



An Analysis Regulation 11 of SEBI (SAST) Regulations, 1997

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SEBI (SAST) Regulations, 1997 provides the triggering events on which the acquirer is required to give an open offer to the shareholders of the Target Company. The triggering event may be signing of Share Purchase Agreement or actual acquisition of shares from the market or passing of resolution for allotment of shares on preferential basis and so on. Thus as soon as the intention of the acquirer to acquire the shares of Target Company beyond the threshold limits mentioned above, is expressed unequivocally, the acquirer is required to give an open offer to the shareholders of the Target Company except where the acquisition is exempted under regulation 3 of these regulations. One of the triggering events is contemplated under regulation 11 of SEBI (SAST) Regulations, 1997, an analysis of which is detailed below :

Regulation 11(1) provides that "No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

Analysis of Regulation 11(1)

This regulation is meant for allowable acquisitions (both direct & indirect) only for those who already hold more than 15% shares or voting rights but less than 55% shares or voting rights in a Target Company. This regulation allows the persons either by themselves or through persons acting in concert (PAC) with them who are holding more than 15% but less than 55% shares or voting rights in the Target Company to acquire further upto 5% shares or voting rights in the financial year ending 31st March. The allowable acquisition of 5% is popularly known as 'Creeping Acquisition'. Thus, the acquirer is permitted to acquire additional shares and consolidate his holdings within the aforesaid limits.

However, it is to be noted that the creeping acquisition limit is subject to the condition that the post acquisition shareholding of the acquirer does not exceed beyond 55% of the paid capital of the Target Company.

Further, where the acquirer who along with the PACs holds equal to or more than 15% but less than 55% shares and desires to acquire more than 5% shares in any financial year, can do so by making an open offer to the shareholders of the Target Company.

Regulation 11(2) provides that No acquirer, who

together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations.

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy-five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.

Analysis of Regulation 11(2)

Regulation 11(2) provides that the acquirer who along with the PACs holds more than 55% but less than 75% shares or voting rights in a company cannot acquire a single share unless a public offer is given as per the provisions of regulations. Thus, the object of the regulation is restrict the acquirer from further acquiring the shares beyond the limit of 55% unless an exit opportunity is given to the shareholders of the Target Company.

However, vide notification dated October 30, 2008, a proviso has been inserted in regulation 11(2) of the SEBI (SAST) Regulations, 1997 which allowed the acquisition of another 5% shares by shareholders who already hold 55% or more but less than 75% shares or voting rights of a Listed Company subject to certain conditions which are further clarified by circular dated August 06, 2009 and amended by the amendment dated November 06, 2009. The legal text of proviso is reproduced below :

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following -

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the Shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five percent (75%).

Analysis of second proviso to Regulation 11(2)

A. Routes allowed

The acquisition is allowed only through Open market purchases in the normal segment & NOT through

- Bulk Deal
- Block Deal
- Negotiated deal or
- Through preferential allotment

OR

Pursuant to the buy back by the Company.

B. Minimum 55% shareholding:

The creeping acquisition is allowed only to the acquirer who together with the PACs with him holds 55% or more shares in the Target Company.

C. Not at par with regulation 11(1)

The creeping acquisition as allowed under second proviso to sub-regulation (2) of regulation 11 is not at par with the creeping acquisition allowed under regulation 11(1) of the SEBI (SAST) Regulations, 1997.

The creeping acquisition as prescribed under regulation 11(1) is allowed in each financial year i.e. an acquirer who is holding 15% or more shares can go on acquiring the further shares upto 5% in each financial year till the time his holding does not exceed beyond 55%.

However, the creeping acquisition as prescribed under second proviso to sub-regulation (2) of regulation 11 is not allowed in each financial year.

D. One time acquisition

Creeping acquisition as prescribed under second proviso to sub-regulation (2) of regulation 11 is a one time acquisition.

The creeping acquisition limit of 5% as prescribed under the said proviso is allowed once during the entire life time of the Target Company and can be made in one or more tranches without any restriction on the time frame.

E. No netting off allowed

The limit of 5% shall be calculated by aggregating all the purchases without netting the sales;

For example: where an acquirer holding 56% shares have acquired further 4% shares in the company during the financial year 2009-10 and sold of 2% shares in the same financial year, then he can further



acquired only 1% shares without making the public announcement regardless of the fact that he has sold of 2% shares in the financial year 2009-10.

F. Maximum 75% shareholding

Irrespective of the level of minimum public shareholding to be maintained in terms of clause 40A of the listing agreement, the total shareholding of the acquirer along with the PACs consequent to the creeping acquisition as allowed under second proviso to sub-regulation (2) of regulation 11 should not increased beyond 75%.

For Example : Where the promoters of a company, which is required to maintain a minimum public shareholding of 10% in terms of clause 40A of the Listing Agreement, are holding 85% shares, then they cannot acquire another 5% shares in terms of second proviso to sub-regulation (2) of regulation 11 without making the public announcement as the said proviso has restricted the maximum shareholding to 75% irrespective of the fact that the company is allowed to maintain the promoter shareholding at 90%.

Further, it is to be noted that the acquisition in accordance with second proviso to regulation 11(2) is available irrespective of the acquisition made under regulation 10 or regulation 11(1) of SEBI (SAST) Regulations, 1997.

Regulation 11(2A) provides that Where an acquirer who (together with persons acting in concert with him) holds fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, is desirous of consolidating his holding while ensuring that the public shareholding in the target company does not fall below the minimum level permitted by the Listing Agreement, he may do so by making a public announcement in accordance with these regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer

of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.

Analysis of Regulation 11(2A)

Regulation 11(2A) provides that where an acquirer who together with PAC holds 55% or more but less than 75% shares in the Target Company and desirous of consolidating his shareholding, then he can do so by giving a Public Announcement as per the Regulations provided that the public shareholding does not fall below the minimum level as prescribed in the Listing Agreement.

Further regulation 21 (3) of the SEBI (SAST) Regulations, 1997 provides that where the public offer is made under sub-regulation (2A) of regulations, the minimum size of the public offer shall be the lesser of the following-

(a) Twenty per cent of the voting capital of the company; or

(b) Such other lesser percentage of the voting capital of the company as would, assuming full subscription to the offer, enable the acquirer, together with the persons acting in concert with him, to increase his holding to the maximum level possible, which is consistent with the target company meeting the requirements of minimum public shareholding laid down in the Listing Agreement.

Regulation 11(3) provides that Notwithstanding anything contained in regulations 10, 11 and 12, in case of disinvestment of a Public Sector Undertaking, an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public annou-

ncement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:-

- both the acquirer and the seller are the same at all the stages of acquisition, and
- disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of regulation 18 and in the first public announcement.

Analysis :

In case of Public sector Undertaking, the acquirer who had once made public offer to acquire shares offered at the time of divestment is relieved from making public offer again at further stages of acquisitions subject to compliance of the following:

- The seller & the buyer are same at all stages of acquisitions &
- The acquirer had made disclosures regarding all the stages of acquisitions, if any, in the letter of offer issued in the first public announcement.

Explanation : For the purposes of regulation 10 and regulation 11, acquisition shall mean and include,-

- direct acquisition in a listed company to which the regulations apply;
- indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad.

In the matter of **Eaton Corporation (18/07/2001) - SAT**, the Tribunal held that SEBI (SAST) Regulations, 1997 takes care of direct and indirect acquisition, and, thus, indirect acquisition of shares/control, including acquisitions through chain of subsidiaries would attract provisions of SEBI (SAST) Regulations, 1997.

TRAINING PROGRAMME FOR STUDENTS

32ND ACADEMIC DEVELOPMENT PROGRAMME (ADP), TYPE-IV – 07.05.2010 AT THE EIRC AUDITORIUM

12 students benefitted from the said one day programme. The day was divided into 4 sessions, where 4 different faculties addressed the participants. 1 ADP credit was awarded to the participants.

61ST SMTP - 11.05.2010 TO 28.05.2010 AT THE ICSI-EIRC AUDITORIUM

Inaugural Session: Past President, ICSI Shri B P Dhanuka, was the **Chief Guest** and he inaugurated the programme by lighting the inaugural lamp. **Smt Mamta Binani**, Chairperson, ICSI-EIRC and **Shri Anjan Kumar Roy**, Vice Chairman, ICSI-EIRC also graced the occasion by their presence and addressed the participants.

Shri B P Dhanuka, Chief Guest on the occasion conveyed his best wishes to the participants. In his address, **Shri Dhanuka** shared some of the most practical experiences with the participants and said that one should be ahead of time with most updated knowledge. The expectations of the

modern corporate world are immense and the competition is looming large. There is huge scope in professional services and it is upto an individual to explore the same.

Valedictory Session: The Valedictory programme of the above training was held on 28th May, 2010 at 5.30 PM where **Past Vice President, ICSI Shri Amit Kr Sen**, was the **Chief Guest**. **Smt Mamta Binani**, Chairperson, ICSI-EIRC was also present and addressed the participants. **Shri Sen** in his address said that decision making is the most crucial aspect in one's life. True professionals are always respected and one should work towards attaining excellence. He

congratulated the participants and distributed the SMTP Completion Certificates and the best participant awards.

Best Participant Awards: Shri Arani Guha, Corpwiz member, Shri Sudhir Banthia, another corpwiz member, **Ms. Megha Sharma** from Ranchi were selected as the first, second and third best participants of the 61st SMTP. They were awarded with the certificates and mementos. Hi-Tea was served after the programme. The programme concluded with National Anthem. 41 participants successfully completed the training.



Flow Chart of Takeover Open Offer

Triggering of regulation 10, 11 and 12 i.e. Open Offer obligations

