



## **SEBI Informal Guidance on inter-se transfer of shares among promoters**

### **Background of the Case**

- JSW Energy Limited (the Target Company) is a listed public limited company engaged in the business of generation, transmission & trading of power.
- The promoters/promoter group of the Target Company included JSW Steel Limited (JSW Steel), Mrs. Sangita Jindal and JSW Investments Private Limited (JSWIPL). Ms. Sangita Jindal and JSWIPL are holding shares in the Target Company for more than 3 years. JSW Steel holds shares in the Target Company from December 2008 onwards which is less than 3 years.
- JSW Steel acquired 1,086,649,874 equity shares representing 45.73 percent of the total equity capital of Ispat Industries Limited (IIL) by virtue of which, JSW became the promoter of IIL. Further, JSW Steel acquired an additional 3.77 percent of the equity share capital of IIL in the open offer. Post the open offer, JSW Steel is in control of IIL with 49.30 percent holding in IIL.
- It was proposed to transfer 2,50,00,000 equity shares of INR 10 each representing 1.53 percent of the total voting capital of the Target Company from Mrs. Sangita Jindal (Transferor or Seller) to IIL and JSWIPL (together referred as Transferees) as follows:
  - 2,49,99,000 equity shares to be transferred to IIL and
  - 1000 shares to be transferred to JSWIPL.

**On the basis of the above facts, informal guidance was sought on following issues:**

- Whether IIL can be said to be a qualifying promoter of the Target Company in terms of the explanation to Regulation 3(1)(e)(iii)(b) of Takeover Regulations?
- Will the proposed transaction for transfer of shares to IIL and JSW IPL qualify for an exemption under Regulation 3(1)(e)(iii)(b) of the Takeover Regulations since JSWIPL, which is one of the transferees in the proposed transaction, has held shares in the Target Company for more than three years even though IIL does not hold any equity shares in the Target Company?

### **Informal Guidance by SEBI**

- The term ‘promoter’ has been defined under Regulation 2(1)(h) of the Takeover Regulations. Explanation to Regulation 2(1)(h) of the Takeover Regulations states that any company in which a promoter holds 10 percent or more of the equity capital shall form part of the promoter group. In the instant case, since JSW Steel is part of the promoter / promoter group of the Target Company and holds more than 10 percent of the equity share capital of IIL, IIL would form part of the promoter group of the Target Company.
- Regulation 3 of the Takeover Regulations exempts certain modes of acquisitions of shares from the provisions of Regulation 10, 11 and 12 dealing with open offer. Regulation 3(1)(e)(iii)(b) provides that the inter se transfer of shares amongst ‘qualifying promoters’ shall be exempt from the provisions of Regulation 10, 11 and 12. For the purpose of Regulation 3(1)(e)(iii), the term ‘qualifying promoter’ has been defined as:
  - any person who is directly or indirectly in control of the company; or
  - any person named as a promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the Company under the Listing Agreement, whichever is later.
- Explanation to Regulation 3(1)(e)(iii) states that if a qualifying promoter is a body corporate, the term "qualifying promoter" includes any firm or company, directly or indirectly controlled by the qualifying promoter of that body corporate.
- In the instant case, JSW Steel was a part of the promoter / promoter group of the Target Company and hence would be a ‘qualifying promoter’ within the meaning of Regulation 3(1)(e)(iii). Further, since JSW Steel controls IIL, in view of the explanation to Regulation 3(1)(e)(iii), IIL would also be a ‘qualifying promoter’ within the meaning of Regulation 3(1)(e)(iii).
- Regulation 3(1)(e)(iii)(b) exempts the transfer of shares from the purview of Regulation 10, 11 and 12 provided that the transferee and the transferor should have both held shares in the Target Company for at least three years prior to the proposed acquisition.

- In order to comply with the condition of three years holding by both transferor(s) and transferee(s), the holdings of the transferors collectively and the holdings of the transferees collectively would be considered. In the instant case, JSWIPL was holding shares in the Target Company for last three years and hence, the proposed transfer of shares would comply with the three year holding criteria even though the other transferee (IIL) did not hold shares for three years prior to the transfer of shares.

### **Our Comments**

This informal guidance re-iterates the position taken by SEBI in the case of Zensar Technologies Limited. It has been once again clarified that to avail exemption under regulation 3(1)(e)(iii)(b) of Takeover Regulations, the holdings of transferors collectively and transferees collectively will be considered to determine compliance with three years holding condition.

Bangalore

Maruthi Infotech Centre, 11-12/1  
Inner Ring Road  
Koramangala, Bangalore 560071  
Phone: + 91 80 3980 6000  
Fax: +91 80 3980 6999

Chennai

KPMG House  
No.10, Mahatma Gandhi Road,  
Nungambakkam High Road,  
Chennai 600034  
Phone: +91 44 39145000  
Fax: +91 44 39145999

Chandigarh

SCO 22-23  
1st Floor, Sector 8 C  
Madhya Marg  
Chandigarh 160019  
Tel: 0172 3935778  
Fax: 0172 3935780

Delhi

DLF Cyber City, Building no. 10,  
Block B, Phase II  
Gurgaon, Haryana 122 002  
Phone: +91 124 307 4000  
Fax: +91 124 254 9195

Hyderabad

KPMG, 8-2-618/2  
Reliance Humsafar, 4th Floor  
Road No.11, Banjara Hills  
Hyderabad - 500 034  
Phone: +91 40 30465000  
Fax: + 91 40 30465299

Kolkata

KPMG Infinity Benchmark  
Plot No. G-1, 10th floor Block - EP &  
GP,  
Sector – V, Salt Lake City  
Kolkata - 700091  
Phone: +91 33 4403 4000

Mumbai

Lodha Excelus, Apollo mills  
compound,  
NM Joshi Marg, Mahalaxmi,  
Mumbai 400 011  
India  
Phone: +91 22 39896000  
Fax: + 91 22 39836000

Pune

703, 7th Floor Godrej Castlemaire,  
Next to Ruby Hall Clinic,  
Bund Garden Road, Pune 411001  
Phone: +91 20 30585764/65  
Fax: +91 20 3058 5775

Kochi

4/F, Palal Towers, M. G. Road,  
Ravipuram, Kochi 682016  
Phone: +91 (484) 305 9000  
Fax: +91 (484) 305 9001