

TAKEOVER PANORAMA

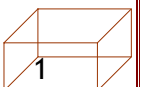
(Corporate Professionals - A monthly update on Takeover Code)

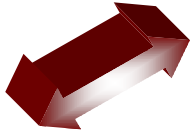
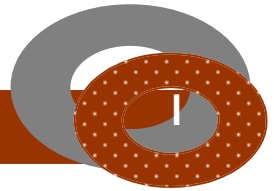
INSIGHT



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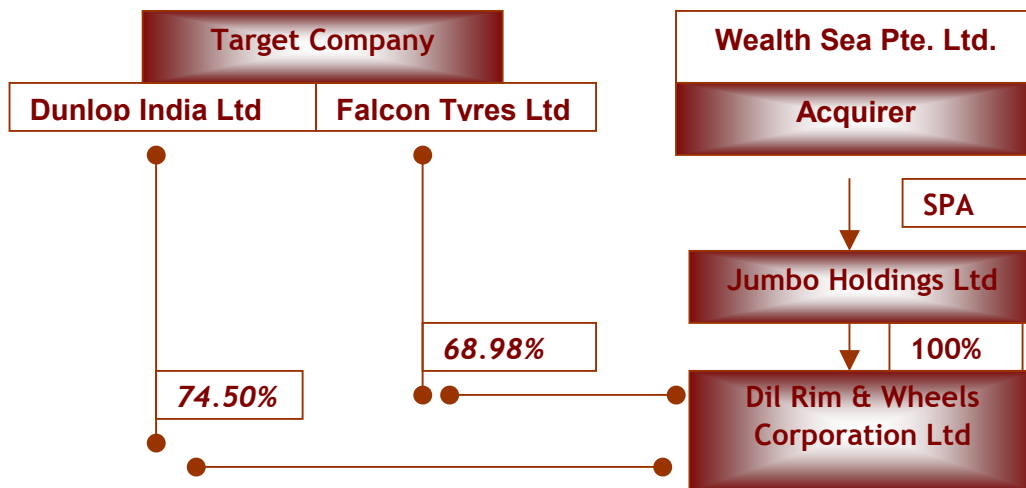




SEBI v W/s. Wealth Sea Pte. Ltd.

FACTS & DECISION

FACTS OF THE CASE



Indirect acquisition of Shares of Dunlop India Ltd & Falcon Tyres Ltd

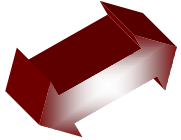
- The acquirer “Wealth Sea Pte. Ltd.” intimated SEBI that it is a company incorporated in Singapore and a Share Purchase Agreement (SPA) had been entered into with Jumbo World Holdings Ltd, which was having the entire share capital of Dil Rim and Wheels Corporation Ltd., Mauritius on Nov.28, 2005.
- In terms of the agreement, Wealth Sea purchased the entire share capital of DRW. DRW was having 74.50% of equity shares of DIL and 68.98% of the equity shares of FTL, the two companies incorporated and listed in India.
- Further, Wealth Sea intimated to SEBI that it has acquired the entire share capital of DRW and it did not directly acquire or agree to acquire the shares of DIL and FTL.
- A special resolution in terms of Regulation 12 of Takeover Regulations was also passed and a meeting of both DIL and FTL was called, in order to effect the change of control over the target companies.

