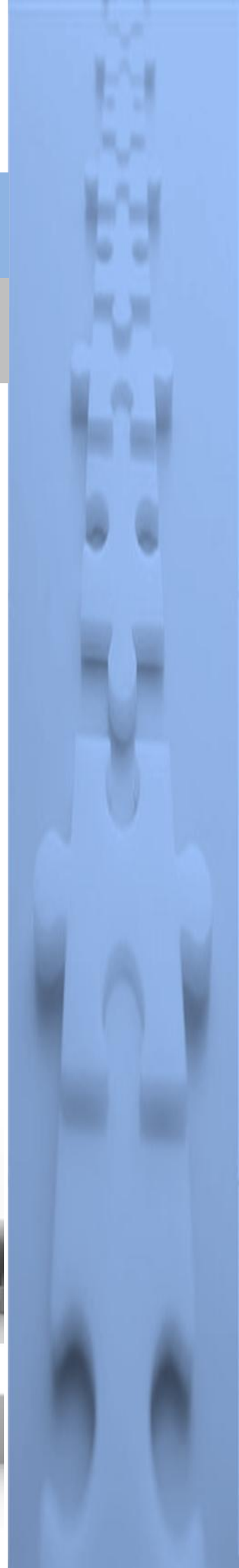


Takeover

Panorama

**A Monthly Newsletter by Corporate Professionals
Year IV-Vol.II-February 2010**





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SAT order in the matter of Subhkam Ventures (I) Pvt. Ltd

Facts:

1. Subhkam Ventures (I) Pvt. Ltd (Appellant) belongs to the Subhkam Ventures group. On October 20, 2007, the Board of Directors of Subhkam Ventures (Target Company) issued and allotted 44,50,000 equity shares on preferential basis at a price of Rs. 84 per share representing 19.91% of the equity share capital of the company.
2. The Appellant was allotted 40,00,000 equity shares representing 17.90% of the paid up capital of the Target Company, thereby, triggering regulation 10 of SEBI (SAST) Regulations, 1997.
3. Further on October 20, 2007, the appellant and the promoters of Target Company entered into a share subscription agreement according to which the appellant is only a financial investor in the company and did not have control over the management of the company.
4. On October 24, 2007, the appellant made the open offer under regulation 10 of SEBI Takeover Regulations and thereafter, the draft letter of offer was filed with SEBI wherein it was mentioned that the acquisition would not result in change in control over the Target Company. However, SEBI directed the acquirer to revise the offer to reflect that the open offer was being made under Regulation 10 as well as Regulation 12 (change in control). As a result, the Acquirer ultimately filed an appeal with SAT.

Acquisition of certain affirmative rights with the purpose only to protect the investment does not constitute the acquisition of control.

Analysis of the case

| SEBI | SAT |
|---|--|
| The Power of the acquirers to nominate one of its director on the Board of the Target Company | The board of the Target Company comprises of 10 directors including the nominee of the appellant. The single nominee would be in a microscopic minority and he has no veto powers. |

| | |
|---|--|
| Standstill provisions- Between the signing of the agreement and allotment of shares to the appellant, the Target Company would not change its basic contours. | It is only a temporary provision and would cease to operate on the allotment of shares to the appellant. |
| The presence of the appellant nominee to constitute the quorum reflects that the acquirer is in control over the Target Company. | The clause only provides that if adequate quorum is not present, the matter would be adjourned by a week where the directors then present would constitute the quorum except for the protective provisions which will not be dealt with by the directors unless the appellant nominee is also present. |
| Veto rights on the crucial matters pertaining to the policy decisions would confer control. | Such veto rights are meant only to protect the interest of the Acquirer and the investment made by it from the whims and fancies of the promoters of the Target Company. |

Issue:

Whether the acquisition of veto rights i.e right to vote on certain action proposed to be undertaken by the Target Company would constitute the change in control?

Decision:

Considering the above facts and circumstances of the case, SAT held that the acquisition of certain affirmative rights with the purpose only to protect the investment does not constitute the acquisition of control. According to SAT, 'control' is a proactive and not a reactive power.

Adjudicating Office order in the matter of Stalk Securities Private Limited

Facts:

1. SEBI conducted an investigation into the dealings of scrips of Washington Software Limited due to the fluctuations in price from 18 October 1999 to 25 July 2000.

2. During the investigations, it was revealed that the shareholding of Stalk Securities Private Limited (Noticee) has increased from 2,29,400 equity shares to 5,39,400 equity shares which worked out to 7.67% of the paid up capital of the company requiring the disclosure under regulation 7(1) of SEBI (SAST) Regulations, 1997. However, the Noticee failed to make the required disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997. Accordingly, a show cause notice was issued to the Noticee.

Adjudicating Officer held that obtaining the blank transfer form along with the shares is as good as owning the shares for the purpose of disclosure requirements under SEBI (SAST) Regulations, 1997 irrespective of the fact that the shares are not transferred in the name of the acquirer.

Contentions:

- 2,34,000 shares were held as investment in Noticee's name, but the 1,00,000 shares from Vaishnavi Construction and 2,00,000 shares from Suryodaya Finmark Consultance Pvt. Ltd. were only taken for private placement, and were placed immediately
- Noticee only acted as a middle man and not as a purchaser
- The 3,00,000 shares were never transferred in the noticee name.
- However, only a blank transfer form was received in respect of those 3,00,000 equity shares.

Issue:

Whether, where the shares have not been transferred in the name of the Noticee and only a blank transfer form is issued in respect of the shares which enable him to sell the shares to third parties, it will be treated as the acquisition of shares, thereby, requiring the disclosure under regulation 7(1) of SEBI (SAST) Regulations, 1997.

Decision:

Adjudicating officer held that even though the shares have not been transferred in the name of the Noticee, however, the issuance of the blank transfer form in respect of the shares in question is sufficient to treat it as the acquisition as it enables the Noticee to sell/place the shares with various entities and receive the proceeds in its name. Further, obtaining the blank transfer form along with

the shares is as good as owning the shares for the purpose of disclosure requirements under SEBI (SAST) Regulations, 1997.

Adjudicating Officer Order in the matter of Systel Infotech Limited

Facts:

1. SEBI conducted an investigation into the scrips of Systel Infotech Limited (Noticee) on the basis of investigation conducted by BSE for a period from December 31, 2004 to April 15, 2005.
2. From the information available on the BSE, it was revealed that Shri Jitendranath Alluri (promoter) has sold 4,00,000 (12.5%) shares of Noticee reducing his shareholding from 16,76,030 shares (52.38%) as on December 31, 2004 to 12,76,030 shares (39.88%) as on March 31, 2005 and Ms. Rajeshwari Alluri has sold 75,000 (2.34%) shares of Noticee, thereby, reducing her shareholding from 4,09,100 shares (12.78%) as on December 31, 2004 to 3,34,100 shares (10.44%) as on March 31, 2005.
3. However, the Noticee failed to file the disclosure under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 8(3) of SEBI (SAST) Regulations, 1997 in respect of the aforesaid sale.
4. Further, it was observed from the information available with RTA and demat statement available on records, that Shri Jitendranath Alluri holds 4,09,200 shares of the Noticee as on December 31, 2004 and later on sold 4,00,000 shares, thereby, reducing his shareholding to 9200 shares. Thus, Noticee has provided wrong disclosures to the BSE with respect to the shareholding of the promoters.
5. Accordingly a show cause notice was issued to the Noticee and opportunity of personal hearing was also granted but the Noticee neither replied to the notice nor appeared for the personal hearing.

Adjudicating Officer imposed the penalty of Rs 15,00,000 for the failure to submit the disclosure as required under 8(3) of SEBI Takeover Regulations and 13(6) of SEBI Insider Regulations.

Issue:

Whether it is justified to impose the penalty for the failure to submit the disclosure as required under SEBI (SAST) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992?

Decision:

Considering the judgment given in the matter of Milan Mahindra Securities Pvt Ltd Vs SEBI, wherein SAT held that *“the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, Adjudicating Officer imposed the penalty of Rs 15,00,000 on Noticee for the aforesaid violation.*

Adjudicating Officer order in the matter of Orissa Sponge Iron and Steel Limited

Facts:

1. SEBI conducted an investigation into the affairs relating to the acquisition of shares of Orissa Sponge Iron and Steel Limited (Target Company) to ascertain whether the provisions of SEBI Act, 1992 and SEBI (SAST) Regulations, 1997 have been complied with or not.
2. Investigations revealed that Bhushan Energy Limited (BEL) along with PACs i.e. Bhushan Steel Ltd. (BSL), Shri Brij Bhushan Singhal (BBS), Neeraj Singhal (NS), BNS Steel Trading Pvt Ltd. (BNSSTPL), BBN Transportation Pvt. Ltd. (BBNTPL), BNR Infotech Pvt. Ltd. (BNRIPL) and BNR Consultancy Services Pvt. Ltd. (BNRCSPL) {hereinafter collectively referred to as Bhushan 1} have made a Public Announcement on February 28, 2009 to acquire 20% stake in the Target Company at a price of Rs. 330 per share.
3. In terms of the investigation report, Bhushan 1 along with BNS Tour and Travel Pvt. Ltd. as PAC (Bhushan 2) had delayed disclosures to be made within stipulated time limit in respect of acquisition of shares made on August 01, 2008 in violation of regulation 7(1) and (2) of SEBI (SAST) Regulations, 1997.
4. Moreover, Bhushan 2 had acquired more than 15% shares of the Target Company without complying with the provisions of Regulation 10 of SEBI (SAST) Regulations, 1997.
5. Accordingly a Show Cause Notice was issued to the acquirers.

Adjudicating Officer held that the Share Purchase Agreement and consequent transfer of shares is said to be completed when both the parties to the contract fulfil their obligation i.e. transfer of shares and payment of consideration.

Contentions:

1. Bhushan1 have not acquired more than 5% shares of Target Company. As per the annexure to the SCN, their shareholding stood at 4.99662% only which is clearly not more than 5%.

Thus, Bhushan 1 were not under any obligations to disclose their shareholding under regulation 7(1) of SEBI (SAST) Regulations, 1997.

2. Bhushan 2 was part of Bhushan1 till 5th October 2008. Later, the shares of Bhushan 2 were sold to Prime Nutrients Pvt. Ltd. and Hariom Yarns Pvt. Ltd. (Jain companies) for Rs. 1.96 crore. Thus, the ownership and management of BNSTTPL was transferred from Bhushan1 to Jain group with effect from October 6, 2008 by duly executing the share transfer deed and handing over the same along with the physical share certificates. Accordingly, for the acquisition of shares by Bhushan 2 on January 29, 2009 exceeding 15% shares of Target Company, Bhushan 1 and Bhushan 2 were acting in concert with each other.
3. Bhushan 2 is alleged to be PAC with Bhushan1 solely on the ground that the consideration for the transfer of shares of Bhushan 2 was released on February 27 and 28, 2009.
4. Post October 06, 2008, the ownership and management of Bhushan 2 has been shifted to Jain group.
5. Change in the registered office of Bhushan 2.
6. BBS and NS have resigned from the directorship of BNSTTPL.

Issue:

Whether, where the consideration for the transfer of shares and/or management was received after a gap of time from the date of transfer of shares, the transferor would still be considered as having the ownership of shares. If, yes, then whether Bhushan 1 will be considered as having the control over Bhushan 2 and accordingly Bhushan 2 will be considered as PAC with the Bhushan 1?

Decision:

1. Disclosure under regulation 7(1) of SEBI (SAST) Regulations, 1997:

- 1.1. With respect of disclosure under regulation 7(1), adjudicating officer held that since the acquisition was for less than 5% shares, therefore, there is no need of any disclosure under the said regulation.

2. Acquisition of shares exceeding 15% of paid up capital of Target Company:

- 2.1. As regards the acquisition of more than 15% shares by Bhushan 2 is concerned, Adjudicating Officer held that in the SPA entered into between the Bhushan 1 and Jain group, the date of payment of consideration of share transfer can be delayed to any date ad infinitum and still the transfer of shares will be deemed to be complete. This kind of stipulation relating to indefinite time period for the payment of consideration makes the SPA void in terms of

section 29 of Contract Act, 1872 which states that Agreements, the meaning of which is not certain or capable of being made certain, or capable of being made certain, are void”.

2.2. Further, in terms of the Contract Act, a contract is complete when both the parties to the contract fulfill their obligation. Since Bhushan1 has transferred the shares of Bhushan 2 to Jain Group on October 6, 2008 and the sale consideration amount of Rs. 1.96 is released on February 27 & 28, 2009, with a considerable delay of 4 months, therefore, in this case the transaction would be deemed to be completed on date of payment of consideration i.e. February 27 & 28, 2009.

2.3. Further the SPA is neither stamped nor registered. Thus, Bhushan 2 would continue to be considered as PAC with Bhushan1 when the acquisition of shares exceeding 15% was made on January 28, 2009.

3. Open Offer to the shareholders of Target Company:

3.1. However, Bhushan 2 has failed to provide any exit opportunity to the shareholder which was due to them at that point of time when the acquisition was made, therefore, Bhushan 2 would be liable for penalty.

3.2. By not complying with mandatory requirement of SEBI (SAST) Regulations, 1997, Bhushan 2 have also avoided the expenditure which would otherwise be incurred towards the making of PA.

3.3. Moreover, three subsequent offers were made to the shareholders of Target Company and there will be no economic loss to the investors. However, there will be opportunity loss shareholders in as much as Bhushan 2 denied the exit opportunity to the shareholders which was due to them at that point of time. Accordingly, adjudicating officer imposed the penalty of Rs.4,50,000

Takeover Panel Exemption order in the matter of Shree Ganesh Forgings Limited

Facts:

1. The acquirers belong to the promoter group of Shree Ganesh Forgings Limited (Target Company) and holds in aggregate 55.22% of the paid up capital of the Target Company.
2. On September 10, 2008, the CDR Cell has sanctioned the CDR Scheme under which the promoters had to bring Rs.5 crore in a phased manner.

SEBI granted exemption from the applicability of regulation 11(2) where the increase in shareholding is pursuant to the CDR Scheme.

Accordingly, the promoters of the Target Company proposed to acquire 12,25,490 equity shares at a price of Rs. 40.80 per share against the contribution brought in by them which would increase the promoter shareholding from 55.22% to 59.22%, thereby, triggering regulation 11(2) of SEBI (SAST) Regulations, 1997 requiring the open offer be made to the shareholders of Target Company.

3. Therefore, the acquirers has filed the present application seeking exemption from the requirement of making the open offer on the following grounds:

Grounds of exemption:

1. Mr. Deepak B. Shekri and Mrs. Anita B. Shekri already brought Rs. 1.85 crore as on the date of application and are in process of bringing balance contribution.
2. No change in control.
3. The exemption is in the interest of Target Company and its shareholders.
4. Approval of shareholders has already been obtained in the AGM.
5. Minimum public shareholding would be maintained.
6. The acquisition of shares is in accordance with the CDR scheme as approved by the CDR Cell.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making open offer on the basis that the facts and statements given by the acquirer are true and the acquirers will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable.

Takeover Panel Exemption order in the matter of Nitin Spinners Limited

Facts:

1. Redial Trading and Investment Pvt. Ltd., Greenfield Securities Pvt. Ltd., Prasham Corporate Services (India) Pvt. Ltd., Dolphin Carriers Pvt. Ltd., Ratan Lal Nolkha HUF and Ranjeeta Nolkha HUF (acquirers) belongs to the promoter group of Nitin Spinners Limited (Target Company) and holds in aggregate 54.99% of the paid up capital of the Target Company.

SEBI granted exemption from the applicability of regulation 11(1) & 11(2) where the increase in shareholding is pursuant to the CDR Scheme.

2. In terms of the CDR package, the promoters of the Target Company proposed to acquire 50,00,000 equity shares at a price of Rs. 10 per share by way of preferential allotment, which would increase the promoter shareholding from 54.99% to 59.90%, thereby, triggering regulation 11(1) & (2) of SEBI (SAST) Regulations, 1997 requiring the open offer be made to the shareholders of Target Company.
3. Therefore, the acquirers has filed the present application seeking exemption from the requirement of making the open offer on the following grounds:

Grounds of Exemption:

1. As per CDR approval promoters of the Target Company are required to contribute 15% of the present value of the sacrifice of interest by the bank or Rs. 5 crore, whichever is higher, out of which 50% should be brought by way of equity capital. However the Board of Directors of Target Company is of view that that the total funds should be brought by way of equity shares since in other routes i.e. preference shares, unsecured loan, etc., there shall be further burden of interest/ dividend on the Target Company.
2. No change in control.
3. The exemption is in the interest of Target Company and its shareholders.
4. Approval of shareholders has already been obtained in the AGM.
5. Minimum public shareholding would be maintained.
6. The acquisition of shares is in accordance with the CDR scheme as approved by the CDR Cell.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making open offer on the basis that the facts and statements given by the acquirers are true and the acquirers will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable.

Takeover Panel Exemption order in the matter of Ajanta Pharma Limited

Facts:

1. The acquirers belong to the promoter group of Ajanta Pharma Limited (Target Company) and holds 66.82% of paid up capital of the Target Company.

2. The BODs of the Target Company proposes to buy back a maximum of 11,24,752 equity shares from open market at a price not exceeding Rs. 101 per shares.
3. Pursuant to Buy Back, assuming the 100% response to Buy Back offer, the shareholding of the acquirers will increase from 66.82% to

SEBI granted exemption from the applicability of regulation 11(1) where the increase in shareholding is pursuant to the buyback by the Target Company.

73.92% resulting into triggering regulation 11(1) of the SEBI Takeover Regulations requiring the open offer be made to the shareholders of Target Company. Therefore, the acquirer has filed the present application seeking exemption from the requirement of making the open offer on the following grounds:

Grounds of Exemption:

1. Increase in the shareholding is incidental to Buy Back.
2. No change in control over Target Company.
3. The acquirers will not participate in Buy Back offer.
4. Minimum public shareholding would be maintained.
5. Increase in return on Equity of the Target Company.
6. The buy back price of Rs. 101 is at a premium of 14.82% of the average of 26 weeks average price and 10.65% of the average of two weeks average price at the Stock Exchange.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making open offer on the basis that the facts and statements given by the acquirer are true and the acquirers will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable.

Consent Order in the matter of Ingersoll Rand Company

Ingersoll Rand Company (Applicant) did not comply with the disclosure requirement under Regulation 6(1), (3) and 8(1) & (2) of SEBI (SAST) Regulations, 1997 for the years 1997-1998 and 2008-2009 in respect of its shareholding in Ingersoll Rand (India) Limited. Therefore, vide letter dated September 9, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 7,20,000 towards the consent terms as settlement charges. The terms as proposed by the applicant

were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

Latest Open Offers

| Name of the Target Company | Name of the Acquirer and PAC | Details of the offer | Reason of the offer | Concerned Parties |
|---|--|---|--|---|
| <p>Himadri Chemicals and Industries Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 32.26 crore</p> <p>Listed At BSE, NSE & CSE</p> | Bain Capital India Investment along with PAC | Offer to acquire 8,198,740 (20%) Equity Shares at a price of Rs. 400 per share payable in cash. | Regulation 10 Preferential allotment of 63,10,000 (16.36%) Equity Shares of face value of Rs. 10 per share. | <p>Merchant Banker Enam Securities Pvt Ltd.</p> <p>Registrar to the Offer Link Intime India Pvt. Ltd.</p> |
| <p>Shree Om Trades Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 24.90 lacs</p> <p>Listed At BSE</p> | Devendra Kumar Somani and Tarun Kumar Somani | Offer to acquire 49,800 (20%) Equity Shares at a price of Rs. 24 per share payable in cash. | Regulation 10 & 12 SPA to acquire 1,00,400 (40.32%) Equity Shares of Target Company at a price of Rs.23 per share increasing the shareholding from 14.90% to 55.22%. | <p>Merchant Banker Arihant Capital Markets Limited</p> <p>Registrar to the Offer Sharex Dynamic (India) Pvt. Ltd.</p> |
| Drillco Metal Carbides Limited | Rahul Timbadia | Offer to acquire 9,87,469 (45%) | Regulation 10 & 12 | Merchant Banker |

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|--|-----------------------------------|---|---|--|
| <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 2.19crore</p> <p>Listed At BSE & PSE</p> | | <p>Equity Shares at a price of Rs. 2.50 per share payable in cash.</p> | <p>SPA to acquire 2,84,600 (12.97%) Equity Shares at a price of Rs.2.50 per share increasing the shareholding from 14.50% to 27.47%.</p> | <p>Dalmia Securities Private Limited</p> <p>Registrar to the Offer Satellite Corporate Services Pvt. Ltd.</p> |
| <p>Ceekay Daikin Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 40.32 million</p> <p>Listed At BSE</p> | <p>EXEDY Corporation</p> | <p>Offer to acquire 1,201,340 (20%) Equity Shares at a price of Rs. 178.50 per share payable in cash.</p> | <p>Regulation 11 & 12 Preferential allotment to acquire 19,75,400 (32.88%) Equity Shares at a price of Rs.62 per share</p> | <p>Merchant Banker Ambit Corporate Finance Private Limited</p> <p>Registrar to the Offer Link Intime India Pvt. Ltd.</p> |
| <p>Olympic Oil Industries Limit</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 24.50 lacs</p> <p>Listed At BSE</p> | <p>Sunil Verma and Uday Desai</p> | <p>Offer to acquire 49,000 (20%) Equity Shares at a price of Rs. 7 per share payable in cash.</p> | <p>Regulation 10 & 12 SPA to acquire 49,600 (20.24%) Equity Shares at a price of Rs.7 per share</p> | <p>Merchant Banker Aryaman Financial Services Limited</p> <p>Registrar to the Offer Sharex Dynamic (India) Pvt. Ltd.</p> |
| <p>Shakti Met-Dor Limited</p> | <p>M V S S Subba Raju, M Uma</p> | <p>Offer to acquire 5,50,800 (20%)</p> | <p>Regulation 11(1)</p> | <p>Merchant Banker</p> |

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|---|---|---|---|--|
| <p>Regd. Office Secunderabad</p> <p>Paid up capital Rs. 294.02 lacs</p> <p>Listed At BSE</p> | <p>Raju, C Shashidhar Reddy, C Anupama Reddy, U Pradeep Kumar and V Rama Devi along with PAC</p> | <p>Equity Shares at a price of Rs. 180 per share payable in cash.</p> | <p>For the purpose of consolidation of shareholding, the present offer has been made.</p> | <p>Karvy Investors Services Ltd.</p> <p>Registrar to the Offer Karvy Computershare Pvt. Ltd.</p> |
| <p>Elpro Packaging Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 18.14 crore</p> <p>Listed At BSE</p> | <p>Abhishek R. Mehta and Bhavna R. Mehta</p> | <p>Offer to acquire 10,00,000 (20%) Equity Shares at a price of Re. 1 per share payable in cash.</p> | <p>Regulation 10 & 12 SPA to acquire 18,98,000 (37.98%) Equity Shares at a price of Re. 1 per share.</p> | <p>Merchant Banker Aryaman Financial services Limited</p> <p>Registrar to the Offer System Support Services</p> |
| <p>Agro Dutch Industries Limited</p> <p>Regd. Office Chandigarh</p> <p>Paid up capital Rs. 5356.50 lacs</p> <p>Listed At BSE & NSE</p> | <p>Malvinder Singh Bhinder, Gurpreet Singh Bhinder, Penta Homes Private Limited and Vishwa Calibre Builders Private Limited</p> | <p>Offer to acquire 1,07,13,000 (20%) Equity Shares at a price of Rs. 16 per share payable in cash.</p> | <p>Regulation 11(2) Conversion of share warrants into equity shares, thereby, increasing the shareholding of Acquirers from 32.51% to 57.71% of the paid up capital of the Target Company.</p> | <p>Merchant Banker Karvy Investors Services Ltd.</p> <p>Registrar to the Offer Karvy Computershare Pvt. Ltd.</p> |

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|--|---|--|--|--|
| <p>Rasoi Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 1.93 crore</p> <p>Listed At BSE & CSE</p> | <p>Pallawi Resources Limited along with J L Morison (India) Limited</p> | <p>Offer to acquire 3,14,152 (16.26%) Equity Shares at a price of Rs. 315 per share payable in cash.</p> | <p>Regulation 11(2A)</p> <p>The acquirers belong to promoter group and holds 58.74%. For the purpose of consolidation of holding, the acquirers have given this open offer.</p> | <p>Merchant Banker Srei Capital Markets Limited</p> <p>Registrar to the Offer C B Management Services (Pvt.) Limited</p> |
| <p>DSPC Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 4.23 crore</p> <p>Listed At NSE & CSE</p> | <p>Orbis Power Venture Private Limited along with Srei Infrastructure Private Limited and India Power Corporation Limited</p> | <p>Offer to acquire 8,46,744 (20%) Equity Shares at a price of Rs. 710 per share payable in cash.</p> | <p>Regulation 10 & 12</p> <p>SPA and Supplementary Agreement to acquire 24,20,255 (57.17%) Equity Shares of Target Company</p> | <p>Merchant Banker Axis Bank Limited</p> <p>Registrar to the Offer Maheshwari Datamatics Pvt. Ltd.</p> |

Hint of the Month

Acquisition of shares by the co-promoters of the company or their successors or assignee(s) or an acquirer who has substituted an erstwhile promoter from the State level financial institutions, including their subsidiaries is exempt from the applicability of regulation 10, 11 and 12 of SEBI (SAST) Regulations, 1997 where the transfer of shares has taken place pursuant to an agreement between such financial institution and such co-promoters.

{As substantiated from regulation 3(1)(i) of SEBI (SAST) Regulations, 1997}

An analysis of Term “Acquirer” as prescribed under regulation 2(1)(b) of SEBI Takeover Regulations

The term Acquirer is the most important definitions provided in the regulations and forms the basis of determining the applicability of SEBI (SAST) Regulations, 1997 on the right person. The term has been specifically defined in regulation 2(1)(b) of SEBI (SAST) Regulations, 1997. An analysis of the same is detailed below:

Regulation 2(1)(b) of SEBI (SAST) Regulations, 1997

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

The term acquirer can be divided into following:

I. Any person

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

II. Who directly or indirectly

The acquisition extends to both direct & indirect acquisition. Indirect acquisition means the acquisition of shares or control of a Listed Company by virtue of acquisition of shares or control of any unlisted company, whether in India or abroad. This similar interpretation was also given in the matter of ***Eaton Corporation*** wherein the Tribunal held that SEBI (SAST) Regulations, 1997 takes care of direct and indirect acquisition, and, thus, indirect acquisition of control, including acquisitions through chain of subsidiaries would attract provisions of SEBI (SAST) Regulations, 1997.

III. Acquires or agrees to acquire

The acquisition includes both completed acquisition as well as agreement to acquire. In the matter of ***B.P. Amoco Plc, SAT***, it was decided that the scope of SEBI (SAST) Regulations, 1997 takes in its ambit not only a person directly or indirectly acquiring the shares or voting rights in the target company or acquiring control over the target company, but one agreeing to acquire shares/voting rights or control is also an acquirer and it is not necessary that one should actually acquire

shares/voting rights or control to consider him as an acquirer. It would suffice if a person agrees to acquire shares or voting rights or control over, the target company.

IV. Shares, voting rights or control over target company

Shares: In terms of Regulation 2(1)(k) of SEBI (SAST) Regulations, 1997, “**Shares**” means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights but shall not include preference shares.

The definition of shares makes it amply clear that the shares mean shares carrying voting rights. Therefore acquisition of shares without voting rights e.g. Preference shares will not trigger the provisions of SEBI (SAST) Regulations, 1997. The most important point to be noted here is that even though where the voting rights have been accrued on the preference shares due to the non payment of dividend in terms of Section 87 of Companies Act, 1956, they will not be counted for the purpose of SEBI (SAST) Regulations, 1997.

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

Control: The term control has been defined under regulation 2(1)(c) of the SEBI (SAST) Regulations, 1997 which states that “**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

V. Either by himself or with any person acting in concert with the acquirer.

The acquisition can be on the behalf of acquirer himself or it may be with the other persons acting in concert which are further defined under regulation 2(1)(e) of the SEBI (SAST) Regulations, 1997. The acquirer can take the shares on its own or along with the persons who share the common objective of acquisition of share or voting rights or control over the target company.

The most important to be noted here is that wherever the term acquirer has been used in the SEBI (SAST) Regulations, 1997, it is to be understood inclusive of person acting in concert irrespective of the fact whether it has specifically mention or not. For instance, in regulation 7 of SEBI (SAST) Regulations, 1997 requiring the disclosure of shareholding to the Target Company as well as to the stock exchange, the term acquirer alone has been mentioned. However, in the matter of **Radheshyam Tulsian**, the Tribunal held that the shares held by all the persons, who act in concert

with the acquirer, are to be taken into account for determining the applicability of regulation 7 of SEBI (SAST) Regulations, 1997.

Further, there must be commonality of objective between the acquirer and person acting in concert with him. Where the objective of the other person is to sell the shares instead of making the further acquisition, then he cannot be considered as the person acting in concert with the acquirer.

The touchstone of determining the relationship of person acting in concert is the commonality of objective to acquire shares or control over a Company. Even the person deemed to be acting in concert is required to go through this test. Therefore, where a promoter does not share common objective or purpose of acquirers in as much as it is not interested in acquiring further shares but, on the contrary, is interested in selling off its shareholding in Target Company with a view to meet its financial obligations, it must be held that such promoter was not acting in concert with acquirers. This interpretation has been substantiated in the matter of **K.K. Modi vs. SAT (05/11/2001) –SC/HC.**

Case Study

An analysis of Takeover Battle for Fame India Limited

About INOX Leisure Limited

INOX Leisure Limited is the diversification venture of the INOX Group into entertainment and is a subsidiary of Gujarat Fluorochemicals Ltd. INOX has traversed its own path by bringing in a professional and service oriented approach to the cinema exhibition sector. With strong financial backing, impeccable track record and strong corporate ethos, INOX has established a strong presence in the cinema exhibition industry in the short span of time.

About Fame India Limited

Fame India Limited formerly known as Shringar Cinemas Limited. The Group's principal activities are to distribute films, exhibit films and operate through a chain of multiplexes. It operates in three segments: Theatrical, Distribution and Others. The Other segment includes programming and management contracts.

Inox-Fame Deal

On February 3, 2010, Inox Leisure Limited has acquired 1,50,57,751 equity shares constituting 43.28% in Shroff family promoted, Fame India Ltd. at a price of Rs 44 per share through block deal. The transaction is entirely funded by Gujarat Fluorochemicals. Further, on February 5, 2010, the acquirer have acquired 25,07,537 equity shares of Fame India at a price of Rs 50.75 per share representing 7.21% of the issued and paid up capital of the company. This acquisition will create the largest multiplex networks with a total of 55 multiplexes, 204 screens and 57,891 seats.

Inox had earlier bought Calcutta Cine, a Bengal Ambuja Company. This acquisition had given additional nine multiplexes to Inox in West Bengal and Assam.

Takeover Open Offer for Fame India Limited

As after the aforesaid acquisition, the total shareholding of Inox in Fame has reached to 50.48% i.e. more than 15%, therefore, it has resulted into triggering regulation 10 of SEBI (SAST) Regulations, 1997 requiring the open offer to be made to the shareholders of the Target Company. Accordingly, on February 06, 2010, INOX has given an open offer to the shareholders of Fame India to acquire 8,231,759 equity shares of Rs. 10/- each representing 20% of the paid up equity capital of Target Company at a price of Re. 51 per share payable in cash.

Controversies involved in the Battle

A takeover battle between Fame India and Reliance MediaWorks looks imminent with the latter accusing the multiplex theatre chain of rejecting its higher offer price i.e. Rs.80 a share for the promoter stake in favour of Gujarat Fluro Chemicals-promoted INOX Leisure. The questions are also being raised on why the Shroffs did not ask for a control premium on their shares, which is the general practice when the promoters surrender management control.

Further, it is expected that Reliance MediaWorks may approach the Securities and Exchange Board of India as the next step if the issue is not resolved.

- **INOX acquires 43.28% stake in Fame India Ltd**

INOX Leisure Limited, a multiplex chain operator promoted by Gujarat Fluorochemicals Ltd., has acquired 43.28% stake in Fame India Limited for cash consideration of Rs 66.48 crore which is entirely funded as a shareholder loan by INOX's promoter company. Following this acquisition, INOX has given an open offer to buy additional 20% stake in Fame India Ltd. With this deal, INOX will have 55 multiplexes, 204 screens and 57,891 total seating capacity.

- **Zylog acquired Canada based Brainhunter**

Zylog Systems Limited has acquired Canada based Brainhunter Inc for \$ 32.75 million through a bidding process under Canadian Creditors Arrangement Act. Through this acquisition, Zylog will be able to tap the Canadian government as 32% of the Brainhunter revenue comes from the government. Brainhunter Inc is engaged in providing staffing, re-engineering and consultancy services.

- **Tata Tea now acquires 50% stake in Mount Everest Mineral Water**

Tata Tea has increased its stake to 50.24% in the management control of Mount Everest Mineral Water. Further Tata Tea may merge the Mount Everest Mineral Water company with itself which will result in creating one holding company with various divisions like tea, water, coffee, juices and energy drinks.

- **Etisalat to increase its stake to 50% in Etisalat DB**

Etisalat, a UAE telecom company has applied to the FIPB for its approval for increasing its stake in its Indian joint venture Etisalat DB (formerly known as Swan Telecom) from 45% to 50%. After the approval Etisalat would be the second new licensee after Unitech wireless in which the foreign partner has increased stake.

- **Warren Buffett says "NO" to Kraft-Cadbury deal**

Kraft's biggest shareholder Berkshire Hathaway's Chairman Warren Buffett is against the Kraft's takeover offer to acquire Cadbury at a price of £11.9 billion (\$ 19.7 billion). He said if given a chance to vote he would vote against the deal as Kraft is overpaying. Further Kraft's Food is still undervalued because the company is issuing shares and divesting its valuable assets.

Our Team

Neha Pruthi

Assistant Manager

neha@indiacp.com

Ruchi Hans

Associate

ruchi@indiacp.com

Priyanka Gupta

Analyst

Priyanka@indiacp.com

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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