Dear Reader,

Whole Time Member, SEBI, has passed an order dated 6 September 2013, granting exemption to Natronix Semiconductor Technology Private Limited (Acquirer – a company incorporated in Singapore) from making an open offer [regulation 3(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011] for the proposed acquisition [through a block deal] of 55.97% shares of the SPEL Semiconductor Limited, a listed company (***Target Company***) on the following facts and grounds:

1. The sole shareholder (promoter) of the Target Company is SPIC Limited (Southern Petrochemical Industries Corporation Limited) which is also a listed company (***Seller***);

2. The proposed divestment to the Acquirer is to generate cash flow and liquidity to facilitate payments to the creditors of Seller pursuant to a scheme of arrangement with creditors for settlement of their dues, which was duly sanctioned by the High Court;

3. Non-payment of dues to the creditors would result in creditors invoking charge on the assets of Seller which may lead to winding up of the Seller;

4. The Acquirer would hold the entire shareholding of the Seller in the Target Company post the proposed transfer;

5. The shareholders of the Acquirer are two individuals who also happen to be the shareholders of the Target Company, and have been disclosed as "persons acting in concert" with the Seller in the Target Company [**Comment**: While clause 3(i) of the order states that, said individuals are part of the "promoter group" of the Seller, the paragraph preceding it and clause 9 of the order states that, these persons individually also hold shares of the Target Company aggregating 2.12%. As per the shareholding pattern available on the website of BSE Limited, it appears that, one of the said individual is holding shares in the Target Company in the category of "public" (more than 1% category) aggregating to 2.11% as on 30 June 2013]; and

6. There would be no change in the management or control of the Target Company as a result of the proposed transfer.

The exemption from open offer has been granted by SEBI subject to the approval of the shareholders of the Target Company provided that, the resolution shall be acted upon only if, the number of vote cast by public shareholders in favour of the proposal are more than the number of votes cast by public shareholders against it. [**Comment:** This condition of the order is consistent with clause 7 of the SEBI circular dated 21 May 2013 which has replaced para 5.16 of the SEBI circular dated 4 February 2013 dealing with scheme of arrangement involving listed companies.]

Analysis:

The order is a welcome precedent since in the present case, the Seller which is a listed company is seeking to revive itself by selling its shareholding in the Target Company on the following grounds, unlike typically a case involving revival of a listed target company:

a) to protect the interest of the investors of the Seller;
b) to utilise the proceeds of the proposed sale of the shares to partly meet the financial liabilities of the Seller in terms of the scheme of compromise and arrangement as approved by the High Court; and
c) to avoid the potential winding up of the Seller.

In past, there have been some instances, where an exemption from an open offer has been granted to the proposed acquirer for the purpose of revival or rehabilitation of a listed target company and utilise the said money for investing into the target company, as against the acquirer making an open offer to the public shareholders of the target company. This is logical, since an open offer leads to cash outflow from the acquirer to the public shareholders of a target company, rather than cash outflow from the acquirer to the target company which is in desperate need of liquidity.

It is also interesting to note that, while the proposal of the Acquirer in this particular case is to acquire the shares of the Target Company from the Seller pursuant to a "block deal", clause 14 of the order also imposes the condition that, acquisition price should be higher of the parameters prescribed therein viz:

(a) price calculated as per regulation 8 of the SEBI takeover regulations; or
(b) price of INR 7.62.

In this connection, there could be a potential practical challenge while executing the proposed transaction on the floor of the stock exchange through block deal, since in terms of the SEBI guidelines, the orders for a block deal can be placed at a price **not exceeding ±1%** from the ruling market price/previous day closing price. Closing market price of the shares of the Target Company on BSE Limited on 13 September 2013 is INR 4.02. Hence, the proposed transaction will have to be executed through a "block deal" provided that, apart from the parameters prescribed in the SEBI order, the guidelines prescribed by SEBI with respect to pricing a block deal transaction [and not exceeding the range] is also complied with.

The SEBI order is available at –
http://www.sebi.gov.in/sebiweb/home/detail/26410/yes/PR-Grant-of-exemption-to-M-s-Natronix-Semiconductor-Technology-Private-Limited-for-the-proposed-acquisition-of-shares-of-SPEL-Semiconductor-Limited-Target-Company-