

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. T C NAIR, WHOLE TIME MEMBER

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF SM ENERGY TEKNIK & ELECTRONICS LTD. – 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 M/s S M Energy Teknik & Electronics Ltd. (hereinafter referred to as 'the target company') is a company incorporated under the Companies Act, 1956, having its registered office at Mumbai, Maharashtra. The equity shares of the target company are inter alia listed on the Bombay Stock Exchange Ltd. (BSE) and the Delhi Stock Exchange Association Ltd. (DSE).
- 1.2 SM Holding and Finance Pvt. Ltd., Sai Ganesh Properties Pvt. Ltd., Primrose Trade Pvt. Ltd., Jatipura Investment and Finance Pvt. Ltd. and Tipu Investment and Trading Pvt. Ltd. (hereinafter referred to as 'the acquirers') belong to the promoter group of the target company and hold 2.81% in the total voting up capital of the target company. The holding of the promoter group (including the acquirers) in the target company is 15.37% of the total voting capital. The acquirers proposes to acquire 57,32,000 lacs equity shares of Rs. 10 each by way of preferential allotment. Pursuant to the proposed preferential allotment, the shareholding of the acquirers in the target company would increase from 2.81% to 48.04% and that of the promoter group (including the acquirers) would increase from 15.37% to 54.76% in the total voting capital of the

target company.

2.0 APPLICATION FOR EXEMPTION

2.1 The acquirers, through Juris Matrix, Advocates, vide letter dated October 10, 2007, filed an application with 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 Takeover) Regulations, 1997, (hereinafter referred to as the Takeover Regulations) seeking exemption from the applicability of regulation 11(1) of the Takeover Regulations with respect to the aforesaid proposed acquisition of 57,32,000 equity shares of the target company. The acquirers submitted further information inter alia vide letters dated October 26, 2007 and November 29, 2007.

2.2 The acquirers inter alia made the following submissions: -

- a) Due to severe recession, the target company's working was adversely affected and it had started making losses from the year 1998 onwards. The accumulated losses of the target company as on March 31, 2007 was Rs.2213.16 lacs. It had also availed finance from State Bank of India and the Sumitomo Mitsui Banking Corporation.
- b) The target company could not make payments to the bankers consequently it had resulted in filing of cases against the target company in the Debt Recovery Tribunal (DRT). The aforesaid banks had also obtained orders along with the recovery certificates from the DRT. The target company finally negotiated with the banks for an One Time Settlement (OTS) and accordingly, it had settled its dues.
- c) In order to honour its OTS commitments and for its survival, the target company decided to approach the promoters and their associates, who had consented to make a payment of Rs.573.20 lacs to meet the aforesaid requirements. The promoters / associates of the target

company agreed to accept the shares at par value of Rs.10/- per share irrespective of the then prevailing lower market price of Rs.0.45 per share.

- d) The shareholders of the target company decided to allot the equity shares of the target company on preferential basis in accordance with the SEBI guidelines against the said advances of the acquirers and to protect the interest of public and minority share holders. The allotment of shares to acquirers would not involve any change in the management and control of the target company as the acquirers together with the other promoters are already having control over the target company.

2.3 The shareholding pattern of the target company before and after the proposed preferential allotment (as given in the application) is as under:

Shareholders' Category	No. of registered shareholders as on date of application	Before the acquisition proposed as on 30/09/2007		After the proposed acquisition	
		No. of Shares/ Total Voting rights held.	% of Shares/ Total Voting rights held.	No. of Shares/ Total Voting rights held.	% of Shares/ Total Voting rights held.
PROMOTERS GROUP (excluding the acquirers)	25	827026	12.56	827026	6.72
Acquirers	5	185465	2.81	5917465	48.04
Foreign Institutions Investors /Banks	6	17850	0.27	17850	0.14
Public	18882	5554525	84.36	5554525	45.10
TOTAL	18918	6584866	100.00	12316866	100.00

2.4 The acquirers vide letter dated October 26, 2007 further submitted that the resolution for preferential issue of shares was passed in the general meeting of the share holders in the target company held on September 26, 2007. They also stated that the required disclosures had been made in the explanatory statement forming part of the notice and that the target company had complied with the guidelines for preferential allotment (including pricing) as specified under Chapter XIII of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000. The acquirers further added that they had abstained from voting on the said resolution.

3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The application filed by the acquirers together with the subsequent correspondences 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 report dated January 19, 2008 recommended for the grant of exemption as sought by the acquirers.

4.0 FURTHER SUBMISSIONS

4.1 SM Holding & Finance Pvt. Ltd. (on behalf of all the acquirers), vide letter dated April 1, 2008 stated that the provisions regarding postal ballot as laid down in Rule 2A and Rule 5 of the Companies (passing of resolution by postal ballot) were not applicable, as the proposed acquisition of shares would not result a change in control over the target company. Therefore, acquirers contended that, the second proviso to Regulation 12 of the Takeover Regulations is not attracted in respect of the proposed acquisition. The acquirers requested to condone the applicability of the said proviso, in case, the said proviso is found applicable.

5.0 FINDINGS

5.1 I have carefully considered the application dated October 10, 2007 and the various letters filed by the acquirers, the recommendations of the

Takeover Panel, further submissions of the acquirers and relevant materials available on record.

5.2 I note from the submissions made by the acquirers that the target company had incurred losses and it had also taken loan from State Bank of India and the Sumitomo Mitsui Banking Corporation. It is stated by the acquirers that the target company could not repay its loan taken from the aforesaid banks which had ultimately resulted in filing of applications before the DRT against the target company for the recovery of the said loan. The acquirers further stated that, in the meanwhile, Sumitomo Mitsui Banking Corporation assigned its debts due from the target company to Kotak Mahindra Bank, vide assignment letter dated February 4, 2004. I note that State Bank of India filed an application before the DRT for the recovery of the loan financed by them and the said bank and the target company filed terms of settlement before the DRT. The acquirers submitted the copy of the letter dated April 19, 2004 of Kotak Mahindra Bank in which it was confirmed that there were no dues outstanding (from the target company) as of March 31, 2004 with respect to the deed of assignment dated February 4, 2004 entered into with Sumitomo Mitsui Banking Corporation. Further, on a perusal of the letter dated March 17, 2005 of State Bank of India addressed to the target company (as submitted by the acquirers), I note that the said bank had accepted the compromise offer of the target company of Rs.3.06 crores against the total dues of Rs.12.32 crores inclusive of interest upto January 31, 2005 on certain terms and conditions. The target company vide letter dated May 06, 2008 confirmed that it had he paid the dues of State Bank of India.

5.3 I note that the acquirers belong to the promoter group of the target company and are in control over the target company. Therefore, there would not be any change in control subsequent to the proposed acquisition of shares (on preferential basis) of the target company. Further, the acquirers are acquiring the shares of the target company @

Rs. 10 per share (above the current market price of Rs.3.81 per share,) which was worked out in accordance with the provisions of the Takeover Regulations. I note that the proposed acquisition is in the interest of the target company as it would strengthen its financial position. I also note that the public shareholding in the target company would be above 25%, even after the proposed acquisition.

5.4 I further note that the Annual General Meeting for passing the special resolution under section 81(1A) of the Companies Act, 1956 in respect of the proposed preferential allotment to the acquirers was held on September 26, 2007. In the notice sent to the shareholders (in terms of section 173 of the Companies Act, 1956), the target company had specified that the proposed preferential allotment was exclusively to the acquirers and that the same would be pursuant to and in accordance with the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 and subject to other applicable Regulations/Guidelines etc. I note that , in accordance with section 173 (2) of the Companies Act, 1956, the target company had inter alia disclosed the identity of proposed allottees (acquirers) in the explanatory statement forming part of the aforesaid notice, the object and intention of the proposed preferential allotment, consequential changes, if any, in the Board of Directors of the target company and in voting rights, the shareholding pattern of the target company indicating that the acquirers (part of the promoter group) were in control of the target company. The target company had also disclosed that the proposed allotment would not result in change in control over the target company.

5.5 I also note from the further submissions of the acquirers that, they had abstained from voting on the special resolution and that the target company had complied with the guidelines for preferential allotment (including pricing) as specified under chapter XIII of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines,

2000.

5.6 I have also taken note of the submission by the acquirers that the special resolution required under section 81 (1A) of the Companies Act, 1956 had been passed by the shareholders of the target company after making all requisite disclosures to the shareholders in the notice of the Annual general Meeting and explanatory statement thereto. The condition of providing facility of voting through postal ballot would involve additional time, efforts and costs. The object of the preferential allotment was to strengthen its financial position. In terms of the application, the target company had suffered huge losses and that the proposed acquisition is for its survival and for the benefit of its shareholders. In view of the above, I am of the view that the condition of passing special resolution under section 81 (1A) of the Companies Act, 1956 by providing facility of voting through postal ballot may not be insisted in this case.

5.7 In view of the above facts and circumstances, I agree with the recommendations of the Takeover Panel and consider the present case as a fit case for granting exemption complying with regulation 11(1) of the Takeover Regulations.

6.0 ORDER

6.1 In view of the above findings, I, in exercise of the powers conferred by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with sub - regulation (6) of regulation 4 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers, SM Holding and Finance Pvt. Ltd., Sai Ganesh Properties Pvt. Ltd., Primrose Trade Pvt. Ltd., Jatipura Investment and Finance Pvt. Ltd. and Tipu Investment and Trading Pvt. Ltd. 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 57,32,000 equity shares of the target company viz. SM Energy Teknik and Electronics Ltd. subject to the conditions that the acquirers and the target company shall ensure –

i) 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;

ii) that there is no reduction in the minimum level of public shareholding required as per the listing agreement pursuant to the proposed preferential allotment and the minimum level of public shareholding at 25% of the enhanced paid up capital of the target company is maintained.

6.2 The acquirers shall complete the proposed transaction within 30 days from the date of this order and file a report with Securities and Exchange Board of India, in the manner specified in Regulation 3(4) read with 3(5) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, confirming compliance including the conditions specified in this order.

T.C.NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: August 11, 2008