

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CONSENT ORDER

ON THE APPLICATION SUBMITTED BY

DISA HOLDING AG

IN THE MATTER OF

NON COMPLIANCE OF TAKEOVER REGULATIONS

(CONSENT APPLICATION NO. 1194 OF 2009)

1. The Securities and Exchange Board of India ('the SEBI') received a consent application filed on behalf of DISA Holding AG ('the applicant'). The applicant is a corporate entity having its registered office at Kasernenstrasse 1, 8184 Bachenbulach, Switzerland vide application dated February 13, 2009. The applicant has voluntarily filed the application under SEBI Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007 proposing settlement of its failure to make open offer under Regulation 11(2) of SEBI ('Substantial Acquisition of Shares and Takeovers') Regulations 1997 ('the Takeover Regulations').
2. It is noted that –
 - (a) DISA India Ltd. ('target company') is a company registered in India. On 28th January 2005, the applicant acquired 8500 shares of target company from the public shareholders at a price of ₹268.27. By virtue of the said acquisition the shareholding of the applicant in the target company increased from 62.005 to 62.0567%. This acquisition attracted regulation 11(2) of the Takeover Regulations. However, the applicant failed to make Public Announcement and public offer as required under regulation 11(2) read with regulation 14 of the Takeover Regulations.
 - (b) As on 05.01.2007, DISA Holding A/S directly and indirectly through the applicant (a wholly owned subsidiary of DISA Holding A/S) held 74.27 % shares in the target company. On 5th January 2007, 100% shareholding in DISA Holding A/S was acquired by another group company of DISA group, namely, DISA Holding II A/S.
 - (c) Subsequently, pursuant to a Share Sale and Purchase Agreement dated 9th March, 2008, Hamlet Holding II ApS acquired the entire shareholding in DISA Holding II A/S .On 31st December 2008 Hamlet Holding II ApS (acquirer) along with DISA Holding II A/S, DISA Holding A/S and the applicant, the persons acting in concert (PAC) made a public offer under the Takeover Regulations, at an offer price of ₹ 1657/ which has been disputed by SEBI in an appeal pending before the Hon'ble Supreme Court of India.

- (d) Had the applicant made a public offer pursuant to acquisition made on 28th January 2005 , the offer price as per regulation 20 could have been approximately ₹ 270/- per share . Adding interest at 10% per annum for four years the public offer could have been at a price of ₹ 378 per share which is below the offer price which has been offered by the subsequent acquirer Hamlet Holding II ApS along with applicant and others as PACs and difference which will be payable subject to the outcome of appeal pending before Hon'ble Supreme Court of India. In view of these peculiar circumstances insisting public offer by the applicant in respect of its above stated acquisition would be a mere formality. Therefore, the request of the applicant to settle the breach through consent process has been entertained.
3. The applicant proposed revised consent terms vide letter dated 19th July, 2010 for settling the matter through a consent order. The High Powered Advisory Committee, constituted by SEBI, has recommend settlement of the case on payment of ₹ 25, 00,000 (Rupees twenty five lakh only) towards settlement charges in view of the facts and circumstances of the case. SEBI accepted the said recommendations and communicated the same to the applicant vide letter dated November 8, 2010.
 4. Accordingly, the applicants have remitted a sum of ₹ 25,00,000 (Rupees twenty five lakh only) towards settlement charges vide Bankers cheque No. 520139 dated 24th November, 2010 drawn on Deutsche Bank payable at Mumbai.
 5. In view of the above, the failure of the applicant to comply with regulation 11(2) of Takeover Regulations as mentioned in the application is settled by this order in terms of the consent terms as mentioned in para. 3 and 4 above and SEBI shall not initiate any enforcement proceedings against the applicants for the said failure.
 6. This order is without prejudice to the right of SEBI to initiate enforcement actions against the applicant, if:
 - a. any representation made by the applicant in this consent proceeding is subsequently discovered to be untrue; or
 - b. the applicant breaches any of the consent terms or undertaking filed in this consent proceeding.
 7. This consent order is passed on this day, the 27th of December 2010 and shall come into force with immediate effect.

K. M. ABRAHAM
WHOLE TIME MEMBER

PRASHANT SARAN
WHOLE TIME MEMBER