

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**Under sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with section 12A of Securities Contracts (Regulation) Act, 1956 in the matter of non-compliance by listed companies with the requirement of minimum public shareholding**

**In respect of Haryana Financial Corporation Limited**

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1. The Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the SCRA") was enacted to prevent undesirable transactions in securities by regulating the business of dealings therein, and by providing for certain other matters connected therewith. Section 21 of the SCRA mandates the compliance, by all listed companies, of the conditions of the listing agreement with the stock exchange. Further, for carrying out the mandate of the SCRA, the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR") were framed by the Central Government. The SCRR *inter alia* prescribes the requirements with respect to the listing of securities on a recognized stock exchange.

2. The SCRR was amended vide the Securities Contracts (Regulation) (Amendment) Rules, 2010 ("the First Amendment") with effect from June 04, 2010 and further vide the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 ("the Second Amendment") with effect from August 09, 2010. Pursuant to such amendments, rule 19(2)(c) mandated that the public sector companies shall offer and allot at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares to public in terms of an offer document.

3. Further, rule 19A (*Continuous Listing Requirement*), which was inserted in the SCRR vide the First Amendment was further amended vide the Second Amendment, with effect from August 09, 2010. Accordingly, rule 19A(3) required every listed public sector company to maintain public shareholding of at least ten per cent. The *proviso* to the said sub-rule provided as follows :-

*"Provided that a listed public sector company-*

*(a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in*

*the manner specified by the Securities and Exchange Board of India, within a period of three years from the date of such commencement;*

*(b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction."*

4. The aforesaid provisions require all listed public sector companies to :
  - (i) offer and allot at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares to public in terms of an offer document and
  - (ii) maintain public shareholding of at least ten per cent. If the public shareholding is below 10% on the date of the commencement of the Second Amendment, such listed public sector company shall increase its public shareholding to at least 10% in the manner specified by the Securities and Exchange Board of India ("SEBI") within a period of 3 years from the date of such commencement (i.e., August 09, 2010). If the public shareholding reduces below 10% after the date of commencement of the Second Amendment, such listed public sector company shall increase its public shareholding to at least 10% in the manner specified by SEBI, within a period of 12 months from the date of such reduction.
  
5. SEBI issued a Circular dated December 16, 2010 to suitably amend Clause 40A of the Listing Agreement in order to align the requirements under the Listing Agreement and those under rules 19(2)(b) and 19A of the SCRR. This Circular *inter alia* provided three methods for complying with the minimum public shareholding ("MPS") requirement. Subsequently, SEBI also issued two circulars dated February 08, 2012 and August 29, 2012, which *inter alia* provided for additional methods for listed companies to achieve compliance with the minimum public shareholding norms. The SEBI circular dated August 29, 2012, had also specified that listed entities desirous of achieving the minimum public shareholding requirement through other means may approach SEBI with appropriate details that would be considered by SEBI based on merit.
  
6. The Bombay Stock Exchange Limited ("BSE") has reported to SEBI that Haryana Financial Corporation Limited (hereinafter referred to as "the Corporation"), a listed public sector company, has not complied with the minimum public shareholding norms by August 08, 2013, the last date of compliance. The Corporation is a statutory state financial corporation established under the State Financial Corporations Act, 1951. The shares of the Corporation are listed only on the BSE. The public shareholding in the Corporation as on date is only 0.64%. I note that SEBI had taken steps to

engage with the Corporation in order to provide clarifications, if any, and to elicit plan of action by the Corporation for meeting the MPS norms. In this regard, I note that SEBI had written letters dated February 18, 2013, April 02, 2013 and April 05, 2013 to the Corporation/its Chairman. However, the Corporation vide letters dated April 08, 2013, April 09, 2013 and April 29, 2013 *inter alia* submitted that it is not in a position to increase the public shareholding and requested SEBI to exempt it from the MPS requirements. The Corporation further submitted that it has also prepared an action plan to wind up its affairs. In response, SEBI vide letter dated July 23, 2013 had informed the Corporation that the amendments to the SCRR were done with a view that a dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. The Corporation was informed that in terms of rules 19(2) and 19A of the SCRR, those listed public sector companies whose public shareholding was below 10%, should raise the same to the minimum level by August 08, 2013. The Company was further put to notice that in case of failure to comply with the MPS requirement within the stipulated timeline prescribed under the SCRR, SEBI may consider undertaking appropriate proceedings or action, under law, as mentioned therein. The Corporation was also specifically informed that its request for exemption from its compliance with the MPS requirement was not acceded to.

7. Despite providing for enabling methods as detailed in the afore-mentioned SEBI circulars for increasing its public shareholding and the cautionary advice by SEBI, the Corporation failed to comply with the MPS requirement specified under the SCRR for listed public sector companies as of August 08, 2013, the last date for compliance and also as on the date of passing this Order. Though, the Corporation has submitted that it has made a plan for winding up its affairs, I note that the Corporation is still listed in the BSE and therefore as long as the Corporation is listed with any of the recognized stock exchanges, it is statutorily bound to comply with the provisions of SCRR including rule 19A. As mentioned earlier, in terms of rule 19A (*which is a condition for continuous listing*), the Corporation, which is a listed public sector company, has to maintain public shareholding of at least 10%. As per the details submitted by BSE, the promoters hold an aggregate of 99.36% (*the Governor of Haryana holds 97.28% and the Small Industries Development Bank of India holds 2.08% of the said aggregate*) of the Corporation's equity capital. The public shareholding is at a very miniscule percentage of 0.64%.

8. The rationale behind the insertion of rule 19A in the SCRR, can be noted from the Press Release dated June 4, 2010, issued by the Ministry of Finance, Government of India, which *inter alia* states that "*A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is*

*the scope for price manipulation."* Further, the availability of a minimum portion/number of shares (floating stock) of the listed securities with the public ensures that there is a reasonable depth in the market and the prices of the securities are not susceptible to manipulation.

9. The promoters of the Corporation are the State Government of Haryana (*holding majority shares to the extent of 97.28%*), holding shares in the Corporation through the Governor of Haryana, and the Small Industries Development Bank of India. In terms of section 4 of the State Financial Corporations Act, 1951, subject to the approval of the State Government and the Small Industries Bank, the Board of Directors of the financial corporation shall determine the number of shares which may, respectively, be distributed among the (a) State Government; (b) the Small Industries Bank; (c) public sector banks, the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956, other insurance companies owned or controlled by the Central Government, other institutions owned or controlled by the Central Government or the State Government, as the case may be; and (d) parties other than those referred to in clause (a), or clause (b) or clause (c). It is also provided that the number of shares which may be allocated to parties referred to in clause (d) shall in no case exceed forty-nine per cent, of the total number of issued equity shares. The shares of the State Government of Haryana in the Corporation are held in the name of the Governor of Haryana. Article 166(1) of the Constitution of India provides that, "*All executive action of the Government of a State shall be expressed to be taken in the name of the Governor*". Therefore, considering the fact that the Governor is holding shares in the Corporation only on behalf of the state government and not in his personal capacity, the protection available to the Governor of a State under Article 361 of the Constitution, could also be applicable with respect to his holding of shares in the Corporation for the state government. However, rule 19A of the SCRR has mandated the Corporation to comply with the requirements stipulated thereunder. Further, the Board of Directors who are responsible for the conduct of the affairs of the Corporation including the required statutory compliances would also be responsible for the non-compliance by the Corporation with the MPS requirements. In view of such non-compliance by the Corporation and in order to protect the interest of investors in the securities market and for the orderly development of the securities market, it is necessary to issue suitable directions against the Corporation and its Board of Directors, while not adversely affecting the interests of the public shareholders.

10. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11(1), 11(2)(j), 11(4) and 11B thereof read with section 12A of the Securities Contracts (Regulation) Act, 1956, pending passing of a

final order, hereby issue the following directions :

- (i) The Corporation shall not offer or pass on corporate benefits like dividends, rights, bonus shares, share split etc. to non-public shareholders with respect to their excess proportionate shareholding in the Corporation, till such time the Corporation complies with the minimum public shareholding requirement ;
- (ii) The directors constituting the Board of Directors of the Corporation are restrained from holding any new position as a director in any listed company, till such time the Corporation complies with the minimum public shareholding requirement ; and
- (iii) The Corporation is directed to comply with rule 19A of the the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement read with section 21 of the Securities Contracts (Regulation) Act, 1956, at the earliest.

**11.** This Order is without prejudice to the right of SEBI to take any other action, including the following against the Corporation and its Board of Directors or issuing such directions in accordance with law, with respect to failure of the Corporation to comply with the MPS requirement before the due date :

- (i) Levying monetary penalty under adjudication proceedings;
- (ii) initiating criminal proceedings by way of prosecution proceedings
- (iii) moving the scrip to trade-to-trade segment;
- (iv) excluding the scrip from F&O segment;
- (v) any other action/direction as may be deemed appropriate.

For this purpose, this Order shall be treated as a show cause notice.

**12.** The Board/audit committee of the Corporation shall, at the end of each quarter, submit compliance report, to the stock exchange where the shares of company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor.

**13.** Copy of this Order shall be served on the BSE, depositories and the Corporation to enable them to take necessary steps to implement the order. The stock exchange and the depositories shall collaborate for the purpose of implementing this Order. The depositories shall rely on the filings made with the stock exchange for the public shareholding. The stock exchange shall provide the aforesaid data to the depositories to enable them to take necessary action as mentioned above.

14. The Corporation and its Board of Directors against whom this Order is passed may file their submissions, if any, within 21 days from the date of this Order. They may also, if they so desire, indicate in their replies whether they wish to avail of the opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, Plot C4-A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051, on a date and time to be fixed on a specific request.

15. This order shall come into force with immediate effect.

**PRASHANT SARAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date : October 14<sup>th</sup>, 2013**

**Place : Mumbai**