

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

**UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH
REGULATION 23(1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.**

IN THE MATTER OF OPEN OFFER OF M/s JYOTI LIMITED IN RESPECT OF –

- 1. SHRI LAVJIBHAI DALIYA.**
- 2. ANJANI RESIDENCY PRIVATE LIMITED.**

BACKGROUND –

1.1 M/s Jyoti Limited (“**Target Company**”), a Public Listed Company, was originally incorporated on January 1, 1943, as *The Jyoti Limited*. The Target Company was subsequently converted into a Public Limited Company on June 2, 1949 and its name was changed to *Jyoti Limited* on June 1, 1964. The shares of the Target Company are listed on the BSE Limited (“**BSE**”).

1.2 The shareholding in the Target Company as on June 30, 2015 (Source: BSE Website), is reproduced as under:

CATEGORY OF SHAREHOLDER	NO. OF SHAREHOLDERS	TOTAL NO. OF SHARES	TOTAL SHAREHOLDING AS A % OF TOTAL NO. OF SHARES	SHARES PLEDGED OR OTHERWISE ENCUMBERED	
				NUMBER OF SHARES	AS A % OF TOTAL NO. OF SHARES
			As a % of (A+B)		
(A) Shareholding of Promoter and Promoter Group	22	5593425	32.65	5446503	97.37
(B) Public Shareholding	20376	11535567	67.35	0	0
TOTAL (A)+(B)	20398	17128992	100	5446503	31.8

PUBLIC ANNOUNCEMENT OF AN OPEN OFFER FOR ACQUISITION OF 75% EQUITY SHARE CAPITAL OF THE TARGET COMPANY –

- 2.1 On June 22, 2015, Shri Lavjibhai Daliya and Anjani Residency Private Limited (hereinafter collectively referred to as the “**Acquirers**”) made a Public Announcement of an Open Offer for acquisition of 128,46,744 fully paid up equity shares of ₹10 each (representing 75% equity share capital of the Target Company) at a price of ₹63 per share (“**Open Offer**”) in terms of Regulation 15(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“**Takeover Regulations, 2011**”).
- 2.2 An amount of ₹22.5 Crores was also deposited by the Acquirers in an Escrow Account representing an amount of more than 25% of the total consideration payable to the shareholders under the Open Offer (assuming full acceptance of such Offer) in terms of Regulation 17 of the Takeover Regulations, 2011.
- 2.3 A Detailed Public Statement in terms of Regulations 13(4) and 15(2) of the Takeover Regulations, 2011, was issued by the Acquirers on June 29, 2015.
- 2.4 Thereafter, a draft Letter of Offer was filed by the Acquirers with the Securities and Exchange Board of India (“**SEBI**”), on July 6, 2015.
- 2.5 Subsequently, in compliance with Regulation 18(4) and 18(5) of the Takeover Regulations, 2011, the Acquirers issued a Corrigendum (dated July 15, 2016) to the aforementioned Public Announcement dated June 22, 2015 and also the Detailed Public Statement dated June 29, 2015, whereby the price for acquisition of shares of Target Company under the Open Offer, was revised from ₹63 to ₹70.
- 2.6 Vide a letter dated July 20, 2015, the Target Company requested SEBI to issue directions against the Acquirers for withdrawal of the incorrect draft Letter of Offer and for republication of the same with correct details since the names of Directors appearing in the draft Letter of Offer were allegedly incorrect. The Target Company also informed SEBI that it had been registered with the Hon’ble Board for Industrial and Financial Reconstruction (“**BIFR**”) since October 17, 2014 and further, stated that it was a sick industrial company wherein any change in management would require permission of BIFR in terms of Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (“**SICA**”).

- 2.7 SEBI forwarded the abovementioned representation made by the Target Company to the Lead Manager to the Open Offer i.e. Inga Capital Private Limited (“INGA”) vide e-mail dated July 27, 2015, seeking its comments. A reply dated August 3, 2015, was received from INGA.
- 2.8 During the intervening period i.e. pendency of the draft Letter of Offer, SEBI also received complaints alleging acquisition of shares of Target Company by certain entities connected to the Acquirers.

PROCEEDINGS UNDER THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 – BEFORE THE BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION –

- 2.9 The Target Company earlier filed a reference on June 2, 2014 (based on its Audited Balance Sheet for the year ending March 31, 2014), under Section 15(1) of the SICA, before the Hon’ble BIFR. Vide an Order dated September 19, 2014, the Hon’ble BIFR directed as under –

“5. This repeated reference of M/s Jyoti Limited can therefore be considered for Registration as a sick company and provisions of Section 22 of the SICA, 1985, can be allowed to prevail.

ORDER

In the light of the above, the Special Bench of BIFR hereby directs the Registrar BIFR to register this repeated reference (Case No. 62/2014) of M/s Jyoti Ltd. under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.”

- 2.10.1 Subsequent to the Public Announcement dated June 22, 2015 (details mentioned at paragraph 2.1), the Target Company filed a Miscellaneous Application no. 330/2015 in Case No. 62/2014, requesting BIFR for *inter alia* the following:

- a. *To declare null and void the Public Announcement dated June 22, 2015 and the Detailed Public Statement dated June 29, 2015, issued by the Acquirers;*
- b. *To direct the Acquirers to refrain from acquiring the equity shares of the Target Company pursuant to their Public Announcement dated June 22, 2015 and the Detailed Public Statement dated June 29, 2015, respectively.*
- c. *To restrain the Acquirers from taking any action which could effect a change in control and management of the Target Company without permission from the BIFR.*

2.10.2 Vide an *ex parte* Interim Order dated September 15, 2015, the Hon'ble BIFR *inter alia* directed as under –

1. *“All the parties to maintain the status quo on the operations of the company and the controlling stake and management till the next date of hearing.*
2. *No Change of Management (COM) should take place during the pendency of the reference without the permission of the Board.”*

2.11 From the summary record of proceedings of the hearing before the Hon'ble BIFR held on October 5, 2015, the Hon'ble BIFR made the following observations –

2.6 *“Having considered the submissions made during the hearing and material on record, the Bench directed that there being no objections to the company's sickness from the parties present today and considering that the company fulfilled the various criteria for sickness under the Act, the Bench was satisfied that the company had become a sick industrial company in terms of Sections 3(1)(o) of the Act and accordingly declared it to be so. The Bench noted that the provisions of Section 18 of the SICA would have to be explored in public interest in relation to the company. Accordingly, in terms of the powers available u/s 17(3) of the Act, the Bench appointed Central Bank of India (CBI) as the Operating Agency (OA) with directions to prepare a viability study report and revival scheme for the company, if feasible. The OA was directed to keep in view the provisions of Section 18 of the Act and the enclosed guidelines while carrying out this exercise. The cut-off date (COD) for the scheme shall be taken as 31.3.2016. The Bench further issued the following directions*

- a. *The company to submit the Draft rehabilitation proposal to the OA (Central Bank of India) within a period of 8 weeks taking into account the COD as 31.3.2016.*
- b. *The company is restrained from alienating or transferring or otherwise creating any third party rights or disposing off in any manner, in respect of their immovable assets of the company, without the prior approval of the Board. ...”*

2.12 Vide letter dated October 7, 2015, the Target Company forwarded a copy of the Order passed by the Hon'ble BIFR on September 15, 2015, to SEBI. Upon a consideration of the same, the Open Offer was kept on hold.

2.13 Against the BIFR Order dated September 15, 2015, the Acquirers filed an appeal (*Appeal no. 93/2015*) before the Appellate Authority for Industrial and Financial Reconstruction (“**AAIFR**”), which vide an Order dated January 13, 2016, directed as under –

“The instant appeal is preferred against the BIFR Order dated 15.9.2015 by which the BIFR has directed status quo on the operations of the respondent company. M/s Jyoti Ltd. and the controlling stake and management till the next date of bearing. Further, the BIFR has also directed that no change of management shall take place during the pendency of the reference without permission of the BIFR. ...

4. ... Keeping this order dated 5.10.2015 in view, we are of a considered opinion that at this stage the direction of BIFR for maintaining the status quo with regard to the operations and controlling stake and management of the respondent 2 company (Target Company) should not be interfered with and further, that pursuant to the BIFR’s Order dated 5.10.2015, any order for change of management of respondent 2 company can only take place under the aegis of SICRA.

5. ...

6. It is further not disputed that the appellants (Acquirers) in the instant case are neither the shareholders nor the creditors of the respondent 2 company as on date. The appellants have merely expressed their intent to acquire shares of the respondent 2 company. The said intention of the appellants has been till date legally not recognized by the SEBI, which is the authority granting permission to the appellants in the first instance. It is noteworthy that from 22.06.2015 till 15.09.2015 i.e. the date of the impugned Order, the appellants failed to obtain the consent of the SEBI for the purpose of issuing its draft letter for acquisition of the shares of the respondent 2 company in terms of SEBI Regulations which is ordinarily granted within a period of 14 days.

7. ...

8. ... We are of the view that the appeal filed by the appellant is premature and the BIFR had jurisdiction to pass an interim order for maintaining the status quo as well as for making the change of management only with the permission of BIFR.

9. There is no illegality or infirmity in the order passed by the BIFR which may require any interference through this appeal.”

2.14 Vide a letter dated February 2, 2016, the Lead Manager to the Open Offer i.e. INGA, forwarded a letter dated January 22, 2016, from the Acquirers wherein it was *inter alia* stated:

“While we reiterate our conviction in the acquisition of the Target Company, we feel that as the proceedings before the BIFR are long drawn and the inability of SEBI to clear the Letter of Offer, it is not possible to keep the Open Offer in an indeterminate state. The Target Company is reeling under substantial debt and any delay will make the

acquisition meaningless. In view of this, we would like to withdraw the Open Offer made by us and request you to take up the matter with SEBI at the earliest.”

ORDER OF THE SECURITIES APPELLATE TRIBUNAL DATED MAY 2, 2016 –

2.15 Thereafter, the Acquirers filed an appeal before the Hon’ble Securities Appellate Tribunal (“SAT”) i.e. *Appeal no. 99 of 2016 – Shri Lavjibhai Daliya and Anjani Residency Private Limited vs. SEBI*. The Hon’ble SAT disposed of the aforesaid Appeal vide an Order dated May 2, 2016, with the following directions –

1. *“Appellants who had made public announcement on June 22, 2015 to acquire 75% shares of Jyoti Ltd. have made representations to SEBI on February 2, 2016 (and March 14, 2016), seeking to withdraw the open offer. Admittedly, the said representation has not been considered and disposed by SEBI. Counsel for SEBI seeks 3 months’ time to dispose of the said representation made by the appellant. Accordingly, the appeal is disposed of directing SEBI to dispose of the representation made by the appellants on February 2, 2016 and March 14, 2016 respectively as expeditiously as possible and preferably within 3 months from today.*
2. *Appeal is disposed of in the above terms with no order as to costs.”*

PROCEEDINGS PURSUANT TO THE SAT ORDER DATED MAY 2, 2016 –

3.1 Vide letter dated May 23, 2016, the Advocate for Shri Lavjibhai Daliya requested SEBI for an opportunity of hearing for disposal of the representation made by the Acquirers for withdrawal of the Open Offer.

3.2 An opportunity of personal hearing was accordingly granted to Shri Lavjibhai Daliya on July 27, 2016. The aforementioned entity availed of the opportunity of personal hearing on the said date.

3.3 During the aforementioned hearing, Shri Lavjibhai Daliya was directed to submit the following information, viz. –

- a. The Acquirers’ rationale for making the Open Offer for acquisition of shares of the Target Company when such Company was already under reference before BIFR, under SICA;
- b. Shareholding pattern in the Acquirer Company i.e. Anjani Residency Private Limited;
- c. Current business activities of the Acquirer i.e. Shri Lavjibhai Daliya;
- d. Memorandum of Appeal filed by the Acquirer i.e. Shri Lavjibhai Daliya before AAIFR, against the BIFR Order dated September 15, 2015.

- 3.4 Vide an e-mail dated July 27, 2016, Shri Lavjibhai Daliya submitted the abovementioned information on behalf of himself and Anjani Residency Private Limited.

CONSIDERATION OF ISSUE AND FINDINGS –

- 4.1 I have considered the representation dated January 22, 2016 and also the submissions made by the Acquirer during the hearing held on July 27, 2016 alongwith the information submitted by them vide e-mail dated July 27, 2016. I have also considered all other relevant material available on record. In light of the same, I shall now proceed to deal with the matter.
- 4.2 The issue for determination in the instant proceeding is '***Whether the Open Offer made by the Acquirers can be allowed to be withdrawn in accordance with Regulation 23(1) of the Takeover Regulations, 2011?***'
- 4.3 In their submissions and during the hearing before me, the Acquirers *inter alia* reiterated the submissions contained in their letter dated January 22, 2016. Further, vide the abovementioned e-mail dated July 27, 2016, the Acquirers made the following submissions:

“The Acquirers made the Open Offer on 22.6.2015/ 29.6.2015, when the (Target) company was not declared as a sick industrial company and therefore, the steps under Section 17 (Powers of Board to make suitable order on the completion of inquiry) or Section 18 (Preparation and sanction of scheme) (of the SICA) couldn't have been initiated.

Section 22 (of the SICA) dealing with Suspension of legal proceedings, contracts etc. also is applicable against the Winding up Proceedings or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof etc.

Subsequent to (the Target Company's) letter dated 22.07.2015, the Acquirers had consulted independent experts in BIFR/SICA matters and were advised that there is no specific provision in SICA prohibiting any entity in making an Open Offer to the shareholders of a Company claiming to be sick but the Order for sickness is yet to be pronounced.”

4.4 Before I proceed to consider the issue for determination in the instant proceedings, the relevant provisions of the Takeover Regulations, 2011, are reproduced below –

“Withdrawal of open offer.

23. (1) *An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances, –*

- a. statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;*
- b. the acquirer, being a natural person, has died;*
- c. any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or*
- d. such circumstances as in the opinion of the Board, merit withdrawal.*

Explanation – For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the Board on its official website.”

4.5.1 Upon a consideration of the above, it is observed that the conditions stipulated in Regulations 23(1)(a), (b) and (c) for withdrawal of Open Offer are clearly not applicable to the facts in the instant proceedings. Therefore, the only provision under which the Acquirers can be permitted to withdraw the impugned Open Offer is Regulation 23(1)(d) where in the opinion of SEBI, there exists such circumstances which merit withdrawal of such Offer.

4.5.2 I note that the abovementioned provisions of Regulation 23(1) of the Takeover Regulations, 2011, are similar to the provisions of Regulation 27(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“**Takeover Regulations, 1997**”), to the extent that the aforesaid provisions deal with the circumstances in which an Open Offer made under those Regulations may be withdrawn. Regulation 27(1) of the Takeover Regulations, 1997 (which was repealed by the Takeover Regulations, 2011), is reproduced below –

“27. Withdrawal of offer

(1) No public offer, once made, shall be withdrawn except under the following circumstances:-

- (a) ...*
- (b) the statutory approval(s) required have been refused;*

- (c) *the sole acquirer, being a natural person, has died;*
- (d) *such circumstances as in the opinion of the Board merits withdrawal.”*

4.5.3 In the matter of *Nirma Industries Limited and Another vs. SEBI (Civil Appeal no. 6082 of 2008 – Judgment dated September 9, 2013)*, the Hon’ble Supreme Court had an occasion to consider the appeal filed by the Appellants therein against the Order of the Hon’ble SAT dated June 5, 2008, rejecting the request for withdrawal of an Open Offer to acquire the equity shares of Shree Ram Multi Tech Limited (Target Company) under Regulation 27(1) of the Takeover Regulations, 1997. The Hon’ble Supreme Court *inter alia* observed –

- 49. *“Applying the aforesaid tests, we have no hesitation in accepting the conclusions reached by SAT that clause (b) and (c) referred to circumstances which pertain to a class, category or genus, that the common thread which runs through them is the impossibility in carrying out the public offer. Therefore, the term such circumstances in clause (d) would also be restricted to situation which would make it impossible for the acquirer to perform the public offer. The discretion has been left to the Board by the legislature realizing that it is impossible to anticipate all the circumstances that may arise making it impossible to complete a public offer. Therefore, certain amount of discretion has been left with the Board to determine as to whether the circumstances fall within the realm of impossibility as visualized under sub-clause (b) and (c). In the present case, we are not satisfied that circumstances are such which would make it impossible for the acquirer to perform the public offer.”*

4.5.4 Further, in the matter of *SEBI v. Akshya Infrastructure Private Limited (Civil Appeal No. 6041 of 2013– Order dated April 25, 2014)*, the Hon’ble Supreme Court while examining Regulation 27(1) of the Takeover Regulations, 1997, *inter alia* observed:

- 35. *“... As pointed out earlier, we do not accept the distinction sought to be made by Mr. Nariman with regard to voluntary open offer and mandatory open offer which is the result of a triggered acquisition. The consequences of both kinds of offers to acquire shares in the Target Company, at a particular price, are the same. As soon as the offer price is made public, the securities market would take the same into account in all transactions. Therefore, the withdrawal of the open offer will have to be considered by the Board in terms of Regulation 27(1)(b)(c) and (d). Further, the deletion of Regulation 27(1)(a) does not, in any manner, advance the case of the respondent. It rather reinforces the conclusion that an open offer once made can only be withdrawn in circumstances stipulated under Regulation 27(1)(b)(c) and (d). ...*
- 36. *We also do not find substance in the submission of Mr. Nariman that the judgment in Nirma Industries (supra) needs reconsideration. In our opinion, the ejusdem generis principle is fully applicable for the interpretation of Regulation 27(1)(b)(c) and (d) as there is a common genus of impossibility.”*

4.5.5 A consideration of the provisions of Regulation 23(1) of the Takeover Regulations, 2011, indicate that an Open Offer can be withdrawn in the following situations –

- i. Where it is rendered impossible for such Open Offer to continue – for example, rejection of any statutory approval required for the Offer [Regulations 23(1)(a)] or Death of an Acquirer who is an individual [Regulations 23(1)(b)] or Non-attainment of any condition stipulated in the Agreement that attracted the Open Offer obligation for reasons beyond the control of the Acquirer, resulting in the Agreement being rescinded [Regulations 23(1)(c)];
- ii. Such circumstances, which in the opinion of SEBI merit withdrawal [Regulations 23(1)(d)].

4.5.6 As stated in the preceding paragraph 4.5.2, the provisions of Regulation 23(1) of the Takeover Regulations, 2011, are similar to the provisions of Regulation 27(1) of the Takeover Regulations, 1997. Consequently, the ratio laid down by the Hon'ble Supreme Court in the matters of *Nirma Industries Limited and Another vs. SEBI* and *SEBI v. Akshya Infrastructure Private Limited* with respect to Regulations 27(1) of the Takeover Regulations, 1997, are squarely applicable to the provisions of Regulation 23(1) of the Takeover Regulations, 2011.

4.5.7 Placing reliance on the observations of the Supreme Court in the aforementioned matters, I find that an Open Offer once made under the Takeover Regulations, 2011, can only be withdrawn under the provisions of Regulations 23(1)(a), (b), (c) and (d) of such Regulations. Further, since withdrawal of the Open Offer in the instant proceedings only attracts the provisions of Regulation 23(1)(d) of the Takeover Regulations, 2011, the phrase '*such circumstances*' under the said Regulation has to be read in accordance with the conditions stipulated in Regulations 23(1)(a), (b) and (c) of the Takeover Regulations, 2011.

4.5.8 It is noted that in the instant proceedings, the Acquirers have sought to withdraw the Open Offer *inter alia* on the grounds that the proceedings before the Hon'ble BIFR are long drawn alongwith the inability of SEBI to clear the draft Letter of Offer and therefore, it would not be possible to keep the Open Offer in an indeterminate state.

- 4.5.9 As regards the contention raised by the Acquirers about the inability of SEBI to clear the draft Letter of Offer, it is noted that SEBI received several complaints alleging acquisition of shares by entities connected to the Acquirers during the pendency of the draft Letter of Offer (for acquisition of shares of the Target Company). While the aforesaid complaints were being examined, SEBI also received a copy of the Order dated September 15, 2015, of the Hon'ble BIFR (forwarded by the Target Company vide letter dated October 7, 2015). Upon a consideration of the same, the Open Offer was accordingly, kept on hold.
- 4.5.10 As stated in the preceding paragraph, on a Miscellaneous Application filed by the Target Company, the Hon'ble BIFR vide an *ex parte* Interim Order dated September 15, 2015, directed: "*All the parties to maintain the status quo on the operations of the company and the controlling stake and management till the next date of hearing. ... No Change of Management (COM) should take place during the pendency of the reference without the permission of the Board.*" Further, the appeal filed by the Acquirers against the aforesaid Order was dismissed by the Hon'ble AAIFR vide an Order dated January 13, 2016, on the ground that the same was *premature*. From the aforementioned facts, it is evident that the direction of the Hon'ble BIFR for maintaining the status quo with regard to the operations and controlling stake and management of the Target Company (passed vide the aforesaid *ex parte* Interim Order) is presently under final consideration by the Hon'ble BIFR. Since the proceedings before the Hon'ble BIFR are yet to attain finality, the aforesaid *ex parte* Interim Order cannot be said to render the completion of the Open Offer by the Acquirers, an impossibility at this point in time. Further, allowing the withdrawal of the Open Offer at this stage may also hamper the interests of the public shareholders of the Target Company. The Acquirers may approach the Hon'ble BIFR for their final decision in the matter.
- 4.5.11 Upon consideration of all the factors enumerated in the aforementioned paragraphs, I find that the circumstances stated by the Acquirers do not merit withdrawal of the Open Offer (envisaged in the Public Announcement dated June 22, 2015 read with the Corrigendum dated July 15, 2015, to the Public Announcement), under Regulations 23(1)(d) of the Takeover Regulations, 2011, at this stage in the light of the proceedings in respect of the Target Company, presently before the Hon'ble BIFR.

Order –

- 5.1 Having regard to the above discussion, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 23(1) of the Takeover Regulations, 2011, do not permit withdrawal of the public offer made by the Acquirers i.e. Shri Lavjibhai Daliya and Anjani Residency Private Limited, vide the Public Announcement dated June 22, 2015 read with the Corrigendum dated July 15, 2015, to the Public Announcement, for acquisition of 128,46,744 fully paid up equity shares of ₹10 each of the Target Company i.e. M/s Jyoti Limited.
- 5.2 This Order shall come into force with immediate effect.

Place: Mumbai
Date: August 1, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA