

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

ORDER

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

1. Prima Industries Limited (hereinafter referred to as the 'Target Company') is a company incorporated under the Companies Act, 1956 having its registered office at Door No. V/679 C, Industrial Development Area, Muppathadam, Edayar, Cochin, Ernakulam, Kerala - 683110. The equity shares of the Target Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE').
2. Mr. Sanjay Gupta (the applicant), a promoter of the Target Company, on behalf of the promoter group of the Target Company filed an application dated August 24, 2012 with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') under Regulation 11 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations'), seeking exemption from the applicability of the provisions of Regulation 3(2) of the Takeover Regulations, in respect of the increase in promoters' voting rights due to the forfeiture of shares as proposed by the Target Company. This proposed forfeiture will increase the voting rights of the promoters of the Target Company ('proposed acquirers') from 60.13% to 71.36%. It is stated in the application that:
 - a. As per audited Balance Sheet dated March 31, 2011 of the Target Company, an amount of ₹1,25,59,500 was due from the shareholders and payable on 25,11,900 equity shares. The said amount was shown as calls in arrears.
 - b. The management of the Target Company has decided to recover the outstanding amount from the shareholders who have failed to make the shares fully paid up and reminder letters were issued to all such shareholders on December 16, 2011, January 13, 2012 and March 30, 2012 requesting them to

terms of the *proviso* to Regulation 11(5) of the Takeover Regulation. After examination of the facts and circumstances stated in the application, the Panel, vide report dated November 27, 2012 recommended as under-

"It was observed by the Panel that the Target Company had issued letters dated 16.12.2011, 13.01.2012 and 30.03.2012 to the shareholders for making the balance payment but there was no response from the shareholders. Considering the fact that the Target Company has given adequate opportunity to the shareholders to make good the default in making the balance payment towards calls in arrears as also, that there is no direct acquisition by the promoters and the case is quite similar to the case of a buy back (which is exempted under regulation 3(2) subject to certain conditions), the Panel decided to recommend exemption as requested by the applicants.

The exemption may be granted subject to the condition that the Target Company and the applicants (promoters) shall ensure that the forfeiture is in accordance with the Article of Association of the Target Company and relevant provisions of the Companies Act, 1956."

5. I have considered the application of the proposed acquirer, the report of the Panel and the material available on record. It has been submitted before SEBI that the voting rights of the proposed acquirers prior to the proposed forfeiture is 60.13%. I note that pursuant to the proposed forfeiture of 20,16,100 equity shares the voting rights of the proposed acquirers would increase to 71.36% in the Target Company. This increase of 11.23% trigger the obligation to make an open offer in terms of the provisions of Regulation 3(2) of the Takeover Regulations. Therefore, the exemption has been sought by the acquirer from complying with the open offer requirements stipulated under the Takeover Regulations.
6. The shareholding/ voting rights of the proposed acquirers (promoters) of the Target Company before and after the proposed forfeiture, as brought out in the application is mentioned below:

Shareholding pattern of the Target company					
Category	No. of registered shareholders	Before forfeiture		After forfeiture	
		Shares	In %	Shares	In %
Promoter & promoter group	102	77,01,700	60.13	77,01,700	71.36
Body Corporate	12	1,92,000	1.50	1,92,000	1.78
NRI's/ OCB	-	0	0	0	0
FII's/ Bank	-	0	0	0	0
Public	1,355	49,14,300	38.37	28,98,200	26.86
Total	1,469	1,28,08,000	100	1,07,91,900	100

7. I note that there is no direct acquisition of voting rights or shares in the Target Company by the promoters and the increase in percentage of voting rights will be on account of forfeited shares of the Target Company. The said shares would be forfeited in the interest of the Target Company and its shareholders in accordance with the provisions of the Articles of Association and the Companies Act, 1956. I note that the Board of the Target Company, while authorising the forfeiture, had also provided for a notice to be given to the defaulting shareholders before effecting the forfeiture. Further, I notice that the defaulted shareholders, to whom the notices of forfeiture have been dispatched are the resident Indians and the notices have been dispatched to their addresses in India as per the Register of Members available with the Target Company. The Target Company has also submitted that it has complied with procedure laid down in Section 53 of the Companies Act, 1956.
8. I note that the proposed acquirers are in control of the Target Company and the proposed forfeiture would not result in any change in control of the management of the Target Company. I note that pursuant to the proposed preferential allotment of shares, the Target Company will continue to be in compliance with the minimum public shareholding requirements. I also note that the proposed acquisition would not affect or prejudice the interests of the public shareholders of the Target Company in any manner.
9. In view of the above, I agree with the observations and recommendations of the Panel and consider it to be a fit case for granting exemption from the requirements of Regulation 3(2) of the Takeover Regulations.
10. In view of the above findings, I, in exercise of the powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 11(5) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby grant exemption to the proposed acquirer, the promoters of Prima Industries Limited from complying with the requirements of Regulation 3(2) thereof with

respect to their increase in voting rights pursuant to the proposed forfeiture of 20,16,100 equity shares of the Target Company, Prima Industries Limited.

11. The exemption is granted subject to the following conditions:
 - a. The statements/ averments made or facts/ figures given in the application are true and correct to the best knowledge of Target Company.
 - b. The acquirer/ target company shall ensure compliance with the statements, disclosures and undertakings made in the application and subsequent correspondences.
 - c. This exemption is limited to the requirements of making open offer under Regulation 3(2) of Takeovers Regulations and shall not be construed as exemption from the requirements of disclosure required under Chapter V of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, compliance of SEBI (Prohibition of Insider Trading) Regulations, 1992, the Listing Agreement or any other applicable Acts, Rules and Regulations.

12. The exemption so granted above shall not be construed as an exemption from the requirements of any other provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (e.g. disclosure requirements under Chapter II), the Listing Agreement or any other law.

DATE: MARCH 11, 2013
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA