SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF DAIKAFFIL CHEMICALS INDIA LIMITED – EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

WTM/GA/134/CFD/2/07

1.0 BACKGROUND

1.1 M/s Daikaffil Chemicals India Limited (hereinafter referred to as 'the target company') is a company incorporated under the Companies Act, 1956, having its registered office at 52, Nariman Bhavan, Nariman Point, Mumbai-400021. The equity shares of the target company are listed on the Bombay Stock Exchange Ltd. (BSE)

1.2 G.E. Chemical Company S.A. (hereinafter referred to as the acquirer) is presently not holding any shares in the target company. The acquirer proposes to acquire 25.10% shares in the target company by way of preferential allotment on private placement basis.

2.0 APPLICATION FOR EXEMPTION

2.1 The proposed preferential allotment on private placement basis would increase the shareholding of the acquirer from nil to 25.10% of the voting capital of the target company and therefore would trigger regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the

Takeover Regulations). In view of the above, the acquirer, vide letter dated July 14, 2006 (as revised on July 31, 2006) filed an application with SEBI under regulation 4(2) read with regulation 3(1) (l) of the Takeover Regulations. Since, the post acquisition shareholding of acquirer shall increase to a level beyond 15%, the exemption is sought from the applicability of regulation 10 of the Takeover Regulations, inter alia on the following grounds:-

i) The acquirer through its affiliated subsidiary ERCA**,** have been buying almost entire production of different varieties of Optical Brighteners from DCIL, since last several years.

ii) ERCA annually get only about 350MT/ from DCIL due to capacity constraints, which is not enough since they have now entered growing markets. The only logical option for ERCA is to expand the target company's production facilities.

iii) The target company has been passing through bad times over the last several years resulting in carried forward losses, and are not in a position to undertake any expansion, which is being achieved by the acquirer ready to subscribe to Equity Shares of DCIL with clear understanding that the funds would promptly be utlised for expanding Capacity. Further the acquirer itself has financial constraints to invest beyond 25.10% of the Equity Share Capital of DCIL.

iv) If exemption is not granted, then the whole idea of supporting the target company might be jeopardized due to the fact that Promoters of the target company might not agree to allow the acquirer to come out with an open public offer for securing their stake as promoters and management (at present they hold around 43% together with their associates and persons acting in concert). Further G.E. Chemical Company S.A. and its Associates as outsourcing partners may be compelled to look at other avenues for securing their prime objective of sure and steady supply of required materials. In the situation that exemption is not granted, perhaps the acquirer and its associate ERCA of Italy might eventually tie up with other entities in India for outsourcing its supplies.

v) Exemption will benefit the stakeholders of the target company both in short and long term

2.2 The shareholding pattern of the target company before and after the proposed acquisition (as mentioned in the aforesaid application) is as under:

Shareholders' category	Number of registered shareholders as on date of application	Before the proposed acquisition		After the proposed acquisition	
		Number of shares/ total voting rights held	% of shares/ total voting capital held	Number of shares/ voting rights	% of shares/ total voting rights
Promoter group	38	2277449	43.3775	2277449	32.4886
Acquirers	0	0	0	1759700	25.1027
FIs/ Banks	6	9400	0.1791	9400	0.1341

FIIs/NRIs/OCBs	17	84900	1.6171	84900	1.2111
Public	3524	2878551	54.8263	2878551	41.0635
Total	3585	5250300	100.00	7010000	100.00

3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The application filed by the acquirer was forwarded by SEBI to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel vide its report dated October 26, 2006 has recommended as under–

"*The proposed issue of preferential allotment will result in 25.10% total paid up capital/ voting rights of the target company. The purpose is to achieve expansion programme in high priority industry and enhance Target Company's market share and volume in Global Market. The aforesaid grounds were considered and the fact that the exemption is going to benefit stakeholders of DCIL on long term and short term basis was also considered. The company in pursuance of further queries made has informed by letter dt 25/09/2006 that there is a special resolution duly approved by the members of DCIL in the 14th AGM granting approval, subject to the approval of SEBI and other authorities and certified copy of the resolution is also forwarded. In view of this the panel does not find any difficulty in granting exemption as prayed for.*"

3.2 The aforesaid recommendation of the Takeover Panel was considered by SEBI and was prima facie of the view that the application filed by the acquirer for the grant of exemption could not be allowed. In the facts and circumstances, a copy of the recommendation of the Takeover Panel was forwarded to the acquirer by SEBI on January 08, 2007. SEBI had also granted an opportunity of hearing to the acquirer on January 19, 2007 to make its submissions. Mr. Dinesh Deora & Mr. Balveer Choudhary of DSU & Associates represented the acquirer on the said date and made submissions before me on the lines of the aforesaid application filed by the acquirer.

4.0 FURTHER SUBMISSIONS

4.1 Subsequent to the aforesaid hearing , the representative of the acquirer has, vide letter dated January. 24, 2007, as given the following clarification:

i) The target company has passed a Special Resolution at its Annual General Meting held on September 25, 2006 seeking approval of its members for the offer of 17,59,700 equity shares constituting 25.10% of the total post issue equity share capital of the target company. All the relevant facts including offering 25.10% of the post issue equity share capital has been stated in the Resolution and Explanatory Statement. The said resolution has been unanimously passed by the members of the target company present in the said meeting. Offer of 25.10% to the acquirer, subject to the approval of SEBI pursuant to Regulation 3(1) (I) of the Takeover Regulations being duly approved by the Shareholders of the target company unanimously implies their assent to passing certain degree of control in the hands of the acquirer.

ii) The acquirer has further clarified that the objective of the investment in the target company is providing financial support to the target company to expand and diversify, resulting into long term gains for both the acquirer, its associates and the target company and its shareholders through growth and prosperity of the target company. There is no objective to gain control over the target company, however at the same time just to maintain a minimum stake for securing its long term goals. Further the acquirer itself has financial constraints to invest beyond 25.10% of the equity share capital of the target company.

iii) If exemption is not granted, then the whole idea of supporting the target company might be jeopardized due to the fact that Promoters of the target company might not agree to allow acquirer to come out with an open public offer for securing their stake as promoters and management (at present they hold around 43% together with their associates and persons acting in concert). Further the acquirer and its associates as outsourcing partners might be compelled to look at other avenues for securing their prime objective of sure and steady supply of required materials.

4.2 The acquirer has also enclosed (with the aforesaid letter) the certified copy of the Annual General Meeting proceedings of the target company held on September 25, 2006. In view of the above, the acquirer has requested SEBI to consider the grant of exemption as the same will be for the benefit of the target company and its stakeholders both in short and long term.

5.0 FINDINGS

5.1 I have carefully considered the application filed by the acquirer, the aforesaid recommendations of the Takeover Panel, the submissions made by Shri Dinesh Deora and Shri Balveer Choudhary of DSU & Associates on behalf of the acquirer during the course of hearing and relevant materials available on record.

5.2 In the present case, the acquirer through its representative categorically stated during the hearing that the preferential allotment of 25.10% of the equity shares of the target company to the acquirer is proposed, so that it can stop any special resolution that the target company wishes to pass. The representative of the acquirer has further reiterated vide letter dated January 24, 2007 that the control over the target company would merely be in terms of passing a special resolution and not controlling day to day management of the target company. The acquirer further stated that it is the policy of its group to acquire a minimum of 25.10% share capital for the purpose of better monitoring of funds invested by them. The above implies that the acquirer intends to acquire negative control over the target company. I note that the said aspect has not been informed to shareholders of the target company either in explanatory statement or notice.

5.3 I also note from the details of voting in the Annual General Meeting of the target company, that the non promoter shareholders having 62, 600 shares were present and voted. It constituted merely 3.5% of total voting capital of the target company. The remaining voting came from promoters group. Special Resolution so passed with promoter support has no meaning.

5.4 The representative of the acquirer vide its letter January 24, 2007 has stated that exemption will benefit the shareholders both in short and long term. I note from the shareholding pattern of the company and market price of the shares of the target company that :

i) The total number of public shareholders of the target company are 3524 out of a total of 3585 shareholders. The percentage holding of the public shareholders is 54.82% and pursuant to proposed preferential allotment the percentage of public shareholding will be 41%.

ii) The shares of the target company are infrequently traded and present price of the said shares is around Rs. 11/- If the acquirer is not exempted from making an open offer the minimum offer price as per the regulations will be Rs. 15/- So the shareholders would be definitely benefited in short term if exemption is not granted. If shareholders take a view that they may be benefited in the long term then they would not tender their shares in the open offer and they will continue to remain with the target company. The making of open offer thus gives all the shareholders a chance to decide themselves whether to go for short term or long term benefit.

5.5 The grounds specified in the application made by the acquirer are not convincing enough to grant exemption as sought by it and the said application is not in the interest of shareholders of the target company. In view of the above facts and circumstances, I do not find this as a fit case for the grant of exemption from complying with the provisions of the

Takeover Regulations. Therefore, I do not agree with the recommendations made by the Takeover Panel.

6.0 ORDER

6.1 In view of the above findings, I, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with sub - regulation (6) of regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby dispose off the applications dated July 14, 2006 (as revised on July 31, 2006) filed by the acquirer, G.E. Chemical Company S.A. in respect of its proposed acquisition of 25.10% of the equity shares of the target company, M/s Daikaffil Chemicals India Limited by way of preferential allotment.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA