

TAKEOVER PANORAMA

Year VI—Vol X

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A Monthly newsletter by Corporate Professionals

Latest Open Offers



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Legal Updates

Hint of the Month



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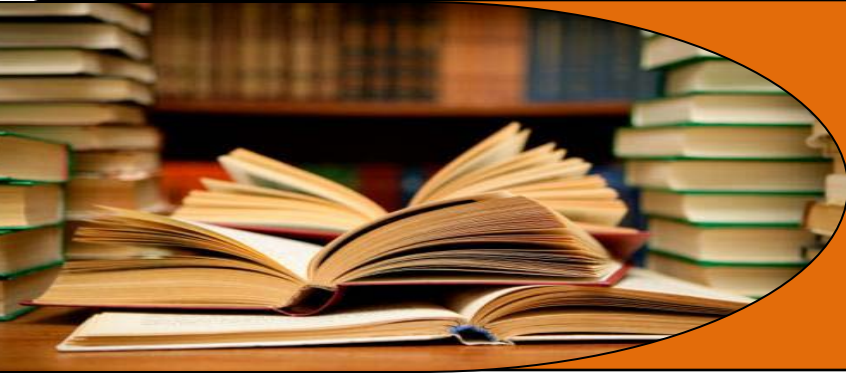
Queries



Quiz

Team





LEGAL UPDATES

SAT Order in the matter of Prudential Stock & Securities Limited Vs SEBI

FACTS

1. Prudential Stock & Securities Limited (Appellant/Acquirer) is engaged in the business of investing in the shares of listed and unlisted companies and is registered with the SEBI (Board).

2. Facts of the case:

2.1. The Board carried out investigation in the dealing of shares of Gennex Laboratories Ltd. (Target Company) so as to ascertain whether any provision of SEBI Act, 1956, Rules or Regulations made there under have been violated. Investigation revealed that during the period from April 2007 to December 2007, the shareholding of the Promoters has reduced from 53.62% to 24.72% of the paid up capital of the Target Company, thereby, resulting in change of shareholding of promoters to the extent of 28.90%. Mercury Fund Management Company Ltd. and Roopshri Finvest were the major selling promoters.

2.2. On May 3, 2006, the Appellant had received 20,00,000 (19.70%) shares of the Target Company from Global Telenet Ltd. and had sold 9,336 shares on June 7, 2006 and 20,02,700 shares on June 14, 2006 in off market to Mercury Fund Management Company Ltd. As the appellant was not a promoter of the Target Company, therefore, the benefit of exemption under Regulation 3(1)(e) was not available to it. It was held that on acquisition of 20,00,000 (19.70%) shares of the Target Company, the acquirer was required to make Open Offer under Regulation 10 of SEBI (SAST) Regulations, 1997 and disclosure under Regulation 7 of SEBI (SAST) Regulations, 1997 and Regulation 13 of SEBI (PIT) Regulations, 1992. However, the Appellant failed to do so and thus, violated the regulations. Further, when it transferred 20,02,700 shares to Mercury Fund

Snapshot

Hon'ble SAT dismissed the appeal and upheld the order passed by the AO regarding the imposition of penalty of Rs.17 Lakh on the appellant.



Management Company Ltd., it again failed to make disclosure under Regulation 13(3) of SEBI (PIT) Regulations, 1992.

- 2.3. The Appellant is also alleged to have violated Section 11C(2), 11C(3) read with Section 11(6) of the SEBI Act and Section 13 of the Securities Contracts (Regulation) Act, 1956 as it failed to respond to the summons and provide details of the acquisition and transfer of shares in off market transactions.
- 2.4. Accordingly, after considering the facts of the case, AO found the Appellant liable for the alleged violations and imposed the penalty of Rs. 17,00,000.

ISSUES:

1. Whether the Appellant has violated the provisions of Regulation 7 and 10 of SEBI (SAST) Regulation, 1997, Regulation 13 of SEBI (PIT) Regulations, 1992, Section 11C(2), 11C(3) read with Section 11(6) of the SEBI Act and Section 13 of the Securities Contracts (Regulation) Act, 1956?
2. Whether the quantum of the penalty imposed by the AO is justifiable?

DECISION:

After pursuing all the records and hearing the learned council for the Appellant and Board, the Hon'ble SAT observed that appellant has not denied the acquisition and disposal of shares as stated above. Further, since the Appellant does not belong to the promoter group of Target Company, therefore the transaction was not covered under Regulation 3(1) of SEBI (SAST) Regulations, 1997 for exemption. Therefore, it was obligatory on the part of Appellant to make disclosures under SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992 and open offer under Regulation 10 of SEBI (SAST) Regulations, 1997 which has not been complied with, thereby violating the regulations.

Further, the Appellant has raised two issues, one of which is relating to procedural aspect. Appellant contented that the SCN and Impugned Order talks about the inquiry held under Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 where under these rules enquiry can be held only for the violations made under the SEBI Act, 1956 and any rules or regulations made there under. However, AO has also made him guilty for the violation of Section 13 of the SCRA, 1956 for which separate rules has been prescribed.



Therefore, the holding of inquiry under the inquiry procedure of 1995 under the SEBI Act in respect of violations committed under SCRA has vitiated the proceedings.

Hon'ble SAT held that the learned council for the Appellant may be right but this is only a procedural aspect and the inquiry procedure as laid down in the rules of 1995 under the SEBI Act and under rules of 2005 of Securities Contracts (Regulation) Act is the same. No prejudice has been caused to the appellant by not mentioning the Rules of 2005 either in the show cause notice or in the impugned order. Full opportunity was given to the appellant to present his case, therefore, it does not deserve any relief on this count.

Further, as regards the second issue of Appellant with respect to the imposition of penalty is concerned, the Hon'ble SAT observed that while deciding the quantum of the penalty, the AO has given due consideration to the provisions of Section 15J of the Act. Further, the Appellant has not been cooperative since neither it has replied to the SCN nor has respond to the summons issued by the Board.

Therefore on the basis of facts and circumstances of the case, the order passed by the AO is upheld and the appeal dismissed.

SAT Order in the matter of IP holding Asia Singapore PTE Ltd. and International Paper Company vs SEBI

FACTS

1. International Paper Company ("Appellant/Acquirer 1") registered in USA, is engaged in the business of global paper and packaging including manufacturing of uncoated papers, industrial and consumer packaging. While IP holding Asia Singapore PTE Limited ("Appellant/Acquirer 2") registered in Singapore, is a subsidiary of Appellant 1. The present appeal is filed on the issue that whether the appellants are liable to pay to the public shareholders the non-compete fee that has been agreed to be paid to the outgoing promoters of the Target Company being taken over.
2. **Facts of the case:**
 - 2.1. On March 29, 2011, the appellants entered into a Share Purchase Agreement (SPA) with the Promoters of Andhra Pradesh Paper Mills Limited (Target Company) to acquire 53.46% equity



shares at a price of Rs. 523/- per share. Further an exclusivity fee of Rs. 21.20 per share is also paid to the promoter group sellers and accordingly, the same was added to the offer price.

2.2. The open offer was made to acquire up to 85,67,521 shares at an offer price of Rs. 544.20 per fully paid-up equity share.

2.3. Being the controlling shareholders and having knowledge of pulp and paper business of the Target Company, each of the promoter group sellers of the Target Company are capable of offering competition to the Appellants. Accordingly, the Appellants have agreed to pay Rs.130.74 per share as non-compete fee to promoters group sellers, which is within the limit of 25% of the offer price arrived at in accordance with the provisions of the Regulation 20 of the SEBI (SAST) Regulations, 1997.

2.4. After considering the submission and information furnished by the appellants, the Board directed the appellants to revise the offer price from Rs. 544.20 to Rs. 674.93, to include the amount of non-compete fees of Rs.130.73 on the following grounds:

- Out of 20 promoters, only 5 promoters are eligible for the non compete fee as the 15 promoters do not have any experiences/expertise in the area of operation of Target Company and are therefore not capable of offering any competition.
- Out of 15 promoters, 13 are the companies and none of them are in the business of pulp and paper manufacturing which is the product line of the Target Company. Further, they don't even have such business objectives in their main object also. The remaining 2 promoters are mere shareholders and relatives of Mr. L. N. Bangur, who is a director of the Target Company.

2.5. It has been submitted by the appellants that upon the ground of prudence and good corporate practice, the appellants have decided to pay the exclusivity fees paid to the promoter group sellers to all the public shareholders.

2.6. However, the Board held that the acquirers have failed to justify why the same logic has not been used while paying a different price per share, without the non compete fee, to all the public shareholders.

3. Contention by the Appellants:

3.1. The two individual promoters are part of the Bangur family and by virtue of their being associated with the management of the Target Company, they have acquired considerable knowledge of the

Snapshot

Hon'ble SAT clarified that the Non compete fee paid to the promoter and promoter group, not involved in the day to day business of the Target Company is required to be added to the offer price to be paid to the public shareholders.



pulp and paper industries and are therefore capable of competing with the business of the Target Company.

- 3.2. Further, the other 13 promoter group sellers have substantial shareholding in the Target Company and have been involved in the business of the Target Company for a substantial period of time. These corporate promoter group sellers with the prime object of working for profit and being privy to confidential information about the business of the Target Company are capable of offering competition.
- 3.3. The non-compete agreement does not merely prohibit the promoter group sellers from competing with the Target Company, but it also prohibits each of the promoter group sellers from indirectly competing with the business of the Target Company, including investing in any business which is capable of competing with the business of the target company.
- 3.4. The Board would have no occasion to interfere if payment is made to the outgoing seller within the limits prescribed under the regulations and is paid to a seller who can offer competition to the business of the target company.

ISSUES:

Whether the appellants are liable to pay to the public shareholders the non compete fees that has been agreed to be paid to the outgoing promoters of the Target Company?

DECISION:

Hon'ble SAT observed that the 13 promoter group sellers are directly or indirectly controlled by same promoter group but by itself are not involved in the day to day business of the Target Company nor are capable of competing with the business of Target Company. Further the two individual promoters who were merely shareholders of the Target Company are being offered non-compete fee but no non compete fee is offered to Mrs. Sheetal Bangur, another family member of L.N. Bangur although she is a director of the Target Company and involved in the day to day business of the Target Company. Accordingly we are unable to accept this argument of the appellants. Thus it was held that the aforesaid entities are not entitled to non-compete fees merely because they are family members of L N Bangur or belong to the promoter group of the Target Company.



Further upon the argument made by the appellants that covenants in the non-compete agreement provide for both non-compete obligations as well as an obligation to maintain confidentiality and accordingly, the promoter group entities are being paid non-compete fee for non-compete obligations as well as for maintenance of confidentiality, the Hon'ble SAT observed that non-compete obligations without a corresponding obligations to maintain confidentiality would render any non-compete agreement ineffective. Further, the appellant have failed to place sufficient material on record to justify payment of non-compete fee to 15 entities

Hence, the Board was justified in making the impugned observations and the appeal is dismissed. Accordingly, the appellants were required to pay the balance amount to the shareholders who had offered their shares in the open offer. However, four week time is given to the Appellants to explore the possibility of filing an appeal before Supreme Court.

SAT Order in the matter of Mercury Fund Management Co. Ltd. v SEBI

FACTS

1. Mercury Fund Management Co. Ltd. (Appellant) is engaged in the business of investing in shares of listed and unlisted companies and other miscellaneous financial activities.
2. The present appeal is filed against the order passed by Adjudicating Officer (AO) for the violations of certain Regulations and imposition of penalty of Rs. 27 Lakhs as under:
 - a. **Rs.10 Lakhs** for violation of Regulation 10 of SEBI (SAST) Regulations, 1997
 - b. **Rs.2 Lakhs** for violation of Section 11C (2) & 11C(3) of SEBI Act, 1992.
 - c. **Rs.5 Lakhs** for violation of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and 13(1) & (3) of SEBI (PIT) Regulations, 1992.
 - d. **Rs.10 Lakhs** for violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 read with regulation 3 of SEBI (PFUTP) Regulations, 2003
3. **Background of the case:**
 - 3.1. The Board carried out investigation in the dealing of shares of Gennex Laboratories Ltd. (Target Company) so as to ascertain whether any provision of SEBI Act, 1956, Rules or Regulations made there under have been violated. Investigation revealed that during the period from April 2007 to December 2007, the shareholding of the Promoters has reduced from 53.62% to 24.72% of the




paid up capital of the Target Company, thereby, resulting in change of shareholding of promoters to the extent of 28.90%. Further, it was also observed that:

- a. As per shareholding pattern, the major selling promoters were Appellant (16, 36,036 shares) and Roopshri Finvest (3, 32,000 shares). It was further revealed that the Appellant had sold 29, 94,394 shares and Roopshri sold 9, 08,025 shares.
- b. It was observed that the Appellant had acquired 9336 shares (0.092%) and 20,02,700 shares (19.73%) of the Target Company on June 7, 2006 and June 14, 2006 respectively. As the shareholding of the Appellant has increased more than 15%, the Appellant was required to make disclosures under Regulation 7 (1) of SEBI (SAST) Regulations, 1997 and Regulation 13 (1) of SEBI (PIT) Regulations and open offer under Regulation 10 of SEBI (SAST) Regulations, 1997. However the Appellant did not made the requisite disclosures and open offer.
- c. On analyzing the demat statement of the Appellant, it was further noted that 2,95,300 shares were received in off market from Prudential Stocks & Securities Limited and 9,60,000 shares (9.46%) in off market on July 04, 2007 from Vinod Baid, but the Appellant has did not made disclosures under Regulation 7 (1) of SEBI (SAST) Regulations, 1997 & regulation 13(1) read with 13(5) of SEBI (PIT) Regulations, 1992.
- d. Similarly, the shareholding of the Appellant was reduced from 16.12% to 1.17% for the quarter ended 2007, but it has not made disclosure under regulation 13(3) read with regulation 13(5) of SEBI (PIT) Regulations, 1992.
- e. Further it was alleged that the Appellant has also violated the provision of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (PFUTP) Regulations, 2003.

Snapshot

Hon'ble SAT clarified that Adjudicating proceeding must be initiated against all the persons found guilty of violation under SEBI Law and penalty should be imposed on the completion of proceedings against all of them.



4. Accordingly a total penalty of Rs. 27 Lakhs in imposed on the Appellant for aforesaid violations



ISSUES:

1. Whether the Appellant has violated the provisions of Regulation 10 of SEBI (SAST) Regulations, 1997, for Section 11C(2) & 11C(3) of SEBI Act, 1992, Regulation 7(1) of SEBI (SAST) Regulations, 1997 and 13(1) & (3) of SEBI (PIT) Regulations, 1992 and Section 12A(a), (b) & (c) of the SEBI Act, 1992 read with regulation 3 of SEBI (PFUTP) Regulations, 2003?
2. Whether the quantum of the penalty imposed by the AO is justifiable?

DECISION:

Hon'ble SAT observed that appellant has neither disputed upon the disclosures compliances required to be made under SEBI (SAST) Regulations, 1997 and SEBI (PIT) regulations, 1992 nor have disputed upon the failure to comply with the summons under section 11C of the SEBI Act, 1992. Further the appellant has not produced any material either in response to the show cause notice or before the adjudicating authority or before the Tribunal regarding the compliances of the said regulations. Accordingly, the penalty imposed by the AO with regard to violations as stated above is not questionable.

The appellant has only disputed upon the imposition of penalty of Rs. 10 Lakhs regarding the finding that Target Company had planted false positive announcement to facilitate the off loading of the shares by its promoter Vinod Baid through the appellant, and the appellant has facilitated Vinod Baid in off loading the shares of the company in the market. According to the adjudicating officer, this act of the company, Vinod Baid and the appellant, is an artifice/device to defraud the investors in the market by presenting the company as a lucrative investing option. Accordingly, AO found the appellant, Mr. Vinod Baid and Target Company liable for the violation of Section 12 of SEBI Act, 1992 read with Regulation 3 of SEBI (PFUTP) Regulations, 2003 and imposed the penalty of Rs. 10 Lakhs. The Appellant contended that the penalty is imposed only upon him whereas no action has been taken against Mr. Vinod Baid and Target Company.

In this regard the Board stated that it has already imposed the penalty of Rs. 10 Lakhs and 3 Lakhs upon the Target Company and Mr. Vinod Baid respectively. Further SCN has been issued under section 11 and 11B of the SEBI Act, 1992 read with Regulation 11 of SEBI (PFUTP) Regulations, 2003 and proceedings are still continuing. With respect to the query raised by SAT



that whether any action has been taken under chapter VIA of SEBI Act, 1992, the Board responded that instead of adjudication proceedings under chapter VIA, the Board has decided to proceed against the Target Company and Mr. Vinod Baid under section 11 and 11B of SEBI Act, 1992.

After hearing learned counsel for the parties and perusing the records, Hon'ble SAT held that the appellant who is alleged to have facilitated the Target Company and Vinod Baid in offloading their shares in the market has been punished but action is yet to be taken against the Target Company and Vinod Baid who are the main culprits and alleged to have violated section 12 of the SEBI Act, 1992 and Regulation 3 of the SEBI (PFUTP) Regulations, 2003. Thus, there is also possibility that proceedings which have been initiated against the Target Company and Mr. Vinod Baid may come to a conclusion that it does not call for any penalty or these entities may be let off with a lower punishment like warning.

Therefore the penalty of Rs.10 Lakhs imposed on appellant for violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 read with regulation 3 of SEBI (PFUTP) Regulations, 2003 is set aside with liberty to the Board to initiate fresh proceedings against the appellant in case the Target Company and Vinod Baid are ultimately found guilty for the said violations.

Takeover Exemption Order in the matter of IFCI Limited

FACTS

1. IFCI Limited (Target Company/IFCI) was established as a statutory corporation on July 1, 1948 under the Industrial Finance Corporation Act, 1948. Subsequent to the repeal of the said Act, it was converted into Public Limited Company under Companies Act, 1956 on March 31, 1993 and it was decided that the new company would be incorporated as Government Company. The shareholding of Government controlled institutions in IFCI Ltd. should be maintained above 51%. The equity shares of the Target Company are listed on BSE, NSE, DSE, MSE and ASE.
2. In the wake of likely systematic impact of the Target Company defaulting on its liabilities, the Government of India (Acquirer/GOI) in the year 2001 as a part of the recapitalization infused Rs. 400 crores as Tier -I capital in the form of 20 year 9.75% Unsecured Convertible Debentures (UCDs) redeemable on October 30, 2021. The GOI has the option to convert the debentures into



equity shares of the Target Company at par at any time subject to compliance of SEBI guidelines in respect of preferential allotment.

3. Thereafter in December 2002, GOI approved financial assistance of Rs. 5220 crores to the Target Company which was to be released over the period from year 2003 to 2011- 2012. Out of this, Rs. 2409.31 crores was released as grants-in-aid and further Rs. 523 crores was released as loan in the form of 0.01% Optionally Convertible Debentures (OCDs) redeemable on March 28, 2023. Since the Target Company started making profits from 2006-2007, GOI decided to stop release of further assistance to the Target Company.
4. A Committee of Secretaries, headed by Finance Secretary, has recommended GOI to convert the UCDs of Rs.400 crores and OCDs of Rs.523 crores into equity at par. The requisite approval for the aforementioned conversion is stated in the decision of the Union Cabinet.
5. Pursuant to conversion of Rs. 400 crore UCDs, the shareholding of Gol would increase from 0.0000011% to 35.15% and after the conversion of Rs. 523 crore OCDs, the shareholding of Gol would further increase to 55.57%. These acquisitions would trigger the obligation for the Gol to make open offer under regulations 3(1), 3(2) and 4 of SEBI (SAST) Regulations, 2011
6. Therefore, the Acquirer has filed an exemption application under Regulation 11(3) of SEBI (SAST) Regulations, 2011 seeking exemption from the applicability of Regulation 3(1), (2) & 4 of SEBI (SAST) Regulations, 2011.

Snapshot

Exemption granted to GOI from the requirement of making Open Offer where increase in shareholding is pursuant to conversion of UCDs and OCDs into equity shares

GROUNDS OF EXEMPTION

1. Pursuant to conversion of the aforesaid loans into equity, IFCI will become a Government Company and thereby increase its public accountability. Moreover IFCI was converted into a public limited company to make it a Government Company and the proposal to convert debentures into equity will be in consonance with the declared policy of GOI with regard to IFCI.
2. Gol had given financial assistance to the Target Company at a nominal rate of interest that has conserved the cash outflow of the Target Company over the years on account of interest payments and in turn has benefited the shareholders of the Target Company.



3. Since substantial amount of public funds have been infused into IFCI Ltd. by the Gol, therefore, such conversion of debts into equity would provide enhanced accountability and will provide additional safeguard to the investment of public funds.

DECISION:

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(1), 3(2) and 4 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 Peacock Industries Limited

SEBI conducted an investigation into affairs relating to dealing in the shares of the Peacock Industries Limited (Target Company/PIL). Investigation revealed that the shareholding of Park Continental Limited (Noticee) in the Target Company prior to June 30, 2009 was 14,48,200 shares constituting 9.34% of the total paid up capital of the Target Company. The Noticee made the following acquisitions but failed to make the required disclosures:

- i. Acquisition of 0.99% shares, thereby increasing its shareholding from 9.34% to 10.34% but did not made the disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997.
- ii. Acquisition of 3.95% shares increasing its shareholding from 10.34% to 14.29% but did not made the disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997

Accordingly, adjudicating proceedings were initiated against the Noticee for the alleged violations. 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. 1,50,000 towards settlement charges.

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



HINT OF THE MONTH

The term “encumbrance” shall include a pledge, lien or any such transaction, by whatever name called.”

In other words, it includes those encumbrances which entail a risk of the shares held by promoters being appropriated or sold by a third party whether directly or indirectly.

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





Latest Open Offers

Target Company

ALSTOM T&D India Limited

Registered Office

New Delhi

Networth of TC

Rs. 8764.30 Millions

Listed At

NSE, BSE and CSE

Industry of TC

Power Transmission

Acquirer

ALSTOM Holdings

Triggering Event: Indirect Acquisition of shares & control over the management of the Target Company

Details of the offer: Offer to acquire 6,21,67,050 (26.00%) Equity Shares at a price of Rs. 187.64/- per share payable in cash.

Triggering Event: Purchase Order for acquisition of upto 55,00,000 (6.80%) fully paid up equity shares at a price not exceeding Rs. 19.50 per share

Details of the offer: Offer to acquire 21,044,220 (26.00%) Equity Shares at a price of Rs. 19.50/- per share payable in cash

Target Company

Dalmia Bharat Sugar and Industries Limited

Registered Office

Tamil Nadu

Networth of TC

Rs. 436.78 Crore

Listed At

NSE, BSE and MSE

Industry of TC

Sugar

Acquirer

Dalmia Bharat Enterprises Limited



Target Company

Svaraj Trading and Agencies Limited

Registered Office

Mumbai

Networth of TC

Rs. 256.96 Lacs

Listed At

BSE

Industry of TC

Financial services

Acquirer

Rekha Soni, Harendra Gupta and Shankar Das Vairagi

Triggering Event: SPA for the acquisition of 61,100 (61.10%) fully paid up equity shares at a price Rs. 50 per share and control over Target Company

Details of the offer: Offer to acquire 26,000 (26.00%) Equity Shares at a price of Rs. 75/- per share payable in cash.

Triggering Event: SPA for acquisition of 69,700 (29.04%) equity shares of the Target Company at a price of Rs. 14 per share and control over Target Company

Details of the offer: Offer to acquire 62,400 (26%) Equity Shares at a price of Rs. 15 per share payable in cash.

Target Company:

Manvijay Development Company Limited

Registered Office

Kolkata

Networth of TC

Rs. 25.30 Lakhs

Listed At

CSE and UPSE

Industry of TC

Textiles

Acquirer

Pradman Property Consortium of India Private Limited and Press Constructions Solutions Private Limited



Target Company

Namburnadi Tea Company Limited

Registered Office

Assam

Networth of TC

Rs. 434.90 Lacs

Listed At

CSE

Industry of TC

Tea

Acquirer

Bokahola Tea Company Private Limited

Triggering Event: SPA for the acquisition of 1,23,076 (92.98%) equity shares at a price Rs. 110 per share and control over Target Company

Details of the offer: Offer to acquire 9,299 (7.02%) Equity Shares at a price of Rs. 110/- per share payable in cash.

Triggering Event: Indirect acquisition of 17,54,92,524 Equity Shares (73.40%) and control over Target Company

Details of the offer: Offer to acquire 6,21,67,050 (26.00%) Equity Shares at a price of Rs. 83.10/- per share payable in cash.

Target Company

Schneider Electric Infrastructure Limited

Registered Office

Gujarat

Networth of TC

Rs. 2,669.65 Million

Listed At

BSE, NSE and CSE

Industry of TC

Heavy Electrical Equipment

Acquirer

Schneider Electric Singapore Pte. Ltd. (Acquirer) and Schneider Electric South East Asia (HQ) Pte. Ltd., Schneider Electric Services International and Energy Grid Automation Transformers and Energy Grid Automation Transformers and Switchgears India Limited (PACs)



Target Company

Sunshield Chemicals
Limited

Registered Office

Mumbai

Networth of TC

Rs. 2,062 Lakhs

Listed At

BSE

Industry of TC

Chemicals

Acquirer

Rhodia Amines Chemicals
Pte. Ltd along with Solvay
S.A.

Triggering Event: SPA for the acquisition of 36,02,999 to 46,72,061 (49% to 63.54%) equity shares at a price Rs. 51 per share and control over Target Company

Details of the offer: Offer to acquire 19,11,796 (26.00%) Equity Shares at a price of Rs. 51/- per share payable in cash.

Triggering Event: Purchase order to acquire up to 1,25,000 (3.42%) equity shares at a price of Rs. 20 per share payable in cash resulting into acquiring aggregate 5.74% shares in a financial year

Details of the offer: Offer to acquire 9,50,164 (26%) Equity Shares at a price of Rs. 20 per share payable in cash.

Target Company

Welspun Investments and
Commercials Limited

Registered Office

Gujarat

Networth of TC

Rs. 26.84 crores

Listed At

NSE and BSE

Industry of TC

Trading and Investment

Acquirers

Krishiraj Trading Limited,
(Acquirer) along with
Welspun Mercantile
Limited and Welspun
Wintex Limited (PACs)



Target Company

Gaylord Commercial
Company Limited

Registered Office

Kolkata

Networth of TC

Rs. 222.71 Lacs

Listed At

CSE and UPSE

Industry of TC

NBFC

Acquirer

Vista Vyapaar Private
Limited (Acquirer) and
Ankit Jain (PAC)

Triggering Event: SPA for acquisition of 3,13,000 (48.91%) equity shares at a price Rs. 7 per share and control over Target Company

Details of the offer: Offer to acquire 1,66,400 (26.00%) Equity Shares at a price of Rs. 20/- per share payable in cash

Triggering Event: SPA for acquisition of 5,68,63,688 (19.59%) equity shares and control over the Target Company

Details of the offer: Offer to acquire 7,54,76,970 Equity Shares at a price of Rs. 1.20/- per share payable in cash

Target Company

Greenearth Resources and
Projects Limited

Registered Office

Kolkata

Networth of TC

Rs. (9268.63) Lacs

Listed At

NSE and BSE

Industry of TC

Low ash metallurgical coke

Acquirer

Aum Saw Pipes &
Industries Private Limited



Target Company

JMG Corporation Limited

Registered Office

Gurgaon

Networth of TC

Rs. 446.75 Lacs

Listed At

BSE and DSE

Industry of TC

Adhesive tapes

Acquirer

Atul Kumar Mishra

Triggering Event: SPA for acquisition of 37,54,013 (18.96%) equity shares at a price Rs. 3 per share thereby increasing the shareholding of Acquirer to 34.15%.

Details of the offer: Offer to acquire 51,48,000 (26.00%) Equity Shares at a price of Rs. 3.05/- per share payable in cash

Triggering Event: SPA for acquisition of 11,81,854 (33.75%) equity shares and control over Target Company

Details of the offer: Offer to acquire 9,10,416 (26.00%) Equity Shares at a price of Rs. 123/- per share payable in cash

Target Company

Brescon Advisors & Holdings Limited

Registered Office

Mumbai

Networth of TC

Not Available

Listed At

BSE

Industry of TC

Finance (NBFC)

Acquirer

Nusarwar Merchants Private Limited

Regular section

Analysis of term Promoter and Promoter Group under SEBI (SAST) Regulations, 2011

Regulation 2(1)(s) and (t) of SEBI (SAST) Regulations, 2011 (“**SEBI Takeover Regulations**”) has given the reference of SEBI (ICDR) Regulations, 2009 (“**ICDR Regulations**”) for the definition of Promoter and Promoter Group.

Promoter

Regulation 2(1)(s) of SEBI Takeover Regulations provides that:

“Promoter” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;

Definition of “Promoter” under ICDR Regulations:

Regulation 2(1)(za) of SEBI (ICDR) Regulations, 2009 defines promoter as:

“Promoter” includes:

- (i) *The person or persons who are in control of the issuer;*
- (ii) *The person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;*
- (iii) *The person or persons named in the offer document as promoters:*

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;



As per the regulation, the term promoter includes:

i. Any person who is in control of the issuer

Any person, who is in control over the Issuer/Target Company, is considered as the promoter of the Company. The term Control has been defined under regulation 2(1)(e) of the SEBI Takeover Regulations, which says 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.

In the matter of Subhkam Ventures (I) Pvt. Ltd vs SEBI, Hon'ble SAT held that control' is a proactive and not a reactive power. Therefore, merely holding of shares cannot be the sole criteria to determine control. A person may be in control of the company even if he does not hold any shares. However it does not specify whether the term control would include only the direct exercise of control over the company or the indirect control as well.

ii. Any person who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public

The promoter includes person or persons who are active in the formulation of a plan or programme at the time of Initial Public Offer pursuant to which the securities are offered to the public at large.

iii. Any person named in the offer document as promoters

The persons who are named as Promoters in the offer documents filed by the company for the purpose of Public Issue, Rights Issue, are also considered as Promoter of the Company.

The definition specifically excludes:

- The director or officers who are only acting in their professional capacity from the ambit of promoters e.g. directors appointed by Banks/FIs from its scope.
- A financial institution, scheduled bank, foreign institutional investor and mutual fund who holds 10% or more of the equity share capital of the issuer;
However such institution shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

Further the promoter includes member of Promoter Group.



Promoter Group

Regulation 2(1)(t) of SEBI Takeover Regulations provides that:

“Promoter group” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

Definition of “Promoter Group” under SEBI (ICDR) Regulations, 2009:

Regulation 2(1)(zb) of SEBI (ICDR) Regulations, 2009 defines Promoter Group as:

“Promoter group” includes:

(i) The promoter;

The promoter as defined under Regulation 2(1)(za) of SEBI (ICDR) Regulations, 2009.

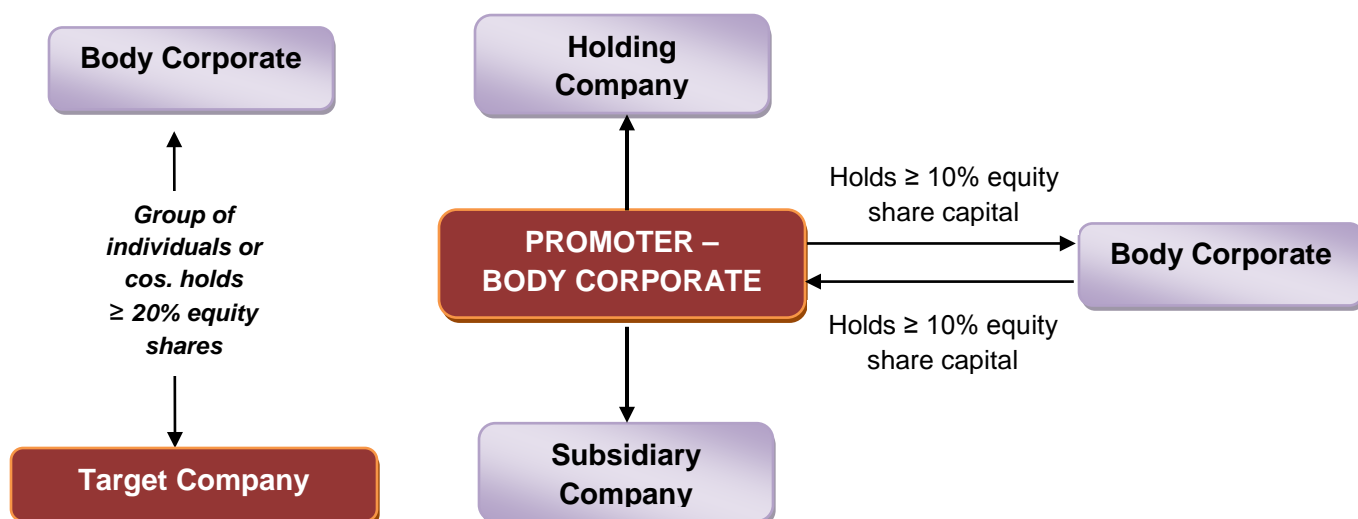
(ii) An immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and

(iii) In case promoter is a body corporate:

(A) A subsidiary or holding company of such body corporate;

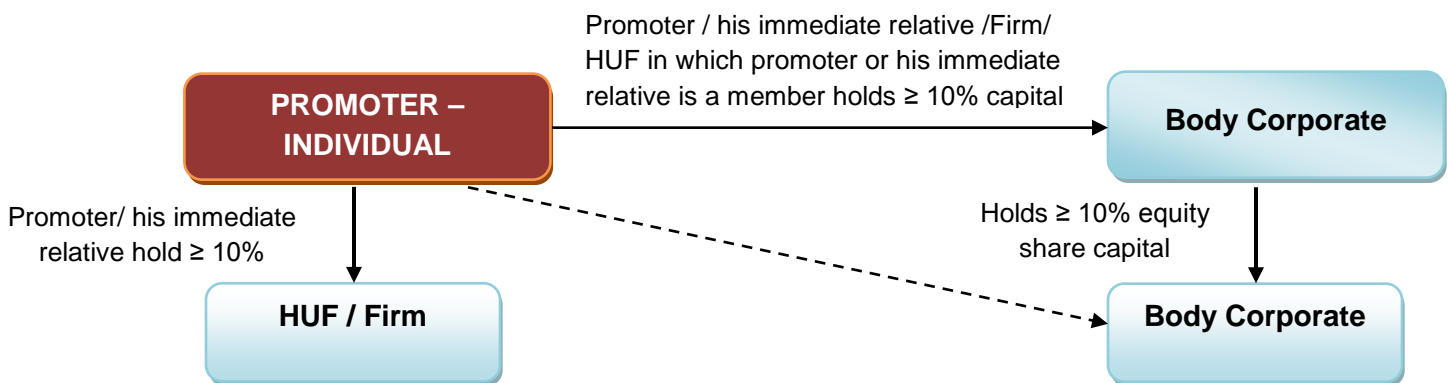
(B) Any Body Corporate in which the promoter holds ten percent or more of the equity share capital or which holds ten percent or more of the equity share capital of the promoter;

(C) Any Body Corporate in which a group of individuals or companies or combinations thereof which hold twenty percent or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and



(iv) In case promoter is an individual:

- (A) Any Body Corporate in which ten per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
- (B) Any Body Corporate in which a body corporate as provided in (A) above holds ten percent or more, of the equity share capital;
- (C) Any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent. of the total; and



(v) All persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading “shareholding of the promoter group”

Any person whose shareholding is included under the heading shareholding of Promoter Group in the Prospectus filed by the Issuer shall be included in the “Promoter Group”

Exception to definition of Promoter group

Financial Institution, Scheduled Bank, Foreign Institutional Investor and Mutual Fund shall also not be deemed to be part of promoter group merely by virtue of the fact that such institution/investor holds at least 10% of equity share capital of the issuer.

However such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;



Analysis of Open Offer of ALSTOM T&D India Limited & Schneider Electric Infrastructure Limited

About ALSTOM T&D India Limited (“Target Company 1”)

ALSTOM T&D India Limited was incorporated as a private limited company under the name ‘The English Electric Company of India (Private) Limited’ and was converted into a public limited company on February 25, 1963. The Company is engaged in the business of manufacturing, designing and commissioning products, projects and systems for electricity transmission and the related. However in 2011, the distribution business of the Target Company was demerged into its wholly owned subsidiary, i.e. Schneider Electric Infrastructure Limited pursuant to a scheme of demerger. The Shares of the Company are listed on NSE, BSE and CSE.

About ALSTOM Holdings (“Acquirer 1”)

ALSTOM Holdings was incorporated under the laws of France and is the holding company within the ALSTOM Group and act as a treasury center. The Company does not have any business operation in it. ALSTOM, the ultimate holding company of ALSTOM Group of Companies, holds 99.99% shares of the Acquirer 1 and balance 0.01% shares are held by 2 ALSTOM Group Companies and 4 other Individuals.

About Schneider Electric Infrastructure Limited (“Target Company 2/SEIL”)

Schneider Electric Infrastructure Limited is a Public Limited Company and having its registered office at Vadodara, Gujarat. Pursuant to the scheme of demerger, the distribution business of ALSTOM T&D India Limited was transferred to the Target Company 2 and the shares of the Company got listed on NSE, BSE and CSE.

About Schneider Electric Singapore Pte Ltd (“Acquirer 2”)

The Acquirer was incorporated on November 19, 1979 under the laws of Republic of Singapore and is engaged in the business of selling and distributing electrical products and equipments and



providing electrical and mechanical services. The Acquirer is a part of the Schneider group. SESEA holds 100% capital of the Acquirer 2.

About Schneider Electric Services International (“PAC1 / SESI”)

SESI was incorporated under the laws of Belgium. It belongs to Schneider Group and is the holding company of Schneider Electric Singapore Pte Ltd (Acquirer 2). SEI holds 88.96% of issued and paid-up share capital of SESI and balance 11.04% is held by Lexel AB (part of Schneider Group). SESI holds 54 Equity shares (30%) of the Grid Finance.

About Schneider Electric South East Asia (HQ) Pte Ltd (“PAC2 / SESEA”)

Incorporated under the laws of the Republic of Singapore, SESEA is a part of the Schneider Group and holds 100% of the issued and paid up share capital of the Acquirer 2. SEI holds 100% capital of SESEA and controls it.

About Energy Grid Automation Transformers and Switchgears India Limited (“PAC3 / Energy Grid”)

Energy Grid is a core investment company and is a part of Schneider Group and ALSTOM Group. However after the completion of primary acquisition, it will become part of only Schneider Group.

About ALSTOM Grid Finance B.V. (“Grid Finance”)

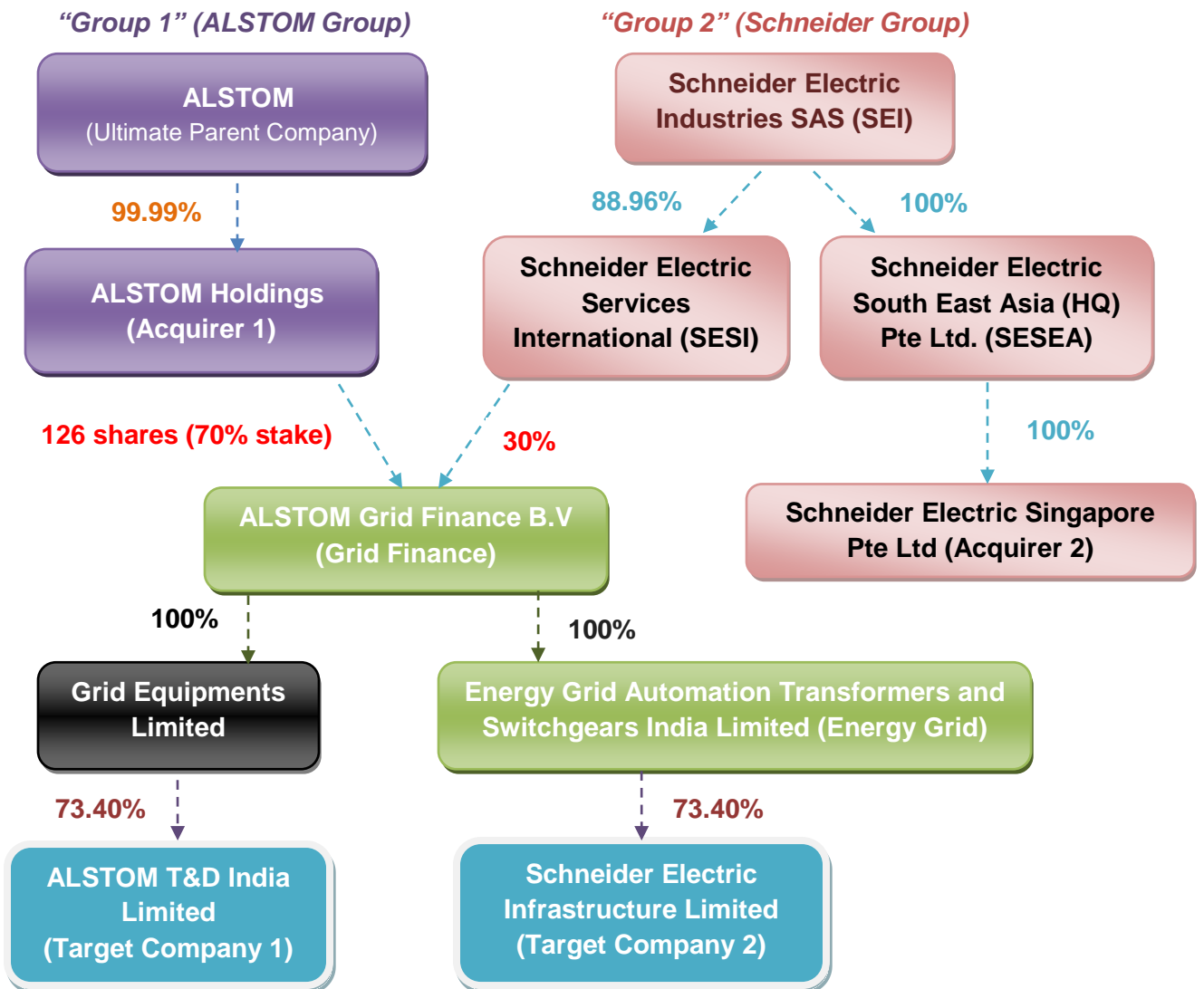
ALSTOM Grid Finance B.V. is jointly controlled by ALSTOM Holdings and SEI. Grid Finance holds 99.99% and has beneficial interest of 0.01% of the issued and paid-up share capital of Energy Grid. After the completion of acquisition, Grid Finance will solely come under the control of ALSTOM Group.

About Schneider Electric Industries SAS (“SEI”)

Incorporated under the laws of France, Schneider Electric Industries SAS is parent Company in the “Schneider Group”. SEI and ALSTOM Holdings have entered into Consortium Agreement on November 9, 2009 for the acquisition of the global transmission and distribution businesses of AREVA SA. SEI controls SESEA and is the holding company of both Acquirer 2 and SESI.



Pre Transaction Structure of ALSTOM and Schneider Group



Background of the Offer

On November 9, 2009, ALSTOM Holdings and SEI have entered into Consortium Agreement (as amended from time to time and supplemented by a letter agreement dated January 24, 2012 and a complementary consortium agreement dated March 19, 2012 entered into amongst ALSTOM Holdings, SEI and SESI) ("**Consortium Agreement**") for the acquisition of the global transmission and distribution businesses of AREVA SA. The transmission and distribution businesses in India are currently undertaken by ALSTOM T&D India Limited (Target Company 1) and Schneider Electric Infrastructure Limited (Target Company 2), which are jointly controlled by ALSTOM and

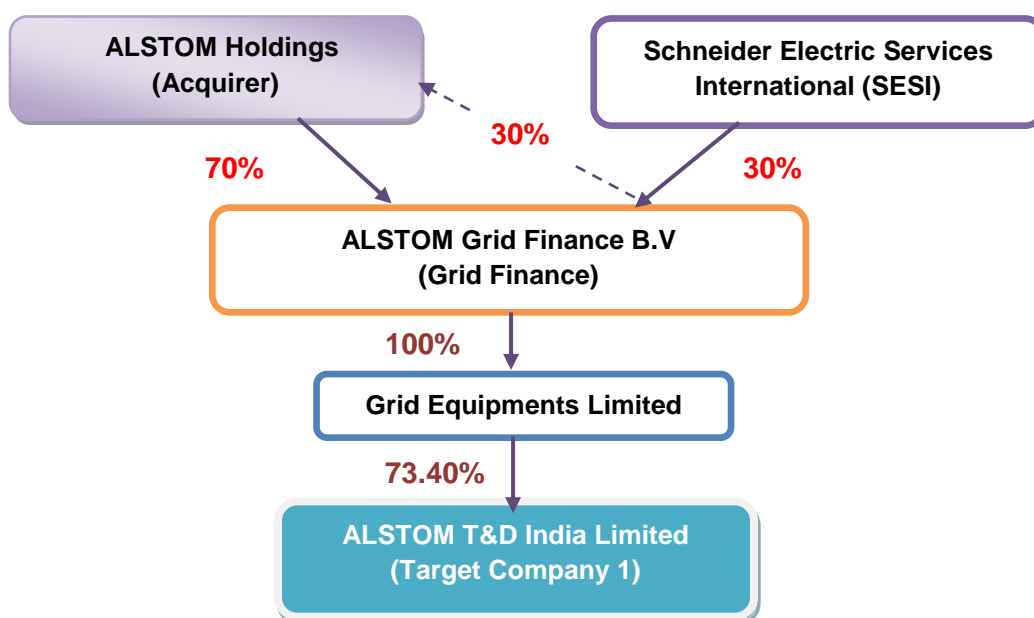
Schneider group of companies in keeping with the principles of management contained in the Consortium Agreement.

The Consortium Agreement provides for the agreement between the parties to eventually separate the transmission and distribution businesses such that the ALSTOM group shall solely control the transmission business and the Schneider group shall solely control the distribution business. To separate the transmission and distribution business in India, two Share Purchase Agreements have been entered amongst the companies. Details of the Agreements are provided below:

Triggering Event for ALSTOM T&D India Limited (Target Company 1)

On September 17, 2012, ALSTOM Holdings and SESI have entered into a Share Purchase Agreement (“SPA”), whereby SESI has agreed to transfer 54 equity shares representing 30% of the issued and paid-up share capital of Grid Finance to ALSTOM Holdings (**Primary Acquisition**). Grid Finance along with its nominees holds 100% of the issued and paid-up share capital of Grid Equipments Limited, which in turn holds 73.40% of the Voting Share Capital of the Target Company 1. Accordingly pursuant to the above underlying transaction, Acquirer will indirectly acquire control the Target Company.

However as of the date of completion of the Primary Acquisition, the same will be regarded as a deemed direct acquisition of control over the Target Company, as it will fall within the parameters prescribed under Regulation 5(2). Therefore the aforesaid agreement has triggered Regulation 4, 5(1) and 5(2) of the SEBI (SAST) Regulations, 2011.

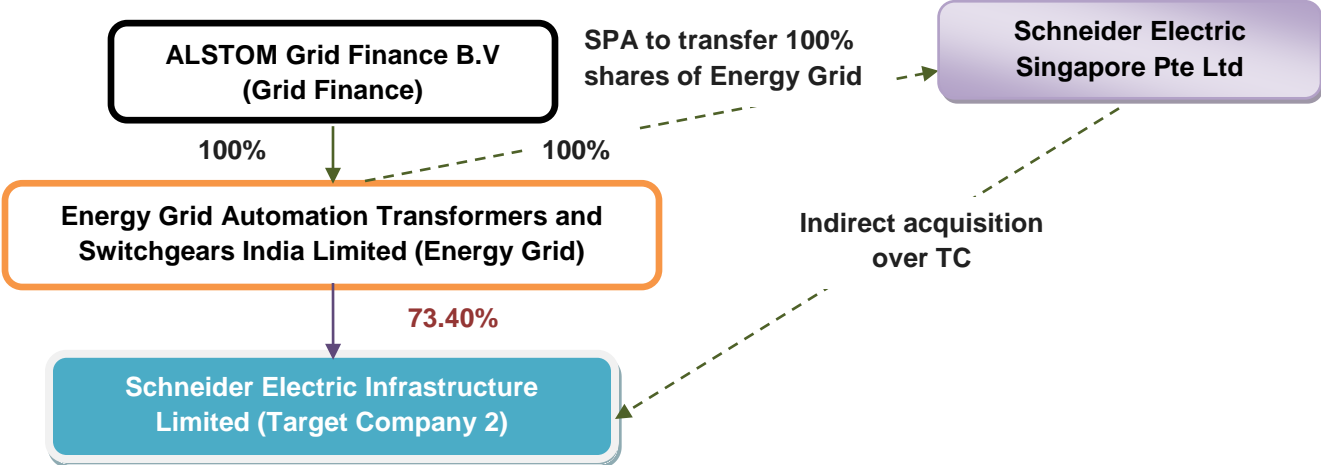


Open Offer under SEBI (SAST) Regulations, 2011

Accordingly, the Acquirer 1 has made the Public Announcement to the Equity Shareholders of the Target Company 1 to acquire 6,21,67,050 Equity Shares representing 26% of the voting share capital of the Target Company 1 at a price of Rs. 187.64 per equity share payable in cash.

Triggering Event for Schneider Electric Infrastructure Limited (Target Company 2)

On September 17, 2012, ALSTOM Grid Finance B.V. and Acquirer 2 have entered into a Share Purchase Agreement (“SPA”) whereby ALSTOM Grid Finance B.V. has agreed to transfer its legal and beneficial interest of 99.99% and beneficial interest of 0.01% in Energy Grid to Acquirer 2. Energy Grid in turn holds 73.40% of the paid up capital of the Target Company 2.



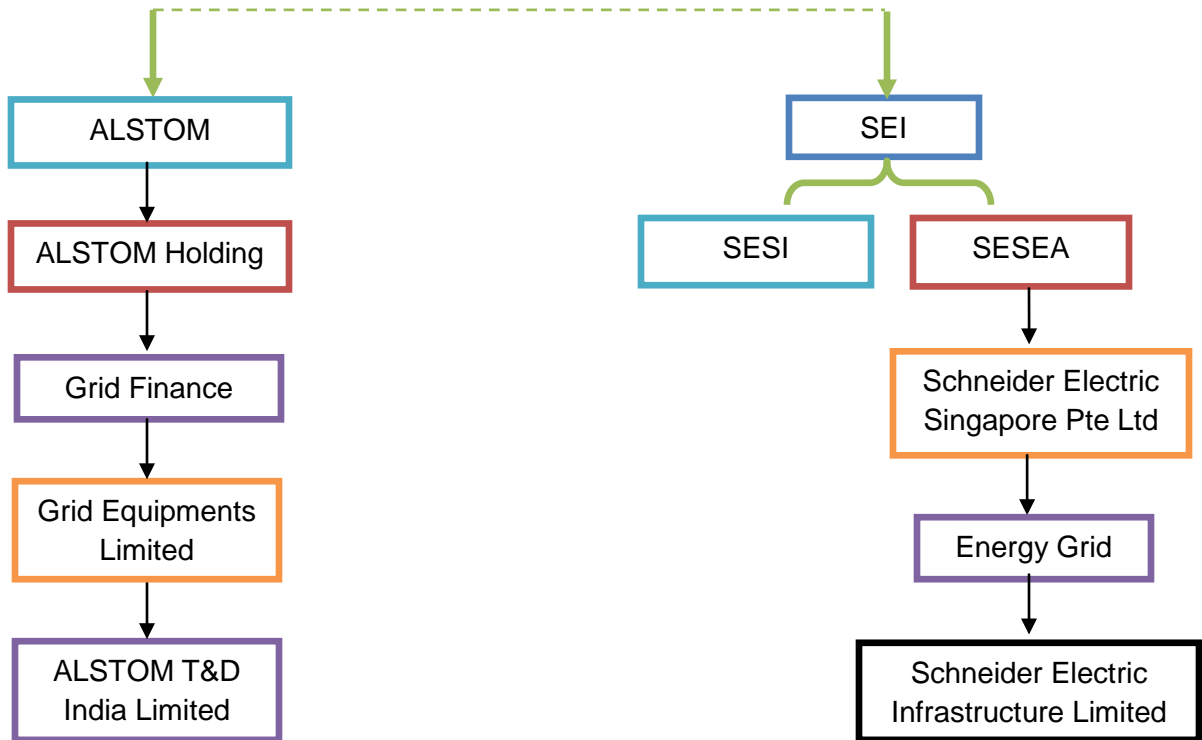
The Primary Acquisition will result in an indirect acquisition of voting rights in and control by the Acquirer 2 over the Target Company 2. However, it will be regarded as a deemed direct acquisition, as it falls within the parameters prescribed under Regulation 5(2) of the SEBI (SAST) Regulations, 2011, therefore the open offer is made under Regulation 3, 4, 5(1) and 5(2) of SEBI (SAST) Regulations, 2011.

Open Offer under SEBI (SAST) Regulations, 2011

Accordingly, the Acquirer 2 along with PACs have made an Open Offer Announcement to the Equity Shareholders of the Target Company 2 to acquire upto 6,21,67,050 shares representing 26% of the voting share capital of the Target Company 2 at a price of Rs. 83.10 per equity share payable in cash.



Post Structure of the Groups



Therefore, post completion of the primary acquisition together the acquisition of shares under the aforesaid Share Purchase Agreements, ALSTOM group shall solely control the transmission business and the Schneider group shall solely control the distribution business.





Market Updates

HERO MOTOCORP SIGNED DEAL WITH ITS EUROPEAN PARTNER

After having an end of JV with Japanese Company Honda, Hero MotoCorp now has signed an agreement with its European technology and designs partner. Hero is also planning to buy stake in its technology partner. The European firm has end-to-end capability in all kinds of two-wheelers and is expected to boast expertise in engines, hybrids and electric bikes. The name of the partner will be announced soon.

DALMIA CEMENT INDIRECTLY ACQUIRED ADHUNIK CEMENT

Cement manufacturer, Dalmia Bharat Enterprises Limited has acquired Adhunik Cement Limited through its subsidiary company, Dalmia Cement Bharat Limited for a total consideration of Rs. 560 crores. Adhunik Cement is a joint venture between the Adhunik Group and the MSP Group and sells cement under the Adhunik MSP brand. The acquisition of Adhunik Cement will strengthen the presence of Dalmia Cement in North East India.



MADRAS STOCK EXCHANGE PLANS TO MERGE WITH THE REGIONAL STOCK EXCHANGE

With a view to revive its own trading platform, Madras Stock Exchange (MSE) is in talks with three regional Stock Exchanges namely, Madhya Pradesh, Pune and Bangalore Stock Exchanges for a possible merger. MSE trading platform which was previously suspended in year 2004 will now launch on the Pongal festival day in January. The exchange is awaiting the SEBI clearance.



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 the publication of post offer public announcement is mandatory?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Question: 2

What are the different modes of deposit of consideration in the escrow account?

- A. Cash
- B. Cash or Securities
- C. Cash or Securities or Bank Guarantee
- D. Cash or Bank Guarantee

Mail your answer at info@takeovercode.com

Winners of Quiz – September 2012-

1. **Nikunj Savaliya**
2. **G.K. Sureka**
3. **Amit Kumar**



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- ⊕ Tax & Transaction Advisory;
- ⊕ ESOP/ESPS;
- ⊕ Domestic & Cross Border Investment Structuring;
- ⊕ Group Reorganisation;
- ⊕ Corporate Funding;
- ⊕ Issue Management.

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