

TAKEOVER PANORAMA

Year VI—Vol XII

December Edition

A Monthly newsletter by Corporate Professionals

Latest Open Offers

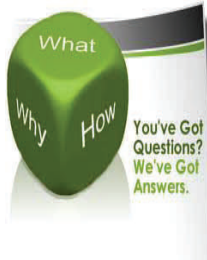


Legal Updates

ENTER THE WORLD OF TAKEOVER

INSIGHT

Hint of the Month



Regular Section



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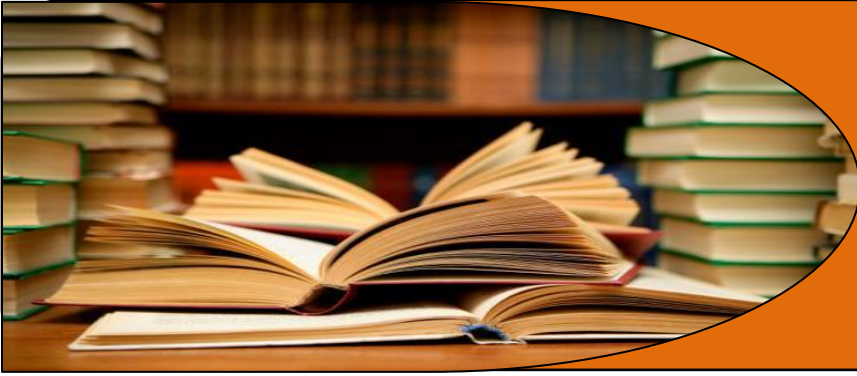
Queries



Quiz

Team





LEGAL UPDATES

Consent Order in the matter of Quantum Build-tech Limited

During the examination of draft letter of offer filed for acquisition of shares of Quantum Build-tech Limited (Target Company/Applicant), SEBI observed that the Target Company has delayed in making compliances of the provision of Regulation 8(3) of the SEBI (SAST) Regulations, 1997 by 572 and 207 days for the financial year ended 2002-03 and 2003-04 respectively. Accordingly, the Board initiated the Adjudicating proceeding and issued the show cause notice to the Applicant.

Therefore, the applicant had proposed to settle the aforesaid delay in making the disclosures on the payment of Rs. 1,50,000 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 Sulabh Engineers and Services Limited

Sulabh Engineers and Services Ltd (Target Company/Applicant) has delayed in making compliances of the provisions of Regulation 6(2) & (4) of the SEBI (SAST) Regulations 1997 by 2468 days for the year 1997 and Regulation 8(3) by 2123, 1758, 1392, 1027, 662, 297 and 166 days for the years 1998 to 2004 respectively.

Therefore, the applicant had proposed to settle any proceedings which may be initiated against the aforesaid delay in making the disclosures on the payment of Rs. 3,85,000 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.



Adjudicating/WTM orders

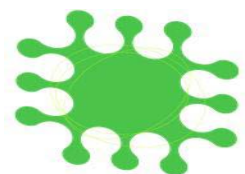
TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
M/s Fact Enterprises Ltd.	Mr. Rajiv Rajaram Kashyap	Regulation 7(1A) read with 7(2) of the SEBI (SAST) Regulations, 1997 and Regulations 13(3) & (5) of SEBI (PIT) Regulations, 1992.	Rs. 1,75,000
M/s Transpek Finance Limited	M/s Abhigam Consultants Private Limited	Regulation 10(5), (6) & (7) of the SEBI (SAST) Regulations, 2011.	Rs. 1,00,000
M/s Concurrent (India) Infrastructure Limited (<i>Now known as Shrinivas Power & Infrastructure Limited</i>)	Ms. K Nirupama	Regulations 8(A) (2) and 8(A) (3) of the SEBI (SAST) Regulations, 1997 and Regulations 13(3) read with (5) of SEBI (PIT) Regulations, 1992.	Rs. 3,00,000
M/s Concurrent (India) Infrastructure Limited (<i>Now known as Shrinivas Power & Infrastructure Limited</i>)	Ms. K. Nirmala	SEBI Circular No. SEBI/CFD/DCR/TO/152758/2009 dated 03/02/2009 read with Regulations 8A(1), 8A(2), 8A(3) and 8A(4) of SEBI (SAST) Regulations 1997, Regulations 29(2) read with 29(3), Regulation 31(2) read with 31(3) of SEBI (SAST) Regulations 2011 and Regulations 13(3) read with 13(5) and Regulation 13(4A) read with 13(5) of SEBI (PIT) Regulations, 1992.	Rs. 3,25,000



