

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF DHANALAXMI ROTO SPINNERS LTD.

In respect of Mr. Harmohan Singh Sabharwal

ORDER

Under Section 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 44 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') conducted investigation into the buying, selling and dealing in the shares of Dhanalaxmi Roto Spinners Ltd. (hereinafter referred as 'DRSL' or 'target company') for the period of May 11, 2006 to May 30, 2006. The investigation was initiated pursuant to a complaint by DRSL made to BSE, wherein DRSL had alleged that one Mr. Harmohan Singh Sabharwal (hereinafter referred to as 'acquirer') had acquired its 5,62,557 equity shares representing 14.42% of its equity capital without making any disclosure. During the period of investigation the scrip of DRSL was listed at Bombay Stock Exchange (hereinafter referred to as 'BSE') and Hyderabad Stock Exchange (hereinafter referred to as 'HSE'). However, no trading was reported at HSE during the relevant period.
2. Investigation revealed that the turnover and net profit of company had decreased substantially during 2005-2006 vis-à-vis the year 2004-2005. The trading details of the persons who had traded in the scrip were collected and analyzed along with the data of the volumes contributed during the relevant period. During the period, the price of the scrip increased from ₹14.20 as on May 11, 2006 and touched a high of ₹28.30 as on May 30, 2006, i.e. an increase of about 100% in just 14 trading days. The total traded quantity in the scrip during the relevant period was 3,63,012 shares with an average daily traded volume of 25,930 shares. However, during the previous six

months the average daily volume of the scrip was only 6,682 shares and the price of the scrip was in the range of ₹3 to ₹13.

3. During investigation it was also revealed that acquirer while trading through his brokers Hornic Investment Pvt. Ltd. and Pragya Securities Pvt. Ltd. contributed 74.49% of gross buy volume and 15.89% of gross sell volume in the scrip of DRSL during the relevant period. Acquirer acquired 5,89,529 shares constituting 15.11% of share capital of DRSL as on May 22, 2006, making it mandatory for him to make a public announcement to acquire further shares as per the provisions of Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations').
4. On completion of investigation, SEBI *inter alia* issued a show cause notice dated July 31, 2008 (hereinafter referred to as 'SCN') to acquirer to show cause as to why suitable directions under Section 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 44 of SAST Regulations should not be passed against him.
5. Acquirer vide his letter dated August 12, 2008, requested SEBI to keep the SCN on hold as he was desirous for applying for settlement of proceedings through consent order in terms of SEBI Circular dated April 20, 2007. However, this application of acquirer was rejected by SEBI. Pursuant to such rejection, the present proceedings have been revived from the stage where these were kept on hold.
6. Reminder letters were issued to acquirer, advising him to reply to the SCN. These reminder letters were returned undelivered. Before proceeding further, an opportunity of personal hearing was granted to acquirer on February 22, 2010. The hearing notice issued to acquirer returned undelivered from all the addresses available with SEBI. Another opportunity of personal hearing was granted to acquirer on May 07, 2010. This time again, the hearing notice issued to acquirer returned undelivered. I note that SEBI has issued a press notification as a mode of substituted service on the acquirer, with an advice

that in absence of any reply, the matter would be proceeded *ex-parte*. I note that the stipulated period mentioned in the publication has expired. I have seen the service report and find that the principles of natural justice have been duly complied with and it appears that the acquirer is not interested in submitting his stand in the present proceedings. In view of this, I am compelled to proceed with the matter *ex-parte*, on the basis of material available on record, having complied with the principles of natural justice.

7. I have carefully considered the SCN and material available on record. The short question arises for consideration here is: Whether the acquirer has triggered Regulation 10 of SAST Regulations?

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- a. I note that the authorized share capital of DRSL during the financial year 2005-2006 was ₹5 Crore i.e. 50 lakh shares of ₹10 each. The paid up capital of DRSL was ₹3,90,03,000 i.e. 39,00,300 equity shares of ₹10 each fully paid.
- b. I note that the acquirer during the complete proceedings have never denied acquiring the shares of target company. It is seen that he had the major concentration of about 90% of the total trading volume in the target company. I have seen the demat statement of acquirer which shows his holding as on May 22, 2006 in the scrip of DRSL as 5,43,438 shares. On the same day, it is seen that he had transferred 30,000 shares to another demat account, in which acquirer was the joint beneficiary. The total of this comes to 5,73,438 shares which forms 14.7% of the paid up capital of DRSL. From the Investigation Report, it is observed that the noticee has been taking a defence that as per his demat account he has never exceeded 15% level.
- c. I observe from his trading details that as on May 22, 2006, he had acquired 5,89,529 shares of DRSL, representing 15.11% of the paid up capital of DRSL. A detailed date-wise trading of acquirer, showing the shareholding

percentage during the relevant period in the scrip of DRSL has been brought out below for easy reference:

TABLE – A

Date	Opening Balance	Dealings through Hornic Investment Pvt. Ltd.			Dealings through Pragya Securities Pvt. Ltd.			Daywise Net Buy/Sell	Cumulative Holding at end of day	Shareholding of acquirer as % of the paid up capital of DRSL
		Buy	Sell	Net Buy/Sell	Buy	Sell	Net Buy/Sell			
(A)	(B)	(C)	(D)	(E=C-D)	(F)	(G)	(H=F-G)	(I=E+H)	(J)	(K)
1-Apr-06	0								0	0
18-Apr-06	0	14,100	0	14,100	5,000	0	5,000	19,100	19,100	0.49%
19-Apr-06	19,100	27,157	247	26,910	12,401	152	12,249	39,159	58,259	1.49%
20-Apr-06	58,259	13,900	15,428	-1,528	0	10,000	-10,000	-11,528	46,731	1.20%
21-Apr-06	46,731	40,854	19,204	21,650	13,585	0	13,585	35,235	81,966	2.10%
24-Apr-06	81,966	35,350	2,150	33,200	8,750	5,000	3,750	36,950	1,18,916	3.05%
25-Apr-06	118,916	8,900	0	8,900	2,400	0	2,400	11,300	1,30,216	3.34%
26-Apr-06	130,216	44,531	1,000	43,531	4,000	0	4,000	47,531	1,77,747	4.56%
27-Apr-06	177,747	31,650	550	31,100	0	0	0	31,100	2,08,847	5.35%
28-Apr-06	208,847	30,000	2,200	27,800	6,000	0	6,000	33,800	2,42,647	6.22%
29-Apr-06	242,647	21,300	4,300	17,000	2,000	10,000	-8,000	9,000	2,51,647	6.45%
2-May-06	251,647	57,675	31,575	26,100	11,500	7,500	4,000	30,100	2,81,747	7.22%
3-May-06	281,747	51,303	1,800	49,503	7,500	2,500	5,000	54,503	3,36,250	8.62%
4-May-06	336,250	9,600	0	9,600	6,000	4,000	2,000	11,600	3,47,850	8.92%
5-May-06	347,850	29,101	22,801	6,300	19,000	2,500	16,500	22,800	3,70,650	9.50%
8-May-06	370,650	0	0	0	21,400	0	21,400	21,400	3,92,050	10.05%
9-May-06	392,050	0	0	0	12,250	0	12,250	12,250	4,04,300	10.37%
10-May-06	404,300	7,500	0	7,500	25,000	0	25,000	32,500	4,36,800	11.20%
11-May-06	436,800	9,238	0	9,238	25,000	0	25,000	34,238	4,71,038	12.08%
12-May-06	471,038	7,373	100	7,273	12,000	0	12,000	19,273	4,90,311	12.57%
15-May-06	490,311	16,576	11,701	4,875	13,000	0	13,000	17,875	5,08,186	13.03%
16-May-06	508,186	14,251	8,651	5,600	9,000	0	9,000	14,600	5,22,786	13.40%
17-May-06	522,786	10,203	3,100	7,103	6,700	0	6,700	13,803	5,36,589	13.76%
18-May-06	536,589	7,870	500	7,370	11,612	0	11,612	18,982	5,55,571	14.24%
19-May-06	555,571	7,838	0	7,838	11,120	0	11,120	18,958	5,74,529	14.73%
22-May-06	574,529	6,000	0	6,000	9,000	0	9,000	15,000	5,89,529	15.11%
23-May-06	589,529	15,006	9,125	5,881	13,500	0	13,500	19,381	6,08,910	15.61%
24-May-06	608,910	5,040	5,840	-800	4,500	0	4,500	3,700	6,12,610	15.71%
25-May-06	612,610	16,000	1,600	14,400	13,200	0	13,200	27,600	6,40,210	16.41%
26-May-06	640,210	6,608	1,900	4,708	500	0	500	5,208	6,45,418	16.55%
29-May-06	645,418	5,500	2,178	3,322	6,400	0	6,400	9,722	6,55,140	16.80%
30-May-06	655,140	2,157	13,000	-10,843	5,500	0	5,500	-5,343	6,49,797	16.66%
TOTAL		5,52,581	1,58,950	393,631	2,97,818	41,652	2,56,166			

