

DCS/AMAL/NJ/24(f)/435/2013-14

March 26, 2014.

The Company Secretary
Aris International Limited.
129-B, Ansa Industrial Estate,
Saki Vihar Road, Saki Naka,
Andheri (E),
Mumbai,
Maharashtra - 400072.

Dear Sir;

Sub: Observation letter regarding Draft Scheme of Arrangement filed by Aris International Limited.

We refer to your submission of draft Scheme of Arrangement / Amalgamation involving Reduction, Split of shares, & Merger of Goriputra Metal Limited (GML) & Pawanputra Metal Limited (PML) with Aris International Limited.

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 March 20, 2014 has given the comments on the draft scheme of arrangement as per **Annexure I** (copy attached).

The comments communicated in the above SEBI letter refer to inter alia:

1. *Dilution in public shareholding of Aris which is not in accordance with provisions of Securities Contracts (Regulations) Rules, 1957 (SCRR) & Listing Agreement.*
2. *Achieving Listing status an attempt to circumvent requirements of SCRR & SEBI (Issue of Capital & Disclosures Requirements) Regulations, 2009 (ICDR).*
3. *Change in control over Aris without providing an exit opportunity – an attempt to circumvent the obligations under SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (Takeover Regulations).*
4. *Increasing shareholding of new promoters (Promoters of Unlisted Company) through Share Swap under Scheme of Arrangement – an attempt to bypass the Preferential Issue guidelines under ICDR.*

The Exchange has therefore been advised by SEBI to inter alia:

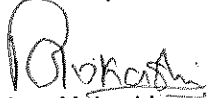
1. *Implead itself in the proceedings before the Hon'ble High Court, stating, inter-alia, that the proposed Scheme of Arrangement is detrimental to the interest of investors and securities market.*
2. *Bring the observations of SEBI to the notice of the Hon'ble High Court;*
3. *Take up the matter actively with ROC and impress upon ROC to object to the Scheme of Arrangement before Hon'ble High Court, inter-alia, on the above grounds.*
4. *Keep SEBI informed the developments in the matter.*

2/-


In view of the above observations, the Exchange is unable to grant its 'No-Objection' to the draft Scheme of Arrangement filed by the company. The company may therefore consider revising the scheme suitably to address all the concerns raised and re-submit the same.

Further, you are advised to bring the contents of this letter to the notice of your shareholders, all relevant authorities, as deemed fit and also include the above observations in the filings to be made before the Honorable High Court/Registrar of Companies, Mumbai.

Yours faithfully,



Bhushan Mokashi
Asst. General Manager



Pooja Sanghvi
Asst. Manager



•SEBI•

OF EMPOWERING
INVESTORS

Assistant Manager
Corporation Finance Department
Division of Issues and Listing
Phone: +91 22 26449464
Fax: +91 22 26449022 || Email: prateeka@sebi.gov.in

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

CFD/DIL/HB/PA/8635/2014
March 20, 2014

Shri Khushro Bulsara
General Manager,
Bombay Stock Exchange Ltd.
Floor 25, P J Towers, Dalal Street
Mumbai - 400 001.

Sir,

Sub: Draft Scheme of Arrangement filed by M/s. Aris International Ltd.

1. This has reference to your letter No. LIST/LO/SEBI/NJ/81/2013-14 dated October 10, 2013 whereby you have forwarded the application of Draft Scheme of Arrangement involving re-organisation of capital of M/s Aris International Ltd., merger of M/s. Goriputra Metal Ltd. and M/s. Pawanputra Metal Ltd. filed in accordance with SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 read with SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 (hereinafter referred to as 'the Circulars') and other correspondences exchanged on the subject, for our comments on the draft Scheme of Arrangement (hereinafter referred to as 'draft Scheme').
2. It is noted that the Designated Stock Exchange, viz., Bombay Stock Exchange (BSE), has accorded its 'no-objection' to the draft Scheme vide letter dated November 26, 2013. 'No-objection' to the draft Scheme has not been received from Calcutta Stock Exchange (CSE).
3. 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.
4. BSE is advised to:
 - 4.1.1. implead itself in the proceedings before the Hon'ble High Court, stating, inter-alia, that the proposed Scheme of Arrangement is detrimental to the interest of investors and securities market.
 - 4.1.2. bring the observations of SEBI to the notice of the Hon'ble High Court;
 - 4.1.3. in case the Hon'ble High Court needs any further clarification on the matter, prior to deciding on the Scheme of Arrangement, request the Hon'ble Court to serve a notice on SEBI, to enable SEBI to appear and clarify the issues to the Hon'ble Court; and
 - 4.1.4. take up the matter actively with RoC and impress upon RoC to object to the Scheme of Arrangement before the Hon'ble High Court, inter-alia, on the above grounds.

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



अनुवर्ती :
Continuation :

2 of 2

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

4.1.5. keep SEBI informed of the developments in the matter.

5. 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,


Prateek Arora

Copy to: Dr. T. Pandian
Registrar of Companies, Mumbai
100, Everest,
Marine Drive
Mumbai- 400002

Chief Listing Officer
The Calcutta Stock Exchange Limited
7, Lyons Range
Kolkata 700001



अनुवर्ती :
Continuation
Page 1 of 13

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Annexure I

Sub: Draft Scheme of Arrangement filed by M/s. Aris International Ltd.

I. FACTS OF THE CASE IN BRIEF

1. Background:

1. The parties relevant to this case are as under:

- 1.1. Aris International Ltd. ("Aris") - Transferee Company – Listed on Bombay Stock Exchange (BSE) and Calcutta Stock Exchange (CSE).
- 1.2. M/s. Goriputra Metals Ltd. ("GML") and M/s. Pawanputra Metals Ltd. ("PML") - Transferor Companies - Unlisted - incorporated as private companies limited by shares and converted into public companies on September 26, 2013 and June 05, 2013, respectively.

2. The Scheme envisages the following:

- 2.1. Reduction of Share Capital of Aris by reducing the equity share capital from Rs. 4,62,01,000 to Rs. 46,20,100 by reducing the number of shares and keeping the face-value intact.
 - 2.2. Subsequent to reduction of share capital, the shares which are at a face value of Rs. 10/- shall be split into equity shares of Rs. 1/- each.
 - 2.3. Merger of the two transferor companies into the transferee company.
 - 2.4. Change in the management of Aris.
3. Pursuant to the provisions of Sections 391 to 394 of the Companies Act, 1956, the transferor undertakings shall stand transferred to and vested in Aris as a going concern.
4. The Net-worth of the transferor companies and transferee company as on March 31, 2013 was as follows:

Name of companies	Net Worth (Rs.)
Aris (transferee)	7,65,034
GML (transferor 1)	28,71,07,052
PML (transferor 2)	27,63,75,443

Handwritten signature/initials



अनुवर्ती :
Continuation :
Page 2 of 13

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

5. It is submitted by the company that as on November 22, 2013, there is no relation between unlisted companies and the listed entity.
6. The nature of business carried out by the transferee entity and the transferor entities is as follows:
 - 6.1. **Aris:** To carry on, inter-alia, the business as manufacturers, processors, designers, refiners, formulators, buyers, sellers etc., of all gears, bevel gears, transmission gears, crown wheel pinion, automobile spare parts, accessories, hardware items, machinery spare & tools, other equipment related to automobile industries etc. To carry on, inter-alia, the business in the field of all types of paintings and buy and sell, set up and deal online, create a painting platform, software design and development and such other services related to Internet, web-development and E-commerce etc. To carry on, inter-alia, business in the field of Information Technology, to provide web based business solutions in terms of e-commerce, communication implementation, hardware implementation /facilitation etc.
 - 6.2. **GML:** To carry on in India or elsewhere the business of and dealers in alloys, ferrous and non-ferrous metallic and non-metallic, dioxide chemicals and other metals etc., and to carry on the business of founders, moulders, casters, mechanical engineers of agriculture implements and other light and heavy machinery, tool makers etc., and to buy, sell, manufacture, export, import, repair etc., in machinery, implements, rolling stock and hardware.
 - 6.3. **PML:** To carry on in India or elsewhere the business of and dealers in alloys, ferrous and non-ferrous metallic and non-metallic, dioxide chemicals and other metals etc., and to carry on the business of founders, moulders, casters, mechanical engineers of agriculture implements and other light and heavy machinery, tool makers etc., and to buy, sell, manufacture, export, import, repair etc., in machinery, implements, rolling stock and hardware.
7. The share holders of the transferor entities shall be issued shares in the transferee entity as a consideration for the aforesaid merger and the ratio of such issuance shall be in the following manner:
 - 7.1. PML: One share of Rs. 1 each of Aris, for every one share of Rs. 1 each in PML .
 - 7.2. GML: One share of Rs. 1 each Aris, for every one share of Rs. 1 each in GML.
8. As per Clause 5.3.2 of the draft Scheme of Arrangement, the Promoters of the PML and GML (same promoters - as per the shareholding pattern submitted with the scheme) shall become the Promoters Transferee Company upon the Scheme being effective. It is further stated that the existing promoters have shown their willingness to step down as



अनुवर्ती :
Continuation :
Page 3 of 13

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

promoters and as a result will be classified as part of Public post the Scheme of Arrangement.

9. The shareholding pattern of the company is as follows:

Sr	Description	Pre-scheme		Post Reduction and Split		Post Merger	
		No. of shares	%	No. of shares	%	No. of shares	%
(A)							
1	Indian						
(a)	Individuals/ Hindu Undivided Family						
(a1)	Promoters of Aris (8)	100100	2.16	100100	2.16	0	0
(a2)	Promoters of GML & PML (1) - same entity	0	0	0	0	10000	0.00
	Total						
(b)	Central Government/ State Government(s)	0	0	0	0	0	0
(c)	Bodies Corporate	0	0	0	0	0	0
(c1)	Promoters of Aris (5)	170000	3.68	170000	3.68	0	0
(c2)	Promoters of GML & PML (1) - same entity	0	0	0	0	50004000	8.80
(d)	Financial Institutions/ Banks	0	0	0	0	0	0
(e)	Any Others	0	0	0	0	0	0
	Sub Total(A)(1)	270100	5.85	270100	5.85	50014000	8.81
2	Foreign						
(a)	Individuals (Non-resident Individuals/ Foreign Individuals)	0	0	0	0	0	0
(b)	Bodies Corporate	0	0	0	0	0	0
(c)	Institutions	0	0	0	0	0	0
(d)	Any Others (Specify)	0	0	0	0	0	0
	Sub Total(A)(2)						
	Total Shareholding of Promoter & Promoter Group (A) = (A)(1) + (A)(2)	270100	5.85	270100	5.85	50014000	8.81
(B)							
1	Institutions						
(a)	Mutual Funds/ UTI	0	0	0	0	0	0

Handwritten signature



अनुवर्ती :
Continuation :
Page 4 of 13

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

(b)	Financial Institutions / Banks	0	0	0	0	0	0
(c)	Central Government/ State Government(s)	0	0	0	0	0	0
(d)	Venture Capital Funds	0	0	0	0	0	0
(e)	Insurance Companies	0	0	0	0	0	0
(f)	Foreign Institutional Investors	0	0	0	0	0	0
(g)	Foreign Venture Capital Investors	0	0	0	0	0	0
(h)	Any Other (specify)	0	0	0	0	0	0
	Sub-Total (B)(1)	0	0	0	0	0	0
2	Non-Institutions						
(a)	Bodies Corporate						
(a1)	Bodies Corporate of ARIS (14)	640400	13.86	640400	13.86	810400	0.14
(a2)	Bodies Corporate of GML (12)	0	0	0	0	252191600	44.4
(a3)	Bodies Corporate of PML (13)	0	0	0	0	41024500	7.22
(b)	Individuals						
I	Individual shareholders holding nominal share capital up to Rs 1 lakh						
	(b(I)(1) Individuals of ARIS (324)	333400	7.2163	333400	7.2163	333400	0.06
	(b(I)(2) Individuals of GML (1)	0	0	0	0	5000	0.00
	(b(I)(3) Individuals of PML (1427)	0	0	0	0	89161500	15.70
II	Individual shareholders holding nominal share capital in excess of Rs. 1 lakh.						
	(b(II)(1) Individuals of ARIS (42)	3376200	73.07	3376200	73.07	3476300	0.61
	(b(II)(2) Individuals of GML (0)	0	0	0	0	0	0
	(b(II)(3) Individuals of PML (480)	0	0	0	0	131013000	23.06
(c)	Any Other						
I	NRI (Repat)	0	0	0	0	0	0

Sharma



ii	Clearing Members	0	0	0	0	0	0
iii	HUF	0	0	0	0	0	0
	Sub-Total (B)(2)	435000	94.15	435000	94.15	518015700	
(B)	Total Public Shareholding (B)= (B)(1)+(B)(2)	435000	94.15	435000	94.15	518015700	
	TOTAL (A)+(B)	4620100	100	4620100	100	568029700	100
(C)	Shares held by Custodians and against which DRs have been issued	0	0	0	0	0	0
	GRAND TOTAL (A)+(B)+(C)	4620100	100	4620100	100	568029700	100

Note: The pre-Scheme shareholding and the share holding post the reduction of capital and split will be the same for Aris (Transferee).

10. From the submissions made along with the Scheme, it is noted that the financials for the unlisted transferor companies have been submitted for the period ending March 31, 2013 i.e. more than 6 months old and not for the period ended September 30, 2013, as Part A of SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

II. COMMENTS OF SEBI ON THE DRAFT SCHEME OF ARRANGEMENT

11. The Scheme of Arrangement is broadly divided into two parts:

11.1. Part A: Reduction of the Share Capital of Aris by reducing the equity share capital from Rs. 4,62,01,000 to Rs. 46,20,100 by reducing the number of shares and keeping the face-value intact and subsequent to reduction of share capital, the shares which are at a face value of Rs. 10/- shall be split into equity shares of Rs. 1/- each.

11.2. Part B: Merger of the two transferor entities (GML & PML) into Aris and change in the management of Aris.

12. Comments with respect to Part - A of the Scheme:

Reduction of capital by the said companies is being done under section 391, 394 read with section 100-104 of the Companies Act, 1956. SEBI has no specific concerns in this regard.

Rate



अनुवर्ती :
Continuation :
Page 6 of 13

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

13. Comments with respect to Part - B of the Scheme:

As regards, Part B of the Scheme, which involves merger of transferor entities (2 unlisted companies) with the transferee entity (one listed company) and change in the management of Aris, certain concerns are observed with regard to the following:

- 13.1 Dilution in public shareholding of Aris which is not in accordance with provisions of Securities Contracts (Regulations) Rules, 1957 (SCRR) and Listing Agreement.
- 13.2 Achieving Listing status an attempt to circumvent requirements of SCRR and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR).
- 13.3 Change in control over Aris without providing an exit opportunity - an attempt to circumvent the obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations).
- 13.4 Increasing shareholding of new promoters (Promoters of Unlisted Company) through Share Swap under Scheme of Arrangement - an attempt to bypass the Preferential Issue guidelines under ICDR.

13.1. Dilution in public shareholding of Aris which is not in accordance with provisions of SCRR and Listing Agreement

- 13.1.1. The Public Shareholding of Aris (Listed Company) prior to the Scheme of Arrangement stands at 94.15% held by 367 shareholders. Post the Scheme, the said public shareholding gets reduced to 0.76% (appx.).
- 13.1.2. In terms of Rule 19A of SCRR, as amended on June 04, 2010, every listed company (other than public sector company) shall maintain public shareholding of at least 25%. The object of this minimum public shareholding requirement is to ensure the availability of a minimum portion/ number of shares (floating stock) of the listed company with the public. This would provide a reasonable depth in the market and the prices of the securities are not susceptible to manipulation. Further, a dispersed shareholding structure is an essential ingredient for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices.
- 13.1.3. While, the shareholding of the pre-Scheme public shareholders of Aris is getting reduced to a miniscule 0.76%, in the post Scheme shareholding pattern, the public shareholding is shown as 91.2%. The said 91.2% comprises



of (i) the pre-scheme public shareholders of Aris (0.76% - 367 shareholders), (ii) the outgoing promoter of Aris (0.047% - 13 shareholders) and (iii) some of the shareholders of the transferor (unlisted) companies (90.393% - 1931 shareholders). It is noted that out of the said 1931 shareholders, 1919 shareholders were shown as part of the public category in the pre-Scheme shareholding pattern of PML (as on September 30, 2013). Further, from the information submitted with the Scheme it is noted that PML got converted into a public limited Company on June 05, 2013. Thus, the increase in number of shareholders from less than 50 (maximum permissible for a private limited company) to 1919 must have taken place within a period of 4 months i.e. between June 05, 2013 till September 30, 2013. The said increase in the number of shareholders in such a short span of 4 months raises serious concerns and prima facie appears to be a pretence to ensure compliance.

13.1.4. The actual public shareholding in the post merged entity would be only 0.76%. Therefore, this is not in compliance with the requirements of rule 19A of SCRR and clause 40A of Listing Agreement. Such a compliance, would defeat the objective of the minimum public shareholding norm stated at Para 13.1.2.

13.1.5. It is observed that the new promoters of the post-Scheme entity has submitted an undertaking stating, inter-alia, that they shall make an open offer to the public share holders of Aris in terms of the Takeover Regulations. If such an offer is made to the public shareholders of Aris and the shareholders tender shares in the open offer, it is likely that the actual public shareholding in the post-Scheme entity will further get reduced from 0.76%. This will further reduce the floating stock and consequently the price of the security would be susceptible to manipulation.

13.2. Achieving Listing status-an attempt to circumvent requirements of SCRR and ICDR

13.2.1. 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.

13.2.2. 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, 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.

13.2.3. 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-viz 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

13.2.4. 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.

13.2.5. 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.

13.2.6. 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**

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.



अनुवर्ती :
Continuation :
Page 10 of 13

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

- 13.2.7. As the listing is being achieved through a scheme of arrangement, the unlisted companies do not offer at least 25% of the shares of the companies in terms of rule 19(2)(b) of SCRR.
- 13.2.8. The scheme of arrangement, envisaged in the instant case does not provide adequate information of the unlisted companies 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.
- 13.2.9. 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.
- 13.2.10. Without complying with the aforesaid regulatory requirements, the unlisted transferor companies will enjoy the benefits of listing as stated above, which they are not entitled to.
- 13.2.11. Further, due to the unavailability of required disclosures pertaining to the unlisted transferor companies, once listed, the investors 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 will 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 will also affect the development of a strong, transparent and credible securities market which is an important prerequisite for the economic development of the country.
- 13.3. Change in control over Aris without providing an exit opportunity - an attempt to circumvent the obligations under Takeover Regulations**
- 13.3.1. The Scheme of Arrangement also envisages change in promoters and management of the listed entity. Such a change in the Promoters effectively is change in control over the company.
- 13.3.2. SEBI, in order to protect the interest of investors has put in place SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations). The Takeover regulations 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. The takeover regulations are based on the following principles:

[Handwritten signature]



- 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.
- All parties to an offer to refrain from creating a false market in securities of the target company.

- 13.3.3. The regulations require the incoming promoter to make an open offer before acquiring the control over the target company. However, it may be argued that such change in management and control is exempt from the applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 under regulation 10(1)(d)(ii).
- 13.3.4. The pre-scheme shareholding of the thirteen promoters of Aris (Listed Company) was 5.84%. Pursuant to the Scheme, the same gets reduced to 0.047%. Correspondingly, the public shareholding also gets reduced from 94.15% to 0.76% as stated at Para 13.1.1. Post allotment of shares to GML and PML (Unlisted Companies) of Aris (Listed Company), the shareholding of promoters of GML and PML (same promoters) in Aris becomes 8.81%.
- 13.3.5. Apart from above, promoters of Aris (Listed entity) post scheme would be classified as Public in the post scheme entity.
- 13.3.6. As part of the Scheme, some of the shareholders of GML and PML (Unlisted Companies) holding 12.17% and 5.45% respectively in the pre scheme capital of the said companies, have been classified as 'public' in the post scheme entity, with shareholding of 90.393%. However, if this shareholding of 90.393% is considered as part of Promoter group of the post scheme entity, the total promoter holding of the post scheme entity would be 99.25% approx. (90.393%+8.81+ .047%).
- 13.3.7. The change in control 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 reduced to a irrelevant



percentage in the post scheme capital, i.e. from 94.15% to 0.76%. The change in control is being achieved without going through the transparent mechanism of open offer process envisaged in the Takeover Regulations. Thus, the principles underlying the regulations have also been defeated because of this non-transparent and opaque method adopted through the Scheme of Arrangement.

- 13.3.8. 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).

13.4. Increasing shareholding of new promoters (Promoters of Unlisted Company) through Share Swap under Scheme of Arrangement - an attempt to bypass the Preferential Issue guidelines under ICDR

- 13.4.1. 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.
- 13.4.2. 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.
- 13.4.3. 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.
- 13.4.4. 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 companies with the listed companies is paid through the preferential allotment of shares as part of the scheme in order to avail the exemption under the said regulations.

14. Conclusion on the Part C of the Scheme of Arrangement

- 14.1. As the actual public holding in the post amalgamated entity would be only 0.76%, there will not be depth in the market and the price of the security would be prone to manipulation. Non-dispersed shareholding structure will hamper the sustenance of



अनुवर्ती :
Continuation :
Page 13 of 13

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

the continuous market for the listed security. There will not be liquidity in trading and discovery of fair price is unlikely.

- 14.2. As listing of the unlisted companies is being achieved through backdoor as part of the Scheme, it will jeopardize and tarnish the image of the securities market as a non-transparent and inefficient way of raising capital and listing. It will 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 of the unlisted companies by virtue of getting the 'listing' status would derive the benefits of 'listing' which they otherwise are not entitled to, as they are not complying with the necessary regulatory framework.
- 14.3. The Scheme of Arrangement in its current form resulting in change in control over the listed company will be detrimental to the public shareholders of Aris as the change in control is achieved through a non-transparent, inequitable and unfair method.
- 14.4. As part of the Scheme, the shareholders of the unlisted companies are receiving shares of the listed company as consideration. Such an acquisition is being done as a 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 companies which may not be marketable which tantamounts to undue enrichment.
