

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

**ORDER**

**IN THE MATTER OF PROPOSED ACQUISITION OF SHARES OF NOVA  
IRON AND STEEL LIMITED BY AMBEY STEEL & POWER PRIVATE  
LIMITED AND OTHERS – APPLICATION FILED UNDER REGULATION 4(2)  
OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL  
ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997**

**BACKGROUND**

1. Nova Iron & Steel Limited (hereinafter referred to as the target company) is a company incorporated under provisions of the Companies Act, 1956, having its registered office at Village-Dagori, Tehsil-Belha, District Bilaspur, Chattisgarh-495224 and corporate office at 506, Hemkunt Tower, 98, Nehru Place, New Delhi – 110019. Though the target company is listed at the National Stock Exchange of India Limited (NSE), the Bombay Stock Exchange Limited (BSE), the Delhi Stock Exchange Limited (DSE), the Ahmedabad Stock Exchange Limited (ASE), the Calcutta Stock Exchange Association Limited (CSE) and the Madras Stock Exchange Limited (MSE), the trading in the shares of the target company have been suspended in all the stock exchanges.

**APPLICATION FOR EXEMPTION**

2. Ambey Steel & Power Private Limited, vide letter dated June 7, 2008 had submitted an application to Securities and Exchange Board of India (hereinafter referred to as the SEBI) in terms of 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) (l) thereof. The said application has been filed by Ambey Steel & Power Private Limited for self and also on behalf of Mr. R.K. Gambhir and Mr. G.K. Gambhir, seeking exemption from making a public announcement as required under Regulation 11(1) of the Takeover Regulations in respect of their proposed acquisition of an aggregate of 5,73,00,000 equity shares of the target company which is proposed to be allotted to them by the target company through preferential allotment. In terms of the application, Mr. R.K. Gambhir and Mr. G.K. Gambhir are the 'persons acting in concert' (PACs) with Ambey Steel & Power Private Limited. A letter of authority dated June 7, 2008 in favour of Ambey Steel & Power Private Limited had been executed by Mr. R.K. Gambhir and Mr. G.K. Gambhir to represent them in the aforesaid exemption application filed with SEBI. For the sake of convenience, Ambey Steel & Power Private Limited, Mr. R.K. Gambhir and Mr. G.K. Gambhir shall henceforth be collectively referred to as the acquirers and individually by their respective names.

3. The application states that the target company had suffered unaffordable losses from the period it commenced business due to various factors and that it remained a sick industrial unit for a period of ten years and was continuously incurring losses. It was stated that, on April 25, 2007, the lender banks and financial institutions have agreed with the target company for a One Time Settlement (OTS). According to the terms of the OTS, it was agreed to discharge the target company from all the loans (to the tune of Rs.959.40 crores) on payment of the OTS amount so arrived and agreed. The promoters of the target company had then approached Ambey Steel & Power Private Limited for financial assistance for paying the OTS amount. Ambey Steel & Power Private Limited had agreed to provide financial assistance subject to the allotment of equity shares of the target company against the financial assistance provided by it and to be considered as part of promoter category by

the existing promoters. Pursuant to the same, Ambey Steel & Power Private Limited had been remitting money for the payment to the banks and financial institutions and had so far infused approximately Rs.40 crores into the target company and had agreed for further infusion of funds. It was submitted that Ambey Steel & Power Private Limited was eager to have an association with the target company as a promoter and that it was infusing funds in anticipation that equity shares would be allotted to it. It was also stated that the promoters (Mr. R.K. Gambhir and Mr. G.K. Gambhir) have also infused money into the company to the extent of Rs.17 crore. According to the application, the acquirers have sought exemption from the requirements of Regulation 11(1) of the Takeover Regulations *inter alia* on the following grounds:

- a. The sole purpose of investment made by the acquirers was to revive the target company and to benefit 2,30,000 shareholders of the target company;
- b. Since the trading in the shares of the target company were suspended, there would be no scope for exit for the shareholders, if the proposal was not accepted;
- c. There would not be any change in control as the old promoters will remain intact after the acquisition also;
- d. If the acquirers were obligated to make public announcement, they would be exposed to unaffordable costs and funds which were being arranged for paying the settlement money for rehabilitating the target company would have to be actually used for making open offer;
- e. If the acquirers are granted exemption from the requirement of making public offer/public announcement, they would expedite the process of revival and expansion of business without prejudicially affecting the interest of any public shareholders of the target company.