- d. The question for me to consider is what should indicate the act of acquisition, the acquirers trading details or his demat account. The SAST Regulations define an acquirer as a person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company or acquires or agrees to acquire control over the target company. In the act of trading through a broker, person acquires the shares bought by him, even if these don't appear in his demat account immediately. It is possible that the shares received in the broker pool account are transferred after some delay. Further, these can be kept in the pool account for a long time if used as margins. Therefore, the

demat account statement cannot be the sole basis of incontrovertible proving that an acquirer did not exceed a certain number of shares and is to be read with the trading details. While on the other hand if demat account shows a certain number of shares, it is indeed an incontrovertible proof that the holder had acquired the shares. Thus, when determining whether the acquirer had acquired more than 15% shares of DRSL, it is reasonable to rely upon the trading done by acquirer through his brokers Hornic Investment Pvt. Ltd. and Pragya Securities Pvt. Ltd.

- e. Having seen the trading details given in para 8(c), I am of the considered view that the acquirer triggered the Regulation 10 of SAST Regulation as on May 22, 2006, by crossing the threshold limit of 15%. Moreover, the acquirer had not made the mandatory public announcement and continued to acquire further shares of DRSL on May 23, 2006, May 24, 2006, May 25, 2006, May 26, 2006, May 29, 2006 and May 30, 2006, taking his cumulative holding to 16.66% by the end of investigation period.
9. From the findings noted above, it is clear that the acquirer had acquired the shares of target company and crossed the threshold limit of 15% as on May 22, 2006. On crossing the limit the acquirer was obliged to follow the requirements as laid down in Regulation 10 of SAST Regulations. Therefore, it is concluded that acquirer has violated Regulation 10 of SAST Regulations by not making an open offer.
10. Therefore, in exercise of the powers conferred upon me under Section 19 read with 11B of the Securities and Exchange Board of India Act read with Regulation 10 and 44 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, I hereby direct Mr. Harmohan Singh Sabharwal [PAN: AMYPS 8858A] (acquirer) to make public announcement to the shareholders of the target company, within 45 days of the date of this order, in terms of SAST Regulations.

- 11.** I note that in terms of SAST Regulations the payment of consideration to the shareholders of target company is required to be completed within 90 days from the date of public announcement. In the present case, if the acquirer would have come out with the public offer on the date when he crossed the threshold limit prescribed under Regulation 10 of Takeover Regulations then the shareholders of the target company would have got the exit opportunity, if they wished so, much before.
- 12.** Since no public announcement for acquisition of shares of the target company has been made, which has adversely affected the interest of the shareholders of the target company, it would be just and equitable to direct the acquirer to pay interest @ of 10 % per annum on the offer price. The acquirer is hereby accordingly directed to pay the interest of 10% per annum to the shareholders for the loss of interest caused to the shareholders for the period of delay.
- 13.** This order shall come into effect immediately.

DATE : 6/OCT/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA