

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

ORDER

**IN RESPECT OF THE APPLICATION FILED UNDER REGULATION 4(2) OF
THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL
ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 BY
MR. MOHAMMED ILLYAS AND OTHERS**

1. Punalur Paper Mills Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at Punalur, Kollam District, Kerala. The shares of the target company are listed on the Cochin Stock Exchange Limited, Delhi Stock Exchange Limited and the Bombay Stock Exchange Limited. Keynote Corporate Services Limited, the Merchant Banker, vide letter dated March 8, 2010 forwarded an application (hereinafter referred to as the application) on behalf of the acquirers, Mr. Mohammed Ilyas, Mr. Nelson Sebastain, Mr. K. Raveendran, Mr. T.K. Sundaresam, Ms. Omana Subash, Mr. Mantrirao Venkata Ratnam along with persons acting in concert (hereinafter referred to as the PACs) with them namely, Ms. Darshana Sundaresan, Mrs. Prasanna Sundaresan, Ms. Ashwathy Sundaresan, Mr. Ajay Sundaresan, Mrs. Vimala Raveendran, Mrs. Sheena Ilyas, Mrs. Sheela Nelson, Ms. Anupama Priyamkari and Ms. Amrutha Priyamkari under Regulation 4(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) read with Regulation 3(1)(i) thereof, with the Securities and Exchange Board of India (hereinafter referred to as SEBI) seeking exemption from the applicability of

Regulations 10 and 12 of the Takeover Regulations and other related Regulations 13,14,15,16,17,18, 20 and 22 thereof, in respect of their proposed acquisition of 11,82,696 equity shares (representing 52.76% of the subscribed and paid up equity share capital of the target company) along with voting rights attached thereto, from the present promoters of the target company. As per the application, the acquirers and the PACs propose to pay Rs. 10/- per equity share, as consideration. Further, the acquirers and the PACs propose to acquire the management control of the target company through the acquisition of equity shares from the promoters/promoter group of the target company. Pursuant to the proposed acquisition, the shareholding of the acquirers and the PACs in the target company would increase from 0% to 52.76%. Hence, the application was filed on behalf of the acquirers and the PACs seeking exemption primarily from the applicability of Regulations 10 and 12 of the Takeover Regulations *inter alia* on the following grounds:

- i. The target company was established in the year 1888 and its the business of manufacturing paper was closed down in 1987 on account of non-availability of raw material, financial difficulties and labour problem. The target company's institutional creditors initiated legal proceedings to recover the outstanding dues to them.
- ii. Various attempts were made to revive the target company. However, the attempts were not successful on account of prolonged nature of the legal compliances and statutory requirements. Further, the target company's other liabilities such as sales tax, central excise etc. are also subsisting. As on the date of the application, the target company stands closed for over 24 years and that its shares have not been traded on stock exchanges for the last 24 years. The target company was unable to revive itself despite successfully entering into a Memorandum of Understanding with the Government of Kerala.
- iii. In such circumstances, the acquirers having established business in different fields want to revive the target company by way of takeover of the management

shareholding. The acquirers propose to infuse fresh capital upon successful purchase of the shareholding of the present management and also propose to settle the claims of the creditors including the statutory and employee dues.

2. The application was forwarded to the Takeover Panel in terms of Regulation 4(4) of the Takeover Regulations. The Takeover Panel, vide letter dated April 19, 2010 forwarded its Report to SEBI, wherein it had rejected the application as it did not find any justification for granting exemption. Subsequently, an opportunity of hearing was granted to the acquirers and PACs on June 3, 2010. Mr. Madhuprasad, Vice-Chairman, Keynote Corporate Services Limited, represented the acquirers and PACs and made submissions. As it was submitted that the acquirers and PACs are interested in the revival of the target company and the acquisition was in the interest of the public shareholders of the target company, they were advised to submit a plan as to how they would be reviving the target company after taking control of its management. Thereafter, Keynote Corporate Services Limited, vide letter dated July 22, 2010, forwarded a copy of the draft revival proposal submitted by the acquirers to the Government of Kerala. When the matter stood thus, SEBI came to know that the acquirers had acquired 11,82,696 equity shares for which the application was submitted. As the said acquisition was made while the application was pending and not preceded by a public announcement, SEBI vide letter dated October 12, 2010 advised the acquirers and PACs to explain why action should not be initiated in terms of Regulation 44 of the Takeover Regulations. In response, Keynote Corporate Services Limited, vide letter dated November 9, 2010 forwarded the reply dated October 30, 2010 of Mr. Mohammed Illyas which contained certain enclosures. The following submissions were made in the said reply:

a. The target company was forced to be closed down in 1987 on account of raw material shortage, labour unrest and pending litigations .

b. Subsequently, the target company submitted its proposal seeking concessions under the New Industrial Policy formulated by the then Government of Kerala in 2001 which provided assistance and concessions to revive closed units and to attract vibrant entrepreneurs. The target company was granted concessions and accordingly a Memorandum of Understanding (MoU) was signed between the Government of Kerala and the target company on May 2, 2002.

c. In spite of the said concessions, the then management of the target company was not able to honour the commitments as agreed in the MoU due to pending litigations and had forwarded a letter requesting the Government of Kerala to find out an appropriate and potential investor to takeover the control of the management and revive the unit.

d. That many investors made several attempts but their interest did not materialize because of the legal complications and liabilities that encircled the target company. After analysing the situation of the unit, the acquirers and the PACs communicated their interest in taking over the management of the target company and revive the same, to the Government of Kerala and that the Government had asked them to crystallize the issue of the employees, clear the liabilities of the financial institutions, discharge the court receiver from the company and takeover the control of the management by getting the shares transferred.

e. As stipulated by the Government of Kerala, they had discussions with all the employees unions and had signed a memorandum. They have cleared the liabilities of the financial institutions on March 31, 2010 under a One Time Settlement (OTS) as the same was available only upto that date. They have also discharged the court receiver from the mills. Further, the acquirers have also taken control of the management of the target company from the 'Dalmia Group' (the erstwhile promoters of the target company) by acquiring 52.76% equity capital on May 14, 2010.

f. A conference was held on July 26, 2010 with the Hon'ble Chief Minister, Government of Kerala, Hon'ble Industries Minister, Hon'ble Revenue Minister and the Secretaries of the Government to discuss the issues involved in the revival of the unit and that the issues were placed before the Cabinet wherein the Council of Ministers gave approval. Accordingly, the Government of Kerala had passed a Government Order (G.O.) on August 20, 2010 and sanction was also accorded for signing another MoU in line with the earlier MoU dated May 2, 2002 (A copy of the said G.O. was also enclosed). According to the acquirers, as the said G.O. had some ambiguous clauses, they had requested the Government of Kerala to make necessary amendments.

h. That their intention had always been to effect the transactions as transparent as it could be and the same was the reason for filing the application for exemption. However, as the secured creditors had stipulated a time frame for the OTS and which if not availed could have increased the liability of the target company tenfold.

i. That the survival of the industry was in challenge and on the assurance of the Government, they had fulfilled all obligations by investing a huge amount and in order to safeguard their investments and to fulfil one of the conditions in the G.O., the acquirers had signed the share purchase agreement (SPA) under the hope that they would get an exemption from the provisions of the Takeover Regulations, once the final proposal is submitted.

j. It was also submitted that the delay in G.O. amendment and signing of another MoU delayed their final revival proposal.

k. According to them, the acquisition was a not a simple investment but a revival of a defunct company for the benefit of all the stakeholders including the employees and creditors.

The acquirers further sought for an opportunity of hearing in order to explain the acquisition and its justification.

3. Accordingly, an opportunity was granted to the acquirers, as sought by them on December 2, 2010, when Mr. B. Madhuprasad, Vice-Chairman, Keynote Corporate Services Limited, along with Mr. S. Prabhakaran, Advocate, represented the acquirers and made submissions. Mr. Mohammed Illyas and Mr. Nelson Sebastain were also present during the hearing. The learned representatives of the acquirers put forth submissions as to why the acquirers had acquired shares, when the exemption application was under consideration by SEBI. It was submitted that the acquisition was made due to pressing urgency as banks were exerting pressure on them. It was also stated that after the acquisition, the acquirers have access to the premises. According to them, compliance in many respects were not in place and also that the complete list of shareholders is also not readily available. It was also explained how the financial institutions including Kotak Mahindra Bank had given them the concessions in respect of the repayment of dues. Further, they had also referred to the G.O. issued by the Government of Kerala and submitted that they had discharged the payment obligations towards the employees and the state government. The learned representatives submitted that the acquirers are now willing to make a public announcement within a specified period from the date of the Order. Thereafter, vide letter dated December 6, 2010, Keynote Corporate Services Limited forwarded an electronic mail from Mr. Mohammed Illyas (on behalf of the acquirers) wherein it was stated as follows:

“.....we hereby undertake to go for Public Announcement of acquisition with a scheme regarding earmarking of designated fund with interest @ 10% per annum from the date of Share Purchase Agreement i.e. 14.05.2010 and to inform the availability of the exit opportunity to the Public Share holders within 30 days from the date of Receipt of the order of the SEBI.

We also hereby undertake to complete the entire process of Public Offer within 120 days from the date of Public Announcement.....”

