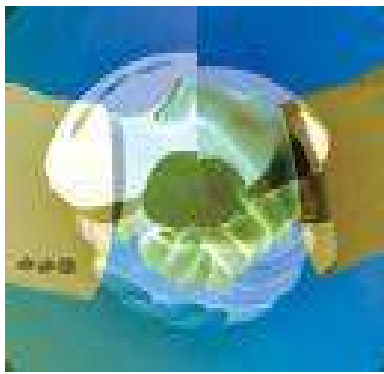


Takeover Panorama



Insight

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Legal Updates

SEBI Order in the matter of Matra Realty Limited

Facts:

On examination of the offer document filed by Kashyap Kanaiyalal Mehta and others (Acquirer) for the acquisition of shares of M/s Matra Realty Limited (Company), it was observed that the company has failed to comply with regulation 6 (2) and 6 (4) and regulation 8 (3) for the year 1998 to 2003. Further, in the letter of offer, the company has made the disclosure that “”

The Board of directors comprising professionals and persons having a wide range of managerial experience will also be considered in control of the company if control the affairs of the Company and are also the largest shareholder of the company.

Contention:

The Noticee contended that regulation 6(2) and 6(4) and regulation 8(3) of SEBI Takeover Code was not applicable to them because the management of the Company vests in the Board of Directors comprising professionals and persons having a wide range of managerial experience and business acumen particularly in securities business and that the disclosures made in the year 2004 were made in their individual capacity as a director of the company and not as having control over the company, directly or indirectly, save and except to act as director duly appointed by the shareholders. Therefore, the question of compliance with the same does not arise.

Issues:

Whether contention of the Noticee is valid and whether regulation 6(2) and 6(4) and regulation 8(3) of SEBI Takeover Code is applicable to them?

Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?

Decision:

On the basis of facts and circumstances of the case, it was held that the definition of “control” is an inclusive definition, meaning that the instances enumerated in it are not exhaustive and there can be other ways to exercise control over a company.

According to the aforesaid, any person who controls the management of a company either individually or collectively with other persons or controls or influences the policy decisions by virtue of his position, can be said to be in ‘control’ over the affairs of the company. In the present case, the directors were a part of the Board of Directors which controlled the affairs of the Company and were also the largest shareholder of the company. Therefore, the company was required to make disclosures under regulation 6(4) of SAST for the year 1997 and 8(3) of SAST for the financial years ended 1998-2003.

On account of failure to make such disclosures, the Adjudicating officer imposed a penalty of Rs. 3,00,000/- for violation of these regulations.

In the same matter, the director namely Emmanuel Anthraper was found guilty of violation of regulation 6(3) of SEBI Takeover Code for the year 1997 and regulation 8(2) of SEBI Takeover Code for the financial years 1998 to 2002 and 2004-05. On the basis of same facts and considerations, Adjudicating officer imposed the penalty of Rs.1, 00,000.

Another director namely Bharat Nagindas Lakhani was found guilty of violation of regulation 8(2) of SEBI Takeover Code for the financial years 2002-03 and 2004-05. On the basis of same facts and considerations, Adjudicating officer imposed the penalty of Rs.40, 000.

Further, another director namely Alok Jain was found guilty of violation of regulation 6(3) for the year 1997 and regulation 8(2) for the financial years 1998 to 2002 and 2004-05. On the basis of same facts and considerations, Adjudicating officer imposed the penalty of Rs.1, 00,000.

Similarly, another director namely Nimish Kantilal Unadkhat was found guilty of violation of regulation 6(3) for the year 1997 and regulation 8(2) for the financial years 1998 to 2002 and 2004-05. On the basis of same facts and considerations, Adjudicating officer imposed the penalty of Rs.1, 00,000.

Adjudication officer order in the matter of Rajesh M. Ranka

Facts:

While conducting the investigation into the affairs of M/s Softtrack Technology Exports Limited (STEL) for the period commencing from January 01, 2002 to July 31, 2002, SEBI observed that Mr. Rajesh M. Ranka (Noticee) has acquired 69, 61,890 equity shares(51.9%) of STEL on 02.02.2002, increasing his shareholding from 3.63% to 54.82% requiring the disclosures in terms of regulation 7(1) and 7(2) of the SEBI Takeover Code and regulation 13(1) of the SEBI Insider Trading Regulations.

The contention that acquirer was not aware of the compliance because his accounts were operated by some third person is not valid.

Further, the acquisition of above shares also requires the open offer be made to the shareholders of the STEL in terms of regulation 10 of the SEBI Takeover Code. Further, during the same period, the Noticee has also sold 6,29,655 shares(2.27%) requiring disclosure in terms of regulation 13(3) & 13(5) of the SEBI Insider Trading regulations.. However, the Noticee failed to comply with the above requirements of the SEBI Takeover Code and SEBI Insider Trading.

Contention:

The Noticee contended that as regards the compliance of regulation 7(1), 7(2) and 10 of the SEBI Takeover Code & 13(1) and 13(3) of the SEBI Insider Trading Regulations is concerned; he has no connection in the matter. He had opened two BO accounts one in name of Rajesh M Ranka. & other in the name of Rajesh Jain which was operated by a third person named Sunil Gaglani. He did whatever Sunil Gaglani asked him to do and did not know anything pertaining to the compliance of the said rules and regulations of SEBI.

Issues:

Whether the contention of the Noticee that he was not aware of compliances to be made in terms of the SEBI takeover Code and SEBI Insider Trading Regulations is valid?

Does the violation and the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) & 15 H (ii) of SEBI Act?

Decision:

It was held that the contention of the Noticee that he did not know anything pertaining to the compliance of the rules and regulations of SEBI cannot be accepted. Further, the disclosure assumes all the more significance as the acquisition was of huge quantity of shares increasing the shareholding of acquirer to 54.82% and that the deal was transacted through off market. Thus, the Adjudication officer imposed the total penalty of Rs.5,00,000/-which includes Rs.2,00,000 for failure to make disclosures and Rs. 3,00,000 for failure to make public announcement of offer.

Informal Guidance in the Matter of Suryajyoti Spinning Mills Ltd

Facts:

The acquirers are the part of the promoters group and holds in aggregate 36.39% shares of the Target Company. The Board of directors of the Target Company at its meeting held on 31.01.2009 has decided to issue 13,00,000 equity shares to the promoters by way of preferential issue increasing their shareholding from 36.39% to 41.33%(of the expanded capital) shares of the company.

It was held that since the increase in shareholding of the acquirer is only 4.94%, therefore, the same is within the creeping acquisition limit as allowed in terms of regulation 11(1) of the SEBI Takeover Code.

Issues:

Whether the above acquisition of shares increasing the shareholding of the promoters from 36.39% to 41.33% will require the open offer be made to the shareholders of the Target Company?

Decision:

No. In case of acquisitions through preferential allotment, the said creeping limit of 5% is reckoned with respect to enhanced equity share capital of the target company pursuant to the preferential allotment. In this case, since the increase in the shareholding of the promoter group is only 4.94% of the expanded capital which is within the creeping acquisition limit as specified under regulation 11(1) of the SEBI Takeover Code. Therefore the promoters are not required to make any open offer to the shareholders of the Target Company.

Takeover Panel Exemption in the matter of Gitanjali Gems Limited**Facts:**

The Promoter Group of the Gitanjali Gems Limited (Target Company) holds in aggregate 4,60,94,283 equity shares representing 54.19% of voting rights of the target company.

The Target Company proposes to buy back the shares from the public shareholders as a result of which the shareholding of the promoter group will increase from 54.19% to 63.09% resulting into triggering regulation 11(2) of the SEBI Takeover Code. Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making open offer on the following grounds:

SEBI granted the exemption where the increase in shareholding of acquirer is pursuant to the buy back by the company and there is no active acquisition.

Grounds of Exemption:

1. No change in control.
2. No active acquisition of shares by the acquirers.
3. Minimum Public shareholding will be maintained.
4. The Earning Per Share will increase.
5. Buy Back is proposed to be made at a price of Rs.120 per share which is more than the market price i.e. Rs. 70.45.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making the open offer subject to the acquirers complying with the other provisions of the SEBI Takeover Code, Listing Agreement and any other law as may be applicable.

Takeover Panel Exemption in the matter of The Sandesh Limited

Facts:

The Promoter Group of the The Sandesh Limited (Target Company) holds in aggregate 56,71,015 equity shares representing 65.58% of voting rights of the target company. The Target Company proposes to buy back the shares from the public shareholders as a result of which the shareholding of the promoter group will increase from 65.58% to 74.99% resulting into triggering regulation 11(2) of the SEBI Takeover Code.

SEBI granted the exemption where the increase in shareholding of acquirer is pursuant to the buy back by the company and there is no active acquisition.

Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making open offer on the following grounds:

Grounds of Exemption:

1. No change in control.
2. No active acquisition of shares by the acquirers.
3. Minimum Public shareholding will be maintained.
4. The Earning per Share will increase and thereby the buy-back will create long-term shareholder value.
5. Buy back is proposed to be made at a price of Rs.180 per share which is more than the market price i.e. Rs. 139.55 and Rs. 139.85 on BSE and NSE respectively.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making the open offer subject to the acquirers complying with the other provisions of the SEBI Takeover Code, Listing Agreement and any other law as may be applicable.

Takeover Panel Exemption in the matter of Ganesh Housing Corporation Limited**Facts:**

The acquirer namely Mr. Shekhar G Patel belongs to the promoter group of the Target Company and holds in aggregate 1,87,74,723 equity shares representing 57.49% with other promoters of the Company. The Board of Directors of the Target Company in their meeting held on October 25, 2008 and November 26, 2008, has decided to buy back the shares from the Shareholders of the Target Company.

SEBI granted the exemption where the increase in shareholding of acquirer is pursuant to the buy back by the company and there is no active acquisition.

Pursuant to above buy back, assuming the full response to the buy back offer, the shareholding of the promoter group will increase from 57.49% to 65.52% resulting into triggering regulation 11(2) of the SEBI Takeover Code requiring the open offer be made to the shareholders of the Target Company. Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making the open offer on the following grounds:

Grounds of Exemption:

1. No change in control.
2. No active acquisition of shares by the acquirers.
3. Minimum Public shareholding will be maintained.
4. The Earning Per Share will increase.
5. Buy Back is proposed to be made at a price of Rs.101 per share which is more than the market price i.e. Rs. 66.70 and Rs. 66.75 on BSE and NSE respectively.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making the open offer subject to the acquirers complying with the other provisions of the SEBI Takeover Code, Listing Agreement and any other law as may be applicable.

Takeover Panel Exemption in the matter of Godrej Industries Private Limited**Facts:**

The acquirers are the promoters of the target company and are presently holding 25,12,34,174 equity shares representing 78.57% of voting rights of the target company. The Target Company has announced the buy back of its own paid-up equity shares up to 57,00,000, pursuant to which the holding of the acquirers would increase from 78.57% to 80% resulting into triggering the regulation 11(2) of the SEBI(SAST) Regulations,1997.

SEBI granted the exemption where the increase in shareholding of acquirer is pursuant to the buy back by the company and there is no active acquisition.

Therefore, the acquirer has filed this present application seeking the exemption on the following grounds:

Grounds of Exemption:

1. No change in control.
2. No active acquisition of shares by the acquirers.
3. Minimum Public shareholding, which is 10% in this case, will be maintained.

Decision:

In view of the above facts, SEBI granted the exemption to the acquirers from complying with regulation 11(2) subject to the condition that the acquirers shall ensure compliance with the applicable provision of the Companies Act, 1956, SEBI (Buy-back of Securities) Regulations, 1998, the Listing Agreement and other applicable laws.

Consent Order in the matter of R.R Ispat Limited & Hira Cement Limited

On October 30, 2007, R. R. Ispat Limited and Hira Cement Limited acquired 449,000 equity shares of Hira Ferro Alloys Limited increasing their shareholding from 40.04% to 51.50% which has resulted into triggering the regulation 11 of the SEBI Takeover Code. However, the acquisition is entitled for exemption in terms of regulation 3(1)(e)(iii) subject to the acquirer complying with regulation 3(4) and 3(5) of the said regulation. However, the acquirer failed to comply with the same within the prescribed time and therefore has filed this present application seeking the settlement of enforcement action that may be initiated by the SEBI for the aforesaid failure on the payment of Rs.25,000/- towards settlement charges and Rs.25,000/- towards administrative expenses. The terms as proposed by the applicant were placed High Powered advisory Committee (HPAC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any action against the applicant for the aforesaid failure.

Consent Order in the matter of Olympic Oil Industries Limited

Olympic Oil Industries Limited failed to make the disclosure in terms of regulation 6(2) and 6(4) for the year 1997 and 8(3) for the year 1998 to 2002 within the prescribed time and therefore has filed this present application seeking the settlement of enforcement action that may be initiated by the SEBI and proposed to pay a sum of Rs.2,25,000/- towards settlement charges and Rs.25,000/- towards administrative charges. The terms as proposed by the SEBI were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any action against the applicant for the aforesaid failure.

Consent Order in the matter of Hira Industries Limited

On July 27, 2007, Hira Industries Limited acquired 259,000 equity shares of Hira Ferro Alloys Limited (Target Company) 6.60% which has resulted into triggering the regulation 11 of the SEBI Takeover Code. However, the acquisition is entitled for exemption in terms of regulation 3(1)(e)(iii) subject to the acquirer complying with regulation 3(4) and 3(5) of the said regulation. However, the acquirer failed to comply with the same within the

prescribed time and therefore has filed this present application seeking the settlement of enforcement action that may be initiated by the SEBI for the aforesaid failure on the payment of Rs.25,000/-towards settlement charges and Rs.25,000/- towards administrative expenses. The terms as proposed by the applicant were placed High Powered advisory Committee (HPAC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any action against the applicant for the aforesaid failure.

Consent Order in the matter of Unicel Impex Limited and others

On examination of the letter submitted by the Unicel Impex Limited with regard to the acquisition of 10,000 equity shares representing 0.24% of the paid up capital of M/s Uniproducts (India) Limited (“UIL”) on April 24, 2002, SEBI observed that Unicel was acting in concert with the other promoters of UIL, who at that time were holding 79.53% of the paid up capital of UIL. With the above acquisition, the shareholding of the promoter group increased to 79.77%. Accordingly, adjudication proceedings were initiated against the Noticee and other promoters of the UIL for the violation of regulation 8(2) and 11(2) of the SEBI Takeover Code. Pending the adjudication proceeding, the Noticee proposed to pay a sum of Rs.9,00,000/- towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee and on the recommendation of the HPAC, SEBI disposes of the said adjudication proceedings against the Noticee.

Consent Order in the matter of California Software Company Limited

California Software Company Limited failed to made the disclosure under regulation 8(3) of the SEBI Takeover Code for the year 2006-2007 and for the record date August 22, 2007 within the prescribed time and therefore has filed this present application seeking the settlement of enforcement action that may be initiated by the SEBI and proposed to pay Rs.50000 towards settlement charges and Rs. 25,000 towards administrative charges. The terms as proposed by the applicant were the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any action against the applicant.

Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned parties
<p>Sinclairs Hotels Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs.465.86 Lacs</p> <p>Listed At BSE and CSE</p>	<p>Xander Investment Holding X, Limited</p>	<p>Offer to acquire 12,13,045 equity shares constituting 20% of the Emerging Voting Capital of the Target Company at a price of Rs.172.50 per equity share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>Conversion of 10,75,328 warrants into equity shares at a price of Rs.172.50 each increasing the shareholding of the acquirer to 17,73,651 equity shares constituting 29.24% of the Emerging Voting Capital.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer Niche Technologies Private Limited</p>
<p>Novartis India Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs.159,8.03</p> <p>Listed At BSE and CSE</p>	<p>Novartis AG</p>	<p>Voluntary open offer to acquire up to 12,464,710 (39%) equity shares of Rs. 5/- each at a price of Rs.351 each.</p>	<p>Regulation 11(1)</p> <p>The Acquirer holds 16,277,437 (50.93%) equity shares of the Target Company. For the purpose of consolidation of holding, the acquirer is making a voluntary open offer.</p>	<p>Merchant Banker DSP Merrill Lynch Limited</p> <p>Registrar to the Offer Bigshare Services Private Limited</p>

<p>Bombay Rayon Fashions Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs 691 million</p> <p>Listed At BSE and NSE</p>	<p>AAA United B.V.</p>	<p>Offer to acquire 1,74,20,000 equity shares of Rs 10/- each representing 20% of the expanded capital at a price of Rs.185 each payable in cash.</p>	<p>Regulation 10</p> <p>Approval of Board of directors for the preferential allotment of 18,000,000 equity shares of Rs. 10/- each for cash at a price of Rs. 185.00/- per share.</p>	<p>Merchant Banker Axis Bank Ltd.</p> <p>Registrar to the Offer Link Intime India Private Limited</p>
<p>Surana Industries Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 20.15 crores</p> <p>Listed At BSE, NSE and MSE</p>	<p>G.R. Surana and others.</p>	<p>Open offer to acquire 40,30,000 (20%) Equity Shares of Rs 10 each at a price of Rs.154.60 each comprises of interest @ 10% payable in cash.</p>	<p>Regulation 11(1)</p> <p>Allotment of 30,00,000 equity shares pursuant to the conversion of warrants increasing the shareholding of the acquirer from 74,00,825 Shares (43.15%) to 1,04,00,825 Shares (51.62 %) of the Target Company.</p>	<p>Merchant Banker Sal Securities Limited</p> <p>Registrar to the Offer Cameo Corporate Services Limited</p>

<p>Core Emballage Limited</p> <p>Regd. Office Ahmedabad</p> <p>Paid up capital Rs.3362.36 lacs</p> <p>Listed At BSE and NSE</p>	<p>Zaverilal V. Madalia and others</p>	<p>Open offer to acquire 27,24,711 (20%) equity shares of Rs. 10/- at a price of Rs.10 each payable in cash.</p>	<p>Regulation 10 and 12</p> <p>Share Purchase Agreement to acquire 68, 11,776 (50%) equity shares of Rs. 10/- each at a price of Rs.8 each payable in cash.</p>	<p>Merchant Banker VIVRO Financial Services Private Limited</p> <p>Registrar to the Offer Link Intime India Private Limited</p>
<p>Continental Valve Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs.82.22 lacs</p> <p>Listed At CSE and DSE</p>	<p>Rashmi Chowdhary</p>	<p>Open offer to acquire 1,62,873 (20%) equity shares of Rs. 10/- each at a price of Rs.8 each payable in cash.</p>	<p>Regulation 11</p> <p>Acquisition of 195,182 (23.97%) equity shares of Rs. 10/- through off market transactions on March 12,2009 at a price of Rs. 8.00 per share increasing the shareholding of the acquirer(promoter) including the shareholding of the other promoters from 44.27% to 68.24% of the paid up capital of the Target Company.</p>	<p>Merchant Banker Microsec Capital Limited</p> <p>Registrar to the Offer Niche Technologies Private Limited</p>

Rane Brake Lining Limited	Nisshinbo Industries Inc. and Rane Holdings Limited(PAC)	Offer to acquire 1582996 equity shares (20%) per share payable in cash.	Regulation 10,11(1) and 12 Target Company has agreed to allot 700000 equity shares representing 8.84% of the expanded capital of the Target Company on preferential basis at a price of Rs.50 each aggregating to Rs.3,50,00,000	Merchant Banker Ernst & Young Merchant Banking Services Private Limited
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Hint of the Month

“The report as required under regulation 3(4) of the SEBI Takeover Code is required to be filed where the acquirer is already holding more than 15% shares in the company even before the acquisition of shares. In other words, the compliance under regulation 3(4) is not one time compliance.

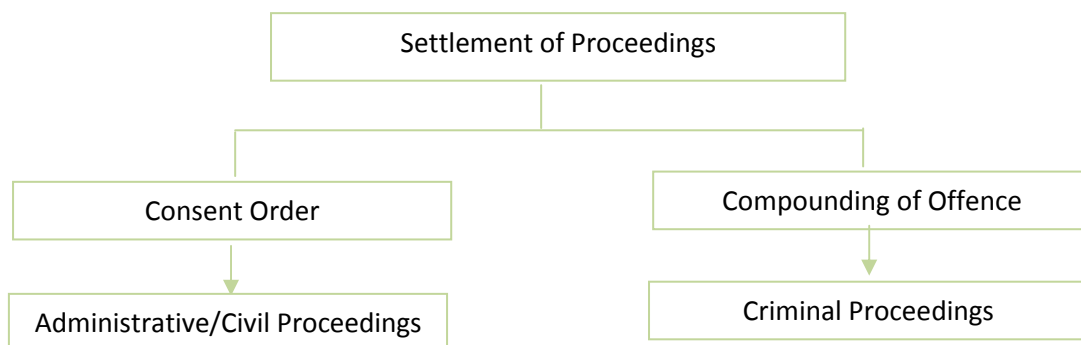
{As substantiated from regulation 3(4)}”

Regular Section

Settlement of Takeover Non-compliances through Consent Order

On April 20, 2007, SEBI came out with a circular No. EFD/ED/Cir-1/2007 providing an itinerary for settlement of non-compliances on consent terms, instead of going for the extensive and prolonged proceedings. The circular gives the SEBI wide power to pass consent order for the settlement of proceedings for the violation of securities laws including SEBI Takeover Regulations. Further, even in the SEBI Takeover Regulations, an application for consent order may be filed for settlement of violation of disclosures as well as open offer.

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.



Time for filing the application for the Consent Order

Application for the Consent order may be filed by the party at any time either before or after the SEBI has initiated the adjudication proceedings to the Division of Regulatory Action, SEBI.

Where a case is already pending before the SAT/Court, then also the same process of consent order will be followed. However, in that case the terms as recommended by the High Powered Advisory Committee will be placed before the SAT/Court and it is the discretion of the SAT/ Court, to either consider the terms as proposed by the HPAC and pass the order on the same terms or pass the order on the other terms.

Scope of Consent Order

Consent Order may be passed at any stage after probable cause of violation has been found. However, in the event of a serious and intentional violation, the process should not be completed till the fact finding process is completed whether by way of investigation or otherwise.

It is to be noted that where criminal complaint has already been filed than recourse to compounding of offence is appropriate. However, where the criminal complaint is yet to be filed, then process of consent order should be followed. In that case, the application shall be made to the Division of Prosecution, SEBI.

Factors considered by Committee before passing the consent order

While considering the application for the consent order, the Committee shall keep in mind the objective of the respective statute, the interests of investors and securities market and factors including but not limited to the following, where-ever applicable:

- i. Whether violation is intentional.
- ii. Party's conduct in the investigation and disclosure of full facts.
- iii. Gravity of charge i.e. charge like fraud, market manipulation or insider trading.
- iv. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past etc.

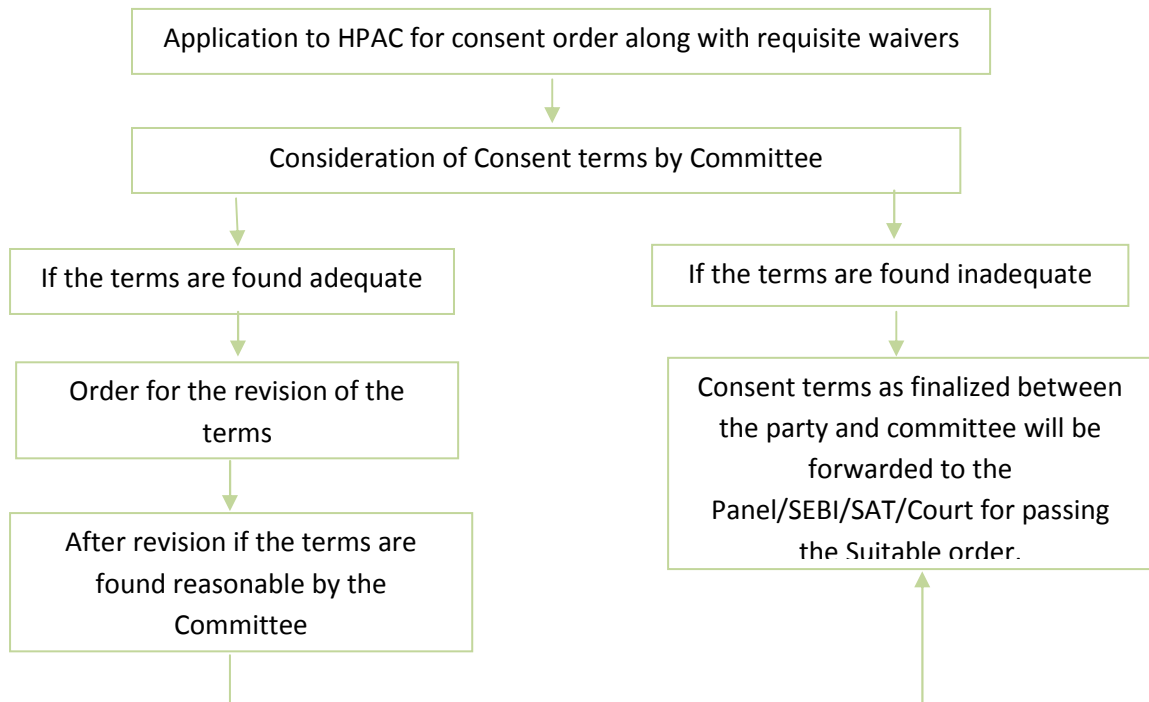
Waivers

While making the application for the consent order, the party is required to furnish a written waiver from taking any legal proceedings against SEBI concerning any of the issues covered by the consent order.

Non Compliance with the Consent Order

Where the party to the consent order failed to abide by the terms as incorporated in the order then SEBI has the power to take the appropriate action under the respective statute. Further, the proceedings which are kept in abeyance may again be started.

Procedure for the consent order



Recent Consent Order passed by the SEBI:

Surana Industries Limited

In this case SEBI initiated the adjudication proceedings against the Noticee for failure to make the open offer in terms of regulation 11(1) of the SEBI Takeover Code. Pending the adjudication proceedings, Noticee made the application to the SEBI for the settlement of the Proceedings on the payment of Rs.600000 towards the consent terms.

It is to be noted that in this case, the SEBI has passed the consent order for the failure to make the open offer.

SCIL Ventures Limited

In this the applicant failed to make the disclosure 6(2) of the SEBI Takeover Code for the years 1997 and Regulation 8(3) of the said Regulations for the years 1998- 2002 within the prescribed time and therefore filed the application for settlement of enforcement action that may be initiated by the SEBI. It is to be noted that in this case no adjudication proceedings are going on against the applicant. The applicant has made the application on becoming aware of the non compliance.

Case Study

Takeover of Jagatjit Industries Limited through differential voting rights

Jagatjit Industries Limited (“JIL”) is a company engaged in the manufacture and marketing of Alcoholic Beverages, Dairy and Malted Milkfood products, Glass and Plastic containers. The shares of the JIL are listed on BSE, CSE, DSE and LSE.

M/s L.P. Jaiswal & Sons Pvt. Ltd. (“LPJ&S”) and Mr. Karamjit S. Jaiswal (“KSJ”) (collectively referred to as “the Acquirers”) are the part of the promoter group of the JIL and holds 7418748 equity shares constituting 15% of the paid up capital and voting rights in JIL as on 31st March, 2004.

In order to avoid any takeover threat and to retain the control with the promoters, on June 17, 2004, JIL allotted 2500000 special series equity shares of Rs.10/- each at a premium of Rs.20/- per share carrying differential rights as to dividend and voting (i.e. nil dividend and twenty voting rights per share) to the acquirers. Such allotment constituted 4.81% of the total expanded capital of JIL.

Pursuant to the above acquisition, the shareholding of the acquirer increased from 7418748 Equity shares carrying equal voting rights and constituting 15% of the total share capital and voting rights to 9918748 equity shares constituting 19.10% of expanded equity share capital and carrying 57418748 constituting 57.74% of the expanded voting rights in JIL.

The differential point:

Thus, although after the above acquisition, the voting rights of the acquirer have increased by beyond the creeping acquisition limit as specified under regulation 11(1) of the SEBI Takeover Code. However, in terms of the number of shares, the acquisition was within the limit specified under the said regulation. Therefore, the Acquirer was advised not to make the open offer.

Thereafter on October 08, 2004 and October 13, 2004, the acquirers acquired 100 equity shares from the open market at the rate of Rs. 32.00 per share and 2190404 equity shares at a price of Rs. 30.55 per share by virtue of a gift deed executed by a relative in his favour increasing their shareholding to 16354132 shares Constituting 31.48% of the paid up share capital and representing 64.21% of the voting rights in JIL (including 4244880 shares (4.27%) held by the PACs).

It is to be noted that the SEBI Takeover Code is equally applicable on the acquisition of voting rights even though the acquisition in number of shares is within the limit specified under the said regulations. Therefore, on the acquisition of above shares carrying the differential voting rights, the acquirers were under the obligation to make the open offer. However, they failed to make the same at that time.

Hence to comply with their obligation under SEBI Takeover Code, on April 12, 2006, the acquirers had along with the PACs made the open offer to acquire 10388445 equity shares representing in the aggregate 20% of the voting capital of JIL at a price of Rs. 36.77 per share and accrued interest thereon of Rs. 9.52 per share calculated at the rate of 15% per annum from 15th October, 2004 (last date for completion of offer, if the offer was made within the prescribed time) to 6th July, 2006).

As against this, in the year 2004, Mr. Anand and Mr. Jagatjit Jaiswal moved to the CLB against the company decision to allot the share carrying the Differential Voting Rights to the acquirers and petitioned to declare the allotment null and void. However, CLB has Vide its order dated March 12th 2009, upheld the validity of issue of shares with differential voting rights. After CLB Order, the stake buy out will be in cash and the transaction would be completed within 3 months from the date of CLB order and all charges against acquirers will be dropped by the petitioners.

Impact on Hostile Takeovers

The decision of CLB has far reaching impacts because differential Voting Rights could arm promoters with a minority holding in companies with potent tool to fight hostile takeovers and is a very positive outcome for minority shareholders against oppression by majority shareholders.

Market Update

■ Danone may exit from Britannia

Danone SA, France's Groupe is planning to sell its entire stake in Britannia (Company) constituting 25.48% of shares of the Company to its Erstwhile Indian Partner namely Wadia Group. The stake will be sold to Leila Lands Ltd.(Mauritius), a wholly owned subsidiary of Bombay Burmah, which is owned by Wadia Group. Pursuant to above acquisition of shares from the Danone, the Wadia group will hold 50.96% stake in the Britannia. To purchase the above stake, Wadia Group is raising a loan from the ICICI Bank against the pledge of direct as well as indirect promoter shareholding in the Britannia and through the corporate Guarantees. The said transaction will be claimed as an exemption under inter-se between promoters clause.

■ Maximum Open Offers in FY09

Open offers made for the substantial acquisition of shares or taking the management control of listed company in terms of the SEBI Takeover Code in FY09 are more than the open offer made in the past. From the data collected from the SEBI, it has been revealed that 84 open offers were made during the year 2008-09 as against 74 open offers made in the Year 2007-08.

■ A new contender is in race for Wockhardt

Vetoquinol, French Company, is also in race along with the other two contenders i.e. Pfizer and Sanofi Aventis to acquire the animal healthcare business of Wockhardt Pharma and has also started the due diligence.

■ Tech Mahindra analyzing its bid for Satyam

Tech Mahindra is also analyzing its bid for Satyam on the lack of clarity of information in respect of Rs.1230 crore claimed to be brought in by B Ramalinga Raju by pledging shares held by his family members. However, there is no admission from the Board of Satyam to this fact as there is no proof which shows that B Ramalinga Raju has brought the money into the company.

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