HINT OF THE MONTH

For computing acquisitions limits for creeping acquisition specified under regulation 3(2) of SEBI (SAST) Regulations, 2011, gross acquisitions/ purchases shall be taken in to account thereby ignoring any intermittent fall in shareholding or voting rights whether owing to disposal of shares or dilution of voting rights on account of fresh issue of shares by the Target Company.

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





Latest Open Offers

Target Company

M/s W W Technology Holdings Limited

Registered Office

Mumbai

Networth of TC

Rs. (42.88) Lakhs

Listed At

BSE

Industry of TC

Realty

Acquirer

Mr. Paresh Mulji Kariya

Triggering Event: SPA for the acquisition of 1,33,130 (54.34%) fully paid up equity shares and control over Target Company

Details of the offer: Offer to acquire 63,700 (26.00%) Equity Shares at a price of Rs. 10/- per share payable in cash.

Target Company

M/s Pioneer Distilleries Limited

Registered Office

Hyderabad

Listed At

BSE, NSE and PSE

Industry of TC

Distilleries

Acquirers

Relay B.V. (Acquirer), Diageo plc (PAC 1), Diageo Finance plc (PAC 2), Diageo Capital plc (PAC 3) and Tanqueray Gordon and Company Limited (PAC 4)

Triggering Event: Indirect acquisition of 10,922,032 (81.60%) fully paid up equity shares and control over Target Company

Details of the offer: Offer to acquire up to 24,66,168 (18.40%) Equity Shares at a price of Rs. 60/- per share payable in cash.



Target Company

M/s United Spirits Limited

Registered Office

Bangalore

Networth of TC

Rs. 46,617.679 Mn

Listed At

BSE, NSE, BgSE and
Luxembourg Stock
Exchange

Industry of TC

Distilleries

Acquirers

Relay B.V. (Acquirer),
Diageo plc (PAC 1), Diageo
Finance plc (PAC 2),
Diageo Capital plc (PAC 3)
and Tanqueray Gordon and
Company Limited (PAC 4)

Triggering Event: SPA for the acquisition of 25,226,839 (17.4%), PAA for the preferential allotment of 14,532,775 (10%) equity shares and SHA and control over Target Company

Details of the offer: Offer to acquire up to 37,785,214 (26.00%) Equity Shares at a price of Rs. 1,440/- per share payable in cash.

Triggering Event: SPA for the acquisition of 31,30,150 (90.60%) fully paid up equity shares and control over Target Company

Details of the offer: Offer to acquire 324,850 (9.40%) Equity Shares at a price of Rs. 3/- per share payable in cash.

Target Company

M/s Southern Fuel Limited

Registered Office

Coimbatore

Networth of TC

Rs. 32.97 Lacs

Listed At

BSE, CSE and BgSE

Industry of TC

Coke / Metalurgicak Coke

Acquirers

Mr. Ramesh Kumar
Sharma and Mr. Kaushal
Sharma



Target Company

M/s GlaxoSmithKline
Consumer Healthcare Limited

Registered Office

Punjab

Networth of TC

Rs. 11,442 Mn

Listed At

NSE and BSE

Industry of TC

Pharmaceuticals

Acquirer

M/s GlaxoSmithKline Pte Ltd
(Acquirer) along with M/s
Horlicks Limited (PAC 1) and
M/s GlaxoSmithKline plc
(PAC 2)

Triggering Event: Voluntary Open Offer for the purpose of consolidation of holdings.

Details of the offer: Offer to acquire 13,389,410 (31.84%) Equity Shares at a price of Rs. 3,900/- per share payable in cash

Triggering Event: Allotment of 8,50,000 (4.69%) Equity shares pursuant to conversion of warrants along with off Market Purchase of 55,500 (0.32%) fully paid up equity of the Target Company

Details of the offer: Offer to acquire up to 44,90,200 (26.00%) Equity Shares at a price of Rs. 22/- per share payable in cash

Target Company

M/s Pradeep Metals
Limited

Registered Office

Mumbai

Networth of TC

Rs. 2,647.79 Lacs

Listed At

BSE

Industry of TC

Forgings

Acquirer

M/s Rabale
Engineering India
Private Limited



Target Company

M/s Cinemax India Limited

Registered Office

Mumbai

Networth of TC

Rs. (0.11) Cr.

Listed At

NSE and BSE

Industry of TC

Entertainment

Acquirer

M/s Cine Hospitality Private Limited (Acquirer) and M/s PVR Limited (PAC)

Triggering Event: SPA for the acquisition of 1,93,94,816 (69.27%) fully paid up equity shares and control over Target Company.

Details of the offer: Offer to acquire 72,80,000 (26.00%) Equity Shares at a price of Rs. 203.65/- per share payable in cash.

Triggering Event: SPA for the acquisition of 11,38,790 (37.96%) equity shares and control over Target Company

Details of the offer: Offer to acquire 7,80,000 (26.00%) Equity Shares at a price of Rs. 1.50/- per share payable in cash.

Target Company

M/s Coimbatore Flavors and Fragrances Limited

Registered Office

Coimbatore

Networth of TC

Rs. 86.41 Lacs

Listed At

MSE, CSX and CSE and ASE

Industry of TC

Personal Care

Acquirer

Mr. P. B. Krishnaprasad

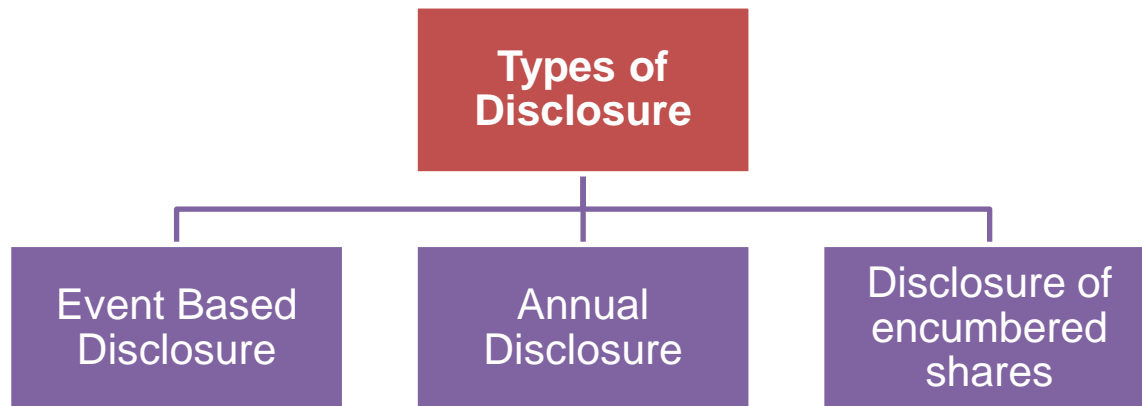




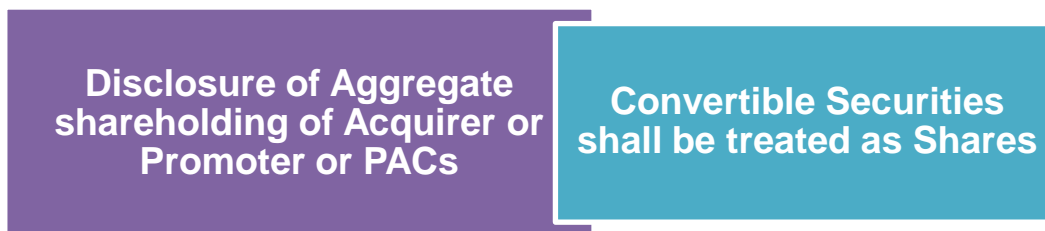
Regular section

DISCLOSURE OF SHAREHOLDING AND CONTROL

Chapter V of SEBI (SAST) Regulations, 2011 provides for the disclosure of shareholding in a Listed Company which can be classified as Event Based Disclosure, Annual Disclosure and Disclosure of encumbered shares. In SEBI (SAST) Regulations, 2011, the obligation to give disclosures lies on part of the Acquirer(s)/Promoters only whereas the erstwhile SEBI (SAST) Regulations, 1997 provides for the disclosures by Acquirer/Promoters and Target Company as well. These disclosures are aimed at providing vital information in relation to the acquisition or disposal of the shares of the Target Company at the specified limits in order to enable the stakeholders and Investors to take the appropriate decisions.



BASIC CONCEPTS

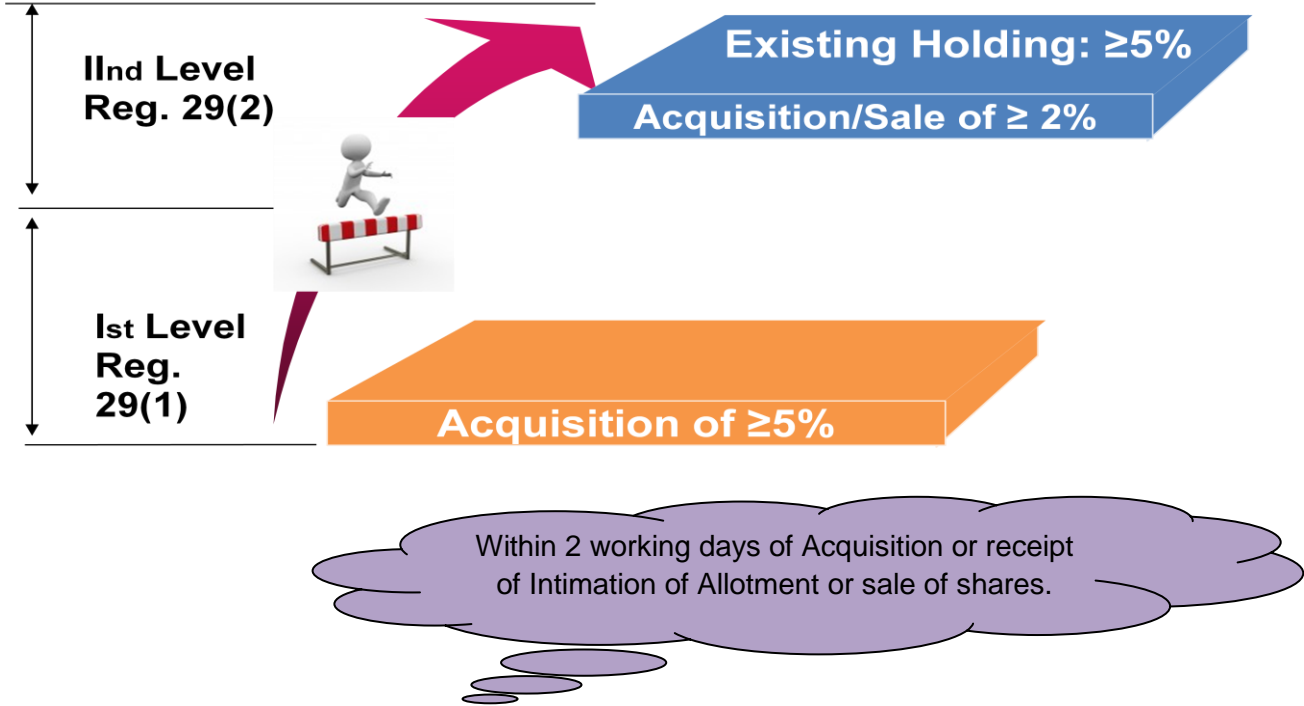


Event Based Disclosures

Regulation 29 provides the provision for the disclosure of shareholding by the acquirers/sellers in the event of acquisition or disposal of shares by them beyond the limits as specified under the said regulation.

The limits as specified under the regulations are given below:

- Acquisition of 5% or more shares or voting rights.
- Acquisition or disposal of 2% or more shares or voting rights by an acquirer already holding 5% or more shares or voting rights.



IMPORTANT POINTS

- No obligation on the Target Company to give any disclosure;
- Acquisition includes shares acquired by way of Encumbrance*;
- Disposal includes shares given upon release of encumbrance* ;
- Disclosure to be given to STX and Target Company.

***Not Applicable to scheduled commercial banks or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.**



Continual Disclosures

Regulation 30 provides the provisions for continual disclosure by the promoters and other shareholders of the Target Company which are explained below:

- Shareholders (along with PACs, if any) holding shares or voting rights entitling them to exercise 25% or more of the voting rights in the Target Company.
- Promoter (along with PACs, if any) of the Target Company irrespective of their percentage of shareholding in the Target Company.



IMPORTANT POINTS

- Disclosure of shareholding as of 31st day of March;
- Disclosure to be given within 7 working days from the end of each F.Y;
- Disclosure to be given to STX and Target Company;
- No obligation on Target Company to give any disclosure.



Disclosure of Encumbered Shares

Regulation 31 provides the provisions for disclosure in respect of shares encumbered by the promoters and person acting in concert with them which are explained below:

- Shares encumbered by promoters or by persons acting in concert with them;
- Any invocation of such encumbrance or release of such encumbrance.



“Encumbrance shall include a pledge, lien or any other transaction which entails a risk on the ownership of shares held by promoters.”

IMPORTANT POINTS

- Obligation on Promoters only;
- Disclosure to be given to STX and Target Company;
- No obligation on Target Company to give any disclosure.



The disclosure requirements as specified under Chapter V of SEBI (SAST) Regulations, 2011 is tabulated below

Regulation	Existing holding	Limit crossed	By Whom	To Whom	Time Period
Event based Disclosures					
29 (1)	0% - <5% shares or V.R.	5 % or more shares or V.R.	Acquirer(s) along with PAC(s)	Target Company & Stock Exchange	Within two working days
29 (2)	Holds 5% or more shares or V.R.	Acquisition or disposal of 2% or more shares or V.R.	Acquirer(s) along with PAC(s)/ Sellers	Target Company & Stock Exchange	Within two working days
Continual Disclosures					
30 (1)	Holds 25% or more voting rights	-	Acquirer(s) along with PAC(s)	Target Company & Stock Exchange	Within Seven working days
30 (2)	Irrespective of the shareholding	-	Promoter(s) of the Target Company	Target Company & Stock Exchange	Within Seven working days
Disclosures of Encumbered Shares					
31 (1)	-	Creation of encumbrance	Promoter(s) along with PAC(s)	Target Company & Stock Exchange	Within Seven working days
31 (2)	-	Invocation or release of such encumbrance	Promoter(s) along with PAC(s)	Target Company & Stock Exchange	Within Seven working days



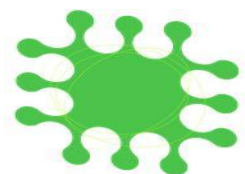
An analysis of SAT order in the matter of "ZJM Laboratories Limited"

About ZJM Laboratories Ltd (Target Company/ZJM):

ZJM Laboratories Ltd. was incorporated on February 14, 1984 as a private limited company under the provisions of the Companies Act, 1956 having its registered office at Mumbai. On January 21, 1993, it was converted into Public Limited Company. The company is engaged in the activities of manufacturing, distributing & marketing of pharmaceuticals in Allopathic & Herbal categories encompassing almost every dosage form, including Tablets, Capsules, Dry Syrups, Liquid Orals, External Preparations, SVPs (Injectables), Ointments, Powders, etc. The Equity Shares of the Target Company are listed on **Over The Counter Exchange of India Ltd. (OTCEI)**.

About the Noticees:

Anwar S. Daud, Unijules Life Sciences Ltd (USL) and Zakir S. Vali belongs to the Promoter group of the Target Company. Zakir Vali was appointed as chairman in 1984 and Anwar S. Daud was appointed as Managing Director in 1988 in the Target Company. USL is promoted by Faiz Vali, son of Zakir Vali.

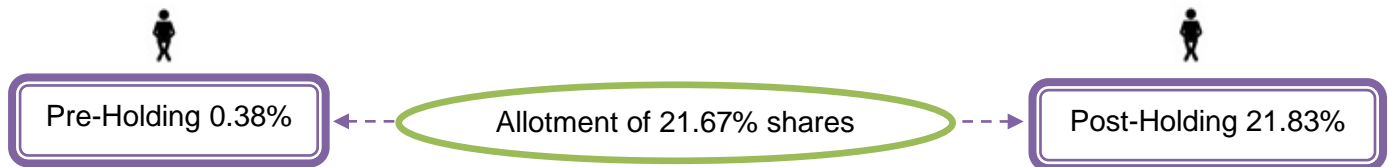


Background of the case

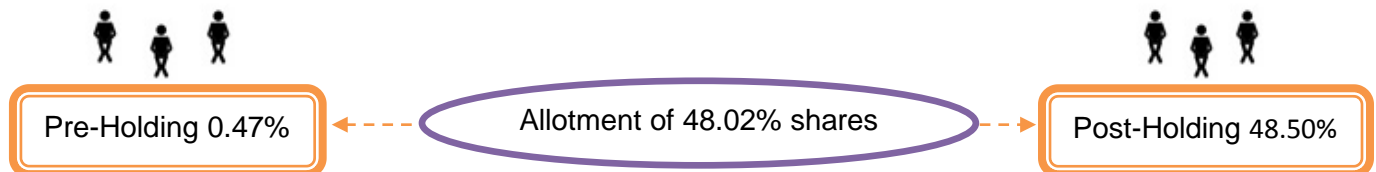
Target Company had made preferential allotments of shares on December 07, 2001, March 01, 2007, March 21, 2008 and May 20, 2008 to Anwar S. Daud (Noticee 1), Unijules Life Sciences Ltd (USL) (Noticee 2), and Zakir S. Vali (Noticee 3) {Collectively Noticees}.

Gist of Preferential Allotments made by the Company:

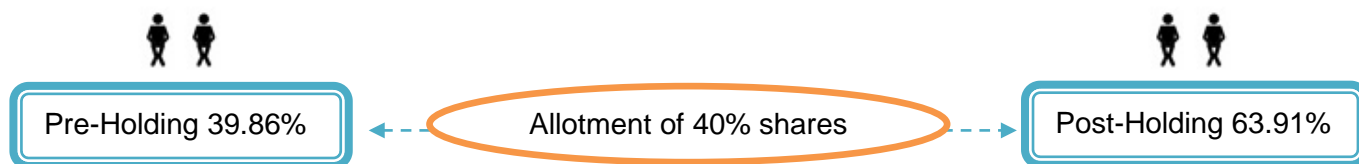
December 07, 2001: Noticee 1 had acquired 6,50,000 shares constituting 21.67% of paid up share capital of the Target Company on December 07, 2001 as a result of which his shareholding increased from 0.38% to 21.83% which necessitated the Noticee to make public announcement under Regulation 10 of SEBI (SAST) Regulations, 1997. However Noticee1 failed to make the Public Announcement.



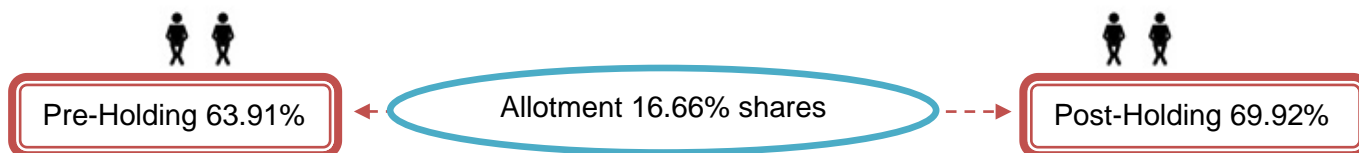
March 01, 2007: All the Noticee together acquired 14,40,590 shares constituting 48.02% of the paid up share capital of the Target Company as a result of which the shareholding of all the Noticees increased from 0.47% to 48.50%. This acquisition was also done without making a public announcement as required under regulation 10 of SEBI (SAST) Regulations, 1997.



March 21, 2008: Noticee 1 and Noticee 2, acquired 20,00,000 shares constituting 40% of the paid up share capital of the Target Company, as a result of which the shareholding of the both the Noticees increased from 39.86% to 63.91% which triggered Regulation 11(1) and 11(2) of SEBI (SAST) Regulations, 1997. However no Public Announcement was made.



May 20, 2008: Noticee 1 and Noticee 2 acquired additional 10,00,000 shares constituting 16.66% of the paid up share capital Target Company. As a result of the acquisition, their shareholding increased from 63.91% to 69.92%, but no Public Announcement was made under Regulation 11(2).



Delayed Public Announcement Made on April 21, 2009 under SEBI (SAST) Regulations, 1997

On April 21, 2009, a public announcement for Open Offer was made by the Noticee 1 and Noticee 2 under Regulation 11(1) and 11(2) of SEBI (SAST) Regulations, 1997 in respect of the above acquisition of shares by way of preferential allotment. However, as the Noticees along with other promoters of the Target Company were holding 75% shares as on the date of PA and they also intend to delist the Target Company in case public shareholding falls to below 25% on the completion of Takeover Open Offer, therefore, SEBI has directed them to withdraw the Takeover Open Offer and provide an exit opportunity to the shareholders of the Target Company by way of delisting offer.



Initiation of Adjudication Proceedings:

On November 17, 2011, show cause notices were issued to all the Notices for the above mentioned acquisition of shares by way of preferential allotment in violation of SEBI (SAST) Regulations, 1997.

Contentions raised by the Notices: Upon the SCN issued, Notices made the followings contentions:

- ❑ The Notices stated that show cause notice is bad in law as they had made an open offer in year 2009 which SEBI has asked them to withdraw and make a delisting offer at a new price, which was complied with.
- ❑ The complete compliance of SEBI directions dated December 3, 2009 was done by the Noticees, as they withdrew the open offer, then offered a higher price of Rs. 35.22 per share and made a delisting offer. However the public shareholders rejected the delisting offer.
- ❑ The allotment of shares on February 7, 2001 through preferential allotment was exempt from making public announcement under the then existing Regulation 3(1)(c) of SEBI (SAST) Regulations, 1997 which was deleted w.e.f. 09.09.2002.
- ❑ No Change in control.
- ❑ The shares in question got listed in OTCEI in year 2011.
- ❑ Further, till now, the trading permission has not been given.
- ❑ The Noticees made the reference of the judgment of Hon'ble SAT in the matter of Fascinating Leasing & Finance Pvt. Ltd. v/s SEBI *wherein it was decided that unlisted shares are not under the purview of SEBI (SAST) Regulations, 1997.*

The Noticees also made the reference of the judgment of Hon'ble SAT in the matter of Mr. Jogeshwar Rijumal Karachiwala and others v/s SEBI *wherein it was said that the shares were allotted to the appellants had never been listed on any stock exchange and that the trading in the scrip of the company had been suspended since January 7, 2002 which is still continuing, therefore the default committed by the Appellants did not make any adverse effect in the market.....”*



Observation by Adjudicating Officer

1. As regards the acquisition on December 7, 2001 is concerned, the same was exempt under the then existing Regulation 3(1) (c) of SEBI (SAST) Regulations, 1997 provided that the conditions specified in the regulation are complied with. On verification, it was found that all the conditions have been complied with. However, SEBI database does not contain any details of his having filed the report u/r 3(4) of SEBI (SAST) Regulations, 1997.

However, referring to the judgment of Hon'ble SAT in the matter of Mr. Jogeshwar Rijumal Karachiwala and others v/s SEBI, the Adjudicating Officer (AO) held that in respect of the said acquisition there was no adverse effect on the market as there was no trading in the scrip of ZIM, thus, benefit of doubt is given to Anwar S Daud.

2. However AO observed that pursuant to the allotment on March 01, 2007, March 21, 2008 and May 20, 2008, the shareholding of the Noticees increased beyond the limit prescribed in Regulation 10, 11(1) and 11(2) of the SEBI (SAST) Regulation, 1997, requiring them to make public announcement. However, they did not make the Public Announcement at that point of time, thereby violating the aforesaid regulations.
3. Moreover AO observed that SAT had never held in the case of Fascinating Leasing & Finance Pvt. Ltd. v/s SEBI that SEBI (SAST) Regulations, 1997 are not applicable to the unlisted shares of a listed company but had considered the unlisted shares only as one of the mitigating factors in reducing the penalty. The shares allotted on preferential basis to the Noticees got listed only on February 2011 is not relevant as the Noticees were enjoying voting rights pursuant to the allotment of the shares and therefore the shares fall under the purview of SEBI (SAST) Regulations, 1997.
4. AO further noted that by not Public Announcement at relevant point of time, the Noticees have avoided the expenditure which otherwise they would have incurred. Thus to this extent they have earned disproportionate gain or unfair advantage.
5. The violations are repetitive in nature as the Noticees crossed the threshold limit thrice.

Verdict of Adjudicating Officer:



However considering the fact that Noticees have made the Public Announcement on April 21, 2009 to regularize their past violations and there was no change in control and management of



the Target Company pursuant to the above preferential allotment, Adjudicating Officer imposed the penalty of Rs. 50,00,000 upon all the Noticees for violation of Regulation 10 and 11 of SEBI (SAST) Regulations, 1997.

Appeal to SAT

Against the above order of Adjudicating officer imposing a penalty of Rs. 50 Lakh, the Noticees have filed an appeal before SAT.

The Hon'ble Tribunal observed that:

- Direction of the SEBI vide letter dated December 3, 2009 to withdraw the public announcement by making a delisting offer under the delisting regulations cannot be said to regularize the breach of provisions of the takeover code by the Noticees.
- Further the letter itself made it clear that the direction in the letter is without prejudice to any action which might be taken by the Board under the takeover code.
- Further, the fact that the Target Company is listed on OTCEI and there is no trading in the shares since July 1998 is no reason for not to comply with statutory requirements.
- The shares allotted on preferential basis to the Noticees got listed only on February 2011 is not relevant as the Noticees were enjoying voting rights pursuant to the allotment of the shares and therefore the shares fall under the purview of SEBI (SAST) Regulations, 1997.

However, the above factors can be considered as mitigating factors while imposing the penalty on the Noticees. Moreover, as it is not a case of market manipulation or of investor's interest having been adversely affected and there is no change in management, therefore, the Hon'ble reduced the penalty from Rs.50 Lakh to Rs.10 Lakh.





Market Updates

ICICI BANK RAISING FUNDS THROUGH BONDS

ICICI Bank, the country's second-largest bank has made another funding in debt segment by issuing \$500 Million Yuan 3 year dim sum bond at the rate of 4.66% through its Singapore branch. In the above transaction, Hong Kong and Singapore investors took up 56% and 31% respectively followed by Taiwan (5%) and Europe (8%). The Bank has previously raised \$80 Mn through 4.9% Yuan bonds.

GULF OIL CORPORATION ACQUIRED AN AMERICAN FIRM

Hinduja Group company has acquired Houghton International, an American based Firm through its UK subsidiary "Gulf Oil Corporation" with a view to strengthen its portfolio for the consideration of Rs. \$1.045 Billion. Houghton has a very strong industrial portfolio, which perfectly complements Gulf's presence in the automotive lubricant sector. Houghton International deals in making specialty chemicals, oils and lubricants for the metal working, automotive, steel and other industries.

RELIANCE MF SOLD ITS STAKE IN TAKE SOLUTIONS

Reliance Mutual Fund sold off around 35 Lakhs shares of Take Solutions Limited, an IT firm through bulk deals on stock exchanges which has been bought by Shriram Entrepreneurial Ventures, a unit of Shriram Group at a price of Rs. 30.75 per share aggregating to a total consideration of over Rs. 10.83 Crores.



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

In which event, the acquirer is required to give the disclosure to the Target Company and Stock Exchange?

- A. Acquisition of shares
- B. Acquisition of shares as well as convertible warrants
- C. Acquisition of shares as well as convertible debentures
- D. Acquisition of shares as well as any convertible securities

Mail your answer at info@takeovercode.com

Question: 2

Whether the shareholders of the Target Company not holding the shares as on the identified date can tender the shares acquired after the identified date under the Open Offer made for the Target Company?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Winners of Quiz – November 2012-

1. **Rajalakshmi S**

Indbank Merchant Banking Services Ltd

2. **Ashish Lahoti**

Intensive Fiscal Services Pvt. Ltd.

3. **CA Swapnilsagar Vithalani**

KJMC Corporate Advisors (India) Limited



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