**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

**ORDER UNDER SECTIONS 11(1), 11(2)(j), 11(4) AND 11 (B) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 12A OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 IN RELATION TO THE COMPLIANCE BY GILLETTE INDIA LIMITED WITH THE REQUIREMENT OF MINIMUM PUBLIC SHAREHOLDING.**

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1. The Securities Contracts (Regulation) Act, 1956 (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. 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 listed companies also have to enter into listing agreements with the respective stock exchanges wherein their securities are listed. Section 21 of the SCRA mandates the compliance, by all listed companies, of the conditions of the listing agreement with the stock exchange. The SCRR *inter-alia*, prescribes the requirements which have to be satisfied by companies for the purpose of getting their securities listed on any stock exchange in India.

2. The SCRR was amended vide notification of the Securities Contracts (Regulation) (Amendment) Rules, 2010 ('First amendment') by the Central Government dated June 04, 2010 and amended once again vide Securities Contracts (Regulation) (Second Amendment) Rules, 2010 ('Second amendment') in terms whereof Rule 19(2)(b) was amended and a new rule; Rule 19(A) was introduced to the SCRR respectively.

3. The amended Rule 19(2)(b) and newly introduced Rule 19(A) of SCRR read as under:

***Requirements with respect to the listing of securities on a recognised stock exchange.***

*19 (2) ……*

*(b) (i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or*

*(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:*

*Provided that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule 2 of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:*

*Provided further that the company, referred to in sub clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.*

***Continuous Listing Requirement.***

*19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.:*

*Provided that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange*



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*Board of India.*

*Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.*

*(2) Where the public shareholding in a listed company falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.*

4. Thus, the provisions quoted above require all listed companies in the private sector to achieve and maintain the minimum public shareholding of 25% of each class or kind of equity shares or debentures convertible into equity shares issued by such companies. Those companies with public shareholding of less than 25%, as on June 04, 2010 are required to achieve the same, within a period of three years from the date of commencement of the first amendment i.e. by June 03, 2013 in the manner specified by the Securities and Exchange Board of India (SEBI).

5. In order to align the requirements in the Listing Agreement with the requirements specified in Rule 19(2)(b) and Rule 19A of SCRR and to specify the manner in which public shareholding may be raised to the prescribed minimum level, SEBI issued a Circular No CIR/CFD/DIL/10/2010 dated December 16, 2010 to suitably amend Clause 40A of the Listing Agreement. This circular *inter-alia* provided the following methods for complying with the minimum public shareholding requirement.

    a. *Issuance of shares to the public through prospectus;*
    b. *Offer for sale of shares held by promoters to public through prospectus;*
    c. *Sale of shares held by promoters through the secondary market i.e. OFS through Stock Exchange;*

6. Subsequently, SEBI issued another circular dated February 08, 2012 which *inter-alia* provided that listed companies may achieve the minimum public shareholding requirement through Institutional Placement Programme (IPP). With a view to further facilitate listed companies to comply with the minimum public shareholding requirements within the time specified in the

SCRR, SEBI issued the circular dated August 29, 2012 which specified the following additional methods to comply with the minimum public shareholding requirements:-

a. *Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their rights entitlement.*
b. *Bonus Issues to public shareholders, with promoters/promoter group shareholders forgoing their bonus entitlement.*
c. *Any other method as may be approved by SEBI, on a case to case basis.*

7. I note that vide circular dated August 29, 2012, SEBI under paragraph 3 had specified that listed companies desirous of achieving the minimum public shareholding requirement through other means may approach it (SEBI) with appropriate details that would be considered by SEBI based on merits.

8. I note that pursuant to circular dated August 29, 2012, Gillette India Limited (hereinafter referred to as Gillette) vide letter dated October 10, 2012 filed an application proposing transactions to achieve the minimum public shareholding under paragraph 3 of the said circular dated August 29, 2012. As per the application Gillette is jointly promoted by the Poddar Group ("Poddar Group") and the Procter and Gamble Group ("P&G Group") who have also entered a Shareholders' Agreement dated July 10, 1996 ("SHA"). The respective shareholdings of the Poddar Group and the P&G Group stand at 12.9% and 75.9%. As per the proposal, the Poddar Group would first transfer 4% of its shares to the P&G Group, which being an inter-se transfer of shares held by the Poddar Group who is a promoter to another promoter viz. the P&G Group would be exempt from the obligation of making an open offer as per Regulation 10(1)(a)(ii) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations, 2011"). As a result of this transfer, the holding of the Poddar Group would go down to 8.9%. This would be followed by termination of the SHA and amendments to the Articles of Association of the company, as a result of which the Poddar Group would be classified as an ordinary public shareholder and would lose all its rights and control over the Appellant as promoter. Thereafter, the 4.9 percentage of the shares would be sold to the public by P&G group. Thereby the promoter would hold 75% and the holding of the Poddar Group would be considered as public shareholding.

9. I note that SEBI vide letter dated November 07, 2012 rejected the said proposal as the transactions proposed was not acceptable means for achieving minimum public shareholding requirement in terms of Rule 19A of SCRR, 1957. However, Gillette still had time to comply with the minimum public shareholding requirement by June 03, 2013.

10. SEBI also initiated a consultative process with all the companies including Gillette who have not complied with requirement under Rule 19A of SCRR. Accordingly, SEBI vide e-mail dated December 12, 2012 invited Gillette to elicit a concrete plan of action as regards ensuring compliance with the minimum public shareholding requirement and to enable the process of complying with the minimum public shareholding requirement.

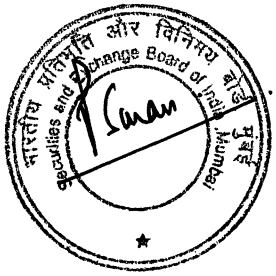
11. I note that being aggrieved by the said communication dated November 07, 2012, Gillette, preferred an appeal before the Hon'ble Securities Appellate Tribunal (SAT) being Appeal no. 26 of 2013. The Hon'ble SAT vide order dated February 22, 2013 disposed off the said appeal with the direction to SEBI, '*to consider the present appeal as a representation made before the Board and, after considering the representation, pass a speaking order on the request made by the appellant in accordance with law*'.

12. Accordingly, in compliance with order of SAT dated February 22, 2013, SEBI issued letter dated April 26, 2013 rejecting the proposal submitted by the applicant on the ground, inter alia, that sale of shares within promoter group and thereafter re-classification of entity/person from Promoter to Public category is not in line with the intended objective behind insertion of rule 19A of SCRR, as it would not lead to broad-basing/dispersing of ownership/shareholding of the company. The SEBI, therefore, advised Gillette to comply with the requirement of the minimum public shareholding within stipulated timeline and intimate the same to SEBI.

13. Being aggrieved by the letter dated April 26, 2013, Gillette preferred an Appeal before the Hon'ble SAT, being Appeal no. 65 of 2013 for setting aside the impugned order in the letter dated April 26, 2013 and seeking a direction that the Gillette be permitted to carry out the proposed transactions as set out in the Application dated October 10, 2012 within a reasonable period of time after the final disposal of the appeal.

14. I note when the said appeal came up for hearing on May 30, 2013, the Hon'ble SAT granted interim relief from enforcement of the requirement to meet the minimum public shareholding against the appellant i.e. Gillette.





15. I note that as on June 03, 2013 there were 108 companies including Gillette which have not complied with the minimum public shareholding requirement, despite SEBI issuing repeated cautionary advices and providing enabling methods. SEBI has passed an ad interim order dated June 04, 2013 against the promoter/promoter group and directors of 105 such non- compliant companies of which, thirty three companies are suspended by the stock exchanges. The said ad-interim order did not cover three companies including Gillette, since the matter was *sub-judice.*

16. I further note that the Hon'ble SAT has vide order dated July 03, 2013 dismissed the appeal being appeal no. 65 of 2013 filed by Gillette as bereft of merit and also vacated the interim relief granted on May 30, 2013.

17. In view of above, Gillette has not complied with the minimum public shareholding requirement in terms of Rule 19A of SCRR within the specified timeline.

18. I am of the considered opinion that the persons forming part of the promoter/ promoter group and the directors of non-compliant company are mainly responsible for the non compliance with the minimum public shareholding requirements within specified timelines. The promoters/ promoter group of such companies would have an advantage on account of their disproportionate stake compared to the public in their respective companies and also place them in a more advantageous position as compared to the promoter/ promoter groups of the compliant companies on account of violating the regulatory requirement prescribed in the SCRR and as specified by SEBI.

19. 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 price of the securities is not susceptible to manipulation. Moreover a dispersed shareholding structure is also essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices.

20. As such, in order to ensure an equitable participation of the promoter / promoter group and the directors qua the public shareholders in the affairs of a public listed company and also provide a level playing field for the promoter/ promoter groups of these companies with the promoter/ promoter groups of the other companies that have already complied with the above-mentioned provisions of SCRR and in the manner as specified by SEBI, it is imperative that this balance

be restored and the disproportionate advantage arising out of non-compliance of the minimum public shareholding requirement not be permitted to be vested with the promoter/ promoter group.

21. In view thereof, in the interest of all investors and the orderly development of the securities market, it is necessary to pass suitable directions against the promoter/promoter group and directors of the Gillette while not adversely affecting the interests of the public shareholders.

22. Hence in exercise of the powers conferred upon me by virtue of section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') read with section 12A of Securities Contracts (Regulation) Act, 1956 ('SCRA'), pending passing of the final order , I hereby:

a. direct freezing of *voting rights* and *corporate benefits* like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding of Gillette till such time these companies comply with the minimum public shareholding requirement.

i. For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60% shall be frozen till the minimum public shareholding requirement is complied with.

ii. In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:

1. A:- (60% multiplied by [45%/45%+35%+10%]) = 30.00%

2. B:- (60% multiplied by [35%/45%+35%+10%]) = 23.33%

3. C:- (60% multiplied by [10%/45%+35%+10%]) = 06.67%

Total = 60.00%

b. prohibit the promoters/promoter group and directors of Gillette, from buying, selling or otherwise dealing in securities of Gillette, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time Gillette comply with the minimum public shareholding requirement.

c. restrain the shareholders forming part of the promoter/promoter group of Gillette, from holding any new position as a director in any listed company, till such time Gillette, comply with the minimum public shareholding requirement;

d. restrain the directors of Gillette, from holding any new position as a director in any listed company, till such time Gillette comply with the minimum public shareholding requirement.

23. This order is without prejudice to the right of SEBI to take any other action, including the following against Gillette, its promoters and/or directors or issuing such directions in accordance with law:

a. levying monetary penalty under adjudication proceedings;

b. initiating prosecution proceedings;

c. moving the scrip to trade-to-trade segment;

d. excluding the scrip from F&O segment;

e. any other action/direction as may be deemed appropriate.

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

25. Copies of this order shall be served on the stock exchanges, depositories and Gillette to enable them to take necessary steps to implement the order. The stock exchanges and depositories shall collaborate for the purpose of implementing the order. Depositories shall rely on the filings made with the stock exchanges for ascertaining the promoters, their shareholding and public shareholding. Stock exchanges shall provide the aforesaid data to the depositories to enable them to take necessary action as mentioned above.

26. For the purpose of paragraph 23 above, this order shall be treated as show cause notice. The entities/persons against whom this order is being passed may file their replies, if any, within 21 days from the date of this order. The entities mentioned herein 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.

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

**DATE: 05/07/2013**

**PLACE: MUMBAI**

**PRASHANT SARAN**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**