

In Re: Oswal Spinning and Weaving

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

Decided On : May-12-2004

Judge : A Batra

Appellant : In Re: Oswal Spinning and Weaving

Judgement :

1. Oswal Spinning and Weaving Mills Limited (hereinafter referred to as "the target company") proposes to issue 91,19,100 equity shares of Rs. 10/-each to the promoters and persons acting in concert namely Smt.

Satya Rani Oswal, Smt. Taru Oswal, Smt. Karuna Oswal, M/s Ashok Oswal & Sons, (HUF), M/s Satish Oswal & Sons, Oswal Cottex Exports Ltd., Anant Portfolio Pvt. Ltd., Sidhant Investment Pvt. Ltd. and Oswal Industries Pvt. Ltd. (hereinafter referred to as "the acquirers") and financial institutions namely IFCI Ltd., Life Insurance Corp. of India, General Insurance Corp. of India, The Oriental Insurance Company Ltd., United India Insurance Co. Ltd., Unit Trust of India (hereinafter referred to as "financial institutions"). Out of the aforesaid 91,19,000 shares , the acquirers are being allotted 20,00,000 shares by the target company .

2. The shares of the target company are listed at Mumbai Stock Exchange, Ahmedabad Stock Exchange, Delhi Stock Exchange, Ludhiana Stock Exchange and the Calcutta Stock Exchange. As the proposed acquisition would result in increase of the shareholding of the acquirers in the target company from 0.49% to 19% the acquirers have filed an application dated February 21, 2004 to the

Securities and Exchange Board of India (hereinafter referred to as "SEBI") seeking exemption from complying with the provisions of Chapter III of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the said regulations").

3.. In the application, it is submitted that the financial position of the target company is very weak. The company was not able to service debts to financial institutions (FIs), non convertible debentures (NCD) holders and banks. This resulted in accumulation of debt and burden became very high and disproportionate to the size and operations of the company.

3.1 The entire networth of the company has been eroded as on 31.03.2002 and the company has come under the purview of Sick Industrial Companies (Special Provisions) Act, 1985. The company had been declared as sick industrial company by BIFR. In order to make the company's operations viable by reducing debt and interest burden, reschedulement of loans and redemption of NCDs etc, a debt restructuring package of the company was submitted to Corporate Debt Restructuring Cell (CDR Cell) through IFCI, the lead financial institution and the trustee to the NCD holders. The restructuring package was approved by CDR Cell subject to, interalia conversion of unsecured loans into equity shares. As a condition of the CDR package the target company proposes to convert i. 40% simple interest on outstanding loans of FIs amounting to Rs. 7.119 crores into 71.19 lacs equity shares of Rs. 10/- each and ii unsecured loans of promoters amounting to 2 crores into 20 lacs equity shares of Rs. 10/- each at par.

and allot these shares on preferential basis to the financial institutions and the acquirers.

4. Accordingly a resolution authorizing the preferential allotment was passed in the extraordinary general meeting (EGM) of the company held on 26.12.2003.

5. The said application was considered by the Takeover Panel in terms of the said Regulations. The Takeover Panel vide its report dated March 11th, 2004 recommended grant of exemption as sought and made the following observation.

"In the facts stated in the application, it appears that the proposed allotment of equity shares to Financial Institutions / Promoters is not to acquire control of Oswal Spinning and Weaving Mills Ltd. but in pursuance of Debt Restructuring Package approved by CDR Cell for revival of the Company and as such, grant of exemption is recommended." 6. I have taken into consideration the application dated February 21, 2004, the material available on record and the recommendations of Takeover Panel.

6.1 It is noted that as a part of the revival package approved by the Corporate Debt Restructuring Cell, the company proposes to convert :- i. 40% simple interest on outstanding loans of FIs amounting to Rs. 7.119 crores into 71.19 lacs equity shares of Rs. 10/- each and ii unsecured loans of promoters amounting to 2 crores into 20 lacs equity shares of Rs. 10/- each at par.

and allot the said shares on preferential basis to the acquirers who are the promoters and the Financial Institutions. The share capital that would be formed as a result of such conversion is proposed to be allotted in the following manner: B) Promoter Group (Promoters / Persons acting in concert with Promoters) 7. The acquirers are the promoters their relatives and associate companies and the names of such persons and entities as mentioned in the application are Smt. Satya Rani Oswal, Smt. Taru Oswal, Smt. Karuna Oswal, M/s Ashok Oswal & Sons, (HUF), M/s Satish Oswal & Sons, Oswal Cottex Exports Ltd., Anant Portfolio Pvt. Ltd., Sidhant Investment Pvt.

Ltd. and Oswal Industries Pvt. Ltd. 7.1 It is noted that in the EGM of the company held on 26.12.2003. the shareholders approved the special resolution under Section 81 (1A) of Companies Act, 1956 for the preferential issue of equity shares at par to financial institutions and the acquirers in terms of the CDR package. It is noted that the Takeover Panel, while recommending exemption for the proposed acquisition by the acquirers had observed that as regards the request of acquirers to make allotment after expiry of the validity period of the approval of shareholders accorded at the EGM held on 26th December 2003, the same has to be considered by SEBI and not by the Takeover Panel.

7.2 It is noted that subsequently the acquirers vide their letter dated 09.04.2004 have submitted the following: a. they shall take requisite steps to pass a fresh special resolution under Section 81(1A) of the Companies Act, 1956 for the proposed preferential allotment, b. the disclosures shall be made in the explanatory statement forming a part of the notice.

d. the prospective acquirers being interested party to the resolution shall abstain from voting in respect of the resolution.

e. regarding providing facility of voting through postal ballot, they have requested that as such a procedure involves huge costs and will pose a heavy burden which due to its adverse finance position the company will be unable to undertake. In view of the same they have sought exemption from getting their proposed special resolution passed through postal ballot.

7.3 It is noted that the proposed acquisition of shares by the acquirers would not result in change in control over the target company. It is further noted that the proposed allotment of shares inter alia to the acquirers and persons acting in concert in pursuance to a package approved by financial institutions and banks under corporate debt restructuring mechanism is for the purpose of revival of the company and would not therefore adversely affect the interest of minority shareholders.

8. Taking into consideration the above, the recommendations of the Takeover Panel and the larger interest of the shareholders of the target company, I, in exercise of the powers conferred upon me under 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 grant exemption, to Smt. Satya Rani Oswal, Smt. Taru Oswal, Smt. Karuna Oswal, M/s Ashok Oswal & Sons, (HUF), M/s Satish Oswal & Sons, Oswal Cottex Exports Ltd., Anant Portfolio Pvt. Ltd., Sidhant Investment Pvt.

Ltd. and Oswal Industries Pvt. Ltd. from complying with the provisions of Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with regard to the proposed acquisition of 20,00,000 equity

shares and voting rights of Oswal Spinning and Weaving Mills Ltd. by them on preferential allotment basis as mentioned in the application.

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