

TAKEOVER PANORAMA

(Volume X)



INSIGHT

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RECENT UPDATES

STERLING CONSULTANCY SERVICES PVT LTD

Regulation: 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Facts: M/s Sterling Consultancy Services Pvt. Ltd. and one of its director Shri Ajit R. Sanghvi were allotted 3,50,000 and 3,40,000 shares respectively at the time of reissue of forfeited shares in December, 1999/ January, 2000 @ Rs. 7.50 each. The acquisition of 6, 90,000 shares by these entities amounts to about 10% of the total paid up capital of the company. The acquisition by the acquirer alone stood at 5.07% of the total paid up capital of the company. Therefore, the noticee was bound to make the necessary disclosures about its acquisition of shares of the target company in December, 1999 /January 2000.

Charges: The acquirer failed to make disclosures in respect of its holding in the company Washington Software Ltd. under regulation 7(1)

Submissions:

- i. The shares were acquired from one of the promoter group companies of the target company.
- ii. The acquirer, through its director Shri. Ajit Sanghvi informed the company on 8th July, 2000 that it had acquired a total of 6, 90,000 shares of the target company along with its director & the target company also disclosed to the stock exchange.
- iii. Delay in informing the target company was unintentional and a technical lapse.

Decision:

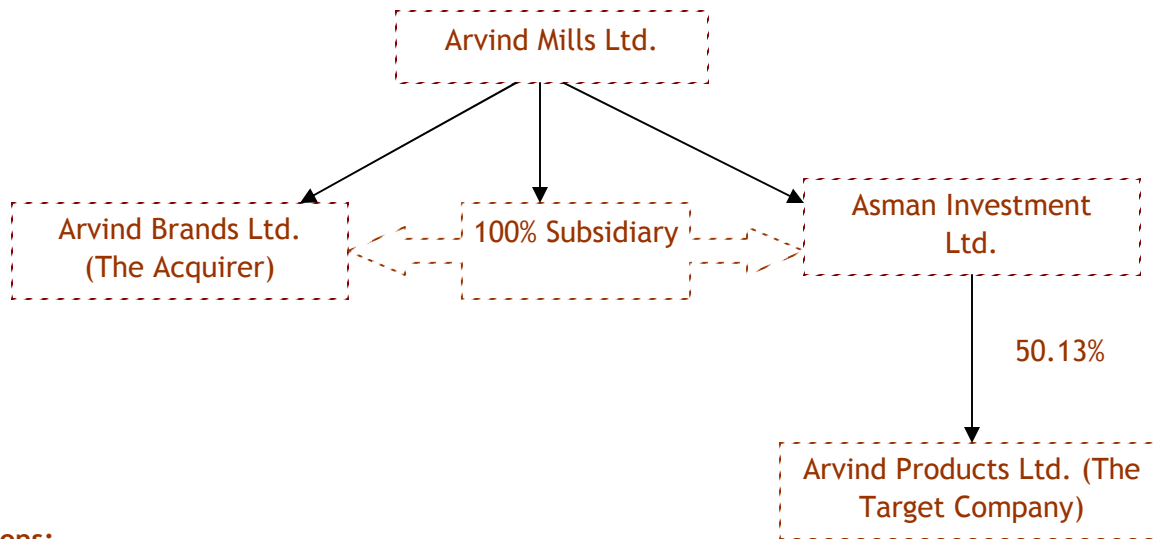
On consideration of the above facts and circumstances, SEBI held that Hon'ble Supreme Court in *Shriram Mutual Fund Vs SEBI* has held that the violations of the provisions SEBI Act and Regulations attract the penalty irrespective of the intent. Therefore, since the acquirer made the disclosures to the Target Company only on 8th July, 2000, and Target Company disclosed the acquisition to Stock exchanges on 18th July, 2000, there was a delay of more than six months in complying with the provisions of Regulation 7 of the Takeover Regulations.

Therefore SEBI imposed a penalty of Rupees one Lakh (Rs. 1,00, 000) on M/s. Sterling Consultancy Services Pvt. Ltd. for the delay in complying with the provisions Regulation 7(1) and 7(2) of the Takeover Regulations.

ARVIND PRODUCTS LTD.

Regulation: 4(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Facts: Arvind Brands Limited 'the acquirer' and Asman Investments Ltd. are 100% subsidiary of Arvind Mills Ltd. The said Asman Investments Ltd. is holding 50.13% equity shares of Arvind Products Ltd. 'the target company'. The acquirer proposes to acquire 39,200(49%) equity shares of Asman Investments Ltd. from Arvind Mills Ltd., the parent company. The proposed acquisition of 49% equity shares of Asman Investments Ltd., by the acquirer from Arvind Mills Ltd. would lead to the indirect acquisition of shares of the target company, which would trigger the provisions of SEBI (Substantial acquisition of shares and takeover) Regulations, 1997.



Submissions:

All the companies viz. The Arvind Mills Ltd., Asman Investments Ltd., the acquirer and the target company are part of Lalbhai Group. There will be no change in the ultimate ownership or control over the Target Company. The proposed acquisition is an internal arrangement amongst the promoters of the target company. In view of the growing economy, the group has initiated the process of creating a separate investment vehicle as a part of larger group investment policy to make and park certain investments in the acquirer to derive cost effective, tax efficient and better administration structure. As a part of this, Arvind Mills Ltd. proposed to transfer part of the investments held in Asman Investments Ltd. to the acquirer, its wholly owned subsidiary without effecting any kind of change of control of two listed subsidiary companies.

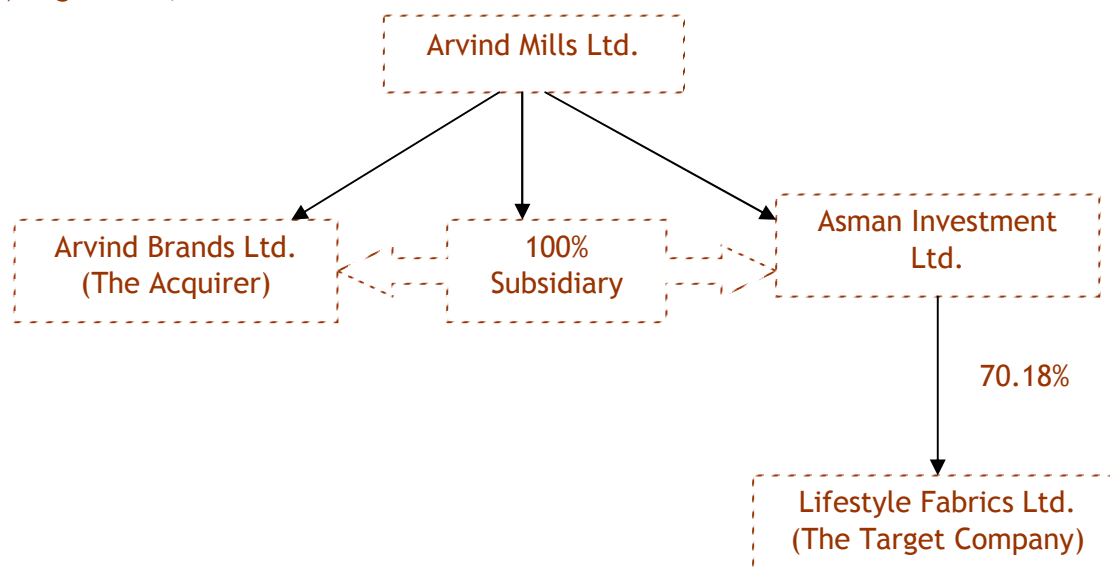
Decision:

On consideration of the above facts & circumstances, SEBI held that the proposed transaction would not cause any loss or prejudice to any of the shareholders of the target company. Therefore, SEBI granted exemption to the acquirer from complying with the provisions of regulation 10 and 12 of SEBI (Substantial acquisition of shares and takeover) Regulations, 1997.

LIFE STYLE FEBRICS LTD

Regulation: 4(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Facts: Arvind Brands Limited 'the acquirer' and Asman Investments Ltd. are 100% subsidiary of Arvind Mills Ltd. The said Asman Investments Ltd. is holding 70.18% equity shares of Life Style Fabrics Ltd. 'the target company'. The acquirer proposes to acquire 39,200(49%) equity shares of Asman Investments Ltd. from Arvind Mills Ltd., the parent company. The proposed acquisition of 49% equity shares of Asman Investments Ltd., by the acquirer from Arvind Mills Ltd. would lead to the indirect acquisition of shares of the target company, which would trigger the provisions of SEBI (Substantial acquisition of shares and takeover) Regulations, 1997.



Submissions:

- ▣ All the companies viz. The Arvind Mills Ltd., Asman Investments Ltd., the acquirer and the target company are part of Lalbhai Group.
- ▣ There will be no change in the ultimate ownership or control over the Target Company.
- ▣ The proposed acquisition is an internal arrangement amongst the promoters of the target company.
- ▣ In view of the growing economy, the group has initiated the process of creating a separate investment vehicle as a part of larger group investment policy to make and park certain investments in the acquirer to derive cost effective, tax efficient and better administration structure. As a part of this, Arvind Mills Ltd. proposed to transfer part of the investments held in Asman Investments Ltd. to the acquirer, its wholly owned subsidiary without effecting any kind of change of control of two listed subsidiary companies.

Decision:

On consideration of the above facts & circumstances, SEBI held that the proposed transaction would not cause any loss or prejudice to any of the shareholders of the target company. Therefore, SEBI granted exemption to the acquirer from complying with the provisions of regulation 10 and 12 of SEBI (Substantial acquisition of shares and takeover) Regulations, 1997.

TYPHOON HOLDINGS LTD.

Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Facts: THL was originally promoted by Shri Kailash Chandra Gupta, Shri Ravi Kumar Ghosh and Shri Rajendra Kumar Linga. In the year 2001 M/s. Lotus Consulting (Mauritius) Ltd. (LCML) acquired 1,20,500 equity shares of THL through a share purchase agreement dated January 15, 2001, which were actually transferred on October 31, 2001. Before this date the promoters / promoter group, directors, friends relatives and associates held 2, 00,000 (40%) equity shares of THL. LCML acquired a further 2, 29,500 equity shares of THL on October 31, 2001 through open offer. Thus, the aggregate number of equity shares acquired by LCML was 3, 50,000 equity shares representing 70% of the paid up capital of THL. This was followed by a change of control in favour of LCML.

On June 21, 2005, Smt. Kajal entered into agreement with LCML, for sale of 1, 80, 000 shares (36%) of THL, for which the draft letter of offer was filed with the SEBI.

Charges:

On perusal of the draft letter of offer and compliance status, it was observed by SEBI that the past promoters of THL, Shri Kailash Chandra Gupta, Shri Ravi Kumar Ghosh and Shri Rajendra Kumar Linga had not complied with regulations 6(1) and 6(3) of SAST Regulations and regulations 8(1) and 8(2) of SAST Regulations for the financial years 1997-1998 to 2000-2001.

Contentions:

The noticees did not contend the charges because they did not reply to the SEBI's notice and did not appear on the personal hearing granted to them.

Decision:

Since it was not confirmed that the noticees were holding more than 10 % (15 % after October, 28, 1998) shares or voting rights in THL at the relevant time. Therefore, on consideration of the facts and circumstances of the case, SEBI imposed a penalty of Rs. 2, 50,000/- each on Shri Kailash Chandra Gupta, Shri Ravi Kumar Ghosh and Shri Rajendra Kumar Linga.

OPEN OFFERS

TARGET COMPANY	ACQUIRER	OFFER DETAILS	REASON FOR THE OFFER	CONCERNED PARTIES DETAILS
<p>Mount Everest Mineral Water Limited</p> <p>Regd. Office Himachal Pradesh</p> <p>Paid up Capital Rs. 288.97 million</p>	Tata Tea Limited	Offer to acquire upto 6,799,194 (Rs. 10) fully paid equity shares representing 20% of the total paid up capital at a price of Rs. 140 each.	<p>Regulation 10 & 12</p> <p>Preferential allotment of 5,099,396 (Rs. 10) shares for cash at a price of Rs. 140 per share and SPA to acquire 3,110,440 (Rs. 10) shares representing 9.15% of total capital at a price of Rs. 140 per share.</p>	<p>Manager to the offer</p> <p>DSP Merill Lynch Limited</p> <p>Registrar to the offer</p> <p>TSR Darashaw Limited</p>
<p>Almondz Capital & Management Services Ltd.</p> <p>Regd. Office New Delhi</p> <p>Paid up Capital Rs 1016.08 Lakhs</p>	Mr. Navjeet Singh Sobti, Mrs. Gurpreet N. Sobti, and Innovative Money Matters Private Limited	Offer to acquire 19,02,000 Equity Shares representing 20% of the post preferential voting capital of the Target Company at Rs.37.80 per Share payable in cash	<p>Regulation 11(1)</p> <p>Preferential allotment to acquire 28,25,000 (Rs. 10) equity shares at a price of Rs. 37.78 constituting 29.70% of post preferential capital to acquirers already holding 30.14% of the total capital.</p>	<p>Manager to the offer</p> <p>Canara Bank</p> <p>Registrar to the offer</p> <p>Alankit Assignments Limited</p>

TARGET COMPANY	ACQUIRER	OFFER DETAILS	REASON FOR THE OFFER	CONCERNED PARTIES DETAILS
<p>Cheslind Textiles Limited</p> <p>Regd. Office Tamil Nadu</p> <p>Paid up Capital Rs. 2309 Lacs</p>	RSWM Limited	Offer to acquire up to 4,618,787 fully paid-up equity shares representing 20% of the paid-up equity share capital at Rs. 25/- per Equity Share payable in cash.	<p>Regulation 10 and 12</p> <p>SPA to acquire 11,125,217 (48.17%) equity shares of Rs. 10 each at a price of Rs. 25/- per share aggregating to a consideration of Rs. 2781 Lacs.</p>	<p>Manager to the offer</p> <p>ICICI Securities Primary Dealership Limited</p> <p>Registrar to the offer</p> <p>Beetal Financial & Computer Services Pvt. Ltd.</p>
<p>Chettinad Cement Corporation Limited</p> <p>Regd. Office Chennai</p> <p>Paid up Capital Rs. 29,50,33,500/-</p>	Chettinad Software Services Pvt. Limited	Offer to acquire upto 40, 82,621 (13.84%) equity shares of Rs. 10 each at a price of Rs. 450 per share payable in cash.	<p>Regulation 11(2 & 2A)</p> <p>Voluntary open offer</p>	<p>Manager to the offer</p> <p>Indbank Merchant Banking Services Limited</p> <p>Registrar to the offer</p> <p>Integrated Enterprises (India) Limited</p>
<p>Deccan Aviation Limited</p> <p>Regd. Office Banglore</p> <p>Paid up Capital Rs.1,00,24,48,870</p>	Kingfisher Radio Limited	Offer to acquire 27,094,024 (20%) equity shares of the target company at a price of Rs. 155 per share payable in cash.	<p>Regulation 10 & 12</p> <p>Preferential allotment of 35,222,231 (Rs. 10) equity shares for cash at a premium of Rs. 145 payable in cash.</p>	<p>Manager to the offer</p> <p>Edelweiss Capital Limited</p> <p>Registrar to the offer</p> <p>Karvy Computershare Private Limited</p>

TARGET COMPANY	ACQUIRER	OFFER DETAILS	REASON FOR THE OFFER	CONCERNED PARTIES DETAILS
ESAB India Limited Regd. Office Tamil Nadu Paid up Capital Rs. 153.9 million.	Exelvia Group India B.V. along with Charter plc and ESAB Holdings Limited	Offer to acquire upto 3,078,604 (20%) fully paid up equity shares of Rs.10/- each of EIL at a price of Rs. 426 per share payable in cash.	Regulation 11(1) Voluntary Cash Offer	Manager to the offer SBI Capital Markets Limited Registrar to the offer Intime Spectrum Registry Limited
K. B. Steel Limited Regd. Office Maharashtra Paid up Capital Rs. 24.50 Lakhs	Mr. Vipul J. Modi, Ms. Leena V. Modi	Offer to acquire upto 49,000 (20%) equity shares of Rs.10/- each, at a price of Rs. 28/- per fully paid-up equity share payable in cash	Regulation 10 & 12 SPA with Mr. Kaushik Kansara & Mrs. Manglaben Kansara to acquire in aggregate 1,34,450 (54.88%) equity shares of Rs.10/- each, at a price of Rs. 28/- per equity share payable in cash.	Manager to the offer Ashika Capital Limited Registrar to the offer Purva Sharegistry India Private Limited
Kilitch Drugs (India) Limited Regd. Office Maharashtra Paid up Capital Rs.705.71 lacs	M/s. NBZ Pharma Ltd.	Offer to acquire 26,40,425 Equity Shares of Rs.10/- each, at a price of Rs.47.50 representing 20% of the Post preferential capital of KDIL.	Regulation 11(1) Preferential allotment of 60, 00,000 equity shares at a price of Rs. 47.50 per share to the acquirer, who already holds 44.34% of total capital.	Manager to the offer Tran warranty Capital Pvt. Limited Registrar to the offer Intime Spectrum Registry Ltd.

<p>Petron Engineering Construction Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up Capital 7,53,84,000</p>	<p>KazStroyService PLC</p>	<p>Offer to acquire 1507680 (20%) fully paid-up Equity Shares of Rs. 10/- each, at a price of Rs. 180 per Equity Share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire entire issued share capital of SRA Finance & Investments Private Limited & Amritha Sharanya Leasing & Investments Private Limited & 20% stake in Petron Investment Private Limited for 20% stake in Petron Investment Private Limited resulting in indirect acquisition of target company.</p>	<p>Manager to the offer Enam Financial Consultants Private Limited</p> <p>Registrar to the offer Intime Spectrum Registry Limited</p>
<p>Sparsh BPO Services Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up Capital Rs. 161,475,000</p>	<p>SKR BPO Services Private Limited</p>	<p>Offer to acquire up to 3,229,500 (20%) equity shares at a price of Rs. 200 per equity share, payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire entire share capital of Intelenet Global Services Private Limited, which is the holding company of the target company at a price of Rs. 51.38 per equity share resulting in indirect acquisition</p>	<p>Manager to the offer JM Financial Consultants Private Limited</p> <p>Registrar to the offer Bigshare Services Private Limited</p>

<p>Savant Infocomm Ltd.</p> <p>Regd. Office Banglore</p> <p>Paid up Capital Rs. 338.03 Lacs</p>	<p>Western India Steel Co. Pvt. Ltd. alongwith Mr. Bharat Parikh and Mrs. Mina Parikh</p>	<p>Offer to acquire 6,76,060 (20%) equity shares of Rs. 10 each at a price of Rs. 10.50 per share, payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Market acquisition of 14,25,600 (Rs. 10) equity shares representing 42.17% of total capital of the target company at an average price of Rs. 10.41</p>	<p>Manager to the offer Keynote Corporate Services Limited</p> <p>Registrar to the offer Sharex Dynamic (India) Pvt. Ltd.</p>
<p>Shirpur Gold Refinery Limited</p> <p>Regd. Office Maharashtra</p> <p>Paid up Capital Rs. 1,55,62,500</p>	<p>Jayneer Capital Private Limited</p>	<p>Offer to acquire 76, 25,625 (49%) equity shares at a price of Rs. 54.75 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 40,00,000 (25.70%) equity shares of Rs. 10 each at a price of Rs. 40 per equity share payable in cash</p>	<p>Manager to the offer Vivro Financial Services Pvt. Ltd.</p> <p>Registrar to the offer Sharepro Services (India) Pvt. Ltd.</p>
<p>Sparsh BPO Services Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up Capital Rs. 161,475,000</p>	<p>SKR BPO Services Private Limited</p>	<p>Offer to acquire up to 3,229,500 (20%) equity shares at a price of Rs. 200 per equity share, payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire entire share capital of Intelenet Global Services Private Limited, which is the holding company of the target company at a price of Rs. 51.38 per equity share resulting in indirect acquisition of the target company.</p>	<p>Manager to the offer JM Financial Consultants Private Limited</p> <p>Registrar to the offer Big share Services Private Limited.</p>

<p>Savant Infocomm Ltd.</p> <p>Regd. Office Banglore</p> <p>Paid up Capital Rs. 338.03 Lacs</p>	<p>Western India Steel Co. Pvt. Ltd. alongwith Mr. Bharat Parikh and Mrs. Mina Parikh</p>	<p>Offer to acquire 6,76,060 (20%) equity shares of Rs. 10 each at a price of Rs. 10.50 per share, payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Market acquisition of 14,25,600 (Rs. 10) equity shares representing 42.17% of total capital of the target company at an average price of Rs. 10.41</p>	<p>Manager to the offer Keynote Corporate Services Limited</p> <p>Registrar to the offer Sharex Dynamic (India) Pvt. Ltd.</p>
<p>Shirpur Gold Refinery Limited</p> <p>Regd. Office Maharashtra</p> <p>Paid up Capital Rs. 1,55,62,500</p>	<p>Jayneer Capital Private Limited</p>	<p>Offer to acquire 76,25,625 (49%) equity shares at a price of Rs. 54.75 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 40,00,000 (25.70%) equity shares of Rs. 10 each at a price of Rs. 40 per equity share payable in cash.</p>	<p>Manager to the offer Vivro Financial Services Pvt. Ltd.</p> <p>Registrar to the offer Sharepro Services (India) Pvt. Ltd.</p>

THOUGHT OF THE MONTH

“All change is not growth; as all movement is not forward.”



REGULAR SECTION

REGULATION 12 - ACQUISITION OF CONTROL

The Takeover Code recognizes both voting rights as well as control irrespective of acquisition of shares. This regulation deals with acquisition of control, irrespective of whether or not there has been any acquisition of shares or voting rights.

The regulation states that if any acquirer including person acting in concert acquires control over the target company irrespective of any acquisition of shares or not he has to give public announcement to acquire shares from shareholders of the company.

However, the requirement of public offer is not there if the shareholders of the company approve change in control by a special resolution. Furthermore the code provides the facility of voting through postal ballot shall be provided to the shareholders for passing of the special resolution.

It is appreciable that the acquisition of control also includes both direct & indirect acquisition of control over target company by virtue of acquisitions of companies whether listed or unlisted and whether in India or abroad.

Further, the control must be taken to mean both de facto control also and de jure control for the purpose of determining control in Regulation 12 as provided in B.P.Amoco Plc v. SEBI.

FAQs on Regulation 12

Whether compliance of Regulation 12 is attracted only with reference to change in control independent of acquisition of shares?

Yes, acquisition of control over Target Company is independent of the acquisition of shares. This point is supported in 'Swedish Match AB Vs SEBI', wherein it was held that the Regulation 12 is independent from Regulation 1`1 in respect of acquisition.

Whether Regulation 11 comes into operation irrespective that there being any change in control?

The answer is affirmative as Regulation 11 takes into account shares or voting rights and it is immaterial for the purpose of regulation 11 that by such acquisition there being any change in control.

A person who is not in control over the company is holding 22% voting rights. He is acquiring 5% each year by way of creeping acquisition. In particular year, the total holdings reached to 51%. Can this be considered as change in control of the company?

According to the understanding of regulations, the mere shareholding equal to 51% cannot be termed as change in control. Though the acquirer is holding 51% shares, which can entitle him to exercise substantial rights, but this cannot be termed as change in control till the time he uses his shareholding for purpose of exercising control.

Whether fact that a company is professionally managed necessarily means that nobody is in control over company

The answer is negative, it cannot be said that in case of professionally managed company, there exists no control as it was held in 'Ashwin K.Doshi v. SEBI'

Whether majority holding of shares is decisive factor in determining effective control?

It was held in 'Ashwin K.Doshi v. SEBI', that the majority shareholding cannot be taken as decisive factor in determining effective control.



HINT OF THE MONTH

In case of warrants,

- ▣ Takeover Code will not attract unless the warrants are converted into equity shares.
- ▣ The regulations prevalent on the date of conversion of warrants will be applicable.





MARKET UPDATE



Mallya's United Spirits lifts Whyte & Mackay for £595mn

United Spirits Ltd., part of the Vijay Mallya-promoted UB Group, had acquired Whyte & Mackay, an independent Scotch whisky maker based in Glasgow, for £595mn (US\$1.2bn). Whyte & Mackay is a leading distiller, owning brands including The Dalmore, Isle of Jura, Glayva, Fettercairn, Viadivar vodka and the eponymous Whyte & Mackay blended Scotch. The company also owns several other Scotch whisky brands such as Mackinlays, John Barr, Cluny and Claynore. The UB Group will provide Whyte & Mackay access to India and other large emerging markets. Whyte & Mackay recorded sales of 9mn case and case equivalents in the last 12 months. United Spirits recorded sales of 66mn cases for the year ended March 2007.

With this acquisition, it will have consolidated sales of 75mn cases p.a. At a time when global demand for Scotch Whisky is showing strong growth and prices are increasing rapidly, Whyte & Mackay's bulk scotch inventories of 115mn liters are not only very valuable but allow the company an opportunity to meet its own growing requirement for its brands in India. The Invergordon Distillery, near Inverness, is one of the largest Scotch Whisky distilleries with a capacity of producing 40mn liters of alcohol p.a. This production resource will provide the company with a perennial source of Scotch Whisky to meet its global requirements, United Spirits said. In addition, Invergordon will remain a key strategic provider of bulk Scotch whisky to industry majors. Whyte & Mackay also owns four malt whisky distilleries in Scotland and a bottling facility in Grangemouth with a capacity of producing 12mn cases p.a.

ICICI BANK and Citibank arranged finance for the transaction, while UBS, ICICI Bank and Standard Chartered acted as advisors.

(Source: Indiainfoline)

INTERMEDIARY SEARCH

MICROSEC CAPITAL LTD

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Kolkata

DSP MERRILL LYNCH LTD

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