

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

**IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF
CITADEL REALTY AND DEVELOPERS LIMITED-EXEMPTION
APPLICATION FILED UNDER REGULATION 4(2) OF SECURITIES AND
EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES
AND TAKEOVERS) REGULATIONS, 1997**

1.0 BACKGROUND

1.1 Citadel Realty and Developers Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at Marathon Nextgen, Gangpatro Kadam Marg, Lower Parel, Mumbai-400013. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE). Marathon Realty Private Limited (hereinafter referred to as the acquirer) is one of the promoters of the target company. The acquirer is holding 26.51% shares in the target company and the promoter group (including the acquirer) holds 61.29% of the equity shares in the target company. The target company proposes to allot 5,93,755 equity shares at a price of Rs.16.41/- per share aggregating to Rs.97,43,520/- on preferential basis to the acquirer. This allotment is in consideration to – (i) the acquirer agreeing to settle the inter-corporate deposit of Rs.73,80,000/- payable by the target company to Fibre Box (Bombay) Private Limited (hereinafter referred to as FBPL) and (ii) the funds aggregating to Rs.21,20,081/- infused by the acquirer into the target company over a period of time to meet its day-to-day expenses.

2.0 APPLICATION FOR EXEMPTION

2.1 The proposed acquisition of equity shares by way of preferential allotment would increase the shareholding of the acquirer in the target company from 26.51% to 36.98% and that of the promoter group (including the acquirer) from 61.29% to 66.81% of the total voting capital of the target company. As the proposed acquisition would trigger Regulation 11(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations), the acquirer vide letter dated September 1, 2009, filed an application with the Securities and Exchange Board of India (hereinafter referred to as SEBI) under Regulation 4(2) read with Regulation 3(1) (I) of the Takeover Regulations. The exemption is sought from the applicability of Regulation 11(2) of the Takeover Regulations, *inter alia*, on the following grounds:

- i. The acquisition of further equity shares by the acquirer would not involve change in control of the target company and that the same would also not result in the reduction of minimum public shareholding
- ii. The said acquisition would help the target company to increase its reserve; have positive networth; undertake diversified activities (real estate business) with the help of and in collaboration with the acquirer; give reasonable returns to the shareholders in the years to come.

2.2 The shareholding pattern of the target company before and after the proposed acquisition (as mentioned in the aforesaid application) is as under:

Shareholders' category	Number of registered shareholders as on the date of application	Before the proposed acquisition		After the proposed acquisition	
		Number of shares/ total voting rights held	Percentage of shares/ total voting capital held	Number of shares/ voting rights	Percentage of shares/ total voting rights
Acquirer – Promoters Marathon Realty Private Limited	1	947587	26.51	1541342	36.98
Other Promoters	2	1243295	34.78	1243295	29.83
FIs/ Bank	0	0	0	0	0

Filings/NRIs/OCBs	6	1242	0.04	1242	0.03
Public	4055	1382376	38.67	1382376	33.16
Total	4064	3574500	100.00	4168255	100

3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The application filed by the target company was forwarded by SEBI to the Takeover Panel in terms of Regulation 4 (4) of the Takeover Regulations. The Takeover Panel, vide report dated December 21, 2009, *inter alia*, observed the following:

“....the target company is not a sick company. Preferential allotment per se is not eligible for exemption under Regulation 3 of the Securities and Exchange Board of India (Acquisition of Shares and Takeovers) Regulations, 1997. No case for exemption has been made out in favour of the proposed Preferential Allotment. The panel did not find the proposal in the interest of the public shareholders and hence did not recommend the same for exemption....”

3.2 The report of the Takeover Panel was forwarded to the acquirer by SEBI and an opportunity of hearing was also granted to the acquirer on February 11, 2010, wherein Mr. K.S. Raghavan (Company Secretary) and Mr. S. Ramamurthy, as authorized by the acquirer appeared before me and made submissions. It was *inter alia* submitted that the acquirer belongs to the promoter group of the target company and that, pursuant to the proposed preferential allotment of shares, there would not be any change in control over the target company. According to them, the proposed acquisition would be in the interest of the target company and its shareholders. The learned representatives submitted that the target company had no assets and its share price was low, when the acquirer took over the company. They further reiterated the statements made in the application.

4.0 FINDINGS

4.1 I have considered the application filed by the acquirer, the recommendation of the Takeover Panel, the submissions made on behalf of the acquirer during the hearing and other material available on record. It is an admitted fact that the acquirer is a promoter of the target company and that the proposed acquisition of equity shares by way of preferential allotment would increase the shareholding of the promoter group (including the acquirer) in the target company from 61.29% to 66.81% and hence, the exemption is sought from the applicability of Regulation 11(2) of the Takeover Regulations. It is the case of the acquirer that the aforesaid allotment is in consideration to – (i) the acquirer agreeing to settle the inter-corporate deposit of Rs. 73,80,000 payable by the target company to FBPL and (ii) the funds aggregating to Rs. 21,20,081 infused by the acquirer into the target company over a period of time to meet its day-to-day expenses. I note that the acquisition of shares through preferential allotment route is not exempted automatically from the applicability of the provisions of the Takeover Regulations. Such an exemption is granted by SEBI, on case-to-case basis, particularly, where the target company has become sick and infusion of funds by the promoters/acquirers is stipulated under Corporate Debt Restructuring (CDR) Package. I note that the inter-corporate deposit as stated by the acquirer was taken from FBPL, an associate of the acquirer. I also note that the target company is neither a sick company nor the repayment to FBPL is under any CDR Package. Further, the Takeover Panel, while not recommending the 'exemption', *inter alia* observed that the proposal is not in the interest of the public shareholders. I also note that the public shareholding in the target company is around 39%. The grounds specified in the application made by the acquirer or the subsequent submissions made on its behalf are not convincing enough to grant exemption as sought by it. In the facts and circumstances of the present case, exempting the acquirer from complying with

the provisions of Takeover Regulations would not be in the interest of public shareholders of the target company.

4.2 In view of the above, I agree with the recommendations of the Takeover Panel and I do not find this as a fit case for grant of exemption to the acquirer, from complying with the provisions of Regulation 11(2) of the Takeover Regulations, in respect of the proposed acquisition of 5,93,755 by way of preferential allotment. Accordingly, the application dated September 1, 2009 filed by the acquirer is disposed of as ordered hereinunder.

5.0 ORDER

5.1 In view of the above findings, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 4(6) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, do not grant exemption to the acquirer, Marathon Realty Private Limited, from the applicability of Regulation 11(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, in respect of the proposed acquisition of 5,93,755 equity shares of the target company, Citadel Realty and Developers Limited, by way of preferential allotment.

Dr. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI
DATE: FEBRUARY 17, 2010