

SECURITIES AND EXCHANGE BOARD OF INDIA

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 MINIMUM PUBLIC SHAREHOLDING NORMS IN RESPECT OF HRB FLORICULTURE LIMITED

Background

1. Securities and Exchange Board of India (SEBI) vide an ex-parte interim order dated June 15, 2016 (Interim Order) had issued directions against HRB Floriculture Limited (HRB / the company) *inter alia* freezing the voting rights and corporate benefits like dividend, rights, bonus shares, split etc. in respect of the proportion of promoter / promoter group shareholding (including certain persons allegedly shown as public shareholders) which was non-compliant with minimum public shareholding norms, as stipulated under Rule 19(2)(b) and 19A of the Securities Contracts (Regulations) Rules, 1957 (SCRR), till the company complied with the same. The Interim Order had observed that the combined shareholding of the promoters and persons acting in concert (PACs) in the company, as on March 31, 2016 was 90.06%, implying that the public shareholding was at a meagre 9.94%.
2. Subsequently, vide an order dated April 07, 2017 (Confirmatory Order), SEBI confirmed the said directions issued against HRB vide the Interim Order.
3. The company preferred an appeal against the SEBI order dated April 07, 2017 before the Hon'ble Securities Appellate Tribunal (SAT). The basic argument of the company before Hon'ble SAT was that in view of the family settlement arrived at by and between the promoters of the company in year 2010, some of the promoters had ceased to be promoters and therefore, their status changed from "promoter" category to the "public" category. The company contended that the Bombay Stock Exchange (BSE) had accepted the above position and therefore, it could not be said that the minimum public shareholding requirement set out

in Rules 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement had been violated by the company.

4. The Hon'ble SAT vide its order dated November 03, 2017 *inter alia* observed that although SEBI had held that the company had failed to comply with the minimum public shareholding requirement, there was no finding recorded either by BSE or by SEBI on the plea raised by the appellant that on account of family settlement, some of the promoters ceased to be the promoters and their status changed from the "promoter" category to "public" category. In these circumstances, the Hon'ble SAT permitted the company to make a representation to SEBI in support of its abovementioned contention which, according to the company, resulted in compliance with the minimum public shareholding requirements. It further directed SEBI to consider the said representation and pass appropriate order thereon as it deems fit and proper.

Contentions raised in the representation and personal hearing:

5. Accordingly, the company submitted a representation dated November 14, 2017 to SEBI, vide which it submitted *inter alia* the following:
- (a) During the period June 2006-September 2010, the company had eight promoters holding 21 lakhs equity shares constituting 41.17% of the company's paid up equity capital. The details of the promoters' holding were as under:

Period From June 2006 to September 2010			
Sr.No.	Name of the promoter	Shareholding	
		Shares	Percentage holding %
1.	Krishan Kumar Parwal	8,64,400	16.95
2.	Sunita Parwal	80,100	1.57
3.	Basanti Devi Parwal	1,10,100	2.16
4.	Hansraj Parwal	2,00,100	3.92
5.	Nirmala Devi Parwal	95,100	1.86
6.	Ram Janki Devi Parwal	55,000	1.08

7.	Vinesh Kumar Bhargva	50,100	0.98
8.	Vinod Kumar Parwal	6.45.100	12.65
	Total	21,00,000	41.17%

- (b) Total number of shares as per the shareholding pattern of the company for the quarter ended September 30, 2010 was 5100200 shares. The aforesaid capital included 2823900 partly paid-up shares.
- (c) On 30-10-2010, the management of the company took a decision to forfeit the aforesaid 2823900 partly paid-up shares on account of non-payment of calls in arrears. As such, the capital of the company was reduced to 2276300 from 5100200 shares.
- (d) The fact regarding forfeiture of the aforesaid shares was intimated to the Registrar of Companies in the Annual Return as well as in the Balance Sheet filed with Registrar of Companies. The aforesaid action was also brought to the notice of the Bombay Stock Exchange at the relevant point of time.
- (e) In the month of October 2010, a family settlement was arrived at between the shareholders who were included in the promoter's category. The settlement resulted in the company coming under the management of Mr. Krishan Kumar Parwal. In accordance with the family settlement, the family members started living separately and assets were also divided / exchanged as a sequel thereto in order to avoid further controversy. In addition thereto, the immovable properties belonging to the family members were also exchanged. Accordingly, Sale Deeds/Gift Deeds were executed within the family members. Since it was decided that the management of the company will go to Krishan Parwal as per the settlement, the other members of the family expressed their desire to step out of the promoter's category of the respondent company. The family settlement qua the HRB Floriculture Limited has been kept with mediator, copy of which can be produced before SEBI.
- (f) As a result of the desire of the other family members and in compliance of the aforesaid family settlement, on 20-10-2010, the company received letters from Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar Parwal, Nirmala Devi Parwal, Vinesh Kumar

Bhargava and Ram Janki Devi Parwal intimating that they are no longer associated with the company as a "Promoter" and as such they requested the company to change their status from "Promoter" category to "Public" category.

- (g) Since as per the settlement, the division of the family was not only of business but also at personal level as the family members started living separately at different addresses and had separate electricity and gas connection, there was a complete partition of the family members and accordingly, the management of the company decided to change the category of the aforesaid shareholders in the company while reporting to the stock exchange.
- (h) The aforesaid change in the shareholding pattern was duly informed to the Bombay Stock Exchange Limited vide letter dated 22-11-2010 which was sent by Speed Post on 23.11.2010, wherein the company informed the BSE about the change in status from "Promoter" category to "Public" category. After the receipt of the aforesaid letter, no query was raised by the BSE and therefore the company remained under the impression that it had complied with all the provisions of the listing agreement as well as Securities Contract (Regulation) Act, 1956.
- (i) The securities of the company, though listed on stock exchange, were suspended for the trading on account of non-payment of fees and as such, in 2012, the management of the company decided to apply for revocation of suspension of trading of equity shares to the BSE. Accordingly an application was made to the BSE for revocation of suspension, in response to which the BSE sought certain queries on forfeiture of equity shares from the company which were duly explained.
- (j) Even at the time of revocation of suspension of trading of equity shares by the Bombay Stock Exchange, no query was made by the BSE regarding the change in the "Promoters" category.
- (k) After the revocation of suspension of trading of equity shares by the BSE, the fact of change in the status of Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar Parwal, Nirmala Devi Parwal, Vinesh Kumar Bhargava and Ram Janki Devi Parwal is being displayed on the website of the Bombay Stock Exchange and the shareholding pattern

depicting change in the "Promoter" category is being filed with the BSE since October 2010 till date. Further, in a recent response to the query of the company, the BSE has clarified that whatever disclosures are submitted by the company, the same are disseminated on the Exchange's website and they can be accessed from the Exchange website. In view of the same, if the change in the promoters' holding has been available on the website of BSE, there was no occasion for the company to believe that the BSE is not aware of the change in the shareholding of the promoters.

- (l) Since there has been no change in the status of shareholding from October 2010 till date, the same shareholding pattern is being sent to the BSE from time to time in compliance of the listing agreement and therefore the fact regarding the change in "Promoter" category is known to BSE from 22-11-2010.
- (m) SEBI vide its letter dated 1-10-2015 informed that BSE has clarified that they have not received any letter from the company. The aforesaid letter was replied to by Mr. Krishan Kumar Parwal vide letter dated 26.10.2015 wherein it was categorically stated that on the basis of the professional advice and the specific letters received from Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar Parwal, Nirmala Devi Parwal, and Ram Janki Devi Parwal, the shareholding of the said persons was put in the public category. Moreover, as the company is being managed by the Mr. Krishan Kumar Parwal and other board of directors, the family members as pointed out above have no role to play in the day to day affairs of the company. It was further pointed out that there is presumption of delivery in the matter of speed post and therefore, the onus is on the BSE to show that a speed post article was not delivered, particularly when the effect of the letter was given by the BSE while displaying shareholding pattern as filed by the company. It was further submitted that Basanti Devi Parwal, Hans Raj Parwal and Ramjanki Devi Parwal have different address than Mr. Krishan Kumar Parwal. The fact of family settlement arrived at between the members of the family was also stated and in this connection, various documentary proof including Ration Card, Electricity Bill, Gas connection, Voter ID were annexed in order to demonstrate that the aforesaid three persons have no relation qua the promoter category of the Applicant Company.

- (n) SEBI has wrongly interpreted the disclosure made and instead of seeking explanation from BSE, the company is being penalized for no fault on its part which have been regularly and meticulously complying with the provisions of SEBI Regulations and other Corporate Laws.
- (o) While revoking the suspension in trading of equity shares of the company, the BSE directed that the promoters shareholding i.e. 944500 equity shares shall remain in lock-in period up to 31-12-2012. A bare perusal of the shareholding pattern of the company would go to show that the aforesaid shares belong to only Mr. Krishan Kumar Parwal and Sunita Parwal. The rest of the persons who were excluded from the promoter's category in the year 2010 have not been included by the BSE. The change in the promoters' category was therefore known to the BSE since 22-11-2010 and the present impugned order having been passed on 15-6-2016 is clearly time barred and suffers from the vice of gross delay, laches and acquiescence.
- (p) In another similar matter, SEBI vide its letter dated 17-8-2016 issued in response to the request made by M/s. Alembic Pharmaceuticals Limited, has approved the reclassification of the promoters group which was essentially on the basis of the submission by the company that some of the shareholders who earlier were classified under the promoter category have expressed their desire for reclassification of their shareholding in the company from promoter group to public category. The basis of the submission given was that the shareholders, even though related to the other promoters of the company, are leading their lives and occupations independently and are not connected, directly or indirectly, in any way whatsoever, with any activity of the company. Further, the other persons in the promoter group of the company do not have any control over the affairs or the decision making process of the above relative of the promoter. It was also stated on behalf of Alembic Pharmaceuticals that the persons included in the promoter category do not, directly or indirectly, exercise control over the affairs of the company nor hold any position of the Manager (Personnel) in the company. The aforesaid request of the company was accepted by the SEBI by observing that the company may not be required to obtain approval of the shareholders for the proposed reclassification. This approval by the SEBI, if viewed in the facts and circumstances of the present controversy relating to the company, clearly goes to show that the Bombay Stock Exchange accepted and

acknowledged the reclassification of the promoters group by the Applicant company. Furthermore, as per the Family Settlement arrived between the family members belonging to the promoters group, the persons who have been excluded from the promoters and included in the public category have given their affidavits to the effect that they do not hold any position in the management of the company nor they are connected directly or indirectly with the activity of the respondent company.

- (q) As far as the issue regarding the 'disclosure under Regulation 30(1) and 30(2) of SEBI (SAST) Regulations, 2011 is concerned, it is submitted that the regulations of 2011 was made applicable w.e.f. September 2011 and therefore, the disclosures filed in the month of April 2011 were governed by the erstwhile regulation 8 of the SEBI (SAST) Regulations, 1997. The disclosure made in April 2012 under Regulation 30(1) and 30(2) of SEBI (SAST) Regulations, 2011 has been wrongly interpreted for the reason that the BSE has made faulty display on its website by placing Vinod Kumar Parwal and Nirmala Devi along with the promoters Krishan Kumar Parwal and Sunita Parwal when in fact the disclosure regarding them was filed separately with the BSE. As understood, the disclosure under regulation 30(1) deals with the disclosure by a person who together with the PAC holds more than 25% of the voting rights in the target company. In compliance of the aforesaid regulation, the disclosure was made by Vinod Kumar Parwal and Nirmala Devi, who is a wife of Vinod Kumar Parwal, with BSE. Similarly in compliance of the regulation 30(2), disclosure was made by the Krishan Kumar Parwal and Sunita Parwal being the Promoters and PAC with him, and the same was filed with the BSE. It is pertinent to note that even though the disclosure was made separately to the BSE, the BSE while uploading on the website, merged the disclosures and displayed the disclosure made under Regulation 30(1) and 30(2) jointly which resulted in showing Vinod Kumar Parwal and Nirmala Devi as the promoters of the company.
- (r) It is pertinent to note that BSE while revoking the suspension in trading of securities ought to have mandated a condition in the year 2012 to bring down the promoter's shareholding upto 75%. The BSE ought to have informed the management of the company that reclassification in promoters category would not result in the shareholding of the ex-promoter being included in public shareholding.

- (s) The BSE never informed the company that the shareholding of the promoters is beyond 75% and the step to be taken for bringing it to the level of 75%.
 - (t) As far as violation of Regulation 31A(7)(b) of the Listing Regulation is concerned, it may be noted that the reclassification in the promoters category took place in the year 2010 when neither the aforesaid Regulation nor the Listing Regulation was in force.
 - (u) It may also be noted that in the reply filed before the Securities Appellate Tribunal, the SEBI did not offer any comments on the contention of the applicant that at the time of revocation of suspension of trading in equity shares, BSE had recognized only Krishan Kumar Parwal and Sunita Parwal as the promoters. The same shows that even though SEBI sought reply on the delivery of letter dated 22-11-2010, it did not seek explanation on the aforesaid fact from the BSE. When the applicant company sought copy of the communications between the BSE and SEBI, the same was denied to the applicant company.
 - (v) The company is not doing any substantial business and does not hold any liquid assets. The net worth of the company is only Rs.40,27,080/- as on 30.06.2017. Since Revocation till date, only 100 shares have been traded in BSE.
6. In the instant matter, in order to comply with the principles of natural justice, opportunities of personal hearing were provided to the Noticee by scheduling the same on June 19, 2018, August 14, 2018, October 09, 2018 and October 26, 2018. However, on all the four occasions, the Noticee failed to attend the hearing.

Consideration of issues

7. I have considered the facts of the case, the submissions of the Noticee as contained in its representation dated November 14, 2017 and other material on record. I note that the instant matter is concerned with the singular issue of whether the company is compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR. As per the company's submissions, it is already compliant with the said requirements. I note that the company has rested its entire case on the purported reclassification of some of the promoter entities into public shareholders in November 2010,

which, according to the company, resulted in it being compliant with the said requirements. The entire representation of the company hinges on this pivotal point. In light of the contentions raised by the company, I now proceed to decide whether the purported reclassification of some of the promoter entities into public shareholders is valid or not.

8. The Noticee has repeatedly asserted that the promoter shareholders of the company had a family settlement in October 2010 which resulted in the company coming under the management Shri Krishan Kumar Parwal. It has further submitted that as per the said family settlement, six other family members (viz. Basanti Devi Parwal, Hansraj Parwal, Nirmala Devi Parwal, Ram Janki Devi Parwal, Vinesh Kumar Bhargava and Vinod Kumar Parwal), who were earlier classified as promoter entities, decided to step out of the promoters' category of the company. Accordingly, the company received letters from the said six entities requesting change in status from "promoter" category to "public" category. The company has further submitted that upon receiving such request, the management decided to change the category of the aforesaid shareholders from "promoters" to "public". The company claims that the aforesaid change was duly informed to the BSE vide letter dated November 22, 2010, sent by Speed Post on November 23, 2010. Thereafter, since December 2010 quarter onwards, the Shareholding pattern of the company, disclosed by the company and appearing on the BSE website, has been showing only Krishan Kumar Parwal and his wife, Sunita Parwal, under the "promoter" category, holding in aggregate 9,44,500 shares (41.49%), whereas the abovementioned six other shareholders (viz. Basanti Devi Parwal, Hansraj Parwal, Nirmala Devi Parwal, Ram Janki Devi Parwal, Vinesh Kumar Bhargava and Vinod Kumar Parwal), who were then holding 50.77% shares in aggregate, have continuously been shown as part of the shareholding belonging to the category "public" and holding more than 1% of the total shares. Thus, the company has contended that since the promoters, after reclassification, held only 41.49% shares in the company, it is compliant with the provisions of Rules 19(2)(b) and 19A of the SCRR.
9. The company has cited the following grounds in support of its contention that the reclassification, pursuant to the family settlement, was valid:
 - (a) In accordance with the family settlement, the then promoter entities started living separately and assets were divided. There was complete partition. The company is being

managed by Shri Krishan Kumar Parwal and other directors. The abovementioned six persons have no role to play in the day to day affairs of the company.

- (b) The company's letter dated November 22, 2010 to BSE, informing about re-classification of promoter shareholders, was sent by Speed Post, for which the postal receipt is available. There is a legal presumption that the said letter was delivered.
- (c) After the receipt of company's letter dated November 22, 2010 by BSE, informing about re-classification of promoter shareholders, no query was raised by BSE. The company remained under the impression that it had complied with the provisions of the Listing Agreement and other provisions.
- (d) In response to an application by company for revocation of suspension of trading in equity shares of the company in 2012, though some query was raised by BSE regarding forfeiture of equity shares, there was no query regarding change in "promoters" category. Further, while revoking the suspension, the BSE had directed that the promoters' shareholding i.e. 944500 equity shares shall remain in lock-in period up to 31-12-2012, which belonged only to Krishan Kumar Parwal and Sunita Parwal.
- (e) Since the change in promoters' holding has been available on the BSE website, there was no occasion for the company to believe that the BSE was not aware of the same. The same shareholding pattern has been reported by the company to BSE since December 2010 onwards, till date, in compliance of the Listing Agreement.
- (f) In the matter of M/s. Alembic Pharmaceuticals Limited, having similar facts, SEBI had approved the reclassification of the promoter group.
- (g) The disclosures made to BSE under regulation 30(1) and 30(2) of the SAST Regulations, 2011, which were filed separately by public shareholders (Vinod Kumar Parwal and Nirmala Devi) and promoters (Krishan Kumar Parwal and Sunita Parwal) have been wrongly clubbed by BSE on its website, which gives impression that Vinod Kumar Parwal and Nirmala Devi are part of the promoters of the company.
- (h) The BSE never informed the company that the shareholding of the promoters is beyond 75%.

10. I have considered the abovementioned submissions of the company. I note that regulation 2(1)(za) of the SEBI (ICDR) Regulations, 2009, which was applicable at the time of purported re-classification of promoter entities, provided an inclusive definition of “promoter” and included “*the person or persons who are in control of the issuer*” within such definition. I note that though, at the time of purported reclassification of the promoter entities, there was no procedure prescribed for reclassification of promoter entities into “public” category, the abovementioned inclusive definition of “promoter”, as provided above, clearly implied that any person who was in control of a listed company qualified to be a “promoter” of that company.
11. I note that the six promoter entities, who were purportedly reclassified as “public” shareholders in November 2010, together held 50.77% shares in the company, as on December 31, 2010. The details of their shareholding are as follows:

Period – December 31, 2010			
Sr.No.	Name of the promoter	Shareholding	
		Shares	Percentage holding %
1.	Basanti Devi Parwal	1,10,100	4.84
2.	Hansraj Parwal	2,00,100	8.79
3.	Nirmala Devi Parwal	95,100	4.18
4.	Ram Janki Devi Parwal	55,000	2.42
5.	Vinesh Kumar Bhargva	50,100	2.20
6.	Vinod Kumar Parwal	6,45,100	28.34
	Total	11,55,500	50.77%

12. I further note that, as per the shareholding pattern of the company appearing on the BSE website, as on March 31, 2019, the abovementioned entities, except the one mentioned at serial no. 5 in the above table (i.e. Vinesh Kumar Bhargva), continue to hold their respective shares and have a combined shareholding of 48.56% in the company. Since the five promoter entities (viz. Basanti Devi Parwal, Hansraj Parwal, Nirmala Devi Parwal, Ram Janki Devi

Parwal and Vinod Kumar Parwal), who were re-classified as “public” shareholders, continue to hold substantial number of shares (48.56%), which is even more than 41.49% shares held by the declared promoters (i.e. Krishan Kumar Parwal and Sunita Parwal), it has to be necessarily presumed, in the absence of sufficient evidence to the contrary, that the said five persons continued to remain in control of the company.

13. The company, in its submissions, has relied on the existence of a “family settlement”, pursuant to which the company came into the possession of Krishan Kumar Parwal and the six promoter shareholders were reclassified as “public shareholders”. In this regard, I am of the opinion that a family settlement, per se, cannot be taken as a conclusive evidence of some promoter entities having given up control in a listed company, which they exercised earlier, unless there is sufficient proof of effective changes in voting rights, management control, acting as directors, ability to appoint or nominate directors, etc., carried out through various actions and documents, which reflect such cessation of control. For the purpose of a family settlement, a listed company, which is jointly owned by the family members along with other public shareholders through their shareholding, cannot be treated on the same footing as any other movable or immovable asset. Since the reclassified promoter entities, who are close relatives, continued to hold substantial number of shares (48.56%) in the company even after the purported family settlement, there is a natural presumption that they still retained control over the company, unless it is proved otherwise. In such a scenario, where reclassified promoter entities continued to hold substantial stake, the onus of proof of them having given up control clearly rested with the company. However, even though four opportunities of personal hearings were afforded, the company failed to attend any of the hearings nor did it produce sufficient evidence to show as to how the “reclassified promoters” did not exercise any control in the company. The company has failed to produce a copy of the purported “family settlement” and instead has produced merely copies of certain sale deeds and a gift deed pertaining to agricultural land and plots of land with buildings, which do not contain any reference to purported family settlement. I note that the company has provided separate affidavits dated 07.11.2016 and 09.11.2016 executed by said five reclassified promoters wherein they have *inter alia* averred that have no association with the company, except holding shares therein. However, in the absence of other independent supporting evidence of them having given up control in the company, the said affidavits do not carry any evidentiary value.

Thus, the reclassification of such promoter entities as “public” shareholders, based on such family settlement, cannot be accepted in law.

14. The company has also harped on its submission that it had informed BSE about the reclassification of the promoter entities and that BSE never raised any query regarding the same. According to it, the BSE did not raise query regarding said reclassification, even while revoking the suspension of trading in the scrip of the company in 2012. It has also contended that since December 2010, it has been showing only two entities (Krishan Kumar Parwal and Sunita Parwal) as “promoter” entities on the BSE website and that the other entities, who were reclassified, have continuously been shown as part of “public” shareholders. In this regard, I am of the opinion that mere continuous disclosures showing the reclassified ‘Promoter’ entities, who continued to hold close to 49% shares in the company, as ‘public’ shareholders at the exchange do not validate such categorization, since the reclassification itself was invalid. Such disclosures, though made continuously, do not confirm or ratify that they belonged to the “public” category.
15. I note that the company, in support of its contentions, has cited the case of *Alembic Pharmaceuticals Ltd.*, where SEBI had purportedly allowed reclassification of promoter entities into “public” shareholders. As per the company, the said case had similar facts and circumstances wherein some of the shareholders of the said company had expressed their desire for reclassification from Promoter category to public category. However, I note from the records that the facts of the instant case differ from those in the matter of *Alembic Pharmaceuticals Ltd.* as said matter pertained to an application for re-classification of certain promoter entities of the said company, under the erstwhile provisions of regulation 31A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). Under the said provisions of regulation 31A, which have subsequently been amended w.e.f. 31.05.2018, the exchanges have been given the power to allow an application for reclassification, submitted along with all relevant evidence, on being satisfied with the compliance of various conditions mentioned in the regulation. I further note from the records that in the said matter, SEBI had not granted any approval for reclassification but had merely allowed the applicant promoters to approach the stock exchanges for reclassification under the erstwhile provisions of regulation 31(A)(2) & (3) of the LODR Regulations, without obtaining the approval of the shareholders. Further, the said case did not pertain to the issue

of compliance with minimum public shareholding requirements, as the entire promoter group, even prior to the proposed reclassification, was holding less than 75% shares in the said company (i.e. *Alembic Pharmaceuticals Limited*). Considering the above, I find that the case cited by the company is not relevant in this matter.

16. Having observed as above, I am of the opinion that even if the purported reclassification is taken as valid, the same would not have had any bearing on the issue of compliance with requirement pertaining to minimum public shareholding. In this regard, I find it imperative to look into the rationale behind insertion of Rule 19A of the SCRR, vide which the requirement pertaining to minimum public shareholding of 25% in a listed company for continuous listing was introduced in the SCRR, with effect from June 04, 2010. The same has been clearly stated in the Press Release dated June 04, 2010, issued by the Ministry of Finance, Government of India, in *inter alia* the following words: "*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.*" The proviso to clause (1) of Rule 19A (as amended with effect from August 09, 2010), required a listed company which had public shareholding below 25% as on June 04, 2010, to increase the same to at least 25% within a period of three years from the said date (i.e. by June 03, 2013), in the manner specified by SEBI. It is further pertinent to note that vide Circulars dated December 16, 2010, February 08, 2012 and August 29, 2012, SEBI amended the erstwhile Clause 40A of the Listing Agreement to provide for compliance with the requirements specified in Rule 19(2) and 19A of the SCRR by an issuer company and to specify the various methods by which an issuer company, having public shareholding of less than 25%, could comply with the minimum public shareholding requirement. While the said methods included varied measures like issuance of shares to public through prospectus, offer for sale of shares held by promoters to public through prospectus and through secondary market, rights issue and bonus issue to public shareholders etc., the said methods did not include reclassification of promoter entities into public shareholders, as one of the methods to be followed by a listed company to achieve minimum public shareholding. Even when the abovementioned Circulars, which had amended Clause 40A of the Listing Agreement, were rescinded and the requirement regarding compliance of minimum public shareholding, as prescribed under Rules 19(2) and 19A of the SCRR, was incorporated in regulation 38 of the LODR Regulations, SEBI, vide Circulars

dated November 30, 2015 and February 22, 2018 again provided various methods, including those as mentioned above, without including reclassification of promoter entities into public shareholders, as one of the permitted methods. Thus, it is amply clear that mere reclassification of promoters has not been envisaged as one of the permitted methods of complying with prescribed minimum public shareholding requirement under law. Thus, even if it is assumed that the purported reclassification in the instant case was valid, the same cannot be said to have resulted in compliance with minimum public shareholding requirement, as any such proposition would defeat the very objective of Rule 19A read with Rule 19(2)(b) which seeks to achieve dispersed shareholding. In this context, it is worth quoting the observation of the Hon'ble SAT in its judgement dated 13/07/2013 in *Gillette India Vs. SEBI & Ors.* (Appeal No. 65 of 2013), which reads as “...the fact that the underlying philosophy behind the requirement of a minimum public holding of 25% is prevention of concentration of shares in the hands of a few market players by ensuring a sound and healthy public float to stave off any manipulation or perpetration of other unethical activities in the securities market which would unfortunately be the irrefragable consequence of the reins of the market being in the hands of a few.”

17. From the observations in the above paragraphs, it emerges that the purported reclassification of promoter entities into public shareholders, in the first place, was invalid. It further emerges that, even assuming that the said reclassification was valid, the same cannot be taken into account while calculating public shareholding in a listed company. Thus, the company's contentions regarding purported reclassification of promoter entities and achieving compliance with minimum public shareholding requirement fail on both counts. In view of the same, I do not find any merit in the contentions raised by the company in its representation dated November 14, 2017.

18. While I have reached the abovementioned conclusions entirely on the basis of detailed reasons as stated above, I find it important to highlight the fact that the promoters of the company claim to have entered into a family settlement and executed the purported reclassification during Oct-Nov 2010, which is incidentally a few months after the requirement of minimum 25% public shareholding was introduced in Rule 19A of the SCRR with effect from June 04, 2010. The same renders the entire exercise undertaken by the company suspect.

19. Considering all the above mentioned observations and findings, upon a fresh consideration of the issues raised, I am of the opinion that the company still remains non-compliant with the provisions of Rule 19A of the SCRR, which prescribe minimum public shareholding of 25% as a continuous listing requirement for a listed company.

Directions

20. In view of the above and in compliance with the direction of the Hon'ble SAT in the instant matter issued vide order dated November 03, 2017, I hereby dispose of the company's representation dated November 14, 2017 without interfering with the directions contained in the Confirmatory Order dated April 07, 2017.

Place: Mumbai
Date: June 10, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA