

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF VAS ANIMATIONS AND ENTERTAINMENT LTD. - EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

WTMO/ 08 /CFD/05 /2006

1.0 BACKGROUND

- 1.1 Vas Animations and Entertainment Ltd. (hereinafter referred to as 'the target company') is a company limited by shares incorporated under the Companies Act, 1956, having its registered office at Mumbai. The equity shares of the target company are listed on the Bombay Stock Exchange Ltd.
- 1.2 Smt. Sangeeta Jayesh Valia (hereinafter referred to as 'the acquirer') belongs to the promoter group of the target company, which holds 20.10% of the total paid up capital of the target company. The acquirer together with Shri Chintan Kanakia, who is a non promoter of the of the target company (hereinafter referred to as 'PAC') propose to acquire 45,00,000 shares and 5,00,000 shares of the target company, respectively, on preferential allotment basis, at the face value of Rs. 10 each, amounting to Rs. 5,00,00,000. Pursuant to the proposed preferential allotment, the promoter holding would increase from 20.10% to 55.05% of the paid up equity capital of the target company.

2.0 APPLICATION FOR EXEMPTION

- 2.1 The target company vide letter dated February 02, 2006 filed an application, with the Securities and Exchange Board of India (SEBI) under regulation 4(2) read with regulation 3(1)(I) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, (Takeover Regulations), on behalf of the acquirer and the PAC seeking exemption from the applicability of regulations 10, 11 of the Takeover Regulations with respect to the proposed preferential allotment of 50,00,000 shares of the target company to the acquirer and the PAC.
- 2.2 In the said application, the target company has made the following submissions, that: -
- a. mode of acquisition of its equity shares by Smt. Sangeeta Jayesh Valia and Shri Chintan Kanakia is by way of sale of the business owned by them and which they are carrying out through the partnership firm known as Metal Shapers which engaged in the manufacture and sale of small size drums and holding registration as a small scale industrial unit.
 - b. the shares of the target company are to be allotted otherwise than in cash as the applicant company desires to purchase a running business after having got business valuation.
 - c. there is a great demand for small size drums and barrels upto 60 litres or so each both metal and plastic and such item of small size drums and that the industrial units require small size barrels upto 60 ltrs. each both metal and plastic, since the applicant company is clamouring for diversification of activities.
 - d. the target company is carving out to come out of the losses by diversification without taking any risk of other line of activity which is strange and absolutely new to the directors of the and can make use of the existing infrastructure of Metal Shapers to the fullest extent astutely and effectively.
 - e. the buying of the running business for the target company is useful and helpful to the Metal Shapers, as the said business unit when purchased by the target company gets the status of corporate level and this enhances the vision and also the bargaining capacity of borrowings with Bank and Financial Institutions, as banks and Financial Institutions are loathe in granting finance to partnership firms and thus the growth of business in partnership firm gets stymied.
- 2.3 The shareholding pattern of the target company before and after the proposed preferential allotment is as under:

Shareholders' category	Number of registered shareholders as on date of application	Before the proposed acquisition	After the proposed acquisition

		No. of shares/total voting rights held	% of shares/total voting capital held	No. of shares/total voting rights	% of shares/total voting rights
Promoter Group	5	1005144	20.10%	1005144	10.05%
Acquirers	2			45,00,000	45%
	1) Mrs. Sangeeta Jayesh Valia			5,00,000	5%
	2) Mr. Chintan Harshad Kanakia				
FLs/Banks	--	--	--	--	--
FLLs/NRIs/OCBs	--	--	--	--	--
Public	2365	3995256	79.90%	3995256	39.95%
Total	2372	5000400	100%	10000400	100%

3.0 RECOMMENDATION OF THE TAKEOVER PANEL –

- 3.1 The aforesaid application dated February 02, 2006 was forwarded to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel vide letter dated February 28, 2006 forwarded its report dated February 21, 2006 by which the Panel has recommended as under –

"In the facts stated in the Application made by the target company itself though ought to have been made by the Acquirers, the valuation of Undertaking of Metal Shapers including the fixed assets at Rs. 3,31,50,000/- does not inspire confidence more particularly in view of the fact that in addition to this amount of Rs. 3,31,50,000/- the target company is also required to pay to the Acquirers by allotment of Shares at par of the value of Rs. 1,68,50,000/- by way of consideration for loss of source and running business to the said Partnership firm of the Acquirers in the ratio of 90% and 10% respectively to Mrs.

Sangeeta Jayesh Valia and Mr .Chintan Harshad Kanakia. Further, in the letter dated 19th January, 2006 addressed by the target company to Securities and Exchange Board of India it is stated that the Acquirers in their capacity as Partners of the said firm of Metal Shapers approached the target company with their difficulties of raising finance due to non-corporate entity and hence the target company thought it fit to takeover the said Partnership firm. It shows that the proposed allotment of shares by the target company is more to over come the difficulties of the Partners of the said Partnership firm rather than in the interest public Shareholders of the target company.

The grant of exemption as sought, in the circumstances, is not recommended."

4.0 SEBI'S NOTICE TO THE ACQUIRER

- 4.1 SEBI, vide letter dated April 10, 2006 forwarded the copy of the recommendation of the Takeover Panel dated February 21, 2006 to the target company and granted an opportunity of hearing in terms of regulation 4(6) of the Takeover Regulations on, April 24, 2006, before the Whole Time Member , SEBI.

5.0 HEARING

- 5.1 The acquirer through the director of the target company namely, Shri S. K. Kittur and Shri Vidyadhar Salunkhe appeared before me on April 24, 2006 and made submissions. It was submitted that the target company was in dare need to diversify its business and that the Metal Shapers are in the business of manufacturing small size drums and is holding registration as a small scale industrial unit and at present, is in the process of acquiring ISO registration.
- 5.2 It was also submitted that Yashraj Containers Ltd. (a sister concern of the target company) is carrying out similar business of manufacturing barrels of bigger size, however, is outside the scope of small scale industry. The aforesaid Yashraj Containers Ltd. has got business dealings with major public sector oil companies namely, Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd., etc. It was further submitted that, if the Metal Shapers is combined with the business of the target company, it can make use of the expertise in manufacturing techniques, adequate manpower, adequate fund flow, etc. of Metal Shapers.
- 5.3 It was further submitted that, the target company can make use of the synergies of Metal Shapers to the fullest extent and on the top of it, there is no gestation period as Metal Shapers is a working industrial unit. It was submitted before me that, if the target company has to purchase a land and shed, install plant and machinery and then to acquire licenses/permission from various authorities for the purpose of manufacturing, it will take substantial time period and will cause financial burden to the target company.
- 5.4 The target company has also made a written submissions dated April 24, 2006 on the above lines.

6.0 CONSIDERATION OF ISSUES AND FINDINGS

- 6.1 I have carefully considered the application dated February 02, 2006, made by the target company on behalf of the acquirer and the PAC and have taken into consideration the above mentioned recommendations of the Takeover Panel, submissions made before me at the time of the hearing and the relevant material available on record including the written submissions dated April 24, 2006 filed by the target company.
- 6.2 I note that though the acquirer is a part of the promoter group of the target company, she does not hold any shares in the target company. The holding of the promoter group in the target company is 20.10% and the acquirer together with the PAC with her proposes to acquire 50 lakh shares (50%) of the expanded capital. I have also noted that the mode of acquisition of equity shares of the target company by the acquirer and PACs is by way of sale of business owned by them, known as Metal Shapers.
- 6.3 I have noted in the application dated February 02, 2006, that the Government approved valuer has valued the fixed assets of the partnership firm (Metal Shapers) at Rs. 3.315 crores. The said consideration is stated to be paid for the loss of source and running business to the existing partnership in the ratio of 90% and 10% respectively for the acquirer and PACs. I observe that the proposed allotment is mainly to help Metal Shapers to overcome its difficulties.
- 6.4 I note that the shares of the target company are infrequently traded and if the exemption as sought by the acquirer is granted, it would deprive the shareholders, an exit opportunity to be given in terms of the provisions of the Takeover Regulations.
- 6.5 I further note that the target company is running loss in the business and therefore, the action of the target company in acquiring another loss making business entity will not be in the interest of shareholders of the target company.
- 6.6 I also note, on perusal of the shareholding pattern of the target company filed with the stock exchange as on April 24, 2004 that the promoter group shareholding was 64.31% as on March 31, 2004, however, the said promoter holding was substantially reduced since then and was reduced to the level of 20.10%, as on the date of application. This shows that the promoters are proposing to increase their stake in the target company through the proposed allotment, subsequent to their offloading of a substantial chunk of shares of the target company within a period 18 months.
- 6.7 Therefore, I note that the purpose of proposed allotment of shares of the target company is appears to be for the purpose of compensating the loss suffered by Metal Shapers and not for any revival of the target company or for the benefit of the shareholders of the target company.
- 6.8 In view of the above facts and circumstances, I agree with the recommendations of the Takeover Panel and I, consider it to be a fit case for rejection of the application for the grant of exemption.

7.0 ORDER

- 7.1 In view of the above findings, I , in exercise of the powers conferred by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with sub - regulation (6) of regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby reject the application filed by the target company on behalf of the acquirer, Mrs. Sangeeta Jayesh Valia and Mr. Chintan Kanakia, (person acting in concert with the acquirer) for the grant of exemption for the proposed preferential allotment of 45,00,000 and 5,00,000 shares of Vas Animations and Entertainment Ltd., respectively.

T. C. NAIR

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Dated: May 19, 2006