

INSIGHT

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Takeover Panorama



RECENT UPDATES



KOTHARI FERMENTATION AND BIOCHEM LIMITED (UNDER REGULATION 4(2) OF THE SEBI (SAST) REGULATIONS, 1997)

FACTS

- i. M/s. Kothari Fermentation and Biochem Limited (hereinafter referred to as “the target company”), having its registered office at No. 16, Community Centre, First Floor, Saket, New Delhi - 110 017. The target company has been declared sick under section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as ‘SICA’) by the Board for Industrial and Financial Reconstruction (BIFR).
- ii. The acquirers are the promoters of the company, who were holding 42.48% of the voting capital of the Company & also in control of the target company.
- iii. The acquirers filed an exemption application to the Takeover Panel considering that acquisition is for the purpose of bringing funds in the target company for repayment of bank loans.
- iv. The acquisition would be done by way of allotment of 16,95,000 preferential share warrants convertible into one equity share for each warrant, within 18 months of the allotment of warrants. The acquisition price would be minimum Rs. 12.72 per share at the time of conversion of share warrants into equity shares. The acquirers would bring minimum 10% of the price at the time of allotment of share warrants.
- v. The acquirers propose to acquire 21.76% of the post-acquisition equity shares/ voting rights of the target company. Pursuant to the acquisition, the shareholding of the acquirers, along with the persons acting in concert, would increase from 42.48% to 54.99% of the total equity capital of the target company.
- vi. The basic purpose of acquisition is to repay the bank loan. The promoters are interested in revival of the target company.

GROUND FOR SEEKING EXEMPTION

- ✓ The promoters wish to revive the company and in lieu of the same wants to repay the loan amount. Therefore, the increase of 42.48% to 54.99% should be exempted in lieu of regulation 11 & 11(2) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997.
- ✓ Further, the acquirers have stated that the present number of shareholders in the target company is 11,695 and therefore, postal ballot for passing a special resolution for the preferential allotment would involve huge costs and will pose a heavy financial burden, which due to the adverse financial position the target company will not be able to undertake. Therefore, considering the precarious financial position of the target company, a waiver of the condition of passing the proposed special resolution through postal ballot is being sought.

ORDER

The takeover Panel gave the opportunity of personal hearing to the acquirers but the acquirers have failed to attend the same.

The Takeover Panel has stated that the application of exemption is not required to be considered by it at this stage when the matter is before the BIFR which has declared the company sick under 3(1)(o) of SICA and the revival package for the target company is yet to be submitted to the operating agency.

The Takeover Panel in view of the above findings dispose of the application dated May 2, 2006 filed by M/s. Kothari Fermentation and Biochem Limited.

Interpretive Circular under Regulation 5 of the SEBI (SAST) Regulations, 1997 (Issued by SEBI on 11.12.2006)

CIRCULAR

ISSUE:

Regulation 3(1) (ia) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 reads as follows:

“3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:

(ja) transfer of shares from venture capital funds or foreign venture capital investors registered with the Board to promoters of a venture capital undertaking or venture capital undertaking pursuant to an agreement between such venture capital fund or foreign venture capital investors with such promoters or venture capital undertaking;

2. The requirement of this clause can be broken down as under:

- a) There should be a transfer of shares from a venture capital fund (VCF) or a foreign venture capital investor (FVCI, for short) to the venture capital undertaking (VCU, for short) or its promoter;
- b) Such transfer should be pursuant to an agreement between them.

In certain cases, interpretational issues have arisen as to the scope of the term ‘shares’ occurring in the above clause, that is whether the term refers to the shares of a venture capital undertaking in which the VCF/FVCI had initially invested (and which subsequently gets listed) or to the shares of any other listed company.

It has been clarified by SEBI that the purpose behind providing exemption under regulation 3(1)(ia) was to facilitate disinvestment by venture capital fund or foreign venture capital investors of shares held by them in a venture capital undertaking in favour of the promoter of such venture capital undertaking. However, the wordings in the definitions of 'venture capital undertaking' found in regulation 2(m) of the SEBI (Venture Capital Funds) Regulations, 1996 and regulation 2(n) of the SEBI (Foreign Venture Capital Investors) Regulations, 2000 excluded companies whose securities are listed in recognised stock exchanges in India and thereby caused confusion.

The expression 'venture capital undertaking' referred to in regulation 3(1)(ia) is not restricted by the aforesaid definitions in the VCF and FVCI Regulations in so far as they require that the shares of VCU should not be listed. It is further clarified that the transfer of shares referred to in regulation 3(1)(ia) is a transfer of the shares of an unlisted venture capital undertaking held by a VCF or FVCI, which subsequently got listed, in favour of the promoter of the Venture Capital Undertaking pursuant to an agreement between them. Any transfer by a VCF or FVCI to a promoter of a venture capital undertaking of shares of some other listed company will not be entitled to exemption under regulation 3(1)(ia). This exemption is also not intended to cover transfer of shares of an unlisted venture capital undertaking by a VCF or FVCI to its promoters, as it is anyway exempted under regulation 3(1)(k).



Securities And Exchange Board Of India Vs. M/s IQMS Software Limited.

FACTS & DECISION

The Company had made yearly disclosure for the year ending on 31.03.01, under Regulation 8(3) of the Takeover Regulations; on 01.11.2001 belatedly as the due date for making such disclosure was 30.04.01. It was also explained that alleged contravention by the company has to be inquired into and adjudged under 15A (b) of the SEBI Act, 1992.

A show cause notice was issued to the Company. The Company in its reply stated that it had not employed a full time Company Secretary during the period and its directors were not aware of the non-submission of report under the Takeover Regulations and they were busy with regular operation of the company. After appointment of Finance Manager, the company made disclosure on November 1, 2001. In view of these submissions, the company has requested to condone the delay in making disclosure under regulation 8(3) of the Takeover Regulations for the financial year ending March 2001.

SEBI in its order stated that the requirement of compliance of regulation 8(3) is an annual feature. It is the primary obligation of the company. The appointment of Company Secretary or the Finance Manager is not a condition precedent for making disclosures in terms of regulation 8 (3) of the Takeover Regulations. The failure in this case cannot be said to be on account of any oversight or lack of knowledge.

SEBI quoted the case 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. Thus, disproportionate gain, unfair advantage, repeated default, etc. are not sine quo non for imposing a monetary penalty when the violations of statutory obligations contemplated in the SEBI Act and the regulations made thereunder are established.

ORDER

SEBI directed to pay the penalty of twenty five thousand rupees would be commensurate with the violation & pay the amount within 45 days of from the date of receipt of this order through a demand draft drawn in favour of "SEBI-Penalties remittable to the Government of India"



LATEST OPEN OFFERS



S.No	Target Company	Acquirer	Details of offer (No of shares & %)	Reason for offer	Intermediary Involved.
1.	<p>DOVER SECURITIES LTD</p> <ul style="list-style-type: none"> ❑ Regd office: Kolkata ❑ Paid up Equity Capital: Rs. 5,00,00,200 comprising of 50,00, 200 fully paid-up Equity Shares of Re.10/- each 	Money Matters (India) Pvt Limited	20% of Voting Capital i.e., at a price of Rs. 8/- per share	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 &12</p> <p>(A SPA was executed on 22nd November, 06 between the Acquirer/PAC to acquire in aggregate fully paid up Equity Shares of Re. 10/- each aggregating to 55.51% of voting capital of the</p>	<p>Manager to the offer:</p> <p>CHARTERED CAPITAL & INVESTMENT LIMITED</p> <p>Registrar to the Offer:</p> <p>MCS LIMITED</p>

	<input type="checkbox"/> Listing Status: (BSE, CSE & JSE)			Target Company at a negotiated price of Rs 4/-.	
2.	MILLARS INDIA LTD <input type="checkbox"/> Regd office: Mumbai <input type="checkbox"/> Paid up Equity Capital: Rs. 232,14,250 comprising of 23,21,425 equity shares of Rs. 10 each fully paid. <input type="checkbox"/> Listing Status: (BSE & ASE)	i. Skyline Vision Pvt. Ltd., ii. Dave Builders Pvt. Ltd, & iii. Jatin Daisaria Realtors Pvt. Ltd.	20% of Voting Capital i.e., at a price of Rs. 80/- per share	<u>Triggerred Regulation</u> <i>Regulation 10 &12</i> Pursuant to preferential issue by company at the price of Rs 80/-, the acquirer's holding reached at 15.04%.	Manager to the offer: LKP SHARES & SECURITIES LTD. Registrar to the Offer: INTIME SPECTRUM REGISTRY LIMITED
3.	JRC INDUSTRIES LIMITED <input type="checkbox"/> Regd office: Gujrat <input type="checkbox"/> Paid up Equity Capital: Rs. 5,00,66,000 comprising of 50,06,600 fully paid-up Equity Shares of Re.10/- each <input type="checkbox"/> Listing Status: (BSE & Vadodora Stock Exchange)	Mr. Rushabh Jitendra Shah	30% of Voting Capital i.e., at a price of Rs. 2.25/- per share	<u>Triggerred Regulation</u> <i>Regulation 10, &12</i> (A SPA was executed between the Acquirer with promoters on 27 th November to acquire in aggregate fully paid up Equity Shares of Rs. 10/- each aggregating to 39.33% of voting capital of the Target Company at a negotiated price of 1.75 Rs.	Manager to the offer: PUNEET ADVISORY SERVICES PRIVATE LIMITED Registrar to the Offer: SHAREX DYNAMIC (INDIA) PVT LTD
4.	ALPINE HOUSING DEV CORP LTD	Alpine Builders Pvt Limited, Jaz Exports & Engineering Pvt	20% of Voting Capital i.e., at a price of Rs. 25.36/-	<u>Triggerred Regulation</u> <i>Regulation 11 & 11(2)</i>	Manager to the offer: MEGHRAJ SP CORPORATE

	<ul style="list-style-type: none"> ❑ Regd office: Bangalore ❑ Paid up Equity Capital: Rs. 1,20,00,000 Lakhs comprising of 12,00,000 fully paid-up Equity Shares of Re.10/- each ❑ Listing Status: BSE, BgSE, CSE, MSE and HSE 	Limited, Mr. S.A. Kabeer, Mr. S.A. Rasheed, Mr. S.M. Mohsin, Mr. S.M. Muneer, Ms. Anisa Banu, Ms. Athiya Begum and Ms.Sabiha Talhath	per share	The acquirers, holding more than 55% of the shares but less than 75% of the shares of the Company have acquired more than 5% of the voting rights of the Company pursuant to the preferential allotment made on the 9th June 2004.	FINANCE (PRIVATE) LIMITED Registrar to the Offer: CAMEO CORPORATE SERVICES LIMITED
5.	<p style="text-align: center;">TEJ INFOWAYS LIMITED</p> <ul style="list-style-type: none"> ❑ Regd office: Hyderabad ❑ Paid up Equity Capital: Rs 348.55 Lakhs comprising of 34,85,500 fully paid up equity shares of Rs. 10/- each. ❑ Listing Status: HSE, MSE and ASE. 	Mr. Nukarapu Surya Prakash Rao,	20% of Voting Capital i.e., at a price of Rs. 11/- per share	<p style="text-align: center;"><u>Triggerred Regulation</u></p> <p style="text-align: center;"><i>Regulation 10, &12</i></p> <p>(A SPA was executed between the Acquirer with promoters on 9th December to acquire in aggregate fully paid up Equity Shares of Rs. 10/- each aggregating to 60% of voting capital of the Target Company at a negotiated price of Rs 8.</p>	Manager to the offer: Ashika Capital Limited Registrar to the Offer: Aarthi Consultants Pvt. Ltd
6.	<p style="text-align: center;">BOMBAY POLYMERS LIMITED</p>	Mr. Nitin Haridas Shenoy	28% of Voting Capital i.e., at a price of Rs. 43.50/- per share	<p style="text-align: center;"><u>Triggerred Regulation</u></p> <p style="text-align: center;"><i>Regulation 10, &12</i></p>	Manager to the offer: Ashika Capital

	<ul style="list-style-type: none"> ❑ Regd office: Mumbai ❑ Paid up Equity Capital: Rs. 24.75 Lakhs comprising of 2,47,500 fully paid-up Equity Shares of Rs. 10/- each. ❑ Listing Status: BSE 			(A SPA was executed between the Acquirer with promoters on 9 th December to acquire in aggregate fully paid up Equity Shares of Rs. 10/- each aggregating to 31.88% of voting capital of the Target Company at a negotiated price of Rs 40.	Limited Registrar to the Offer: Kotak Securities Limited,
7.	<p style="text-align: center;">ASIAN OILFIELDS SERVICES LTD</p> <ul style="list-style-type: none"> ❑ Regd office: Baroda ❑ Paid up Equity Capital: Rs. 53571000 comprising of 53,57,100 fully paid-up Equity Shares of Rs. 10/- each. ❑ Listing Status: BSE, ASE, DSE & VSE 	Consolidated Securities Limited	20% of Voting Capital i.e., at a price of Rs. 20.50/- per share.	Triggerred Regulation Regulation 10, &12 (Preferential allotment of 1650000 shares constituting 23.55% of the voting capital of the company.)	Manager to the offer: Chartered Capital & Investment Limited Registrar to the Offer: MAS Services Private Limited
8.	<p style="text-align: center;">THE MORAN TEA COMPANY (INDIA) LTD</p> <ul style="list-style-type: none"> ❑ Regd office: West Bengal ❑ Paid up Equity Capital: Rs. 2.1 crore comprising of 2,100,000 fully paid-up Equity Shares of Rs. 	Mcleod Russel India Limited, Williamson Magor & Co Ltd & Ichamati Investments Pvt Ltd	20% of Voting Capital i.e., at a price of Rs. 273/- per share.	Triggerred Regulation Regulation 10, &12 (SPA to acquire 15,20,000 shares constituting 72.38% of the voting capital of the company @ 273 per share.	Manager to the offer: ICICI Securities Limited Registrar to the Offer: Shree Bahubali International Limited

	10/- each.				
	<input type="checkbox"/> Listing Status: CSE & GSE				



REGULAR SECTION



Interpretation of Regulation 10

This regulation provides a threshold limit for mandatory public offer. This regulation explains that when an acquirer intends to acquire shares or voting rights which along with existing shareholding would entitle him to exercise 15% or more of the voting rights in a company, in such a case the acquirer is required to make public announcement to acquire at least additional 20% of the voting capital of target company from the shareholders through an open offer.

Frequently Asked Questions:

- Whether threshold limit of 15% shares or voting rights covers equity only?

Since the regulation mentions only about the shares or voting rights only. Therefore, if one may enter into agreement to have 15% or more of the voting rights without acquiring the shares, which would be sufficient to trigger the limit for public offer. Other securities are outside the scope of this regulation till the time they ripe for conversion into equity shares.

- **Whether the shares, which are devoid of voting rights, are covered under Regulation 10?**

The answer is negative in the sense as it was held in *Ch.Kiron Margadarsi Financiers Vs Adjudicating Officer, SEBI*, wherein it was held that shares kept as a pledge against loan beyond the limit of 15% shares or voting rights are not covered under the provisions of Regulation 10.

- **Does Regulation 10 operate against only those who are already holding shares or voting rights?**

No, the Regulation though mentions the existing and the proposed acquisition of the acquirer, but it also covers those acquirers who don't possess any shareholding before the proposed acquisition, which is beyond the threshold limit mandatory for public offer.



CASE STUDY



The Man of Mettle - Lakshmi Mittal conquers Arcelor

ON January 27, 2006, Lakshmi Mittal, billionaire steel magnate and the world's third richest man announced he was launching a takeover offer for Luxemburg-based Arcelor, the world's second-largest steel maker. Eighty-eight per cent family-owned, Mittal Steel, the world's market leader in terms of volume and turnover, said its offer would create "the world's first 100 million ton plus steel producer."

The offer valued each Arcelor share at 28.21 – a 27 per cent premium over the closing price on 26 January 2006, a 31 per cent premium over the volume weighted average price in the preceding month, and a 55 per cent premium over the volume weighted average share price in the preceding 12 months.

▪ FAVORABLE MARKET

The markets reacted favorably with share prices of both companies going up. Market analysts appeared to approve the industrial logic that propelled it and declared it was "not a bad initial offer". The bid drew intense interest from U.K. hedge funds such as Marshall Wace and GLG Partners and US funds such as Och-Ziff, Duquesne and Perry Capital. Anticipating such a move, some funds bought Arcelor shares before the bid.

Mittal explained his strategy was to consolidate the steel industry in order to better protect it from vicious boom and bust cycles that have marked it. Size and weight would give the large steel makers the capacity to control market trends and to respond with flexibility, which would give them more bargaining power with coal and iron ore suppliers. His cash and share offer would dilute his family's holdings in the company from 88 per cent to just over a half, he said. He would respect all of Arcelor's contracts with the workers and promised there would be no job cutbacks. "We buy plants to develop them, not shut them down," Mittal said.

The announcement however had the effect of a bombshell, with an almost hysterical chorus of voices raised against the "predator" from India. Guy Dollé, the CEO of Arcelor fired the first salvo. Describing Mittal's offer as "ridiculous" which would be paid in "monkey money" – a rather inelegant French expression signifying worthless currency, he said: "I do not have my son on the board." Arcelor made "perfume" while the Mittals made "eau de cologne" or commodity steel, Dolle said, dismissing his rival as "a family enterprise specializing in buying up obsolete installations at a cheap price."

The contempt and disdain in his remarks smacked of xenophobia if not outright racism. In an unsolicited interview with The Hindu, he later said he "could have over-reacted". Dolle was not the only culprit. Declarations by France's ministers of Finance and Industry, Thierry Breton and Francois Loos as well as Luxemburg Prime Minister Jean Claude Juncker amounted to economic jingoism of the worst kind.

"It's a hostile bid and it requires an equally hostile response," Juncker said. "Prime Minister Villepin and I tuned our violins together. I am determined to do everything possible in concert with my French and Belgian partners to stop this hostile bid. This take-over and its method are not compatible with the manner in which we the Luxembourgeois and the Europeans see globalization."

Mittal's repeated explanations that his was an European company based in The Netherlands and listed on most major exchanges appeared to fall on deaf ears.

REACTIONS

French Finance Minister Thierry Breton said he was "shocked" by the way the bid was announced – without prior consultations. The Industry Minister Francois Loos went a step further when he told the French parliament: "We are opposed to the success of Mittal's public offer for Arcelor. Mittal has infringed all the rules of conduct, the grammar of international finance in this domain. You do not approach a group like Arcelor, a flower of the European economy and of the French metal industry, without giving advance warning, without talks, without a vision, without a common industrial project." Valéry Giscard d'Estaing, the former president, adding his bit, said, "the laws of a modern, liberal economy are not those of a jungle".

The rhetoric was toned down only when Indian Trade and Commerce minister Kamal Nath expressed the government's dissatisfaction over the issue in discussions with European trade Commissioner Peter Mandelson. Several declarations by workers' unions both in Europe and in the U.S. endorsing Mittal's managerial skills and employment policies also helped cool tempers and place the bid in some kind of perspective.

The Main Players -- Mittal & Arcelor



The world's largest steel company with steel plants in 14 countries, especially in Asia, Eastern Europe and America and sales office in another 11 nations. With a turnover of over \$28 billion, Mittal Steel employs over 1,75,000 persons worldwide.

The company's profits in 2005 dropped to \$3.4 billion from \$4.7 billion in 2004. Its turnover rose to \$28.1 billion from \$22.2 billion in 2004 while total steel shipments amounted to 49.2 million tonnes, up from 42.1 million tonnes last year. Asked whether a higher bid was envisaged for Arcelor in light of the rejection of Mittal Steel's 18.6-billion-euro (\$22 billion) takeover bid by that company's board, Mittal answered with a firm "No".

The company produces a broad range of finished and semi-finished products for the flat and long products markets for the automotive, engineering and appliance sectors.

The world's second-largest steel company was created in 2002 with a merger of three European steel-makers - Usinor of France, Arbed of Luxemburg and Aceralia of Spain. The company is headquartered in Luxemburg and the Duchy is its largest shareholder with 5.6 per cent of the shares.

Arcelor operates in four market sectors, Flat Carbon Steel, Long Carbon Steel, Stainless Steel and Arcelor Steel Solutions & Services. With 94,000 associates in over 60 countries and a turnover of 30 billion in 2004, the company's main markets include automotive, construction, household appliances and packaging as well as general industry. Like Thyssenkrupp of Germany, Arcelor is expanding internationally.

In 2005 Arcelor reported outstanding results with a gross operating result of 5.6 billion and a net result, group share of 3.8 billion. Strong cash generation allowed further debt reduction of 1.3 billion in 2005.

People are definitely a company's greatest asset. It doesn't make any difference whether the product is cars or cosmetics. A company is only as good as the people it keeps.



USEFUL HINTS



The applicability of Regulation 3(4) arises when the existing shareholding of the acquirers is above 15% & the proposed acquisition triggers the provisions of Regulation 11 & 12.

The above view is discussed in *Naagraj Ganeshmal Jain v. P. Sri Sai Ram*. (Appeal No. 12 of 2001 August 17, 2001)



INTERMEDIARY SEARCH



S.No	Particulars	Contact details
1.	DSP MERRILL LYNCH LTD	Mafatlal Centre, 10th floor, Nariman Point, Mumbai - 400021
2.	DEUTSCHE BANK	D B House, Hazarimal Somani Marg, Fort Mumbai 400001

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