

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

**DIRECTIONS UNDER REGULATIONS 44 AND 45 (6) OF THE SECURITIES
AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF
SHARES AND TAKEOVERS) REGULATIONS, 1997 AGAINST
ANJANIPUTRA ISPAT LIMITED IN THE MATTER OF IAG COMPANY
LIMITED**

1. On an examination of the draft letter of offer filed by Microsec Capital Limited (the manager to the offer), on July 29, 2009 on behalf of Anjaniputra Ispat Limited (hereinafter referred to as the acquirer), in respect of the open offer for acquisition of 20% of the issued and paid up share capital of IAG Company Limited (hereinafter referred to as the target company), Securities and Exchange Board of India (hereinafter referred to as SEBI) *inter alia* observed that the acquirer had acquired 26,89,592 equity shares representing 41.77% of the current paid up and voting share capital of the target company from its erstwhile promoters over a period of eight months during the financial years 2008-09 and 2009-10. It was observed that the acquirer had acquired in excess of 15% shareholding of the target company on November 19, 2008, when it had acquired 17,79,692 shares (27.64% of the paid up capital) of the target company. Pursuant to the said acquisition, the shareholding of the acquirer had increased to 32.35% of the paid up capital of the target company. The acquirer had further consolidated its holding from 32.35% to 41.77% by acquiring 6,06,600 shares (9.42% of the paid up capital), 4.71% each on December 19, 2008 and April 3, 2009. As the acquirer had acquired more than

15% of the shareholding in the target company on November 19, 2008 without making a public announcement within four days of the acquisition, it was alleged that it had violated Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations). As the acquisition of 27.64% of the paid capital of the target company was not in accordance with the provisions of the Takeover Regulations, it was further alleged that the subsequent acquisitions (4.71% each on December 19, 2008 and April 3, 2009), were in violation of Regulation 11(1) of the Takeover Regulations. Further, as the acquirer had taken representation on the board of directors of the target company, it had also acquired control over it since November 2008, without making a public announcement, it was alleged that the acquirer had violated Regulation 12 of the Takeover Regulations. The acquirer was also alleged to have failed in complying with the disclosure requirements as mentioned in Regulation 7(1) of the Takeover Regulations. In view of the above, SEBI issued a notice dated April 6, 2010 to the acquirer to show cause as to why one or more or all action(s) under Regulation 44 read with Regulation 45(6) of the Takeover Regulations including the direction to continue with the open offer and to disinvest 6,06,000 shares representing 9.42% of the total share capital of the target company should not be taken against it. The acquirer appeared before me through its representative, Mr. Balveer S. Choudhary, Chartered Accountant who made submissions on its behalf on May 20, 2010. It was *inter alia* submitted that no action as stipulated in the show cause notice is warranted against the acquirer. Subsequently, the acquirer, vide letter dated May 25, 2010 filed the reply to the show cause notice (hereinafter referred to as the notice).

2. I have considered the notice, the oral as well as written submissions made on behalf of the acquirer and other material available on record. It is an admitted fact that the acquirer had not made the public announcement within

the time stipulated under Regulation 14(1) of the Takeover Regulations. It is an undisputed fact that, the acquirer while increasing its shareholding from 4.71% to 32.35% of the paid up capital of the target company by acquiring 17,79,692 shares on November 19, 2008 had triggered Regulation 10 of the Takeover Regulations and was required to make a public announcement within four working days as specified under Regulation 14(1) thereof. The acquirer, admittedly, had failed to do so. It had made the public announcement only on July 11, 2009. Further, the acquirer had also acquired control over the target company on November 19, 2008 when it was represented on the board of directors of the target company. However, it had failed to make the public announcement as required under Regulations 12 and 14(1) of the Takeover Regulations. The other issues to be considered are whether the acquirer had complied with:-

- i. Regulation 11(1) of the Takeover Regulations, while acquiring 6,06,000 shares representing 9.42% of the total share capital of the target company (4.71% each on two occasions as stated above) and
- ii. Regulation 7(1) of the Takeover Regulations.

