

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF THE ENTIRE BALANCE PUBLIC SHAREHOLDING IN SRP TOOLS LTD BY ANDAVAR INVESTMENTS PVT LTD AND PERSONS ACTING IN CONCERT

WTMN/204/CFD/8/04

1.0 BACKGROUND

- 1.1 Meghraj Financial Services (India) Pvt Ltd (hereinafter referred to as "the Merchant Banker") vide letter dated 21st August 2003 informed the Securities and Exchange Board of India (hereinafter referred to as "SEBI") of its appointment as Manager to the Voluntary Offer to buy 25.002% equity shares of SRP Tools Ltd (hereinafter referred to as "the Target Company") by Andavar Investments Pvt Ltd, Subramanian Investments Pvt Ltd, Valliammai Investments Pvt Ltd and Ramanath Investments Pvt Ltd (hereinafter collectively referred to as "the Acquirers"). Shares of the Target Company are listed only on Madras Stock Exchange (hereinafter referred to as "MSE"). Merchant Banker stated that the public announcement was being made pursuant to Regulation 11 (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Regulations").
- 1.2 Merchant Banker vide letter dated 23rd August 2003 filed with SEBI a copy of public announcement dated 20th August 2003 that appeared in newspapers on 21st August 2003. A copy of letter of offer was subsequently filed with SEBI on 29 August 2003.
- 1.3 From the letter of offer it was observed that Acquirers were part of promoter group of the Target Company, holding 22,27,440 equity shares of Rs. 10/- each forming 74.998% of the paid up equity share capital of the Target Company. The offer was a voluntary one being made by Acquirers to shareholders of the Target Company to acquire 7,42,560 equity shares of face value of Rs. 10/- each i.e. of the entire balance issued paid up equity share capital of Target Company.
- 1.4 SEBI vide letter dated 19th September 2003 informed the Merchant Banker that as the proposed acquisition by the Acquirers would result in delisting of the shares of the Target Company, the Acquirers shall withdraw the public announcement already made and to make a fresh public announcement in accordance with the provisions of the Securities and Exchange Board of India (Delisting of securities) Guidelines, 2003 (hereinafter referred to as "Delisting Guidelines").
- 1.5 Acquirers vide letter dated 23rd September 2003 informed MSE that on 22nd September 2003 they had acquired 13.932% shares of the Target Company at Rs. 35/- per share through negotiated deals.
- 1.6 Merchant Banker vide letter dated 1st October 2003 informed SEBI about the said acquisition inter alia stating to the effect that:
 - The proposed open offer was planned to enable the Acquirers to further "consolidate" their holding in the Target Company, without any minimum level of acceptance. Acquirers had undertaken to follow the procedure prescribed under the Delisting Guidelines in the event of non-promoter holding falling below 10% pursuant to the acquisition.
 - Had the offer been made under Delisting Guidelines and the response not resulted in non-promoter holding falling below 10%, the offer would have been considered to have failed and the Acquirers would not be in a position to achieve their objective of acquisition for consolidation.
 - Delisting was not their objective.
 - If the public announcement is allowed to be made under the Takeover Regulations and consequently Acquirers' shareholding does not exceed 90% post offer, the object of public announcement would be achieved and the question of delisting would not arise
 - Management of Target Company had approached MSE for taking the route of Delisting Guidelines but MSE vide letter dated 23rd April 2003, informed the Target Company that MSE does not have computer terminals outside the city limits of Madras and MSE had sought a clarification from SEBI with regard to the procedure to be followed in such a situation to comply with Delisting Guidelines.
 - The public announcement was made in terms of the Takeover Regulations and the acquisition of 4, 13, 770 equity shares at Rs.35/- amounting to 13.932% of the paid up capital of the Target Company resulting in the Acquirers holding increasing to 88.93% was permitted under Regulation 20(7) of the Takeover Regulations. This was reported to MSE on 23rd September 2003 as required under Regulation 22(17).

- In view of SEBI's letter dated 19th September 2003 the Acquirers have been advised not to acquire any further shares.
- The Acquirers have requested SEBI to allow them to proceed with the proposed open offer under the Takeover Regulations. Post offer, Acquirers have also undertaken to remain listed in case non-promoter holding remains 10% or more and in case non-promoter holding falls below 10%, Acquirers will make an offer for sale of their holding above 90% or proceed with delisting of shares as per Delisting Guidelines.

2.0 SHOW CAUSE NOTICE :

- 2.1 SEBI issued a Show Cause Notice dated 29th December 2003 to the Acquirers to show cause as to why one or more actions under Regulation 44 and 45 read with Sections 11, 11B, 15H and 24 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") should not be initiated against them for violations of Regulation 11 (2) of the Regulations.

3.0 REPLY TO SHOW CAUSE

- 3.1 Acquirers vide letters dated 9th and 12th January 2004 responded to the above Show Cause Notice inter alia, submitting to the effect that:
- The purpose of voluntary offer made by them was to consolidate their share holding and to provide an exit route in the process to the shareholders without any limitation, restriction or discrimination.
 - There is very little trading in the shares of in the Target Company and it is only listed on MSE, share holders would like to liquidate their shares with the boom in the stock market so that they can gainfully deploy the proceeds in the market.
 - The position was not clear till they received SEBI's letter dated 19th September 2003. They would be unable to comply with the requirements under Regulation 11 (2) of the Regulations, if provisions of Delisting Guidelines were directly followed. Moreover, MSE had informed that it cannot provide the infrastructure required for implementing Delisting Guidelines.
 - Due to lack of adequate clarity in Delisting Guidelines, they had to make the public announcement under the Takeover Regulations. The public shareholding falling below 10% in the event of the offer being substantially accepted would be incidental. Consequently, the delisting of shares arising out of the public shareholding falling below 10% would also be incidental. However, necessary provisions have been made to meet this eventuality.
 - The acquisition of shares was in compliance of Regulation 20 (7) and Regulation 22 (17) of the Takeover Regulations.
 - A public offer could be withdrawn under Regulation 27 ibid after indicating reasons for such withdrawal. Also that acquisition of shares under Regulation 20 (7) and Regulation 22 (17) remain valid despite the withdrawal of public offer.
 - The Acquirers have not violated the provisions of Regulation 11 (2) of the Regulations.
 - Acquirers have undertaken to withdraw public offer made on 21st August 2003 and to comply with the Delisting Guidelines. However, since 13.932% of shares have already been acquired, these shares could be held in trust to be offered under delisting offer. The difference in price determined under reverse book building and the actual price paid, will be paid to the original share holders. Since the shares are not traded in demat form it is not possible to adopt reverse book building process through electronic mode. In addition MSE has no electronic connectivity outside Madras. In view of 29, 70, 000 equity shares of the company amounting to 93.30% held in South, rest of 6.70% equity shares spread 1.10% in North, 5.10% in West and 0.50% in East, while the requirement of conducting reverse book building with minimum of 30 electronically connected centers required under the Delisting Guidelines cannot be met, the shareholders outside Madras would be contacted directly so that they can send their offers to MSE and to co-ordinate with MSE for effective completion of the process.

4.0 HEARING :

- 4.1 A personal hearing was granted to the Acquirer on 31st March 2004. Shri S. Rm. Pl. Subramanian, Director of Andavar Investment Pvt. Ltd. appeared on behalf of Acquirers and reiterated their above submissions.

5.0 CONSIDERATION OF THE ISSUES

- 5.1 I have carefully considered the facts of the case, the oral and written submissions of the acquirers.
- 5.2 It is observed that the acquirers who held 74.998% of equity share capital of the Target Company had made a public announcement to acquire the balance of 25.002% shareholding from the public, pursuant to Regulation 11(2) of the Takeover Regulations. At the instance of SEBI, the public announcement has been kept in abeyance. However, in the

meantime, the acquirers have acquired 13.932% additional shares of the Target Company @ Rs.35/- per share through negotiated deals. It is also observed that the acquirers have undertaken to withdraw the public offer and to go by the delisting guidelines.

- 5.3 In terms of Regulation 21(3) of the Takeover Regulations, "if the public offer results in public shareholding being reduced to 10% or less of the voting capital of the company or if the public offer to be made is in respect of the company which has public shareholding of less than 10% of its voting capital, the acquirer shall

either

make an offer to buy the outstanding shares remaining with the shareholders in accordance with the Delisting guidelines

or

undertake to invest through the offer for sale or by a fresh issue of capital to the public which shall open within a period of 6 months from the date of closure of the public offer such number of shares so as to satisfy the listing requirements.

- 5.4 In the instant case, it was the promoters of the Target Company who were already holding 74.998% of its share capital and made public announcement to acquire the balance shareholding from the public. The unambiguous intention of the acquirers was therefore to have the company delisted. The intended acquisition of the balance shareholding of the Target Company by the promoters would clearly fall within the purview of the delisting guidelines. In terms of the guidelines, the promoter of a company which desires to delist from the stock exchange shall determine the exit price for delisting of securities in accordance with the book building process. As per schedule II of the guidelines, the book building process inter alia shall be made through electronically linked transparent facility and the number of bidding centers shall not be less than 30, including all stock exchange centers and there shall be at least one electronically linked computer terminal on all bidding centers. The final offer price shall be determined at a price at which maximum number of shares have been offered in the bidding process. The promoters seem to have chosen the route of Takeover Regulations to gain possible price advantage since in the book building process the final offer price might turn out to be higher than the price offered by the promoters under Takeover Regulations. It would therefore be appropriate, in the interest of public shareholders, for the Regulator to insist on the acquirers abiding by the delisting guidelines for proposed acquirers of the entire balance shareholding from the public. I note that the acquirers have already acquired 13.932% shareholding from the public pursuant to the earlier proposed acquisition of Takeover Regulations and they are prepared to hold those shares in trust to be reoffered under delisting guidelines and pay the difference if any, in the price to those shareholders in the event of the actual final price determined "by" book building process turning out to be higher.

- 5.5 It is noted that the Merchant Banker had not exercised due care and diligence as expected of him under Regulation 13 read with schedule III of SEBI (Merchant Bankers) Regulations 1992 in advising the acquirers proper course of action to meet their regulatory requirement. It is also observed that in spite of SEBI's communication to Merchant Banker on 19.09.2003 not to go forward with the open offer for acquisition of shares of S.R.P. Tools Ltd. under the provisions of the Regulations, the same was not communicated to the Target Company immediately. The Merchant Banker could not adduce any convincing reasons for the lapse.

6.0 ORDER

- 6.1 In view of the foregoing and in the interest of the public shareholders of the Target Company and in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Section 11, 11 B and 15 H of the Act, I hereby direct the Acquirers to make a fresh public offer under the Securities and Exchange Board of India (Delisting of securities) Guidelines, 2003, with regard to the acquisition of 7,42,560 equity shares of SRP Tools Ltd. within a period of 45 days from the date of this order. Further since 13.932% of shares have already been acquired pursuant to the public announcement, Acquirers shall hold those shares in trust to be offered under delisting guidelines and pay the price as determined under the Delisting guidelines to those shareholders whose shares have already been acquired pursuant to public announcement.
- 6.2 I further direct that Enquiry proceedings be initiated against Meghraj Financial Services (India) Pvt. Ltd, the Merchant Banker for which separate order will be issued.
- 6.3 This order shall come into force with immediate effect.

Place : Mumbai

Date : August 31, 2004

T M NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA