

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
ARVIND REMEDIES LIMITED-APPLICATION FOR EXEMPTION FILED
UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD
OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS)
REGULATIONS, 1997**

BACKGROUND

1. Arvind Remedies Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at No. 190, Poonamallee High Road, Chennai-600084. The equity shares of the target company are listed on the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited.

APPLICATION SEEKING EXEMPTION

2. Dr. Arvind Kumar B Shah on behalf of Dr. Arvind Kumar B Shah (Hindu Undivided Family) and Narit Tradecom Private Limited (hereinafter collectively referred to as the acquirers), vide letter dated November 11, 2009 filed an application for exemption under Regulation 4(2) read with Regulation 3(1)(I) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) with the Securities and Exchange Board of India (hereinafter referred to as SEBI) in respect of the proposed acquisition of 15,55,90,000 equity shares (at Re. 1/- each at a premium of Rs.1.25/- per share) of the target company by the acquirers through preferential allotment. As per the application,

the proposed preferential allotment was made for raising funds for the target company's new project at Irungattukottai, Kanchipuram District, Tamilnadu. It was stated that Dr. Arvind Kumar B Shah (HUF) forms part of the promoter group of the target company and Narit Tradecom Private Limited has been named as a 'promoter associate company'. It is further stated that the M/s. Arvind Kumar B Shah (HUF) [one of the acquirers] currently holds 39,26,755 shares constituting 1.51% of the paid up capital of the target company and along with other promoters and the persons acting in concert hold 25.32% of the total paid up capital of the target company. The said application stated that the proposed preferential allotment would increase the holding of the acquirers to 32.26% in the target company and that the promoter group's shareholding would increase from 25.32% to 45.91%. Therefore, according to the acquirers, the aforesaid proposed acquisition would exceed the limits laid down under Regulations 10 and 11(1) of the Takeover Regulations and hence they have sought exemption from SEBI under Regulation 3(1)(I) of the Takeover Regulations *inter alia* from the applicability of Regulations 10 and 11(1) thereof, on the following grounds.

GROUND FOR SEEKING EXEMPTION:

- (a) The proposed subscription by the acquirers is with the overall objective of infusing funds into the target company for meeting its critical and urgent financial needs for financing the new project at Irungattukottai in Kanchipuram District in Tamilnadu for the manufacture of large and small volume parenterals besides tablets, capsules and small and large volume parenterals. It is stated that the proposed unit will have the facility to produce not only a range of the current product line but also take up the production of any other formulation that complies with USFDA standards.
- (b) the proposed acquisition would not result in any acquisition of control or a change in control in the target company.
- (c) As funds were required on urgent basis, there is no other viable option with the target company but to infuse funds by making preferential allotment to the promoter group/public body corporate, who have consented for the same.
- (d) The intention of the acquirers to subscribe to proposed preferential issue is not to acquire substantial shares or control over the target company but to infuse funds into the target company to further scale up its operations and herald its foray

into the fast growing injectibles and soft gel market segments and also consolidate its position in the industry.

(e) The acquisition would not be detrimental to the interest of the public shareholders in any manner and on the contrary same will be beneficial to the public shareholders since the target company by undertaking this new project would be expanding its operations, which would be profitable to both the target company and its shareholders .

(f) The approval of the shareholders of the target company for the preferential issue has been obtained through postal ballot and the results of the same were published in the newspapers on October 20, 2009.

3. The shareholding pattern of the target company before and after the proposed acquisition is as follows:

	Before the proposed acquisition			After the proposed acquisition		
Category	No. of share holders	No. of shares	% of share holding	No. of share holders	No. of shares	% of share holding
A. Promoters and Promoter Group						
1. Indian Promoter						
a. Individuals						
Arvind Kumar B Shah HUF	1	39,26,755	1 .51%	1	3,11,46,650	7.27
Others	4	413,47,950	15.90	4	4,52,74,705	8.57
b. Bodies Corporate						
Narit Trade com Pvt. Ltd.	-	Nil	Nil	1	12,44,43,350	25.80
Others	3	205,69,955	7.91	3	205,69,955	4.27
2. Foreign Promoters	-	-	-	-	-	-
Total – A	8	658,44,660	25.32	9	2214,34,660	45.91
B. Public Shareholding						
1. Institutions						
a. Mutual Funds	-	-	-	-	-	-
b. Financial institutions/Banks	1	3,000	0.00	1	3,000	0.00
c. Insurance Companies	-	-	-	-	-	-
d. Foreign Institutional investors	-	-	-	-	-	-
Sub Total	1	3,000	0.00	1	3,000	0.00
2. Non-institutions						
Private Corporate Bodies						

M/s. Aryaman Commerce Pvt Ltd.	-	Nil	Nil	1	66660000	13.82
Others	1261	130,47,693	5.02	1261	13047693	2.71
Individuals	70105	179159036	68.89	70105	179159036	37.15
NRIs/OCB	215	1995611	0.77	215	1995611	0.41
Sub Total	71581	194202340	74.68	71582	260862340	54.09
Total B	71582	194205340	74.68	71583	260865340	54.09
Grand Total (A+B)	71589	260050000	100.00	71591	482300000	100.0

4. Thereafter, vide letters dated November 25, 2009, December 9, 2009 and December 22, 2009 submitted further details/information in respect of the aforesaid application.

RECOMMENDATION OF THE TAKEOVER PANEL

5. The aforesaid application was forwarded to the Takeover Panel by SEBI, in terms of Regulation 4(4) of the Takeover Regulations. The Takeover Panel, vide report dated December 30, 2009, had recommended as under:

“Considering the above, the panel felt this a case for giving exemptionas it will enhance the shareholders value as the expansion and timely contribution of equity capital by promoters is in the interest of all the shareholders of the company.

This is subject to the company complying with (as already confirmed by the applicant) to the Company Law/ SEBI/ Listing Agreement.”

HEARING AND FURTHER SUBMISSIONS

6. In terms of Regulation 4(6) of the Takeover Regulations, an opportunity for a personal hearing was granted to the acquirers on March 25, 2010. Mr. P.R. Krishnan, the Company Secretary of the target company, Mrs. Lakshmmi Subramanian and Mr. Sriram of Lakshmmi Subramanian & Associates, appeared before me on March 25, 2010 and made submissions on behalf of the acquirers. The learned representatives, *interalia* submitted that, the proposed preferential allotment is not to acquire substantial shares or control in the target company but were made to infuse funds into the company to further scale up its

operations. They reiterated the submissions made in the application including the reasons why in their view, the target company did not go for a rights issue for raising the requisite funds. Further, the acquirers vide letter dated April 9, 2010 made further submissions, as under:

“....The Company's equity shares were quoted high at Rs 2.45 per share and low at Rs 1.30 per share during the six months, April 09 to October 09, for considering the preferential issue. For the rights issue the Company therefore needed to give offer price at least 50 paise per share lower than the average, which was Rs.1.89 per share. The institutional holding of the company's shares being negligible, there are only around 71500 retail investors and hence lower pricing will be a major factor that will decide success of rights issue.

The response from the retail investors on the postal ballot was only from 10% members, which included the promoters, and hence it was estimated that if rights issue is opted, the full subscription may not be available.

Even if we consider chances of meeting full subscription at 1: 1 ratio, the total money to be received at Rs 1.39 per share will be Rs 36 Crores (26,00,50,000 equity shares of Re 1 each at premium Rs. 0.39 per share) against total requirement of Rs.50 Crores and there would still be a gap of Rs.14 Crores to be filled by alternative sources to meet with the requirements.

.....”

FINDINGS

7. I have carefully considered the application dated November 11, 2009, the subsequent details/information filed by the acquirers, , the recommendation of the Takeover Panel, the oral as well as written submissions made on behalf of the acquirers and other relevant material available on record.

8. According to the acquirers, the target company has proposed to allot its 15,55,90,000 equity shares on preferential basis to them. As the acquirers form part of the promoter's group, the said allotment would increase the promoter's shareholding in the target company from 25.32% to 45.91% of the total paid up capital. The proposed preferential allotment would increase the shareholding of the promoter group by 20.59% (i.e. four times of the creeping increase per year permitted under the Takeover Regulations). The acquirers have stated that the

said allotment is to fund a new project of the target company. From the shareholders resolution, it is noted that another entity, Aryaman Commerce Private Limited (a new investor in the target company) would also be allotted 6,66,60,000 equity shares (13.82%) of the target company on preferential basis, which would be in addition to the preferential allotment of 15, 55, 90,000 equity shares (20.59%) to the acquirers herein. The acquisition of equity shares by the acquirers which would increase the shareholding of the promoter group by 20.59%, would trigger the open offer requirements stipulated in terms of Regulation 11(1) of the Takeover Regulations. The acquirers (vide letters dated January 21, 2010 and April 9, 2010) have submitted that a 'rights issue' was not feasible as there may be a short fall of the required funds. In this regard, I note that monies to the tune of approximately Rs.36 crores could be raised through the rights issue, if resorted to. This has been admitted to by the acquirers also, in their letter dated April 9, 2010. By issuing shares on 'rights' basis, all the shareholders of the target company would get an equal opportunity in the fund raising exercise by the target company for the new project. Assuming a case where a portion of the rights issue remains unsubscribed, the promoters/acquirers of the target company could subscribe to the unsubscribed portion and such an acquisition does not trigger open offer obligations, subject to the provisions contained in the Takeover Regulations. Therefore, the submission of the acquirers of the 'non-feasibility of rights issues' is not convincing in the facts and circumstances of this case. Therefore, ideally all shareholders shall be given an option to either infuse funds through rights issue in the target company or shall be given an exit opportunity through the open offer to be made by the acquirer in terms of the Takeover Regulations.

9. Further, the acquisition of shares through preferential allotment has not been automatically exempted from the applicability of the provisions of the Takeover Regulations. An exemption in such cases is granted by SEBI on a case-to-case basis, particularly, where the target company has become sick and infusion of funds by the promoters/acquirers is stipulated under a Corporate

Debt Restructuring (CDR) Package or when it is a part of a One Time Settlement, etc. Besides, such an exemption is also subject to certain conditions including compliance with the relevant provisions of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. I observe that the objective of the proposed acquisition in this case, does not fall into any such category to make it eligible for grant of an exemption from the provisions of the Takeover Regulations. In view of the above, even the submission of the acquirers that the target company had submitted the project appraisal to the Bank does not by itself favour the grant of exemption. I also note that, the public shareholding in the target company (as per the application) stands at 74%, at present. In such circumstances, if acquirers were exempted from complying with requirements of the provisions of the Takeover Regulations, in respect of their proposed acquisition, a large number of public shareholders of the target company would be denied of an exit opportunity. Therefore, considering the facts and circumstances of the case, as discussed above, I do not consider it fit to grant exemption to the acquirers from the applicability of the provisions of Regulations 10 and 11(1) of the Takeover Regulations, in respect of their proposed acquisition, as the same would be to the detriment of the public shareholders.

10. Thus, in the facts and circumstances of the present case, I do not find this a fit case for grant of exemption to the acquirers under Regulation 3(1)(I) of the Takeover Regulations read with Regulation 4 thereof, from complying with the provisions of the Takeover Regulations, in respect of their proposed acquisition of 15,55,90,000 equity shares by way of preferential allotment by the target company, Arvind Remedies Limited. For the reasons stated above, I am not in agreement with recommendation of the Takeover Panel.

ORDER

11. In view of the foregoing, 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 the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, do not grant exemption to the acquirers, Dr. Arvind Kumar B Shah (HUF) and Narit Tradecom Private Limited, in respect of their proposed acquisition of 15,55,90,000 equity shares of target company, Arvind Remedies Limited by way of preferential allotment, as submitted in their application dated November 11, 2009 from complying with the requirements of Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The application filed by the acquirers for exemption is accordingly disposed of.

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

PLACE: MUMBAI
DATE: APRIL 26, 2010