

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES OF M/S GANESH POLYTEX LIMITED BY SHRI SHYAM S SHARMA & OTHERS- EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

WTM/GA/CFD/133/2/07

1.0 BACKGROUND

- 1.1 M/s Ganesh Polytex Ltd. (hereinafter referred to as 'the target company') is a company incorporated under the Companies Act, 1956, having its registered office Village Raipur (Rania), Kalpi Road, Distt. Kanpur Dehat. The equity shares of the target company are listed on The Bombay Stock Exchange Ltd. (BSE) and U.P. Stock Exchange Association Ltd (UPSE)
- 1.2 Shri. Shyam S. Sharma is one of the promoters and is the Chairman cum Managing Director of the target company. Shri Shyam S. Sharma together with some of the other promoters of the target company namely Shri Sharad Sharma, Shri V. D. Khandelwal and M/s Sandeep Yarns Pvt. Ltd – and persons acting in concert namely Shri Ashok Tyagi, Shri D.K.Shukla, Ms. Nisha Sharma, M/s Abhyudya Industrial Consultants Pvt. Ltd., M/s Alok Leasing Pvt. Ltd., M/s Pradeep Kumar Goenka / Sunil Gupta, M/s Crest International Ltd., M/s AKG Consultants Ltd., and Shri Sanjeev Gupta (hereinafter collectively referred to as acquirers) collectively holds 22.95% of the voting capital of the target company. The entire promoter group together with the acquirers holds 35.23% of the voting capital of the target company.
- 1.3 The target company proposes to allot 34 lakh equity share of Rs.10/- each at a premium of Rs.5/- per share to the acquirers. After the said proposed allotment the holding of the acquirers would increase to 43.47% and that of the promoter group would increase to 52.48%.

2.0 APPLICATION FOR EXEMPTION

- 2.1 Shri Shyam S Sharma (on behalf of all the acquirers) filed an application dated December 28, 2005 under regulation 4(2) read with regulation 3(1) (I) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, (hereinafter referred to as the 'Takeover Regulations') and requested Securities and Exchange Board of India (hereinafter referred to as SEBI) to exempt them from making of an open offer under the provisions of the Takeover Regulations inter alia on the grounds mentioned below:
- 2.2 In the said application the acquirers had inter alia made the following submissions.
- i) To improve the margins, the target company is in the process of setting up a plant. The total cost of the proposed project is estimated at Rs.1530.00 lacs. The term loan provider Bank (for the project) is stipulating the condition, requiring the promoters to bring in their contribution by way of equity to the tune of Rs.510.00 lacs in the target company.
- ii) Therefore, with a view to meeting the condition being stipulated by the financial institution, the target company proposes to make a preferential allotment to the promoters.
- iii) The proposed allotment would not result in change of control and management as the acquirers as part of promoter group are already in control of the target company. The target company is already maintaining the minimum public shareholding of 25%.
- 2.3 The shareholding pattern of the target company, as mentioned in the said application before and after the proposed acquisition is as under:

Shareholders' category	Shareholding Before the proposed acquisition		Shareholding After the proposed acquisition	
	Number of shares / total voting rights held	% of shares / total voting capital held	Number of shares / voting rights	% of shares / voting rights
Promoter	11,50,221	12.282%	11,50,221	9.011%
Acquirers*(also acting in concert with the promoters)	21,49,325	22.951%	55,49,325	43.473%

FIs/Banks	2,96,100	3.162%	2,96,100	2.320%
FIIs/NRIs/OCBs	14,897	0.159%	14,897	0.117%
Public	57,54,457	61.446%	57,54,457	45.079%
Total	9365000	100.00	12765000	100.00

* includes 4,65,000 shares allotted on conversion of warrants.

3.0 FURTHER SUBMISSIONS

- 3.1 Shri Shyam S Sharma vide letter dated January 30, 2006 forwarded SEBI, the certified true copy of the special resolution passed at the last Annual General Meeting of the target company held on September 17, 2005. Further vide letter dated May 29, 2006 (to SEBI) enclosed the copy of the sanctioned letter dated May 10, 2006 issued by the Canara Bank to the target company. Further vide letters dated July 12, 2006, Shri Shyam S Sharma had forwarded the letter received from the Allahabad bank dated July 10, 2006 advising the target company to seek permission of SEBI for meeting allotment of equity shares to the promoters (acquirers). Shri Shyam S. Sharma vide letter dated August 1, 2006 had also forwarded the copy of the shareholding pattern of the target company as submitted to BSE for the quarter ending on December 31, 2005, March 31, 2006 and June 30, 2006, copy of the letter sent to BSE in respect of the disclosure under clause 8 (3) of the Takeover Regulations for the year ended March 31, 2006 and copy of the audited balance sheet for the year ended March 31, 2006. The acquirer vide e- mail dated August 22, 2006 intimated SEBI that promoters have brought in Rs. 292.28 lakhs as unsecured loans. It is further stated that 4,65,000 warrants have been converted on December 30, 2005 and the shareholding of the promoters including acquirers as on August 18, 2006 have been provided.

4.0 RECOMMENDATION OF THE TAKEOVER PANEL

- 4.1 The application filed by the acquirers was forwarded by SEBI to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel vide its report dated August 28, 2006 has recommended as under-

"The committee in its meeting dated 28.08.2006 had prolonged discussion on the mater in which all the pros and cons were discussed threadbare. The committee did consider that the preferential allotment would be as per SEBI Guidelines. However, the Committee is of the view that this is not a case for recommending exemption, by passing the normal mode envisaged by the Company Law."

- 4.2 The Takeover Panel vide letter dated October 6, 2006 withdrew its aforesaid report and further submitted a fresh report in respect of the application filed by the acquirers. It was inter alia recommended in the said report that: *"The committee in its meeting dated 28.08.2006 had prolonged discussion on the mater in which all the pros and cons were discussed threadbare. The committee did consider that the preferential allotment would be as per SEBI Guidelines. However, the Committee is of the view that this is not a case for recommending exemption, bypassing the normal mode envisaged by the SEBI guidelines and regulations."*

- 4.3 Vide letter dated January 08, 2007, an opportunity of hearing was granted to the acquirers by SEBI on January 19, 2007 to make its submissions. Dr. S.D Israni, Practicing Company Secretary represented the acquirer on the said date and made submissions before me on the lines of the aforesaid application filed by the acquirers.

5.0 FINDINGS

- 5.1 I have carefully considered the application filed by the acquirers, the aforesaid recommendations of the Takeover Panel, the submissions made by Dr. S.D Israni on behalf of the acquirer during the course of hearing and relevant materials available on record.
- 5.2 I note that the statement regarding the dismal performance mentioned in the application filed by the acquirers can not be accepted as it is found that the target company is a profit making company as per the audited accounts of the target company for the years 2004-2005 and 2005-2006.
- 5.3 I have also considered the Panel's view that it is not the case for recommending exemption bypassing the normal mode envisaged by the SEBI guidelines and regulations.
- 5.4 I have also noted that 4,65,000 shares of the target company have been allotted to the acquirers upon the conversion of warrants which constitutes 4.97% of the post issue capital. If the promoters are required to bring in their contribution by way of preferential allotment of equity shares, they should make an open offer and comply with the provisions of the Takeover Regulations.
- 5.5 The grounds specified in the aforesaid application filed by the acquirers are not convincing enough to grant exemption as sought by them and the said application is not in the interest of shareholders of the target company. In view of the above

facts and circumstances, I do not find this as a fit case for the grant of exemption from complying with the provisions of the Takeover Regulations. Therefore, I agree with the recommendations made by the Takeover Panel.

6.0 ORDER

- 6.1 In view of the above findings, I, in exercise of the powers conferred upon me 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 dispose off the application dated December 28, 2005 filed by the acquirers, Shri Shyam S. Sharma, Shri Sharad Sharma, Shri V. D. Khandelwal and M/s Sandeep Yarns Pvt. Ltd., Shri Ashok Tyagi, Shri D.K.Shukla, Ms. Nisha Sharma, M/s Abhyudya Industrial Consultants Pvt. Ltd., M/s Alok Leasing Pvt. Ltd., M/s Pradeep Kumar Goenka / Sunil Gupta, M/s Crest International Ltd., M/s AKG Consultants Ltd., and Shri Sanjeev Gupta in respect of the proposed preferential allotment of the equity shares of the target company, Ganesh Polytex Ltd.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: 05.02.07