

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 Monotype India Limited

Date of hearing: December 15, 2015

Appearance:

For the **Company**:

1. Mr. Prakash Shah, Advocate
2. Mr. Naresh Jain, Director
3. Mr. Robin Shah, Authorised Representative

For **SEBI**: Mr. T. Vinay Rajneesh, Assistant General Manager and Ms. Chitra Bhandari, Manager

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. Monotype India Limited (hereinafter referred to as "the Company") was one such company against whom the *interim order* was passed. The equity shares of the Company are

listed on the Bombay Stock Exchange Limited ("BSE") and the Calcutta Stock Exchange Limited.

3. After affording opportunity to file response and personal hearing, SEBI vide an Order dated July 22, 2014, observed/directed as follows:

“9. Considering the above violations of the Company and the continuous nature of such violations, it becomes necessary for SEBI, for proper regulation of the securities market, to confirm the directions issued against the Company, its directors and promoters/promoter group. Further, for such contravention, SEBI may also initiate other action, as appropriate in law, against the Company, its directors and promoters.

10. Accordingly, 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)(f), 11(4) and 11B thereof and section 12A of the Securities Contracts (Regulation) Act, 1956, hereby confirm the directions issued vide the interim order dated June 04, 2013 against the company, Monotype India Limited, its directors, promoters and promoter group.

11. This Order shall remain in force till further directions”.

4. Thereafter, vide letters dated May 08, 2015 and July 15, 2015 read with letter dated August 03, 2015, the Company *inter alia* submitted the following:

- (a) The management of the Company was taken over by way of an open offer. Prior to the said open offer, the promoters' shareholding was at 74.22% and post the offer, the same slightly increased to 75.27%. The public shareholding reduced slightly below the prescribed minimum public shareholding level.
- (b) The Company had preferred a Scheme of Arrangement i.e. merger, which was filed before the Hon'ble High Court of Calcutta and was pending approval. Hence, the Company was unable to comply with the MPS norms within the due date i.e. June 03, 2013.
- (c) The Hon'ble High Court had sanctioned the scheme vide Order dated December 09, 2014. Pursuant to the scheme under section 391(2) to 394 of the Companies Act, 1956 approved by the Hon'ble High Court, the shareholding of the promoter and promoter group of the Company had reduced from 75.27% to 25.23% in compliance with the MPS norms.
- (d) Presently, the Company is in compliance with the provisions of the MPS norms and therefore the Company requested SEBI to vacate the interim order.

5. The Company also forwarded its Written Submissions vide letter dated November 10, 2015, wherein the following submissions were made:

- (a) Around June – July 2011, then promoter of the Company viz. Swagatam Tradevin Limited (holding 74.23%) was mandatorily required to make an open offer to public shareholders in compliance with regulations 10 and 12 of the Takeover Regulations. Post the open offer, the shareholding of the promoter increased to 75.27%. It was submitted that only on account of the mandatory open offer, the public shareholding was reduced below 25%.
- (b) On December 09, 2014, the Hon'ble High Court of Calcutta approved the scheme of merger.
- (c) Pursuant to the approved scheme, on March 18, 2015, 68,66,36,929 fresh shares were allotted and return of allotment was filed on April 29, 2015. The allotment was resolved in the Company's Board resolution dated March 18, 2015.
- (d) Additionally, post sanction of the scheme of arrangement, the promoters' shareholding was substantially reduced to 25.23% from 75.27% in compliance with the amended provisions of rule 19A of SCRR.
- (e) A copy of the shareholding pattern for quarter ended September 2015 was enclosed.
- (f) While filing the shareholding pattern with BSE for ensuing quarters beginning from March 2015, the shareholding of promoters and public has been clarified in accordance with the SEBI ICDR and Takeover Regulations.
- (g) As on March 31, 2015, the Company had 4008 shareholders. The distribution of shareholders is as below:

Range of equity shares	No. of shareholders
Upto 500	480
501-1000	188
1001-5000	418
5001-10000	86
10001-50000	735
50001-100000	1068
Above 100001	1033
Total	4008

- (h) The Company submitted that its shareholding is widely distributed and broad-based and requested SEBI to take cognisance of the submissions and vacate the directions passed vide Orders dated June 04, 2013 and July 22, 2014 at the earliest.

6. The Company also filed an appeal (Appeal no. 494/2015 – Monotype India Limited vs. SEBI) before the Hon'ble Securities Appellate Tribunal, which was disposed off vide Order dated December 09, 2015, wherein SEBI was directed to pass appropriate order 'on the letter addressed by the Company on May 08, 2015' within a period of 4 weeks. The Company was afforded an opportunity of personal hearing on December 15, 2015, when it was represented by Mr. Prakash Shah, Advocate and Mr. Naresh Jain, Director. The learned advocate made oral submissions on the lines of the submissions made by the Company.

7. Further submissions: (1) With respect to certain queries of SEBI sought vide email dated December 31, 2015, the Company vide letter dated January 02, 2016, submitted as follows:

- (a) Query – As per the scheme of arrangement, all transferor companies stand dissolved. However, as per the latest shareholding pattern available for the quarter ended September 30, 2015, Swagatam Tradevin Limited, one of the transferor companies that was to be dissolved as per the said Scheme is still shown as a promoter of the Company.

Reply – The Company submitted that disclosures were made as per the details furnished to it by the Registrar and Transfer Agent (RTA) which is on the basis of names of beneficial owners in the respective demat accounts. Disclosures of shareholding under the listing agreement is required to be made on the basis of the names of beneficial owners as appearing in the books and records of the Depository.

Swagatam was holding 1,24,08,600 shares of the Company as part of their investments prior to the merger with the Company. Post-merger, the Company and concerned depository did not consider it appropriate to change the name of beneficiary owner from Swagatam to the Company without following due process of law. The same was disclosed to BSE.

Under such circumstances, the shareholding of Swagatam is disclosed in its own name even though it stands dissolved. The Company stated that once SEBI revokes the interim order and listing/trading is permitted, it would make necessary change in the shareholding of Swagatam at the earliest.

- (b) Query – As per the shareholding pattern for March 2015, Swagatam was shown holding 11.83% and 1.76% (entries at sr. nos. 1 and 3 in the shareholding pattern). However, in the shareholding pattern for September 2015, one Innocent Investment Consultants Limited is shown as holding 11.83% earlier stated to be held by Swagatam.

Reply – As on March 31, 2015, Innocent held 8,31,67,800 shares (11.83%) of the Company. The said fact was correctly disclosed to BSE in the shareholding pattern filed for quarter ended March 2015 under its letter dated April 20, 2015 as required under clause 35 of the Listing Agreement.

- (c) Query– Vide the interim order, the promoters and promoter group were prohibited from buying, selling or otherwise dealing in securities of the Company. Despite the order being in force and Swagatam being the promoter holding 75.27%, on what basis the Company had allotted 13,53,13,550 equity shares.

Reply – The allotment was made pursuant to the Order of the High Court at Calcutta. As the allotment was intended for the purpose of complying with MPS requirements, the Company is in compliance with the interim order.

- (d) Query – It was observed from the shareholding pattern for the quarters ended March, June and September of 2015, 4 new entities/persons viz., Innocent, Sandeep Ispat Traders Pvt. Ltd., Harsh Jain and Naresh Manakchand Jain are stated to be the promoters along with Sswagatam holding 25.23%. On what basis the new entities have been classified as promoters of the Company?

Reply – Naresh Jain and Harsh Jain are directors of the Company and hence they were classified as promoters. Further, Innocent and Sandeep Ispat fall within the definition of ‘promoter group’ as defined under the ICDR Regulations.

(2) The Company also forwarded the list of allottees as sought by SEBI.

(3) BSE, vide letter dated January 04, 2016, *inter alia* stated that listing approval for 68,66,36,929 equity shares allotted pursuant to the Scheme has been kept in abeyance. BSE had stated as follows:

"...The company had been granted NOC by the Exchange for its Scheme of Arrangement on January 27, 2012 and had already filed the Scheme with the High Court on November 29, 2011. Accordingly, the SEBI circular on Schemes dated February 4, 2013 was not applicable to the company.

In this regard, it may be noted that Monotype India Ltd had submitted its application dated March 31, 2015 on April 6, 2015, seeking listing approval for 68,66,36,929 equity shares allotted pursuant to the scheme of arrangement approved on December 09, 2014 by Hon'ble High Court of Calcutta, with the Exchange.

The Exchange sought several clarifications from the company based on its application and documents submitted and on July 9, 2015, the Exchange had sought following clarifications from the company:

- 1. It has been observed that as per the shareholding pattern submitted by the company for the quarter ended December 2011 at the time of seeking Exchange's NOC, the promoter holding in the company was 74.31%. When the company approached for final listing of its shares issued pursuant to the Scheme, it was observed that the company was showing that the pre Scheme shareholding of promoters was in excess of 75%. Upon further scrutiny, it was observed that as per the shareholding pattern submitted by company and disseminated on our website for the quarter ended March 2012, (which is after the exchange granting its NOC to the scheme) the promoter holding of the company has increased to 75.27%, which is in non-compliance with clause 40A of the then Listing Agreement. It is further observed that name of the company appears in the SEBI order dated June 4, 2013 w.r.t "Minimum Public Shareholding (MPS)". However, the promoter holding in the company has come down to 25.23% pursuant to the allotment of shares made under the said scheme on March 18, 2015 and the company thereby became compliant with clause 40A of the Listing Agreement.*

In view of the aforesaid, it appears that the company has not followed one of the methods prescribed in the said SEBI order read with clause 40A of the Listing Agreement for achieving MPS and therefore a clarification has been sought from the company as to how it is in compliance with the same.

- 2. Subsequently company has forwarded to the Exchange an acknowledged copy of its letter dated July 15, 2015 submitted to SEBI inter-alia informing that pursuant to the scheme of arrangement u/s 391(2) to 394 of the Companies Act 1956*

approved by the Hon'ble high court of Calcutta on December 9, 2014, the shareholding of the promoter and promoter group of the company has reduced from 75.25% to 25.23% in compliance with the SCRR amended notification and rules 19(2)(b) of SEBI. Company has also requested SEBI to vacate the stay on the promoter/promoter group for dealing in securities market vide order dated July 22, 2014.

3. Further on seeking clarification with respect to compliance with SEBI order dated June 4, 2013 w.r.t "Minimum Public Shareholding (MPS)" company submitted its clarification on July 15, 2015. The reply received is reproduced below: –

*"SEBI order dated June 04, 2013 bearing Ref. No. WTM / PS/ 09/ CFD/ JUNE/ 2013, where in SEBI has asked the company about compliance of 40A. The Companies name was mentioned in serial no. 31 with further reference to SEBI communications dated, November 30, 2012, February 2, 2013 & April 15, 2013. Please note that after completion of the open offer, the promoters holding exceed 75% and become 75.27% i.e. excess of 4450 equity shares of face value of Rs. 10/- each. The SEBI notification was of December 16, 2010 & August 29, 2012. **The Company filed its application for sanction of the scheme before high court in 2011 hence it was not possible to sale the shares in the market as per the method prescribed at that time.** However by operation of law i.e. by the order of the Hon'ble High Court by approving the scheme the present holding is in compliance with 40A which can be verified in Share holding pattern filed by company for March, 2015. For your information, SEBI in this matter on June 26, 2014 fixed a hearing at SEBI Bhavan. We represented our case before SEBI informing about the scheme of arrangement and dilution of the shareholding and the whole time member noted the same this was confirmed by order dated July 22, 2014. The Hon'ble High Court Passed the order December 9, 2014 sanctioning the scheme. However, the promoters are even ready to sale the shares as per the method as prescribed by SEBI, if you direct so. Enclosed correspondence dated June 30, 2014, and May 11, 2015 by company along with SEBI order dated June 4, 2014 and July 22, 2014"*

We have not received any further update from the company regarding its submission to SEBI dated July 15, 2015.

In view of the above, listing approval for 68,66,36,929 equity shares allotted pursuant to the scheme of arrangement has been kept in abeyance."

(4) The RTA of the Company, vide email dated January 07, 2016, forwarded the list of allottees of 68,66,36,929 equity shares pursuant to the Scheme and the shareholding pattern as of December 2015.

8. I have considered the submissions made by the Company. The Company has also submitted that it had on March 18, 2015 allotted 68,66,36,929 equity shares of Rs.1/- to the

shareholders of the transferor companies as on the record date of March 17, 2015. The Company has submitted Form No. PAS-3 (return of allotment) with respect to the shares so allotted. I note that on one hand the Company has submitted that post the approved scheme of merger becoming effective and allotment of fresh equity shares were made, it has become compliant with the MPS norms. However, it has also stated that the Scheme itself was for complying with the MPS requirements. In this regard, I have perused the sanctioned scheme as forwarded by the Company, and note the following:

- (a) The scheme is for amalgamation of **Mono Herbicides Limited** (MHL or Mono Herbicides), **Gateway Distributor Limited** (GDL or Gateway), **Unicorn Vyapar Limited** (UVL or Unicorn), **Subhankar Vinimay Limited** (SVL or Subhankar), **Swagatam Tradevin Limited** (STL or Swagatam) and **Lotus Financial Management Private Limited** (LFMPL or Lotus) with Monotype India Limited. It is important to note that Swagatam was disclosed as the Company's promoter as per shareholding pattern for the quarter ended December 2014.
- (b) The proposed scheme has been sanctioned by the Hon'ble High Court at Calcutta on December 09, 2014 as ordered therein. The 'Appointed Date' was April 01, 2011 and the scheme was binding from such date on the transferor companies, the transferee company, their respective shareholders and all concerned subject to the fulfilment of the observations of the Hon'ble High Court.
- (c) As per the scheme, the following allotment of shares (of the transferee company – Monotype India Limited) needs to be made to the shareholders of the respective transferor companies:

S. No.	No. of shares of transferee company to be allotted	Allotments to be made to the shareholders of the following companies
1.	53842010 equity shares of Re.1/-	to SVL who holds approx.. 51% in MHL
2.	51714679 equity shares	To other shareholders of MHL
3.	87757700 equity shares	GDL
4.	78372000 shares	UVL
5.	115668099 equity shares	SVL
6.	135313550 equity shares	STL

7.	163968800 equity shares	LFMPL
Total	68,66,36,929 shares	

(d) The scheme stated that on coming into effect, the transferor companies (6 companies that merged into Monotype) shall stand dissolved without winding up and without any further act or deed. The Hon'ble High Court has also ordered the Official Liquidator (attached to the High Court) to file a Report under second proviso to section 394(1) of the Companies Act, 1956 in respect of the transferor companies within a period of six weeks and that the transferee company to apply for dissolution without winding up of the said transferor companies after filing of the report by the Official Liquidator.

(e) On sanction of the scheme, the paid-up equity capital of the transferee company shall be Rs.70,31,21,889/- and the authorised capital was increased to 75,00,00,000/-.

9. Swagatam was disclosed as a promoter as per the shareholding pattern for December 2014. This entity held 12,40,860 shares constituting 75.27%. The shareholders of this entity therefore indirectly controlled the Company. This entity was amongst the 6 entities that had merged with the Company. As per the merger, the shareholders of this entity would be issued 13,53,13,550 shares of the Company as against their shares/capital held in the entity. The shareholders who have been allotted shares pursuant to the Scheme should ideally be classified as “promoters” of the Company. As per the shareholding pattern of the Company for September 2015, these shareholders have not been disclosed under the ‘promoter and promoter group’ category. Considering the expanded capital, pursuant to the Scheme, comprising of 70,31,21,889 shares, the shareholding of these shareholders (i.e. erstwhile shareholders of Swagatam) is around 19.24% in the Company.

10. I also note that Swagatam is mentioned as holding 1,24,08,600 (increase in the number of shares is presumed to be because of reduction in face value of share from Rs.10/- to Re 1/-) shares as per the shareholding pattern for September 2015. It appears that the shareholding of Swagatam (i.e. 12,40,860 shares as per December 2014 shareholding pattern) has not been dealt with under the Scheme. The Company, in its submissions dated January 02, 2016, has stated that these shares would be held by the Company as an ‘investment’ because of operation of law and would be in course of time dealt with under the Companies Act, 2013.

11. I note from the list of allottees provided by the Company that post merger, shareholders – Innocent Investment Consultants Pvt. Ltd., Sandeep Ispat Traders Pvt. Ltd. and Mr. Naresh Manakchand Jain of Lotus (one of the six entities that merged with Company) were allotted **8,31,67,800, 7,59,51,000 and 48,50,000** shares respectively of the Company. Further, Mr. Harsh Jain of Swagatam was allotted **452** shares of the Company. These persons have been classified as promoters by the Company as per the shareholding pattern of September 2015. These persons/ entities collectively hold around 25% in the Company.

12. It is important to note that Mr. Naresh Manakchand Jain is a promoter and shareholder of Mono Herbicides also (and he was allotted 10,00,000 shares of the Company in addition to the 48,50,000 shares as mentioned above). The Company has not submitted as to why the other shareholders of Mono Herbicides should not be classified as promoters of the Company.

13. In the shareholding pattern for the quarter ended on March 31, 2015, the Company had shown three shareholders of Lotus (one of the merged entities) namely Innocent Investment Consultants Pvt. Ltd., Sandeep Ispat Traders Pvt. Ltd. and Mr. Naresh Manakchand Jain as its promoters. However, the basis for such classification is unclear. On a perusal of the list of allottees, it is noted that few names are seen to be common shareholders in the entities that merged with the Company like Bhoopesh Kumar Jain, Althuri. Further, there are many names with the same surname indicating that these entities/ persons' shareholding should be seen together. Further, the members of the transferor companies who are said to be allotted shares pursuant to the scheme, now hold around 97.60% shares of the expanded paid-up capital post approved merger.

14. BSE, while referring to the correspondence it had with the Company has informed that the exchange has not granted listing approval for the **68,66,36,929** shares issued pursuant to the Scheme. BSE also referred to the Company's submission that its promoters are ready to sell shares as per the method prescribed by SEBI, if directed. If such unlisted shares are excluded, then the promoter holding shall continue to be more than 75%, resulting in non-compliance with the MPS norms. It becomes relevant to note here that the Company had sufficient time to comply with the MPS norms as they had to offload 0.27% to bring down

the promoters' holding to 75%. The promoters of the Company vide email dated August 28, 2015 had also informed that they would comply with MPS requirements through OFS of 0.27% of share capital of Company. This would mean that as of August 2015, even the Company was not sure about its compliance with MPS norms.

15. Another important factor, which I wish to note is that the Company has stated that the Scheme was for complying with the MPS norms. However, as can be seen, the same is not a method approved by SEBI for compliance with the said norms. Further, the Scheme does not mention anywhere that the Scheme is for complying with the MPS. It also appears that the Company has not apprised the Hon'ble High Court regarding the SEBI interim order passed for non-compliance with the MPS norms. Further, if compliance is accepted through such schemes, there could arise an eventuality that companies may merge few entities into themselves and claim compliance without actually complying with such norms through methods approved by SEBI. Further, the methods prescribed by SEBI for achieving compliance would be made redundant.

16. Considering the above, it cannot definitely be said that the Company has complied with the MPS norms. In this regard, I note the following observations made by the Hon'ble SAT in the matter of Gillette India Limited (order dated July 03, 2013) :

"It is pertinently noted that in the proposition put forth by the Appellant, the entire idea behind having a specific percentage of 25 involving a large number of the members of the public in the shareholding of listed companies, is eclipsed by the Appellants trying their best to part with as little of the promoters' shareholding as possible. Further, in relation to the rationale behind inclusion of Rule 19A in the SCRR, a Press Release dated June 4, 2010, issued by the Finance Ministry, following the introduction of Rule 19A, is relevant and reproduced herein below :-

"A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation."

17. Considering the above, I come to the conclusion that at this stage, the Company cannot be said to have complied with the MPS norms. However, SEBI shall make an enquiry into the subject as to whether the promoters and their connected entities have reduced their shareholding to 75% or below and come out with findings and thereafter proceed in accordance with law.

18. Accordingly, 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 confirm the directions issued vide the *interim order* dated June 04, 2013 against the company, **Monotype India Limited**, its directors, promoters and promoter group.

19. This Order shall remain in force till further directions.

20. 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 : January 22nd, 2016
Place : Mumbai