

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T. C. Nair, WHOLE TIME MEMBER

IN THE MATTER OF

PROPOSED ACQUISITION OF EQUITY SHARES OF AGARWAL HOLDINGS LIMITED

WTMO/29/CFD/07/2006

DATE OF HEARING: 14.06.2006

Appearances:

For Acquirers: Shri Keyoor Bakshi, Company Secretary

Shri Rajesh Parekh, Company Secretary

For SEBI : Shri S. V. Muralidhar Rao, General Manager

Shri Santosh Shukla, Deputy Legal Adviser

Shri Vijayakrishnan G., Asst. Legal Adviser

Smt. Anuradha Goyel, Manager

ORDER

(UNDER REGULATION 4(6) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997).

1.0 BACKGROUND

1.1 M/s Agarwal Holdings 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 302, Sahakar Bhavan, 3rd floor, 340-348 Narsi Natha Street, Mumbai – 400 009, Maharashtra. The equity shares of the target company are listed on the Bombay Stock Exchange, Ltd. (BSE).

1.2 M/s Ambitious Holdings Pvt. Ltd., Ms. Lalita Tibriwala, Ms. Urmila N. Harlalka, Ms. Damyanti Harlalka, Mr. Madhusudhan Harlalka, Ms. Devkinandan Harlalka, Mr. Narendra Harlalka and Ms Urmila R. Harlalka are the existing promoters of the target company and they collectively hold 39.22% equity shares in the target company.

2.0 APPLICATION SEEKING EXEMPTION

2.1 Shri Hitesh G. Somani, Ms. Namrata Kabra and Ms. Geetaben Kabra (hereinafter collectively referred to as 'the acquirers') filed an application dated December 31, 2005 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 Takeovers) Regulations, 1997, (hereinafter referred to as 'the Takeover Regulations').

2.2 The acquirers vide their subsequent letters dated February 11, 2006 and March 24, 2006, made further clarifications in respect of the said exemption application. It is submitted by the acquirers that they are not holding any shares in the target company and they propose to acquire 1,56,900 (39.22%) equity shares carrying voting rights of the target company by way of purchase of shares from its existing promoters and additional 80,000 (20%) equity shares of the target company by making individual offers to the public shareholders of the target company.

2.3 The shareholding pattern of the target company before and after the proposed acquisition is as under:

Shareholders category	Number of registered shareholders as on date of application	Shareholding Before the proposed acquisition		Shareholding After the proposed acquisition	
		No. of shares/ total voting rights held	% of shares total voting	No. of shares/ voting rights	% of shares / voting rights

			capital held		
Promoter group		1,56,900	39.22%	-----	-----
Acquirers		-----	-----	2,36,900	59.22%
FIIIs		-----	-----	-----	-----
Public		2,43,100	60.78%	1,63,100	40.78%
Total		4,00,000	100%	4,00,000	100%

2.4 Pursuant to the aforesaid acquisition, the shareholding of acquirers would increase from nil to 59.22% in the target company and there would be change in control over the target company. The acquirers have sought the exemption from the applicability of provisions of regulations 10, 11(1), 11(2), 12, 13, 15 and 28(5) of the Takeover Regulations. As per the application, the exemption was sought more particularly in respect of the following requirements:

- i). Making public announcement and publication of the same in newspapers. (Regulations 10 and 12 read with regulation 15 of the Takeover Regulations).
- ii). Appointment of Merchant Banker. (Regulation 13 of the Takeover Regulations).
- iii). Authorizing merchant Banker to operate / issue instructions relating to escrow account. [Regulation 28(5) of the Takeover Regulations].

3.0 GROUNDS FOR SEEKING EXEMPTION

3.1 The acquirers have sought the exemption as stated above inter alia submitting the following:

- a) The acquirers are carrying on the business of finance and investment and real estate business since long. The acquirers intend to enter into the business of finance and investments in an organized manner in a listed public company and also plan to expand the business of the target company which is engaged in the business of investment and finance.
- b) The issued , subscribed and paid up capital of the target company is Rs. 40,00,000/- divided into 4,00,000 equity shares of Rs. 10/- each. The total paid up equity share capital of the target company will remain the same before and after the proposed acquisition.
- c) Size of the target company is very small and if the exemption is not granted, it would involve huge expenditure which would further make the acquisition unviable.
- d) The shares of the target company are infrequently traded in terms of Explanation (i) of regulation 20(5) of the Takeover Regulations. The opening and closing price of last trade in the shares of the target company at BSE on August 17, 2005, was Rs. 4.60. The networth of the target company is Rs. 46,39,790/-, the book value per equity share is Rs. 11.60, return on networth is 0.246% and earning per share is Rs. 0.03. The minimum offer price in respect of the proposed acquisition is Rs. 10 per share, which is higher than the price calculated in accordance with regulation 20 of the Takeover Regulations.
- e) The number of public shareholders in the target company is only 134 and cost of public announcement / appointment of merchant banker would be disproportionate / unwarranted.
- f) The acquirers will send the draft letter of offer to SEBI and the observations, if any, from SEBI will be incorporated in the final letter of offer.
- g) The letter of offer will be dispatched to the individual shareholders of the target company by Registered post and that the acquirers would comply with all the provisions of the Takeover Regulations except those for which the exemption is sought.

4.0 RECOMMENDATION OF THE TAKEOVER PANEL

4.1 The aforesaid application and the subsequent letters dated February 11, 2006 and March 24, 2006 were forwarded to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel, vide its report dated May 11, 2006, recommended as under –

“The Panel has considered the pros and cons of the proposal. The Panel however felt that the proposal even after the clarifications given is not acceptable and there appears to be an attempt to circumvent normal procedure. The Panel is therefore not recommending grant of exemption as sought.”

5.0 HEARING TO THE ACQUIRERS

- 5.1 Vide letter dated May 26, 2006, SEBI sent a notice for hearing to the acquirers in terms of regulation 4(6) of the Takeover Regulations. A copy of the recommendation of the Takeover Panel was also forwarded to the acquirers along with the said letter.
- 5.2 Shri Keyoor Bakshi and Rajesh Parekh, Company Secretaries appeared before me on June 14, 2006, on behalf of the acquirers. The representatives of the acquirers submitted that the exemption is sought only from the requirements of making the public announcement with respect to the proposed acquisition in the national dailies and the regional language dailies as required in regulation 15 and from the appointment of the merchant banker as required under regulation 13 of the Takeover Regulations. They reiterated that the number of shareholders in the target company are only 134 and if the exemption as requested above is not granted, the acquisition would involve huge expenditure and the cost of the same would be higher than the consideration to be made to the shareholders. They further emphasized that the individual offers shall be made to the 134 public shareholders of the target company by sending the letter of offer by registered post.

6.0 CONSIDERATION OF ISSUES AND FINDINGS

- 6.1 I have carefully considered the application dated December 31, 2005, the letters dated February 11, 2006 and March 24, 2006 sent by the acquirers and the recommendation of the Takeover Panel dated May 11, 2006 and the submissions made before me on behalf of the acquirers.
- 6.2 I note that the acquirers are not holding any shares in the target company and pursuant to the proposed acquisition as mentioned herein above the acquirers would acquire control over the target company. The proposed acquisition of 1,56,900 (39.22%) shares of the target company by the acquirers from the existing promoters and change in control over the target company would trigger regulations 10 and 12 of the Takeover Regulations and therefore, the acquirers are under obligation to make a public announcement to acquire additional 20% equity shares in terms of the provisions of regulation 10, 12, 15 and 21 of the Takeover Regulations.
- 6.3 The acquirers have submitted that they will make the public offer to acquire 20% equity shares of the target company from the 134 public shareholders. However, they have requested for exemption from requirements of making the public announcement in the national dailies and regional dailies and from requirement of appointment of merchant banker in respect of the said public offer.
- 6.4 The objective of the public announcement as contemplated in the Takeover Regulations is to provide the shareholders of the target company an exit opportunity in case an acquirer acquires substantial stake in the target company or control over the target company. With the further objective of protecting the investors, the Takeover Regulations contemplate that the shareholder should get the best offer price. Regulation 20 of the Takeover Regulations provides that the offer to acquire shares under regulations 10, 11 or 12 should be made at a price not lower than the price determined as per regulations 20(4) and (5). The price determined in accordance with the regulations should be disclosed to the shareholders.
- 6.5 Regulation 25 of the Takeovers Regulations provides for the opportunity of the competitive bid in case of a public announcement to acquire shares or control in accordance with the Takeover Regulations made by an acquirer. In terms of regulation 25 of the Takeover Regulations, any person, other than the acquirer who has made the first public announcement, can, within 21 days of the public announcement of the offer made by the acquirer, make a public announcement, of this offer for acquisition of the shares of the same target company. The said competitive bid should be for such number of shares which shall be atleast equal to the holding of the person who made the first public announcement including the number of the shares for which the said public announcement was made. The acquirers who made the public announcements of offer including the public announcement of the competitive bid have the option to make upward revision in respect of the price.
- 6.6 I find that in the instant case the acquirers holding nil shares in the target company propose to acquire substantial stake (59.22%) in the target company and control over the target company. In case, the exemption from the making of public announcement is granted, as requested by the acquirers in this case, the same may curtail the opportunity of the competitive bid as provided under regulation 25 of the Takeovers Regulations and may deprive the public shareholders (holding 60.78%) of getting the best offer price. The purpose of making a public announcement in accordance with regulation 15 is necessary inter alia to provide, to any person, an opportunity of making a competitive bid in accordance with the Takeover Regulations. In my view the number of public shareholders (134 as represented) is not a sufficient ground for the grant of exemption from making the public announcement particularly in view of the fact that the public shareholding in the target company is substantial (60.78%).
- 6.7 The Takeover Regulations require fair and adequate disclosures to be made to the shareholders to enable them to make informed decision with regard to their investment in the target company. Accordingly, the role of the merchant banker

becomes very important and the merchant banker is expected to exercise due diligence and ensure that the disclosures made by the acquirer in the public announcement as well as in the letter of offer are true, fair and adequate and based on reliable sources. The merchant banker is also under obligation to ensure that the acquirer is able to implement the offer, the provision relating to escrow account as required under regulation 28 of the Takeover Regulations has been made, the public announcement is made in terms of the regulations, etc. The merchant banker is also required to oversee the procedure of acceptance of shares offered in the public offer and payment of consideration to the shareholders who offered their shares, etc. as specified in the Takeover Regulations.

- 6.8 The acquirers could not point out any valid and sufficient reason for the exemption from the appointment of the merchant banker, except that it would invoke huge expenditure. I find that this cannot be a ground for grant of exemption from requirement of appointment of merchant banker. In the present case the role of merchant banker in respect of the public offer proposed to be made by the acquirers is important so as to ensure that the public announcement is made in terms of the Takeover Regulations and the shareholders get the best offer price.
- 6.9 In view of the above, I find that the exemption as sought by the acquirers cannot be granted and the proposed acquisition of 1,56,900 shares of the target company would trigger regulation 10 and 12 of the Takeover Regulations. Consequentially, the acquirers are under obligation to make public announcement in accordance with the Takeover Regulations.

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 request made by acquirers namely, Shri Hitesh G. Somani, Ms. Namrata Kabra and Ms. Geetaben Kabra, seeking exemption from requirements of the provisions of regulations 10, 12, 13, 15 and 28(3) etc. of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in respect of the proposed acquisition of 1,56,900 shares of M/s. Agarwal Holdings Limited, from its promoters, namely, Ambitious Holdings Pvt. Ltd., Ms. Lalita Tibriwala, Ms. Urmila N. Harlalka, Ms. Damyanti Harlalka, Mr. Madhusudhan Harlalka, Ms. Devkinandan Harlalka, Mr. Narendra Harlalka and Ms Urmila R. Harlalka. The application filed by the acquirers is disposed of accordingly.

T. C. NAIR

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Dated: July 14, 2006