In Re: Speciality Papers Ltd.

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SooperKanoon Citation : sooperkanoon.com/58019

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

Decided On : Jun-15-2005

Judge : Madhukar

Appellant : In Re: Speciality Papers Ltd.

Judgement :

1.1 Speciality Papers Ltd. (hereinafter referred to as 'the target company') is a public limited company incorporated under the Companies Act, 1956, having its registered office at P.O. Box No. 7, Morai Village, National Highway No. 8, Vapi. Distt., Valsad, Gujarat.

1.2 The equity shares of the target company are listed on The Stock Exchange, Mumbai.

2.1 Shri. Mekan. J. Gala (hereinafter referred to as 'acquirer') made an application dated 24.12.04 under Regulation 4(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as 'the Takeover Regulations'), seeking exemption from the compliance of Chapter III of the Takeover Regulations with respect to the proposed acquisition of 31,18,388 equity shares, of the target company through preferential allotment.

3.1 The present paid up equity share capital of the target company is Rs.2,35,50,000 divided into 23,55,000 equity shares of face value of Rs.10 each. The acquirer is the promoter of the target company and holds .01% shares in the target company. The shareholding of the promoter group, including that of the acquirer, in the target company is 28.08%.

3.2 In respect of the said acquisition of 31,18,388 (56.96%) equity shares, the acquirer has sought exemption from making an open offer in terms of Takeover Regulations. The exemption is sought in view of the following: i. The target company was under the Board for Industrial and Financial Reconstruction formed as per the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'BIFR') for almost 15 years and the existing management which includes the acquirer was instrumental in reviving the company and brought it out of BIFR. As a part of the acquirer's on going exercise in uplifting the company, he has agreed to block his funds lying with the target company in the form of unsecured loans to be converted into equity capital.

ii. The acquirer proposes to acquire 56.97% ie: 31,18,388 equity shares on preferential basis at a price of Rs.19.85/- per share. The acquirer is compelled to acquire equity shares worth Rs.6,19,00,000/- due to the condition imposed by the State Bank of India, Ghatkopar(W) Branch (hereinafter referred to as 'bank'), else the target company will have to pay extra interest on the loan sanctioned by the bank for non-compliance of condition.

iii. The bank while sanctioning the credit facilities to the target company imposed a condition that the target company should bring in equity amount of Rs.6.19 crores upfront before 31.3.05. The acquirer has already given the unsecured loan of Rs. 580.83 Lakhs to the target company and the balance amount of Rs.38.17 Lakhs be brought in the due course before 31.3.05. The total unsecured loan of Rs. 619 Lakhs will be converted into equity shares as per the requirement of the bank's sanction letter.

iv. The proposed preferential allotment is to less than fifty persons, so it is not a public issue as per Section 67 of the Companies Act, 1956 and will be governed by SEBI Guidelines for Preferential Issue. Further, the public shareholding would not fall below 25%.

v. The proposed acquisition would not result in a change in control since the acquirers (existing promoter) and associates already have control over the target company.

vi. The proposed acquisition is in the interest of the target company since it will save the target company from heavy financial losses which may not be viable for the target company.

vii. The acquirer also agrees to keep their shares in the lock-in period as may be prescribed under the Takeover Regulations or for higher period as may be decided by SEBI as a condition for grant of exemption.

viii. Considering the shareholding pattern, size of the company, history of the target company and applicant's role in BIFR, the requirement of the bank for such preferential allotment and acquirer's consent to higher lock-in period of their shares, the acquirer seeks exemption from making the open offer.

The aforesaid application dated 24.12.04 was forwarded to the Takeover Panel in terms of sub-regulation (4) of regulation 4 of the Takeover Regulations. The Takeover Panel, vide its report dated 05.01.05, has recommended as under - "On the facts stated and taking the totality of circumstances into consideration, it appears that promoters group, being already in control and management of the target company, is increasing its holding in the target company. Subject, to the target company passing the requisite resolution in accordance with the provisions of Section 81(1)(a) of the Companies Act, 1956 where the promoters group is to abstain from voting, the grant of exemption as sought is recommended." 5.1 The target company and the acquirer vide their letters dated January 17, 2005 submitted that for the exemption from preferential allotment they undertake to comply with the following conditions: (i) The target company will call a general meeting of shareholders for passing a special resolution under Section 81(1A) of the Companies Act, 1956 for the said preferential allotment to the acquirer.

(ii) In the explanatory statement to the notice under Section 173 of the Companies Act, 1956 the following disclosures shall be made: - consequential changes, if any, in the Board of Directors of the target company and in the voting rights, the shareholding pattern of the company, and - whether such allotment would result in change in control over the target company.

(iii) The guidelines for preferential allotment (including pricing) as prescribed under Chapter XIII of SEBI (Disclosure and Investor Protection) Guidelines, 2000 shall be complied with.

(iv) Facility of voting through postal ballot for passing of the special resolution as per the procedure laid down in Rule 2A and Rule 5 of Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 will be provided. The notice to shareholders shall be sent along with a postage pre-paid envelope for facilitating the consent or dissent.

(v) The prospective acquirers (promoter group shareholders) of the target company, being interested party to the resolution, shall abstain from voting in respect of the resolution.

5.2 Subsequently vide letters dated February 24, 2005 and March 2, 2005 the acquirer further submitted that in order to comply with the amended regulations by virtue of SEBI (Substantial Acquisition of shares and Takeovers) (Second Amendment) Regulations, 2004, the acquirer will take 23,18,388 shares only, so as to maintain promoters shareholding in the target company less than 55% subsequent to preferential allotment; 5.3 The target company vide its letter dated March 02, 2005 submitted that it will keep the promoters stake less than 55% in the target company and it will allot 23,18,388 shares to the acquirers and 8,00,000 shares to other non promoters under proposed preferential allotment. The preferential allotment to other non promoting group will be under 15% after the proposed preferential allotment.

6.1 I have carefully gone through the application dated 24.12.04 and taken into consideration the relevant material available on record and the above mentioned recommendation of the Takeover Panel and the further submissions made by the acquirer and the target company.

6.2 The proposed acquisition is not for the purpose of acquiring control and management over the target company as the control already vests with the acquirer who is an existing promoter along with other promoters and their associates.

6.3 I also take note of the fact that the company was in BIFR for almost 15 years and the existing management which includes the acquirer was instrumental in reviving the company and brought it out of BIFR. As a part of the acquirer's on going exercise in uplifting the company, he has agreed to block his funds lying with the target company in the form of unsecured loans to be converted to equity capital.

6.4 From the application and the letters dated February 24, 2005 and March 02, 2005, it is observed that the current shareholding pattern of the target company along with the shareholding subsequent to the proposed acquisition would be as under:-- Shareholder's No. of Before the proposed No. of After the proposedcategory registered acquisition shares/total acquisition shareholders voting as on date of rights application proposed to be acquired-- No. of % of No.of % of shares/ total shares shares / shares/ voting rights total voting held voting rights voting-- Promoters 4 661000 28.07 0 661000 12.08Acquirer 1 335 0.01 2318388 2318723 42.36FIs/Banks 2 3350 0.14 0 3350 0.06FIIs/NRIs/OCBs 8 5625 0.24 0 5625 0.10Non Promotor 0 0 800000 800000 14.62Public 2845 1684690 71.54 0 1684690 30.78--Total 2355000 100 3118388 5473388 100-- 6.6 In view of the above facts and circumstances, taking into consideration the application dated December 24, 2004, the recommendations of the Takeover Panel and the subsequent letters dated February 24, 2005 and March 02, 2005 from the acquirer and the target company and the relevant material on record, I find that the present case is fit for granting exemption from making a public offer, as required under Regulation 11(1) of the Takeover Regulations.

7.1 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 sub - regulation (6) of Regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirer, namely Shri. Mekan. J.Gala, from complying with the Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, with regard to the proposed acquisition of 23,18,388 equity shares pursuant to the preferential allotment subject to the condition that the acquirer shall acquire only such percentage of the shareholding in the target company so that the shareholding of the promoter group including that of the acquirer does not exceed 55% and that the acquirer and target company shall comply with the conditions as undertaken by them as mentioned in paragraph 5.1, 5.2 and 5.3.

7.2 The acquirer shall complete the transaction within 90 days from the date of the order and file a report with SEBI in the manner specified in Regulation 3(4) read with 3(5) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.