4. Thereafter, vide letter dated July 24, 2008, the acquirers had submitted that a notice (dated June 6, 2008) of postal ballot in terms of Section 192A of the Companies Act, 1956 read with the Companies (Passing of Resolutions by Postal Ballot) Rules, 2001 was sent by the target company to all its shareholders for passing of a special resolution under Section 81(1A) of the Companies Act, 1956 in respect of the proposed preferential allotment of 5,73,00,000 equity shares to the acquirers. It was stated that the shareholders approval has been obtained for the said resolution. The said letter enclosed therewith a certified copy of the special resolution and a copy of the scrutinizer's report dated July 22, 2008. In terms of the resolution, the board of the target company was authorized to issue and allot, subject to such conditions and approvals including that from SEBI, upto 5,73,00,000 equity shares of face value of Rs.10/- each at par, to the acquirer and persons amongst the promoters. The scrutinizer's report mentioned that the members (shareholders) had approved all the resolutions with more than the requisite majority.

#### **RECOMMENDATION OF THE TAKEOVER PANEL**

5. Pursuant to the receipt of the aforesaid information, the said application submitted to SEBI by the acquirers was forwarded to the Takeover Panel (hereinafter referred to as the Panel). Ambey Steel & Power Private Limited made further submissions, vide letter dated August 4, 2008 in respect of its revival proposal which was to be finalized and filed with the Board for Industrial and Financial Reconstruction (BIFR). It was submitted that the target company had taken steps for revoking the trading suspension imposed by the NSE and BSE. Thereafter, the Panel vide report dated August 8, 2008 had observed as follows "*Since the Scheme for rehabilitation of the Target Company is yet to be approved by BIFR, the panel was of the view that the Applicant be advised to approach SEBI for seeking exemption after approval of the scheme by BIFR.....*". On communication of the Panel's Report to the acquirers,

they made further submissions, vide letters dated November 24, 2008, December 30, 2008 and January 22, 2009. The said information was forwarded to the Panel. Pursuant to the receipt of information regarding the reasons for suspension of the trading of the target company's shares; period of such suspension and the steps taken by the target company to restore trading; certificate from the statutory auditors confirming that the entire amount under the OTS has been paid to all the secured lenders, the Panel in report dated February 6, 2009 while recommending exemption, had observed as follows:

“...the Target Company vide its letter dated January 22, 2009 has furnished certificate from the Chartered Accountant, M/s. Antima & Goel, confirming that the entire amount payable under the OTS has since been paid by the target Company to all the concerned financial institutions and banks and as on date there is no secured loan payable by the Target Company. As regards the steps taken by the Target Company to restore the trading of the Company's shares which have been suspended since April & May, 200 by NSE and BSE respectively, the Target Company has furnished copies of relevant correspondence exchanged between it and the aforesaid exchanges. It appears from the aforesaid correspondence that the Target Company is in the process of satisfying the pending compliances including payment of listing fee and other charges.

The panel observed that restoration of trading of the Company's shares on both the national level exchanges i.e. NSE and BSE is essential for passing on the benefit of revival of the target Company in real terms to the public shareholders. Considering all the relevant facts, the panel was of the view that the proposed preferential allotment of the target Company's shares to the Acquirers would be in the overall interest of the public shareholders and the Target Company. The panel therefore recommended the grant of exemption by SEBI accordingly, subject to the Target Company complying with all the necessary formalities for preferential allotment to the acquirers under the Companies Act, 1956 and SEBI Guidelines including compliance with the pricing formula laid down therein. Further, the Acquirers/Target Company shall ensure that the trading of the Target Company's shares is restored on NSE and BSE within a period of 6 months from the date of the SEBI's order granting exemption.”

## **HEARING**

6. After considering the reports of the Panel and other attending facts and circumstances of the case, SEBI vide letter dated September 23, 2009 advised the acquirers to appear for a personal hearing scheduled on October 6, 2009. On the said date, Mr. Virender Ganda, Advocate (M/s. Vishvas Associates, Advocates & Attorneys), Mr. S. P. Maken (Director of the target company), Mr. M. C. Gupta (Director of the acquirer) and Mr. Pawan Kumar [of Corporate Professional (India) Private Limited] were present on behalf of the acquirers. Mr. Virender Ganda, the learned advocate made his submissions before me in the matter. The learned counsel submitted that he would be filing detailed written submissions. Thereafter, as submitted, written submissions dated November 2, 2009 (received by SEBI on November 5, 2009) was filed by the learned counsel on behalf of the acquirers in the matter requesting SEBI to exempt the acquirers from complying with the requirements of Regulations 10, 11(1) & (2) of the Takeover Regulations.

## **FINDINGS**

7. I have considered the application dated June 7, 2008 including the documents submitted by the acquirers, the recommendations of the Panel, oral as well as written submissions made on behalf of the acquirers and other relevant material available on record. My findings in the matter are as below:

8. I find that the present application has been filed for exemption from making a public announcement in respect of the proposed acquisition of 5,73,00,000 equity shares of the target company by the acquirers. Mr. R.K. Gambhir and Mr. G.K. Gambhir are two promoters forming part of the promoter group in the target company. The present holding of Ambey Steel & Power Private Limited and the promoter group in the target company is as under (shareholding as intimated to SEBI by the acquirers):

<b>Person/Entity</b>	<b>Number of shares held</b>	<b>Percentage to the total capital</b>
Ambey Steel & Power Private Limited	12,70,000 equity shares	1.30%
Promoters (including that of Mr. R.K. Gambhir and Mr. G.K. Gambhir)	2,91,00,000 equity shares	29.79%

According to the acquirers, pursuant to the proposed acquisition, they would acquire more than 5% of the voting rights in the target company in a financial year and that, they cannot acquire more than 5% shares of the target company without making a public announcement in terms of Regulation 11(1) of the Takeover Regulations.

9. I note that the target company had resolved by way of a special resolution (the said resolution was passed by postal ballot of the shareholders) to allot 4,02,41,000 shares to Ambey Steel & Power Private Limited and 85,29,500 shares each to Mr. R.K. Gambhir and Mr. G.K. Gambhir, through preferential allotment, subject to regulatory approvals and other legal requirements. It has been submitted that Ambey Steel & Power Private Limited would be included in the 'promoter category' if the said allotment of shares on preferential basis is made to it. I note that the proposed allotment, if made, would increase the stake of Ambey Steel & Power Private Limited from 1.30% to 26.78% in the target company. The promoter group's holding including that of Ambey Steel & Power Private Limited in the target company post facto the proposed preferential allotment, would increase to 56.56% of the total equity capital (post issue). I note that Ambey Steel & Power Private Limited had agreed to provide financial assistance to the target company pursuant to the target company's agreement with the banks and financial institutions towards the OTS. According to the application, Ambey Steel & Power Private Limited had been remitting money on behalf of the target company for payments to financial institutions towards the settlement so arrived and that it had infused

approximately Rs.40 crores into the target company. As per the application, Ambey Steel & Power Private Limited had also agreed for further infusion of funds for the future expansion of the target company and that the target company had resolved to allot shares on preferential basis to it. From the application, it also appears that Mr. R.K. Gambhir and Mr. G.K. Gambhir have also infused money to the extent of Rs.17 crore into the target company. In view of the same, the target company, pursuant to their shareholder's resolution, had authorized its board to issue, offer and allot securities on a preferential basis to the acquirers (as per the details in paragraph 8 above), against the funds advanced by them for reviving the target company.

10. I note that in the present matter, Ambey Steel & Power Private Limited is already holding 1.3% of the equity capital, which is not under the promoter category. Further, its holding would increase from 1.3% to 26.78% if shares so proposed are allotted on preferential basis. If its increase in the shareholding is taken separately, the same would trigger the provisions of Regulation 10 of the Takeover Regulations. I note that the application states that all the equity shares of the target company carry uniform voting rights and that the shares proposed to be allotted (5,73,00,000 shares) carry one voting right per share. I further note that the existing promoters have agreed to consider Ambey Steel & Power Private Limited as part of the promoter category pursuant to the allotment. If Ambey Steel & Power Private Limited is regarded as part of the promoter group post allotment, the total promoter holding in the target company would increase to 56.56% of the total equity capital, thereby triggering the provisions of Regulations 11(1) & (2) of the Takeover Regulations.

11. I note that the acquirers have submitted that the proposed acquisition is being made for the sole purpose of reviving the target company and to benefit the interests of 2,30,000 shareholders of the target company. According to the acquirers, if the exemption is granted from the requirement of making public

offer/public announcement, it would expedite the process of revival and expansion of the business of the target company. During the personal hearing, it was submitted that there would be no change in control of the target company. I note that post issue of the shares on preferential allotment; the acquirer would individually hold 26.78% as against the holding of 29.78% by the existing promoters of the target company. Further, there seems to be no resistance from the promoters in taking Ambey Steel & Power Private Limited into their (promoters) category post allotment. I also note that, it has been submitted that the net worth of the target company would become positive and which in turn would increase the share value. It was further submitted that the trading would be restored and the shares would be dematerialized, giving more liquidity to the shares of the target company. It was submitted that the target company would also be discharged from the purview of Sick Industrial Companies Act, 1985 (SICA) by the BIFR and is awaiting a final order in that respect. In this regard, I note that the target company had made an application before the BIFR for discharging it from the purview of the SICA. From a copy of the said application submitted by the acquirers, I note that the target company had mentioned that its networth would become positive pursuant to the allotment of shares under preferential allotment and that because of the same; the target company did not propose to file any rehabilitation scheme before BIFR. It needs to be noted that, in terms of the order dated April 22, 2008 of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), the target company and the Operating Agency were required to submit before BIFR, a fully tied-up proposal for revival of the target company within eight week of the order. Pursuant to an application filed by the target company, AAIFR had in M.A. No. 303 of 2008 in Appeal No. 276 of 2007 had granted liberty to the target company to file an application before the BIFR seeking discharge from the purview of the SICA on the basis of its audited balance sheet. The application filed by the target company before the BIFR for discharging it from the purview of SICA has been made after the aforesaid

order from the AAIFR. I also note that the Panel has observed that the entire money agreed under the OTS has been paid by the target company to the banks and financial institutions and that the target company was taking steps to resume trading of its shares on the stock exchanges (NSE and BSE).

12. From the submissions made and also taking into consideration the case specific facts, I am of the considered view that granting of exemption would benefit the target company and its shareholders. Besides, the acquirers stated that the resources/funds which are required for making an open offer/public announcement by the acquirers could also be utilised for the benefit of the target company. It is also undertaken by the acquirers that the target company would be revived. Further, I also agree with the observation of the Panel that the target company should ensure that the trading of its shares is resumed at the stock exchanges at the earliest. This would give liquidity to the shares of the target company, which again would benefit the public shareholders. Since the target company and its existing promoters, in all earnestness want to revive the target company, they should ensure that the trading of its shares be resumed at the earliest. In the facts and circumstances, I agree with the recommendation of the Panel and consider the present case a fit one for granting exemption from the application of the provisions of Regulations 10 and 11(1) & (2) of the Takeover Regulations.

13. 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, hereby grant exemption to the acquirers, namely Ambey Steel & Power Private Limited, Mr. R.K. Gambhir and Mr. G.K. Gambhir from complying with the provisions of Regulation 10 and 11(1) & (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with

regard to the proposed acquisition of 5,73,00,000 equity shares of face value of Rs.10/- each of Nova Iron & Steel Limited, through preferential allotment. However, the exemption is granted subject to the following conditions:

a. The acquirers shall ensure compliance with the statements, disclosures and undertakings made in their application and subsequent correspondence to Securities and Exchange Board of India in this regard.

b. The proposed preferential allotment of equity shares to the acquirers shall be in accordance with the Companies Act, 1956, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, the Listing Agreements and other applicable laws.

c. Nova Iron & Steel Limited and its promoters (including the acquirers) shall ensure that the trading in the shares of the target company be resumed within a period of six months from the date of this Order. The stock exchanges shall extend necessary support in this regard, subject to the target company complying with all the necessary rules/regulations/formalities laid down by them. Thereafter, Nova Iron & Steel Limited shall file a compliance report indicating the resumption of trading of its shares at the stock exchanges as directed herein above.

14. This exemption shall not be construed as an exemption from the requirements of any other provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the Listing Agreements or any other law.

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

**Place: Mumbai**  
**Date: November 24, 2009**