

Sharing insights

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Exemption from open offer obligation will be available on *inter se* transfer amongst promoters under the SEBI Takeover Code where transferor(s) as well as transferee(s) collectively hold shares of the target company for a period of at least three years

In brief

In the case of Weizmann Forex Ltd¹ (WFL or target company), the Securities Exchange Board of India (SEBI) has taken a view that to be eligible for exemption for *inter se* transfer of shares amongst the promoters, the transferor(s) as well as the transferee(s) should be holding the shares in the target company collectively for a period of at least three years prior to the proposed transfer.

¹ SEBI informal guidance CFD/PC/IG/CB/2three756/12 dated 25 October, 2012
[http://www.sebi.gov.in/cms/sebi_data/commondocs/Weizmannforex%20-reply_p.pdf]

Facts

- WFL is a company listed on BSE and NSE. As on 30 June 2012 promoter's shareholding and public shareholding in WFL were 74.59% and 25.41% respectively.
- The High Court of Bombay had sanctioned a composite scheme of arrangement (the scheme) on 29 October 2010. As per the scheme:
 - Weizmann Forex Ltd. and Karma Energy Ltd. (subsidiary companies of a listed company 'Weizmann Ltd') were amalgamated with Weizmann Ltd. The appointed date of the amalgamation was 1 April 2009.

- Further, the forex division and the power division of Weizmann Ltd. (demerged company) were demerged into Chanakya Holdings Ltd. and Karma Wind Power Ltd. (resultant companies) respectively. The appointed date of demerger was 1 April 2010.
- Chanakya Holdings Ltd. and Karma Wind Power Ltd were renamed as Weizmann Forex Ltd. and Karma Energy Ltd. respectively.
- The shares of the resulting companies, viz. WFL and Karma Energy Ltd. were listed on BSE and NSE on 28 June 2011.
- Promoter and few other promoter group entities intended to transfer part of their equity shareholdings in WFL to another promoter group companies.
- All the proposed transferors held shares in Weizmann Ltd. for a period of more than three years and one of them held the shares in WFL (formerly known as Chanakya Holdings Ltd.) and Weizmann Ltd. for a period of more than three years.
- One of the transferee companies held the shares in WFL and Weizmann Ltd for a period of more than three years. However, the other transferee company (viz. Tapi Energy Projects Ltd.) did not hold the shares in WFL and Weizmann Ltd for a period of three years.

Issue before SEBI

An interpretive guidance was sought from SEBI on:

- Whether shareholding of the proposed transferors in the demerged company and the resulting target company (unlisted prior to it being listed on 28 June

2011) can be considered for satisfying the condition of names appearing in the shareholding pattern for minimum three years?

- Whether shareholding of Tapi Energy Projects Ltd, since June 2010 in the resulting company, which is prior to its listing on 28 June 2011 can be counted for satisfaction of the Regulation 10(1)(a)(ii) of SEBI Takeover Code?

Relevant Regulations of SEBI Takeover Code

The relevant provisions of SEBI Takeover Code are as follows:

General exemptions:

The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfilment of the conditions stipulated therefore –

(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons being –

(i)

(ii) Persons named as promoters in the shareholding pattern filed by the target company in terms of listing agreement or these regulations for not less than three years prior to the proposed acquisition.

SEBI's View

In light of the above facts of the case, SEBI's views were as below:

- The transferors have been holding shares in the demerged company for a period of more than three years and one of the transferor has been holding shares in WFL as well as in Weizmann Ltd. for a period of more than three

years. Further, one of the transferee has been holding shares in the WFL and Weizmann Ltd. for more than three years. The other transferee company is holding shares in resultant target company for a period of less than three years.

- Since the condition of three years shareholding by the transferees prior to the proposed acquisition would be deemed to be fulfilled in case all the transferees collectively hold shares for a period of three years prior to the proposed acquisition, the proposed transfer of shares would be exempt under Regulation 10(1)(a)(ii) of SEBI Takeover Code provided the other conditions for availing the exemptions are fulfilled.

Conclusion

The exemption under Regulation 10(1)(a)(ii) of the SEBI Takeover Code, will be available even if one of the transferors and one of the transferees hold the shares of the target company for a period of more than three years prior to the date of transfer. The interpretation of SEBI is in line with the interpretation of the regulations of the erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 1997. This would enable promoters to realign their shareholding in listed companies without triggering open offer obligation under the Takeover Code.

Further, the period of holding has been reckoned from the date of acquisition of the shares and not from the date of listing of the target company. However, one may note that SEBI has taken a different view in the case of Commercial Engineers and Body Builders Company Ltd.² (CEBBCO), wherein SEBI has clarified that the exemption under Regulation 10(1)(a)(ii) of the Takeover Code cannot be availed if the target company was not listed for three years. The interpretative letter in case of CEBBCO was issued after the interpretative letter in case of WFL was issued.

Hence, in light of the divergent views of the SEBI as regards the listing requirement for reckoning three years period, it is imperative to consider the facts of each case while evaluating the exemption eligibility.

² SEBI informal guidance CFD/PC/IG/27088/OW/2012 dated 5 December 2012

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