

DCS/AMAL/JS/24(f)/255/2014-15

January 1, 2015

The Company Secretary
Action Construction Equipment Ltd
5th Floor, TDI Centre, Jasola,
New Delhi, Delhi, 110076

Dear Sir/Madam,

Sub: Observation letter regarding Draft Scheme of Arrangement Involving amalgamation of ACE TC Rental Private Ltd with Action Construction Equipment Ltd.

We refer to your submission of draft Scheme of Amalgamation/Arrangement involving merger of ACE TC Rental Private Ltd with your company filed in accordance with SEBI Circular No.CIR/CFD/DIL/5/2013 & No. CIR/CFD/DIL/8/2013 dated February 4, 2013 & May 21, 2013 respectively.


As required under SEBI Circular No.CIR/CFD/DIL/5/2013 & No. CIR/CFD/DIL/8/2013 dated February 4, 2013 & May 21, 2013 respectively, SEBI vide its letter dated December 26, 2014 has given its letter of comments on the draft scheme and a copy of the same is attached as **Annexure I**.

In its aforesaid comment letter dated December 26, 2014, SEBI has inter-alia made the following observations:

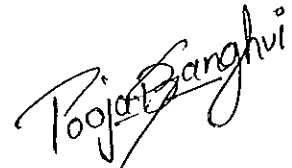
1. *Listing status is being achieved which appears not to be in compliance with Securities Contract (Regulation) Rules, 1957 (SCRR) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR).*
2. *Substantial acquisition by promoters of ACEL is being achieved without providing exit opportunity which appears to be an attempt to circumvent the obligations under SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011 (Takeover Regulations) and Significant dilution in public shareholding of ACEL.*
3. *Shareholding is being increased through Share Swap which appears to an attempt to bypass the preferential issue guidelines under ICDR*

Further, you are advised that, as mentioned under para 11 of the Annexure I of the aforesaid SEBI letter, the above comments/observations do not preclude the company from filing the draft scheme with the Hon'ble High Court for sanction.

Yours faithfully,



Nitin Pujari
Manager



Pooja Sanghvi
Asst. Manager



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Sanjay Sarwade
Assistant General Manager
Corporation Finance Department
Division of Issues and Listing-I
Phone: +91 22 2644 9664
Fax: +91 22 2644 9022. Email: sanjays@sebi.gov.in

CFD/DIL-I/BNS/SGS/OW/37187/2014
December 26, 2014

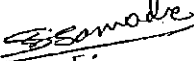
Shri Khushro Bulsara,
General Manager,
BSE Ltd.,
Floor 25, P J Towers, Dalal Street,
Mumbai – 400001.

Dear Sir,

Sub: Draft Scheme of Arrangement involving Amalgamation of ACE TC Rental Private Limited with Action Construction Equipment Limited.

1. This has reference to your letter No. LIST/LO/SEBI/JS/022/2014-15 dated July 09, 2014 and all correspondences exchanged in this regard whereby you have forwarded the application of Draft Scheme of Amalgamation involving Action Construction Equipment Limited (ACEL) and ACE TC Rental Private Limited. (ATRPL) filed in accordance with SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 and SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 (hereinafter referred to as 'the Circulars') for our comments on the draft Scheme of Arrangement (hereinafter referred to as 'draft Scheme').
2. The matter has been examined by SEBI in the light of the provisions under Part A, Annexure I of the aforesaid Circular. Accordingly, SEBI's comments on the draft Scheme are placed at Annexure I.
3. Please note that the submission of documents/information in accordance with the Circular, to SEBI should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or for the correctness of the statements made or opinions expressed in the documents submitted.

Yours faithfully,


Sanjay Sarwade

Encl: a/a

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
Tel.: 2644 9950 / 4045 9950 (IVRS), 2644 9000 / 4045 9000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



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Anneuxre I

Sub: Draft Scheme of Arrangement filled by M/s. Action Construction Equipment Limited.

I. Facts of the Case In brief

1. The parties relevant to this case are as under:
 - 1.1. Action Construction Equipment Limited (ACEL / the company) - Transferee Company and listed on BSE and NSE.
 - 1.2. ACE TC Rentals Private Limited (ATRPL)- Transferor Company, (unlisted).
2. ACEL is a 19 year old company and is inter alia engaged in business of material handling and manufacturing of construction equipment having significant market share in mobile cranes segment.
3. ATRPL is an unlisted company and is inter alia engaged in the business of renting, leasing, letting and dealing in all types of cranes, construction equipment, etc.
4. As per para 1.2 of the draft Scheme of Arrangement (SoA) the rationale of the scheme is that both the companies are in similar line of business and consolidation is expected to bring strengths that each company may not necessarily possess individually.
5. As per Para 5.1 and 5.2 of Part III of the Draft SoA it is inter alia stated:
 - 5.1. "Upon the scheme becoming effective the transferee company shall issue and allot on the proportionate basis to all the members of the Transferor Company 1168 fully paid up equity shares of Rs 10/- each of the Transferee Company for every 100 fully paid up equity shares of Rs 10/- each of the Transferor Company.
 - 5.2. Notwithstanding the above, the new issue of Equity Shares shall be made in accordance of the Minimum Public Shareholding (MPS) prescribed under the Securities Contracts (Regulation) Act, 1956 (SCRA) and Securities Contracts (Regulation) Rules, 1957 (SCRR) such that for any excess entitlement to new equity shares of the members beyond the maximum permissible promoter group shareholding of 75% or any other specified percentage as may be permissible under SCRA, the members shall be proportionately issued such number of fully paid up 8%, fully convertible preference shares of Par Value of Rs 2/- each (FCPS) with one FCPS convertible into one fully paid up equity share of par value of Rs 2/- each of the Transferee company at the option of the members within a period of three years from the date of their allotment in compliance with minimum public shareholding norms under the SCRA or any other applicable laws. It is hereby clarified that the entitlement of the Members to FCPS shall be in the ratio of one FCPS for every one equity share of par value of Rs 2/- each of the transferee company in terms of the share exchange ratio prescribed above.



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6. As per Para 5.5 of Part III of the Draft SoA it is interalia stated the Transferee Company in respect of the fractional entitlement arising out of issue of new shares shall not be required to issue fractional new equity shares (including the FCPS).

7. The Net-worth of the transferor company and transferee company was as follows:

Name of companies	Net Worth (Rs. in crore)		
	31/3/2014	31/3/2013	31/3/2012
Action Construction Equipment Limited (transferee - Listed)	308.02	303.41	297.63
ACE TC Rentals Pvt. Ltd. (transferor - Unlisted)	11.61	9.29	6.65

II. **Shareholding pattern**

8. The pre and post scheme shareholding pattern of ACEL and ATRPL in summarized form is given as under:

8.1 Pre scheme Shareholding pattern of ATRPL:

	#	Shareholder	Holding	%
Promoter	4	Vijay Agarwal	12,00,000	40.00
		Mona Agarwal	6,00,000	20.00
		Sorab Agarwal	6,00,000	20.00
		Surbhi Agarwal	6,00,000	20.00
Sub Total			30,00,000	100.00
Public	0		0	0.00
Total	4		30,00,000	100.00

number of shareholders

8.2 As per the share exchange ratio of 1168:100, ACEL will have to issue 350,39,997 equity shares to shareholders of ATRPL. Upon issue of these shares the promoter shareholding will be in excess 75%. So, in order to comply with the Minimum Public Shareholding requirement the company will issue 267,10,741 equity shares and in lieu of the remaining 83,29,256 equity shares the company will issue 8% Fully Convertible Preference Shares (FCPS). These FCPS will be converted into equity shares within a period of 3 years subject to Minimum public shareholding requirement. Accordingly, the Pre and Post Amalgamation Shareholding Pattern of ACEL is given below:



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	Pre Amalgamation			Post Amalgamation (excluding conversion of FCPS to be allotted in lieu of equity shares)			Post Amalgamation (after conversion of FCPS to be allotted in lieu of equity shares)		
	#	Holding	%	#	Holding	%	#	Holding	%
Promoter	5	67527314	65.25	5	94238055	75.00	5	102567311	76.55
Public	30783	31412686	31.75	30783	31412686	25.00	30783	31412686	23.45
	30788	98940000	100	30788	125650741	100	30788	133979997	100

number of shareholders

8.3 Pre and post amalgamation promoter shareholding pattern of ACEL:

	Promoter	Pre Amalgamation		Post Amalgamation (excluding conversion of FCPS to be allotted in lieu of equity shares)		Post Amalgamation (after conversion of FCPS to be allotted in lieu of equity shares)	
		No of shares	%	No of shares	%	No of shares	%
1	Vijay Agarwal	33988707	34.35	44673003	35.55	48004707	35.83
2	Mona Agarwal	26637207	26.92	31979955	25.45	33645807	25.11
3	Sorab Agarwal	3600150	3.64	8942298	7.12	10608150	7.92
4	Surbhi Agarwal	3250650	3.29	8592798	6.84	10258650	7.66
5	Anuradha Garg	50000	0.05	50000	0.04	50000	0.04
		67527314	68.25	94238055	75.00	102567314	76.55

III. SEBI's observations with regard to Scheme of Arrangement

9. As regards to the merger of transferor entity (ACE TC Rentals Private Limited - unlisted company) with the transferee entity (Action Construction Equipment Limited - listed company), it is prima-facie observed that:

10.1 Listing status is being achieved which appears not to be in compliance with Securities Contracts (Regulation) Rules, 1957 (SCRR) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR).

10.2 Substantial acquisition by promoters of ACEL is being achieved without providing an exit opportunity which appears to be an attempt to circumvent the obligations under SEBI (Substantial Acquisition of Shares and

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Takeovers) Regulations, 2011 (Takeover Regulations) and Significant dilution in public shareholding of ACEL.

10.3 Shareholding is being increased through Share Swap which appears to an attempt to bypass the Preferential Issue guidelines under ICDR.

9.1. Listing status is being achieved which appears not to be in compliance with Securities Contracts (Regulation) Rules, 1957 (SCRR) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR).

9.1.1. An unlisted company, in order to get listed, is required to go through Initial Public Offer (IPO) route by complying with the provisions of rule 19(2)(b) of SCRR and ICDR.

9.1.2. The said IPO process involves a due diligence process conducted by a SEBI registered merchant banker, filing of a draft offer document with SEBI/Stock Exchange/Merchant Banker, disseminating of the draft offer document on the websites of SEBI/Stock Exchanges/Merchant Banker for public comments, in-principle approval by Stock Exchange, processing of the same by SEBI to ensure adequacy of disclosures, issuance of observations by SEBI, filing of prospectus with RoC, issuance of advertisements in newspapers, allotment of shares and listing of the same on the Stock Exchange.

9.1.3. The offer document is required to contain disclosures on:

- Background of the Promoters
- Capital Structure including share capital built up
- History of the company
- Past financial details including indebtedness, related party transactions, etc.
- Basis for valuation of shares vis-a-vis peer group
- Management of the company
- Government and other statutory approvals required for the business
- Pending litigations against the company, its directors, promoters, etc.
- Risk factors associated with the business carried out by the company

9.1.4. The unlisted companies are required to go through the aforesaid process which would provide adequate and accurate information to the investors to take an informed decision with regard to their investment.



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9.1.5. Listing provides an exclusive privilege to securities in the Stock Exchange. Only listed shares are quoted on the Stock Exchange. Stock Exchange facilitates transparency in transactions of listed securities in perfect equality and competitive conditions. Listing is beneficial to the company, to the investor, and to the public at large.

9.1.6. Some of the important advantages of listing are enumerated below:

- **Fund Raising**
Listing provides an opportunity to the corporates/ entrepreneurs to raise capital to fund new projects/undertake expansions/diversifications and for acquisitions.
- **Ready Marketability of Security**
Listing brings in liquidity and ready marketability of securities on a continuous basis adding prestige and importance to listed companies.
- **Ability to raise further capital**
An initial listing increases a company's ability to raise further capital through various routes like preferential issue, rights issue, Qualified Institutional Placements and ADRs/GDRs/FCCBs, and in the process attract a wide and varied body of institutional and professional investors.
- **Supervision and Control of Trading in Securities**
The transactions in listed securities are required to be carried uniformly as per the rules and bye-laws of the exchange. All transactions in securities are monitored by the regulatory mechanisms of the Stock Exchange, preventing unfair trade practices. It improves the confidence of small investors and protects them.
- **Fair Price for the Securities**
The prices are publicly arrived at on the basis of demand and supply; the Stock Exchange quotations are generally reflective of the real value of the security. Thus listing helps generate an independent valuation of the company by the market.
- **Timely Disclosure of Corporate Information**
The listing agreement signed with the exchange provides for timely disclosure of information relating to dividend, bonus and right issues, book closure, facilities for transfer, company related information etc. by the company. Thus providing more transparency and building investor confidence.
- **Collateral Value of Securities**



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Listed securities are acceptable to lenders as collateral for credit facilities. A listed company can also borrow from financial institutions easily as it is rated favorably by lenders of capital.

- **Benefits to the Public**
The data daily culled out by the Stock Exchange in the form of price quotations and others, provide valuable information to the public which can be used for project and research studies. The Stock Exchange prices can be an index of the state of the economy. Financial institutions, NRI, individual investor's etc. can take wise decisions before making investments.
- **Subdivision and Consolidation of Holdings**
Stock Exchange bye-laws provide for explicit rules for sub division and consolidation of securities as desired by the investors. There is special trading sessions in the exchange for conversion of odd lots into market lots arranged by financial and institutional investors. Thus listing helps to provide flexibility to investors in the subdivision and consolidation of their holdings with speed and earnestness.

- 9.1.7. As the listing is being achieved through a scheme of arrangement, the unlisted company ATRPL do not offer at least 25% of the shares of the company in terms of rule 19(2)(b) of SCRR.
- 9.1.8. The scheme of arrangement, envisaged in the instant case does not provide adequate information of the unlisted company, ATRPL, with regard to background of the Promoters, Capital Structure, history of the company, financial details, management of the company, government and other statutory approvals required for the business, litigations, risk factors associated with the business carried out by the company as no prospectus is prepared.
- 9.1.9. Even if the aforementioned disclosures are made, the adequacy and authenticity of the same cannot be ensured in the absence of due-diligence by a SEBI registered Merchant Banker and/or examination by SEBI.
- 9.1.10. Without complying with the aforesaid regulatory requirements, the unlisted transferor company (ATRPL) will enjoy the benefits of listing as stated above, which they are not entitled to.
- 9.1.11. Further, due to the unavailability of required disclosures pertaining to the unlisted transferor company (ATRPL), once listed, the investors



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trading in the secondary market would be deprived of the critical information for taking informed investment decisions. If such backdoor listing is allowed unchecked, it may jeopardize and tarnish the image of the securities market as a transparent and efficient way of raising capital shaking the very foundation of capital raising in India. It may also affect the development of a strong, transparent and credible securities market which is an important prerequisite for the economic development of the country.

9.2. **Substantial acquisition by promoters of ACEL is being achieved without providing an exit opportunity which appears to be an attempt to circumvent the obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations)**

9.2.1. The promoters of ACEL are Vijay Agarwal, Mona Agarwal, Sorab Agarwal, Surbhi Garg. The promoters of ATRPL are Vijay Agarwal, Mona Agarwal, Sorab Agarwal, Surbhi Garg and Anuradha Garg. Both the companies are having common promoters except Anuradha Garg who is holding 0.05% in ACEL.

9.2.2. Therefore, the Scheme envisages increase in promoter holding, post amalgamation, from 68.25% to 75.00% (i.e. increase of 6.75%) and considering full conversion of FCPS to 76.55% (i.e. increase of 8.30%). Such increase in shareholding of Promoters effectively appears to be substantial acquisition in terms of Takeover Regulations.

9.2.3. SEBI, in order to protect the interest of investors, has put in place Takeover Regulations which seek to ensure that the substantial acquisition of shares and/or of control over a listed company in the securities market takes place in a fair, equitable and transparent manner. Takeover Regulations are based on the following principles:

- Equality of treatment and opportunity to all shareholders.
- Protection of interests of shareholders.
- Fair and truthful disclosure of all material information by the acquirer in all public announcements and offer documents.
- Availability of sufficient time to shareholders for making informed decisions.
- An offer to be announced only after most careful and responsible consideration.
- The acquirer and all other intermediaries professionally involved in the offer, to exercise highest standards of care and accuracy in preparing offer documents.



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- All parties to an offer to refrain from creating a false market in securities of the target company.
- 9.2.4. The Takeover Regulations require that before making substantial acquisition, the acquirer, in this promoter, to make an open offer/ give exit opportunity to incumbent shareholders of the target company.
- 9.2.5. However, it may be argued that such substantial acquisition due to scheme of arrangement pursuant to the sanction of Hon'ble High Court is exempt from the applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 under regulation 10(1)(d)(ii).
- 9.2.6. Substantial acquisition is taking place without any exit opportunity to the public shareholders of the listed entity. Moreover, the shareholding of the erstwhile public shareholders of the listed entity would get significantly reduced in the post scheme capital, i.e. from 31.75% to 25% (23.45% considering full conversion of FCPS) leading to significant dilution in public shareholding of ACEL.
- 9.2.7. In the instant case, Substantial acquisition is being achieved without going through the transparent mechanism of open offer process envisaged in the Takeover Regulations. Thus, it is prima facie observed that the principles underlying the regulations may be defeated because of this non-transparent and opaque method adopted through the Scheme of Arrangement.
- 9.2.8. The present Scheme appears to have been designed as an artifice to circumvent the compliance with the provisions of the Takeover Regulations and surreptitiously claiming exemption from the applicability of the Takeover Regulations under reg. 10(1)(d)(ii).
- 9.3. **Shareholding is being increased through Share Swap which appears to an attempt to bypass the Preferential Issue guidelines under ICDR.**
- 9.3.1. Preferential Allotment is the process by which allotment of securities/shares is done on a preferential basis to a select group of investors which is neither a rights issue nor a public issue.



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- 9.3.2. A listed company going for preferential allotment has to comply with the requirements contained in Chapter VII of ICDR, in addition to the requirements specified in the Companies Act.
- 9.3.3. In the instant case, the shares of the listed company are reportedly issued to the shareholders of the unlisted companies as consideration for the merger. Such a transaction is akin to preferential allotment.
- 9.3.4. However, it may be argued that such preferential allotment would be exempt from the applicability of Chapter VII of SEBI (ICDR) Regulations, 2009 under regulation 70 (1) (b). The exemption is provided where the preferential allotment is made pursuant to a scheme approved by the High Court u/s 391-394 of the Companies Act, 1956. In the instant case, the consideration for merger of the assets of the unlisted company with the listed company is paid through the preferential allotment of shares as part of the scheme in order to avail the exemption under the said regulations.

10. Conclusion on the Scheme of Arrangement

- 10.1. As listing of the unlisted company is being achieved through backdoor as part of the Scheme, it may jeopardize and tarnish the image of the securities market as a non-transparent and inefficient way of raising capital and listing. It may also affect the development of a strong, transparent and credible primary securities market, which is an important prerequisite for the economic development of the country. Further, the promoters/ shareholders of the unlisted company by virtue of getting the 'listing' status may derive the benefits of 'listing' which they otherwise are not entitled to, as it appears that they are not complying with the necessary regulatory framework.
- 10.2. The Scheme of Arrangement in its current form resulting in substantial acquisition of voting rights by the promoter of ACEL may be detrimental to the public shareholders of ACEL as the substantial acquisition is achieved through a non-transparent, inequitable and unfair method.
- 10.3. As part of the Scheme, the shareholders of the unlisted company are receiving shares of the listed company as consideration. Such an acquisition is being done as a share swap, which is akin to preferential allotment without complying with the regulatory requirements. The shareholders of the unlisted companies are receiving marketable securities of the listed company in lieu of the shares of the unlisted



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companies which may not be marketable which tantamount to undue enrichment.

11. The above comments/observations do not preclude the company from filing the draft scheme with the Hon'ble High Court for sanction.