4. I have considered the application of the acquirers and PACs, the recommendation of the Takeover Panel, the oral as well as written submissions made on behalf of the acquirer and other relevant material available on record. The application has been submitted seeking exemption from SEBI in respect of their proposed acquisition of 52.76% of the paid up equity capital from the present promoters of the target company, for the reasons stated therein. In the meanwhile, the acquirers executed the SPA with the promoters of the target company and acquired shares which were the subject matter of the exemption application earlier filed by them. In this regard, it is to be noted that application under Regulation 4 of the Takeover Regulations could be made only for proposed acquisitions. For those acquisitions which have been consummated, Regulation 4 of the Takeover Regulations would have no applicability. The act of acquiring of shares would make the application infructuous. Therefore, the said application has to be merely disposed of by SEBI accordingly. As the acquirers have already acquired 52.76% of the subscribed and paid up equity capital of the target company from the present promoters, the Takeover Regulations under Regulations 10 and 12 mandates that the acquirers (along with their PACs) have to make a public announcement. As stated above, Mr. Mohammed Illyas, for himself and on behalf of other acquirers and PACs has undertaken to make a public announcement in respect of their aforesaid acquisition. He has also submitted that an exit opportunity would be given to the public shareholders within thirty days from the date of the receipt of the Order and that a scheme would be devised for earmarking a designated fund with interest at 10% per annum from the date of the SPA (May 14, 2010). He has also undertaken to complete the entire process of the public offer within one hundred and twenty days from the date of the announcement. In this regard, I have considered the submissions made by the acquirers. According to them, the acquisition had to be made due to the pressing urgency and pressure from the banks and financial institutions and the stipulations in the G.O. that the

target company should take immediate steps for settling the government dues and restart the operation of the company within six months. As per the said G.O. (G.O. (MS) No. 180/2010/ID dated August 20, 2010 which was under the seal of the Additional Chief Secretary to the Government of Kerala), certain concessions in respect of the electricity dues, sale tax arrears were granted. Further, the said G.O. stipulated:

“All the concessions and relief will be granted as and when positive steps are taken by the company for the reopening and running of the Punalur Paper Mills Ltd. The Government will take steps to withdraw concessions if company fails to implement approved revival scheme.”

The Punalur Paper Mill Ltd will take immediate steps for settling the Government dues and restart the operation of the company within 6 months.

The Punalur Paper Mill Ltd will submit detailed action plan for the utilisation of Land with the Company.

All the legal/Revenue Recovery steps against the company will be withdrawn.....

Sanction also accorded for signing an Mou with Punalur Paper Mills Ltd, for reopening of the company in line with MoU signed in 2002 and concessions and conditions approved in above paras.” (Underline supplied)

5. According to the G.O., the target company had to take immediate steps for settling the dues and to restart the operation within six months time. Further, it was the apprehension of the acquirers that the concessions would be withdrawn by the state government, if the target company fails to implement the approved revival scheme. According to the acquirers, a Revival Proposal made in the interest of the target company, its public shareholders and its employees, was already submitted to the state government, pursuant to the G.O. The acquirers further submitted that, the dues could be settled and operations started only when they acquire shares and takeover the control and

management of the target company from the then promoters. According to the acquirers, the same compelled them to acquire the shares and control of the management of the target company, under the SPA. The acquirers have also explained the urgency and the demand from banks to settle their dues and that they had already settled the dues of the employees of the target company and the Financial Institutions, pursuant to the takeover of the target company. They further submitted that they have done so to revive a defunct company and for the benefit of its public shareholders and employees for which they have made their bonafide efforts. Further, the acquirers have undertaken to make the public announcement within thirty days from the date of receipt of this Order and earmark a designated fund with interest @10% per annum from the date of the SPA.

6. Having made the foregoing observations, I shall desist from giving a finding on the merits of the submissions made by the acquires in response to the letter of SEBI dated October 12, 2010, as the present proceeding is limited in scope as SEBI merely has to consider whether to grant exemption or not to the acquirers on the basis of the application submitted by them, under Regulation 4 of the Takeover Regulations. SEBI may consider and dispose of the letter dated October 12, 2010 after considering the submissions of the acquirers made in that regard.

7. Considering the facts and circumstances of the case in its totality, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 4(6) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby dispose of the application dated March 8, 2010 filed on behalf of Mr. Mohammed Illyas, Mr. Nelson Sebastain, Mr. K. Raveendran, Mr. T.K. Sundaresam, Ms. Omana Subash, Mr. Mantrirao Venkata Ratnam along with persons acting in concert with them namely, Ms. Darshana

Sundaresan, Mrs. Prasanna Sundaresan, Ms. Ashwathy Sundaresan, Mr. Ajay Sundaresan, Mrs. Vimala Raveendran, Mrs. Sheena Illyas, Mrs. Sheela Nelson, Ms. Anupama Priyamkari and Ms. Amrutha Priyamkari, as infructuous.

8. The above named acquirers and persons acting in concert shall comply with all open offer/public announcement requirements in respect of their acquisition of 11,82,696 equity shares of Punalur Paper Mills Limited, as undertaken by them, vide electronic mail dated December 5, 2010 (forwarded to the Securities and Exchange Board of India by Keynote Corporate Services Limited, vide letter dated December 6, 2010), in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

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

PLACE: MUMBAI

DATE: DECEMBER 10, 2010