

Year VI-vol VIII

August Edition

TAKEOVER PANORAMA

A Monthly newsletter by Corporate Professionals



Legal Updates

ENTER
THE WORLD OF
TAKEOVER

INSIGHT

Hint of the
Month



Latest Open
Offers



Regular
Section



Case
Study

Quiz

Market
Update

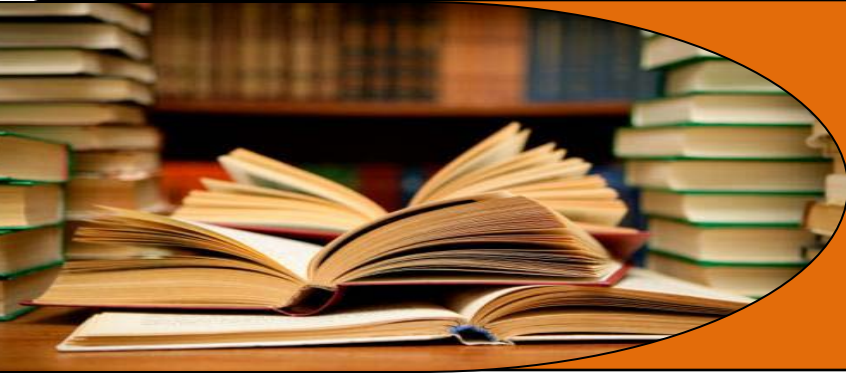


Queries



Team





LEGAL UPDATES

SAT Order in the matter of Hanumesh Realtors Pvt. Ltd v SEBI

FACTS

1. M/s Hanumesh Realtors Pvt. Ltd. (Appellant/Acquirer) is a part of the promoter group of the S. Kumars Online Ltd. (Target Company). The present appeal is filed against the decision of SEBI (Board) imposing the penalty of Rs. 1.87 crore on the Appellant for violating the provisions of Regulation 11(1) read with Regulation 14 of SEBI (SAST) Regulations, 1997.

2. The brief facts of the case are:

2.1. As on December 31, 2009, the promoter group of the Target Company including the Appellant were holding 1,28,01,010 equity shares constituting 49.62% of the equity capital of the Target Company. The appellant individually was holding 94,47,814 Equity Shares constituting 36.62% of the Equity Share Capital of the Target Company.

2.2. On March 3, 2010, the Appellant was allotted 28,25,000 Equity Shares (6.25%) on preferential basis. Subsequent to the preferential allotment, the shareholding of the promoter group increased from 49.62% to 54.59%, i.e. increase by 4.97% and the individual shareholding of the Appellant increased from 36.62% to 42.87% i.e. increase by 6.25%. Since the Appellant has acquired more than 5% shares in one Financial Year (F.Y.), therefore Regulation 11(1) read with Regulation 14(1) of SEBI (SAST) Regulation, 1997 got triggered, requiring it to make Public Announcement to the shareholders of the Target Company. But the appellant did not make the Public Announcement and violated the

Snapshot

Hon'ble SAT clarified that where the increase in shareholding of a single acquirer is more than the Creeping acquisition limit i.e. 5% although the increase in total shareholding of the promoter group is within 5%, Regulation 11 is attracted and the acquirer is under an obligation to make Public Announcement under Regulation 11.



provisions of SEBI (SAST) Regulation, 1997.

- 2.3. The Appellant contended that since pursuant to the preferential allotment, the shareholding of the promoter group has increased to 54.59%, i.e. an increase of 4.97%, which is within the creeping acquisition limit as prescribed in Regulation 11(1), therefore the obligation to make Open Offer was not attracted.
 - 2.4. However the Board, on the other hand, held that due to the preferential allotment of shares to the appellant, the shareholding of the Appellant in the Target Company increased from 36.62% to 42.87%, which is more than 5%, therefore the provision of regulation 11(1) got triggered and the appellant was required to make an open offer.
3. Accordingly the Board found the appellant liable for the violation of Regulation 11(1) and imposed the penalty of Rs. 1.87 crores and hence this present appeal has been filed.

ISSUES:

1. Whether the Appellant can be said to have violated the provisions of Regulation 11(1) read with Regulation 14 of SEBI (SAST) Regulation, 1997 where the increase in consolidated shareholding of the promoter group of the Target Company is within the creeping acquisition limit of 5% but the individual shareholding of the appellant increases beyond 5%?
2. Whether the penalty imposed by the Board of Rs. 1.87 crores on appellant is justified under Section 15H of SEBI Act, 1992?

DECISION:

Hon'ble SAT observed that the Appellant relied on the interpretative letter issued by the Board in favour of Suryajyoti Spinning Mills where the shareholding of the acquirers increased more than 5% after preferential issue but overall increase in holding of the promoter group remained within 5% and it was held that Regulation 11 would not be triggered. However the Board clarified that explanation made by the Board was based on the representation made by the applicant and it does not express any decision of the Board. Further it is not the correct appreciation of the provisions of regulation 11(1) and not binding either on the Board or on this Tribunal.



The Appellant also placed on record the case in the matter of Jamnalal Sons where, after the rights issue, shareholding of the acquirers increased by more than 5% but total increase in holding of the promoter group was below 5%, and the adjudicating officer has held that question of claiming exemption by the acquirer from the applicability of regulation 11(1) does not arise.

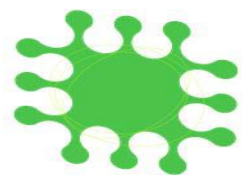
However, the Board stated the views of Hon'ble Supreme Court in the matter of Swedish Match AB vs SEBI wherein the Apex Court makes it clear that even when a single acquirer acquires more than 5% voting rights, irrespective of the total voting rights of the promoter group, the acquirer is under an obligation to make Public Announcement under Regulation 11.

Order of the Hon'ble Tribunal

1. After hearing the contentions of both the parties, Hon'ble SAT held that the view taken by the adjudicating officer in the impugned order needs to be upheld on the following grounds:
 - The language of Regulation 11(1) makes it clear that the provisions of this regulation apply to an acquirer when he is acting (i) by himself or (ii) through persons acting in concert with him, or (iii) with persons acting in concert with him.
 - The Apex Court in the matter of Swedish Match AB vs SEBI has also observed that regulation 11 does not accept any other interpretation. It also observed that if additional shares are acquired entitling an acquirer to exercise more than 5% of the voting rights, the statutory restriction to the effect that the acquirer must make a Public Announcement to acquire shares in accordance with the regulation comes into operation.

Therefore on the basis of the decision taken by the Apex Court, Hon'ble SAT held since the appellant was holding 36.62% of the shares / voting rights of the company and further acquired shares increasing his shareholding to 42.87%, which is more than 5% of the shareholding, thus it was under an obligation to make Public Announcement in terms of Regulation 11(1) read with Regulation 14(1) of the SEBI (SAST) Regulations, 1997.

2. Upon the contention made by the Appellant that penalty of Rs. 1.87 crore is not only contrary to the provisions of Section 15H(ii) of the SEBI Act but it is also excessive, Hon'ble SAT held that the factors for determining the penalty, refer to the actual amount of loss caused to the investors and not a notional loss which has been considered by the adjudicating officer while arriving at the amount of penalty. It was further argued that the appellant acted bonafide based on the instances mentioned above including the order passed by the adjudicating officer of the Board



in the case of Jamnalal Sons Private Limited. Further according to learned counsel also, the appellant has acted in good faith based on the interpretation of the other instances and no penalty could be imposed on the appellant for an alleged technical violation.

However Hon'ble SAT considered that if the Board felt that non-compliance on the part of appellant will lead to loss to the investors, it could have issued a direction to the appellant to come out with an open offer as stipulated by regulation 11(1) but the Board decided to initiate adjudication proceedings and levied the maximum penalty that could have been imposed under the law. Therefore after considering the facts and circumstances of the case, Hon'ble SAT reduced the penalty from Rs.1.87 crores to Rs. Rs. 10 lakhs

SAT Order in the matter of Radheyshyam Agarwal v The Bank of Rajasthan Limited and SEBI

FACTS

1. The appellant, Mr. Radheyshyam Agarwal is a shareholder of Bank of Rajasthan Ltd. which has now been merged with ICICI Bank Limited (hereinafter referred to as "Target Company"). An investigation was carried out by the Board against the erstwhile Bank of Rajasthan Ltd. regarding dealing in the scrip of the Bank wherein it was noted that the Promoter Group of the Target Company has, by way of continuous disclosure, informed that their shareholding has been reduced from 44.18% to 28.61% from the quarter ended June 2007 to December 2009. It was also noted that they had increased their shareholding but no disclosures relating to the increase in the shareholdings were made to the stock exchanges.

Snapshot

Hon'ble SAT clarified that It is only a 'person aggrieved' who can prefer an appeal under section 15T of SEBI Act, 1992 and a person who is disappointed with the result of a case cannot be said to be a 'person aggrieved'.

2. Pending the Investigation, the Board passed an ex-parte ad-interim order on March 8, 2010 restraining 100 entities from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner till further directions.

3. After the completion of Investigation on March 26, 2012, the Board noted that there is violation of certain provisions of SEBI (PFUTP) Regulations, 2003 and SEBI (SAST) Regulations, 1997 by 92 entities and recommended initiation of adjudication proceedings against these entities. However, as no material record was found against the remaining 8 entities, hence no adjudication proceedings were recommended against them.
4. Accordingly, the appellant has filed this appeal for setting aside the order dated March 26, 2012 and to continue with the direction passed under ex-parte ad-interim order dated March 8, 2010.

ISSUES:

Whether considering the fact that the appellant is only a shareholder of the Target Company against which the adjudication proceedings were initiated can be considered as a person aggrieved by the order and can prefer an appeal under Section 15T of the SEBI Act, 1992?

DECISION:

Hon'ble SAT dispose of the appeal ex-parte after perusing the material available on record since the appellant was not present on the day of hearing. Hon'ble SAT held that the Appellant is only a shareholder of the Target Company and cannot be considered to be a person aggrieved within the meaning of section 15T of the Act. It is only a 'person aggrieved' who can prefer an appeal under section 15T of SEBI Act, 1992 and a person who is disappointed with the result of a case cannot be said to be a 'person aggrieved'. The order must cause him a legal grievance by wrongfully depriving him of something. However no such case has been made available by the appellant in his support. Similar view has been taken by the Tribunal in the case of Bharatbhai Baldevbhai Shah v/s SEBI on October 6, 2009.

Therefore it was held that the present appeal is not maintainable since the appellant is not a 'person aggrieved' by the order impugned herein and accordingly the appeal is disposed off.



Informal Guideline in the matter of R. Systems Internationals Limited

FACTS:

1. R Systems International Limited (Target Company) is a public limited company having its shares listed on NSE and BSE. The shareholding of promoter and promoter group in the Target Company is 45.57% of the expanded equity share capital of the Target Company.
2. One of the shareholder of the Target Company, Mr. Bhavook Triparthi (Acquirer) holding 23.82% of the equity shares on December 15, 2011 made an order for market purchase of 9,24,142 (7.18%) Equity Shares and made the Public Announcement on December 15, 2011.
3. In the Detailed Public Statement dated December 22, 2011, the Acquirer stated that as on the date of DPS, he held 31% Equity Shares in the Target Company.

ISSUES:

1. Confirmation of the understanding that Regulation 22(1) of SEBI (SAST) Regulations, 2011 prohibits the completion of any acquisition (whether under any agreement or otherwise) of share/voting rights/control by an Acquirer for which an open offer is required to be made under SEBI (SAST) Regulation, 2011, prior to the consideration having been received by the shareholders who have tendered their shares under the open offer.
2. Confirmation of the understanding that Regulation 22(2) of SEBI (SAST) Regulations, 2011 merely provides for an exception to the Regulation 22(1) by permitting the acquirer to complete the acquisition contemplated under such agreement after 21 days from the date of DPS, subject to the deposit of 100% of the consideration payable under the open offer assuming full acceptance.

Snapshot

SEBI clarified that Regulation 22(1) relates to an acquisition pursuant to an agreement except in the cases of transaction involving market purchases.

DECISION:

Regulation 13 stipulates that the PA mandated under Regulation 3 and 4 shall be made on the date of agreeing to acquire shares or voting rights or control over the Target Company. Further, Regulation 13(2)(a) specifies that in case of market purchase of shares which would lead to increase in voting rights of Acquirer beyond the stipulated threshold, the public announcement has to be made prior to placing the order with the stock broker.

On the basis of facts and circumstances and submissions made by the Target Company, SEBI clarifies that Regulation 22(1) relates to an acquisition pursuant to an agreement except in the cases of transaction involving market purchases. The expression “such agreement” endorses aforesaid interpretation. Regulation 22(2) provides exception to Regulation 22(1) subject to the fulfillment of the conditions specified therein.

Informal Guideline in the matter of R. Systems Internationals Limited

FACTS:

1. R Systems International Limited (Target Company) is a public limited company having its shares listed on NSE and BSE. The shareholding of the promoter and promoter group in the Target Company is 45.57% of the expanded equity share capital of the Target Company.
2. One of the shareholder of the Target Company, Mr. Bhavook Triparthi (Acquirer) holding 23.82% of the equity shares on December 15, 2011 made an order for market purchase of 9,24,142 (7.18%) Equity Shares and made the Public Announcement on December 15, 2011.
3. In the Detailed Public Statement dated December 22, 2011, the Acquirer stated that as on the date of DPS, he held 31% Equity Shares in the Target Company.

ISSUES:

1. Confirmation of the understanding that in terms of Regulation 20(2) of SEBI (SAST) Regulations, 2011, the competing acquirer would only be required to make a competing offer for such number of shares which would be the difference between (a) the holding of the acquirer

who made the first Public Announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the Target Company pursuant to which the open offer is made; and (b) holding of the competing acquirer and the person acting in concert with such competing acquirer.

- Confirmation of the understanding that size of the competing offer cannot be for at least 26%.

DECISION:

SEBI clarified that Regulation 20(2) provides that any competing offer being made in pursuance to Regulation 20(1) shall be for such number of shares, which taken together with the shares held by such competing acquirer along with the person acting concert with him, shall be at least equal to the holding of original acquirer including number of shares proposed to be acquired under the open offer and any underlying agreement for sale of shares pursuant to which open offer is made.

Further Regulation 20(10) states that except for the variations made under Regulation 20, all the provision of SEBI (SAST) Regulation, 2011 are applicable on the Competing offer. Therefore, the determination of offer size for the competing offer shall be made in accordance with Regulation 20(2) read with Regulation 20(10).

TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSE D/ DECISION TAKEN
ACIL Cotton Industries Limited	Sonal International Limited	Regulation 7(1) read with 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992.	Rs. 2,00,000
Gemstone	Mr. Bhavesh Pabari	Regulation 7 of SEBI	Hon'ble SAT



TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSE D/ DECISION TAKEN
Investment Limited		(SAST) Regulations, 1997, Regulation 13 of SEBI (PIT) Regulations, 1992 and Regulation 4 of SEBI (PFUTP) Regulation, 2003	dismissed the appeal
Gupta Carpets International Limited	Gupta Carpets International Limited	Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997	Rs. 1,00,000

HJNT OF THE MONTH

An open offer, other than a voluntary open offer under Regulation 6, must be made for a minimum of 26% of the target company's share capital. The size of voluntary open offer under Regulation 6 must be for at least 10% of the target company's share capital. Further the offer size percentage is calculated on the fully diluted share capital of the target company taking into account potential increase in the number of outstanding shares as on 10th working day from the closure of the tendering period.

{As substantiated from Regulation 7(1) of SEBI (SAST) Regulations, 2011





Latest Open Offers

Target Company
Blue Blends (India) Limited

Registered Office
Mumbai

Networth of TC
Rs. (1,103.70) Lakhs

Listed At
NSE, BSE, ASE, DSE, and MSE

Industry of TC
Textiles

Acquirers
Anand Arya, Indu Arya,
Aman Arya, Cressida
Traders Private Limited

Triggering Event: Acquisition of 45,00,000 (24.76%) equity shares at a price of Rs. 2 per share by way of off market transaction through Sale Bills

Details of the offer: Offer to acquire 89,81,450 (26.00%) Equity Shares at a price of Rs. 2/- per share payable in cash.

Triggering Event: Voluntary Open Offer for the purpose of consolidation of holdings

Details of the offer: Offer to acquire 8,21,913 (21.07%) Equity Shares at a price of Rs. 830/- per share payable in cash.

Target Company
Fulford (India) Limited

Registered Office
Mumbai

Networth of TC
Rs. 1501 Million

Listed At
BSE

Industry of TC
Pharmaceuticals

Acquirers
Dashtag (Acquirer) along
with Merck & Co., Inc.
(PAC)



Target Company

Indo-Asian Projects
Limited

Registered Office

Hyderabad

Networth of TC

Rs. 452 Lacs

Listed At

BSE, ASE and MSE

Industry of TC

Real Estate

Acquirer

Golden Earth Infracon
Projects Private Limited

Triggering Event: SPA to acquire 12,78,400 (24.79% of the Issue & Subscribed Capital and 25.08% of the Voting Capital) equity shares at a price of Rs. 10 per share payable in cash.

Details of the offer: Offer to acquire 13,40,508 (26% of the Issue & Subscribed Capital and 26.31% of the Voting Capital of the Target Company) equity shares at a price of Rs.10/- per equity share payable in cash.

Triggering Event: SPA to acquire 45,900 (51%) Equity Shares at a price of Rs. 5200/- per share

Details of the offer: Offer to acquire 23,400 (26.00%) Equity Shares at a price of Rs. 5200/- per share payable in cash.

Target Company

Kumergode Estates
Limited

Registered Office

Bangalore

Networth of TC

Negative

Listed At

MSE

Industry of TC

Agriculture

Acquirer

Gonibedu Coffee Estates
Private Limited



Target Company

Welspun Global Brands Limited

Registered Office

Gujarat

Networth of TC

Rs. (0.45) Crores

Listed At

NSE and BSE

Industry of TC

Textiles

Acquirers

Krishiraj Trading Limited (Acquirer) and Welspun Mercantile Limited (PAC)

Triggering Event: Voluntary Open Offer for the purpose of consolidation of holdings

Details of the offer: Offer to acquire 14,50,000 (13.84%) Equity Shares at a price of Rs. 42/- per share payable in cash

Triggering Event: SPA for acquisition of upto 8,08,425 (73.33%) Equity shares at a price of Rs. 20.70 Per share payable in cash.

Details of the offer: Offer to acquire upto 2,86,650 (26.00%) Equity Shares at a price of Rs. 32/- per share payable in cash.

Target Company

Subway Finance & Investment Company Limited

Registered Office

Mumbai

Networth of TC

Rs. 162.26 Lacs

Listed At

BSE

Industry of TC

Finance and Investment

Acquirers

Kalpesh Kanubhai Shah, Sangita Kalpesh Shah, Akshay Kalpesh Shah, Suketu Bhogilal Shah, Bhavna Suketu Shah, Kavish Suketu Shah, Shaili Kavish Shah, Nitin Kantilal Shah, Bhadra Nitin Shah, Nehal Nitin Shah, Janki Nehal Shah, Ankur Nitin Shah, Hetu Ankur Shah, Rahul Kantilal Shah, Amita Rahul Shah, Viraj Rahul Shah, Ishan Rahul Shah, Harshad Kantilal Shah, Harsha Harshad Shah, Mayur Kantilal Shah, Jayshree Mayur Shah, Parth Mayur Shah, Bhupendra Ratilal Kadhi, Manisha Bhupendra Kadhi and Rashesh Shah



Target Company

Magnum Limited

Registered Office

Ahmedabad

Networth of TC

Rs. 489.28 Lacs

Listed At

BSE

Industry of TC

IT Software

Acquirer

Pavaki Vanijya Private
Limited

Triggering Event: SPA for acquisition of 7,96,333 (18.21%) Equity shares at a price of Rs. 5 per share resulted into increasing the shareholding of Acquirer from 24.29% to 42.50%.

Details of the offer: Offer to acquire 11,37,006 (26.00%) Equity Shares at a price of Rs. 6/- per share payable in cash.

Triggering Event: Offer to acquire upto 27,15,74,809 (26.00%) Equity Shares at a price of Rs. 11.65/- per share payable in cash.

Triggering Event: Preferential allotment of 38,00,00,000 (36.38%) equity shares at a price of Rs. 10 per share.

Target Company

Lloyds Steel Industries
Limited

Registered Office

Mumbai

Networth of TC

Rs. 8,179.53 Lacs

Listed At

NSE and BSE

Industry of TC

Steel

Acquirers

Ultimate Logistics Solutions
Private Limited, Metallurgical
Engineering and Equipments
Limited (Acquirers) and Ushdev
International Limited (PAC)

Target Company

Shanthy Gears Limited

Registered Office

Coimbatore

Networth of TC

Rs. 247.84 Lacs

Listed At

BSE and NSE

Industry of TC

Automobile

Acquirer

Tube Investments of
India Limited

Triggering Event: SPA for acquisition of 3,60,50,291 (44.12%) equity shares at a price of Rs. 81 per equity share

Details of the offer: Offer to acquire 2,12,46,122 (26.00%) Equity Shares at a price of Rs. 81/- per share payable in cash.





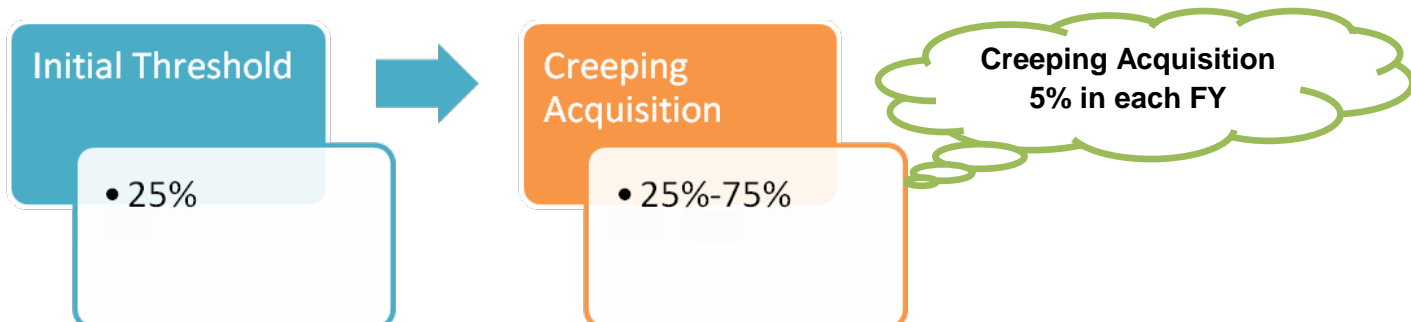
Regular section

REGULATION 3 - SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS

SEBI (SAST) Regulations, 2011 provides the triggering events on which the acquirer is required to give an open offer to the shareholders of the Target Company. The triggering event may be signing of Share Purchase Agreement or actual acquisition of shares from the market or passing of special resolution for preferential allotment and so on. Thus as soon as the intention of the acquirer to acquire the shares of Target Company beyond the threshold limits mentioned in the regulations, is expressed undeniably, the acquirer is required to give an open offer to the shareholders of the Target Company except where the acquisition is exempted under regulation 10 of these regulations. One of the triggering events is contemplated under regulation 3 of SEBI (SAST) Regulations, 2011, an analysis of which is detailed below:

SNAP SHOT OF REGULATION 3

Regulation 3 of SEBI (SAST) Regulations, 2011 contains provisions regarding substantial acquisition of shares or voting rights of the Target Company. It provides specific limits beyond which the acquirer(s) is required to come out with an open offer in accordance with these Regulations.



LETS ELABORATE

Regulation 3 (1) provides that “No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five percent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.”

ANALYSIS OF PROVISION OF REGULATION 3(1)

This sub-regulation provides a threshold limit for mandatory public offer. This sub-regulation explains that when an acquirer intends to acquire shares or voting rights which along with the existing shareholding would entitle him to exercise 25% or more of the voting rights in the target company, in such a case the acquirer is required to make public announcement to acquire at least additional 26% of the voting capital of target company from the shareholders through an open offer.



Regulation 3 (2) provides that “No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate



shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

ANALYSIS OF PROVISION OF REGULATION 3(2)

This regulation is meant for allowable acquisitions (both direct & indirect) only for those who already hold more than 25% shares or voting rights but less than 75% shares or voting rights in the Target Company. This regulation allows the persons either by themselves or through persons acting in concert (PAC) with them who are holding more than 25% but less than 75% shares or voting rights in the Target Company to acquire further upto 5% shares or voting rights in the financial year ending 31st March. The allowable acquisition of 5% is popularly known as '**Creeping Acquisition**'. Thus, the acquirer is permitted to acquire additional shares and consolidate his holdings within the aforesaid limits.

However, it is to be noted that the creeping acquisition limit is subject to the condition that the post acquisition shareholding of the acquirer does not exceed beyond the maximum permissible non-public shareholding.

Further, where the acquirer who along with the PACs holds equal to or more than 25% but less than 75% shares and desires to acquire more than 5% shares in any financial year, can do so by making an open offer to the shareholders of the Target Company.



Determination of the quantum of acquisition of *additional* voting rights

- NO NETTING OFF ALLOWED

The limit of 5% shall be calculated by aggregating all the purchases without netting the sales.



For example: where an acquirer holding 56% shares have acquired further 4% shares in the company during the financial year 2012-13 and sold of 2% shares in the same financial year, then he can further acquired only 1% shares without making the public announcement regardless of the fact that he has sold of 2% shares in the financial year 2012-13.

- **ACQUISITION OF SHARES BY WAY OF ISSUE OF NEW SHARES**

The difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

Particulars	Pre shareholding		Shares to be allotted pursuant to preferential allotment		Post shareholding		Changes	
	No. of shares	%	No. of shares	%	No. of shares	%	No. of shares	%
Promoters	70	58.33	16	11.99	86	63.33	16	5
Non promoters	50	41.67			50	36.67	0	(5)
Total	120	100			136	100	16	0.00

In the present case, the incremental increase in voting right is 5%, although the fresh allotment constitutes 11.99% of the expanded capital of the Company.

Accordingly, the incremental increase in voting rights is within the creeping acquisition limit.

ANALYSIS OF PROVISION OF REGULATION 3(3)

For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.



For Instance:

Promoter	Pre Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulations, 2011
A	23%	3%	26%	Open Offer Obligations
B	7%	2%	9%	-
Total	30%	5%	35%	-

- Increase in total promoter shareholding- within the creeping acquisition limit.
- However, A's shareholding has goes beyond 25%, resulting into triggering of Open Offer obligation.





Participate In Our ESOP Survey

With the growing importance of Human asset and deliberate efforts to retain and motivate employees, India Inc. has slowly but steadily started showing interest in implementing ESOPs in their companies.

ESOP, although a very contemporary and popular concept worldwide, is still to be fully understood and appreciated by both Corporates as well as their Human Assets in India. Out of the total 6,299 Companies listed on BSE, only 427 (i.e. 6.77%) companies have so far given ESOPs to their employees. Out of aforesaid 427 companies, around 34% companies has allotted ESOP during last 3 years only.

With a view to analyze the acceptability and impact of ESOPs on India Inc. and create awareness about this option in all interested sections, we are conducting a survey on ESOPs titled ***“ESOP-Acceptance & Impact on India Inc”***.

We will be obliged if you could spare few minutes of your precious time and fill the same. The survey is open till 20th August 2012. It will be our pleasure to share a detailed survey report on the closing of the survey.

Your Contribution will be highly appreciated. Thanking you in anticipation.

Please select your respective category i.e. **Employer/ Employee** to proceed.

Employer

Employee



Case Studies

ANALYSIS OF TAKEOVER OPEN OFFER OF R SYSTEMS INTERNATIONAL LIMITED

About R Systems International Limited (“RSIL/Target Company”)

R Systems International Limited was incorporated on May 14, 1993 as a private limited company under the name **R Systems (India) Private Limited** and on April 13, 2000, its name changed to **R Systems (India) Limited** pursuant to the conversion of the Company into public limited company. Further, w.e.f. August 7, 2000, the name of the company was further changed to its present name i.e. **R Systems International Limited**. The company’s primary focus is to provide full service IT solutions, software engineering services, technical support, customer care and other IT enabled services to the high technology sector, independent software vendors (ISV's), banks, financial services companies, telecom, insurance and health care sector. The equity shares of the Target Company are listed on BSE and NSE.

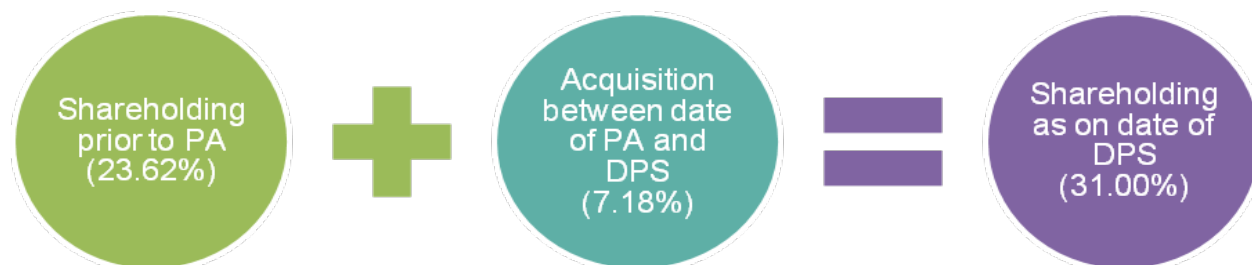
About Mr. Bhavook Tripathi (“Acquirer”)

Mr. Bhavook Tripathi is engaged in the business of manufacturing ancillary auto parts through his proprietorship concern Sanshu Industries and has experience of more than 12 years in this field.

Background of the Case

Prior to making Public Announcement on December 15, 2011, the Acquirer was holding 23.82% equity shares of the Target Company. The Acquirer was desirous of acquiring the additional equity shares of the Target Company from the open market, which necessitated the Open Offer in terms of Regulation 3(1) of SEBI (SAST) Regulations, 2011. Accordingly, prior to the placement of purchase order with the Stock Broker, the Acquirer has issued the Public Announcement of open offer on December 15, 2011 to the shareholders of the Target Company. Subsequent to making Public Announcement, the Acquirer has acquired 9,24,142 equity shares from open market thereby increasing his shareholding to 31%.

Shareholding and Acquisition Details of Acquirer



The Offer

The public announcement of open offer was made by the Acquirer to the shareholders of the Target Company to acquire 33,45,242 equity shares representing 26% of the paid up capital and voting capital of the Target Company at a price of Rs.122 per equity share payable in cash, which later increased to Rs. 150.05 per equity share pursuant to the acquisition of further 10 equity shares through market purchase on March 9, 2012 at a price of Rs. 150.05 per equity share.

Issues Involved

Whether, considering the provisions of Regulation 22(1) of SEBI (SAST) Regulations, 2011, the Acquirer can complete the acquisition made on December 15, 2011 that has triggered the Public Announcement before the expiry of the offer period.

As per Regulation 22(1) of the SEBI (SAST), Regulations 2011 *“The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period”.*

As per Regulation 22(2) of the SEBI (SAST), Regulations 2011 *“Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated.”*



FAQs on SEBI (SAST) Regulations, 2011 as Notified by SEBI

Regulation 22(1) of Takeover Regulations 2011 specifically provides that the acquirer shall not complete the acquisition of shares and voting rights in, or control over, the target company, whether by way of subscription of shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period.

In cases where acquisitions, resulting from any agreement triggering open offer are sought to be completed through transactions such as bulk/ block deals, settled on a recognized stock exchange, the same would get completed/ settled on T+2 basis i.e. within 2 days after the date of such transaction. Therefore such acquisitions, if done, will not be in line with the provisions of Regulation 22(1) since the same would result in completion of the triggering acquisition before the expiry of the offer period. Hence the acquisition resulting from any agreement attracting the obligation to make an open offer cannot be executed through transactions such as block/ bulk deal.

Regulation 22(1) prohibits the acquirer from completing the acquisition that has triggered the Open Offer until the expiry of offer period except where the acquirer has deposited 100% consideration payable under the Open Offer in the Escrow Account, then in that event the acquisition contemplated under the agreement may be completed after 21 working days from the date of detailed public statement.

Thus, the question that arises for consideration is whether Regulation 22(1) also covers within its ambit, the acquisition made through market purchases.

Request for Interpretative Letter under (Informal Guidance) Scheme, 2003

Vide letter dated February 24, 2012, the Target Company has requested for Informal guidance on the following queries:

1. Confirmation of the understanding that Regulation 22(1) of SEBI (SAST) Regulations, 2011 prohibits the completion of any acquisition (whether under any agreement or otherwise) of share/voting rights/control by an Acquirer for which an open offer is required to be made under SEBI (SAST) Regulation, 2011, prior to the consideration having been received by the shareholders who have tendered their shares under the open offer.



2. Confirmation of the understanding that Regulation 22(2) of SEBI (SAST) Regulations, 2011 merely provides for an exception to the Regulation 22(1) by permitting the acquirer to complete the acquisition contemplated under such agreement after 21 days from the date of DPS, subject to the deposit of 100% of the consideration payable under the open offer assuming full acceptance.

Views of SEBI on Queries raised by Target Company

Regulation 13 stipulates that the PA mandated under Regulation 3 and 4 shall be made on the date of agreeing to acquire shares or voting rights or control over the Target Company. Further, Regulation 13(2)(a) specifies that in case of market purchase of shares which would lead to increase in voting rights of Acquirer beyond the stipulated threshold, the public announcement has to be made prior to placing the order with the stock broker.

Further as regards Regulation 22(1) is concerned, it relates to an acquisition pursuant to an agreement and is not applicable in cases of transaction involving market purchases.

Furthermore, Regulation 22(2) provides for an exception to Regulation 22(1) by permitting the acquirer to complete the acquisition contemplated in the agreement which triggered the open offer subject to the fulfillment of conditions stated therein.

Observation of SEBI on Draft Letter of Offer submitted by Acquirer

On December 29, 2011, the acquirer has submitted draft letter of Offer with SEBI on which SEBI has issued their observation on July 25, 2012 and alleged certain violations by acquirer and issues directions that includes:

- Ensure compliance with regulation 22 (2) of the SEBI (SAST) Regulations 2011 by putting 100% of consideration in cash in the escrow account.
- Calculate the offer price as well as interest taking July 29, 2011 as the trigger date for the open offer.

Appeal before SAT by Acquirer

The Acquirer being aggrieved, by the observation of SEBI has filed an appeal before Securities Appellated Tribunal (SAT) seeking to set aside the observation/direction contained in the SEBI observation letter. This Open offer process would be on hold till the time appeal is disposed off by Honorable SAT.



NEWS

Market Updates

AMANSA INVESTMENTS SOLD OFF ITS ENTIRE STAKE IN GUJARAT PIPAVAV PORTS

Singapore based Fund Management Company, Amansa Investments Limited has exited from Gujarat Pipavav Ports Limited by selling its entire stake in the Company constituting 83,16,136 Equity Shares for a total consideration of Rs. 46.35 crore Majority of these shares were purchased by Franklin Templeton Investment Fund.



INDIAN ANGEL NETWORK AND BLUME VENTURES INVESTS IN HASH CUBE TECHNOLOGIES

Indian Angel Network and Blume Ventures have made investment in Bangalore based social gaming platform - Hash Cube Technologies Private Limited. Hash Cube makes puzzle games such as Sudoku Battle and Sudoku Quest on social networking sites and mobile platforms. The funds will be used for improving existing games and for promoting new games.

FIRST CARLYLE MADE INVESTMENT IN CARLYLE ENTERPRISES

First Carlyle Ventures has acquired 1.1 Crores (9.96%) shares in Infotech Enterprises Limited at a price of Rs. 190 each through NSE and BSE bulk deal transaction valuing at Rs. 211 crores. Major sellers for the deal were combination of American Funds and Small Cap World Fund and Kotak India Focus Fund.



Quiz

**PLAY THE QUIZ
TEST YOURSELF**

The name of winners of the quiz will be posted on our website www.takeovercode.com and will also be mentioned in our next edition of **Takeover Panorama**. So here are the questions of this edition:

Question: 1

Whether an acquirer (existing holding 30%) who has acquired the shares through bonus issue is not eligible to make Voluntary Open Offer?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Question: 2

The total promoter's shareholding in the Target Company is 72%. Now M/s A Ltd. belonging to promoter group enters into an agreement to acquire 4% shares in the Target Company. Whether the above acquisition of shares being less than 5% (Creeping Acquisition) is in line with SEBI (SAST) Regulations, 2011?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Winners of Quiz – July 2012-edition

- 1. S Venkat Ramana Reddy**
- 2. Anusha**
- 3. Shashi Singhvi**



Our TEAM



Ruchi Hans

E: ruchi@indiacp.com

D: [+91.11.40622251](tel:+911140622251)

Priyanka Gupta

priyanka@indiacp.com

D: [+91.11.40622235](tel:+911140622235)

Divya Vijay

divya@indiacp.com

D: [+91.11.40622248](tel:+911140622248)

Visit us at



A venture of



D- 28, South Extn. Part I New Delhi – 110049

T: 40622200 F: 91.40622201

E: info@takeovercode.com

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- ⊕ Corporate Funding;
- ⊕ Issue Management.

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