3. The acquirer did not dispute its acquisition of the shares of the target company, as given in the notice and the same are reproduced below for reference:

Date of acquisition	Holding prior to Acquisition. (%)	No. of shares acquired	% of the present paid up capital	Price per share (₹)	Post-acquisition holding (%)
September 22, 2008	Nil	3,03,300	4.71%	10.33	4.71%
November 19, 2008	4.71%	17,79,692	27.64%	10.33	32.35%
December 19, 2008	32.35%	3,03,300	4.71%	10.33	37.06%
April 3, 2009	37.06%	3,03,300	4.71%	10.33	41.77%
Total		26,89,592	41.77%		41.77%

4. When the acquirer had acquired 17,79,692 shares of the target company on November 19, 2008, its shareholding had increased from 4.71% to 32.35%

i.e. an increase of more than 15% paid up capital of the target company. This indeed triggered Regulation 10 of the Takeover Regulations. The acquirer, therefore, was mandated to make the public announcement in respect of the said acquisition, as required under Regulation 10 thereof. The said Regulation is reproduced below:

“No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations”.

The said public announcement was to be made within the time stipulated under Regulation 14(1) of the Takeover Regulations, which is reproduced below:

“The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein;”

5. Admittedly, no public announcement was made by the acquirer within the stipulated time and the same was made only on July 11, 2009 with a delay of 228 days. According to the acquirer, it was not aware of the applicability of the Takeover Regulations. The acquirer also submitted that, it was under the impression that the Takeover Regulations was applicable to the listed and traded companies. This submission has to be rejected *in limine* as ignorance of law cannot be taken as a defence. Even otherwise, the said submission cannot be accepted on the face of it. It was the case of the acquirer that the target company was undergoing financial difficulties during the period 2004 to 2008. It was also submitted by the acquirer that due to non-compliance of various provisions of the listing agreement over a period of time, the Bombay Stock Exchange Limited (hereinafter referred to as BSE) suspended the trading in the shares of the target company with effect from September 20, 2006 till September 2009. The said situation, according to the acquirer, prompted its

director, Mr. Vijay Joshi to invest in the target company for the purpose of its revival. The acquirer submitted that it had pumped money (₹40 Crores till May 2010) into the target company in the form of Inter Corporate Deposits for its revival. In its reply, the acquirer further stated “ *As the Target Company had a long list of dues and non compliance, therefore its revival would involve not only huge funds but also reach, understanding of the industry ad strong negotiation skills, Mr. Joshi accepted the challenge.....*”. The acquirer had acquired the shares from the erstwhile promoters of the target company. The financial assistance of the acquirer and its subsequent acquisition of shares of the target company were admittedly, with the full knowledge of the fact that the target company was facing various difficulties including the suspension of the trading of its shares. According to the acquirer, the financial aid extended by it to the target company enabled the latter to come out of its difficulties and had also taken steps to relist the shares of the target company. The acquirer had also appointed a director in the board of directors of the target company. In such a situation, it would be difficult to assume that the acquirer was not aware of the requirements of the Takeover Regulations when it initiated several steps towards the revival of the target company including the relisting of its shares in BSE, after the rectification of its non compliance. In the facts and circumstances of the case, no prudent person can believe that the acquirer was unaware of the statutory requirements to be fulfilled while acquiring substantial shares and the control of the target company and that too from the erstwhile promoters. The acquirer might have taken various steps in turning around the target company from its weak financial position. However, the same would not absolve the acquirer from not complying with the statutory mandates while acquiring substantial shares and control over the target company. The facts of the case would clearly indicate that, the acquirer was crystal clear in its intention of acquiring substantial shares and control over the target company, while improving the conditions of the target company. From the facts of the case, it appears that the acquirer did everything but the compliance of the requirements of the Takeover Regulations. This case

