

In Re: Proposed Acquisition of

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Apr-30-2003

Judge : G Bajpai

Appellant : In Re: Proposed Acquisition of

Judgement :

1. Mr Bhupinder Singh Sahney & M/s Delco Remy America Inc.(hereinafter collectively referred to as the "Acquirers") along with Mrs Brijween Kaur Sahney, Mrs Jasmine Sahney Pillay, Mrs Anjana Sahaney Thakker, Ms Ambita Kaur Sahney, Ms Deepika Kaur Sahney, M/s Bhupinder Investment Company Pvt, Ltd. M/s Delco Remy Korea Inc. & M/s Remy India Holdings Inc. (hereinafter referred to as the "persons acting in concert") intend to make an offer to buy out the outstanding shares aggregating to 1.82% of the total share capital of the Delco Remy Electricals India Limited(hereinafter referred to as the "Target company") remaining with the public shareholders. The shares of the Target company are listed at Mumbai & Hyderabad Stock Exchange.

2. The Acquirers made an application dated 27.11.02 to the Securities and Exchange Board of India (hereinafter referred to as SEBI) under sub-regulation (2) of Regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "Regulations") seeking exemption from making a Public Announcement and other formalities of open offer in terms of Regulation 11(2) to acquire 1.82 % of the total share capital of Target company.

3. At this juncture it is necessary to deal with the background of the matter as follows: 3.1 The Acquirers had made their earlier application dt. 16.02.02 (hereinafter referred to as "First Application") to SEBI under sub-regulation (2) of Regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "Regulations") seeking exemption from making a Public Announcement and other formalities of open offer in terms of Regulation 11(2) to acquire to acquire the share in question of the target company.

3.2 In the aforesaid application, the Acquirers submitted, inter-alia, the following: a. The promoters group of the Target company including the Acquirers presently hold 98.18% of the total share capital of the Target company and public shareholding is 1.82% of the share capital of the Target company.

b. The Target company has only 350 shareholders in the 'public' category holding 68,450 shares.

d. The control of the Target company already vests with the promoters and the proposed acquisition is to enhance the stake of the promoters to 100%.

e. The public shareholders being only 350 in number, the Acquirers shall make the offer for buying directly to each of such shareholder by way of individual letters .

3.3 The said application dated February 16, 2002 was forwarded to the Takeover Panel in terms of sub-regulation(4) of Regulation 4 of the Regulations. The Takeover Panel vide its report dated March 11, 2002 while mentioning the requirements to be complied with by the acquirers recommended for granting the exemption to the acquirer.

3.4 Taking into consideration the facts and circumstances of the case and also the recommendations of the Takeover Panel and the interest of investors, in exercise of the powers conferred upon me under Section 4(3) of the Securities and Exchange Board of India Act 1992 read with Regulation 4(6) of the Regulations, vide my order dt.

17.04.02, the acquirers were granted exemption from complying with the procedure laid down in Chapter III of the Regulations in respect of the proposed

offer to acquire 1.82% shares of the Target company at Rs 44.15 /- from public shareholders. The acquirers were directed to make individual offer to the balance public shareholders and to complete the proposed offer within three months from the date of the Order.

3.5 However, instead of the complying with the said order dt.

17.04.02 the acquirers requested for extension of time on the ground that the FIPB approval for acquisition of shares by one of the acquirers viz. Delco Remy America was not received. Though it was noted that application to FIPB was made by the acquirer after 3 months from the SEBI Order dated 17.4.2002, in the interest of the investors, while advising the acquirers to be careful in future, SEBI vide its letter dated 13.8.2002, granted extension upto 17.10.2002 for completing the proposed acquisition in terms of the Order dated 17.4.2002. The acquirers were further advised to note that no request for further extension if any, would be considered.

3.6 The acquirers however, could not complete the acquisition even under the extended period i.e. by 17.10.2002 as FIPB approval was not received. The acquirers once again requested for further extension of two months. As it was not possible to grant further extension, the acquirers were advised on 28.10.2002 to consider making a fresh application if they wish to acquire 1.82%.

3.7 The FIPB granted permission on 28.10.2002. Pursuant to such approval of FIPB, the acquirers filed the present application (hereinafter referred to as "Second Application") again seeking exemption from making Public Announcement for the proposed acquisition of 1.82% in terms of Regulation 11(2). In the said application it was submitted, inter-alia, that the public shareholders being only 350 in number, the Acquirers may be allowed to make the offer for buying directly to each of such shareholder by way of individual letters .

4. This second application was also referred to the Takeover Panel which after consideration, while mentioning certain conditions to be complied with by the acquirers, vide its report dated 12.12.02 recommended the grant of exemption to the acquirers.

5. Before proceeding further it is pertinent to note that whereas the first offer was proposed to be made @ Rs. 44.15/- per share (being the price at which the preferential allotment was made to the acquirers within a period of 12 months prior to the date of the previous application in terms of Regulation 20(3) as existing prior to amendment to the Regulations notified on 9.9.02), the present offer was proposed to be made @ Rs. 10/- which was in terms of amended Regulation 20(5).

When this was pointed out to the acquirers, they vide their letter dt.

03.02.03 proposed to revise the offer price upwards to Rs. 44.15/-.

However, they requested that they may be allowed to de-list their securities under the old procedure for de-listing in terms of Takeover Regulations prior to the amendment dt. 09.09.02 and not under the SEBI (De-listing of Securities) Guidelines, 2003 (hereinafter referred to as "New Guidelines").

6. Before taking any view in the matter, the acquirer was accorded personal hearing before me which was attended by them on 14.03.03.

Pursuant thereto, the acquirer made written submissions vide their letter dt. 17.03.03.

7. In support of their request of allowing them to de-list the shares under old procedure, the acquirers in their written submissions inter-alia submitted that as the Requirement of Regulation 21(3)(a) which deals making open offer in terms of Guidelines specified by Board, falls under Chapter III of the Regulations, the Takeover Panel, if the matter is referred to it by SEBI, can recommend such exemption in terms of Regulation 3(1)(l) r/w Regulation 4. They therefore requested SEBI to forward the said application to the Panel. They further submitted that the exemption sought by them, if granted would not set a precedent as it would be applicable to only those cases where exemption was granted prior to New Guidelines coming into effect. They further tried to justify their request by submitted that the open offer is being made @ Rs. 44.15/- even though the book value is less than Rs.5/- and therefore the promoters are willing to give this benefit

to investors provided they are permitted to delist under the old procedure. They further submitted that the shareholders would not benefit from the process as contemplated in new Guidelines, as the floor price (for the book building process to be followed under new guidelines) would be book value of the share which is less than Rs. 5/-. They also submitted that the new de-listing process involves expenditure of Rs. 20 lakhs and moreover, entire process can be rendered infructuous by putting in frivolous bids.

8. I have carefully considered the facts and circumstances of the case.

The reasons submitted by the acquirer for continuing with the old procedure provided in the Regulations are not tenable on the basis of the following observations: 8.1 The present application was made on 27.11.2002 i.e. after the notification of the amendment to the Regulations dated 09.09.02, seeking exemption from public announcement required to be made in terms of Regulation 11(2). Pursuant to the proposed acquisition from the outstanding public shareholders, the shareholding of the acquirers / promoters would increase from 98.18% to 100%, resulting in delisting of the target company from the stock exchanges. During the pendency of the application before SEBI, the New Guidelines for de-listing were issued by SEBI on 17.2.03, which apply inter-alia to voluntary delisting of a company from all or some stock exchanges.

That being the case, the application for exemption from Regulation 11(2) which in effect resulted in seeking voluntary delisting from the Hyderabad and Mumbai stock exchanges where the target company is listed, would squarely fall under the provisions of the New Guidelines.

8.2 The acquirers had an opportunity to complete the acquisition prior to the amendment of the Regulations and then the old delisting procedure under the then existing regulation 21(3)(a) would have been applicable to them. However, the acquirers failed and neglected to complete the procedure then, due to lapse on their own part and hence, made the second application which for the reasons stated above, would be covered under the amended Regulations as they existed on the date of the second application.

8.3 So far as the recommendations of Takeover Panel dt. 12.12.02, it may be noted that as on 12.12.02 New Guidelines had not come into effect and therefore it appears that the Panel, as per its stand in similar cases in the past, recommended exemption from Chapter III subject to certain conditions mentioning the modalities of making individual offer to the existing shareholders.

8.4 SEBI (Delisting of Securities) Guidelines, 2003 came into effect from 17.2.2003. The New Guidelines define the applicability of the Guidelines and the present case squarely falls within the new Guidelines. There is no provision for any exemption from applicability of the said Guidelines and therefore the acquirers have to comply with the new Guidelines.

8.5 So far as the cost involved under new Guidelines, I am of the view that the New Guidelines are applicable across the board to all listed companies wishing to be de-listed and no discrimination can be made in this regard.

8.6 The price to be indicated in the book building process is only the floor price and not the ceiling price, and hence, the investors who participate in the book building process may get a higher price than the book value.

8.7 For the reasons given and observations made earlier, the request of the acquirers to refer the matter to Takeover Panel again for considering the exemption from complying with the New Guidelines is not tenable.

In view of the facts and circumstances of the case, I do not find any justification for granting any exemption to the acquirer or referring the matter again to the Takeover Panel as requested by the acquirers.

Therefore, in exercise of the powers conferred upon me under sub-section (3) of Section 4 of the Securities and Exchange Board of India Act, 1992 read with sub-Regulation (6) of Regulation 4 of the Takeover Regulations, I hereby reject the application of the acquirer for the grant of exemption from making public offer and direct the acquirer to make an offer to buy the outstanding shares remaining with the shareholders in accordance with the SEBI (Delisting of Securities) Guidelines, 2003.

