WTM/RKA/CFD/DCR-I/38/2012

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES OF IFCI LIMITED – APPLICATION FILED UNDER REGULATION 11(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

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1. The Industrial Finance Corporation of India (IFCI) was established as a statutory corporation on July 1, 1948 under the Industrial Finance Corporation Act, 1948, an Act of the Parliament. Subsequent to the repeal of the said Act, IFCI was converted into a public limited company incorporated under the Companies Act, 1956 on March 31, 1993. The name of IFCI was changed to IFCI Limited (hereinafter referred to as "IFCI Ltd. or "the Target Company"). The Target Company has its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi- 110019 and its equity shares are listed on the Bombay Stock Exchange Limited (BSE), the National Stock Exchange of India Limited (NSE), the Delhi Stock Exchange Limited, the Madras Stock Exchange Limited and the Ahmedabad Stock Exchange Limited.
2. The Government of India (hereinafter referred to as 'the GoI' or 'the acquirer'), through the Ministry of Finance, Department of Financial Services, vide letter dated August 29, 2012 filed an application under regulation 11(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "the Takeover Regulations") seeking exemption from complying with the open offer requirements stipulated under regulations 3(1), 3(2) and 4 of the Takeover Regulations in respect of its proposed increase in shareholding from 0.0000011% to 55.57% in the Target Company, when it exercises its option to convert at par -
   a) Rs.400 crore 20 year 9.75% Unsecured Convertible Debentures, and
   b) Rs.523 crores 20 years 0.1% Optionally Convertible Debentures; into equity shares..

3. It has been stated in the application that

a) IFCI was converted into a company incorporated under the Companies Act and was decided that the new company would be incorporated as a Government Company. In 1994, a decision was taken that the shareholding of Government controlled institutions in IFCI Ltd. should be maintained above 51%.
b) In the wake of likely systemic impact of the Target Company defaulting on its liabilities, the GoI in the year 2001, as part of its recapitalization plan infused Rs.400 crore as Tier -I capital in the form of 20 year 9.75% Unsecured Convertible Debentures (UCDs) and is redeemable on October 30, 2021. The terms of the said instrument provide GoI the option of converting the debentures, wholly or partly into fully paid equity shares of the Target Company, at par, at any time during the currency of debentures subject to compliance with the provisions of SEBI guidelines in respect of preferential allotment.
c) The Target Company has the right to redeem the aforesaid UCDs, fully or partly, at par, at any time after expiry of five years from the date of the issue with prior approval of the Reserve Bank of India (RBI).
d) Thereafter, in December 2002, the GoI approved a financial assistance of Rs.5220 crores to the Target Company, which was to be released over the period from 2003 to 2011-2012. Out of the said package, financial assistance of Rs.2932.31 crores - Rs.523 crores as loan in the form of Optionally Convertible Debentures (OCDs) and Rs.2409.31 crores as grants-in-aid, was released. Since the Target Company started making profits from 2006-2007, it was decided to stop release of further assistance to the Target Company. The aforesaid loan of Rs.523 crores from GoI to the Target Company was in the form of 0.01% OCDs and redeemable on March 28, 2023 and has a right of recompense on par with other stakeholders.
e) A Committee of Secretaries, headed by Finance Secretary and comprising Secretaries from the Departments of Economic Affairs, Expenditure and Financial Services was constituted to look into the issues concerning the Target Company and to suggest a way forward. The Committee, after due consideration and taking into all the facts, has *inter alia* recommended to convert the UCDs of Rs.400 crore and OCDs of Rs.523 crores into equity at par and that the GoI need not make an open offer to the shareholders of the Target Company and instead approach SEBI for an exemption under regulation 11(1) of the Takeover Regulations. The requisite approval for the aforementioned conversion is stated in the decision of the Union Cabinet dated August 23, 2012.

f) The GoI has decided to convert the aforesaid convertible debentures into equity and since the modalities around conversion may entail different time periods, the conversion may happen in two tranches :

   i. Stage I - Conversion of Rs.400 crore UCDs into 40,00,00,000 shares of face value Rs.10/- ;
   ii. Stage II - Conversion of Rs.523 crore OCDs into 52,30,00,000 shares of face value Rs.10/-.

g) After conversion of Rs.400 crore UCDs, the shareholding of GoI would increase from 0.0000011% to 35.15% and after the conversion of Rs.523 crore OCDs, the shareholding of GoI would further increase to 55.57%. These acquisitions would trigger the obligation for the GoI to make open offer under regulations 3(1), 3(2) and 4 of the Takeover Regulations and hence exemption is sought under regulation 11(1) of the said regulations.

4. The aforesaid application of GoI was referred to a Panel of Experts in terms of the *proviso* to regulation 11(5) of the Takeover Regulations for making recommendations on the application. After examination of the facts and circumstances stated in the application, the Panel vide its report dated September 11, 2012 recommended as under:

"<u>Recommendation :</u>

The matter was discussed at length by the Panel at its meeting held on September 3, 2012 when the Panel desired SEBI to seek clarification from the GoI as to whether the loan of Rs 523 crore has been converted into debentures or not. In response to this, SEBI has now produced before the Panel a communication dated September 04, 2012 received from GoI informing SEBI that the loan of Rs 523 crore was in the form of Optionally Convertible Debentures of 20 years at the rate of interest of 0.1% per annum with a right of recompense on par. The nature of the said loan has been reflected in the annual statements of IFCI since 2002-03. Along with said communication, GOI has also furnished a copy of resolution passed by IFCI's Board at its meeting held on 17th December 2007 whereby the Board of IFCI Ltd. has approved the issue of 523 OCDs of Rs. 1 crore each with effect from March 28, 2003 subject to the terms specified therein. In view of this it appears that IFCI Ltd has agreed to covert the said loan of Rs 523 crore into OCDs though the certificates for such OCDs has not been issued by IFCI till date.

On a perusal of IFCI's Annual Report for the year 2011-12, it was observed by the panel that the current authorized equity capital of IFCI may not be enough to accommodate the entire *conversion of debentures of Rs. 400 crore and Rs 523 crore respectively into equity at par. If so, this would require approval of shareholders for reclassifying / increasing the authorized capital of IFCI Ltd. Further, it was observed by the Panel that though GoI desires to convert the debentures of Rs 523 crore into equity at par, the terms of OCDs approved by the IFCI's Board are silent on pricing on resultant equity shares. However, if such a conversion option is exercised u/s 81(3) of the Companies Act, 1956 then the SEBI pricing formula applicable to preferential allotment will not be attracted in view of the provisions contained in regulation 70 of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 which provide exemption to such acquisition of shares on conversion of loans / debentures by Govt. and PFIs.*

Panel observed that conversion of the aforesaid loans into equity of IFCI will make IFCI a Government Company and thereby increase its public accountability. Further, considering the historical background of IFCI which was a statutory corporation till 1993 and which was converted into a public limited company with a view to make it a Government Company, the current proposal for conversion of debentures into equity will be in consonance with the declared policy of GoI with regard to IFCI. Panel agreed that since substantial amount of public funds have been pumped into IFCI Ltd by the Gol, the enhanced accountability will provide additional safeguard to the investment of public funds.

Against the aforesaid background, panel was of the opinion that necessary exemption (as requested) may be given by SEBI to GoI subject to compliance of any other legal and regulatory compliances under the relevant laws, rules and regulations."

5. I have considered the application, the grounds mentioned therein, the recommendation of the Panel of Experts and other materials available on record. The GoI has sought exemption from complying with the open offer obligations under regulation 3(1) & (2) and 4 of the Takeover Regulations in respect of its proposed acquisition of 92,30,00,000 equity shares (*on conversion of Rs.400 crore UCDs in Stage I and Rs.523 crores OCDs in Stage II*) of face value of Rs.10/-. The said proposed acquisition of shares would increase the shareholding of GoI in the Target Company from 0.0000011% to 55.57% and would also result in acquisition of control over the Target Company.

6. The shareholding pattern of the Target Company (before and after the proposed allotment of equity shares pursuant to the conversion of UCDs and OCDs) is as under:-

Particulars	Existing Shareholding (No. of shares)	Existing Shareholding (%)	Proposed Allotment (No. of shares)	Post allotment shareholding (No. of shares)	Post allotment shareholding (%)
Stage I - Conversion of Rs. 400 Crore Unsecured Convertible Debentures at par					
Government of India	8	0.0000011	40,00,00,000	40,00,00,008	35.15
Others	73,78,37,323	99.99	0	73,78,37,323	64.85
Total	**73,78,37,331**	**100.00**	**40,00,00,000**	**113,78,37,331**	**100.00**
Stage II - Conversion of Rs. 523 Crore Optionally Convertible Debentures at par					
Government of India	40,00,00,008	35.15	52,30,00,000	92,30,00,008	55.57
Others	73,78,37,323	64.85	0	73,78,37,323	44.43
Total	113,78,37,331	100.00	52,30,00,000	166,08,37,331	100.00

7. I note that pursuant to proposed conversion of the Rs.923 crore convertible debentures (Rs.400 crore UCDs and Rs.523 crore OCDs) into 92,30,00,000 equity shares , the shareholding of GoI would increase from 0.0000011% to 55.57%. If this conversion takes place, the acquisition of those equity shares by the GoI would trigger obligation to make open offer under regulation 3 (1) (2) and 4 of the Takeover Regulations, unless exempted under regulation 11 thereof. If exemption is not granted the GoI would be obligated to make open offer to acquire 26% additional equity shares in the Target Company from its public shareholders. Therefore, it needs to be examined whether the facts and circumstances of this case merit grant of exemption from the obligation to make the open offer. For this purpose , it needs to be kept in mind that grant of exemption should strike a balance between obligation to make open offer and the interests of investors.

8. I note that the first subscribers to the Target Company's Memorandum and Articles of Association had subscribed to the initial paid up share capital of 8 equity shares, one each, on behalf of the Central Government. Further, while effecting changes to IFCI (*conversion into a company incorporated under the Companies Act*), it was conceived that the new company shall be formed as Government Company under the Companies Act, 1956 to which the

entire business and functions of IFCI as well as its assets and liabilities would be transferred.

9. It is noted that the GoI had given financial assistance to the Target Company to the tune of Rs. 923 crores during year 2001 and 2002. UCDs for Rs. 400 crore were issued at an interest rate of 9.75% p.a. and OCDs for Rs. 523 crore were issued at a nominal rate of interest of 0.1% p.a. In my view, such lower rate of interest in the case of Rs. 523 crore OCDs, has conserved the cash outflow of the Target Company over the years on account of interest payments and in turn has benefited the shareholders of the Target Company. Further, as observed by the Panel, if such a conversion option is exercised under section 81(3) of the Companies Act, 1956 then the SEBI pricing formula applicable to preferential allotment will not be attracted in view of the provisions contained in regulation 70 of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 which provide exemption to such acquisition of shares on conversion of loans / debentures by Government and PFIs. Also, considering the historical background of IFCI, which was converted into a public limited company with a view to make it a Government Company, I find that the current proposal of GoI for conversion of debentures/loans into equity is in consonance with the declared Government policy with regard to the Target Company. Further, since substantial amount of public funds have been infused into the Target Company, I also agree with the observation of the Panel that the conversion of such debts into equity would provide more accountability and would stand as an additional safeguard to the investment of such public funds. These observations also address the issues raised by the Target Company with respect to the interests of the investors vide its letter dated August 29, 2012.

10. I, therefore, agree with the observations and recommendations of the Panel and consider the proposed acquisition of equity shares pursuant to conversion of UCDs of Rs.400 crore and OCDs of Rs. 523 crore and acquisition of control, by the GoI in the Target Company, a fit case to grant exemption from the obligation to make an open offer as required under regulations 3(1), 3(2) and 4 of the Takeover Regulations.

11. In view of the above, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 11(5) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby grant exemption to the acquirer, the Government of India, from complying with the open offer requirements stipulated under regulations 3(1), 3(2) and 4 of

the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 with respect to its proposed acquisition of 92,30,00,000 equity shares pursuant to conversion of Rs.400 crore UCDs and Rs.523 crore OCDs, thereby increasing its shareholding in the Target Company from 0.0000011% to 55.57%.

12. The above exemption is granted with regard to proposed acquisition subject to the following conditions :

    a. The exemption is limited to the requirements of making open offer under regulation 3(1), (2) and 4 and shall not extend to other obligations of GoI and the Target Company under any other law (e.g. disclosure requirements under Chapter V of the Takeover Regulations, the Listing Agreement, etc.);
    b. The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 1956 and other applicable laws ;
    c. The GoI/Target Company shall ensure compliance with the statements, disclosures and undertakings made in the application and subsequent correspondence in this matter.

Date : September 24th , 2012
Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA