

TAKEOVER PANORAMA

(Corporate Professionals - A monthly update on Takeover Code)



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RECENT UPDATES IN SAST

SEBI v M/s TOP TELEMEDIA LTD

FACTS & DECISION

FACTS OF THE CASE:

The Company in spite of various summons and reminders contravened the following:

- a. That despite the service of the summons at its office, the Company failed to make appearance before the investigating officer and produce documents as required by the said summons, on the stipulated date and time.
- b. That Company had not made disclosures as required under regulations 6, 7 and 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The Regulator appreciated the necessity of disclosures under Regulation 6, 7 & 8 of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997 & observed following:

Regulations	Due date for compliance	Actual date of compliance	Approx. Delay till 20.11.2002 (no. of days)
6(2)	20.5.1997	Nil	1992
6(4)	20.5.1997	Nil	1992
8(3)	30.4.1997	Nil	2012
8(3)	30.4.1998	Nil	1647
8(3)	30.4.1999	Nil	1282
8(3)	30.4.2000	Nil	916
8(3)	30.4.2001	Nil	551



FINDING & DECISION

The Regulator considering the judgment of *Rameshchandra Mansukhani NRI v. SEBI considered the application of the law existing at the time of commission of violation*. In view of the same SEBI proceeded to adjudge the failure under section 15A (b) as it existed before 29.10.02. Further, due consideration was made to the factors given in section 15J while deciding the quantum of penalty as was supported in *SEBI Vs. Cabot International Capital Corporation (2004) 2 Comp LJ363 (Bom)*, It was further held that Takeover Regulations have specific purpose and the penalty provisions for enforcing the regulations need to be given effect to ensure that the investors are informed of the material information so as to decide on their investment in the target company. Also, the intention is irrelevant for the purpose of judging the penalty amount. The matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68SCL216(SC)* has held that once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant.

Considering the same, *the provisions of penalty for non-compliance of the said mandate of the Act is definitely with an object to have an effective deterrent to ensure better compliances of the provisions of such laws, which is in the in the interest of public at large, investors and essential to regulate and control such markets, through the regulatory authority, like SEBI.*”

Accordingly, SEBI imposed a penalty of Rs 50 lakhs on the company and have directed them to pay the penalty amount within 45 days.

SEBI v TOP MEDIA ENTERTAINMENT LTD.**FACTS & DECISION****FACTS OF THE CASE:**

The Company in spite of various summons and reminders contravened the following:

- a. That Company had not made disclosures as required under regulations 6, 7 and 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 & even after sending reminders have not replied to any of summons and show cause notice.
- b. The regulator observed from the report of BSE from the details furnished in Distribution Schedule alongwith details of persons holding more than 5% shares in the company, dated March 23, 2001, that the joint holdings of Mr. Gautam Trivedi and Mr. Himanshu Trivedi are 17,99,358 shares i.e. 14.49% of the capital of the company.
- c. The company submitted to the surveillance department only after it was called. Thus, the company had not complied/filed the disclosures under Regulations 6 (2), 6 (4), 7(3), 8(3) and 11 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.”

**FINDINGS & DECISIONS**

The Regulator appreciated the necessity of disclosures under Regulation 6, 7 & 8 of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997 & followed the provisions and precedents observed in Top Telemedia Limited.

Accordingly, SEBI imposed a penalty of Rs 10 lakhs on the company and have directed them to pay the penalty amount within 45 days.

**SEBI v M.P.AGARWAL IN THE ACQUISITION OF SHARES OF
M/s SHRI LAKSHMI COTSYN LIMITED .**



FACTS OF THE CASE

The acquirers all inclusive of promoter group violated of the provisions of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 (Takeover Regulations) i.e. Regulation 3(1)(c)(i) and (ii) read with Regulation 11 (1) of the Takeover Regulations in the matter of the acquisition of the shares of SLCL, through preferential allotments, the details of which in brief is reproduced below.

Date of allotment	No. & % of shares allotted	Pre acquisition holding	Post acquisition holding	Total increase in the holding	Applicable creeping acquisition limit
29.04.98	6,40,000	24.69%	31.52%	6.83%	2%
03.08.98	3,40,000	31.85%	33.81%	1.96%	2%
28.12.98	3,00,000	38.71%	40.45%	1.74%	5%

A hearing opportunity was given to the promoters of the company & accordingly, a one promoter on the behalf of all the promoters appeared before the adjudicating officer & took the following defense:

- The report under regulation 3(4) & compliance of provision of 3(5) was made belatedly.
- There was no malafide interest or intention on the part of promoters.
- The non-compliance was because of lack of knowledge on the part of the compliance officer.
- The non-compliance of Regulation 3(1)(c)(i) & 3(1)(C)(ii) was complied & accordingly disclosed to the shareholders belatedly. There was no loss of interest of investors because of non-disclosure.



FINDINGS & DECISIONS

SEBI placed the following points:

- a. The Takeover Regulations (as per the then relevant provisions) however, contemplated acquisitions through the preferential route to be exempted from the applicability, of inter alia Regulation 11(1) of the Regulations, only in cases where the provisions of Regulation 3(1)(c) (i) and (ii) of the Takeover Regulations were duly complied with.
- b. The acquirers have however sought condonation of these lapses by contending that ample steps had been taken by them to validate the said preferential allotments by the suo moto filing of the reports and the accompanying fees in terms of Regulations 3(4) and (5).
- c. All disclosures were in the General Body Meeting of SLCL to keep the investors informed & ratified all the said preferential allotments by the shareholders of the company in the meeting. The fact that the UPSE had granted the listing approval to the company for the mentioned preferential issues was also appreciated.
- d. There was no change in control of management in the present case.

Necessary reliance was placed on the precedents like Swedish Match AB and Anr. Vs. SEBI & Anr., (2004) 11 SCC 641 The Chairman, SEBI vs. Shriram Mutual Fund & Anr etc to decide the case.

SEBI imposed a consolidated penalty of Rs 5 lacs on the promoters and directed them to pay the same within 45 days.

LATEST OPEN OFFERS

II

S.No	Target Company	Acquirer	Details of offer (No of shares & %)	Reason for offer	Intermediary Involved.
1.	<p>SAARC NET LIMITED</p> <p>❑ Regd office: Hyderabad</p> <p>❑ Paid up Equity Capital: Rs. 579.48 Lakhs comprising of 5,79,48,000 fully paid-up Equity Shares of Re.1/- each</p> <p>❑ Listing Status: (BSE & HSE)</p>	<p>Mr. Govind Sharda</p> <p>Mr. Ashish Agarwal</p>	<p>20% of Voting Capital i.e., at a price of Rs. 1.05/- per share</p>	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 &12</p> <p>(A SPA was executed on 27th September, 06 between the Acquirer/PAC with promoters and Non-promoters to acquire in aggregate 2,95,62,440 fully paid up Equity Shares of Re. 1/- each aggregating to 51.01% of voting capital of the Target Company at a negotiated price of 40 paise and 30 paise)</p>	<p>Manager to the offer:</p> <p>ASHIKA CAPITAL LIMITED</p> <p>Registrar to the Offer:</p> <p>BIGSHARE SERVICES PVT. LTD.</p>
2.	<p>JAIHIND SYNTHETICS LTD</p> <p>❑ Regd Office: Mumbai</p> <p>❑ Issued & paid up Equity Capital: Rs. 480 Lakhs comprising of 48,000,00 fully paid-up Equity Shares of Re.1/- each.</p> <p>Paid up. 448.51 Lakhs</p>	<p>Mihir D Karia,</p> <p>Meghji G Patel,</p> <p>Hasmuk G. Patel,</p> <p>Paresh V Savani</p>	<p>20% of the Voting Capital constituting 9,60,000 equity shares at the price of Rs 6 per fully paid up equity share and Rs 1 per for each partly paid</p>	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 &12</p> <p>(A SPA was executed on 29th September, 06 between the Acquirer to acquire in aggregate 7, 20,000 fully</p>	<p>Manager to the offer:</p> <p>FEDEX SECURITIES LIMITED</p> <p>Registrar to the</p>

	<p>❑ Listing Status (BSE, JSE, CSE & ASE)</p>		up shares.	paid up Equity Shares of Re. 10/- each aggregating to 15% of voting capital of the Target Company at a negotiated price of Rs 2.08/-	Offer: SYSTEMS SUPPORT SERVICES.
3.	<p>IL & FS INVESTMART LIMITED</p> <p>❑ Regd Office: Mumbai</p> <p>❑ Issued & paid up Equity Capital: Rs 69,307,5380 comprising 69,307,538 outstanding fully paid-up equity shares and 12,873 outstanding Employees Stock Options (ESOPs), which are vested but not, exercised.</p> <p>❑ Listing Status (BSE & NSE)</p>	E*TRADE Mauritius Limited (“Acquirer”) alongwith E*TRADE Financial Corporation (“ETFC”) and Converging Arrows Inc. (“CAI”)	20% of the voting capital comprising of 13,864,082 fully paid up equity shares of Rs. 10/- each at Rs 210/-.	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 & 12</p> <p>The conversion of GDRs into fully paid up equity shares of company together with the previous equity shareholding of the Acquirer increased to 19,318,577 equity shares of Rs. 10/- 27.87% of the fully paid up equity capital of Target Company.</p>	<p>Manager to the offer: SBI CAPITAL MARKETS LTD.</p> <p>Registrar to the Offer: INTIME SPECTRUM REGISTRY LIMITED</p>
5.	<p>eWEB UNIV LIMITED</p> <p>eWEB UNIV LIMITED</p> <p>❑ Regd Office: Mumbai</p> <p>❑ Issued & paid up Equity Capital: Rs. 24,90,000 comprising of 2,49,000 fully paid-up Equity Shares of Re. 10/- each.</p> <p>❑ Listing Status</p>	Vimal Anand, Amit Anand, Deepak Anand & Mrs. Prem Anand	20% of the Voting Capital constituting 49,800 equity shares at the price of Rs 1.50 per fully paid up equity share.	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 & 12</p> <p>(A SPA was executed on 4th October, 06 between the Acquirer to acquire in aggregate 174300 fully paid up Equity Shares of Re. 10/- each aggregating to 70% of voting capital of the Target</p>	<p>Manager to the offer: CHARTERED CAPITAL & INVESTMENT LIMITED</p> <p>Registrar to the Offer: BEETAL FINANCIAL & COMPUTER</p>

	(BSE- Trading suspended)			Company at a negotiated price of Rs 1.44/-.	SERVICES PVT. LIMITED
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REGULAR SECTION


 III

UNDERSTANDING THE TERM 'ACQUIRER'

“Acquirer” means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;

The term acquirer can be divided into following:

a. Any person

The term person includes both individuals & juristic persons like company, partnership firm etc, who either directly or indirectly acquire shares, voting rights or control over the target company.

b. Who directly or indirectly

The acquisition extends to both direct & indirect acquisition. The code itself provides an example of indirect acquisition is explained as in regulation 3(k), which states that acquisition of shares of an unlisted holding or investment company, which in turn holds majority stake in listed company. The other instance can be acquisition of voting rights in a listed company from the present promoters through power of attorneys or by entering into voting rights arrangement.

c. Acquires or agrees to acquire

The acquisition includes both completed acquisition as well as agreement to acquire.

In *B.P.Amoco. Plc Vs SEBI*, where it was held that the moment the acquirer sets into motion the process of acquiring shares or control, acquisition within the meaning regulation takes place. Also, it was held that acquirer includes both who has acquired shares as well as who agrees acquire shares or voting rights in a company. Similarly if the word ‘acquirer’ were to mean only those who have already acquired shares, then the provisions regarding ‘public announcement’ in the SEBI Regulations would be rendered nugatory. The salutary protections contemplated through public announcement would be lost.

d. Shares, voting rights or control over target company

Shares: This has been defined in Regulation 2(k) of the Takeover code. The shares mentioned in

the definition provided in the code mentions about the equity shares only & specifically exclude the preference shares.

Voting rights: *The term voting rights have not been defined anywhere in the Takeover code, however it can be construed as the right to vote in the decision making powers of the company.*

Control: *The term control has been defined under regulation 2(c) of the SEBI (SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997) Regulations, 1997. Control is defined to include the exercising control over appointment of directors, taking major policy decisions.*

- e. **Either by himself or with any person acting in concert with the acquirer.**

The acquisition can be on the behalf of acquirer himself or it may be with the other persons acting in concert which are further defined under regulation 2(e) of the Code. The acquirer can take the shares on its own or along with the persons who share the common objective of acquisition of share or voting rights or control over the target company.

CHECKLIST

IV

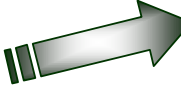
CHECKLIST FOR INTER-SE TRANSFER

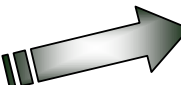
S.NO	COMPLIANCES TO BE MADE.	PERSONS RESPONSIBLE FOR COMPLIANCE.	DUE DATE FOR COMPLIANCE
PRE CONDITIONS FOR INTER-SE TRANSFER			
1	Check whether the Transferor(s) & Transferee(s) have been holding shares in the Target Company for a Period of at least three years prior to the proposed acquisition.		
2	Check whether Inter-se transfer is at a Price not exceeding 25% of the Price as determined in terms of Regulation 20(4)& 20(5)		
3	Check whether Transferor & Transferee have complied with Regulation 6, 7 & 8.		
COMPLIANCES TO BE MADE			
4	Check whether the Stock Exchange is being notified at least 4 working days in Advance of the date of the Proposed Acquisition, in case of acquisition exceeds 5% of the Voting share Capital of the Company. (Regulation 3(3))	TRANSFEEE	X - 4
5	Check applicability of Regulation 7(1) & 7(1A) on acquisition and sale of shares. <i>(This compliance is subjective upon the number of shares previously held</i>	TRANSFEEE	X+2

	<i>of shares previously held and proposed to be acquired.)</i>		
5A	Regulation 7(3) compliance depending upon the applicability of Regulation 7(1) & 7(1A).	TARGET COMPANY	X+9
6	Check whether the Acquirer has submitted a Report within 21 days of the date of acquisition, submit a report along with the Supporting documents to the Board, in case the acquisition along with the already held shares entitle him to exercise 15% or more of the voting rights of the Company. (Regulation 3(4))	TRANSFEEE	X + 21
7.	Check whether the Acquirer has paid the fees of Rs 25000/- to SEBI. (Regulation 3(5))	TRANSFEEE	X + 21

HELPFUL HINTS



 Regulation 3(4) & 3(5) are attracted as & when any acquisition, which is intended to be exempt under the provisions under Regulation 3(1), hits the provisions of Regulation 10,11 & 12.

 The mention of 15% in Regulation 3(4) is not to be interpreted in the manner that the particular acquisition should exceed 15% so as to comply with Regulation 3(4) & 3(5).

INTERMEDIARY SEARCH**VI**

S.No	Particulars	Contact details
1.	A.K. CAPITAL SERVICES LTD	135 & 136, FREE PRESS HOUSE, 13TH FLOOR FREE JOURNAL MARG, NARIMAN POINT, MUMBAI. Tel no: 022-56349300 email: akcap@del2.vsnl.net.in
2.	ALLIANZ SECURITIES LTD	2ND FLOOR, 3 SCINDIA HOUSE, JANPATH, NEW DELHI 110001 Tel No: 011-51514666-69

Pls contact for any kind of clarification:
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 preeti@indiacp.com

Wisdom is knowing what to do next, skill is knowing how to do it, and virtue is doing