involved series of acquisitions, as mentioned above in this Order. The acquirer had first triggered the Takeover Regulations on November 19, 2008. It ought to have made the public announcement in terms of Regulation 10 and 14(1) of the Takeover Regulations. It did not do so. Neither, did it stop further acquisition. It continued to consolidate its shareholding in the target company twice, one in the same financial year and the other one in the next year. I cannot accept the submission that it was unaware of the provisions of the Takeover Regulations. As stated above, the facts of the case would make it very clear that the acquirer assisted the target company with an intention of acquiring major shareholding and control. The manner of the acquisition (4.71% each during two financial years) would lead to an inference that the acquirer was well aware of the creeping acquisition limit provided under Regulation 11(1) of the Takeover Regulations. Otherwise, the acquirer would have acquired the entire 9.42% shares in a single financial year, especially when its intention was to consolidate its holding and take control over the target company. However, it chose to split its acquisition and acquired shares in two financial years and limited such acquisition to less than 5%. This is more relevant as the 5% limit available under Regulation 11(1) of the Takeover Regulations is applicable to an acquirer who together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than fifty five per cent (55%) of the shares or voting rights in such company. The said Regulation is extracted hereinbelow:

“No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.”(Emphasis supplied)

6. In the present case, when the acquirer had acquired 9.42% of the equity capital of the target company, its previous acquisition of 27.64% on November 19, 2008 was not in accordance with law, as it had not made a public announcement in respect of the said acquisition in accordance with the Regulations. According to the acquirer, it had already made the public announcement in respect of its acquisition, taking November 19, 2008 as the relevant date for calculation of offer price. As stated above, the acquirer had acquired 27.64% of the equity capital on November 19, 2008 and subsequent acquisitions were made on December 19, 2008 (4.71%) and April 3, 2009 (4.71%). The public announcement of the acquirer was made only on July 11, 2009 i.e after its entire acquisition of 41.77%. As stated above in this order, when the acquirer had acquired 3,03,000 shares each on December 19, 2008 and April 3, 2009, its previous acquisition (17,79,692 shares on November 19, 2008) was not in accordance with law. This is because it did not make a public announcement in respect of the acquisition of 17,79,692 shares. In view of the above, the acquisition of the acquirer on December 19, 2008 and April 3, 2009, though, was less than 5% individually, would require a public announcement. It is the argument of the acquirer that by making the public announcement, as on date, it has cured the alleged violation of the provisions of the Takeover Regulations. The acquirer further contended that, since it had already made the public announcement, no action is warranted under Regulation 44 and 45(6) of the Takeover Regulations. I cannot accept the submission of the acquirer in this regard. The intention of the acquirer in improving the conditions of the target company may be a bonafide one. But, in the facts and circumstances of the case, the acquirer deliberately omitted to make the public announcement as required under law. The acquirer should not have acquired the shares of the target company on December 19, 2008 and April 3, 2009 without making the public announcement in respect of its previous acquisition on November 19, 2008. It had completely ignored the statutory responsibility in respect of the acquisition made on November 19, 2008. The acquirer not only failed to make

the public announcement but also continued to consolidate its holding in the target company in total disregard to the provisions of the Takeover Regulations. No acquirer is expected to ignore the statutory requirements, as stipulated under the Takeover Regulations. As a regulator, SEBI would not entertain such practices, in the interest of the shareholders. I cannot accept the plea that by making the present public announcement, the acquirer had cured the previous violations, for the reasons stated above. Therefore, I cannot accept the submission of the acquirer that the two violations were unintentional and accidental in nature. The submission that, as a result of the alleged technical violations, it had not made any disproportionate gain or unfair advantage, would not benefit it, as the purpose of making a public announcement was to provide an exit opportunity to the shareholders, which the acquirer had denied before consolidating its shareholding in December 2008 and April 2009. Such a mandatory public announcement was not made by the acquirer within the stipulated time in respect of its acquisition on November 19, 2008. Therefore, the subsequent acquisitions were not in compliance with Regulations 11(1) and 14(1) of the Takeover Regulations. Thus, the issue i in paragraph 2 above, is answered accordingly.

7. In respect of the second issue, as to whether the acquirer had violated Regulation 12 of the Takeover Regulations, the acquirer did not make any substantial submissions. It is an admitted fact that the acquirer had acquired the control on November 19, 2008 when it had appointed its nominee into the board of directors of the target company. No public announcement was made in this regard within the stipulated time. Thus, the acquirer had violated Regulation 12 of the Takeover Regulations. Admittedly, it had failed to disclose the change in shareholding, as required under Regulation 7(1) of the Takeover Regulations. The acquirer, in its reply stated “..... *The acquirers were not aware of the applicability of the regulation otherwise the disclosures under the regulation 7 and the subsequent regulation could have been complied fully*”. The said submission would

not benefit the acquirer. Further, it is not in dispute that, as per the disclosures made in the notice dated June 11, 2009 to the shareholders for Extra Ordinary General Meeting of the members of the target company held on July 21, 2009, the acquirer had been disclosed as its promoter. The public announcement was made by the acquirer on July 11, 2009. However, the acquirer had already acquired the control of the target company prior to that. Thus, the acquirer had taken control and had become promoter of the target company without making a public announcement in terms of the Takeover Regulations which is a clear contravention of Regulation 12 of the Takeover Regulations.

8. Further, Regulation 7(1) of the Takeover Regulations casts disclosure obligations on the acquirer at every stage of acquisition which entitle him to exercise more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company. In the instant case the acquirer, admittedly, had not made any disclosure in terms of regulation 7(1) with respect to the acquisitions made on November 19, 2008, December 19, 2008 and April 3, 2009 which is clearly a violation of regulation 7(1) of the Takeover Regulations.

9. It is an admitted fact that the acquirer had acquired shares to the extent of 6,06,600 shares representing 9.42 % of the total share capital of the target company on December 19, 2008 and April 3, 2009, without carrying out the outstanding obligation of making an open offer for the acquisition of 27.64% shares of the target company made on November 19, 2008. This is not in compliance with Regulation 11(1) of the Takeover Regulations. The said conduct indicates blatant indifference on the part of the acquirer to statutory requirements. Considering the above, the acquirer should be directed to disinvest 9.42% of the total share capital of the target company which were acquired when an outstanding statutory obligation in respect of its previous

acquisition was pending and to transfer profit, if any, in selling these shares, to the Investor Protection Fund of the concerned stock exchanges.

10. 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 Section 11B thereof and Regulations 44 and 45 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby direct as under:

I. The open offer made by the acquirer, Anjaniputra Ispat Limited, vide public announcement dated July 11, 2009, to acquire 20% of the issued and paid up share capital of the target company, IAG Company Limited, is agreed to, in terms of the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

II. The acquirer shall appoint a merchant banker for the purpose of disinvesting 6,06,000 shares of IAG Company Limited, acquired on December 19, 2008 and April 3, 2009 and which constituted 9.42% of the total share capital of IAG Company Limited, as provided in Regulation 44(a) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 within thirty days and to transfer profit, if any, in selling those shares, to the Investor Protection Fund of the concerned stock exchanges.

III. Adjudication proceedings under the provisions of the Securities and Exchange Board of India Act, 1992 and the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 shall be initiated against the acquirer for not making the public announcement, as required under Regulations

10, 11(1) and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 14(2) thereof, in respect of its acquisition of 17,79,692 shares (27.64% of the paid up capital) of the target company, IAG Company Limited, on November 19, 2008.

11. A separate Order would be issued appointing the Adjudicating Officer in the matter. The acquirer may appear and make its submissions before the Adjudicating Officer, who shall consider the same on merits without being prejudiced by the observations made in this Order and pass an Order in accordance with law.

12. Appropriate disclosure of this Order shall be made in the letter of offer through a corrigendum to the public announcement dated July 11, 2009.

13. With the above directions, the show cause notice dated April 6, 2010 issued by the Securities and Exchange Board of India to the acquirer shall stand disposed of.

14. This order shall come into force with immediate effect.

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

PLACE: MUMBAI
DATE: OCTOBER 6, 2010