



Federal-Mogul Goetze (India) Limited
A Tenneco Group Company
Corporate Office : Paras Twin Towers,
10th Floor, Tower B, Sector 54,
Golf Course Road, Gurugram - 122 002
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Date: 23rd December, 2024

To,

BSE Limited

Phiroze Jeejeebhoy Towers
Dalal Street, Mumbai 400 001
Maharashtra, India

National Stock Exchange of India Limited

Exchange Plaza
Plot No. C/1, G Block
Bandra-Kurla Complex
Bandra (East), Mumbai 400 051
Maharashtra, India

Subject: Update: Open offer for acquisition of Federal-Mogul Goetze (India) Limited (“Target Company”) by Pegasus Holdings III, LLC, (“Acquirer”) together with Pegasus Parent, L.P. (“PAC 1”), Federal-Mogul Holdings, Ltd. (“PAC 2”) and Tenneco Inc. (“PAC 3”, and PAC 1, PAC 2 and PAC 3 are collectively referred to as the “PACs”), as the persons acting in concert with the Acquirer (“Open Offer”)

Reference: Update provided on September 9, 2023, September 20, 2023, October 12, 2023, December 12 2023, January 25, 2024, March 19, 2024, April 24, 2024, July 9, 2024, August 6, 2024, August 19, 2024, September 10, 2024 & October 16, 2024 relating to the Open Offer

Dear Sir / Ma'am,

We write to you in relation to the captioned Open Offer.

We refer to our earlier updates dated September 9, 2023, September 20, 2023, October 12, 2023, December 12 2023, January 25, 2024, March 19, 2024, April 24, 2024, July 9, 2024, August 6, 2024 August 19, 2024, September 10, 2024 & October 16, 2024 in relation to the said Open Offer.

We are in receipt of a letter dated December 23, 2024 from the Acquirer. We understand that Securities Appellate Tribunal (“SAT”) through its judgement dated December 20, 2024, has allowed the appeal filed by the Acquirer in relation to the Open Offer. A copy of the said Order is attached herewith for your ready reference.

For and on behalf of Federal Mogul-Goetze (India) Limited

(Dr. Khalid Iqbal Khan)

Whole-time Director- Legal & Company Secretary

Encl. as above

Corporate Identification Number: L74899DL1954PLC002452

Regd. Office : DLF Prime Towers 10 Ground Floor, F 79 & 80, Okhla Phase - I, New Delhi - 110 020

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IN THE SECURITIES APPELLATE TRIBUNAL
AT MUMBAI

DATED THIS THE 20TH DAY OF DECEMBER, 2024

CORAM: Justice P.S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No.762 of 2023
[Along with Misc. Application
No.1223 of 2023]

Pegasus Holdings III, LLC
Corporate Creations Network Inc.,
3411 Silverside Road,
Tatnall Building, #104, Wilmington,
New Castle County, Delaware 19810.Appellant

(BY Mr. Ravi Kadam, Senior Advocate with Mr. Abishek Venkatraman, Mr. Prabhav Shroff, Mr. Dhaval Vora, Ms. Sneha Nagvekar and Mr. Rohan Satija, Advocates i/b AZB & Partners for the Appellants.)

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, G Block,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra – 400 051. ...Respondent

(BY Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody, Mr. Harshvardhan Melanta, Mr. Yash

Sutaria and Mr. Tushar Bansode, Advocates i/b. K. Ashar & Co. for the Respondent)

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 FOR TO SET ASIDE ORDER DATED AUGUST 30, 2023 (Ex-A) PASSED BY SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON OCTOBER 4, 2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS 20TH DAY OF DECEMBER 2024, THE TRIBUNAL MADE THE FOLLOWING:

ORDER

**Per: Justice P.S. Dinesh Kumar, Presiding Officer
(for himself & Ms. Meera Swarup, Hon'ble
Technical Member)**

This appeal by Pegasus Holding III LLC (Pegasus for short) is directed against communication dated August 30, 2023 by the SEBI¹ conveying appointment of an independent Chartered Accountant to value the shares of Federal Mogul Goetze (India) Ltd. ('FMG or target company' for short).

¹ Securities and Exchange Board of India

2. Brief facts of the case are, Pegasus agreed to acquire Tenneco Inc. representing business around the globe. FMG, a company listed in India is a part of it. The proportionate net asset value of FMG is more than 15% of the consolidated net asset value (NAV²) of the global business. Under Regulation 8(5) of the SAST Regulations³ ('Takeover Regulations' for short), attribution of value is required to be made by the acquirer. Pegasus ascribed a value of INR 275 per share of FMG at a premium to the 60 days volume weighted average market price which is INR 236. SEBI has not accepted the value of FMG ascribed by Pegasus and vide the impugned communication conveyed that in terms of Regulation 8(16) of the Takeover Regulations, M.M. Nissim & Co. LLP was appointed as an independent Chartered Accountant for valuation of

² Net Asset Value

³ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011

shares of the FMG. Feeling aggrieved, Pegasus is before this Tribunal.

3. Shri Ravi Kadam, learned Senior Advocate for the Pegasus submitted that:

- This is a case of indirect acquisition as FMG forms a part of Tenneco Inc. FMG's shares are frequently traded;
- Pegasus has made an open offer under Regulation 3(1), 4, 5(1) and 8(3) of the Takeover Regulations;
- The impugned order has been passed under Regulation 8(16) of the Takeover Regulations which applies only for the purpose of Clause (e) of Sub-Regulation 4. Both these regulations are not attracted in the instant case;
- As FMG's shares are frequently traded and they are capable of being computed under Regulation

8(3)(e) which stipulates the volume weighted average price for a period of 60 trading days immediately preceding the date on which primary acquisition is contracted. The FMG's equity share price for the period between November 30, 2021 and February 22, 2022 was INR 236. Appellant has ascribed INR 275 which is more than traded price.

4. In substance, Shri Kadam contended that this being a case of indirect acquisition, appellant has taken the volume weighted average market price for a period of 60 trading days as per Regulation 8(3)(e) of the Takeover Regulations. Therefore, appointment of an independent valuer as per 8(16) is not sustainable.

5. Opposing the appeal, Shri Pradeep Sancheti, learned Senior Advocate for SEBI submitted that:

- Pegasus has submitted a draft letter of offer as per Ex-‘H’ to the SEBI. In the said draft letter, the offer price is mentioned at Clause 5 of the document. Pegasus has clearly mentioned in the draft letter that the price per equity share of FMG is offered at INR 275 as per the requirement of Regulation 8(5) of the Takeover Regulations;
- In terms of Regulation 8(3), in the case of indirect acquisition, the offer price must be the highest of Clause (a) to (e) of that Regulation.
- As per Regulation 8(5), in case of an indirect acquisition where proportionate market capitalisation of the target company (FMG) in percentage of the enterprise value for the entity sought to be acquired is in excess of 15% the acquirer is required to compute and disclose in

the letter of offer the per share value taken into account for acquisition.

6. Shri Sancheti submitted that in the case on hand, the percentage is in excess of 15%. Therefore, in order to protect the interests of the investors, SEBI has appointed an independent Chartered Accountant for valuation.

7. In substance, Shri Sancheti's contention is that the appellant has offered INR 275 per share as per the requirement of Regulation 8(5) of the Takeover Regulations. Regulation 8(5) requires computation and disclosure of the share value of the target company. The offer price is arbitrary and, therefore, SEBI has appointed an independent Chartered Accountant for valuation of shares of the target company.

8. In support of his contention, Shri Sancheti placed reliance on *G.L. Sultania v. SEBI*⁴.

9. We have carefully considered the rival contentions and perused the records.

10. Appellants' contention is that the average market price between November 30, 2021 and February 22, 2022 was INR 236. This is not in dispute. In the draft offer letter at Exhibit 'H' appellant has offered INR 275 per share of FMG stating that the same is as per requirement of Regulation 8(5) of the Takeover Regulations.

11. It is pleaded⁵ by the SEBI that it has appointed an Independent Chartered Accountant to value the shares under Regulation 8(16). The said Regulation reads as follows:

⁴ *G.L. Sultania and Anr. v. SEBI and Ors.* decided on May 16, 2007, (2007) 5 SCC 133

⁵ In paragraph No.6, reply affidavit of SEBI

“8(16) For purposes of clause (e) of sub-regulation (2) and sub-regulation (4), the Board may, at the expense of the acquirer, require valuation of the shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having a minimum experience of ten years.

12. A careful reading of above regulation shows that it applies in the case of sub-Regulation 8(2)(e) and Sub-Regulation 8(4).
13. Clause 8(2)(e) of Takeover Regulations apply to the shares which are not ‘frequently traded’. It is not in dispute that the shares of FMG are frequently traded. Therefore, the said clause is not applicable to the facts of this case.
14. The next applicable sub-Regulation is Sub-Regulation 8(4) and it reads as follows:

“(4) In the event the offer price is incapable of being determined under any of the parameters specified in sub-regulation (3),

without prejudice to the requirements of sub-regulation (5), the offer price shall be the fair price of shares of the target company to be determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.”

(Emphasis Supplied)

15. It is thus amply clear that the above sub-Regulation is applicable where the price is ‘incapable’ of being determined under any of the parameters specified in Sub-Regulation 8(3).
16. The appellant has chosen to value the shares based on volume weighted average market price of the shares as per Clause (e) of sub-Regulation (3) for a period of 60 trading days immediately

preceding the date on which the primary acquisition is contracted.

17. Therefore, it is unambiguous that the price is capable of determination under sub-Regulation 8(3)(e) of the Takeover Regulations because, the scrip is 'frequently traded' and the appellant has valued the shares based on volume weighted average market price for a period of 60 days. The undisputed average market price was INR 236 and the appellant has offered INR 275 which is higher than the average market price. In the case of any listed Company share, it is the investors who trade in the scrip are the best evaluators of the share price. Therefore, in our considered view, in the facts of this case, SEBI has incorrectly applied Regulation 8(16) and appointed an independent Chartered Accountant to do the valuation, even

though the share price is capable of being determined on the basis of average share prices for a period of 60 days.

18. In the light of above discussion, in our view, no further valuation by an independent Chartered Accountant is necessary. Hence, this appeal merits consideration. In the result, the following :

ORDER

1. Appeal *allowed*.
2. Order dated August 30, 2023 is quashed.
3. All interlocutory applications stand disposed of.
4. No costs.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

20.12.2024
RHN

Per: Dr. Dheeraj Bhatnagar, Technical Member

I am benefited by the order per the Hon'ble Presiding Officer, which provides a useful framework for interpretation of the applicable provisions.

2. In recent times, SAST Regulations have evolved to capture the growth of mergers and acquisitions activity, and increasing sophistication of takeover market. With regard to the pricing of the open offer, the erstwhile provisions of SAST Regulations, 1997 provided for separate sets of methods for *frequently traded shares* and *infrequently traded shares*. In this regard, the SAST Regulations, 2011, provided a different set of classification of methods for determining open offer

price for *direct acquisitions* and *indirect acquisitions* as per Regulation 8(2) and 8(3), respectively.

3. In case of the direct acquisition, whereby company-A acquires company-B, four methods have been laid out in Regulation 8(2)(a) to (d) capture the valuation in case of frequently traded shares, with the highest value to be the open offer price. In case of a sub-category of infrequently traded shares, where market value of shares may not reveal the true and fair value of the target company, valuation using customarily prevailing methods (other than market valuation of shares), such as book value method, comparable trading multiple method, etc. are to be used as per Regulation 8(2)(e).

4. In case of indirect acquisition, where direct acquisition of Company-B entails indirect acquisition of its subsidiary, company-C, six methods have been

prescribed in Regulation 8(3)(a) to (f) and the open offer price shall be the highest of these six methods. Out of this, the first five methods, denote either negotiated price, actual price or in the nature of market valuation of shares, such as 60 days' Volume Weighted Average Market Price (VWAP) of shares. The sixth method as in clause (f), deals with valuation in certain special circumstances, which are specified in regulation 8(5).

4.1 The SAST regulations, 2011 introduced special provisions of Regulation 8(5) for valuation in indirect acquisition cases in the specified circumstances, as under:

“(5) In the case of an indirect acquisition and open offers under sub-regulation (2) of regulation 5 where,—

a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;

b) the proportionate sales turnover of the target company as a percentage of the

consolidated sales turnover of the entity or business acquired; or

c) the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquire shall, notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), be required to compute and disclose, in the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation”.

4.2 These special provisions capture circumstances, where the underlying ‘net asset value’ or ‘the proportionate sales turnover’ or the ‘proportionate market capitalization’ of the target company (subsidiary of the Company under acquisition), as the case may be, as percentage of overall entity or business under acquisition is significantly higher, which may not be captured using the market valuation of shares alone. For this purpose, the ‘level of significance’ has been

bench-marked at 15% and above. Under these special provisions of Regulation 8(5), the acquirer is required to compute and disclose in the letter of offer, '*Per share value of the target company*' taken into account for acquisition alongwith a '*detailed description of the methodology*' adopted for such computation. The provisions of regulation (5) are '*notwithstanding anything contained in sub-regulation (2) or sub-regulation (3)*', and hence the valuation methodology for addressing the valuation needs under the special provisions of sub-regulation (5), ought to be different from the five other methods provided in the sub-regulation (3). In any case, for finalizing the valuation for indirect acquisition cases under the regulation (3), valuation by all these five methods is also considered alongside the valuation as per special provisions of sub-

regulation (5) and highest value out of all these six methods is taken.

4.3 In their FAQs posted on their website, SEBI has given the following explanation for introducing the special provisions under sub-regulation (5):-

“34. Are there special provisions for determining the offer price in case of open offer arising out of indirect acquisition of a target company?”

Ans.- Yes. Since indirect acquisitions involve acquiring the target company as a part of a larger business, SAST Regulations, 2011 have prescribed additional parameters to be taken into account for determination of the offer price. If the size of the target company exceeds certain thresholds as compared to the size of the entity or business being acquired then the acquirer is required to compute and disclose in the letter of offer, the per share value of the target company taken into account for the acquisition, along with the methodology. (Kindly refer to Regulation 5).

.....

[emphasis supplied]

5. In terms of regulation 8(4), in the event the offer price is incapable of being determined under ‘any’ of

the parameters specified in sub-regulation (3)', without prejudice to the requirement of sub-regulation (5), the offer price shall be the fair value of the shares of the target company, which may require a proper valuation using an appropriate one of the customarily accepted valuation method, such as book value method, comparable trading multiples method etc.

6. In the instant case, the acquirer did not adopt any appropriate valuation method for the purpose of special provision of regulation 8(5) and rather indicated the VWAP methodology as the chosen method, already a prescribed method under sub-regulation (3). Secondly, the acquirer presented valuation of company in per share value terms, by dividing the company's valuation with number of shares, apparently to justify compliance with sub-regulation 3(f). It will be absurd to assume that the underlying objectives of the special provisions

of regulation 8(5) brought in by the new SAST Regulations, 2011 is to merely (a) indicate, which of the already existing five methods in regulation 8(3) is being used with details, and (b) present the valuation in '*per share value*' terms, by dividing the total valuation of the company with the total number of shares, which is a primitive mathematical exercise. Certainly, this could not have been the intention of the legislature. Moreover, for the purpose of open offer to public shareholders, valuation by any method, is generally presented in per share value terms only. The special provisions introduced by the new legislation are intended to carry out valuation in special circumstances. Appellant's interpretation of its onus under sub-regulation (5) defeats the objective of valuation need for specified special circumstances, as the available 5 methods might not capture true and fair

valuation. In view of this, rules of construction need to be applied to appreciate the true purport of the newly inserted regulation 8(5) read with regulation 8(3)(f).

7. On strict interpretation basis too, keeping in view the specific use of '*notwithstanding anything contained in sub-regulation (2) and sub-regulation (3)*' the methods specified in sub-regulation (3) were not to be taken into account for making valuation under the special provision of sub-regulation (5). Moreover, valuation per such methods will in any case be available for selection of the highest value, under sub-regulation (3).

8. The appellant has relied upon the decision of this Tribunal in the case of *Arun Goenka vs. SEBI Appeal No. 220 of 2019 decided on December 11, 2019*, which was affirmed by the Hon'ble Apex Court. Though,

similar to the appellant, this decision was in respect of a company having frequently traded shares, it interpreted then applicable SAST Regulations, 1997, which did not provide for any such special provisions as in the Sub-regulation of SAST regulation, 2011, which capture valuation in special case. In view of this, the aforesaid decision is distinguishable on the facts of the case.

9. In view of this, in my considered view, in the absence of any value reported in Regulation 8(3)(f), which ought to be based on valuation as per the special provisions of Regulation 8(5), the offer price is *incapable* of being determined thereunder. Accordingly, in my considered view, the provisions of regulation 8(4) read with 8(16) were rightly applied by the SEBI, as the offer price is incapable of being determined under *'any of the parameters specified*

under sub-regulation (3)'. In view of this, the respondent has rightly issued directions to get the valuation done in pursuance of powers contained in Regulation 8(16). Accordingly, appeal is dismissed.

Dr. Dheeraj Bhatnagar
Technical Member

20.12.2024
PTM

ORDER OF TRIBUNAL

10. In view of the majority opinion, the appeal is allowed with no order as to costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

20.12.2024
PTM