



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

General Manager
Corporation Finance Department
Division of Corporate Restructuring
Tel: 022-26449330

CFD/DCR/TO/DA/1489/10
February 22, 2010

Supreme Petrochem Ltd
Solitaire Corporate Park
Building No 11, 5th Floor, 167 Guru Hargovindji Marg
Andheri-Ghatkopar Link Road
Chakala, Andheri(E)
Mumbai-400 093

Dear Madam,

Sub.: Request for interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 for second buyback of shares u/s 77A of Companies Act, 1956- Supreme Petrochem Ltd.

1. This has reference to your letter dated December 24, 2009 on the captioned subject.
2. In your letter under reference you have *inter alia* represented as follows:-
 - (a) Supreme Petrochem Ltd (SPL), a public listed company, had completed its first offer of buyback of equity shares through open market route in 2009.
 - (b) The buyback opened on 27.12.2008 and closed on 4.12.2009. The actual buyback commenced on 31.12.2008 after corrigendum to public announcement was published. SPL brought back 15, 37,907 shares (1.56% of the paid up share capital) against the maximum authorized quantity of 75 lacs shares during this buyback period. The maximum buyback price was Rs 14/-share.
 - (c) SPL buyback was authorized by the Board of directors.
 - (d) Reference has been drawn to various sub-sections of Section 77A of Companies Act.
 - (e) The clear interpretation of Section 77 A (2)(A) proviso and Section 77A(2)(b) of Companies Act states that once the buyback has been made with the authorization of the board and not that of shareholders, no further offer of buyback of any securities can be made within 365 days reckoned from the date of preceding offer. However, the company can make a further offer within a period of 365 days if it is authorized by its members by way of special resolution, provided aggregate of authorization does not exceed quantum of 25% in a financial year. As regards "date of offer", there is no clear explanation in the Act as to what exactly date of offer shall mean.

97

Resigned
Vijay
23/02/10

Page 1 of 3



अनुवर्ती:
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

3. In view of the above submissions, you have sought the interpretive letter on following two issues—
- (a) The date on which the period of 365 days for making the second buy-back offer pursuant to the board resolution would end i.e whether the period of 365 days is to be reckoned from the date of the public announcement, or from the date of opening of the offer or from any other date; and
 - (b) Whether the company can immediately proceed with the second buy-back offer pursuant to the special resolution passed by the members or whether the cooling period of 365 days will be applicable to the second offer through the members' resolution also.
4. The submissions made in your letters have been considered and without necessarily agreeing with your analysis, our views on the issue are as under:-
- (a) The second proviso to section 77A (2) (b) prescribes that the second "offer of buy back" can only be made after expiry of 365 days reckoned from the date of the preceding 'offer of buyback'. Explanation to clause (b) section 77A (2) defines the words "offer of buyback" for the purposes of said clause to mean "offer of such buy back made pursuant to board resolution referred to in first proviso".
 - (b) This cooling period of 365 days is stipulated when two successive offers of buy back are authorized by resolutions of the board. The second proviso to section 77A(2)(b) says that the 365 days have to be reckoned from the date of the preceding offer of buy-back.
 - (c) The period of 365 days has to be reckoned from the date of completion of the preceding offer of buy back made pursuant to the Board resolution.
 - (d) Since the Companies Act does not provide for any cooling period when the first offer of buy-back is made pursuant to a Board resolution and the second offer of buy-back is made pursuant to the special resolution passed by shareholders, a second buyback authorized by special resolution passed by the shareholders can be made after completion of the first buy-back offer made pursuant to Board resolution. However, other conditions provided in SEBI(Buyback of Securities)Regulations, 1998 and section 77A of Companies Act e.g. the buy-back should not exceed 25% of the total paid up equity capital in the financial year, must be complied with.
5. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.



अनुवर्ती:
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड
*Securities and Exchange
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6. You may note that the above views are expressed only with respect to the clarification sought on SEBI (Buyback of Securities) Regulations and do not affect the applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

(Santosh Kumar Sharma)