

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: T.C. NAIR, WHOLE TIME MEMBER

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 44 and 45 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 {Takeover Regulations}-

In the matter of acquisition of shares of Scenario Media Limited {target company} by Scenario Communications Pvt. Ltd. (acquirer) through preferential allotment.

WTMO/TCN/CFD/155/2009/JAN

APPEARANCES:

FOR THE ACQUIRER:

1. Mr. B. Madhuprasad, Vice Chairperson of Keynote Corporate Services Ltd.
2. Ms. Radha Kirthivasan, Senior Vice President of Keynote Corporate Services Ltd.
3. Mr. D.S. Sharma & 1 Associate, Aryaman Financial Services Ltd.
4. Mr. Saurabh Shah & 1 Associate, Promod S. Shah & Associates (Practicing Company Secretaries)
5. Mr. Chirag Pittie, Director of Scenario Media Limited.

FOR SEBI:

1. Mrs. Soma Majumder, Deputy General Manager, and
2. Mrs. Anuradha Goyel, Assistant General Manager

1.0 BACKGROUND

- 1.1 The Scenario Media Limited (target company) is a public limited company incorporated under the Companies Act, 1956, having its registered office at 167, Atlanta Building, Nariman Point, Mumbai- 400 021. The equity shares of the target company are listed on the Bombay Stock Exchange Ltd. (BSE).

- 1.2 On 28.05.05, Scenario Communications Pvt. Ltd. (acquirer) made a Public Announcement under regulations 10 and 12 read with regulation 14 of Takeover Regulations to acquire 2, 40,000 fully paid up equity shares representing 10.71% of the post preferential voting capital of target company at an offer price of Rs.10 (plus interest @ 10% for the delay in making Public Announcement) per fully paid up share. The draft letter of offer was filed under regulation 18 of the Takeover Regulations with SEBI on 10.6.05 by the acquirer through M/s Aryaman Financial Services Ltd. (the merchant banker).
- 1.3 While vetting the draft Letter of offer, SEBI noted that on 27.12.2004 the acquirer had acquired 20, 00,000 equity shares representing 89.29% of the paid up equity capital of the target company through preferential allotment. Pursuant to the said preferential allotment, the voting capital of the target company increased from 2, 40,000 equity shares to 22, 40,000 equity shares and the shareholding of acquirer increased from 'Nil' to 89.29% of the enhanced paid up equity capital of the target company. Further, the shareholding of the then existing promoter group in the target company decreased from 19.73% to 2.11% and the public shareholding decreased from 80.27% to 8.60%.
- 1.4 By letter dated 01.07.05, SEBI sought certain details from the merchant banker including the details as to whether the preferential allotment was in compliance with the then applicable clause 40A of the Listing Agreement and whether shares allotted by said preferential allotment were eligible for listing. SEBI also sought comments from the merchant banker on the observation made by BSE that the target company allotted said shares on preferential basis without obtaining prior 'in-principle' approval from it.
- 1.5 The merchant banker vide its letters dated 06.10.05 submitted that the acquirer has clarified in point No. 6 at Page No. 10 of draft letter of offer that "the acquirer undertakes to disinvest through an offer for sale or by fresh issue of capital to the public which shall open within a period of six months from the date of closure of offer, such number of shares, so as to satisfy the listing requirement." The merchant banker also informed that the target company is awaiting the 'in-principle' approval from BSE for the listing of the said equity

shares issued on preferential basis and listing of shares allotted on preferential basis to the acquirer is under process with BSE.

- 1.6 Vide letter dated 21.10.05, SEBI informed the merchant banker that the reply made by them was not complete and not satisfactory and advised it to furnish the complete details with regard to the queries raised by SEBI in its letter dated 01.07.05 before the 28.10.05. The Merchant Banker vide letter dated 27.10.05 sought extension of time for 15 days for giving reply. Since no response was received from the merchant banker SEBI vide its letter dated 15.12.05, advised the merchant banker to furnish the complete details immediately. The merchant banker vide letter dated 07.04.06 replied that the target company and the acquirer are regularly following up the matter with BSE for “in principal” approval and requested for 30 days extension for submitting the reply. By letter dated 19.12.06, the merchant banker informed that it is taking up the matter with the acquirers as well as BSE and wish to resolve the matter at the earliest.
- 1.7 Thereafter, vide letter dated 27.01.07 the merchant banker *inter alia* submitted that with respect to compliance of clause 40A of the Listing Agreement the target company has given following undertakings to BSE :
- (i) To increase the existing public shareholding level of 10.74% to the minimum stipulated level of 25% within the time as may be permitted by the BSE.
 - (ii) Not to dilute in any way its public shareholding except for the supervening events as specified in sub-clause (vii) of clause 40A of the Listing Agreement, with prior approval of the BSE.
 - (iii) The target company will adopt any of the following methods to raise the public shareholding to the minimum level viz; (a) issuance of shares to public through prospectus, (b) offer for sale of shares held by promoters to public through prospectus; (c) sale of shares held by promoters through secondary market; or (d) any other

method which does not adversely affect the interest of minority shareholders.

- (iv) It was also submitted that the target company shall take (c) and (d) methods mentioned above only after obtaining prior approval from the BSE.

1.8 Vide letters dated 16.04.07 and 23.04.07 the merchant banker informed that the BSE has given personal hearing to the target company in the matter on 16.03.07 and the BSE had asked the acquirer to submit the valuation report and other papers respectively. On submission of the said report and the papers BSE will be taking its decision in the matter. Vide letter dated 12.09.07, the merchant banker informed that regarding the “in-principal approval” the decision has still not been taken by BSE.

2.0 SHOW CAUSE NOTICE

2.1 In view of the non-compliance with the minimum public shareholding requirement and violations of various applicable laws, SEBI issued a show cause notice dated 04.12.07 to the acquirer asking *inter alia* as to-

2.1.1 Why the acquirer should not withdraw the public offer made by Public Announcement dated 28.05.05 in terms of the regulation 27 (1) (d) of the Takeover Regulations?

2.1.2 Why the acquirer should not be directed under regulation 44 and regulation 45 of the Takeover Regulations and sections 11 and 11B of the SEBI Act, 1992:

(a) to disinvest shares acquired by the acquirer in excess of limit of 75%;

(b) to transfer the proceeds of such disinvestment or any unjust enrichment on account of above acquisition to the Investor Protection and Education Fund of SEBI; and

(c) not to exercise voting rights attached to the shares acquired in violation of provisions of listing agreement and Takeover Regulations, till completion of the process of disinvestment in accordance with regulation 44(a) of Takeover Regulations.

2.1.3 Why any other action (s) under regulation 44 and regulation 45 of the Takeover Regulations and sections 11 and 11B of the SEBI Act should not be initiated against the acquirer.

3.0 REPLY AND PERSONAL HEARING:

3.1 After seeking further time, the acquirer submitted its reply to the show cause notice vide its letter dated 28.12.07. An opportunity of personal hearing was granted to the acquirer on 19.03.08. The acquirer submitted that the preferential allotment of 20 lac shares [(89.29%) of the post issue paid up capital] was in violation of the then applicable clause 40A of the Listing Agreement. The said shares were not listed on BSE, as the company has not obtained the prior 'in-principle' approval from BSE as required under clause 24(a) of the Listing Agreement. Consequent to such allotment of 20 lac shares, since the shareholding of the acquirer in the target company increased beyond the stipulated percentage, a Public Announcement in compliance with regulation 10 and 12 of the Takeover Regulations was made on 28.05.05.

3.2 The acquirer further submitted that after repeated representations made by the target company to the BSE; the Listing Committee of BSE has indicated that the listing of those shares was not possible till a corrective action was taken by the target company to comply with minimum public shareholding requirement. Accordingly, vide letter dated 26.12.07 to BSE the target company undertook to take the following corrective measures-

- (a) Pass a resolution to reclassify the present authorized share capital of 50,00,000 equity shares of Rs. 10/- into two kinds viz; 35,00,000 equity Shares of Rs. 10/- each and 15,00,000 redeemable preference shares of Rs. 10/- each.

- (b) Filing a scheme of restructuring of capital under Clause 24(f) of the Listing Agreement with the BSE.
- (c) Pursuant to obtaining a No-objection Certificate from the BSE for the restructuring, file the restructuring scheme with the High Court of Mumbai for sanction under the provisions of the Companies Act.
- (d) Allot 5,25,000 equity shares of Rs. 10/- each and 14,75,000 redeemable preference shares of Rs. 10/- each to the acquirer in lieu of the 20,00,000 equity shares already allotted to it on preferential basis. Post restructuring, the paid-up capital of the target company would consist of 7, 65,000 equity shares of Rs. 10/- each and 14, 75,000 redeemable preference shares of Rs. 10 each.
- (e) The post restructuring equity share capital of the Target Company would be as under:

Shareholders category	Shareholding prior to the pref. allotment		Shareholding post re-structuring	
	Shares	Percentage	Shares	Percentage
PROMOTER HOLDING				
Promoter	45300	18.88	45300	5.92
Scenario Media Ltd.	0	0.00	525000	68.63
Person Acting in concert	2050	0.85	2050	0.27
SUB-TOTAL (A)	47350	19.73	572350	74.82
NON-PROMOTER HOLDING				
Pvt. Corporate	3500	1.46	3500	0.46

bodies				
Indian public	189150	78.81	189150	24.73
SUB-TOTAL (B)	192650	80.27	192650	25.18
TOTAL(A + B)	240000	100.00	765000	100.00

3.3 The target company has received the approval from BSE, vide their letter dated 17.03.08, to bring down the equity holding of the acquirer to 68.63%. As consequent to the corrective measures being taken in restructuring the capital, the target company would continue to maintain the public shareholding as per the requirements of continuous listing under clause 40 A of the Listing Agreement .

3.4 Even at the time of the acquisition of the said shares and control of the target company, the acquirer had a good business model to grow the target company to the best interest of the shareholders, which is already under implementation. Further, consequent to the said corrective steps, the obligation of the acquirer to make public offer under Takeover Regulations will continue. Since the public offer would be in the interests of the public shareholders, the withdrawal of Public Announcement need not be insisted upon.

3.5 The acquirers further submitted that since only a portion of the capital is listed there is no possibility of disinvesting the shares acquired in excess of 75%. Further, with no divestment, there has been no unjust enrichment and therefore, the situation for directions for disinvestment and transfer of any proceeds of such disinvestment to the Investor Protection and Education Fund of SEBI may not arise.

3.6 In view of the above submission, the acquirer submitted that no action as contemplated in the show cause notice is warranted under Regulations 44 and 45 of the Takeover Regulations and sections 11 and 11B of the SEBI Act. The acquirer has requested to issue suitable directions and allow them to make a fresh Public Announcement at the appropriate time at a price reckoning the interest to be paid for the delayed public offer under the Takeover Regulations. The acquirer

has also undertaken to follow and comply with all the provisions laid down in the Takeover Regulations.

3.7 The acquirer has undertaken to revise the offer price including the interest for the delay in making the public offer and inform the public shareholders accordingly through a fresh Public Announcement by making full disclosures for the benefit of the shareholders.

3.8 The acquirer also submitted that it wishes to change the merchant bankers from Aryaman Financial Services Limited to Keynote Corporate Services Limited.

3.9 The acquirer vide letter dated 02.04.08 made further submissions stating *inter alia* that it would be increasing the offer price for the shares under the public offer to Rs 100/- per share and requested SEBI to issue observations to enable them to proceed with the public offer.

4.0 FURTHER SUBMISSIONS

4.1 The acquirer vide its letter dated 08.08.08 submitted that the acquirer has given its consent for the reclassification of 20, 00,000 equity shares of Rs. 10/- each held by it in the target company which were allotted through the preferential allotment. As per directions from BSE, the target company has passed following resolutions through postal ballot on 25.07.08 –

(a). special resolution under section 31 and all other applicable provision of the Companies Act and Articles of Association of Target Company for amendment of its Article of Association;

(b). special resolution under section 16 and all other applicable provision of the Companies Act and Articles of Association of Target Company for alteration of its Memorandum of Association with respect to reclassification of its existing Authorized Share Capital;

(c). special resolution under section 94 and all other applicable provisions of the Companies Act and Articles of Association of Target Company for reclassification of its existing authorized share capital;

(d). special resolution under section 106 of the Companies Act and Article 10 of the Articles of Association of the target company for reclassification of its 20,00,000 equity shares of Rs. 10/- each allotted to the acquirers into 5,25,000 equity shares of Rs. 10/- each and 14,75,000 redeemable preference shares of Rs. 10/-each. The acquirer further submitted that necessary filings with the Registrar of Companies shall be complied by the target company in the next few days.

4.2 Vide letter dated 23.09.08, the acquirer submitted that the target company has passed the special resolution through postal ballot on 25.07.08 for the purpose of the reclassification of its authorized share capital. Out of the 20 lakh shares allotted to the acquirer, 14,75,000 equity shares had been converted into 14,75,000 redeemable preference shares. As a result, the acquirer's shareholding in the target company has been reduced from 89.29% to 68.63% and the target company has complied with all the necessary filings with Registrar of Companies, Mumbai.

4.3 Vide letter dated 20.12.2008, the acquirer submitted that as per the submissions made by the acquirers before WTM on 19-03-2008, the total shareholding was shown at 74.82% and total non-promoter shareholding was shown at 25.18%. However, acquirers clarified that the shareholding pattern filed with BSE for the quarter ended September 2008, the promoter shareholding is indicated at 68.63% and non-promoter shareholding at 31.37%. It was stated that the earlier promoters and their PAC's have sold their shares of 6.19% and the acquirer have not acquired any of those shares in the target company. Accordingly, the acquirer's shareholding would be 68.63%.

4.4 In view of the same, the acquirer requested SEBI to grant permission for the public offer.

5.0 CONSIDERATION OF SUBMISSIONS AND FINDINGS:

5.1 I have carefully considered the show cause notice, replies and submissions of the acquirer and relevant material available on record. Clause 40A of the Listing Agreement as it existed at the date of acquisition i.e. 27th December 2004 prohibited the listed companies from making any preferential allotment if such allotment results in reducing the non -promoter holding below the limit of public shareholding specified in the DIP Guidelines as applicable at the time of initial

listing. In this case, admittedly the minimum public shareholding requirement was 25% in terms of SEBI (Disclosure and Investor Protection) Guidelines (DIP Guidelines) read with rule 19(2) (b) of the Securities Contracts (Regulation) Rules, 1957 (SCRR). However, the target company allotted 20, 00,000 (89.29%) equity shares by way of preferential allotment to the acquirer, who did not have any shares in the target company before such allotment. This was admittedly in violation of clause 40A of the listing agreement. This allotment was also made without seeking in-principle approval from BSE and therefore it was also in violation of clause 24(a) of the Listing Agreement.

5.2 Pursuant to the said acquisition of 89.29% shares in the target company, the acquirer made a Public Announcement under regulations 10 and 12 read with regulation 14 of the Takeover Regulations on 28.05.2005 after considerable delay. In the said Public Announcement, the acquirer made the offer to acquire shares from the public shareholders at the offer price of Rs. 10/ per share and interest @10% for delayed offer in making Public Announcement for the offer.

5.3 In this case, the allotment to the acquirer was in violation of the Listing Agreement particularly with respect to the minimum 25% public shareholding requirement. On the date of preferential allotment and at the time of Public Announcement there was no trading in the shares of the target company. Further, considerable time had elapsed since the date of Public Announcement on account of considerable time consumed by the merchant banker in furnishing the required information and details to SEBI. In this course, the market price of the shares of the company increased from Rs 10/- to around Rs. 107/- per share. Since the minimum public shareholding requirement (25% limit) was already breached by the target company by making the preferential allotment to the acquirer and in facts and circumstances of the case the delayed public announcement at the time when the market price of the shares of the target company was Rs.107/ per share i.e. substantially higher than the offer price, such offer would be a mere formality of compliance by the acquirer. Therefore, it was observed that the public announcement by the acquirer was prima-facie not in the interests of public shareholders of the target company. Accordingly, the show cause notice dated 04.12.07 was issued to the acquirer contemplating *inter alia* the directions for

disinvestment of shares by the acquirer and crediting the proceeds thereof to the Investor Protection or any unjust enrichment and Education Fund of SEBI.

5.4 I note that the target company has taken steps to rectify and regularize the default and to allot 5,25,000 equity shares of Rs. 10/- each and 14,75,000 redeemable preference shares of Rs. 10/- each to the acquirer in lieu of the 20,00,000 equity shares already allotted to the acquirer on preferential basis. After such restructuring, the shareholding of the acquirer in the target company would be 68.63% as against earlier 89.29%. I also note that the BSE has agreed to and approved the said proposal of the target company. Such restructuring of capital by the target company could be for the purpose of regularization or rectification of the default by the target company with respect to the conditions of Listing Agreement. However, the liabilities of the acquirer with respect to the violation of the regulations 10 & 12 read with regulation 14 of the Takeover Regulations will continue to subsist even after such restructuring.

5.5 With respect to the proposed reclassification and restructuring of the share capital, the target company has passed the special resolution of its shareholders by providing the facility of postal ballot. Thus, the public shareholders have also approved the said reclassification and restructuring. I have considered the proposal of the acquirer to make the revised Public Announcement after the above mentioned restructuring by the target company and make disclosures of subsequent developments and revise the offer price alongwith interest for the delayed offer. In view of the changed circumstances as submitted by the acquirer, I find that allowing the acquirer to make public offer for the 20% of the reclassified voting capital by determining the offer price with reference to the present market price would be in the interest of the public shareholders of the target company and it would meet the objectives of the Takeover Regulations.

6.0 ORDER

6.1 In view of the above findings, I, in exercise of the powers under section 11 and 11B of the SEBI Act read with regulations 44 and 45 of the Takeover Regulations, direct the acquirer to make the revised public announcement under regulations 10 and 12 of the Takeover Regulations making full disclosures of all

material facts including subsequent developments and offer the revised price.

- 6.2 The acquirer shall make the public announcement within two weeks of the date of the listing granted by the BSE (if not yet granted). The acquirer shall determine the price under regulation 20 of the Takeover Regulations and for the said purpose; it would factor in the two weeks traded price prior to taking the date of revised Public Announcement. The acquirer shall also pay the interest @ 10% for the delay in making the payment to the shareholders whose shares have been accepted from 26.03.05 (i.e., 90 days from the date of trigger of the Takeover Regulations) till the actual date of making payment to those shareholders.

Place: Mumbai

T. C. NAIR

Dated: January 14, 2009

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA