In Re: Victory Paper and Boards

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

Decided On : Feb-02-2007

Judge : G Anantharaman

Appellant : In Re: Victory Paper and Boards

Judgement :

1.1 M/s Victory Papers and Boards (India) Ltd.(hereinafter referred to as 'the target company') is a company limited by shares incorporated under the Companies Act, 1956, having its registered office at Kunnamkulam, Kerala. The equity shares of the target company are listed on the Bombay Stock Exchange Ltd. (BSE), The Cochin Stock Exchange Ltd., Ahmedabad Stock Exchange Ltd. and Madras Stock Exchange Ltd. 1.2 Victory Press Private Ltd. (hereinafter referred to as 'the acquirer') belong to the promoter group of the target company and holds 8.29% in the total voting up capital of the target company. The holding of the promoter group (including the acquirer) in the target company is 54.29% in its total voting capital. The target company proposes to issue 40 lacs equity shares of face value of Rs. 10 each @ Rs. 10 per share to the acquirer by way of preferential allotment. Pursuant to the proposed allotment, the shareholding of the acquirer in the target company would increase from 8.29% to 36.37% and that of the promoter group (including the acquirer) would increase from 54.29% to 68.28% in the total voting capital.

2.1 Vide letter dated October 6, 2005, the acquirer filed an application dated September 22, 2005 with the Securities and Exchange Board of India (hereinafter referred to as SEBI) under regulation 4(2) read with regulation 3(1) (l) of the Securities ad 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 allotment of 40,00,000 equity shares. The acquirer submitted further information inter alia vide letters dated January 4, 2006, January 19, 2006, January 24, 2006 and February 1, 2006 in addition to the aforesaid application.

a) the target company is engaged in the business of manufacture and dealing of various types of papers, pulp and paper board and inter alia undertakes printing jobs for Central Government, State Government and public companies. It had undergone several difficulties since over the years.

b) the target company was incurring losses and it was imperative for the target company to increase its net worth for running its business and getting additional working capital loan from banks and/or financial institutions.

c) the accumulated losses of the target company are almost 50% of its paid up share capital. When applied for additional credit facilities for the target company, the bankers of the target company had insisted on improving the net worth of the target company by infusing additional capital by the group companies. The acquirer being one of the promoters and sole selling agents for the products of the target company, had been providing, from time to time, trade advances to the target company, which was accumulated upto Rs. 4 crores as on March 31, 2005.

d) it was proposed to convert the said trade advances into equity share capital of the target company, so that the target company could meet the stipulations of the banks for sanction/enhancement of its working capital. The acquirer, being one of the promoters of the target company, had consented for converting the said trade advances into equity shares of the target company to enable the target company to meet the aforesaid stipulations of its Bankers.

e) the target company proposes to issue shares on preferential basis to acquirer against the aforesaid trade advances of Rs. 4 crores and the said proposed acquisition will not result in the change in control over the target company since the acquirer and its associates already have control over the target company. The proposed acquisition is in the interest of the target company as it will save the target company from heavy financial losses and offer an opportunity for its viability. The shares of the target company are presently infrequently traded at the stock exchanges, where the shares of the target company are listed. The book value of the shares of the target company was @ Rs. 5.01/- for the year 2004-2005.

2.3 The shareholding pattern of the target company before and after the proposed preferential allotment is as under: Post preferential paid up amount on the shares issued /subscribed (Rs.) * out of 95,00,000 shares, there were 8,74,200 partly paid up shares on which Rs.5/- per share has been paid up. They carry voting rights in proportionate to amount paid up.

3.1 The aforesaid application filed by the acquirer together with its subsequent correspondences were forwarded by SEBI to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel vide its report dated February 2, 2006 has recommended as under - On the facts stated in the application, it appears that the proposed conversion of trade advances of the Acquirer to the target Company into Equity Share Capital of the target Company is to meet the stipulations of the Banks for sanction/enhancement of its working capital limits and the proposed acquisition would not result in a change in control.

The grant of exemption as sought is recommended subject, however, to following of SEBI (Disclosure and Investor Protections) Guidelines 2000 for preferential issue.

4.1 M/s Pandya & Co, Practicing Company Secretary representing the acquirer vide letter dated March 13, 2006 had submitted an undertaking of the target company to the following effect: i. A general meeting of shareholders of the target company will be called for passing a special resolution under section 81(1A) of the Companies Act, 1956 in respect of the proposed preferential allotment to the acquirer.

ii. Target company shall make the following disclosures in the explanatory statement in terms of Section 173 of the Companies Act,1956 forming part of the Notice of General Meeting: 4 Consequential changes, if any, in the Board of Directors of the target company and in voting rights, the shareholding pattern of the target company, and 5 Whether such allotment would result in change in control over the target company.

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

iv. In respect of the resolution under section 81(1A), the facility of voting through postal ballot for passing of the special resolution as per the procedure laid down for postal ballot in Rule 2A and Rule 5 of Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 will be provided. The notice to the shareholders shall include a postage pre-paid envelope for facilitating the consent or dissent.

v. The acquirers (promoter group shareholders) of the target company, being interested party to the resolution, shall abstain from voting in respect of the said resolution under Section 81(1A) of the Companies Act, 1956.

4.2 A similar undertaking was filed by the acquirer vide letter dated August 14, 2006.

5.1 I have carefully considered the application dated September 22, 2005 and the various letters filed by the acquirer, the recommendations of the Takeover Panel, further submissions of the acquirer and the target company and relevant material available on record.

5.2 I note from the submissions made by the acquirer that the target company had incurred losses and had taken working capital loan from banks and financial institutions. The acquirer submitted in its application dated September 22, 2005 that when the target company had applied for additional credit facilities, the bankers of the target company had insisted on improving the net worth of the target company by infusing additional capital by the group companies. In this context, the acquirer had also submitted the copy of the letter dated May 27, 2005 issued by the Federal Bank Ltd., Kunnamkulam Branch to the Chairman of the target company. Apparently , the said letter was issued in response to the application for the renewal of various limits and additional limits and it was inter alia stated in the said letter under the head 'other terms and conditions' that " An undertaking to the effect that the company would retain an amount not less than Rs.300 Lakhs from the group concerns, during the currency of the loan/improvement of the networking capital".

5.3 I also note from the submissions made in the application that the acquirer had been providing, trade advances to the target company from time to time and the same was accumulated upto Rs. 4 crores as on March 31, 2005. The acquirer has submitted that the proposed conversion of the aforesaid trade advances into equity shares of the target company was made so as to enable the target company to meet the stipulations of its Bankers and accordingly, the target company has made the proposal for the issue of shares of preferential shares to the acquirer.

5.4 I note that the acquirer belongs to the promoter group of the target company and already have 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. I note that the proposed acquisition is in the interest of the target company as it will save the target company from its financial losses and offer an opportunity for its viability and the same was pursuant to the terms and conditions imposed by the Federal Bank Ltd. It is also submitted that the shares of the target company are presently infrequently traded at the stock exchanges, where the shares of the target company are listed. I have noted that the intention of the acquirer is to revive the operations of the target company and to meet the stipulations imposed by the Bank.

5.5 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 subject to the conditions as undertaken by the target company vide its letter dated March 13, 2006 and the letter dated August 14, 2006 filed by the acquirer.

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 acquirer, Victory Press Private Ltd. from complying with the provisions of Regulation 11(1) of Securities ad Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 with regard to the proposed preferential allotment of 40 lacs equity shares of Victory Papers and Board (India) Ltd. subject to the condition that, the acquirer and the target company shall comply with the undertakings as mentioned in their letter dated August 14, 2006 and March 13, 2006, respectively.

6.2 I further direct that the formalities in respect of proposed preferential allotment shall be completed within 90 days of receipt of this order and the 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.