



Takeover *panorama*

Insight

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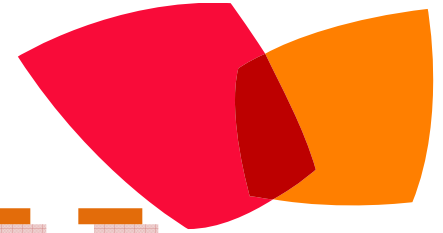


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Recent Updates



SEBI Order in the matter of ADC TELECOMMUNICATIONS, INC. vs. ADJUDICATING OFFICER

Regulation Title: Regulation 22(7)

Facts:

KCL is stated to be a joint venture between KRONE GmbH, a company incorporated under the laws of Germany and Karnataka State Electronics Development Corporation Limited. ADC entered into a share purchase agreement (SPA) with GenTek Holding Corporation (GenTek) to acquire 100% equity of KRONE a wholly owned subsidiary of GenTek. In turn, KRONE held 2,346,000 shares of KCL, constituting 51% of the voting equity capital of KCL. As the aforesaid constituted indirect acquisition of shares and control of the target company, the acquirer and persons acting in concert made a public announcement to acquire 23% of share capital of the target company and accordingly filed Letter of Offer before SEBI. During the course of scrutiny of this filing, it was observed that PAC replaced two of its nominee directors on the board of Target Company with two new directors on July 24, 2004, i.e. after the signing of the Share purchase agreement (SPA).

Allegation:

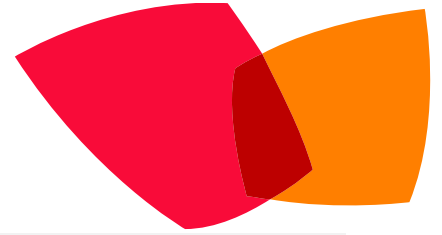
It is alleged that since the completion of the open offer formalities pertaining to KCL were not completed as on July 24, 2004, the acquirer or PAC were not entitled to be appointed on the board of directors of the target company, i.e., KCL in terms of Regulation 22(7) read with 2(1) (f) of Takeover Regulations

Contentions:

- 1) It can be said that an acquirer without having made a public offer should not appoint a nominee on the board of a target company and where the appointment of a director to the board is out of replacement of an existing director of a person acting in concert, this restriction is not intended. Mr.Hemmady was a replacement of an existing nominee director on the board of KCL. The appointment was made by KCL without impacting the overall board membership enjoyed by KRONE GmbH and, thereby, without acquiring any additional rights/control or prejudicing any shareholders' interest.
- 2) It is further submitted that the term "offer period" under Regulation 2(1)(f) of the Regulations "means the period between the date of entering into Memorandum of Understanding or the public announcement, as the case may be, and the date of completion of offer formalities relating to the offer made under these regulations.
- 3) Also the alleged violation has neither given any disproportionate gain to the acquirer or person acting in concert nor caused any loss to any investor/shareholder.

Order:

The appointment of directors was made prior to the date of public announcement so it cannot be held that the appointment was made during the offer period in violation of the provisions of Regulation 22(7) of the Takeover Regulation. In view of the same the violation of Regulation 22(7) by acquirer has not been established and hence the adjudication proceedings against the acquirer are disposed of.



SEBI Order In the matter of Anand Arya v Adjudicating officer

Regulation Title: Regulation 3(1) (e) (iii), 3(3), 3(4)

Facts:

Mr. Anand Arya submitted a report to Securities and Exchange Board of India in terms of regulation 3(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 for acquisition of 16,11,054 shares representing 44.22% of the share/voting capital of Premier Synthetics Limited. As the said acquisition was an 'inter-se transfer of shares amongst qualifying promoters' exemption was sought from the applicability of regulation 11(1) of SAST Regulations under regulation 3(1)(e)(iii)(b) of SAST Regulations. As the individual as well as the collective acquisition of the Noticees exceeded 5% of the voting share capital of the company, they were required to notify the stock exchanges where the shares of the company are listed at least four working days in advance of the date of the proposed acquisition in terms of regulation 3(3) of SAST Regulations. Upon examination of the aforesaid report, it was observed that the disclosure required to have been made under regulation 3(3) of SAST Regulations was made by the Noticees almost after 1 year of acquisition.

Allegations:

It was alleged that the Noticees had not complied with the requirements of regulation 3(3) of SAST Regulations.

Contentions:

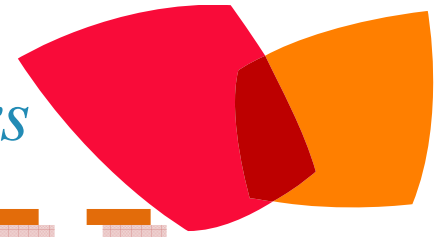
- 1) The failure to notify the details of the proposed transactions at least 4 working days in advance of the respective dates of proposed acquisitions was due to inadvertence and sheer oversight and was not malafide.
- 2) None of the Noticees or PSL or any other person has derived any economic benefit or made any gain or unfair advantage nor any shareholder or other person or group of persons have suffered any loss by the unintentional violation of the requirement of notification as per regulation 3(3) of SAST Regulations.
- 3) There had been no trading in the shares of PSL since September 2001

Order

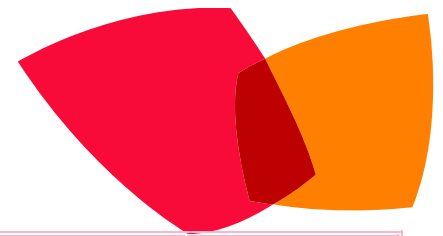
After taking into consideration all the facts and circumstances of the case a monetary penalty of Rs 1, 00, 000 had been imposed on the Noticees since in spite of the contentions of the acquirer the fact remains that the outside shareholders were deprived of the important information at the relevant point of time.



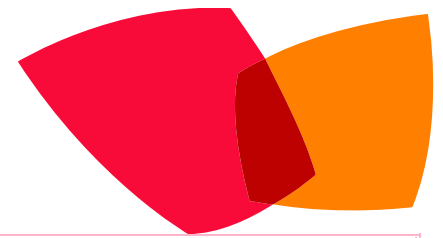
Latest Open Offers



| Target Company | Acquirer | Details of offer (No. of shares & %) | Reason for offer | Intermediary |
|---|--|--|--|---|
| <p>Sunil Healthcare Limited</p> <p>Registered Office : Rajasthan</p> <p>Paid-up Capital : Rs. 466.12 lacs</p> <p>Listed At : JSE, DSE & CSE</p> | <p>Anil Kumar Khaitan</p> <p>Magnum Computers (P) Ltd.</p> | <p>9,32,250 equity shares of Rs. 10/- each representing 20% of post preferential share/voting capital Company at a price of Rs. 30.50 payable in cash.</p> | <p>Regulation 11(1)</p> <p>Allotment of 1403668 fully paid up equity shares on preferential basis at a price of Rs 30.50/- each to the Acquirer representing 33.37% of post preferential share/voting capital of the Company.</p> | <p>Merchant Banker</p> <p>Chartered Capital & Investment Ltd</p> <p>Registrar to the Issue</p> <p>MCS Limited</p> |
| <p>Neelkanth Technologies Ltd.</p> <p>Registered Office: Mumbai</p> <p>Paid-up Capital : Rs. 361.75 Lacs</p> <p>Listed At : CSE, JSE, BSE & ASE</p> | <p>Preeti Remedies Private Limited</p> | <p>7,23,500 equity shares of Rs.10/- each representing 20% of the voting share capital of the company at a price of Rs.10.50 per fully paid up equity share ("Offer Price") payable in cash.</p> | <p>Regulation 10 & 12</p> <p>The SPA to acquire an aggregate of 13,41,150 fully paid-up Equity Shares of face value Rs.10/ each, representing 37.08% of the voting equity share capital of company.</p> | <p>Merchant Banker</p> <p>Arihant Capital Markets Ltd</p> <p>Registrar to the Issue</p> |



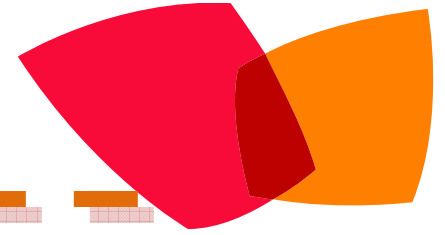
| | | | | |
|--|---|---|--|--|
| <p>Channel Guide India Limited</p> <p>Registered Office: Mumbai</p> <p>Paid-up Capital : Rs. 300.00 Lakhs</p> <p>Listed At :</p> <p>BSE</p> | <p>Rajendra Sharad Karnik</p> | <p>12,00,000 equity shares of Rs. 5/- each representing 20% of the existing outstanding equity share capital at a price of Rs. 30.50 per equity share payable in cash</p> | <p>Regulation 10 & 12</p> <p>The SPA dated 10, 2008 to Acquire 2,13,214 fully paid up equity shares of Rs. 5/- each representing 3.55% of the voting capital of the Target Company, at a price of Rs. 27/- per share.</p> | <p>Merchant Banker Ashika Capital Ltd.</p> <p>Registrar to the Issue</p> |
| <p>KLG Capital Services Limited</p> <p>Registered Office: Delhi</p> <p>Paid-up Capital : Rs 32,024,000</p> <p>Listed At :</p> <p>DSE & BSE</p> | <p>Awaita Properties Private Limited</p> | <p>640,480 equity shares of Rs. 10/- each, representing 20.00% of the paid-up equity share capital of the Company, at a price of Rs. 37.50/- per share payable in cash.</p> | <p>Regulation 10 & 12</p> <p>The SPA dated February 27, 2008 to Acquire 1,936,075 equity shares of the representing 60.45% of total paid up equity share capital of company at a price of Rs. 37/- per share</p> | <p>Merchant Banker Intime Spectrum Registry Ltd.</p> <p>Registrar to the Issue</p> |
| <p>Fusion Fittings (India) Limited</p> <p>Registered Office New Delhi</p> <p>Paid-up Capital Rs 41,112,750</p> <p>Listed At BSE, DSE, JSE & ASE</p> | <p>Experienced Hi-Tech Consultancy Services Private Limited & Vasundhara Technologies India Pvt Ltd</p> | <p>10,97,160 equity shares of Rs 10/- each representing 20% of the total issued equity share capital and resultant voting rights of "FFL" at a price of Re 1.00/- per fully paid up equity share.</p> | <p>Regulation 10 & 12</p> <p>The SPA dated 20th day of March, 2008 to acquire an aggregate of 18,19,300 fully paid up equity shares of Rs 10/- each representing 33.16 % of the total issued equity share capital at a price of Re. 1.00/- per fully paid up equity share</p> | <p>Merchant Banker Chartered Capital & Investment Ltd</p> <p>Registrar to the Issue Skyline Financial Services Pvt. Ltd.</p> |



| | | | | |
|--|--|--|---|--|
| <p>Rashmi Commercial Company Limited</p> <p>Registered Office: Kolkata</p> <p>Paid-up Capital : Rs.24,00,000/- divided into 2,40,000 equity shares of Rs.10/- each</p> <p>Listed At : CSE</p> | <p>Basant Kumar Almal, Basant Kumar Almal (HUF), Amit Almal and Savita Almal</p> | <p>48000 fully paid-up Equity Shares of Rs.10/- each, representing 20 % of the fully paid-up equity and voting share capital at a price of Rs.250/- per share payable in cash.</p> | <p>Regulation 10 & 12</p> <p>The SPA to acquire 1,31,900 Equity shares of Rs. 10/- each representing 54.96 % of the fully paid-up equity and voting share capital of company, at a fixed price of Rs.10/- per share (“Negotiated price”) payable in cash.</p> | <p>Merchant Banker</p> <p>Vc Corporate Advisors Pvt. Ltd.</p> |
| <p>Hira Ferro Alloys Limited</p> <p>Registered Office: Chhattisgarh</p> <p>Paid-up Capital : Rs 391.77 lacs.</p> <p>Listed At : MPSE & DSE</p> | <p>Hira Industries Limited</p> | <p>783,540 fully Paid-up Equity Shares of face value of Rs. 10/- each, representing in aggregate 20% of the fully diluted equity voting capital of the Target Company at a price of Rs. 120/- (Rupees One Hundred and Twenty only) per share (“Offer Price”), payable in cash</p> | <p>Regulation 11(1)</p> <p>The Acquirer has acquired 755,000 equity shares of Rs.10/- each representing 19.27% fully paidup equity capital of the Target Company at a price of Rs.70/- per share from M/s ETP Corporation Ltd, a person deemed to be acting in concert with the promoters on February 22, 2008</p> | <p>Merchant Banker II&fs Investsmart Ltd</p> <p>Registrar to the Issue Intime Spectrum Registry Ltd.</p> |
| <p>Thomas Cook (India) Limited</p> <p>Registered Office Mumbai</p> <p>Paid-up Capital Rs.160,782,330/-</p> <p>Listed At BSE & NSE</p> | <p>Thomas Cook UK Limited</p> | <p>32,795,996 Equity Shares of the Target Company of face value Re.1 each representing approximately 20.4% of the current voting capital (20% of the diluted voting capital) of the Target Company for cash at a price of Rs.107/- (Rupees [6] One Hundred and Seven Only) per fully</p> | <p>Regulation 10 & 12</p> | <p>Merchant Banker</p> <p>Kotak Mahindra Capital Company Limited</p> |



Regular Section



Securities Triggering SEBI Takeover Code

Regulation 2(k) – Shares

“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;

Shares mean

- i. Shares capital of a company carrying voting rights
- ii. Includes any security which would entitle the holder to receive shares with voting rights
- iii. It excludes preference shares.

The implication of this definition is as under:

1. Equity Shares:

The SEBI (SAST) Regulations, 1997 provides an inclusive definition for shares. Shares are considered to be the part of share capital of the Company. However, only that part of shares which provides for voting rights in the company are taken for the purpose of definition of shares. The voting rights are not been defined in the Takeover Code. The voting rights are the right to vote in the company’s policy decision.

2. Convertible Securities e.g. Warrants

The definition also provide for any other kind of security which entitle the holder to get shares and also voting rights at a later date. That means the inclusion in the definition is with respect to those securities, which provide both shares and voting rights.

3. Preference Shares.

The Takeover code does not take into account preference shares. Prior to SEBI (SAST) (Second Amendment) Regulations, 2002, preference share with voting rights were included. Further, if the security is convertible into preference share at a later date, then since there been no voting right, it would also not be included in definition of share.

Query 1

Whether preference shares which are entrusted with voting rights pursuant to section 87(2) (b) of the Companies Act, 1956 are to be considered for the purpose of Takeover code?



As per the understanding of regulations, the preference shares shall be included in the purview of takeover code when they vest with the voting rights, as they will have the same implication as of equity shares in a company. Thus, the preference may be taken for the purpose of Takeover code provided they are vested with the voting rights.

Query 2

In case of Warrants, at what time the voting rights are to be considered – at the time of initial allotment or after conversion? If at the time of initial allotment, then what if they are not converted into equity shares?

As per the understanding of regulations, the voting rights on the warrants shall be considered on the date of conversion and not before that. Therefore, the provisions of SEBI Takeover Regulations do not apply at the time of acquisition / allotment of warrants but at the time of conversion of such warrants into shares.

SEBI Informal Guidance in Nagreeka Exports Limited:

“Regulations 10 and 11 of the Takeover Regulations are triggered by acquisition of shares entitling the acquirer to exercise voting rights beyond the threshold limits specified in the said regulations. In case of an acquisition of convertible securities such as warrants which would entitle the acquirer to exercise voting rights, exceeding the threshold limit specified in regulation 10 or 11, the regulations are triggered on conversion of warrants, or exercise of option, as the case may whereby the acquirer acquires voting rights on such convertible securities. Therefore, at the time of issue of warrants by the company, regulations will not be triggered.”

SEBI Informal Guidance in Strides Acrolab Limited:

In case of acquisition/ allotment of convertible securities, the regulations as prevailing on the date of conversion are triggered on the date of conversion of warrants, or exercise of option, as the case may be whereby the acquirer acquires voting rights on such convertible securities. Therefore, at the time of issue of warrants by the target company, regulation 11(1) of the Takeover Regulations will not be triggered.

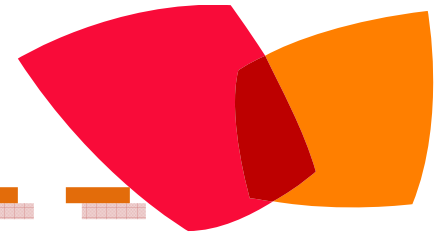
Hint of the Month

“Where the promoters are holding more than 55% Equity Shares but less than 75% Equity Shares of a Company, and the Company allots further shares to the promoters as well as non-promoters in such a manner that thereby the aggregate promoters’ shareholding reduces, then the provision of regulation 11 (2) will not be applicable.”

E.g. the promoters are holding 60 shares and non-promoters are holding 40 shares. Now, if a Company having a total capital of 100 shares issues further 2 shares to promoters and 8 shares to non-promoters, then even after acquisition of 2 Equity shares, the total promoters’ shareholding will be reduced to 56.36%. However, in this case, regulation 11 (2) will not be applicable.



Case Study



TATA'S TAKEOVER OF FORD MOTOR CO'S GLOBAL ICONIC BRANDS JAGUAR AND LAND ROVER

TAKEOVER RACE FOR FORD'S GLOBAL ICONIC BRANDS JLR:

Ford Motor Co's global iconic brands Jaguar and Land Rover have been the target of Takeover mogul Tata Group after its acquisition of Corus last year. However, Tata Group was not alone in this race, it was accompanied by Mahindra & Mahindra in this race.

DECISIVE ROLE OF UNITE:

Now, this takeover race becomes worth studying because of the role played by employees' trade union "Unite" in finalizing the deal. Unite is Britain's largest trade union and in the Tata – JLR takeover, Unite has been involved to such an extent that even Takeover tycoon Tata Group could not afford to overlook the wrinkles on Unite's forehead. This can be seen from the fact that both the Indian entities made presentations at the meeting with union. It was also promised to the unions that post-take-over the senior management of Jaguar and Land Rover (JLR) would continue and key jobs won't move to India. Even the owner of JLR brands, Ford has always bowed to wishes of unions, although the decision regarding JLR was an entirely Ford's decision considering the best interests of the two brands and Ford.

REASONING FOR THE IMPORTANCE OF TRADE UNION IN THIS DEAL:

It is noteworthy to mention here the reason for importance given to the unions in this case. The reason is that the British government is a Labour one and unions are absolutely critical to its survival. So the government may not interfere, but it will listen to the unions who are its main electoral power base. No matter who buys the two brands, the union's blessing will be important because they can have a lot of influence on pension trustees as well. Typically if the unions don't like the terms of the buy, the buyer may have to sweeten the pill.

TATA FINALLY SUCCEEDED TO STAMP ITS AUTHORITY AS TAKEOVER TYCOON

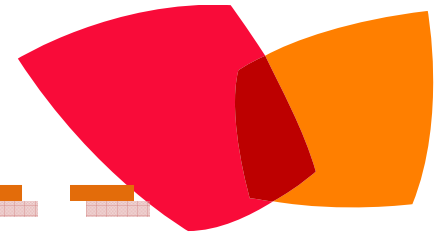
Finally, by the end of March 2008, after lot of discussions and presentations by both the competitors, union supported a "partner with an established presence and background in manufacturing" and nodded its head in favor of Tata Group stating it as their preferred choice. And that is how, India's top corporate Tatas succeed to acquire luxury auto brands Jaguar and Land Rover from Ford Motor for \$2.3 billion, stamping their authority as a takeover tycoon.

EXCHANGE OF PROMISES AS TO POST-TAKEOVER SCENE:

Both the parties also exchanged certain promises while finalizing the deal where the buyer promised to endeavour to preserve and build on their heritage and competitiveness, keeping their identities intact and Ford committed to providing engineering support, including Research and Development plus information technology, accounting and other services.



Market Updates



SECURITIES AND EXCHANGE BOARD OF INDIA

(PAYMENT OF FEES) (AMENDMENT), REGULATION 2008

Amendment to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997:-

i) in regulation 4, in sub-regulation (3), for the words “one lakh rupees”, the words “fifty thousand rupees” shall be substituted;

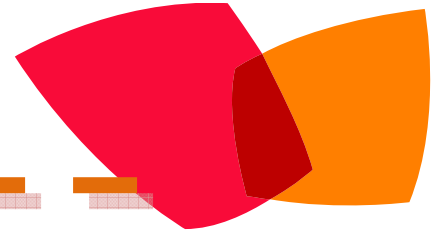
ii) in regulation 18, for sub-regulation (3), the following sub-regulation shall be substituted, namely:-

“(3) The acquirer shall, while filing the draft letter of offer with the Board under sub-regulation (1), pay a fee as mentioned in the following table, by bankers’ cheque or demand draft drawn in favour of the ‘Securities and Exchange Board of India’, payable at Mumbai:

| Offer size | Fee (Rs.) |
|--|--|
| Less than or equal to ten crore rupees. | One lakh rupees (Rs. 1, 00,000/-). |
| More than ten crore rupees, but less than or equal to one thousand crore rupees. | 0.125% of the offer size. |
| More than one thousand crore rupees, but less than or equal to five thousand crore rupees. | One Crore twenty five lakh rupees (Rs. 1, 25, 00,000/-) plus 0.03125 per cent of the portion of the offer size in excess of one thousand crore rupees (Rs. 1000, 00, 00, 000/-). |
| More than five thousand crore rupees. | A flat charge of three crore rupees (Rs. 3, 00, 00,000/-).” |



Intermediary Search



| Name of Merchant Banker | Contact Details |
|--|--|
| Atherstone Capital Markets Ltd. | 121, 12th Floor, Maker Chambers IV Nariman Point Maharashtra 400021 Tel.:02266191919 |
| Saffron Capital Advisors Private Limited | Ground Floor, Vilco Center 8, Subhash Road, Vile Parle (East) Mumbai - 400 057 Tel No: +91-22-2682 0654 Fax No: +91-22-2682 0502 Website: www. saffronadvisor.com |

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