Corporate Professionals
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TAKEOVER Panorama

I N S I G H T

Disclaimer:

SEBI granted exemption in the matter of Kesar Enterprises Limited

"SEBI granted exemption where the shares are being allotted to sanction the Bank funds for development of Co-Generation Power Plant"

Facts:

Kesar Enterprises Limited had allotted 16, 60,000 convertible warrants of Rs.97/- each {11,51,600 to the promoters (including the acquirers) and 5,08,400 to one Artlink Vintrade Pvt. Ltd.} on September 6, 2005. Later on, AVPL refused to convert the warrants held by it. The said allotment was made as a part of the fund requirement for Co- Generation Power Plant project of Rs.90.75 out of which Rs. 40 Crores had already been sanctioned by Allahabad Bank subject to full tie up of the entire amount of funds from Sugar Development Fund (SDF) and the target company. SDF has also sanctioned a loan of Rs. 32.73 crore (less by Rs.3.27 crore). Now, the acquirers proposes to acquire 7, 00,000 equity shares on conversion of 7,00,000 warrants held by it. Pursuant to it, the shareholding of the acquirers would increase from 16.76% to 24.54% and total promoters' shareholding will increase from 54.87% to 59.09%.

In the alternative, the acquirers also proposes to acquire 70,000 equity shares of the target company, on a preferential allotment basis, Rs.10/- each with a premium of Rs. 87/- per share by adjusting Rs. 67,90,000/- already paid by them towards the preferential allotment of warrants. Pursuant to the proposed acquisition, the shareholding of the acquirers would increase to 17.61% and total promoters' shareholding would be 55.34%.

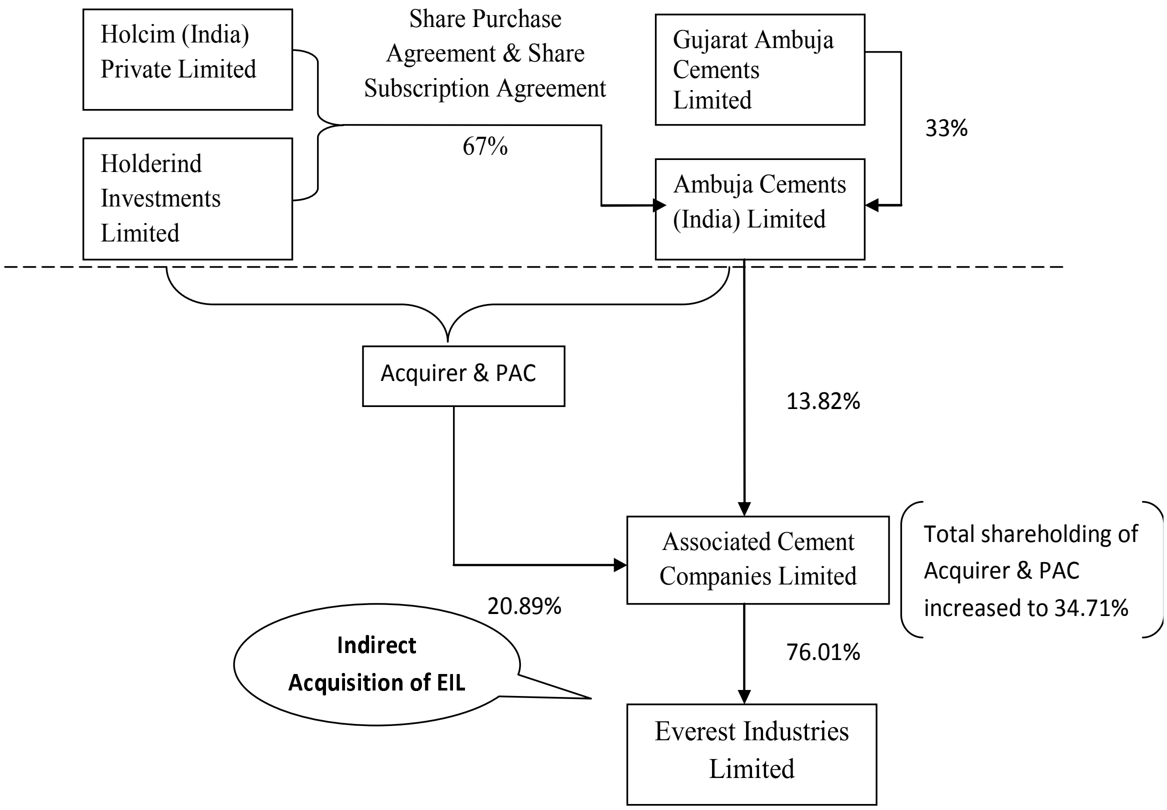
Grounds of Exemption:

1. That there will be no change in control.
2. That the shares are being allotted to secure funds for its Power Project.
3. That the shares are being allotted to secure the disbursement of loan already sanctioned by Allahabad Bank.
4. That the acquirers undertake to brought down its shareholding below the prescribed level.
5. That the shares are being acquired at Rs. 97/- per share against the market price of Rs 49/- per Share.

Decision:

On the basis of above facts and circumstances, SEBI granted exemption from regulation 10, 11 & Chapter III of SEBI Takeover Regulations.

"Penalty of Rs. 25 Crores imposed by SEBI for violation of regulation 11(2A) as mentioned in shown cause notice is set aside, whereas actually it was a violation of regulation 10 but the regulation 10 was not mentioned in SCN."



Facts:

The appellant, Holcim India (Private) Limited acquired shares and control of ACC through the open offer procedure and in turn indirectly acquired the shares of EIL to the extent of 76.01 per cent of its equity capital. However, it failed to make a public announcement to acquire further shares of EIL, and therefore, it violated Regulation 11(2A) of the takeover code. Appellant, however, contended that it was under no obligation to make an open offer to the public shareholders of EIL in terms of Regulation 11(2A). AO however held that that Regulation 11(2A) of the takeover code got triggered when the appellant acting in concert with others had indirectly acquired 76.01 per cent shares of EIL and was obliged to give delisting offer in respect of acquisition of EIL. This was decided on the basis that had the appellant given an offer to acquire a minimum of 20% shares of EIL, his shareholding would have increased to 96.01%. Accordingly, AO imposed on it a penalty of Rs.25 crores. It is against this order that the present appeal has been filed.

Decision:

On the basis of above facts and circumstances, SAT held that as per the AO order the appellant indirectly acquired 76.01 per cent of EIL's equity, it should have made a public offer within three months of the acquisition to acquire further shares of EIL and not having done so, it violated Regulation 11(2A) of the takeover code. It is thus clear that AO has imposed penalty for violation of Regulation 11 (2A).

However, SAT held that Regulation 11(2A) gets triggered only where the acquisition results in the lowering of the public shareholding below the limit prescribed in the listing agreement. But, in the present case, the acquirer has indirectly acquired only 76.01 per cent of the equity capital in EIL. With this indirect acquisition the level of the public shareholding in EIL which at all times was required to be maintained atleast upto 20 per cent for the purpose of continuous listing has not fallen below that limit. Therefore, regulation 11(2A) is not triggered in this case.

Later on the Board alleged that even if regulation 11 (2A) is not violated, regulation 10 is certainly violated since the appellant has acquired more than 15% shares, therefore, Regulation 10 should be read into the show cause notice.

However, SAT rejected this argument since Violation of Regulation 10 of the takeover code has not been alleged in the show cause notice and the appellant had not been put on notice for such a violation. Violation of Regulation 10 and the violation of Regulation 11(2A) are two distinct violations for which separate penalties could be levied and, therefore the SEBI order imposing penalty of Rs. 25 Crores was set aside.

SAT Order in the matter of Holcim (India) Private Limited

"Penalty of Rs. 1 Lac imposed for violation of regulation 3(3) reduced to Rs. 10,000 where the parameters of Section 15J are not satisfied."

Facts:

The promoters made an inter-se transfer of 16, 11,054 Equity shares constituting 44.22 per cent of the share/voting capital of the company. They, however, failed to comply with Regulation 3 (3) of the takeover Code but the appellants did comply with Regulations 7 (1) of the takeover code and informed BSE of the acquisitions on the dates of the transactions. For the said violation of regulation 3 (3), AO levied a monetary penalty of Rs.1 lac on the appellants. Appellant made an appeal before SAT for the said order.

Submissions:

1. In the instant case the trading in the scrip of the company has been suspended since September 2001 and the trades that were executed by the appellants were inter se among them as promoters of the company. In these circumstances the default could not result in any disproportionate gain or unfair advantage to the appellants nor could it cause loss to any investor.
2. The default is not repetitive in nature and it has occurred for only four days.

Decision:

On the basis of above facts and circumstances, SAT reduced the amount of penalty to Rs. 10, 000.

SEBI Consent Order in the matter of IL & FS Limited

SEBI, vide order dated December 5, 2006, initiated adjudication proceedings against IL & FS Investsmart Ltd. (the Noticee) for the alleged violation of Regulation 8(3) of SEBI Takeover Regulations. Pending the adjudication proceedings, the noticee made an application dated November 7, 2007 and proposed to offer Rs.50,000/- towards consent terms in the matter and in terms thereof, the notice remitted a sum of Rs.50,000/-. In view of this, SEBI disposed off the adjudication proceedings by passing the consent order.

SEBI Consent Order in the matter of Siruguppa Suggars and Chemicals Limited

SEBI, vide order dated February 20, 2007, initiated adjudication proceedings against Siruguppa Sugars and Chemicals Ltd and Persons Acting in Concert with it for violation of regulation 3(3), 3(4), 3(5). Pending the adjudication proceedings, the noticee proposed to offer Rs. 1, 00,000/- towards consent terms in the matter. The noticees have also remitted a sum of Rs. 1, 00,000/- vide Demand Draft No. 049769 dated April 18, 2008, On the basis of recommendation of High Powered Advisory Committee, SEBI disposed off the said adjudication proceedings on consent terms.

LATEST OPEN OFFERS

Name of Target Company	Name of Acquirer	Details of Offer	Reason of Offer	Concerned Parties
Anand Lease and Finance Limited **Regd. Office** Ahmedabad **Paid up capital** Rs 2,76,01,140 **Listed At** ASE and JSE	Jayesh Patel, Mr. Pranay Patel, Mr Deepak Patel, Mr Prakash Patel and Mr Sandip Patel	Offer to acquire 7,83,243 equity shares of Rs. 10/- each representing 20.00 % of the total equity capital / voting share capital of Anand at a price of Rs. 4.90 per fully paid up equity share/ Voting Rights payable in cash.	***Regulation*** *10 & 12* SPA to acquire 16,69,924 shares/voting rights and management control of Target Company, representing 42.64% of the total issued equity share Capital and representing 59.99 % of voting share capital of Anand at a price of Rs. 1.00 per equity share payable in cash.	**Merchant Banker** Chartered Capital & Investment Ltd **Registrar to the Issue** Intime Spectrum Registry Ltd
BASF India Limited **Regd. Office** Mumbai **Paid up capital** 28,189,466 Fully paid Equity shares of Rs. 10 **Listed At** BSE and NSE	BASF SE	Offer to acquire up to 6,289,591 (22.31%) Equity Shares of the Target Company at a price of Rs. 274 per Equity Share.	***Regulation*** *11 (1)* Acquirer already holds 52.69% Equity shares of the Target Company and has made a voluntary offer to consolidate his shareholding.	**Merchant Banker** JM Financial Consultants Pvt Ltd **Registrar to the Issue** Sharepro Services India Pvt Ltd.

Camphor and Allied Products Limited **Regd. Office** Gujarat **Paid up capital** 5,133,674 fully paid-up Equity Shares **Listed At** BSE	Oriental Aromatics Limited	Offer to acquire up to 10,26,735 (20%) fully paid up equity shares of Rs.10/-each at a price of Rs.167/- per fully paid up equity share payable in cash.	***Regulation*** *10 & 12* SPA with Promoter Group of Target Company to acquire 16,77,129 fully paid up equity shares of Rs.10/- per equity share aggregating to 32.67% of the total paid up capital of Target Company at a price of Rs.167/- per share.	**Merchant Banker** Imperial Corporate Finance & Services Pvt Ltd **Registrar to the Issue** Sharex Dynamic (India) Pvt. Ltd
Choice International Limited **Regd. Office** **Mumbai** **Paid up capital** 40,04,800 Equity Shares **Listed At** BSE	Sunil Kumar Patodia and Smt. Vinita Patodia and Sunil Chothmal Patodia (HUF) (PAC)	Offer to acquire 8,00,960 Equity shares of Rs. 10 each at a price of Rs. 13.75 per share payable in cash.	***Regulation*** *10 & 12* SPA with the present promoter of Target Company to acquire 12,00,000 Equity Shares representing 29.96% of the voting capital at a price of Rs. 5/- per fully paid up share for cash.	**Merchant Banker** Fedex Securities Ltd **Registrar to the Issue** Sharex Dynamic (India) Pvt. Ltd
Hansu Controls Limited **Regd. Office** Mumbai **Paid up capital** 9,00,100 Equity Shares **Listed At** OTCEI	Chandrashekhar Ramashrey Gupta and Mr. Ramashrey Jagannath Gupta	Offer to acquire upto 1,80,100 (20%) equity shares of Rs. 10/- each, at a price of Rs. 78/- per equity share payable in cash.	***Regulation*** *10 & 12* SPA with the Promoter Group of the Target Company to acquire in aggregate 4,50,000 (49.99%) fully paid up equity shares, at a price of Rs. 78/- per share.	**Merchant Banker** Ashika Capital Ltd **Registrar to the Issue** Purva Sharegistry Pvt Ltd

Indo Green Projects Limited **Regd. Office** Mumbai **Paid up capital** 49,90,900 Equity Shares **Listed At** BSE	Industrial Investment Trust Limited	Offer to acquire upto to acquire upto 9,98,180 (20%) equity shares of Rs. 10/- each at a price of Rs. 38/- per share, payable in cash.	***Regulation*** 10 & 12 SPA with Promoter Group of the Target Company to acquire in aggregate 25,03,900 (50.17 %) fully paid up equity shares of Rs. 10/- each, at a price of Rs. 38/- per share.	**Merchant Banker** Systematix Corporate Services Ltd. **Registrar to the Issue** Purva Sharegistry Pvt. Ltd
JPT Securities Limited **Regd. Office** Delhi **Paid up capital** 30,06,000 fully paid up shares **Listed At** BSE	Awaita Properties Private Limited	Offer to acquire up to 6,01,200 (20%) fully paid-up equity shares of Rs. 10 each, at a price of Rs. 32.50 per Share payable in cash.	***Regulation*** 10 & 12 SPA to acquire 18,05,450 equity shares of the Target Company representing 60.06% of total paid up equity share capital.	**Merchant Banker** Saffron Capital Advisors Pvt Ltd **Registrar to the Issue** Intime Spectrum Registry Limited
Sayaji Iron & Engineering Company Limited **Regd. Office** Vadodara **Paid up capital** 39,00,400 fully paid-up Equity Shares **Listed At** VSE, ASE and DSE	McNally Bharat Engineering Company Limited	Offer to acquire upto 7,80,080 (20.00 %) fully paid-up equity shares of Rs.10/- each, at a price of Rs. 221.60/- per share payable in cash.	***Regulation*** 10 & 12 MOU with promoters to acquire their entire shareholding aggregating to 26,63,100 (68.28 %) fully paid-up equity shares of Rs. 10/- each at a price of Rs.221.60/- per fully paid up equity share payable in cash.	**Merchant Banker** VC Corporate Advisors Pvt. Ltd. **Registrar to the Issue** Maheshwari Datamatics Private Limited

Understanding the Term 'Qualifying Promoter '

The opening lines of definition of qualifying Promoter starts with '**unless otherwise provided',** this means that the following categories will not be covered under the Promoter group.

The following categories are provided in the qualifying promoter definition:

a. **A person who is directly or indirectly in control of the company, or**

The persons who are in the control over the company are considered to be the promoter of the company, no matter whether the control is exercised directly or indirectly. The control may be exercised in any capacity such as shareholder, director or otherwise. Further the control can be exercised even without holding shares in the company or without holding any directorship or other pivotal position in the company. Thus, a presumption is drawn that the whole time directors, chairman are the persons who can exercise control over the company unless a contrary is proved. This sub-regulation appreciates the position where there is professionally managed company and there appears no person who can be called as having control over the company.

b. **Any person who is named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later.**

The persons who are named as promoter in the offer document (whether prospectus or letter of offer) or in the shareholding pattern to be filed with the stock exchange as per clause 35 of the Listing Agreement, whichever is filed later.

Example:

If the prospectus filed by the Company shows that Mr. X is shown as promoter whereas the shareholding pattern filed later by the company does not show Mr. X as promoter of the Company. Thus, according to the definition, Mr. X will not be considered as promoter.

c. **Any person named as person acting in concert with the promoter in any disclosure filed.**

The person who is named as person acting in concert with the promoter will also be deemed to be promoter of the Company. The person who are shown as person acting in concert in the disclosure filed as per the requirement of the listing agreement (Clause 35 requires shareholding pattern to be filed within 15 days of the close of the quarter of the company) or shown as persons acting in concert in any of the disclosure filed under the SEBI Regulations like that of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997)

The definition of promoter is an inclusive definition, which mentions for inclusion of various other persons in the promoter category because of the presence of the promoters as classified by the above definition;

If the promoter as determined by above three clauses is an individual; then the following are also included in the promoter category;

I. Related category i.e. Spouse of promoter, Parents of promoter, Brothers, Sisters & Children

II. Any company in which the promoter or the related category whether collectively or singly holds 26% or more of the voting capital of the Company.
III. Any partnership firm or HUF in which the promoter or the related category whether collectively or singly are partners or member.

IV. Any company in which the company (where promoter or the related category shareholding is 26% or more of the voting capital) holds more than 50% of the voting capital of the company.

V. Any firm in which the holding of the promoter or the related category holds more than 50% shares.

However, it should be clearly specified that only those who are holding shares in the company and coming within the above parameters are included in the promoters.

If the promoter as determined by above three clauses is a body corporate; then the following are also included in the promoter category;

I. A subsidiary or holding as defined under section 4 of the Companies Act, 1956.
II. Any Company in which the promoter which is a body corporate (as determined under first three clauses) holds more than 26% of the voting capital of the company.
III. Any company, which holds more than 26% of the voting capital of the promoter (which is body corporate).
IV. Any company in which persons acting in concert holds more than 26% or more of the voting capital and also the same person acting in concert holds more than 26% in the promoter (body corporate).
V. Any other body corporate, which comes in, the purview of same management companies as defined under section 370(1B) of the Companies Act, 1956.

The explanation to the definition provides that the Financial Institution, Scheduled commercial banks, Foreign institutional Investors, Mutual Fund & Venture capital fund shall not be deemed to be the promoter of the company merely because of the shareholding. However, another explanation provides that the above categories shall be deemed to be the promoter of their subsidiaries and the mutual fund sponsored by them.

The Ranbaxy – Daiichi Deal

Deal Outline

On June 11, 2008, Japanese third largest drug maker 'Daiichi Sankyo' has bought control of India's largest pharmaceutical Company - Ranbaxy Laboratories in a friendly takeover that worth as much as $4.6 billion (over Rs. 15,000 crores). Daiichi Sankyo has agreed to acquire 34.8% from Ranbaxy's founding Singh family and then to make an open offer for up to 20% at Rs737 a share, representing a premium of 68% to the stock's average closing price in the last six months. If the offer is fully accepted, Daiichi's stake will rise to 58.09%. The proposed deal values the company at $8.5 billion.

Vogue Statement

Ranbaxy-daiichi deal marks a huge milestone in the internationalization of Indian companies. The recent trend has been for Indian companies to take over foreign businesses - ranging from Jaguar cars to Corus steel – but this time a major successful Indian company has agreed to sell control to a foreign company. The deal is the second-biggest foreign sale of an Indian company. Last year Vodafone of the UK bought control of a telecoms company then called Hutch Essar by buying a controlling stake from Li ka Shing, the Hong Kong entrepreneur.

In the Indian Corporate Scenario, Indian families tend to treat their main businesses as treasures that are to be held until, as often happens, they decline after the second or third generation. They frequently take in foreign equity partners to help them grow, but a sense of pride combined with insecurity prevents them from selling out. Ranbaxy- Daiichi deal points to the true internationalization of Indian companies, because the leading business family has now shown they are willing to sell as well as buy abroad.

Deal prospects

The deal is being seen as putting Ranbaxy on a new and much stronger platform to harness the Company's capabilities in drug development, manufacturing and global reach. The deal, the largest ever in the Indian pharmaceutical industry, would help turn Ranbaxy into a "research-based international pharmaceutical Company because, generics alone could not be relied upon to propel its growth in the intensely competitive non-branded drugs market. The main immediate pharma advantage is that Ranbaxy will have access to Daiichi's branded drugs expertise while contributing its low-cost production facilities and global distribution. Furthermore, consolidation of the international generics business has been inevitable and it would have been difficult for Ranbaxy to grow significantly on its own. Malvinder Singh would continue as CEO and MD of the entity, which would retain its Ranbaxy brand.

The mega Ranbaxy deal will have a trickle-down impact on mid-sized companies Zenotech Labs and Orchid Pharma in which the Delhi-based number one pharma player has significant interest. The more zing in the story is likely to be added by Pfizer who is being said to make to counter bid to acquire Ranbaxy.

Daiichi's open offer to buy up to 20% in India's Ranbaxy Laboratories would open on 8 August, 2008.

Reliance - MTN Deal

On May 26, RCOM and MTN started their 45 days of exclusive talks on a possible merger that would create a telecom giant focused on emerging markets. The most talked about deal structure is that Anil Ambani would swap most of his 66 per cent holding in Rcom for a de facto takeover of MTN with a near-controlling stake in the merged entity. Rcom in itself would become a subsidiary of MTN.

Under a deal, RCom would become the largest single shareholder in MTN and the South African giant would be the biggest holding company of the Indian telecoms firm.

However, the two sides have yet to decide the share-swap ratio under which RCom chief Anil Ambani would transfer his stake in the Indian company in return for a holding in MTN. Ambani wanted 66 MTN shares for 100 RCom shares while MTN was seeking 51 MTN shares for 100 Reliance Shares, adding that a top RCom team was at MTN's headquarters and was due back today. In addition, the two sides were discussing the post-merger firm's management structure, with both wanting to keep their top personnel in "most geographies".

Spice Communications – Idea Deal

Spice Communications has reached advanced stages of talks related to an outright sale or merger with Idea Cellular. Modis are planning to sell their entire stake to Idea. BK Modi currently holds 40.2 per cent in Spice through Modi Wellvest. The other 39.8 per cent is held by state-owned Telekom Malaysia.

Modi family's stake has been valued at Rs 1,900 crore. The Modis stake might be transfered in two phases. Modi is keen to sell his stake at a price of Rs 70 per share. The shares are currently trading at Rs 53.50 on Bombay Stock Exchange

The deal, once sealed, would automatically trigger an open offer for another 20 per cent stake in the firm. In the event of the full subscription of the open offer, Idea will have close to 60 per cent while the remaining stake will be with Telekom Malaysia, the foreign partner in the firm. Further Idea Cellular's plan may be to merge Spice with itself, which would give Telekom Malaysia a minority stake in the merged entity.

Battle over Zandu Pharmaceuticals Works

The battle for control of Zandu Pharmaceutical Works has taken a new turn with the Parikhs' proposal to issue preferential shares to themselves could not be pushed through the board of directors. The independent directors on the board of Zandu Pharmaceuticals rejected a proposal for a preferential issue to the promoters and other investors. This development took place after Zandu had informed BSE that its directors are meeting to consider preferential share allotment to Zandus promoters. Emami, the new stakeholder in the company, has played the spoilsport, as they told the independent directors that any preferential issue at this stage to promoters is not in the interest of the company.

Emami had acquired 24 per cent stake in Zandu from one of the promoter families - the Vaidyas. Emami, which earlier owned 3 per cent stake in the company, pushed up its stake in Zandu to 27.5 per cent thorugh this acquisition.

The Parikhs, the other promoter family, owns only 18 per cent. Even though Emami is keen on buying their stake too, the Parikhs are not willing to sell out nor are they willing to give up control of the company.The Parikhs are now trying to increase their stake and also control over the company by issuing preferential shares to themselves. Emami reacted to this by sending a legal notice to Zandu's board after which board dropped the proposal. Emami's notice said the preferential allotment was unsolicited and went against the letter and spirit of the Securities and Exchange Board of India's takeover code. Emami has also offered to share management of Zandu with Parikh family. Presently, the possibility of preferential allotment is ruled out and now Parekh's are still trying to avoid the possible takeover.

Sterlite – Asarco Deal

Sterlite Industries Ltd, a subsidiary of Vedanta Resources Plc, has reached an agreement to acquire the assets of a bankrupt US copper miner, Asarco LLC, for $2.6 billion. The asset acquisition will be financed by Sterlite through a mix of debt and existing cash resources. The deal is subject to the approval of the U.S. bankruptcy court for the Southern District of Texas, Corpus Christi Division, and the sale will conclude Asarco's Chapter 11 case. Asarco, with estimated reserves of 5 million tone copper, produced 235,000 tons of refined metal in 2007. Asarco has revenues of $1.9 billion in 2007. Formerly known as American Smelting and Refining Company, the company is over a century old, and is currently the third largest copper producer in the US.

Asarco's former parent, Group Mexico, plans to challenge the sale to Sterlite. Group Mexico had bought Asarco in 1999, and later lost control in the bankruptcy proceedings. It contends that the court-ordered auction was flawed. Using debt and cash on hand; Sterlite is buying three open-pit copper mines and a smelter in Arizona and a refinery, rod-and-cake plant and precious-metals plant in Texas. Copper cake is fabricated into plates, sheets, strips and bars. Anil Agarwal, Chairman of Sterlite, expects any indication of a counter bid from Group Mexico. He said that the Asarco deal would be financed through a mix of debt and internal accruals. The US firm would be wholly owned by Sterlite India, with Asarco's buyout expected to impact Sterlite's revenue from next fiscal. The case is presently due for hearing in US Court for settlement under Bankruptcy law.

I N T E R M E D I A R Y S E A R C H

Goldman Sachs (INDIA) Securities Pvt. Ltd.	*Neelam Centre, 2nd Floor, A Wing, Plot No.249-B* *Hind Cycle Road, Worli* *Mumbai – 400018*
Edelweiss Capital Ltd	*1st floor, Shalaka* *9, Maharishi Karve road, Cooperage* *Mumbai- 400021*

H I N T O F M O N T H

Capital for calculation for Open Offer in case of pending conversions

In case of pending conversions, the voting rights as at the expiration of fifteen days after the closure of the public offer shall be reckoned.

[Regulation 21(5)]

Example: In the recent case of Ranbaxy Laboratories Ltd, the size of the open offer has been determined on enhanced capital. The enhanced capital has been calculated on the following basis

a. *Outstanding paid up equity shares outstanding on date +*
b. *Total outstanding ESOPs as on date for which equity shares may be issued+*
c. *New shares proposed to be acquired under preferential allotment +*
d. *Equity shares underlying possible conversion of zero coupon foreign currency convertible bonds.*

O U R   T E A M

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