- The acquirer made the following contentions:
 - *That the provision of Regulation 10 read with Regulation 14(4) had not been violated by it as no public announcement required to be made in the instant case.*
 - *That the show cause notice has not even mentioned the documents on which SEBI has placed reliance and therefore the show cause notice suffers from the vice of non-compliance with the Principles of Natural Justice.*
 - *The provisions of Indian laws will not be applicable, as Wealth Sea had entered into an agreement with a company incorporated outside India to acquire the shares of company incorporated outside India.*
 - *Regulation 10 did not contain any provision for indirect acquisition of shares of a listed company.*
 - *Regulation 10 casts an obligation on the acquirer to make a public announcement prior to the acquisition of shares in a company. However the acquisition by the acquirer in the instant case is an indirect acquisition. Regulation 14(4) of Takeover Regulations deals with indirect acquisition and permits an acquirer to make a public offer within 3 months of the consummation of such acquisition or change in control.*
 - *Regulation 10 and 11 deal exclusively with acquisition of shares. Regulation 12 deals with acquisition of control over a company. As per the provisions of Regulation 12, the control over a company can be acquired either by acquisition of shares or by acquiring control over it, as defined in Regulation 2 (1)(c) of the Takeover Regulations. It was further submitted that in the facts of the case neither Regulation 11 nor Regulation 12 are applicable and therefore the reliance on Regulation 10 in the show cause notice is misplaced.*
 - *Indirect acquisition of control supported by a shareholder's resolution is exempted under the provisions of Regulation 12. There was no obligation to make an open offer and the provisions of Regulation 14(4) would not be applicable in the facts of the present case. Hence there is no violation of Regulation 14(4) as alleged by SEBI.*
 - *The acquirer is not a person who is associated with the securities market. The transactions whereby the shares of DRW were acquired had taken place outside India. It was further submitted that the acquirer was neither in the business of buying or selling shares in India nor it had sold any shares in India.*
 - *The provisions of section 11 & 11 B empower SEBI to pass directions, pending investigation or inquiry or on completion of investigation or inquiry to take various measures. It is submitted that the measures referred to in section 11 (4) cannot be resorted to against the directors of acquirer who are not amenable to the jurisdiction of Indian Laws as the acquirer is a company incorporated outside the jurisdiction of India.*
 - *Section 24 of the SEBI Act empowers SEBI to initiate criminal proceedings and in the instant case as there was no mens-rea or intention to violate the provisions of the SEBI Act, Takeover Regulations, criminal proceedings cannot be initiated against the acquirer.*
 - *That this was not a fit case to invoke the provisions of Regulation 44 of the Takeover Regulations.*

- *SEBI in reply to above mentioned contentions made the following remarks: -*
 - *SEBI has to look after the interest of investor of the company, therefore section 11B is an enabling provision enacted to empower the SEBI to regulate securities market in order to protect the interest of the investors.*
 - *Pursuant to the acquisition of any company, control of an Indian listed company changes then such change in Indian company would be governed by the Indian legislature, therefore SEBI has full power to try the case.*
 - *It is clear from the facts of this case though the direct acquisition by the acquirer took place in Singapore, but indirectly this acquisition led to acquisition of shares and control of the target companies, which were incorporated in India. Since the entire indirect acquisition has taken place with respect to two companies listed in India whose securities are listed in Indian brochures, it has become a person associated with the securities market within the meaning of section 11B of SEBI Act.*
 - *By directly acquiring DRW the acquirer had indirectly acquired the control of DIL and FTL and thereby triggered Regulations 10 and 12 of the Takeover Regulations.*

DECISION OF THE CASE

The acquirer is directed to give **public announcement** with in 90 days of order and also to pay interest @10% per annum on the offer price.



FACTS & DECISION

FACTS OF THE CASE

The acquirers belonging to the promoter group were holding 74.998% shares and given a public announcement to acquire 7,42,560 equity shares of SRP Tools Ltd. (Hereinafter referred to as the target company). The said 7,42,560 equity shares (25.002% of the voting share capital) of the target company had constituted for its entire balance issued paid-up capital.

The acquirers had appointed M/s. Meghraj SP Corporate Finance (Private) Limited as the merchant banker. One of the comments communicated by SEBI vide its letter dated September 19, 2003 was that the said acquisition might result in the delisting of shares of the target company and therefore, the acquirers had to follow the provisions of the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003 (hereinafter referred to as the Delisting Guidelines).

Fresh public announcement should be given for the purpose of acquisition of shares in terms of delisting of securities guidelines.

FINDING & DECISION

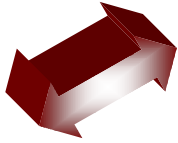
In spite of the communication, the Acquirer did not take the appropriate advice and acquired the entire issued paid up capital of the company and the merchant banker too did not advise for the compliance of Delisting guidelines.

The Merchant Banker denied the fact of acquisition of shares & justified that the acquisition was in violation of the MOU entered between him and the acquirer.

The question that was to be decided was whether the Merchant Banker had failed to exercise due care and diligence as contemplated

Considering the facts and circumstances stated by the Merchant Banker, the mistake was not justified.

Accordingly, SEBI imposed a minor penalty of censure on M/s. Meghraj SP Corporate Finance (Private) Limited {formerly Known as Meghraj Financial Services (India) Pvt. Ltd.}, merchant banker with registration number INM 000001220.



ORDER AGAINST M/S. TANVIR ZAKI

● FACTS OF THE CASE

Tanvir Zaki (noticee) is alleged to acquire shares of Sun Infoways Ltd. (hereinafter referred to as SIL) without making mandatory public announcement and public offer in terms of the provisions of Regulations 10 and 12 of the Takeover Regulations.

In January 2000, the promoter group and PAC sold their 98% stake in SIL for a total consideration of Rs.98, 34,659/- (Rs.4.95/- per share) to the noticee and others namely Shri. Anil Pujari, Shri. Hozefa Vohra, Shri. Rajan Tawate, Shri. Pravin Sonalkar and Shri.Kuldeep Kumar Handoo.

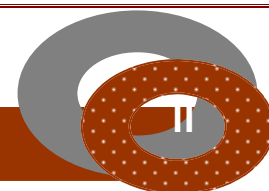
The acquisition has resulted in acquiring 98% of shares and voting rights in SIL, the requirement of public announcement and offer to acquire the shares from the general public has to be necessarily adhered to. Further, the noticee and persons acting in concert had acquired control over the target company as consequent to acquisition of shares, the said persons were appointed as directors of SIL on February 1, 2000. Hence the requirement of public announcement and public offer in terms of Regulation 12 also has to be adhered to. In this regard, it is noted from the evidence available on record that no public announcement and offer in terms of the provisions of Regulation 10 and 12 have been made by the acquirers.

● FINDING & DECISION

The noticee violated the provisions of Regulation 10 and 12 and consequently, liable for

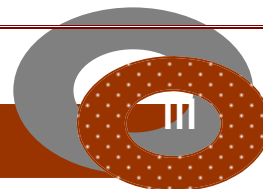
SEBI imposed a consolidated penalty of Rs 5 lacs on the noticee & directed them to pay the same within 45 days.

LATEST OPEN OFFERS



S.No	Target Company	Acquirer	Details of offer (No of shares & %)	Reason for offer	Intermediary Involved.
1.	<p>Bhagyodya Marketing Company Limited</p> <ul style="list-style-type: none"> ❑ Regd office: Mumbai ❑ Paid up Equity Capital: Rs. 15 Lakhs comprising of 1,50,000 fully paid-up Equity Shares of Re.10/- each ❑ Listing Status: (BSE) 	Mr. Gaurav Mehra	36.67% of Voting Capital i.e., at a price of Rs. 10/- per share	<p><u>Triggerred Regulation</u></p> <p>Regulation 10 &12</p> <p>(A SPA was executed on 23rd October, 06 between the Acquirer/PAC with promoters to acquire in aggregate fully paid up Equity Shares of Re. 10/- each aggregating to 38.03% of voting capital of the Target Company at a negotiated price of 10 Rs.</p>	<p>Manager to the offer:</p> <p>FEDEX SECURITIES LIMITED</p> <p>Registrar to the Offer:</p> <p>SHAREEX DYNAMIC INDIA PVT LTD</p>
2.	<p>Vishal Malleable Limited</p> <ul style="list-style-type: none"> ❑ Regd office: Ankelshwar, Gujrat ❑ Paid up Equity Capital: Rs. 1,95,00,000 Lakhs comprising of 19,50,000 fully paid-up Equity Shares of Re.10/- each ❑ Listing Status: (BSE) 	Mr. Om Prakash Khetan	20% of Voting Capital i.e., at a price of Rs. 30/- per share	<p><u>Triggerred Regulation</u></p> <p>Regulation 10,11(1), 11(2) &12</p> <p>It is in lieu of conversion of loan into equity shares of the company.</p>	<p>Manager to the offer:</p> <p>BOB Capital Markets Ltd</p> <p>Registrar to the Offer:</p> <p>SHAREX DYNAMIC (INDIA) PVT LTD</p>

3.	<p>Parichay Investments Limited</p> <ul style="list-style-type: none"> ❑ Regd office: Mumbai ❑ 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) 	<p>Mr. Omi Bhagadiya, Ms Ritu Aggarwal, Shobha Bhagadiya & Mr. Anurag Aggarwal</p>	<p>20% of Voting Capital i.e., at a price of Rs. 11/- per share</p>	<p><u>Triggerred Regulation</u></p> <p>Regulation 10, &12</p> <p>(A SPA was executed between the Acquirer with promoters to acquire in aggregate fully paid up Equity Shares of Re. 10/- each aggregating to 55% of voting capital of the Target Company at a negotiated price of 10 Rs.</p>	<p>Manager to the offer: FEDEX SECURITIES LIMITED</p> <p>Registrar to the Offer: SHAREX DYNAMIC (INDIA) PVT LTD</p>
4.	<p>Integrated Capital Services Ltd</p> <ul style="list-style-type: none"> ❑ Regd office: New Delhi ❑ 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: (JSE, MSE, DSE & ASE) 	<p>DEORA ASSOCIATES PRIVATE LIMITED</p>	<p>20% of Voting Capital i.e., at a price of Rs. 3.75/- per share</p>	<p><u>Triggerred Regulation</u></p> <p>Regulation 10, &12</p> <p>(A SPA was executed on 17th October 2006 between the Acquirer with promoters to acquire in aggregate fully paid up Equity Shares of Re. 10/- each aggregating to 64.81% of voting capital of the Target Company at a negotiated price of 3.75Rs.</p>	<p>Manager to the offer: CHARTERED CAPITAL & INVESTMENT LIMITED</p> <p>Registrar to the Offer: SKYLINE FINANCIAL SERVICES PRIVATE LIMITED</p>



DIFFERENCE BETWEEN REGULATION 7(1) & 7(1A)

Differential Point	Regulation 7(1)	Regulation 7(1A)
Applicability	<p>Any acquirer whose holding exceeds 5%, 10%, 14%, 54% and 74% at any time.</p> <p>Acquirer includes Persons acting in concert with the acquirer as per regulation 2(b) of SAST Regulations.</p>	<p>Intimation is required to be given on the persons who are holding between the range of 15%-55%.</p> <p>Acquirer includes Persons acting in concert with the acquirer as per regulation 2(b) of SAST Regulations</p>
Stage of Intimation	At every stage when the holding exceeds the above percentage, acquirer has to intimate within 2 days of such acquisition.	When the acquirer holding 15%-55% made any purchase or sale aggregating 2% or more of the share capital of the target company.
Time Limit	Within two days of acquisition or receipt of intimation of acquisition.	Within 2 days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.
Similarity	For the purposes of regulation 7(1), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.	For the purpose of regulation 7 (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.
	Company has to intimate the stock exchange within seven days of receipt of information.	Company has to intimate the stock exchange within seven days of receipt of information.

HELPFUL HINTS

IV



The acquisition beyond 55% is allowed to promoters if the very acquisition of shares does not made the incremental increase in the percentage held by promoters.

CASE STUDY

V

Open Offer for acquisition of Bombay Dyeing

Mr. Arun Bajoria, the jute baron from Kolkata, made a takeover bid for Bombay Dyeing Co.Ltd in late 2000. The offer was to buy out Mr. Nusli Wadia's stake in the company so as to gain management control. Simultaneously he also went on record with an offer to sell out his entire holding to Reliance Industries at a price even lower than the price of rs.200 asked of Bombay Dyeing. Mr. Bajoria had by then used the open market purchase route to acquire about 14% of the company. At that time the ruling market price of the company's share was around Rs.105.

On a representation from Bombay Dyeing, the Company Law Board restrained Mr. Bajoria from exercising his voting rights. During that period SEBI investigated whether Mr. Bajoria had informed Bombay Dyeing once his holding crossed 5% as per the provisions of the Takeover Code. Attempts were also on at Bombay Dyeing to prevent a hostile takeover of the company. However, it was apparent that Mr. Bajoria did not wish to go for an open offer under the Takeover Code to attain majority stake. He was however interested in taking up the 15% held by LIC at that time. His acquisition through the market purchase route had included shares held by UTI.

A controversy arose on the violation of the disclosure requirements under the Takeover Code due to the manner in which the market purchases were made. The shares were acquired using the route of financing a loan against pledge of the shares of the company, which were subsequently appropriated towards default by the borrower in repaying such loan. Using this mechanism, a potential acquirer can use a third party as a conduit for the acquisition by providing finance as a loan. The borrower would purchase the shares of the target company and pledge them as security. The loan would be intentionally defaulted so that the shares become those of the acquirer by default. Since this does not amount to a direct acquisition, Mr. Bajoria claimed that the disclosure requirement did not arise.

INTERMEDIARY SEARCH

VI

S.No	Particulars	Contact details
1.	ARYAMAN FINANCIAL SERVICES LTD	401 CHIRANJEEV TOWERS 43 NEHRU PLACE NEW DELHI DELHI-19
2.	CHARTERED CAPITAL & INVESTMENT LTD	711, MAHAKANT COMPLEX, OPP. V.S. HOSPITAL, ELLISBRIDGE AHMEDABAD GUJARAT

Please contact for any kind of clarification:

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