

TAKEOVER PANORAMA

Volume - XVII - February Issue

INSIGHT

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RECENT UPDATE

“SEBI Order in the Matter of Mysore Cements Limited”

On July 18, 2006, the acquirer had entered into to a share subscription and share purchase agreement with the promoters of Mysore Cements Limited (the Target Company). Pursuant to this, they acquired 42.09% equity shares of the total expanded capital at a price of Rs. 54 per share. Further, they also acquired 8.48% shares from the promoters at a price of Rs. 58 per share. The acquirer had also entered into a **non-compete agreement** with the sellers for an additional payment of Rs. 14.50 per share. Pursuant to this, the acquirer gave an open offer under SEBI Takeover Regulations to acquire 20% shares of the Target Company at an offer price of Rs. 58 per share. However, the shareholders of Target Company alleged that non-compete consideration cannot be paid to a promoter incapable of competing need not be paid non-compete consideration. Thus, the offer price should include non-compete consideration paid to the sellers.

Contentions:

1. The non-compete fees is within the parameters defined by regulation 20(8) of SEBI Takeover Regulations i.e. it is less than 25% of the offer price.
2. That an obligation not to ‘compete’ cannot be confused with ‘competency’ of a person to effectively compete.

Decision:

On the basis of above facts and circumstances, SEBI has decided that The Sellers were part of the promoter group of the target company when it had been sick company and their competence, if any, could not revive the affairs of the company. It is only after infusing funds by the acquirers the target company had been revived and had come out of the reference of the BIFR. These peculiar facts clearly suggest that the Sellers can not be considered as competitor who could carry on business activity in same line of business as that of the Target Company. The said payment of Rs. 14.50 per equity shares in the garb of non compete consideration to the Sellers only is clearly to reduce the cost of the acquisition through public offer and hence is not covered by regulation 20(8) as a non compete consideration. The acquirers should therefore, pay the consideration to the shareholders of the target company whose shares have been accepted by the acquirers in the public offer made by them at the rate of Rs.72.50 per equity share and also the interest.

LATEST OPEN OFFERS

Name of Target Company	Name of Acquirer	Details of Offer	Reason of Offer	Concerned Parties Details
<p>A. V. Cottex Limited</p> <p>Regd. Office New Delhi</p> <p>Paid up capital Rs.598.19 Lakhs</p> <p>Listed At BSE, DSE & JSE</p>	<p>Sudhir Milapchand Naheta and Ms. Rajkumari Sudhir Naheta</p>	<p>Offer to acquire upto 11,98,380 (20%) equity shares of Rs.10/- each, at a price of Rs. 14/- per fully paid-up equity share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Two SPAs, (i) SPA - 1 with Promoter Sellers (ii) SPA - 2 with Other Seller, to acquire an aggregate of 41,69,925 (69.59%) equity shares of Rs. 10/- each, at a price of Rs.10/- per equity share payable in cash.</p>	<p>Merchant Banker</p> <p>Collins Stewart Inga Private Limited</p> <p>Registrar to the Issue</p> <p>Mondkar Computers Pvt. Ltd.</p>
<p>Camlin Fine Chemicals Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 580 Lacs</p> <p>Listed At BSE</p>	<p>Mr. Ashish Dandekar and Mrs. Leela Dandekar</p>	<p>The acquirers, in their capacity as a guardian of minor children, had made an open public offer to acquire 11,60,000 (20% of expanded capital) equity shares of Rs. 10/- each, at a price of Rs. 60/- per share.</p>	<p>Regulation 11(1)</p> <p>The acquirers (part of the promoters group) have acquired 950,000 equity shares of Rs. 10/- each at a price of Rs. 52/- per share, through their minor children on a preferential basis thereby increasing their shareholding from 49.81% to 58.03%.</p>	<p>Merchant Banker</p> <p>Transwarranty Capital Pvt Ltd</p> <p>Registrar to the Issue</p> <p>Sharepro Services (India) Pvt. Ltd.</p>

<p>New Delhi Television Limited</p> <p>Regd. Office New Delhi</p> <p>Paid up capital Rs 2501.33 Lacs</p> <p>Listed At BSE & NSE</p>	<p>Dr Prannoy Roy and Mrs Radhika Roy</p>	<p>Open offer to acquire an aggregate of 12,525,336 (20.00%) equity shares of Rs. 4/- each, at a price of Rs. 438.98/- per share.</p>	<p>Regulation 11(1)</p> <p>Acquisition of 4,835,850 (7.73%) equity shares at a price of Rs 400/- per share from the Open Market, thereby increasing the shareholding from 53.26% to 61%.</p>	<p>Merchant Banker</p> <p>Morgan Stanley India Company Private Limited</p> <p>Registrar to the Issue</p> <p>Karvy Computershare Private Limited</p>
<p>Parekh Distributors Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 10,00,000/-</p> <p>Listed At BSE</p>	<p>Praful M. Patel and Mrs. Varsha P. Patel</p>	<p>Offer to acquire upto 20,000 fully paid-up equity shares representing 20% of the Equity Capital at a price of Rs. 10 /- per equity share of the Target Company.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire the entire shareholding of sellers of 74,500 (74.5%) fully paid-up equity shares at a price of Rs. 5/- per fully paid-up equity share to be paid in cash.</p>	<p>Merchant Banker</p> <p>Kotak Mahindra Capital Company Ltd</p> <p>Registrar to the Issue</p> <p>Computech Sharecap Limited</p>

<p>Axis IT & T Limited</p> <p>Regd. Office New Delhi</p> <p>Paid up capital Rs. 999.56 Lacs</p> <p>Listed At BSE & NSE</p>	<p>Tayana Software Solutions Private Limited</p>	<p>Offer to acquire upto 39,92,097 (20%) constituting at a price of Rs. 19.59 per fully paid up Equity Share, payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 1,21,12,184 (60.69%) equity shares of face value of Rs. 5/- each at a price of Rs.13.50 per share.</p>	<p>Merchant Banker Edelweiss Capital Ltd</p> <p>Registrar to the Issue Karvy Computershare Private Limited</p>
<p>Flat Products Equipments (India) Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 4,93,78,130</p> <p>Listed At BSE, ASE and DSE</p>	<p>Cockerill Maintenance & Ingenierie SA</p>	<p>Offer to acquire upto 9,87,563 equity shares constituting 20% of the Target Company at a price of Rs. 517/- per fully paid up Equity Share, payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Direct and indirect acquisition of aggregate 27,17,637 equity shares of face value Rs. 10/- each, representing 55.04% of the paid up share capital of FPL.</p>	<p>Merchant Banker Edelweiss Capital Ltd</p> <p>Registrar to the Issue Karvy Computershare Private Limited</p>

<p>Stovec Industries Limited</p> <p>Regd. Office Gujarat</p> <p>Paid up capital Rs. 2,08,80,160</p> <p>Listed At BSE and ASE</p>	<p>Stork Prints Group B.V. & Stork Prints B.V.</p>	<p>Offer to acquire 417,604 Shares representing 20% of the paid-up and voting equity share capital of the Target Company at a price of Rs. 225.75 per Share, to be paid in cash.</p>	<p>Regulation 10 [read with explanation (b) to Regulation 11] and 12</p> <p>Indirect acquisition of 1,064,889 (51%) fully paid-up equity shares of face value of Rs.10/- each of the Target Company.</p>	<p>Merchant Banker Ambit Corporate Finance Private Ltd</p> <p>Registrar to the Issue Intime Spectrum Registry Ltd</p>
<p>BOC India Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 852,842,230</p> <p>Listed At BSE, the NSE and the CSE</p>	<p>BOC Group plc along with BOC Holdings, Linde Holdings Netherlands B.V. and Linde Finance B.V.</p>	<p>Offer to acquire up to 17,056,845 (20%) fully paid-up Equity Shares of the Target Company at a price of Rs. 165 per Equity Share.</p>	<p>Regulation 11(1)</p> <p>Allotment, on preferential basis, of 3,62,00,000 fully paid-up Equity Shares of the face value of Rs. 10/- each of the Target Company for cash, at a price of Rs. 165/- per Equity Share.</p>	<p>Merchant Banker Deutsche Equities India Private Limited</p> <p>Registrar to the Issue Intime Spectrum Registry Ltd.</p>

<p>Pennar Industries Limited</p> <p>Regd. Office Hyderabad</p> <p>Paid up capital Rs. 54,07,65,395/-</p> <p>Listed At BSE</p>	<p>Eight Capital Master Fund Ltd, and Spinnaker Global Opportunity Fund Ltd, Spinnaker Global Emerging Markets Fund Ltd and Spinnaker Global Strategic Fund Ltd</p>	<p>Offer to acquire upto 2,52,95,496 (20%) equity shares of Rs. 5/- each, at a price of Rs. 14.75 per share payable in cash.</p>	<p>Regulation 10</p> <p>Automatic conversion of debentures into Equity shares on due date, thereby increasing the shareholding of debentureholder to 26% of the total expanded capital.</p>	<p>Merchant Banker Yes Bank Ltd.</p> <p>Registrar to the Issue Mondkar Computers Pvt. Ltd.</p>
<p>Brilliant Securities Limited</p> <p>Regd. Office Hyderabad</p> <p>Paid up capital Rs. 510.73 Lacs</p> <p>Listed At BSE, HSE, BgSE, ASE</p>	<p>K. Bhaskar Reddy, Mrs. K. Uma, Mr. Venkat S Meenavalli, Mrs. Meenavalli Usha Rani and KBR Holding Private Limited</p>	<p>Offer to acquire 10,21,460 shares of Rs. 10/- each, representing 20% of its voting capital, at a price of Rs. 109 per share payable in cash in terms of regulation 20 of the regulations.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire in aggregate 21,75,200 fully paid -up Equity shares of Rs. 10 each representing 42.59% to the total voting capital of Target Company at a price of Rs. 12.19/- per shares.</p>	<p>Merchant Banker Ashika Capital Ltd</p> <p>Registrar to the Issue Venture Capital And Corporate Investments</p>

<p>Industrial Investment Trust Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 1000.00 Lakhs</p> <p>Listed At BSE</p>	<p>N.N. Financial Services Private Limited, Nimbus (India) Limited, Mr. Bipin Agarwal & Mr. Swaran Singh</p>	<p>Offer to acquire upto 20,00,000 equity shares of Rs. 10/- each representing 20% of the voting capital at a price of Rs. 111/- per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 48,88,097 (48.88%) fully paid up equity shares of Rs. 10/- each, at a price of Rs. 105/- per share from the Promoter Group of IITL.</p>	<p>Merchant Banker Ashika Capital Ltd</p> <p>Registrar to the Issue Intime Spectrum Registry Ltd</p>
<p>Manoj Housing Finance Company Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 499.75 Lacs</p> <p>Listed At BSE</p>	<p>Mahesh N. Pujara, Mr. Mitesh M. Pujara, Mr. Rishabh P. Siroya, Mr. Anant A. Bhalotia, Mr. Ajay R. Joshi, Mr. Ashok S. Patel and Mr. Subhash A. Patel</p>	<p>Offer to acquire upto 9,99,500 equity shares representing 20% of the voting capital, at a price of Rs. 14/- per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>7 SPAs with the existing promoter group of Target Company to acquire in aggregate 15,66,210 (31.34%) fully paid up equity shares of Rs. 10 each, at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker Ashika Capital Ltd</p> <p>Registrar to the Issue Purva Shareregistry P Ltd</p>

<p>Universal Print Systems Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 820 Lakhs</p> <p>Listed At MSE & BGSE</p>	<p>Manipal Press Limited</p>	<p>Offer to acquire upto 16,40,020 Equity shares of Rs. 10 each representing 20% voting rights of the Target Company.</p>	<p>Regulation 10 & 12</p> <p>Preferential Allotment of 32,00,000 (39.02%) fully paid Equity Shares of Rs. 10 each at a price of Rs. 17 per share and SPA to acquire balance number of Equity shares so as to enable the acquirer to hold 51% shares of the total capital of the Target Company, if valid Equity Shares tendered in the Open offer together with shares acquired pursuant to the preferential allotment does not constitute 51% of the total expanded capital of the Target company,</p>	<p>Merchant Banker</p> <p>Collins Stewart Inga Private Limited</p> <p>Registrar to the Issue</p> <p>Mondkar Computers Pvt. Ltd.</p>
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HINT OF THE MONTH

“Calculation of Creeping Acquisition Limit”

In case of regulation 11(1), for the purpose of calculating the limit of 5% as allowed to be acquired in a financial year, only the absolute acquisition i.e. without giving the effect of sale, should be considered. In other words, no netting off shall be done for the purpose of calculating the limit of 5%.

In Kosha Investments Ltd., SAT has accepted the contention of SEBI that for the purpose of 5 per cent acquisition limit, the total purchase i.e., the absolute purchases of shares of SIL during the period of 12 months without reducing the sale of shares, which means that no netting off of acquisition was to be done.

In the P. N. Bhagwati Committee report also, this point has been made amply clear in the following words:

“The percentage of acquisition referred to above is on absolute basis i.e. there should be no netting of acquisition and disinvestment during the said period. In other words if a person acquired x% during a period of 12 months, sold y% and acquired z% his aggregate acquisitions of (x% + z%) would be reckoned for the purpose of the Regulation and not (x% - y% + z%).”

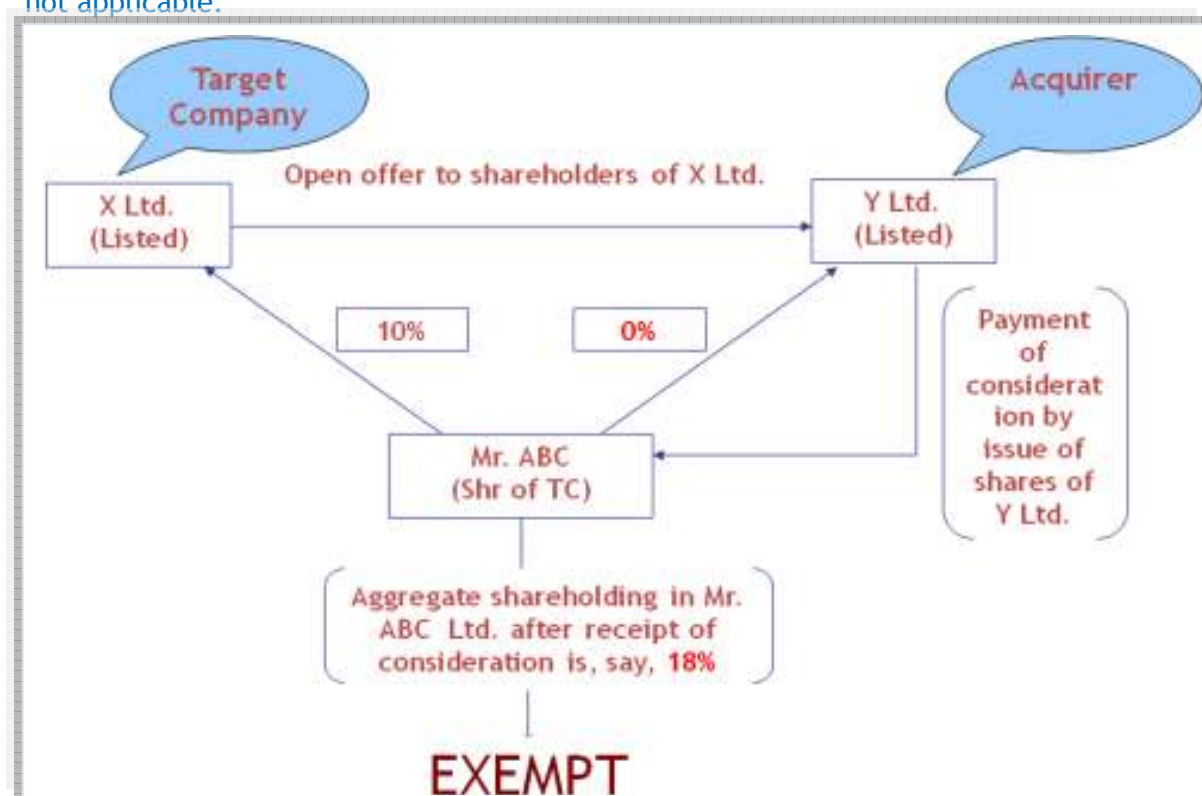
REGULAR SECTION

EXEMPTIONS EXPLAINED...

⇒ Acquisition of shares by a person in exchange of shares received under a public offer made under these regulations - Regulation 3(1) (ff)

Takeover Code provides for two types of considerations for acquisition of shares i.e. cash as well as non-cash consideration such as shares. The exemption is available when the acquirer is a listed body corporate and it issues its shares to the shareholders of Target Company in consideration of public offer. Therefore such shares received by the shareholder of Target Company in consideration of public offer will not trigger the Takeover Offer, even if it exceeds the limits specified under the regulations.

Example: The acquirer is a listed body corporate (XYZ Ltd) & is acquiring the shares of another listed company (ABC Ltd). In consideration the acquirer is ready to issue shares in XYZ Ltd to the shareholder of ABC Ltd. If any of the shareholders in ABC Ltd. acquires shares in XYZ Ltd. beyond the prescribed limit specified in the takeover offer in consideration of the shares offered to the acquirer, then the provisions of open offer are not applicable.

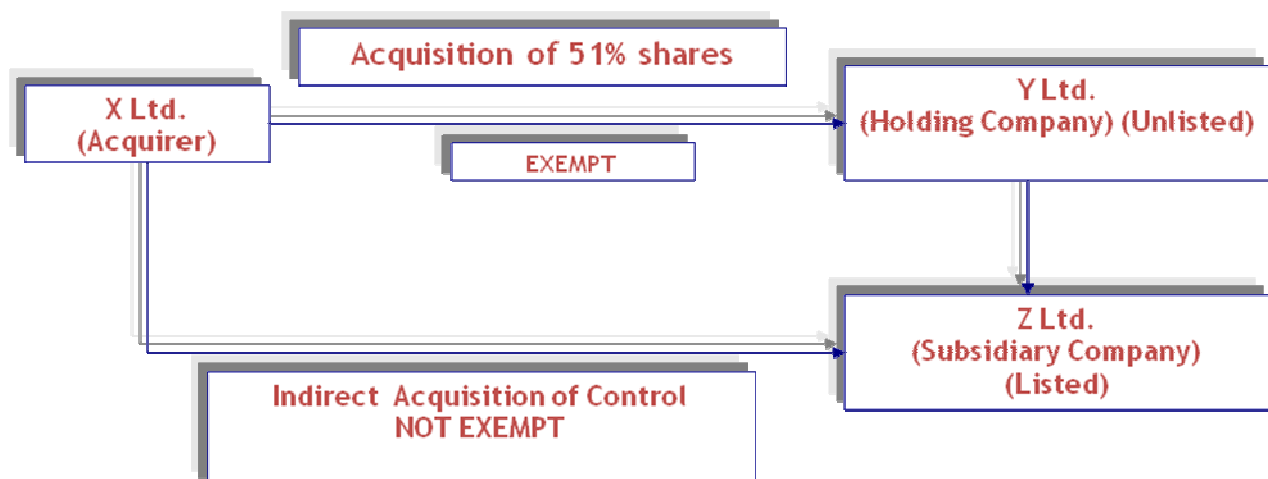


⇒ Acquisition of shares in companies whose shares are not listed on any stock exchange. - Regulation 3 (1)(K)

Explanation –The exemption under clause (k) above shall not be applicable if by virtue of acquisition or change of control of any unlisted company, whether in India or abroad, the acquirer acquires shares or voting rights or control over a listed company.

The code extends to acquisition of shares of listed company. Therefore, if any listed company acquires the shares of an unlisted company, then the takeover code is not attracted. However, if acquisition of shares / change in control of unlisted company results into acquisition of shares or voting rights of listed company indirectly, then the Takeover Code will be applicable.

Example: The acquirer, whether individual or body corporate, acquires 51% shares of Y Ltd. Y Ltd. is an unlisted holding Company of Z Ltd., which is a listed Company. Therefore, by virtue of acquisition of 51% shares of Y Ltd, the acquirer will acquire control over the Target Company or in other words, it will indirectly acquire the shareholding of Z Ltd. (Listed Subsidiary Company). Hence, although the acquirer has acquired shares of an unlisted Company, yet he will be required to comply with the provisions of SEBI Takeover Regulations in respect of Z Ltd.



MARKET UPDATE

⇒ “Yahoo continued to reject Takeover Bid by Microsoft:

Is it Another Takeover war???”

WHAT’S GOING ON.....

On Feb. 1, Microsoft made an unsolicited \$44.6 billion cash and stock bid for Yahoo at \$31 per share. The bid represented a 62% premium over Yahoo stock price one day earlier. On February 11 Yahoo Inc has announced that its board has rejected the Microsoft’s \$44.6 billion deal. The Yahoo board believes that Microsoft’s proposal “substantially undervalues Yahoo”, including their global brand, large worldwide audience, significant recent investments in advertising platforms and future growth prospects, free cash flow and earnings potential, as well as their substantial unconsolidated investments.

PRICE MOVEMENT IN THE SCENE...

After the bid, Yahoo's shares closed with 31 cents rise to \$29.88 and rose nearly 1% in after-hours trading & Microsoft's shares rose 62 cents, to \$28.96.

ACQUIRER’S ATTITUDE...

“The Yahoo response does not change our belief in the strategic and financial merits of our proposal. As we have said previously, Microsoft reserves the right to pursue all necessary steps to ensure that Yahoo’s shareholders are provided with the opportunity to realise the value inherent in our proposal.” This means Microsoft is not going to back out, and it will explore all means - a friendly or a hostile takeover bid.

NEXT MOVE...

Murdoch's News Corp, a Web powerhouse seems to enter the scene soon as it is said to be in talks to invest in Yahoo to help it fend off Microsoft's overtures. It is clear that Yahoo is doing everything it can to avoid a Microsoft takeover.

However, a partnership with News Corp. is unlikely to materialize and that Yahoo's shareholders will "take the cash" from Microsoft because one potential complication is that MySpace.com, a top social networking site owned by News Corp., has an ad agreement with Yahoo competitor Google. On the other hand, Google has released various statements questioning about the ulterior intentions of Microsoft in this deal. Whatsoever be the next move, the billion dollar question is, *how Yahoo will convince its shareholders* because to defend itself Yahoo has to convince its shareholders to believe in its vision and pass up that premium.

The latest turn being anticipated in the scene is that Microsoft is likely to up its bid to \$35 a share, which may be difficult for Yahoo's public shareholders to reject. Getting a higher price from Microsoft would be easier for Yahoo if an alternative bidder had presented itself.

⇒ **Kotak Mahindra proposed to acquire 51% stake in Ahmedabad Commodity Exchange**

Kotak will acquire a 51 per cent stake in the 50-year-old Ahmedabad Commodity Exchange (ACE). According to a circular sent by the exchange to its shareholders, the exchange will issue to Kotak Mahindra Bank Ltd and its associates upto 1,02,000 equity shares at a price of Rs 321 per equity share and up to 1,050,000 share warrants that can be exercised at Rs 321 within 36 months. This will constitute about Rs 36.97 crore. Once Kotak comes in, ACE will be the first regional commodity exchange in India to be corporatised. It would become a online screen-based exchange.

⇒ **Acme Tele Power obtained 5/5 IPO Grading from Crisil**

Delhi-based telecom infrastructure and power Solutions Company Acme Tele Power Ltd has notched top-most grading for its IPO. The company, backed by private equity investors like Capital Partners, has got 5 on 5 grading from Crisil. The grading indicates that the fundamentals of the issue are strong relative to other listed equity securities in India. Acme plans a public issue of 17.28 million equity shares of face value Rs 2 each priced in the range of Rs 800 to Rs 950 per share. The IPO is in the form of an offer for sale by the promoters, whose stake in the company will reduce to 84.6 per cent from 94.7 per cent post issue.

INTERMEDIARY SEARCH

S. No.	Particulars	Address
1	YES Bank Ltd.	9th Floor, Nehru Centre, Discovery of India, Dr. Annie Besant Road Worli Mumbai Maharashtra - 400018
2	Edelweiss Capital Ltd	Express Towers, 14th floor, Nariman Point, Mumbai Maharashtra - 400021

FOR ANY CLARIFICATION

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