

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND SECTION 11(2)(h) 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.

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN -

Target Company	Som Distilleries and Breweries Limited
Acquirers	<ol style="list-style-type: none"> 1. Mr. Jagdish Kumar Arora, 2. Mr. Ajay Kumar Arora, 3. Mr. Deepak Arora, 4. Som Distilleries Private Limited, 5. Aalok Deep Finance Private Limited

Background

1. Som Distilleries and Breweries Limited (for convenience "*Target Company*") is a company incorporated on March 26, 1993, having its registered office address at 1-A, Zee Plaza, Arjun Nagar, Safdarjung Enclave, Kamal Cinema Road, New Delhi - 110029 and engaged in production of beer and blending and bottling of Indian made foreign liquor. The equity shares of the *Target Company* are listed on BSE Limited (for convenience "**BSE**") and National Stock Exchange of India Limited. (for convenience "**NSE**").

2. Securities and Exchange Board of India (for convenience "**SEBI**") received an Application dated December 18, 2020 and emails dated February 26, 2021; March 1, 2021; May 20, 2021; June 14, 2021 and June 22, 2021 (for convenience collectively referred to as "*Application*") from Mr. Jagdish Kumar Arora (Acquirer 1), Mr. Ajay Kumar Arora (Acquirer 2), Mr. Deepak Arora (Acquirer 3), Som Distilleries Private Limited (Acquirer 4), Aalok Deep Finance Private Limited (Acquirer 5) (for convenience collectively referred to as "*Acquirers/ Applicants/ Proposed Acquirers*"). Vide the afore-stated *Application*, the *Applicants* have sought exemption from the applicability of regulation 3(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (for convenience "*Takeover Regulations, 2011*") in connection with the proposed acquisition

of equity shares of the *Target Company* in the proposed Rights Issue of 49,99,058 equity shares by the *Target Company*.

3. As per the *Application*, the following are the brief facts for consideration:

- (a) The total paid up equity share capital of the *Target Company* is INR 324,938,690 broken down into 6,49,87,738 equity shares of face value of INR 5/- each.
- (b) The unfortunate outbreak of Covid-19 pandemic in the later part of the fiscal year 2019-20 has impacted all the businesses and industries in the country. In addition to the existing challenges that the alcohol and beverage industry is already dealing with which include stringent regulations, lower market penetration, and high tax liabilities, the impact of covid-19 will be felt in terms of potentially lower consumption and distribution of products.
- (c) The Acquirers have submitted that due to COVID-19, the operations of the *Target Company* have been severely impacted resulting in a net loss of INR 41.77 crores in the nine months ending December 31, 2020. In addition, the sales also have seen a drop of more than 50% as compared to the year FY 2019-20. Therefore, there is a serious need for more capital in the *Target Company* to turnaround the operations and introduce additional working capital in the system.
- (d) The overall promoter shareholding in the *Target Company* as on March 31, 2021 is 1,59,06,374 shares constituting 24.48% of the total paid up capital of *Target Company*. From the year 2010 till now there has been no change in the ownership or control of the *Target Company*. Now there has been increasing pressure from the lenders on the promoters including *Proposed Acquirers* to infuse further equity in the *Target Company* in view of the expansion.
- (e) Therefore, the *Target Company* has proposed to initiate a Rights Issue of Equity Shares. The *Target Company* is proposing to conduct a Rights Issue of 49,99,058 (in proportion of 1:13) equity shares,
- (f) The afore-stated Rights Issue has been proposed due to the increased requirement of working capital, marketing expenses, required on account

of the capital expenditure done by the *Target Company* in the Bhopal plant for the increase in the production capacity in the years 2019 - 20 and the current year. Additionally, in spite of the sluggish market conditions, the *Target Company* remains committed to its strategic objective of entering into new markets and further strengthen its foothold in existing markets, to achieve the said objective the *Target Company* hopes to utilize appropriate portion of the aforesaid monies for acquisition of new undertakings and strengthening existing infrastructure.

- (g) In the proposed Rights Issue, the *Target Company* would provide an opportunity to all the shareholders of the *Target Company* to subscribe to their respective entitlement, in such case the holding of the promoters / promoter group would not change at all. However, in the event public shareholders do not subscribe to the shares upto their entitlement, the *Proposed Acquirers* will subscribe to the certain portion of unsubscribed portion of the Rights Issue. Therefore, at this stage it would be difficult to determine the exact quantum of shares that will be acquired by the *Proposed Acquirers* on account of subscription to the unsubscribed portion of the Rights Issue. The acquisition price to be paid per share of the shares proposed to be acquired shall be determined in consultation with the lead managers which shall not be less than the face value of the specified securities and shall be in accordance with a valuation obtained from a registered valuer.
- (h) Pursuant to the Rights Issue there shall be no change in the management control of the *Target Company*.
- (i) Proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.

Proposed Transaction

4. Details of the proposed transaction in respect of which exemption is being sought, as submitted by the *Applicants*, is given below:

- (a) The *Target Company* is proposing to issue 49,99,058 equity shares of the *Target Company* through Rights Issue to its shareholders. The *Proposed Acquirers* will subscribe to their entitlement of 11,77,557 equity shares.

Subscription by *Proposed Acquirers* up to their entitlement will not trigger obligation to make an open offer under *Takeover Regulations, 2011*. The *Proposed Acquirers* will subscribe to additional shares if the existing shareholders do not subscribe to their entitlement.

- (b) In the event of acquiring shares in the proposed Rights Issue beyond the entitlement of the promoters, such acquisition by promoters may exceed the threshold of 25% within a financial year under regulation 3(1) of the *Takeover Regulations, 2011* and thereby necessitating a mandatory open offer in terms of the *Takeover Regulations, 2011*. Therefore, the *Acquirers* have sought exemption under regulation 11(1) of the *Takeover Regulations, 2011* from the said requirement of making an open offer in case of breach of the said threshold as stipulated under regulation 3 (1) of *Takeover Regulations, 2011*. Pursuant to the proposed transaction, indicative pre and post shareholding pattern of the *Target Company* is tabulated below:

Particulars	Pre-Rights issue		Proposed Rights Issue*		Post-Rights Issue	
	No. of shares	%	Subscription	Additional shares as per entitlement	No. of shares	%
Promoters & Promoter group other than Acquirers	5,98,146	0.92	5,98,146	46,011	6,44,157	0.92
Acquirers	1,53,08,228	23.56	1,53,08,228	**11,77,557	1,64,85,785	23.56
Public	4,90,81,364	75.52	4,90,81,364	**37,75,490	5,28,56,854	75.52
Total	6,49,87,738	100%	6,49,87,738	49,99,058	6,99,86,796	100%

*Ratio assumed, 1 equity share for every 13 equity share held

** These are indicative as it will depend upon the portion subscribed by public and acquirer

- (c) In case, certain public shareholder does not subscribe to the Rights Issue, *Acquirers* will subscribe to those unsubscribed portion of Rights Issue of shares, which may trigger threshold of 25% for obligation to make an open offer under regulation 3(1) of the *Takeover Regulations, 2011*.

Grounds for seeking exemption

5. The *Application* lists, *inter alia*, the following grounds for exemption from the applicability of regulations 3(1) of the *Takeover Regulations, 2011*:

- (a) The *Target Company* has the intention to infuse additional capital to revive its operations. The *Acquirers* have undertaken / committed to bring in such additional subscription as would be necessary to make the issue successful and at the same time ensure that the overall promoter / promoter group shareholding is maintained at 75% of the total paid up capital of the *Target Company*.
- (b) The *Acquirers* will subscribe to additional shares only if the existing shareholders do not subscribe to their entitlement and to ensure that the issue garners the minimum subscription. The *Acquirers* are part of the promoters / promoter group and there shall be no change in control and management of the *Target Company* post the Rights Issue.
- (c) The *Acquirers* are aware that the subscription to the unsubscribed portion of the Rights Issue may trigger the obligation of making a public announcement / open offer for acquiring additional shares of the *Target Company* under regulation 3(1) of *Takeover Regulations, 2011*. This trigger of an open offer is technical in nature and an incidental event to the acquisition.
- (d) The additional subscription shall also be made in such a way that the *Target Company* shall maintain the public shareholding of 25% on the enhanced post issue paid-up capital of the *Target Company*.

Recommendation of the Panel of Experts (Takeover Panel)

6. Since, the issue involved in the matter is unique in nature, the said *Application* received from the *Acquirers* were referred to the Panel of Experts (for convenience "*Takeover Panel*") constituted in terms of regulation 11(5) of the *Takeover Regulations, 2011* for their advice and recommendations. The recommendation made by the *Takeover Panel* is as under:

- (a) Proposed Rights Issue should be offered to all its shareholders of the *Target Company* on a pro rata basis.
- (b) In case, the promoters subscribe to more than their entitlement, they should ensure that after such additional subscription, their shareholding shall not increase more than 75% of the shareholding of the *Target Company*, in order to comply with the minimum public shareholding

requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

Consideration

7. I have examined the *Application* and various other submissions made by the *Acquirers* and other material available on record. After examination of all the relevant material, I note the following:

- (a) The *Target Company* is facing financial problems and due to COVID 19, its operations have been severely impacted resulting in a net loss of INR 41.77 crores in the nine months ending December 31, 2020. The sales also have seen a drop of more than 50% as compared to the Financial year 2019-20.
- (b) The objective of the proposed fund raising by issuing 49,99,058 equity shares of the *Target Company* by way of Rights Issue is to infuse more equity and to enhance the net worth of the *Target Company*.
- (c) There is a possibility that the proposed Rights Issue may not be subscribed to by any or all the non-promoter shareholders, in which case the *Acquirers* have agreed to subscribe to the unsubscribed portion of this Rights Issue. In such case, the proposed acquisition of the unsubscribed portion by the *Acquirers* may trigger the requirement of making open offer under regulation 3(1) of *Takeover Regulations, 2011*. Thus, the proposed acquisition is contingent upon the non-participation by the public shareholders in the proposed Rights Issue.
- (d) Prior to the proposed Rights Issue, the overall promoter shareholding in the *Target Company* as on March 31, 2021 is 24.48% of the total paid up capital of the *Target Company*. *Acquirers* have also submitted that the proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- (e) Pursuant to the proposed Rights Issue, there will not be any change in control of the *Target Company*. Further, presently the *Target Company* is in compliance with the minimum public shareholding requirements as specified under the Securities Contracts Regulation Rules, 1957 and shall continue to be in compliance with minimum public shareholding norms post Rights Issue.

- (f) In view of the peculiar facts of this matter and considering the recommendations of the *Takeover Panel*, I am of the view that granting exemption as prayed for by the *Acquirers* in respect of the proposed acquisition is in the larger interest of the securities market. Accordingly, I am inclined to grant the said exemption to the Proposed *Acquirers* in respect of the proposed acquisition pursuant to the proposed Rights Issue, subject to certain conditions as ordered herein below.

Order

8. I, in exercise of the powers conferred upon me under Section 11(1) and Section 11(2)(h) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 11(5) of the *Takeover Regulations, 2011* read with Section 19 of the SEBI Act hereby grant exemption to the *Acquirers*, from complying with the provisions of regulation 3(1) of the *Takeover Regulations, 2011* in connection with acquisition of equity shares of the *Target Company* in the proposed Rights Issue offered by the *Target Company* i.e., Som Distilleries and Breweries Limited, as described in the *Application* and this Order, subject to the following conditions:

- (a) Proposed Rights Issue should be offered to all the shareholders of the *Target Company* on a pro rata basis.
- (b) In case, promoters subscribe more than their entitlement in the proposed Rights issue, they should ensure that after such additional subscription, their shareholding shall not increase more than 75% of the shareholding of the *Target Company*, in order to comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.
- (c) The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- (d) On completion of the proposed acquisition, the *Proposed Acquirers* shall file a report with SEBI within a period of 21 days from the date of such acquisition, as provided in the *Takeover Regulations, 2011*.
- (e) The statements/ averments made or facts and figures mentioned in the *Application* and other submissions by the *Proposed Acquirers* are true and correct.

- (f) The *Proposed Acquirers* shall ensure compliance with the statements, disclosures and undertakings made in the *Application* and in subsequent submissions.
- (g) The *Proposed Acquirers* shall also ensure that the all undertaking given by the *Proposed Acquirers* through various replies/submissions, shall be duly complied with. In any case of deviation, the *Proposed Acquirers* shall take prior approval of SEBI.

9. The exemption granted above is limited to the requirements of making open offer under *Takeover Regulations, 2011* and shall not be construed as exemption from the disclosure requirements under Chapter V of *Takeover Regulations*; compliance with SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any other applicable Acts, Rules and Regulations.

10. The Application dated December 18, 2020 along with subsequent submissions received vide email dated February 26, 2021; March 1, 2021; May 20, 2021 and June 14, 2021 filed by *Acquirers*, are accordingly disposed of.

-Sd-

Place: Mumbai
Date: July 15, 2021

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA