

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

1. Jainex Aamcol Limited (hereinafter referred to as the target company) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1 & 2, Broach Sadan, Broach Street, Devji Ratansi Marg, Masjid Bunder, Mumbai-400009 and corporate office at 1116, Dalamal Towers, 211, Nariman Point, Mumbai-400021. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE). Mr. Bhagat Singh Dugar and Mr. Ronojoy Mazumdar (promoters of the target company) had filed an application dated December 16, 2009 read with a subsequent application dated January 11, 2010, 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) for themselves and on behalf of Mrs. Madhu Dugar, Mr. Rahul Dugar, Mrs. Nandita Dugar, Mrs. Ketaki Mazumdar, Mr. Sujoy Mazumdar, Mr. Pravin C. Vora and Jainex Foods Private Limited (all the aforesaid persons shall henceforth be collectively referred to as the acquirers and individually by their respective names), seeking exemption from the applicability of Regulations 10 and 11 of the Takeover Regulations, in respect of their proposed acquisition of 8,10,000 equity shares of the target company at a price of ₹40/-per share (including a premium of ₹30/-) through

preferential allotment by the target company. The application for exemption was filed *inter alia* on the ground that the target company's financial health did not enable it to repay the unsecured loans extended by the acquirers and/or service the unsecured loans during the year ending March 31, 2009 and it was deemed prudent to the target company that the unsecured loans to the tune of ₹3.24 crores be converted into equity shares and allot the same on preferential basis to the acquirers. According to the said application, the shareholding/voting rights of the acquirers in the target company would increase from 45.75% to 74.92%, pursuant to the aforesaid acquisition.

2. The aforesaid application of the acquirers was thereafter forwarded to the Takeover Panel in terms of Regulation 4(4) of the Takeover Regulations. Subsequently, the Takeover Panel sought certain information from the acquirers, which was duly communicated to the acquirers by SEBI, vide letter dated February 8, 2010. Pursuant to the same, the acquirers furnished information vide letter dated February 15, 2010. Thereafter, the Takeover Panel in its Report dated March 27, 2010, had recommended as follows:

*“It was observed by the panel that sales of the Target Company have increased by 667% from 2001-2002 to 2007-2008 resulting in profitability of the Company. As on 31/3/2008 the Target Company had a credit balance in the Profit & Loss Account of Rs.107.52 lacs (after payment of Income Tax of Rs.77.55 lacs). The networth of the Target Company is Rs.258.10 lacs. The aforesaid financials of the Target Company clearly reveal that its financial health is fairly good which does not call for any favourable treatment from the compliance of regulations. In normal circumstances, any preferential allotment, is required to comply with the open offer requirements as laid down in the Takeover Regulations. The panel did not find any justification for granting exemption to the Acquirers and consequently rejected their application for exemption from the applicability of the provisions of regulations 11(1) and 11(2) of the Takeover Regulations.”*  
[Underline supplied]

3. Thereafter, the acquirers were informed vide letter dated April 22, 2010 that SEBI was of a *prima facie* view that their case is not a fit one for grant of exemption and accordingly afforded them an opportunity of hearing on June 2,

2010, when, Mr. Ronojoy Mazumdar, on behalf of the acquirers, appeared before me and made submissions. Written submissions dated June 2, 2010 was also submitted during the hearing. It was *inter alia* submitted that the acquirers had made the application considering the state of affairs of the target company as at March 31, 2009 and the projections for the financial year 2010. It was further submitted that, though the audited balance sheet as at March 31, 2009 was annexed to the application, the Takeover Panel has completely ignored to consider the same and instead, had considered the balance sheet as at March 31, 2008. According to the acquirers, the balance sheet as at March 31, 2008 was not at all relevant for considering their application. It was thus, the case of the acquirers that the recommendation and the conclusion arrived at by the Takeover Panel was not based on actual facts. Mr. Ronojoy Mazumdar further submitted that the present case is similar to that of Secur Industries Limited wherein, on the basis of the recommendation of the Takeover panel, SEBI had granted exemption to the acquirers therein from the applicability of the relevant provisions of the Takeover Regulations. Considering the contention that the Takeover Panel's recommendation was not based on the relevant facts, SEBI vide an Order dated June 15, 2010, remanded back the application dated December 16, 2009 read with January 11, 2010 of the acquirers to the Takeover Panel for considering the same afresh taking into account the submissions of the acquirers as mentioned in the said Order.

4. The case was again considered by the Takeover Panel and in their Report dated August 12, 2010, whilst not recommending grant of exemption to the acquirers, the Takeover Panel had observed as follows:

“The Panel observed that as per the projections given by the Applicant, networth of the target company will increase from 286.12 lakh as on 31/3/2009 to Rs. 479.17 lakh as on 31/3/2011. The turnover is also projected to increase from Rs. 664.37 lakh as on 31/3/2009 to Rs. 886.4 lakh as on 31/3/2011. In its earlier report dated 27/3/2010, the Panel had observed that the sales of the Target Company had increased from 667% from 2001-2002 to 2007-08 resulting in profitability of the Company. It is clear from

the above that the financial health of the Company is expected to become better as per the projections given by the Applicant. The Panel did not find any material change in this regard even after considering the Target Company's balance sheet for the year ending 31/3/2010. As regards the case of Secur Industries Ltd., the Panel observed that the facts of that case are not similar to the facts of this case and as such no analogy can be drawn between the two cases. The Panel therefore did not recommend any exemption to the acquirers and rejected their application for exemption from the applicability of provisions of regulation 11(1) and 11(2) of the Takeover Regulations." (Underline supplied)

5. The aforesaid Report of the Takeover Panel was forwarded to the acquirers, vide SEBI letter dated August 23, 2010 and an opportunity of hearing was granted to them on September 8, 2010. However, on request of the acquirers, the hearing was rescheduled to October 12, 2010, when on the said date, Mr. Ronojoy Mazumdar appeared on behalf of the acquirers and made submissions. Written submissions dated October 12, 2010 was also submitted during the course of the hearing. The representative submitted that the Takeover Panel has again recommended rejection of their application without considering the relevant facts. According to him, the Takeover Panel did not consider the target company's balance sheet for the year ended March 31, 2010. The representative further contended that the Takeover Panel while observing the projections given by the applicant that, the net worth of the target company would increase from ₹286.12 lakhs as on March 31, 2009 to ₹479.17 lakhs as on March 31, 2011, had ignored and overlooked the fact that the projected increase in network would only be consequent to the conversion of the unsecured loans (due to the promoters/acquirers) amounting to ₹324 lakhs to equity at a premium of ₹30/- per share and not otherwise. He further submitted that without conversion of unsecured loans into equity, the network of the target company would stand reduced to ₹207.49 lakhs as at March 31, 2010 from ₹286.12 lakhs as at March 31, 2009 and the same was projected to reduce further in the year 2011. According to the representative, the financial health would improve only on conversion of unsecured loans due from the target company to the acquirers. The representative further contended that the

Takeover Panel has merely stated that there is no analogy between the instant application and the case of Secur Industries Limited without giving any reason for their conclusion. It was also submitted that the increase in the shareholding of the acquirers in the target company would not result in change in control since the acquirers are already in control of the target company and requested SEBI to grant exemption from the applicability of the Takeover Regulations with respect to their proposed acquisition of shares of the target company.

6. I have considered the application filed by the acquirers for grant of exemption, the recommendation of the Takeover Panel, the oral as well as written submissions of the acquirers and other material available on record. It is the case of the acquirers in their application that the sales of the target company declined steeply during 1999-2000 to 2001-2002 and to arrest the decline, they had infused funds to the tune of ₹6.24 crores by way of unsecured loans. Thereafter, the sales of the target company had increased by 667% from 2001-2002 to 2007-2008, which resulted in profits to the target company. However, due to the global meltdown, the sales of the target company declined again from ₹934.86 lakhs in the previous year to ₹664.37 lakhs in the year 2008-2009. It is the submission of the acquirers that as a result in the fall in the sales and consequent profits, the target company is not in a position in the near future to repay the unsecured loans to the acquirers as any cash generation would necessarily have to be ploughed back not only to keep the target company financially healthy but also for further upgradation of plant and machinery, expansion of capacity and diversification. Therefore, according to the acquirers, the target company deemed it prudent that the unsecured loans be converted into equity by way of preferential allotment of 8,10,000 equity shares to the acquirers (promoters) so as to avoid adverse effect on the fund flow of the target company.

7. The primary submission of the acquirers is that the projected increase of networth of the target company from ₹286.12 lakhs as on March 31, 2009 to ₹479.17 lakhs as on March 31, 2011 was given assuming that the unsecured loans of the target company would be converted into equity and in absence of the same, the networth of the target company would stand reduced to ₹207.49 lakhs as at March 31, 2010 from ₹286.12 lakhs (as at March 31, 2009) and was projected to further reduce in 2011. I have considered the aforesaid submission. I have perused the written submissions filed on behalf of the acquirers and from the table at page 3 of the said written submissions, I note that the networth of the target company has been positive, with ₹286.12 lakhs (audited) as on March 31, 2009 and ₹204.16 lakhs (audited) as on March 31, 2010. The networth of the target company for 2011 is projected at ₹159.17 lakhs (if the unsecured loans are not converted into equity) and at ₹479.17 lakhs (if the loans are converted into equity). Thus, even when the unsecured loans due to the acquirers/promoters are not converted into equity as proposed by the target company, the networth of the target company would be positive at ₹159.17 lakhs. Further, the credit balance (projected) in profit and loss account after deferred tax credit for 2011 is (-)₹37.17lakhs. The said figure remains constant, irrespective of the loans being converted into equity. I also note from the annual reports and accounts for 2010 of the target company (the said document was submitted along with the written submissions during the hearing), that the sales of the target company had increased from ₹ 664.37 lakhs as on March 31, 2009 to ₹ 767.52 lakhs as on March 31, 2010 From the said document, I also note that Mr. Bharat Singh Dugar and Mr. Ronojoy Mazumdar are identified as the directors of the target company and that Mr. Bharat Singh Dugar is the Chairman of the target company and Mr. Ronojoy Mazumdar is its Managing Director. Though, the acquirers have submitted that the financial health of the target company would improve (wherein networth would increase and debt equity ratio would decrease due to preferential allotment of equity shares) only on conversion of unsecured loans due from the target company to the

acquirers, I do not find the same to be convincing. The networth of the target company, even as per the projections of the acquirers (who are the promoters/directors of the target company), would be ₹159.17 lakhs when the unsecured loans are not converted into equity. Even in the event of the target company not converting the unsecured loans to equity, the networth of the target company would not become negative, even as per the projections given by the promoters/acquirers of the target company. Further, assuming that the financial health of the target company in terms of networth and debt equity ratio would improve only after conversion of loans into equity, the same would hold good even when an exemption is not granted to the acquirers herein. As per the submissions of the acquirers, the total unsecured loans due to the promoters/persons acting in concert is ₹6,24,26,351/-, out of the same, ₹3,24,00,000/- is proposed to be converted into equity. The outstanding balance of unsecured loans would be ₹3,00,26,351/-. In view of the above, I am not convinced with the submissions of the acquirers that the financial health of the target company would improve only if the loans are converted into equity for the purposes of granting exemption.

8. The next contention of the acquirers is that their case is similar to that of Secur Industries Limited. The Takeover Panel has observed in their Report that the present case is not similar to that of Secur Industries Limited and that no analogy could be drawn from the same. In this regard, I note that SEBI vide an Order dated June 30, 2009 granted exemption to the acquirers therein from the applicability of the Regulation 11(1) of the Takeover Regulations, wherein consequent to preferential issue and conversion of warrants, the shareholding of the acquirers therein would increase from 17.49% to 46.40%. While comparing the present case with that of Secur Industries Limited, I note that in the matter of Secur Industries Limited, at the time of filing of the application for exemption, the said company's networth was eroded and was running substantial losses for the last many years, resulting in accumulated losses. It is

also observed from the balance sheet of Secur Industries Limited, that nil sales was reported for the years 2006 and 2007. However, in contrast, in the present case, the networth (audited) of the target company has been positive at ₹286.12 lakhs in 2009 and ₹204.16 lakhs in 2010 and projected to be ₹159.17 lakhs in 2011 even when the unsecured loans are not converted into equity. As stated above, the sales of the target company had increased from ₹664.37 lakhs as on March 31, 2009 to ₹767.52 lakhs as on March 31, 2010. Therefore, the facts and circumstances of the present case are not exactly similar to that of Secur Industries Limited. Thus, I am in agreement with the observation of the Takeover Panel that no similar analogy could be drawn between the present case and that of Secur Industries Limited. I also note that the conversion price/allotment price is fixed at ₹40/- (including ₹30/- as premium). However, the market price of the shares of the target company is in the range of ₹109 to ₹121 during December 2010 and has been in the range of ₹110/- to ₹134.50/- during the period November 2009 to December 2010. Further, the proposed allotment would increase the shareholding of the acquirers (who are the promoters of the target company) from 45.75% to 74.92%, at a price less than half of the market price. It has been contended that the allotment price has been computed as per Regulation 20(5) of the Takeover Regulations as the shares were infrequently traded. I note that if an offer is made for the said price, the public shareholders can avail of an opportunity to exit their holding more particularly when the shares of the target company are illiquid. Therefore, granting exemption in such a case, would adversely affect the public shareholders as they would lose an opportunity of public offer. Therefore, in such circumstances, I am of the considered view that the public shareholders must have an option of a public offer from the acquirers. There is yet another reason for not granting exemption to the acquirers. I note that in the resolution authorising the target company to issue and allot shares to the promoters/acquirers, the details of allotment, particularly, the amount of unsecured loans to be converted, the number of equity shares to be allotted against such conversion, the names of the

proposed allottees, are not mentioned. Though, the acquirers have vide letter dated February 15, 2010 stated that in the event, SEBI required specific number of shares to be converted, another meeting of the shareholders would be convened, I find the same not to be convincing as full details of the allotment were not made available to the shareholders in the first instance, for the purposes of considering grant of exemption to the acquirers. Further, in such circumstances SEBI would not want to grant contingent exemption or exemption subject to fulfilling certain conditions by the acquirers. It is also to be noted that the acquisition of shares through preferential allotment route is not exempted automatically from the applicability of the provisions of the Takeover Regulations. Such an exemption is granted by SEBI, on a case to case basis, particularly where the target company has become sick and infusion of funds by promoters/acquirers is for purposes of rehabilitating that company or is required under any sanctioned Corporate Debt Restructuring (CDR) package.

9. Considering the facts and circumstances of the present case in its totality and also for the foregoing reasons, I am of the considered view that the present case is not a fit one for grant of exemption from the applicability of Regulation 11(1) and (2) of the Takeover Regulations. Therefore, I am in agreement with the Takeover Panel in not recommending exemption to the acquirers.

10. In view of the foregoing, I, in exercise of 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, namely, Mr. Bhagat Singh Dugar, Mr. Ronojoy Mazumdar, Mrs. Madhu Dugar, Mr. Rahul Dugar, Mrs. Nandita Dugar, Mrs. Ketaki Mazumdar, Mr. Sujoy Mazumdar, Mr. Pravin C Vora and Jainex Foods Private Limited, from the applicability of Regulation 11(1) and (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and

Takeovers) Regulations, 1997, in respect of their proposed acquisition of 8,10,000 equity shares of Jainex Aamcol Limited, through preferential allotment.

11. Accordingly, the application dated December 16, 2009 read with the subsequent application dated January 11, 2010 of the aforesaid acquirers, stand rejected.

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

**PLACE: MUMBAI**  
**DATE: JANUARY 17, 2011**