

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF ACQUISITION OF SHARES OF EMPEE SUGARS AND CHEMICALS LIMITED BY M/S EMPEE DISTILLERIES LIMITED.**Background :**

1. Empee Distilleries Limited (hereinafter referred to as "the acquirers") filed a report dated 16th May, 2003 with the Securities and Exchange Board of India ("SEBI") under Regulation 3(4) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 in respect of acquisition of 39,48,500 shares (constituting 78.5% of the share capital) of Empee Sugars and Chemicals Limited (hereinafter referred to as the "target company") on May 15, 2003 from Empee Holdings Ltd. by way of inter se transfer among group companies, claiming exemption as per Reg.3(1)(e) of the Takeover Regulations. As the said report was not in the proper format the acquirer submitted a revised report on June 10, 2003. The shares of the target company are listed at the stock exchanges at Mumbai, Hyderabad and Chennai.
2. On examination of the report submitted by the acquirers, it was observed that the names of persons constituting the 'group' had not been shown as 'group' in the Annual Report of the target company for the year 2001-02. In terms of sub regulation (i) of Regulation 3(1)(e) of the Regulations, nothing contained in Regulations 10, 11, and 12 of the said regulations shall apply to inter se transfer of shares amongst the group coming within the definition of group as defined in the MRTTP Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company. It was observed that the persons constituting the group had not been shown in the relevant published Annual Report of the target company. This acquisition was not, therefore, considered prima facie eligible for the exemption under Regulation 3(1)(e)(i) of the Regulations.

Show Cause Notice and Reply

3. A notice was issued to the acquirers on March 08, 2004 to show cause as to why one or more or all action(s) under Regulations 44 and 45(6) of the Regulations read with Sections 11 & 11B of the SEBI Act 1992, should not be initiated against them for the alleged violations of the Takeover Regulations. In response to the show cause notice, the acquirers, vide their letter dated April 02, 2004, stated inter alia, that the target company, transferor and transferee were part of the same group of companies namely, 'Empee Group' falling within the definition of group companies as per section 2(e) of MRTTP Act. It was stated that the omission to furnish the information about the group companies in the Annual Report of the Target company was purely out of oversight and unintentional. It was pleaded that while the non-disclosure might be condoned, the acquirer could have the benefit of the exemption under Reg.3(1)(e) of the Takeover Regulations in respect of the acquisition.

Hearing

4. The acquirers were granted a personal hearing on June 7, 2004, when Mr. P. Purushothaman, Managing Director, of the acquirers appeared before me and reiterated the submissions made earlier and stated that they were not guilty of any willful default and that no action should be taken against them. Subsequently, they made further written submissions vide letter dated June 16, 2004.

Consideration of Issues

5. I have taken into consideration the facts and circumstances of the case and the material available on record which includes the show cause notice and the written submissions made by the acquirers.
6. In terms of Regulation 10 of the Takeover Regulations "No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations".
7. Regulation 11(2) of the said Regulations states that "no acquirer, who together with persons acting in concert with him, has acquired in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire, either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations".
8. Regulation 3(1)(e) of the Regulations, states that nothing contained in Regulations 10, 11 and 12 of the Regulations shall apply to "the inter se transfer of shares amongst the group coming within the definition of group as defined in the

Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company.”

9. It is noted that the acquisition had been made by Empee Distilleries Ltd. from Empee Holdings Ltd. All the four directors of Empee Holdings Ltd. were the directors of Empee Distilleries Ltd. The target company was promoted by Empee Distilleries Ltd. The transferor and the transferee and the target company are stated to be part of the same group of companies. That the acquisition in question was by way of inter se transfer amongst the group companies is not disputed. The only requirement found to have been unsatisfied is that the persons constituting such group have not been shown in the Annual Report of the target company immediately preceding the acquisition.
10. It is argued that the said requirement of disclosure of 'group' in the target company's Annual Report came into force effective 09.09.2002. The impugned transaction took place on 15.05.2003. The said disclosure, therefore, should have been made in the Annual Report of the target company for 2001-02, which was published on 30.11.2002 but the new regulatory requirement was lost sight of, due to inadvertence. Had the target company contemplated the inter se transfer among the group companies it is claimed, the disclosure requirement would have been attended to. There is some force in the argument. It is observed that the acquirer company has otherwise made necessary disclosures to the target company and to the Stock Exchanges as required under the Takeover Regulations.
11. In the view of the foregoing and in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 44 and 45 of the Takeover Regulations, I hereby direct that the report of May 16, 2003 submitted by Empee Distilleries Ltd. regarding acquisition of share holdings in Empee Sugars and Chemicals Ltd. be taken on record.

PLACE : MUMBAI

DATE : August 31, 2004

T.M.NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA