

## **BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

### **ORDER**

**IN THE MATTER OF PROPOSED ACQUISITION BY PREFERENTIAL ALLOTMENT OF EQUITY SHARES OF SECUR INDUSTRIES LIMITED BY MR. H.P. AGARWAL AND OTHERS– EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.**

#### **1.0 BACKGROUND**

1.1 Secur Industries Limited (hereinafter referred to as the target company) is a company registered under the Companies Act, 1956, having its registered office at Ghaziabad,U.P.The equity shares of the target company are listed on the Ahmedabad Stock Exchange Limited (hereinafter referred to as ASE), Delhi Stock Exchange Limited (hereinafter referred to as DSE) and the Jaipur Stock Exchange Limited (hereinafter referred to as JSE).

#### **2.0 APPLICATION FOR EXEMPTION**

2.1 Mr. H.P. Agarwal (promoter of the target company) vide letter dated February 5, 2008, made an application to the Securities and Exchange Board of India (hereinafter referred to as SEBI) under Regulation 4(2) read with Regulation 3(1)(I) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations,1997 (hereinafter referred to as the Takeover Regulations). In the said application, it is stated that Mr.H.P. Agarwal along with persons acting in concert with him namely, Mr.Ashutosh Agarwal, Utpal Agarwal, H.P. Agarwal & Company Private Limited, Mrs. Bandana Agarwal, and H.P. Agarwal (HUF) (hereinafter referred to as the acquirers) are part of the promoter group of the target company and currently

holds 7,13,207 equity shares of the target company constituting 17.49% of its paid up capital.

2.2 The said application has been filed seeking exemption from the applicability of Regulation 11 (1) of the Takeover Regulations with respect to the proposed allotment of 12 Lakh equity shares of the target company by way of preferential allotment and 10 Lakh warrants (convertible into equity shares) to the acquirers. Consequent to the preferential allotment of equity shares and conversion of warrants, the shareholdings of the acquirers in the target company would increase from 17.49% to 36.25 % of post-preferential issue of equity shares and 46.40% of post-conversion of warrants. The exemption has been sought *inter alia* on the following grounds:

- a) The target company came out with a public issue in the year 1993. Due to unfavourable market conditions, its business operations were stopped. During that period, the promoters of the target company infused further funds into the target company to the tune of Rs.1.20 Crore in order to meet its general expenses as well as to expand its business into the international market.
- b) The target company has been incurring substantial losses for last many years. The target Company owes unsecured loan of Rs.1.20 Crore to the acquirers. The networth of the target company has been eroded and therefore, it was not in a position to arrange enough funds to pay off such debts.
- c) To revive the financial position and to meet the long term and short term working capital requirements, it has been decided by the target company, vide the Annual General meeting held on October 30,2007 to convert the unsecured loans into equity shares and to induce further equity shares through issuing warrants to the acquirers.
- d) The acquirers of the target company have agreed to invest further funds in the company through issue of warrants by way of preferential allotment to them.
- e) The proposed allotment is being made with sole purpose of bringing out the company from the financial crisis.

f) There will be no resultant change in control due to the proposed preferential allotment as the acquirers are already in control.

g) The allotment shall be in due compliance with Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 and all other provisions governing preferential allotment. The allotment shall not in anyway prejudice the interest of any shareholder or creditors of the target company.

2.3 The shareholding pattern before and after the preferential allotment (including conversion of warrants into equity shares) of the target company (in terms of the said application) is as follows:

S.No	Category	Pre-Issue		Post-Issue		Post-Issue(After conversion of warrants)	
		No. of shares held	% of share holding	No. of shares held	% of share holding	No. of shares held	% of share holding
<b>A</b>	<b>Promoters' holding</b>						
1	Indian :						
	Individual	2,59,504	6.36	12,22,443	23.16	17,22,443	27.43
	Body corporate	6,04,605	14.83	8,41,666	15.95	13,41,666	21.37
	<b>Sub Total</b>	<b>8,64,109</b>	<b>21.19</b>	<b>20,64,109</b>	<b>39.11</b>	<b>30,64,109</b>	<b>48.80</b>
2	Foreign Promoters	0.00	0.00	0.00	0.00	0.00	0.00
	<b>Sub Total (A)</b>	<b>8,64,109</b>	<b>21.19</b>	<b>20,64,109</b>	<b>39.11</b>	<b>30,64,109</b>	<b>48.80</b>
<b>B</b>	<b>Non-Promoters' holding :</b>						
1	Institutional Investors	0.00	0.00	0.00	0.00	0.00	0.00
2	Non Institution :						
	Body Corporate	1,76,500	4.32	1,76,500	3.34	1,76,500	2.81
	Indian Public	30,37,303	74.49	30,37,303	57.55	30,37,303	48.38
	Clearing members	0.00	0.00	0.00	0.00	0.00	0.00
	NRI	0.00	0.00	0.00	0.00	0.00	0.00
	<b>Sub Total (B)</b>	<b>32,13,803</b>	<b>78.81</b>	<b>32,13,803</b>	<b>60.89</b>	<b>32,13,809</b>	<b>51.19</b>
	<b>GRAND TOTAL</b>	<b>40,77,912</b>	<b>100.00</b>	<b>52,77,912</b>	<b>100.00</b>	<b>62,77,912</b>	<b>100.00</b>

2.4 The shareholding pattern of the acquirers before and after the preferential allotment (including conversion of warrants into equity shares) is given below:

Name of the proposed allottees	Pre Issue holding		Number of shares	Post Issue shareholding		Number of warrants	Post Issue shareholding (after conversion of warrants)	
	Number of shares	% of Pre Issue Holding		Number of shares	% of Pre Issue Holding		Number of shares	% of Pre Issue Holding
Mr. H.P. Agarwal	62601	1.53%	561447	624048	11.82%	250000	874048	13.92%
Mr. Ashutosh Agrawal	38401	0.94%	247506	285907	5.42%	250000	535907	8.54%
Mrs. Utpal Agrawal	7600	0.19%	50271	57871	1.10%	-	57871	0.92%

H.P.Agrawal & Co. P.Ltd	604605	14.83%	237061	841666	15.95%	500000	1341666	21.37%
Mrs.Bandana Agrawal	0	0.00%	84665	84665	1.60%	-	84665	1.35%
H.P.Agrawal(HU F)	0	0.00%	19050	19050	0.36%	-	19050	0.30%
<b>TOTAL</b>	<b>713207</b>	<b>17.49%</b>	<b>1200000</b>	<b>1913207</b>	<b>36.25%</b>	<b>1000000</b>	<b>2913207</b>	<b>46.40%</b>

### 3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The aforesaid application dated February 05, 2008 was forwarded to the Takeover Panel by SEBI. The Takeover Panel vide report dated May 07, 2008 has returned the application with the following observation:

*“Considering the public shareholding currently at 74.49% as also the undertaking giving by the acquirers that they shall have the necessary shareholders resolution passed afresh with the facility of postal ballot, the panel desired the Department that they may inform the acquirers to first complete the process of shareholders resolution with postal ballot facility and thereafter approach SEBI for exemption under Regulation 4. The case was returned to the Department accordingly”.*

3.2 Subsequently, SEBI vide letter dated May 16, 2008 informed the acquirers about the aforesaid observation of the Takeover Panel. The acquirers replied to SEBI on July 08, 2008 and submitted a copy declaration of result by the Chairman of the target company informing the completion of process of postal ballot and a copy of notice of postal ballot.

3.3 Thereafter, the application was reconsidered by the Takeover Panel. The Takeover Panel, vide report dated August 08, 2008, recommended as under:

*“The panel observed that the proposed preferential allotment of shares and warrants to the acquirers will result in infusing funds into the sick company at a price of Rs 10/- per share, which is far above the price worked out as per SEBI*

*formula. The panel however noted that as per the balance sheet as on 31/3/2007, the company has not shown any sales as on 31/3/2006 or 31/3/2007. The company has also not shown any fixed assets during the said period. In view of this, the panel is not optimistic about the future of the company. Nonetheless, the proposed preferential allotment is not found to be prejudicial to the interest of the company or its public shareholders. In the circumstances, the panel recommends that the acquirers may be granted exemption under Regulation 4 subject to the condition that the acquirers/Target company shall comply with all other relevant provisions of the Companies Act, 1956 and SEBI (Disclosures and Investor Protection) Guidelines, 2000.”*

#### **4.0 FINDINGS**

4.1 I have considered the application dated February 05, 2008, the submission of the acquirers and the above mentioned recommendations of the Takeover Panel and relevant material available on record.

4.2 The proposal of acquirers envisages preferential allotment of 12,00,000 equity shares and 10,00,000 warrants to the promoters of the target company. As a result, their shareholding would increase from 17.49% to 36.25% post-preferential issue of shares and to 46.40% (post-conversion of warrants) and hence the proposed acquisition would trigger regulation 11(1) of the Takeover Regulations unless exempted under Regulation 3, thereof.

4.3 In terms of the application, the target company owes unsecured loan of Rs.1.20 Crore to the acquirers, which shall be converted into equity shares to revive the financial position and to meet the long term and short term working capital requirements of the target company. I note that the acquirers have also agreed to invest further funds in the target company by subscribing to the warrants. The aforesaid increase in the shareholding of the acquirers would not

result into change in control, since the acquirers are already in control of the target company.

4.4 I note that the Annual General Meeting where the special resolution under Section 81(1A) of the Companies Act, 1956 in respect of the proposed preferential allotment to the acquirers was passed, held on October 30, 2007. In the notice sent to the shareholders in terms of Section 173 of the Companies Act, 1956 it was stated the proposed preferential allotment exclusively to the acquirers would be in compliance with Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 and subject to other approvals, permissions, etc. In the explanatory statement forming part of the said notice, the target company *has inter alia* disclosed the identity of proposed allottee (the acquirers), the object and intention of the proposed preferential allotment, consequential changes, if any, in the Board of Directors of the target company and in the voting rights, the shareholding pattern of the target company indicating that the acquirers being part of the promoter group who is already in control of the target company as well as the proposed allotment would not result in change in control over the target company.

4.5 I note that in accordance with SEBI's intimation dated May 15, 2008 to the acquirers regarding completion of the process of shareholders' resolution with the postal ballot facility, compliance with the provisions of Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 have been ensured by the acquirers. The acquirers have provided copies of the notice for postal ballot and results of the same vide its letter dated July 08, 2008. The acquirers have also filed the scrutinizer report in respect of the said resolution passed by the postal ballot. Acquirers have also submitted that they did not participate in the special resolution passed in compliance with the postal ballot requirement.

4.6 The acquirers have stated in the explanatory statement to the postal ballot notice dated May 28, 2008 that guidelines for preferential allotment (including pricing) as prescribed under Chapter XIII of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 would be complied with, and that the auditors of the company have certified that the preferential allotment issue is being in accordance with the provisions of the aforesaid Guidelines. I note that the target company had suffered losses and the proposed preferential allotment to the acquirers is for the purpose of improving its financial / working conditions. It is also stated that the target company is not in a position to raise funds from outside source. Further, the preferential allotment would not, in any way, prejudice the interests of any shareholder of the target company and that there would not be any changing control over the target company even after the proposed preferential allotment to the acquirers who belong to the promoter group of the target company.

4.7 In view of the above facts and circumstances of this case, I agree with the recommendation of the Takeover Panel and consider the present case as a fit case for granting exemption from making a public announcement as required under Regulation 11 (1) of the Takeover Regulations.

## **5.0 ORDER**

5.1 In view of the above findings, I , in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 4 (6) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers, namely Mr. H.P. Agarwal, Mr. Ashutosh Agarwal, Mr. Utpal Agarwal, H.P. Agarwal & Co. Private Limited, Ms. Bandana Agarwal, and H.P. Agarwal (HUF) from complying with the provisions of Regulation 11 (1) of Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeovers) Regulations, 1997 with regard to the proposed preferential allotment of 12,00,000 equity shares and 10,00,000 equity shares (upon conversion of 10,00,000 warrants) of Secur Industries Limited , subject to the condition that the target company and the acquirers shall ensure -

that in respect of the proposed preferential allotment, the relevant norms including the norms regarding the pricing specified in Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 are observed and complied with

5.2 The proposed transaction shall be completed within fifteen days from the date of this order and acquirers shall file a report with Securities and Exchange Board of India in the manner specified in Regulation 3(4) read with Regulation 3(5) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 confirming compliance.

**DR. K.M.ABRAHAM**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Place: Mumbai**

**Date: June 30, 2009**