

TAKEOVER PANORAMA

A monthly newsletter by Corporate Professionals

Year VI-Vol IV-April 2012



INSIGHT

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LEGAL UPDATES

Informal Guidance in the matter of Khaitan Electricals Limited

Facts:

The Promoter & Promoter group of Khaitan Electricals Limited (Target Company) are holding 60,12,166 equity shares constituting 52.28% of total paid up capital of the Target Company. Now the Promoters intend to acquire additional 5,75,000 equity shares constituting 5% of total share capital of the Target Company in Financial Year 2011-12 under Regulation 3(2) of SEBI (SAST) Regulations, 2011. Further they are desirous to increase their shareholdings by additional acquisition of 5% in each F.Y. 2012-13, 2013-14 and 2014-15 without making Public Announcement by way of open market purchase in normal segment on the Stock Exchange under Regulation 3(2) of the SEBI (SAST) Regulations, 2011.

The promoters of the Company holding shares between 25%-75% are eligible to acquire additional 5% shares in every financial year without making any public announcement subject to the fulfillment of other conditions mentioned in regulation 3 of SEBI (SAST) Regulations, 2011.

Issues:

1. Whether the Promoters of the Company can acquire additional 5% (5,75,000 shares) during the financial year 2011-12 as per Regulation 3(2) of SEBI (SAST) Regulations, 2011?
2. Whether the Promoters can further acquire additional 5% shares as per Regulation 3(2) of the SEBI (SAST) Regulations 2011 in each financial year 2012-13, 2013-14, and 2014-15 till reaching the level of 75% shares capital of the Company?

Decision:

1. As per Regulation 3(2) of SEBI (SAST) Regulations, 2011 if the acquirer shareholding is between 25%-75% of total number of shares or voting rights of the Target Company, then the acquirer may acquire additional 5% of the total number of shares or voting rights of the Target Company in a financial year without making public announcement subject to the shareholding of the Acquirer not crossing the limit of 75%. Further, only gross acquisitions shall be taken into account irrespective of the fact that there is any intermittent fall in the shareholding owing to disposal of

shares by the acquirer or dilutions of shareholding on account of fresh issue of shares. However where Target Company has issued new shares during a financial year, the difference between the pre-allotment and post-allotment shall be taken into account for calculating the acquisition limit under Regulation 3(2).

2. In the present case, the promoters are holding 52.28% shares in the company and want to increase their holding and has queried as to whether the promoters are allowed to acquire additional 5% shares in one financial Year or in each financial Year. In this regard, it is clarified that “any financial year” mentioned in Regulation 3(2) should be read as “every financial year”. Therefore the promoters of the Company are eligible to acquire additional 5% shares in every financial year without making any public announcement subject to the fulfillment of other conditions mentioned therein.

Exemption Granted in the matter of IDBI Bank Limited

Facts:

1. The Government of India (hereinafter referred to as “Gol” or “the Acquirer”) is the promoter of IDBI Bank (Target Company) and vide its letter dated November 22, 2011, the Gol has granted in-principle approval to subscribe to equity share capital of the IDBI Bank by way of conversion of Tier I Bonds of IDBI Bank of the value of Rs. 2,130.50 crore held by the Gol. Accordingly, the Gol would be issued 188,556,509 equity shares at Rs.112.99 per share for conversion of the said Tier I Bonds. After the said issue of equity shares to Gol, the shareholding of Gol in the IDBI Bank would increase from 65.13% to 70.73%, which would be in excess of the creeping acquisition limit of 5% as permitted under regulation 3(2) of the SEBI (SAST) Regulations, 2011, resulting into triggering of open offer requirement unless the acquisition is exempted under Regulation 11.
2. Therefore, IDBI Bank, on behalf of the Gol vide letter dated March 9, 2012 filed an application under regulation 11(1) of the SEBI (SAST) Regulations, 2011 seeking exemption from the applicability of regulation 3(2) of the said Regulations.

SEBI granted exemption/relaxation to the Acquirers from strict compliances of making open offer for conversion Tier I bonds into equity shares of the bank to enable the bank to meet the prudential norms set under Basel I, and to protect the interest of its customers as well as public shareholders who have invested in its capital.

Grounds of Exemption:

- i. The GoI and the Reserve Bank of India had given a loan of Rs. 2,130.50 crore to IDBI Bank in the late 90s when IDBI was a Public Financial Institution. This loan was converted into Tier I Bonds, in order to get these funds to qualify as Tier I Capital. This augmented the capital of the IDBI Bank and helped it to meet the prudential norms set under Basel I.
- ii. With the onset of Basel III norms, the IDBI Bank needs to strengthen its core equity and hence the GoI has consented to convert these bonds into equity shares. The increase in shareholding is a mere outcome of the conversion of loan, which is being done to provide the IDBI Bank with a platform to leverage and grow, which will in the long run would be beneficial to the shareholders.
- iii. The conversion of Tier I Bonds into equity shares will not involve any separate infusion of funds and is being done to strengthen the IDBI bank which will not only help it to meet the norms, but will also provide it with sufficient room to grow its business.
- iv. There is no change in control.

Decision:

The WTM observed that under Basel III norms, the IDBI Bank needs to strengthen its core equity capital and the capital adequacy of the IDBI Bank is a key requirement to protect its small customers as well as public shareholders who have invested in its equity. It is also observed that pursuant to the said acquisition there is no change in control over the Target Company. Further the equity shares on preferential basis shall be allotted upon conversion of Tier I Bonds in accordance with pricing for preferential issues under the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009.

Therefore, after considering the above facts and circumstances of the case, SEBI granted exemption to the Acquirer from the requirement of making Open Offer under Regulation 3(2) of SEBI (SAST) Regulations, 2011 provided the acquirer will comply with other provisions of SEBI (SAST) Regulations, 2011, SEBI (ICDR) Regulations, 2009, Listing Agreement or any other law as may be applicable.

Consent Order in the matter of SBI Capital Markets Limited

SEBI had initiated adjudicating proceedings against SBI Capital Markets Limited (Noticee) for the alleged violation of Clauses 3, 4 and 6 of Code of Conduct prescribed under Regulation 13 of SEBI (Merchant Bankers) Regulations 1992, Regulation 20(9) of SEBI (SAST) Regulations, 1997 and

Clauses 5.4.3.1, 7.3.1, 7.4.1, 7.7.1, 11.2(xxiii), 11.3.6, 16.2.2.2 of SEBI (DIP) Guidelines, 2000 in the matter of SBI Capital Markets Limited. Pending the adjudicating proceedings, the Noticee has filed the consent application for the settlement of above violations and proposed to pay a sum of Rs. 20,00,000 towards settlement charges.

Accordingly, the terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and dispose of the said proceedings against the Noticee.

LATEST OPEN OFFERS

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
SEBI (SAST) Regulations, 2011					
Public Announcement 07-Mar-2012	Shree Rang Mark Travels Limited	Shib Narayan Das	Offer to acquire 17,17,924 (26%) equity shares at a price of Rs.5.50 per share payable in Cash.	Regulation 3 & 4 Off market acquisition of 60,000 shares and SPA for acquisition of 18,47,060 equity shares, thereby increasing the shareholding of the Acquirer to 53.51%.	Merchant Banker Comfort Securities Limited Registrar to the Offer Sharepro Services (India) Private Limited
Detailed Public Announcement 15-Mar-2012	Regd. Office Ahmedabad Net worth Rs. 337.46 Lakhs Listed At BSE, ASE and VSE				
Public Announcement 13-Mar-2012	DFL Infrastructure Finance Limited	Auctus Holdings Private Limited	Offer to acquire 15,48,124 Equity shares (26%) at a price of	Regulation 3(1) & 4 SPA for acquisition of 30,36,703 (51%)	Merchant Banker SPA Merchants Bankers Limited

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
Date of Detailed Public Statement 20-Mar-2012	Regd. Office Chennai Net worth Rs. (10593.39) Lakhs Listed At BSE		Rs. 2 per share payable in cash.	equity shares at a price of Rs. 0.099 per equity share.	Registrar to the Offer Cameo Corporate Services Limited
Public Announcement 21-Mar-2012 Date of Detailed Public Statement 29-Mar-2012	Ahlcon Parenterals (India) Limited Regd. Office New Delhi Net worth Rs. 3810.00 Lakhs Listed At BSE DSE, CSE and JSE.	B. Braun Singapore PTE. Limited along with B. Braun Melsungen AG	Offer to acquire 1,872,039 (26%) Equity Shares at a price of Rs. 460 per share payable in cash.	Regulation 3(1) & 4 SPA to acquire such number of equity shares of the Target Company from the promoters which, taken together with the equity shares to be purchased by the Acquirer from the shareholders under this Offer, aggregates to 75% of the voting capital of the Target Company.	Merchant Banker Deutsche Equities India Private Limited Registrar to the Offer MAS Services Limited
Public Announcement 28-Mar-2012	Beardsell Limited Regd. Office Chennai	Jayasree Anumolu, Bharat Anumolu (Acquirers), P Lalithamba, Amrith A,	Offer to acquire 12,17,624 (26%) Equity Shares at a price of Rs. 58 per share payable in cash.	Regulation 3(2) Conversion of 4,50,000 warrants into equity shares increasing the	Manager to the Issue Comfort Securities Limited

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
	Listed At MSE	Gunnam Subba Rao Insulation Pvt. Ltd. (PACs)		shareholding of the Promoter Acquirer from 48.20% to 57.64%.	
Public Announcement 28-Mar-2012	Ganon Trading and Finance Company Limited Regd. Office Mumbai Listed At BSE	Krishnamani Holdings Private Limited	Offer to acquire 78,260 (26%) Equity Shares at a price of Rs. 350 per share payable in cash.	Regulation 3(1) & 4 SPA for acquisition of 76,000 (25.25%) equity shares payable in cash.	Merchant Banker VC Corporate Advisers Private Limited
Public Announcement 30-Mar-2012	Meuse Kara & Sungrace Mafatlal Limited Regd. Office Mumbai Listed At BSE	Kavya Amit Digvijay Singh	Offer to acquire 20,80,910 (26%) Equity Shares at a price of Rs. 13 per share payable in Cash.	Regulation 3(1) and 4 SPA to acquire 5,67,450 Equity shares (7.09%) thereby increasing the shareholding of Acquirer to 30.83%.	Merchant Banker Firstcall India Equity Advisors Pvt. Ltd.
SEBI (SAST) Regulations, 1997					
Public Announcement 07-Mar-2012	Hasti Finance Limited Regd. Office Chennai Net worth Rs. 2475.05	Sonal Nitin Somani and Nitin Prabhudas Somani	Offer to acquire 19,70,900 equity shares (20%) at a price of Rs. 90 per share (including interest of Rs. 7.50 per share)	Regulation 11(1) Conversion of warrants into equity shares, thereby increasing the shareholding of	Merchant Banker Ashika Capital Limited Registrar to the Offer

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
	Lakhs Listed At BSE, ASE and MSE		payable in cash.	the Acquirers from 28.15% to 38.14%.	Cameo Corporate Services Limited
Public Announcement 08- March-2012	STI India Limited Regd. Office Indore Net worth Rs. (241.38) Lakhs Listed At BSE & NSE	Bombay Rayon Fashions Limited, AAA United B.V. and Ashwell Holding Company Private Limited	Offer to acquire 58,00,000 (20%) Equity Shares at a price of Rs.29 per share payable in cash.	Regulation 10, 11(2) and 12 Indirect acquisition of shares and change in control of the Target Company.	Manager to the Issue Axis Bank Limited Registrar to the Offer Link Intime India Private Limited

HINT OF THE MONTH

Acquisition of equity shares carrying voting rights or any security which entitles the holder thereof to exercise voting rights, beyond the prescribed threshold limits, leads to the obligation of making an open offer. GDR (Global Depository Receipts) which by virtue of depository agreement or otherwise, carrying voting rights is an example of a security which entitles the holder to exercise voting rights but is not an equity share

{As substantiated from FAQ of SEBI on SEBI (SAST) Regulations, 2011}

REGULAR SECTION

Competing Offers under SEBI (SAST) Regulations, 2011

The term Competing Offers refers to an offer given by any other person (Competitor Acquirer) after an offer has already been given by an acquirer to the shareholders of the Target Company to acquire the shares held by them.

E.g. If 'A' (Acquirer) has already given an Open Offer in terms of SEBI (SAST) Regulations, 2011 to the shareholders of X Ltd. (Target Company) and subsequently during the relevant period, B (any other person) also gives the similar offer to the shareholders of the Target Company, then offer given by B shall be termed as 'Competing Offer' in terms of these regulations.

Legal Provision

Regulation 20 of SEBI (SAST) Regulations, 2011 deals with the concept of Competing Offer. As per regulation 20 (1), Upon a public announcement of an Open Offer for acquiring shares of a Target Company being made, any person, other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an Open Offer within fifteen working days of the date of the detailed public statement (DPS) issued by the acquirer who has made the first public announcement.

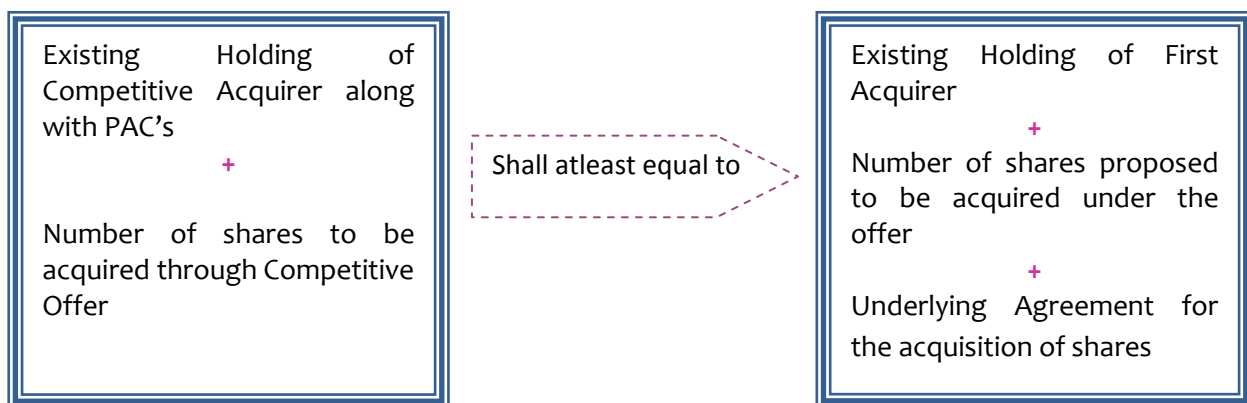
Timing under Competing offers

Particulars	Period
Public announcement under Competing Offer	Within 15 working days of the date of DPS issued by the First Acquirer.
No Public announcement under Competing Offer or no acquisition of shares that would attract the obligation to make PA	After 15 working days of the DPS issued by the First Acquirer and until the expiry of the offer period under the said offer.
Upward revision of the offer price under Competing Offer	Upto 3 working days prior to the commencement of the tendering period.
Increase in offer size by the acquirer in case of	Within a period of fifteen working days

voluntary offer	from the public announcement of a competing offer.
Comments of board on DLOO in respect of Competing Offer	SEBI shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.
Publication of Recommendations of the committee of Independent Directors	At least two working days before the commencement of the tendering period.

Size of competing offers

As per regulation 20 (2), the minimum number of shares for competitive offer shall be determined as under:



Highlights:

- Competing offer can be made within 15 working days from the date of DPS made by the acquirer who makes the first PA. **(Regulation 20 (1))**
- Unless the first open offer is a conditional offer, the competing offer cannot be made conditional as to the minimum level of acceptance. **(Regulation 20 (6))**
- A competing offer is not regarded as a voluntary Open Offer and therefore all the provisions of SEBI (SAST) Regulations, 2011, including that of offer size, would also apply in case of Competing Offer. **(Regulation 20 (3))**
- Upon PA of competing offer, an acquirer who had made a preceding offer is allowed to revise the terms of his open offer; if the terms are more beneficial to the shareholders of the target company. The upward revision of the offer price can be made any time up to three working days prior to commencement of the tendering period. **(Regulation 20 (9))**
- No induction of any new director to the board of directors of the target company during the pendency of competing offers. **Provided that** in the event of death or incapacitation of any

director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot. (**Regulation 24 (3)**)

Till now, no competing offer has been made under SEBI (SAST) Regulations, 2011.



CASE STUDY

About STI INDIA LIMITED (“STI/Target Company”)

STI India Ltd. was originally incorporated on August 7, 1984 with the name STI Biplus Tubing (India) Limited. The name of the Target Company was changed to STI India Limited with effect from September 20, 1994. The Target Company is a manufacturer of cotton yarn and cotton knitted fabrics and its main products are 100% cotton yarns, both super combed & super carded and knitted fabrics. The Target Company has been declared as a sick company and the proceedings before the BIFR are ongoing. The Equity Shares of the Target Company are presently listed on BSE and NSE.

About BOMBAY RAYON FASHIONS LIMITED (BRFL/Acquirer)

Bombay Rayon Fashions Limited was incorporated on May 21, 1992 as a private limited company under the name Mudra Fabrics Private Limited and was converted into public limited company on October 13, 1992. W.e.f. September 30, 2004, its name was changed to the present name i.e. Bombay Rayon Fashions Limited. BRFL is engaged in the business of fabrics and garment and owns 32 manufacturing facilities across several locations in the States of Maharashtra, Karnataka, Tamil Nadu, Kerala. The equity shares of the Acquirer are listed on BSE and NSE. The Acquirer is the promoter of the Target Company.

About AAA United B.V. (“PAC 1/AAA”)

Incorporated on March 18, 2009 under the laws of The Netherland, AAA is a wholly owned subsidiary of Aktieselskabet af 1/8 2004 and engaged in the business of investing, financing, lending, providing administrative and clerical services, trade and invest in registered properties etc. The equity shares of the AAA are not listed on any stock exchange.

About ASHWELL HOLDING COMPANY PRIVATE LIMITED (“PAC 2/Ashwell”)

Incorporated on March 24, 2011 under the Companies Act, 1956, Ashwell is engaged in the business of investment in, holding of and to purchase or otherwise acquire, underwrite, trade or deal in shares, securities, stocks, debentures, debentures stock, bonds etc. of other companies. The company is not listed on any stock exchange.

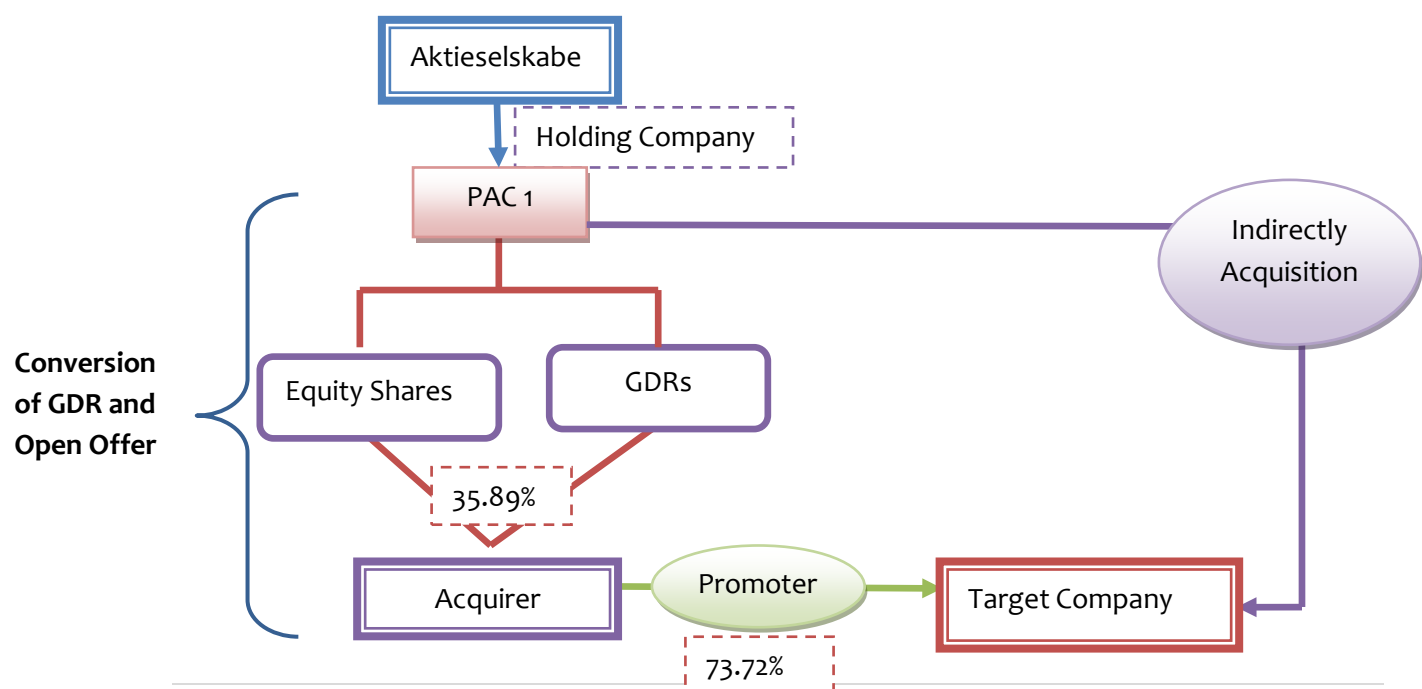
BACKGROUND OF THE CASE

On March 31, 2011, AAA United B.V. (PAC1) was holding 1,80,00,400 (14.07%) equity shares along with 3,30,00,000 Global Depository Receipts (GDRs) in BRFL. On March 31, 2011, PAC1 has passed a board resolution to convert the entire holding of GDRs into equal number of equity shares of BRFL. As a result of conversion of GDRs into Equity Shares of BRFL, the shareholding of PAC1 has increased to 5,10,00,400 equity shares i.e. 39.88% of the fully paid up equity capital and 35.89% of the Emerging capital of the Acquirer Company.

Pursuant to the above transaction, PACs 1 and PACs 2 along with Aktieselskabet af 1/8 2004 had made an open offer to the equity shareholders of BRFL under SEBI (SAST) Regulations, 1997.

Since, BRFL belongs to the promoter group of the Target Company and holds 73.72% of the paid up capital of the Target Company, therefore, by virtue of the above acquisition of BRFL by PACs, the PACs have indirectly acquired voting rights in excess of the limits prescribed under regulation 10 of SEBI (SAST) Regulations, 1997 accompanied by change in control of the Target Company.

A diagrammatic presentation of the transaction is given below:



THE OFFER:

As a result of the indirect acquisition of shares of STI INDIA LIMITED (Target Company) accompanied with change in control, BOMBAY RAYON FASHIONS LIMITED (Acquirer) along with the AAA United B.V. (PAC₁) and ASHWELL HOLDING COMPANY PRIVATE LIMITED (PAC₂) has given an Open Offer to the equity shareholders of the Target Company on March 08, 2012 under regulation 10, 11(2) and 12 of SEBI (SAST) Regulations, 1997.

IMPORTANT NOTE:

Since the primary acquisition which has resulted into indirect acquisition of shares and control of the Target Company was contracted in March 2011 i.e. prior to notification of SEBI (SAST) Regulations, 2011, accordingly, the Open Offer to the shareholders of Target Company was given under erstwhile SEBI (SAST) Regulations, 1997.

In terms of regulation 14(4) of SEBI (SAST) Regulations, 1997, in case of indirect acquisition of shares, the PA is to be made within three months of consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India.

In the given case, the primary acquisition of BRFL was completed in December 2011, accordingly, the Offer for Target Company is given in March 2012 i.e. within 3 months of completion of primary acquisition of BRFL.

MARKET UPDATE

Merger of Mahindra Satyam with Tech Mahindra

IT Sector Company Mahindra Satyam is getting merge with its parent company Tech Mahindra Limited. According to the filing done with BSE, the Share Exchange ratio has been fixed as 2:17 i.e. 2 shares of Tech Mahindra will be issued for every 17 shares held in the Mahindra Satyam. Tech Mahindra will issue 10.34 crore new shares and Mahindra Group will hold 26.3% in the combined entity.

Nitco acquires majority stake in New Vardhman

Nitco Limited has acquired 51% stake in Surat based New Vardhman Vitrified Private Limited. As per the information available on BSE, Vardhman is setting up the tile plant with a capacity to manufacture 4.95 mn sqmt p.a. of Vitrified Tiles and 3.75 Mn sqmt p.a of Wall Tiles whereas Nitco limited manufactures, markets and distributes various tile products.

Schroders is looking to acquire stake in Axis MF

To allow itself to sell its product in India and grant AXIS access to the London-listed company's global network, UK based Schroders is planning to acquire 30% stake in Axis Asset Management Company. Axis Mutual Fund was established in September 2009 and sponsored by Axis Bank Limited, however Schroders had applied to SEBI in April 2008 to start a mutual fund business in India, but did not secure a license till last year. Presently Schroders manages around \$291 bn in assets on behalf of institutional and retail investors, financial institutions and high net worth clients.

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