

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(5) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 10 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 READ WITH REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 AND REGULATION 5(3) OF SEBI (INVESTOR PROTECTION AND EDUCATION FUND) REGULATIONS, 2009.

IN THE MATTER OF POLO HOTELS LIMITED –

	Acquirers	PAN
1.	ABHEY RAM DAHIYA	ABVPD0924C
2.	AMARDEEP SINGH DAHIYA	AANPD3910B
3.	PANKAJ DAHIYA	AGLPD1665M

Background –

1. Polo Hotels Limited (“**Target Company/Polo Hotels**”) was incorporated under the Companies Act, 1956 on July 15, 1994 and its shares are listed on BSE Limited (“**BSE**”).
2. On April 20, 1999, V. P. Garg (“**Garg**”) (erstwhile Promoter of the Target Company) entered into an Agreement with Abhey Ram Dahiya and his Associates, viz. Amardeep Singh Dahiya and Pankaj Dahiya (Collectively referred to as “**Acquirers**”) whereby the Acquirers agreed to purchase the entire share capital of 28.09% held by Garg at the rate of ₹8.50 per share. Since the aforesaid acquisition was in excess of 15% of the total shareholding of the Target Company, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

("Takeover Regulations 1997"), were attracted. In order to comply with the aforementioned Regulations, the Acquirers made a Public Announcement on April 24, 1999, making an Open Offer to the remaining shareholders of the Target Company to purchase a minimum of 20% shares of the said Company at an offer price of ₹8.75 per equity share.

3. Subsequent to the above, SEBI received a complaint from one, Komlam Sardana alleging that the Acquirers had acquired 3 Lakh shares from Haryana State Industrial Development Corporation Limited ("**HSIDC**") for ₹71.25 Lakhs at the rate of ₹23.75 per share, whereas the shares were not offered at the same price to the existing shareholders of the Target Company.
4. After enquiring into the complaint, SEBI found that the the Acquirers had violated the provisions of the Takeover Regulations 1997 as the price of ₹23.75 per share paid by the Acquirers for the acquisition of 3 Lakh shares from HSIDC on April 19, 1999, had not been considered for determining the open offer price. Accordingly, vide an Order dated August 1, 2003 ("**SEBI Order**"), SEBI directed the Acquirers to:
 - a. *Make a fresh Public Announcement for 20% shares as required under Chapter III of the Takeover Regulations 1997 in accordance with Regulation 10 and offer to the shareholders of the Target Company the price of ₹23.75 per share along with interest at the rate of 15% per annum for the period from November 16, 1999 to the actual date of payment of consideration.*
 - b. *Pay the balance amount to all the shareholders who shares have been accepted in the public offer made on April 24, 1999, the balance amount*

being ₹15 [₹23.75 - ₹8.75] plus interest at the rate of 15% for the period from November 16, 1999 to actual date of payment of balance consideration.

5. Aggrieved by the SEBI Order, the Acquirers preferred an appeal before the Hon'ble Securities Appellate Tribunal ("**SAT**") (*Appeal no. 205 of 2006*). Vide an Order dated April 19, 2006 ("**First SAT Order**"), the Hon'ble SAT *inter alia* observed that as the buy-back of shares which transpired between the Acquirers and HSIDC was neither disclosed in the Public Announcement nor in the Letter of Offer made to the other shareholders, SEBI was correct in directing the Acquirers to go in for a fresh Public Announcement and offer to the remaining shareholders of the Target Company, the rate of ₹23.75 per share.
6. Aggrieved by the First SAT Order, the Acquirers filed an Appeal before the Hon'ble Supreme Court (*Civil Appeal No. 2727 of 2006*), which vide an Order dated November 26, 2015 ("**First Supreme Court Order**") found that the transaction of buy-back of shares which transpired between the Acquirers and HSIDC was required to be disclosed in the Public Announcement dated April 24, 1999, and accordingly, dismissed the Appeal. Subsequent to the First Supreme Court Order, the Acquirers filed a Review Petition before the Hon'ble Supreme Court (*Review Petition (C) No. 2361 of 2016*), which dismissed the same vide an Order dated July 13, 2016 ("**Second Supreme Court Order**"). Thereafter, the Acquirers filed a Curative Petition before the Hon'ble Supreme Court (*Curative Petition (C) No. 66 of 2017*), which dismissed the same vide an Order dated March 2, 2017 ("**Third Supreme Court Order**").
7. SEBI vide letter dated April 5, 2017, advised the Acquirers to comply with the SEBI Order. As the Acquirers failed to comply with the SEBI Order in spite of

extension of time being granted, SEBI vide letter dated August 3, 2017, once again called upon the Acquirers to comply with the said Order within 7 days failing which, appropriate action would be initiated. Aggrieved by the aforementioned letter dated August 3, 2017, the Acquirers filed an Appeal before the Hon'ble SAT (*Appeal no. 205 of 2017*), which, vide an Order dated August 29, 2017 ("**Second SAT Order**"), had observed: *"In our opinion the present appeal is filed in gross abuse of the process of law merely with a view to delay implementation of the order of SEBI dated 1.8.2003 which was upheld by this Tribunal and finally by the Apex Court on November 26, 2015. Even after SEBI considered the plea of the appellant and granted extension of time, the appellant has failed and neglected to comply with the order of SEBI dated August 1, 2003 ... We grant extension of time for a further period of four weeks for compliance of the Order of SEBI dated August 1, 2003 subject to payment of costs quantified at ₹50,000 to be paid by the appellant to SEBI within a period of 2 weeks from today."*

8. The Acquirers failed to ensure compliance with the SEBI Order within the time stipulated by the Second SAT Order. The Acquirers (through the Merchant Banker) filed a Public Announcement only on November 6, 2017 and thereafter, a draft Letter of Offer with SEBI on November 16, 2017. SEBI offered its observations on the aforementioned draft Letter of Offer vide an Observation Letter dated May 11, 2018 ("**Observation Letter**") *inter alia* advising the Acquirers to incorporate the following in the draft Letter of Offer:

- (a) Public Announcement shall be made for acquiring 44,74,851 equity shares constituting 20% of the latest capital of the Target Company, which is

2,23,74,253 as per the provisions of Regulation 21 of Chapter III of the Takeover Regulations 1997.

- (b) As per the (SEBI) Order, the Acquirers were required to pay the shareholders who were holding shares as on April 30, 1999 (Trigger date) whose shares are accepted in the offer, the price at the rate of ₹23.75 per share along with interest @ 15% for the period from November 16, 1999 to the actual date of payment of consideration.
 - (c) Shareholders other than the above shall be eligible to tender their shares at the price of ₹23.75 per share.
9. A reminder e-mail dated May 18, 2018, was forwarded to the Acquirers to ensure compliance with the Observation Letter and to complete the Open Offer process in compliance with the the SEBI Order.
10. Pursuant to the above, the Acquirers filed an Appeal challenging the Observation Letter, before the Hon'ble SAT (*Appeal no. 192 of 2018 and Misc. Applications no. 195 of 2018 and 205 of 2018*), which vide an Order dated February 15, 2019 ("**Third SAT Order**") had observed: "*Consequently, for the reasons stated aforesaid, we do not find any merit in the appeal and the same is dismissed with costs which we quantify at ₹50,000 since we find that the Order of SEBI dated August 1, 2003 has not been complied with for almost 15 years in spite of the said Order reaching finality. The said costs shall be deposited before the Registrar of this Tribunal within four weeks from today.*"
11. Vide a letter dated February 27, 2019, SEBI *inter alia* advised the Acquirers to complete the Open Offer process in compliance with the the SEBI Order.

12. Thereafter, the Acquirers filed an appeal against the Third SAT Order before the Hon'ble Supreme Court (*Civil Appeal no. 2377 of 2019*), which dismissed the same vide an Order dated April 5, 2019 ("**Fourth Supreme Court Order**"). Subsequent to the aforementioned, the Acquirers vide a letter dated April 16, 2019, informed SEBI that they had filed a Review Application before the Hon'ble Supreme Court.
13. Vide a letter dated May 3, 2019, SEBI *inter alia* advised the Acquirers to comply with the SEBI Order within 5 working days from the date of receipt of the said letter and to complete the pending Open Offer after duly incorporating the observations issued vide the Observation Letter. However, vide a reply dated May 8, 2019, the Acquirers requested SEBI to grant time for compliance with the SEBI Order till the disposal of the Review Application preferred by them before the Hon'ble Supreme Court.
14. Since the directions contained in the SEBI Order dated August 1, 2003, as upheld by the Hon'ble SAT vide its Order dated February 15, 2019 and the Hon'ble Supreme Court vide its Order dated April 5, 2019, have not been complied with by the Acquirers, SEBI, vide order dated June 03, 2019 ("**Execution Order**"), issued the following directions:

*(a) "Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya shall ensure compliance with the SEBI Order dated August 1, 2003 and complete the pending Open Offer after duly incorporating the observations issued vide the Observation Letter dated May 11, 2018 within **twelve working days** from the date of receipt of this Order.*

(b) *Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya shall within **seven working days** from the date of receipt of this Order, deposit an amount of ₹11,94,40,349 (as determined at paragraphs 20–22) in an interest bearing Escrow Account [“Escrow Account in Compliance with SEBI Order dated June 3, 2019 – A/c (in the name of the respective persons/entities)”] created specifically for the purpose in a Nationalized Bank.*

(c) *The Banks are directed that no debits shall be made, without the permission of SEBI, in respect of the bank accounts held by all persons mentioned at paragraph 23(b) except for the purpose of compliance with this Order. Further, the Depositories are also directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by the above said persons. However, credits, if any, into the accounts maybe allowed. The Banks and the Depositories are directed to ensure that all the above directions are strictly enforced. Further, debits may also be allowed for amounts available in the account in excess of the amount to be deposited by the persons mentioned in paragraph 23(b). The Escrow Account(s) shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI. On production of proof by any of the persons mentioned in paragraph 23(b) that the aforementioned money is deposited in the Escrow Account, SEBI shall communicate to the Banks and Depositories to defreeze the accounts.”*

15. It was also provided in the said order dated June 03, 2019 that upon failure to comply with the above directions, SEBI shall initiate other suitable actions under the securities laws against the Acquirers.
16. The Acquirers, vide letter dated June 10, 2019, inter-alia, requested time for compliance with the directions in SEBI order dated August 01, 2003 till the disposal of the review petition filed by them before the Hon'ble Supreme Court. They had requested six weeks' time to deposit the amount of ₹11,24,40,249 as they were in the process of selling the following two properties held in the name of Abhey Ram Dahiya:
- (a) Plot No. 12P, Sector 6, MDC, Panchkula, Haryana (Area 420 sq. mtrs.)
 - (b) Registry No. 394/1, (Area 6 Bigha – 0 Biswa (2.40 acres))
17. Corporate Capital Ventures Private Limited, who was named as the Manager to the Open Offer in the Draft letter of Offer filed by the Acquirers, vide email dated August 29, 2019, submitted copies of Net Worth Certificates of Abhey Ram Dahiya and Amardeep Singh Dahiya, inter-alia, showing a net worth of ₹25.85 crore for Abhey Ram Dahiya and ₹11.73 crore for Amardeep Singh Dahiya, and providing details of following immovable properties held by them as on June 30, 2017:
- (a) Residential H. No. 329, Sec 21A, Chandigarh measuring 1001 sq. mtrs
 - (b) Plot No. 12, Sec 6, MDC, Panchkula measuring 420 sq. mtrs.
 - (c) Residential H. No. 344, Sec 2, Panchkula measuring 300 sq. mtrs

(d) 50% share in Plot No. 531P, Sec 27, Panchkula measuring 420 sq. yards.

18. I find that the Acquirers have been avoiding, delaying and protracting the obligation to make an Open Offer in compliance with the SEBI Order for a considerable period thereby adversely affecting the interests of small shareholders of the Target Company and depriving them of an exit opportunity at a fair price, despite the orders of Hon'ble SAT and Hon'ble Supreme Court directing them to make an open offer as directed by SEBI. Further, the Acquirers failed to comply with the directions in SEBI order dated June 03, 2019, inter-alia, directing them to deposit ₹11,24,40,249 with SEBI within seven working days of the said order. While the Acquirers sought extension of six weeks' time to deposit the amount, I note that no deposit has been made even after the expiry of 9 months from the date of the aforesaid order. Thus, I find that the Acquirers have failed to comply with the directions contained in SEBI orders dated August 01, 2003 and June 03, 2019 and are wilfully protracting such compliance.
19. Having regard to the aforementioned facts, any further delay by the Acquirers at this stage would prejudice the interests of the small shareholders of the Target Company. It is therefore appropriate for SEBI to step in and protect the interest of such shareholders by adopting effective measures through an Order to compel the Acquirers i.e. Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya, to comply with the legal mandate of making an Open Offer in compliance with the SEBI Order read with the Observation Letter dated May 11, 2018, without any further delay.

20. I note that SEBI order dated June 03, 2019 has computed the liability of the Acquirers towards the open offer at ₹13,02,85,968.75 considering interest up to May 31, 2019 and the net amount payable by them at ₹11,94,40,349.00 after adjusting ₹1,08,45,619.75 already deposited by the Acquirers in the Escrow Accounts. I note that the more than 9 months have passed since the SEBI has issued the aforesaid directions to the Acquirers and no amount has since been deposited by the Acquirers pursuant to SEBI order dated June 03, 2019.
21. I note that post SEBI order dated June 03, 2019, an amount of ₹1,20,53,442.75 (Rupees One Crore Twenty Lakh Fifty Three Thousand Four Hundred and Forty Two and Seventy Five Paise) is reported to be available in all the bank accounts held by the Acquirers including the Escrow Accounts. While the Acquirers also hold 1,16,40,513 shares in the demat accounts, I am not inclined to consider the value of such securities as it comprises entirely of the shares of the Target Company. Accordingly, at this stage, for ensuring completion of the Open Offer, the Acquirers' liability (excluding interest payable to the concerned shareholders from June 01, 2019 till date of payment) after adjusting amounts already deposited, amounts to ₹11,82,32,526.00 as computed below:

Table I – Total Outstanding Open Offer Obligation (Amount in ₹)				
	Total Shares	Price/share in ₹	Interest in ₹	Amount in ₹
Continuing/Old shareholders*	2,74,910	23.75	#69.65	2,56,76,594.00
Current shareholders	41,99,941	23.75	0	9,97,48,598.75
Amount [A]	44,74,851			12,54,25,192.75
Shares earlier tendered in open offer* [B]	82,400	15	#43.99	48,60,776.00
Total Amount [A + B]	45,57,251			13,02,85,968.75

Less Total Amount Already deposited by the Acquirers in Escrow Accounts including interest accrued thereon [C]		1,12,57,629.75
Less amount available in other bank accounts of the Acquirers [D]		7,95,813.00
Total Outstanding Open Offer Obligation [(A + B) – (C+D)]		11,82,32,526.00
*Source – Draft Letter of Offer dated November 16, 2017.		
#As per SEBI Order dated August 1, 2003, interest calculated as on May 31, 2019 and may change depending upon actual date of payment.		

22. It is reiterated that the Acquirers have failed to make an open offer despite SEBI directions to do so and the SEBI directions being upheld by Hon'ble SAT and Hon'ble Supreme Court multiple times. Further, Acquirers have failed to deposit the amount directed to be deposited vide SEBI order dated June 03, 2019. I note that adequate opportunities and time have already been provided to the Acquirers to comply with the requirements of law regarding the open offer and SEBI directions issued in this regard. By failing to meet their statutory requirements under the Takeover Regulations 1997, the Acquirers have acted adverse to the interest of the public shareholders of the Target Company, by denying them the right to exit at the price specified under the Takeover Regulations, 1997. In view of the above, I find it necessary to take further steps to ensure that the directions contained in the SEBI order dated August 01, 2003 and June 03, 2019 and SEBI Observation letter dated May 11, 2018 are duly enforced.

Order –

23. In view of the foregoing and in the interest of investors and for protection of their rights, I in exercise of the powers conferred upon me under Section 11B read with Sections 11(1), 11(5) and 19 of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and Regulation 10 of the Takeovers Regulations, 1997 (read with saving provision under Regulation 35 of the Takeovers Regulations, 2011) along with Regulation 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009, hereby direct as under:

(a) The amounts of ₹80,42,167.30 deposited by the Acquirers in the Escrow Account maintained with ICICI Bank Limited (Account No. 000405115689) and ₹32,15,462.45 available in the Escrow Account with ING Vysya Bank Limited (now Kotak Mahindra Bank Limited) (CRN No. CRN No.1024663 / TD No. 565092010951) shall stand attached with immediate effect and shall be utilised for payment of consideration to the eligible and identifiable investors of the Target Company in consideration for the Open Offer.

(b) Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya shall disgorge the balance Open Offer consideration amount of ₹ 11,82,32,526 (Rupees Eleven Crore Eighty Two Lakh Thirty Two Thousand Five Hundred and Twenty Six) along with simple interest @ 15% from June 01, 2019 till date of actual payment. The Acquirers shall pay the said amount on or before March 20, 2020, either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment* to SEBI account as detailed below:

Bank	Branch	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	SEBI	012210210000008

**Noticees who are making e-payment are advised to forward the details and confirmation of the payments so made to the Enforcement Department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 9, 2016, which is reproduced as under:*

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/settlement amount and legal charges along with order details:	

- (c) Banks shall not allow debits from the bank account(s) of the Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya to the extent of the above mentioned amount, without the permission of SEBI. Credits, if any, into the accounts may be allowed. The Banks are directed to ensure that all the aforementioned directions are strictly enforced.
- (d) Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya are restrained from disposing of or alienating any of his assets/ properties/securities, including the assets / properties mentioned at Para 16 and 17 above, except for the purpose of completing the Open Offer.
- (e) Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya are directed to provide, on or before March 20, 2020, a full inventory of all their assets and properties and details of all their bank accounts, demat accounts

and holdings of shares/securities, if held in physical form and details of companies in which they hold substantial or controlling interest.

- (f) The amount disgorged by way of this Order shall be credited to the Investor Protection and Education Fund and shall be utilised in terms of sub-regulation (3) of Regulation 5 of the SEBI (Investor Protection and Education Fund) Regulations, 2009, for restitution of the investors of Polo Hotels Limited, who had tendered their shares and / or who may tender their shares in response to a fresh Open Offer.
- (g) Upon failure to comply with the above directions, SEBI shall initiate other suitable actions under the securities laws including Recovery proceedings under Section 28A of the SEBI Act, prosecution, etc. against Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya.
24. This Order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the above mentioned persons/entities.
25. This Order shall come into force with immediate effect.
26. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance

Place: Mumbai
Date: March 09, 2020

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