

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with section 12A of the Securities Contracts (Regulation) Act, 1956 in the matter of non-compliance with the requirement of minimum public shareholding by listed companies

In respect of RMG Alloy Steel Limited (earlier known as Remi Metal Gujarat Limited)

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had passed an *interim order* dated June 04, 2013 (hereinafter referred to as "*the interim order*") with respect to 105 listed companies who did not comply with the Minimum Public Shareholding ("MPS") norms as stipulated under rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR") within the due date i.e., June 03, 2013. The *interim order* was passed without prejudice to the right of SEBI to take any other action, against the non-compliant companies, their promoters and/or directors or issuing such directions in accordance with law. The *interim order* was to be treated as a show cause notice by those companies for action contemplated in *paragraph 18* thereof.

2. RMG Alloy Steel Limited, earlier known as Remi Metals Gujarat Limited (hereinafter referred to as "the Company") is one such listed company against whom the *interim order* was passed.

3. The Company filed its replies to the *interim order* vide letters dated June 24, 2013 and July 19, 2013, wherein it *inter alia* made the following submissions :

- (i) The Company was declared a sick industrial company on August 10, 1999 by the Board for Industrial and Financial Reconstruction ("BIFR") and pursuant to which a scheme for rehabilitation was approved on October 18, 2002 under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 ("the SICA").
- (ii) The scheme was modified by the BIFR from time to time, by orders including orders passed on September 23, 2008, May 18, 2010 and November 22, 2010 and by the order of

the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR") dated February 13, 2009, for the proper implementation of the order.

- (iii) The modified scheme specifically allowed the promoter group to collectively hold shares in excess of 75% of the share capital of the Company and required the Company to obtain specific permission from the BIFR before diluting such shareholding for the purpose of meeting regulatory guidelines.
- (iv) In accordance with the modified scheme, the Company applied to the BIFR from time to time and sought permission for its promoter group to offload their shares. The BIFR, by its orders dated September 08, 2009 and May 18, 2010 granted permission to two of its promoters to offload their shares.
- (v) Though the Company's promoters disposed of 50,86,298 shares (4.69%) between July-November 2010, they were unable to dispose of any additional shares due to circumstances beyond their control. The Company therefore filed a miscellaneous application before the BIFR and sought an extension of the period from 3 years to 5 years to reduce the promoter group's shareholding. A copy of the application and the next date of hearing before BIFR was informed to SEBI. However, SEBI failed to appear before BIFR at the hearing held on March 23, 2012.
- (vi) The BIFR by its order dated March 23, 2012 was pleased to permit the promoters of the Company to offload their shares within 5 years from February 07, 2009 i.e. by February 07, 2014.
- (vii) As per the provisions of section 32 of the SICA, the BIFR order and the modified scheme overrides the provisions of the SEBI Act, Securities Contracts (Regulation) Act, 1956 and all rules made thereunder. Therefore, the SEBI Order passed in respect of the Company should be withdrawn.

4. The Company had filed an appeal (*Appeal No. 149 of 2013*) before the Hon'ble Securities Appellate Tribunal, challenging the *interim order*. While disposing off the appeal, the Hon'ble Tribunal vide Order dated September 17, 2013, directed SEBI to dispose off the appeal memorandum, treating the same as the representation of the Company, within a period of one month from the date of the Order after affording an opportunity of personal hearing to the Company, as per law.

5. In compliance with the directions of the Hon'ble Tribunal, the Company was afforded an opportunity of personal hearing on September 24, 2013, when it was represented by its advocate, Mr. Samer Pandit, who made submissions on the lines of those made in the Company's replies and the appeal memorandum. Mr. K.N. Kapasi, Mr. Devendra Patil and Ms. Nishtha Kacholia, the authorised representatives of the Company were also present in the personal hearing.

6. According to the learned advocate, the Company had filed a miscellaneous application dated February 13, 2012 before the BIFR *inter alia* praying for a direction for extension of the period from 3 years to 5 years for the purpose of offloading the equity shares of promoters/co-promoters/strategic investors in order to bring their shareholding in the Company to 75% or less from the present level of 87.26%. The BIFR in the hearing held on March 02, 2012 directed that the copy of the summary of proceedings be served on SEBI and IDBI (*the monitoring agency*) for their comments and that the next hearing on the said application was fixed on March 23, 2012. The advocate further submitted that on March 23, 2012, there were no comments from SEBI and IDBI and after considering the submissions of the Company and the material on record, the BIFR allowed the prayer of the Company for offloading of shares within a period of 5 years from February 07, 2009.

7. The learned advocate further submitted that in terms of section 32 of the SICA, the provisions of the said Act, rules or schemes made there under shall have overriding effect on other laws except the Foreign Exchange Management Act, 1999 and the Urban Land (Ceiling and Regulation) Act, 1976. The learned advocate submitted that such overriding powers were not available under the SEBI Act and therefore requested that the directions imposed vide the *interim order* with respect to the Company be vacated at the earliest.

8. During the personal hearing, the representatives were asked as to why the promoters were not able to reduce their shareholding to 75% or less, to which, they replied that the net worth of the Company was in the negative and that there is no demand for the shares. The representatives were also asked as to how the Company proposes to reduce its promoters' shareholding to 75% within the timeframe allowed by the BIFR. As the representatives requested that they be permitted to file written submissions with respect to the same, the request was allowed. The Company filed its written submissions vide letter dated October 01, 2013 and *inter alia* submitted the following :

- (i) In accordance with the revival scheme, the promoter group has sold 50,86,298 shares (constituting 4.69%) between July – November 2010. The Company has always been working towards meeting the MPS requirement ;
- (ii) Due to the global meltdown, the steel industry has suffered a lot and India's steel production is getting affected by inflation and interest rates. Given these uncertain conditions and the state of the Company, the volume of purchase of shares of the Company is negligible as compared to the shares to be offloaded by the promoter group. There is virtually no market for the shares ;

- (iii) The promoter group is finding it extremely difficult to offload their shares in the Company, particularly when there is no market for the same ;
- (iv) The BIFR had in acknowledgement of the above reasons passed the Order allowing extension to the promoter group to offload additional shares ;
- (v) In order to improve the business and finances, the Company is *inter alia* taking the following steps subject to necessary approvals :
 - a) Sale of surplus land in Bharuch and other immovable properties lying unused with the Company ;
 - b) Grant of relief and concession from sales tax department, Government of Gujarat i.e., to get extension of composite scheme of sales tax deferment/exemption under scheme 1995 as a pioneer unit for the period 2012-2013 to 2015-2016 ;
 - c) Capital expenditure of ₹35 crore to modernize plant to improve productivity.
- (vi) Considering the positive developments, the Company is hopeful of revival and thereby generating investor interest in the Company. Furthermore, the Company is making sincere efforts to comply with all applicable regulations and the promoter group is in the process of initiating steps for disposal of their shareholding as per the BIFR's scheme in order to comply with the MPS requirements at the earliest. The proposed measures include –
 - a) Sale of shares held by promoters through the secondary market for complying with the MPS requirement in terms of SEBI Circular dated February 01, 2012 ;
 - b) Institutional Placement in accordance with applicable SEBI Regulations ; or
 - c) Such other methods as may be most optimum for the promoter group to meet the MPS requirement as approved by SEBI.

The Company submitted that it is trying its best to meet the minimum public shareholding requirements, however, the same is subject to market dynamics and the revival of the Company's performance. The Company also requested SEBI to take note of the BIFR Order and requested that the SEBI *interim order* be withdrawn as far as it concerns the Company.

9. I have considered the submissions made by the Company including its submissions regarding its proposed manner for complying with the Order passed by the Hon'ble BIFR. I have perused the appeal memorandum filed by the Company and note that the averments made therein by the Company are similar to its submissions made in its aforesaid replies. The Company has *inter alia* prayed (*in its appeal memorandum*) the Hon'ble Tribunal to set aside the impugned order in so far as it applied to it.

10. I have perused the Order dated March 23, 2012 passed by the Hon'ble BIFR, and note that the following was ordered therein -

"5.3 Having considered the submissions made in the bearing and material on record and also considering the present market conditions, the Bench allowed the prayer of the company to offload the equity shares of promoters/co-promoters/strategic investor in order to bring their shareholding in RMGL to 75% or less from the present level of 87.26% and also to offload the remaining shares (20,76,293 equity shares) of strategic investor (M/s Welspun Power & Steel Ltd. (now Welspun Steel Ltd) to bring down the shareholding of promoter/co-promoter/strategic investor in RMGL to 75% or below that. The Bench further directed that the company to offload the equity share within 5 years from 07.02.2009 and report compliance. Accordingly, the M.A. No.63/2012 is disposed of." [Emphasis supplied]

11. The Hon'ble BIFR has allowed the Company to reduce its promoters' shareholding to 75% or less within a period of 5 years from February 07, 2009 i.e. by February 06, 2014. I note that in terms of section 32 of the SICA, the provisions of the said Act, rules or schemes made there under shall have overriding effect on other laws. SEBI Act is not a statute exempted from the applicability of section 32 of the SICA. Further, in terms of section 32 of the SEBI Act, the provisions of the SEBI Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. I have also noted the steps proposed to be taken by the Company for bringing down its promoters' holding to 75% or less and for achieving compliance with the MPS requirements.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(2)(j), 11(4) and 11B thereof and section 12A of the Securities Contracts (Regulation) Act, 1956, hereby vacate the directions issued vide the *interim order* dated June 04, 2013 against RMG Alloy Steel Limited, its directors, promoters and promoter group, with immediate effect. However, the directions issued vide the SEBI Order dated June 04, 2013, shall immediately be revived (*without the need for passing of a separate order*) against the said company, its directors, promoters and the promoter group, if -

- (i) the promoter shareholding in the company, RMG Alloy Steel Limited, is not reduced to 75% or less within February 06, 2014 being the end of the period till which the Hon'ble BIFR had given exemption ; and

(ii) the company, RMG Alloy Steel Limited, fails to increase its public shareholding to the minimum 25% as stipulated under rule 19A of the SCRR, within the said time frame (*i.e., on or before February 06, 2014*).

13. Further, the above directions would be without prejudice to the right of SEBI to initiate other appropriate action in accordance with law, if the company, RMG Alloy Steel Limited, fails to reduce its promoter shareholding to 75% or less as directed by the Hon'ble BIFR, and increase its public shareholding to the minimum 25% as stipulated under rule 19A of the SCRR, within February 06, 2014.

14. Copy of this Order shall be served on the stock exchanges and depositories for their information and necessary action.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : October 14th, 2013

Place : Mumbai