

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION BY PREFERENTIAL ALLOTMENT AND PURCHASE OF EQUITY SHARES OF CRESSANDA SOLUTIONS LIMITED BY SHIVSHAKTI AGRO INDIA LIMITED, SHRI.SUMIT SUREKHA AND JYOTI SUREKHA—EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

1.0 BACKGROUND

- 1.1 M/s Cressanda Solutions Limited (hereinafter referred to as 'the target company') is a company incorporated under the Companies Act, 1956, having its registered office at 26/27 Khatau Building, AD Modi Marg, Mumbai-400023. The equity shares of the target company are listed on the The Bombay Stock Exchange Ltd. (BSE)
- 1.2 M/s Shivashakti Agro India Limited a company incorporated under the companies Act, 1956 and having its registered office at Arya Samaj Road, Samshtipur, Bihar-848101, Shri. Sumit Surekha son of Ram Gopal Surekha and Shri. Jyoti Surekha son of Ram Gopal Surekha (hereinafter referred to as 'the acquirers') are persons acting in concert. The acquirers do not hold any shares in the target company.

2.0 APPLICATION FOR EXEMPTION

- 2.1 The acquirers filed an application vide letter dated January 30, 2006 with the Securities and Exchange Board of India (hereinafter referred to as SEBI) 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'). The acquirers proposed to acquire 34.7 lac shares out of which 27.5 lac shares were to be acquired by way of preferential allotment and 7.22 lac shares by way of purchase from Shri. Kalpesh Rashilal Shah, a public shareholder, (hereinafter referred to as the 'seller'), at the rate of Rs.3.50 per share. Since, the post acquisition shareholding of the acquirers would become 29.55%, the exemption was sought from the applicability of regulations 10, 11(1), 11(2) and 12 of the Takeover Regulations, *inter alia*, on the following grounds;

- a) The target company is in dire financial crisis; the cumulative loss of the company at the end of June 30, 2006 is Rs.6,12,32,000/- consequently eroding 68.03% of the networth of the company.
- b) The company requires direct capital investment in order to expand and diversify its business operations.
 - c) Due to the current financial condition of the company and keeping in view its past performance, the target company is unable to raise any debt from the markets and its promoters are not in a position to invest further capital into the company.
- d) The preferential allotment would not in any manner affect or prejudice the interests of any public shareholders or other stakeholders of the company.
- e) If the acquirers are compelled to make the open offer under the takeover code, then the money paid out by the acquirers would go to the shareholders and not to the target company and consequently the target company will not be able to carry on with its diversification plans for lack of funds.
- f) Taking into account the pricing formulation of the Takeover code any open offer made by the acquirers would be made at a price less than par value of the share, ie Rs.10/-. Any shareholder accepting this offer would incur a significant loss.
 - g) If the acquirers are not exempted from the applicability of the Takeover code, then the amount of actual investment would stand reduced. This will directly impact the company as it will not be able to fully meet its future expansion plans as envisaged.
- h) While the acquirers will collectively nominate one director on the Board of Directors of the target company, it is the intention of the acquirers to retain the existing management of the target company on the completion of the proposed acquisition.
- i) The acquirers would hold only 29.55% of the shares in the post issue fully paid up equity share capital of the company while the existing promoters will hold 53.38% of the post issue fully paid up share capital of the target company.
- j) The effective and substantial control over the day to day operations and affairs of the company will continue to vest with the existing promoters.

- 2.2 The aforesaid application dated January 30, 2006 was forwarded to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations and the Takeover Panel vide its report dated February 28, 2006 recommended as under:

"As per the application, issue of fresh capital by way of preferential allotment to the acquirers is for the purpose of meeting capital expenditure by the target company of its proposed diversification plans and if the acquirers are to make the 'Open offer' under the Takeover Code, then the money paid out by the acquirers would be to the shareholders of the target company and to the target company to carry on with its diversification plans for lack of funds.

The acquirers are not in promoter group of the target company. The proposed allotment of 27.5 lac shares to outsiders on preferential allotment basis does not appear to be in the interest of the public shareholders of the target company. Though it is stated that resolution as per section 81(1A) of the Companies Act, 1956 for allotment of shares on preferential basis to the acquires is passed at the Extra-Ordinary General Body Meeting on 13th September 2005, neither notice of such Extra-Ordinary General Body Meeting is relied nor details of the holding of such Extra-Ordinary General Body Meeting are furnished,. In the facts stated in the application, passing of alleged resolution under Section 81(1A) of the Companies Act inspire confidence.

Keeping in view interest of public shareholders of the target company, grant of exemption as sought is not recommended."

- 2.3 Since the Panel refused to grant exemption, an opportunity for hearing was given to the acquirers on April 24, 2006. Pursuant to the hearing, acquirers vide letter dated April 25, 2006 modified the prayer. The modified prayer is as under:

- Exemption was sought for the preferential allotment of 17.02% of the fully paid up equity share capital of the target company to M/s Shivshakti Agro India Limited, 2.76% of the fully paid up equity share capital of the target company to Shri. Sumit Sureska and 3.61% of the fully paid up equity share capital of the target company to Shri.Jyoti Sureka.
- Without prejudice to the above prayer, exemption was sought in relation to the purchase of 2.95% of the fully paid up equity share capital of the target company by Shri.Sumit Sureka and purchase of 3.19% of the fully paid up equity share capital of the target company by Shri.Jyoti Sureka from the seller. Suitable directions, or preconditions which are to be complied with before proposed transfer of shares to persons acting in concert were prayed in the event of the exemption sought in (b) above is not granted.

- 2.4 As per the aforesaid modified prayer, the shareholding pattern of the target company before and after the proposed preferential allotment would be as under;

CATOGORY	NO. OF SHARES/ TOTAL VOTING RIGHTS HELD	% OF SHARE HOLDING	NO. OF SHARES/ TOTAL VOTING RIGHTS HELD	% OF SHARE HOLDING
	BEFORE THE PROPOSED ACQUISITION		AFTER THE PROPOSED ACQUISITION	
Promoters	6271700	69.69	6271700	53.38
Acquirer	Nil	Nil	2750000	23.40
FIs/Banks	Nil	Nil	Nil	Nil
FIIIs/NRIIs/ OCBs	Nil	Nil	Nil	Nil
Public	2728300	30.31	2728300	23.22
TOTAL	9000000	100.00	11750000	100.00

3.0 RECOMMENDATION OF THE TAKEOVER PANEL

- 3.1 In view of the modified prayer, the said application dated January 30, 2006 was remitted back to the Panel and the Panel vide its report dated June 27, 2006 made the following recommendation;

"Earlier this matter was placed before this Committee and the Committee reported that the acquirers are not in promoter group of the target company and the proposed allotment of 27.5 lac shares to outsiders on preferential allotment basis is not in the interest of public shareholders of the target company. It was observed that although resolution as per section 81(1A) of the Companies Act, 1956 for preferential allotment to the acquirers was passed, neither the notice of extra ordinary general meeting nor details were submitted. Hence, passing of the alleged resolution did not inspire confidence and committee did not recommended grant of exemption.

Thereafter along with the applicant's application dated April 25, 2006 the Applicant has forwarded the documents relating to the extra ordinary meeting dated 13th September 2005 in which the requisite resolution approving the preferential allotment

of shares to, Shivashakti Agro India Ltd, Mr Sumit Sureka and Mr.Jyoti Sureka , was passed.

The clarification sought on above purchases of shares Mr Sumit Sureka and Mr Jyoti Sureka from Mr. Kalpesh Rasiklal Shah were submitted.

It was requested that if the Board is not inclined to allow Para II (i) or (ii) then the acquirers request the Honourable Member to consider the prayer in Para I above "seeking exemption for the proposed preferential allotment independently, in its merit".

Committee considered this request and in its meeting held on 22nd June 2006 after thorough discussion all the members of the committee have considered the prayers of the applicants and found that the prayer in Para(I) of the new application can be granted and in view of this the other prayers need not be considered."

4.0 FURTHER SUBMISSIONS

- 4.1 The target company and the acquirers filed written submissions vide letter dated January 3, 2007. whereby it was submitted that the acquirers has confidence in the existing management of the target company and their acquiring shares would not change the management structure. In the event of preferential allotment, the acquirers would nominate one Director to the Board of the Company. It was further submitted that as on March 31, 2006, the loan liability of the target company was Rs.3,24,57,998/- and the acquirers have, as on August 31, 2006 provided the target company with an unsecured loan of Rs.2.75 crores to meet the company's working capital requirements and other payment obligations. Further, it has been agreed between the target company and acquirers that the amount towards the loan will be converted into equity shares to be issued to the acquirers in the event of grant of approval for exemption. On the contrary, the company in the current financial position will not be in a position to honour the loan and this may lead to winding up of target company. Such a situation would be detrimental to the shareholders.
- 4.2 It was further submitted that the Board had granted exemption in similar circumstance in the matter of White House Cotton Industries. They further cited the orders of Board in Boruka Financial Services Limited, Shricon Industries Limited, Southern Petrochemicals Industries Corp Limited, Satia Paper Mill and Southern Iron and Steel Company where exemption was granted and contended that the present case is similar in facts and circumstances. Later, they appeared for personal hearing on April 17, 2007 and reiterated the aforesaid submissions.

5.0 FINDINGS

- 5.1 I have carefully considered the original application dated January 30, 2006 filed by the acquirers, the modified application/prayer, the above mentioned Panel recommendations and further submissions made by the acquirers and the target company.
- 5.2 At present the acquirers hold no shares of the target company and the proposed preferential allotment of 27,50,000 fully paid up equity shares would result in the acquirers holding 23.4 % of the total paid up equity capital. The proposed purchase of 7.22 lac shares from the seller would result in an addition of 6.15% and *in toto* acquirers will be holding 29.55% of the enhanced paid up equity capital of the target company. I note that even after the proposed allotment and purchase, the stake of the promoter group will be above 52% of the total paid up equity capital of the target company.
- 5.3 As recommended by the Panel, if grant of exemption on preferential allotment is approved it would result in a situation where the acquirers will hold 23.4 % of the enhanced capital and the acquirers will have the power to nominate one Director to the Board of the target company. It was submitted that the effective and substantial control over the day to day operations and affairs of the target company will continue to vest with the existing promoters Apparently, there is no change in control of the target company as acquirers do not have the right to appoint majority of the directors. However, it may not be right to conclude that there will not be change in control of the target company subsequent to the preferential allotment where as per the definition, "control" may be 'direct or indirect' and can be 'in any manner'. I note that the target company is in dire financial crisis and even at present, acquirers have a decisive role in the fate of target company as submitted above in view of the unsecured loan.
- 5.4 Recommendation of the Panel at the first instance was on the ground that the grant of exemption would not be in public interest. However, the Panel reconsidered the recommendation on the basis of further evidence and the modified prayer. In view of the same, the Panel recommended grant of exemption for preferential allotment independently and declined to consider the other prayer seeking exemption for purchase from a seller as prayed in the application. The acquirers and target company have submitted that preferential allotment would not in any manner affect or prejudice the interests of public shareholders and taking into account the pricing formulation of the Takeover code, any open offer made by the acquirers, would be made at a price less the par value of the share, ie Rs.10/- and any shareholder accepting this offer would incur a significant loss. In this regard, I note that the public share holding in the target company is 30.31% at present. Excluding the promoters and persons acting in concert out of the total number of shareholders which is 209, the number of public

shareholders comes above 202. I find it difficult to accept the aforesaid submissions on account of the number of public shareholders who will be deprived of the exit opportunity.

5.5 In the event of grant of exemption, the acquirers will acquire 23.4% of the enhanced paid up equity capital of the target company. Thereafter, acquirers can easily consolidate their holding by way of creeping acquisition without making any public offer. Consequently, acquirers can acquire substantial shares or control over the target company without giving an exit opportunity to the existing shareholders. In view of the above, grant of exemption from an open offer will be against public interest.

5.6 I have also taken into account various orders of the Board cited in favour of the acquirers and the target company. In the matter of White House Cotton Industries, exemption was granted in the circumstance where the existing management could not run the company and was not able to meet the financial obligations to IDBI. New promoters having expertise in the same line of business were proposed to acquire control at the instance of IDBI as the target company was potentially sick. In the present case there are no such requirement from financial institutions and the acquirers not in the same line of business. In the matters of Bhoruka Financial Services Limited and Shricon Industries Ltd. exemption was sought from procedural formalities only and there had been no prayer for exemption from making an open offer unlike in the present case. In the matters of Southern Petrochemicals Industries Limited, Satia Paper Mills and Southern Iron and Steel Company, target companies had availed the CDR scheme of RBI and the said schemes were to fail in the absence of grant of exemption. But the present matter is not part of any CDR scheme and none of the aforesaid considerations are present here. Therefore, I find that the cases quoted by the acquirers and target company cannot be treated as precedents as facts and circumstances are different from the present case.

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 Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby reject the request made by the acquirers, namely, M/s Shivashakti Agro India Limited, Shri Sumit Surekha, Shri Jyoti Surekha seeking exemption from complying with the provisions of Chapter III of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in respect of the proposed acquisition.

T.C.NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: April 26, 2007