

TAKEOVER PANORAMA

Year VI—Vol XI

November Edition

A Monthly Newsletter by Corporate Professionals

Legal Updates

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Hint of the Month

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Regular Section

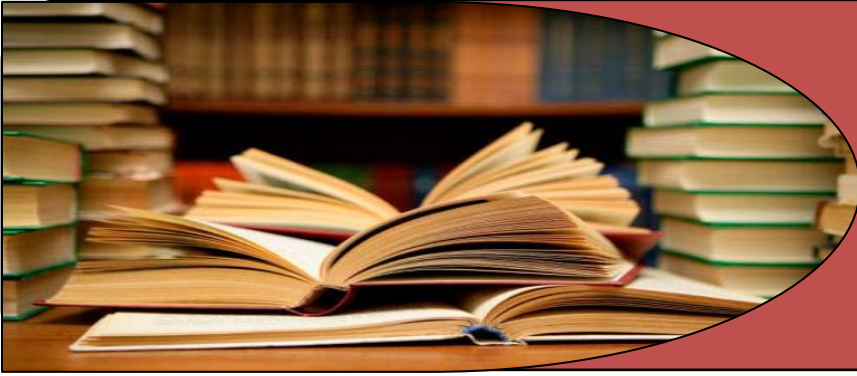
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LEGAL UPDATES

Takeover Exemption Order in the matter of Hemakuta Industrial Investment Co. Ltd.

Facts:

1. The existing promoters of Hemakuta Industrial Investment Co. Ltd. (Target Company) holds 5,96,260 equity shares amounting to 47.70% of the paid-up capital of the Target Company. The equity shares of Target Company are listed on BSE.
2. Mr. Kannan Krishnan Naiker (Acquirer/Applicant) holds 3,05,000 shares representing 24.4% of the paid up capital of the Target Company. Now the Acquirer proposes to acquire 5,62,500 equity shares representing 45% of the paid-up capital of the Target Company from its existing promoters which will increase his shareholding from 24.4% to 69.4%, resulting into triggering of Regulation 3(1) and 4 of SEBI (SAST) Regulations, 2011 (Regulations).
3. Accordingly, the Applicant have made an application under Regulation 11(1) of the Regulations with the SEBI (Board) seeking exemption from the open offer requirement under Regulation 3(1) & 4 of the Regulations in respect of the aforesaid acquisition.

Snapshot

SEBI relaxes the Acquirer from compliances of making Open Offer where the Acquirers are bringing funds to revive and restart the business operation of the Target Company.

Grounds of Exemption:

1. Target Company was incorporated in 1940 and it has been scaled down since 1985 when the account with bank was irregular and bank recovery was filed.



2. The shares of the Target Company has been suspended from BSE since 2002 due to non compliances;
3. Due to heavy accumulated losses, income tax liability and unavailability of working capital funds the business of the company has come to the standstill.
4. The original promoters of the company are old and not in a position to infuse the additional funds in order to revive the company. Further it is not possible to raise funds from the banks or other investor as the net worth of the company is negative and has no revenue generation.
5. The proposed promoters are financially strong and would be able to bring additional capital and restart the business operation.
6. The shares will be acquired at a price of Rs. 1 each and will incur total cost of Rs. 7.25 Lakhs. There will be no adverse loss to the shareholders. If exemption is allowed, the said amount can be utilized for revival of Target Company
7. The Acquirer does not intend to deprive shareholders from exit opportunity and will make individual offer to the shareholders of Target Company at a price of Rs. 1 per share. Therefore exemption is sought only from the procedural requirement of Chapter III and IV of the Regulations.
8. If pursuant to acquisition from public shareholders, the applicant's shareholding exceeds the limit of 75%, the applicant will take necessary steps to facilitate compliance with the provisions of the Securities Contracts (Regulation) Rules, 1957.

Decision:

SEBI observed that the Applicant is the single largest shareholder of the Target Company and the combined net worth of Applicant along with his relatives is Rs. 50,88,76,656. The Acquirer intends to revive the Target Company and will bring additional funds and restart the activity of Target Company.

Therefore after considering the facts and circumstances of the case, SEBI granted exemption/relaxation to the Acquirer from making Open Offer subject to the compliances of following conditions:

1. Acquirer shall appoint a merchant Banker to monitor and supervise the offer.
2. Acquirer will send individual offer to all shareholders by registered post with due acknowledgement at their address.



3. Offer price shall be in accordance with Regulation 8 of the Regulations or the price at which the applicant had purchased shares of the target company during August/November 2011, whichever is higher.
4. Before sending the offer letters, the company shall intimate BSE about his offer and mode of offer and BSE shall disseminate the same on its website.
5. Acquirer shall make a public notice in two news papers i.e. one in English and one in Kannada giving the details of the offer.
6. The Open offer shall be completed within 3 months from the date of this order and a certificate of Merchant Banker shall be submitted to the Board within 7 days from the completion of offer.
7. Necessary steps shall be taken to comply with Regulation 7(4) of the Regulations.

Takeover Exemption Order in the matter of AIA Engineering Limited

Facts:

1. AIA Engineering Limited (Target Company/AEL) is a company incorporated under the Companies Act, 1956 having its shares listed at BSE and NSE. The shareholding of the promoter group of Target Company is 61.65%. As per the disclosure filed to Stock Exchanges, Mr. Bhadresh K Shah (42%), Bhadresh K Shah HUF (19.62%), Bhadresh K Shah and Gita B Shah (0.01%), Khusali B Shah (0.01%), Bhumika B Shah (0.01%) and Gita B Shah (0.01%) belongs to the promoter and promoter group of the Target Company.
2. Grey Cast Foundry Works (Acquirer) is a Partnership Firm. The partners of the firm are Bhadresh K. Shah (Managing Partner), Bhadresh K Shah (HUF) (Seller) and Vrindavan Alloys Private Limited (VAPL). -

Snapshot

Exemption granted wherein the seller is promoter of Target Company and the acquirer is a promoter group entity of Target Company in which 100% profit sharing ratio is held by promoters of Target Company.



At present, the Acquirer directly does not hold any shares in the Target Company. However, its partners, Mr. Bhadresh K. Shah, holds 42% shares and Bhadresh K Shah (HUF) holds 19.62% shares in the Target Company

3. Now the Acquirer proposes to acquire 1,41,48,050 equity shares constituting 15% of paid up capital from Bhadresh K Shah HUF (out of 19.62% shares held by it) through Block Deals on Stock Exchange at the market price on date of purchase.
4. The proposed acquisition will increase the shareholding of Acquirer from 0% to 15%, and the shareholding of Acquirer together with PAC will increase from 42.04% to 57.04%, therefore, the Acquirer through its partner Bhadresh K Shah, has made an application under Regulation 11(1) of SEBI (SAST) Regulations, 2011, seeking exemption from the applicability of open offer requirement under Regulation 3(2) read with Regulation 5(2) of SEBI (SAST) Regulation, 2011 on the following grounds:

Grounds of Exemption:

1. The Target Company is promoted by Bhadresh K Shah and he along with the person acting in concert holds 61.65% shares of the Target Company.
2. In the Offer Document (November 2005), it has been specifically stated that the Target Company has acquired the entire business of the Acquirer since December 31, 2004 and all liabilities and assets of the Acquirer have been taken over by the Target Company. The association between the Target Company and the Acquirer is old.
3. Vrindavan Alloys Private Limited (a partner of the Acquirer) has also been shown as a promoter and a promoter group company in the Prospectus dated November 29, 2005. Mr. Bhadresh K. Shah and his wife are the promoters of the entity and hold 99% in it;
4. The proposed transfer to the Acquirer is a part of the restructuring of shareholding amongst the family members of the promoter family/promoter group in the Target Company.
5. The proposed acquisition will take place between the seller who is promoter of Target Company and the acquirer who is a promoter group entity in which 100% profit sharing ratio is held by promoters.
6. No change in control or management of Target Company.
7. The Target Company, Acquirer, Seller are controlled and promoted by Bhadresh K Shah and his family members whether directly or indirectly.
8. The exemption available in Regulation 10(1)(a)(ii), (iv) and (v) do not apply for the aforesaid acquisition.



Decision:

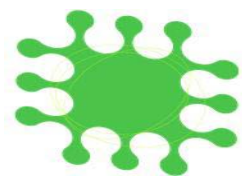
SEBI observed that Bhadresh K Shah HUF, one of the promoter, will transfer 15% shareholding to the Acquirer in whom the promoters of the Target Company are the partners. There is no fresh acquisition of shares by the promoter group and the pre-acquisition and post acquisition shareholding of the promoter group would remain the same at 61.65%. Moreover there would be no change in the management or control of the Target Company as a result of the proposed transaction.

Considering the above facts and circumstances of the case, SEBI granted exemption to the Acquirer from the requirement of making Open Offer under Regulation 3(2) of SEBI (SAST) Regulations, 2011 subject to the condition that if there is any change in the constitution of partners of the Acquirer, it may attract provisions of SEBI (SAST) Regulations, 2011 and the acquirer shall 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 (Noticee/Target Company/PIL). Investigation revealed that:

1. Dawood Investment Pvt. Ltd. acquired shares of Noticee thereby increasing its shareholding from 1.25% to 5.76% and made the disclosure under Regulation 13(1) of PIT Regulations and Regulation 7(1) & (2) of the SAST Regulations with the Noticee. However, the Noticee failed to disclose the same under Regulation 13(6) of PIT Regulations and Regulation 7(3) of SAST Regulations to the Stock Exchanges within the stipulated time.
2. Park Continental Limited (PCL) decreased its shareholding from 13.85% to 9.34% in the Noticee and accordingly made the disclosure under Regulation 13(3) and (5) of the PIT Regulations but the Noticee failed to disclose the same under Regulation 13(6) to the Stock Exchanges. Thereafter the shareholding of PCL increased from 9.34% to 10.34% and it made the required disclosures under Regulation 7(1) of SAST Regulations but the Noticee failed to disclose the same under Regulation 7(3).
3. PCL again increased its shareholding from 10.34% to 14.29% and disclosed the same under Regulations 13(3) and (5) of PIT Regulations and Regulation 7(1) of SAST Regulations with



Noticee but the Noticee did not disclose the same under Regulations 13(6) of PIT Regulations and Regulation 7(3) of SAST Regulations to the Stock Exchanges.

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. 2,00,000 towards settlement charges.

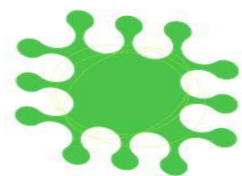
The terms as proposed by the Noticee were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and disposes of said proceedings against the Noticee.

Consent Order in the matter of Peacock Industries Limited (Dawood Investment Pvt. Ltd)

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 Dawood Investment Pvt. Ltd (Noticee) in the Target Company prior to March 26, 2009 was 1,93,300 shares constituting 1.25% of the total paid up capital of the Target Company. On March 26, 2009, the Noticee acquired 1,93,300 (4.51%) shares thereby increasing its shareholding from 1.25% to 5.76% but did not make 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. 1,00,000 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.



Consent order in the matter of Sharp Trading & Finance Ltd.

During the examination of offer document filed for the acquisition of shares of Sharp Trading & Finance Ltd. (Applicant), it was observed that the applicant has delayed in making compliances under the provision of Regulation 8(3) of SEBI (SAST) Regulations, 1997 for the years 2004, 2006, 2007, 2009 and 2010. Therefore, vide application dated February 01, 2011, the applicant had proposed to settle the aforesaid delay in making the disclosures on the payment of Rs. 2,50,000 towards 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-compliances of the Applicant.

Consent order in the matter of Sophia Finance Limited

Sophia Finance Ltd. (Applicant) had delayed in complying with the provisions of Regulation 6(2), 6(4), 7(3) and 8(3) of SEBI (SAST) Regulations, 1997. The applicant have complied the provision of Regulation 6(2) & 6(3) with a delay of 5011 days, Regulation 7(3) with a delay of 3607 Delays and Regulation 8(3) with a delay of 1130, 765, 3965, 33, 3205, 2840, 2474, 2109, 1744, 1379, 1013, 648 and 283 days for the year ended 1998 to 2010.

Therefore, the Applicant had voluntary filed the consent application to settle the non-compliance on the payment of Rs. 5,00,000 towards settlement charges. The terms as proposed by the applicant were placed before the High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non-compliances of the Applicant.



Adjudicating Officer Order

TARGET COMPANY	NOTICEE	REGULATION	PENALTY IMPOSED/ DECISION TAKEN
Livingroom Lifestyle Ltd. [Presently known as "Chisel & Hammer (Mobel) Ltd]	Gulistan Vanijya Pvt. Ltd.	Regulation 7(1) read with 7(2) of SEBI (SAST) Regulations 1997 and Regulation 13(1) & (3) of SEBI (PIT) Regulations, 1992	Rs. 45,000

HINT OF THE MONTH

The Target Company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

{As substantiated from Regulation 26(4) of SEBI (SAST) Regulations, 2011}





Latest Open Offers

Target Company

Gujarat Gas Company Limited

Registered Office

Ahmedabad

Networth of TC

Rs. 9121.85 Million

Listed At

NSE, BSE, ASE and VSE

Industry of TC

Gas

Acquirer

GSPC Distribution Networks Limited (Acquirer), Gujarat State Petroleum Corporation Limited, Gujarat State Petronet Limited and GSPC Gas Company Limited (PACs)

Triggering Event: SPA for acquisition of 8,35,18,750 (65.12%) fully paid up equity shares and control over Target Company.

Details of the offer: Offer to acquire 3,33,45,000 (26.00%) Equity Shares at a price of Rs. 314.17/- per share payable in cash.

Triggering Event: SPA for acquisition of 7,000 (2.92%) fully paid up equity shares and control over the Target Company.

Details of the offer: Offer to acquire 62,400 (26.00%) Equity Shares at a price of Rs 15/- per share payable in cash.

Target Company

Yamini Investments Company Limited

Registered Office

Mumbai

Networth of TC

Rs. 20 Lakhs

Listed At

BSE

Industry of TC

Investment

Acquirers

Vandana Agarwal

Target Company

Firstsource Solutions Limited

Registered Office

Mumbai

Networth of TC

Rs. 1,429.88 Crores

Listed At

NSE and BSE

Industry of TC

BPO

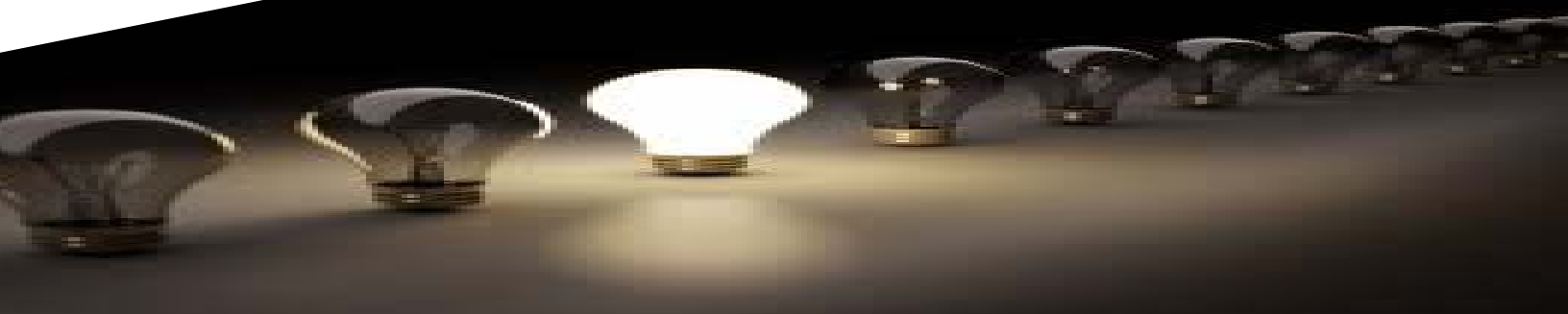
Acquirer

Spenn Liq Private Limited
(Acquirer) along with CESC
Limited (PAC)

Triggering Event: SSA for allotment of 22,68,97,444 (34.50%) and SPA for acquisition of 9,86,51,064 (15%) and control over Target Company

Details of the offer: Offer to acquire 19,84,85,163 (26.00%) Equity Shares at a price of Rs. 12.20/- per share payable in cash.





Regular section

Indirect acquisition of Shares or Control

Indirect Acquisition means acquisition of shares or voting rights or control over the Target Company by virtue of acquisition of some other company.

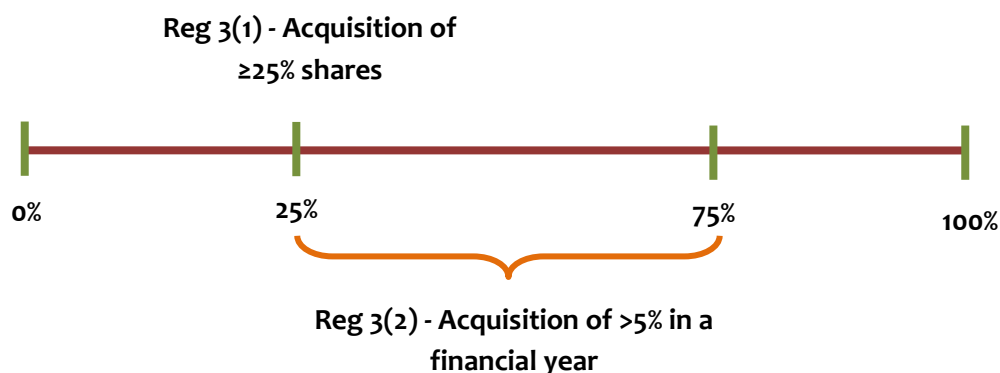
Regulation 5 of SEBI (SAST) Regulations, 2011 provides the provisions relating to indirect acquisition of shares or voting rights or control over the Target Company.

Regulation 5(1) – Indirect Acquisition

Indirect acquisition is define to mean the acquisition of shares of or voting rights in or control over other entity or company which would enable any person and PACs to **exercise or direct the exercise of voting rights** in the Target Company in excess of the limit as prescribed under SEBI (SAST) Regulations, 2011 or Control over the Target Company which will attract the Open Offer Obligations.



Indirect acquisition under SEBI (SAST) Regulations, 2011



Further, acquisition of control over the target company would trigger the obligation to make open offer even though there is no acquisition of shares or voting rights.

Regulation 5(2) – Deemed Direct Acquisition

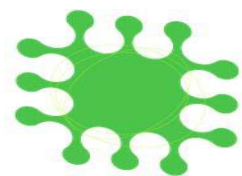
SEBI has come out with a new concept known as **Deemed Direct Acquisition**. Regulation 5(2) provides three situations, wherein indirect acquisition would be treated as Deemed Direct Acquisition i.e. where;

- i. the **proportionate net asset value** of the target company as a **percentage of the consolidated net asset value** of the entity or business being acquired; or
- ii. the **proportionate sales turnover** of the target company as a **percentage of the consolidated sales turnover** of the entity or business being acquired; or
- iii. the **proportionate market capitalisation** of the target company as a **percentage of the enterprise value** for the entity or business being acquired;

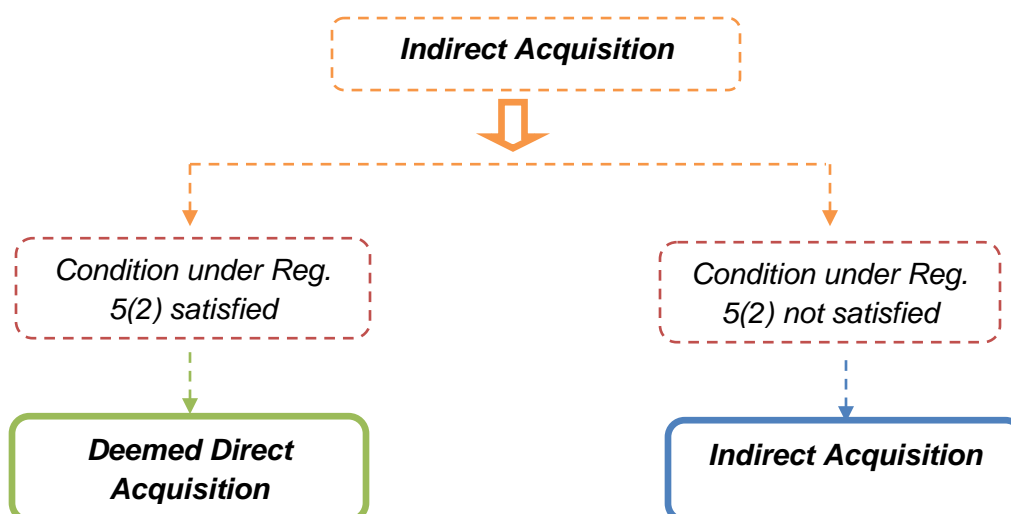
On the basis of the latest audited annual financial statements is **more than 80%**, then such indirect acquisition will be regarded as Direct Acquisition of Target Company.

Accordingly if any indirect acquisition will be treated as Deemed Direct Acquisition, then all the provisions of direct acquisition shall be applicable on such acquisition including but not limited to time for making open offer, pricing and other compliances.

The market capitalisation mentioned in clause (iii) shall be calculated on the basis of the ***volume-weighted average market price*** of such shares on the stock exchange where the maximum volume of trading in the shares of the target company are recorded for a period of **60 trading days preceding the date on which the primary acquisition is contracted, or the**



date on which the intention or the decision to make the primary acquisition is announced in the public domain, whichever is earlier.



Some Major Important provisions related to Indirect Acquisition:

Indirect Acquisition	Deemed Direct Acquisition
• Offer Price	
<p>Offer Price shall be highest of:</p> <ul style="list-style-type: none"> ✓ Highest Price paid per share under the Agreement ✓ Volume-weighted average price for acquisition made during preceding 52 weeks earlier of [^] ✓ Highest price paid for acquisition made during preceding 26 weeks earlier of [^] ✓ Highest price paid for acquisition between the earlier of [^] ✓ Volume-weighted average market price for 60 trading days preceding date of PA earlier of [^] ✓ The per share value computed under reg. 8(5) <p>[^] Earlier of:</p> <ul style="list-style-type: none"> • date of the primary acquisition • date on which the intention or the decision to make the primary acquisition is announced 	<p>Offer Price shall be highest of:</p> <ul style="list-style-type: none"> ✓ Highest Price paid per share under the Agreement ✓ Volume-weighted average price for acquisition made during 52 weeks preceding date of PA ✓ Highest price paid for acquisition made during 26 weeks preceding date of PA ✓ Volume-weighted average market price for 60 trading days preceding date of PA ✓ Or ✓ Other Valuation Parameters - Book Value, Comparable trading multiples, Earning per share and other parameters



It is to be noted that the offer price shall be increase at the rate of 10 % per annum for the period on the date on which primary transaction is contracted or from the date of the primary transaction being announced in the public domain, whichever is earlier until the date of actual Detailed Public Statement in respect of the target company where such period is more than 5 working days.	
<ul style="list-style-type: none"> Time for making PA 	
4 working days from earlier of: <ul style="list-style-type: none"> ✓ date on which the primary acquisition is contracted, or ✓ date on which the intention or decision to make the primary acquisition is announced in the public domain. 	On the earlier of: <ul style="list-style-type: none"> ✓ date on which the primary acquisition is contracted, or ✓ date on which the intention or decision to make the primary acquisition is announced in the public domain
<ul style="list-style-type: none"> Offer Size 	
26%	26%

Open Offers made under SEBI (SAST) Regulations, 2012 made pursuant to Indirect Acquisition:

<i>Target Company</i>	<i>Acquisition</i>
ALSTOM T&D India Limited	Deemed Direct Acquisition
Schneider Electric Infrastructure Limited	Deemed Direct Acquisition
Shree Digvijay Cement Co. Limited	Indirect Acquisition
Acme Resources Limited	Indirect Acquisition
ESAB India Limited	Indirect Acquisition



Determination of Person Acting in Concert in the matter of MAN Industries (India) Limited

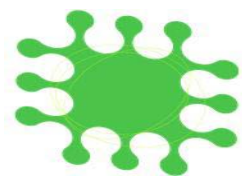
About MAN Industries (India) Limited (Target Company)

Incorporated on **May 19, 1988**, **MAN Industries (India) Limited** (Target Company) is a leading manufacturer and exporter of large diameter Carbon Steel Line Pipes for various high pressure transmission applications for Gas, Crude Oil, Petrochemical Products and Potable Water. The shares of the Target Company are listed on BSE Limited (BSE) and National Stock Exchange of India Limited (NSE).

The Target Company was promoted by Mr. J. L. Mansukhani and his two sons Mr. R. C. Mansukhani "**RCM Group**" and Mr. J. C. Mansukhani "**JCM Group**".

Background of the Transaction:

- On June 16, 2010, the Target Company had informed the BSE that its Board of Directors at meeting held on June 15, 2010, had considered and approved the *allotment of 2,50,000 Equity Shares* of Rs. 5/- each at a premium of Rs 30/- per share to Mr. Nikhil Mansukhani, a promoter, upon conversion of 2,50,000 warrants by way of preferential allotment.
- On June 21, 2010, the Target Company informed BSE that Board of Directors at their meeting held on June 19, 2010 has *allotted 10 Lakhs shares* of Rs 5/- each at a premium of Rs 30/- per share to Mr. Nikhil Mansukhani, MS. Anita Mansukhani and JPA Holdings Pvt. Ltd. upon conversion of 10 Lakhs warrants.
- During the quarter ended September 2010, JCM Group made some acquisition of shares from the open market.

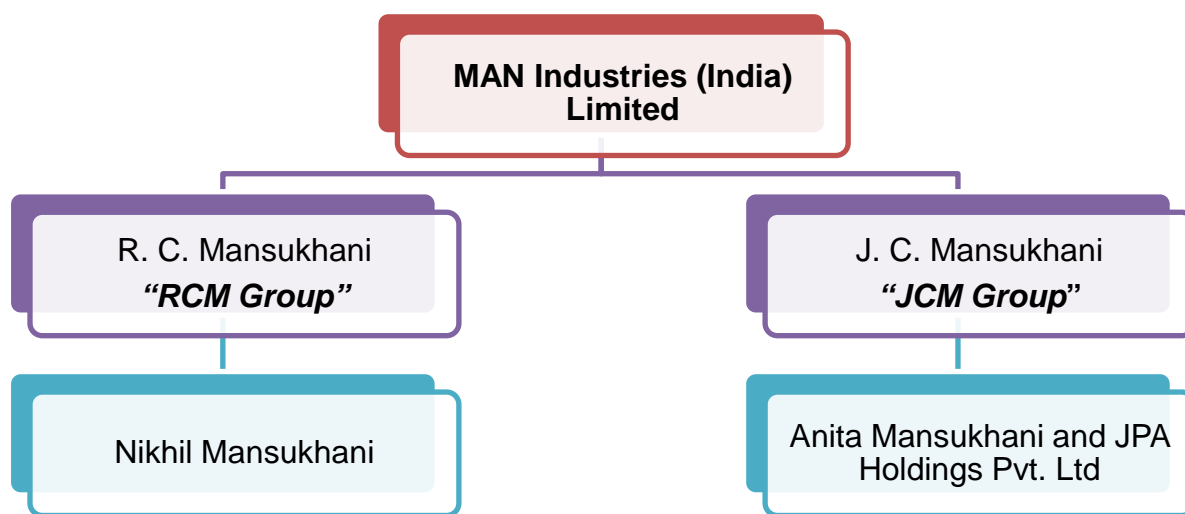


Triggering Event:

Pursuant to the allotment of shares on June 15, 2010 and June 19, 2010 and acquisition made in quarter ended September 2010, the shareholding of promoter group of Target Company increased from 53.36% to 55.18% i.e. an increase of 1.82% shares, which has resulted into triggering the Regulation 11(1) read with the proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997 (hereinafter called as “SAST Regulations”).

Pursuant to the said acquisition Mr. Nikhil Mansukhani, Ms. Anita Mansukhani and JPA Holdings Pvt. Ltd (Acquirers/Noticees) were required to make an open offer under the SAST Regulations. However, the acquirers did not make the open offer and therefore violated the provisions of SAST Regulations.

Pursuant to the non compliance of the SAST Regulations, SEBI (Board) issued the show cause notice to the acquirers as to why the proceeding should not be initiated against them.



Submission of the Notices:

The Noticees contended that they were not acting on concert for acquisition of shares of the Target Company on following grounds:

Mr. Nikhil Mansukhani – Mr. Nikhil Mansukhani submitted that before allotting the shares against the warrants to him, the Board had satisfied itself that the allotment of shares was within the permissible limits as specified in the SEBI (SAST) Regulations, 1997. However Mr. J C Mansukhani and JPA Holdings Pvt. Ltd made some market purchase and did not disclose the



acquisition of shares made by him and his associate company. Mr. J C Mansukhani was not only present at the said meeting of the Board but he was a part of the decision taken by the Board. As a result, the total shareholding of the promoter group consequent to the said allotment against conversion of warrants increased to only 54.93% of the total capital of the company which was well within the permissible limits. However, neither the company nor the Board meeting where such allotment was made was informed by him of the additional shares acquired by him. If the Board would have been informed of the said acquisition of shares, the Board would have approved conversion of lesser number of warrants so as to remain within the prescribed limits permissible under the regulations.

Ms. Anita Mansukhani and JPA Holdings Pvt. Ltd. – The Noticees stated that they were not aware that subsequent to the allotment of shares to them, the total promoters' shareholding would increase to 55.18% thereby crossing the threshold limit of 55% and that it is the duty of the company and its Board to check the threshold limit before making allotment to them.

They further submitted that there has been a serious rift between Mr. R C Mansukhani (RCM) and Mr. J C Mansukhani (JCM) from October 2009, when Mr. R C Mansukhani attempted to interfere with and curtail the powers of Mr. J C Mansukhani. The RCM group is in control of the company and is systematically trying to marginalize the JCM group including the Noticees herein.

It was further stated that the RCM group has willfully and with a view to exert undue pressure on the JCM group has attempted to expose Mr. J C Mansukhani and JPA Holdings Pvt. Ltd. to proceedings under the SEBI Act by not filing the requisite disclosures with stock exchanges, despite the same having been made available to the company.

The relationship between both the groups had deteriorated to such an extent that the JCM group was constrained to take legal recourse by filing the CLB Petition in October 2010 for relief against the acts of oppression and mismanagement perpetrated by the RCM group.

Adjudicating Officer Order:

The Adjudicating Officer held that if the Noticees had no intention of acquiring more than 55% of the share capital, then on becoming aware of the violation they could have taken appropriate corrective action as per law. But there is no document on record to signify such an intention. This indicates that they wish to continue to hold these shares which have resulted in the



promoters' holding exceeding 55% of the paid up share capital. It was also held that the rift between the two promoter groups of the Company does not change the liability of the Acquirers/Noticees.

It was further contended that Mr. J C Mansukhani did not disclose the acquisition of shares made by him and his associate company a few days earlier to the Company due to which the conversion of the warrants was approved by the Board and shares were allotted. It is to be noted that it is the Noticee who had applied for conversion of warrants and the company had done so. Thus, there is no liability on the company to monitor the promoters' holdings. The liability pursuant to acquisition is that of the acquirer.

Therefore after considering all the facts and circumstances of the case, the Adjudicating Officer imposed a monetary penalty of Rs. 10,00,00,000 on the Noticees for the violation of Regulation 11(1) read with second proviso to Regulation 11(2) of (SAST) Regulations, 1997

Appeal against the order of AO on the following Contentions:

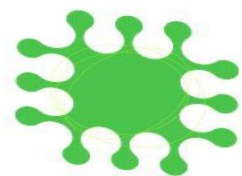
Aggrieved by the order of adjudicating officer, Nikhil Mansukhani filed an appeal before Securities Appellant Tribunal.

Consideration of Securities Appellant Tribunal (SAT):

While interpreting the definition of Person acting in concert as given under Regulation 2(1) (e) of SAST Regulations, Hon'ble SAT relied on the following judgments

Supreme Court Decision in the matter of Daiichi Sankyo Co. Ltd.:

*“The idea of “person acting in concert” is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, **the***



element of the shared common objective or purpose is the sine qua non for the relationship of “person acting in concert” to come into being.”

Bombay High Court Order in the matter of K. K. Modi vs. Securities Appellate Tribunal:

“Co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the Target Company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer.”

Since Mr. J. C. Mansukhani had acquired shares independent of the other shareholders and was not a person acting in concert. Thus if his acquisition was taken out, the remaining shareholding of the promoter group works out to only 54.93% i.e. below 55%. Hence, there was no requirement of making a public announcement as required under regulation 11(1) read with second proviso to regulation 11(2).

Verdict of SAT:

Hon'ble SAT held that there was sufficient material available on record to show that the dispute between the two promoter groups is continuing since 2009. Thus it was for the Board to bring sufficient material on record to show that inspite of conflict among the promoters, the members of the two groups were acting in concert while acquiring the shares.

Accordingly the Hon'ble SAT **set aside** the impugned order and remand the matter to the Board for passing a fresh order dealing with the submissions made by the appellants.





Market Updates

FORTIS HEALTHCARE RAISES \$510 MILLION THROUGH STAKE SALE

Religare Health Trust (“RHT”), of which Fortis Healthcare is the Sponsor, successfully raised approximately S\$510.7 million by listing its units on the Singapore Exchange (“SGX”). Following the listing Fortis will, through its wholly owned overseas subsidiary, continue to hold 28% stake in RHT.

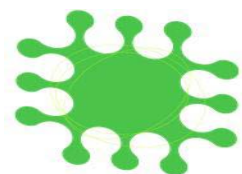
BHARTI AND WAL-MART PLANS TO FORM A 50:50 JV

After having 5 years of partnership in whole business with Wal-Mart, Bharti Enterprise is now in talks with Wal-mart to form a 50:50 joint venture to roll out retail outlets in India, following government’s decision allowing 51% FDI from outside India in multi brands retail segments. The earlier JV established wholesale cash-and-carry stores and back-end supply chain management operations in line with GOI guidelines.



RAMKY ENVIRO ACQUIRES ENTECH INDUSTRIES

Ramky Enviro Engineers, part of Ramky Group, has acquired Australian firm Entech Industries Pty Limited. Entech is a subsidiary of public-listed technical waste operator Tox Free Solutions Limited and offers environmental and waste treatment solutions to government and industrial customers in Australia and China. The acquisition will help Ramky to expand its services to Indian and multinational customers in Australia and Greater China.



Quiz

**PLAY THE QUIZ
TEST YOURSELF**

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

Question: 1

What Term is used for public announcement published in the newspapers?

- A. Public Announcement
- B. Public Statement
- C. Detailed Public Statement
- D. Detailed Public Announcement
- E. Complete Public Statement

Mail your answer at info@takeovercode.com

Question: 2

Whether the amount paid by the acquirer as control premium to the selling shareholder is required to be offered to the shareholders under the Open Offer?

- A. Yes
- B. Yes but where it is beyond 25% of the Offer Price
- C. No

Mail your answer at info@takeovercode.com

Winners of Quiz – October 2012-edition

- 1. Anusha**
- 2. Deepak Mishra**
- 3. Ashish lahoti**



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