



takeover panorama





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LEGAL UPDATES

In the matter of Mallikarjuna Rao Akkineni and other Promoters

Facts:

On examination of the letter of offer filed for the acquisition of shares of Softpro Systems Limited (SSL), it was observed by the SEBI, that erstwhile promoters group (Noticees), already holding more than 55% shares in the SSL, have acquired the shares of the Company on February 10, 2005, March 14, 2005, March 31, 2005, May 02, 2006, May 03, 2006, June 07, 2006, June 08, 2006 and November 14, 2006 without making the public announcement in terms of regulation 11(2) of the SEBI (SAST) Regulations, 1997.

SEBI imposed the penalty of Rs.5 lacs where the notices failed to make the open offer as required under regulation 11(2)

Contention:

1. The promoters had control over the affairs of the target company even prior to acquisition of the shares.
2. Acquisition of additional equity shares is not an intentional act done for any benefit or for violating the Regulations. Further, one of the transaction was actually a recasting of shareholding pattern.
3. When we had acquired the said shares, price was ranging from Rs.32 to Rs.48 and therefore if we would have made open offer, the shareholder would have got a price of Rs.48 per share. As against this, in the recent open offer made by Sahasra Investments Pvt.Ltd. and others in March, 2008, the shareholders were immensely benefited at the offer price of Rs.150 per share. The open offer was made for 12,00,000 equity shares, however, only 23 applications were received by the acquirers for about 2000 equity shares.

4. The company has made all the yearly disclosures as required under regulation 8 of the SEBI (SAST) Regulations, 1997.

Issues:

Whether the Noticees have violated provisions of regulation 11(2) of SAST Regulations? Does the violation, if any, on the part of the Noticees attract monetary penalty under section and 15 H (ii) of SEBI Act?

Decision:

SEBI held that the Noticees failed to fulfill the statutory obligation of making the public announcement and with the result, denied the statutory right of the shareholders of SSL to exit through the open offer mechanism. SEBI though extended the benefit of doubt in respect of 60,714 shares which was reportedly due to recast of shareholding pattern of the Noticees and therefore imposed the monetary penalty of Rs.5,00,000/- on the noticees.

In the matter of Scana Color (India) Limited

Facts:

On examining the letter of offer filed for the acquisition of shares of Scana color (India) Limited (SCIL), it was observed that SCIL failed to comply with Regulations 6(2), 6(4) and 8(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 within the stipulated time on five occasions between the year 2005- 2006. Accordingly, the adjudication proceedings were initiated against the Noticee.

SEBI disposed off the adjudication proceedings where the noticees has made all the disclosures as required under SEBI (SAST) Regulations, 1997.

Contention:

1. The letter of offer filed by the Noticee erroneously stated that the noticee has failed to make the adequate disclosures when the promoters sold the shares worth more than 2% of the share capital.

2. The noticees submitted copies of the acknowledgement from the BSE regarding the disclosures made on March 29, 2005 and July 31, 2006 in respect of sale of shares made at the end of March and on August 31, 2008.
3. As regards the error found in the filed document, as one company belonging to the promoter group was accidentally shown under the head 'Bodies Corporate' was rectified as soon as it was discovered by the noticee and the same was filed in the declarations on March 28, 2007.

Issues:

Whether there had been any delay on the part of the noticees in complying with the provisions of Regulations 6(2), 6(4) and 8(3) of the Takeover Regulations.

Decision:

Since the noticee has made the required disclosures as required under the SEBI(SAST) regulations within the time and has further submitted the copies of the acknowledge receipt from the SEBI, therefore, SEBI disposed off the adjudication proceedings against the noticee.

In the matter of Parimal J. Patel

Facts:

On examining the offer document filed for the acquisition of shares of M/s Adarsh Plant Protect Limited (APPL), it was alleged that Mr. Parimal J. Patel had failed to comply with regulation 6(1) of SAST Regulations for the year 1997. Accordingly, a show cause notice was issued to the PJP.

Contention:

1. The noticee contended that presently it does not holds any shares in the APPL.
2. That the disclosure was made with a delay of more than 200 days due to inadvertence.

SEBI dispose of the proceedings where the delay in filing the disclosures u/r 6(1) was due to inadvertence and the acquirer presently doesn't hold any shares in the Target Company

Issues:

Whether the Noticee had violated regulation 6(1) of SAST Regulations for the year 1997? Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15A (b) of SEBI Act?

Decision:

In view of the facts and circumstances of the case, SEBI held that though the violation of regulation 6 (1) is established, however, it is not a fit case to impose any monetary penalty on the Noticee and accordingly, the matter is disposed of.

In the matter of Rajendra Kumar Banthia

Facts:

SEBI conducted an investigation in the scrip Nedungadi Bank Ltd. (NBL) and observed that Rajendra Kumar Banthia, Surendra Kumar Banthia and Saroj Banthia falls under one group. NBL by virtue of a resolution in the Board Meeting held on October 30, 2001 has treated the members of the Banthia Group, Shrikant Mantri Group and The First Custodian Fund (India) Limited as a single promoter Group.

“SEBI held that, to treat a person as a promoter of the Company, the consent of that person is not required if he is otherwise in control and management of the Company”

As per the shareholding patterns of the Company, the total shareholding of the Banthia Group, Shrikant Mantri Group and The First Custodian Fund (India) Limited as on October 29, 2001 was 20.13% which fell down to 9.19% as on January 31, 2003. However, no disclosure under Regulation 8(1) and 8(2) of SAST Regulations and Regulation 13(3) of Insider Trading Regulations has been made.

Contention:

1. Board resolution was passed without their consent.

2. They submitted that they were never the promoter of the company.
3. The total shareholding of the Bhantia group as on October 29, 2001 was 8.40% which is less than 15%.
4. Since the shareholding was less than 15% and they were never the promoter of the company, therefore they cannot be held to have violated Regulation 8(1) & 8(2) of SAST Regulations.
5. Further, the change in the shareholding of the Bhantia group was never exceeded the limit specified in the Insider Trading Regulations, therefore, they were not required to file the disclosures under regulation 13(3) of that regulation.

Issues:

Whether the contention of the noticee that they were not required to made the disclosure under regulation 8(1) & 8(2) of SAST Regulations and regulation 13(3) Insider Trading Regulations is justified?

Decision:

SEBI held that noticee are persons in control of NBL as defined in Regulation 2(c) of SAST Regulations, as they by acting in concert had the right to appoint the majority directors as well as the right to influence the management and the policies on NBL. Further, the submission that the said Board Resolution was passed without their consent, cannot be accepted, because as per the definition of promoter under Regulation 2(h) of SAST Regulations, consent of the person is not required. Therefore the contention of the noticee that they were not required to filed the disclosure is not justified and imposed the penalty of Rs.50000/- on the noticee.

In the same matter, SEBI passed the similar order in the case of First Custodian Fund (India) Limited and imposed a penalty of Rs. 25000/-.

In the matter of Hanuman Securities Pvt. Ltd.

Facts:

SEBI conducted an investigation into the shares of NBL and found that the Hanuman Securities Pvt. Ltd. has violated Regulation 7(1) of the SEBI (SAST) Regulations, 1997 and 13(1) and 13(3) of the Insider Trading Regulation, 1992. Accordingly, a show cause notice is issued to the Hanuman Securities Pvt. Ltd. It has been alleged that the noticee had neither disclosed its aggregate shareholding when it crossed 5% as required under regulation 7(1) of Takeover Regulations and regulation 13(1) of Insider Trading Regulations nor the noticee had disclosed the sale of 6.87% of the paid-up share capital of NBL as required under regulation 13(3) of Insider Trading Regulations.

SEBI imposed the penalty of Rs.1,00,000/- where the noticee failed to make the disclosures as required under regulation 7(1) of the Takeover Regulations and regulation 13(1) and 13 (3) of the Insider Trading Regulations

Contention:

1. That these sales were on account of an order of Moratorium in respect of NBL issued by the Government of India on an application made by the Reserve Bank of India.
2. It was clearly set out in the order that the entire amount of the paid up capital and reserves of NBL were to be treated as provision of bad and doubtful debts and depreciation in the assets of NBL.
3. No provision for issue of shares of PNB in lieu of the shares of NBL to the shareholders of NBL. Therefore, in order to avoid a complete loss of its investment in the shares of NBL, the noticee sold the shares.

Issues:

Whether, where the noticee has admitted the violation, imposition of penalty on the noticee is justified?

Decision:

SEBI held that the contention of the Noticee that the said omission was unintentional cannot be accepted and imposed the penalty of Rs.100000/- on the Noticee. Further, once the violation of statutory regulations is established, the intention of parties committing such violation becomes totally irrelevant.

Informal guidance in the matter of Forbes & Company Limited

Facts:

Sterling Investment Corporation Pvt. Ltd. ('Sterling') is a holding company of Forbes & Company Limited ('F&CL') & holds 64.55% of the share capital of F&CL. The aggregate shareholding of the Promoter Group in F&CL is 73.35%. Forbes Finance Ltd. ,a wholly-owned subsidiary company of F&CL & one of the promoter of F&CL, holds 1,66,398 shares(1.29%) of F&CL since 1992.

For computing the period of three years holding in terms of regulation 3(1) (e) of the Takeover Regulations, where the shares acquired in the demerged company are sought to be traded, the date on which the shares were acquired in the demerged company would be taken as the date of acquisition and the period of three years will be calculated from that date only.

On 29.11.2006, F&CL acquired the entire shareholding, aggregating 50000 shares, from the promoters of ANS Textiles (Bangalore) Ltd., the name of which was subsequently changed to Gokak Textiles Limited ('GTL'). During the year 2007, the textile business of F&CL was demerged into GTL & the shareholders of F&CL were allotted 1 share of GTL for every 2 shares held by them in F&CL.

Accordingly, Sterling which is now the holding company of both GTL & F&CL ,was allotted 41,63,176 shares(64.06%) & FFL was allotted 82831 shares (1.28%) of GTL. The aggregate shareholding of the promoter group in GTL including FFL & F&CL is 47, 80,845 shares (73.56%).

Now, FFL & F&CL desired to transfer their entire shareholding in GTL to Sterling in accordance with regulation 3(1) (e) of the SEBI (SAST) Regulations, 1997 i.e. as inter se transfer among the qualifying promoters. One of the conditions for effecting the inter se transfer is that transferors as well as the

transferee have been holding the shares in the target company for a period of at least three years prior to proposed acquisition.

Issues:

How the period of three years holding for the purpose of the proviso to Regulation 3 (1) (e) shall be calculated when shares in a demerged company are sought to be traded or acquired.

Decision:

As per section 47(vi) (d) of the Indian Income-tax Act, 1961, any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking' is not regarded as transfer & for the purpose of finding out the period of holding of shares to determine whether it is long term or short term capital gain, the period of holding is taken from the date on which the shares were acquired in the company which demerged a part of their business and not from the date of allotment of shares in the demerged company.

Hence the same rationale for period of holding as is applied in the Indian Income Tax Act, 1961 should be applied to compute the period of 3 years holding as per Regulation 3 (1) (e) of SEBI (SAST) Regulations, 1997. i.e.

- a) F&CL's holding in GTL from the date F&CL acquired the shares in ANZ;
- b) FFL's & Sterling's holding in GTL from the date they acquired shares of F&CL;

Sterling as well as FFL has been holding the shares in GTL for more than three years. However, F&CL has been holding the shares in the GTL since 29.10.2006 & thus does not satisfy the condition of three years holdings. However, in line with SEBI's informal guidance in the matter of Sudarshan Chemical Industries Limited; the transferors would be deemed to be collectively holding shares of the target company for 3 years. Thus, the condition of 3 years shareholding by the transferee as well as the transferors prior to the proposed acquisition would be deemed to be fulfilled in order to be eligible for exemption under regulation 3(1)(e)(iii) of the Takeover Regulations.

Informal guidance in the matter of DISA India Ltd.

Facts:

Procuritas Group collectively holds 100% of the equity share capital of DISA Holding II A/S which indirectly holds 74.27% of the paid up capital of DISA India Ltd (Target Company). On 9.03.2008, Hamlet Holding II ApS (Acquirer) has executed a SSPA with the Procuritas Group for purchase of 100% shareholding of the DISA Holding II A/S resulting into indirect acquisition of shares of Target Company.

For the purpose of regulation 14(4) of the Takeover Regulations, the date of the conclusion of the sale will be taken as the date of consummation of acquisition or change in control for making the public announcement and not the date of obtaining final clearance from the competition authorities.

The sale of DISA Holding II A/S was completed on 04.09.2008 whereby acquirer was registered as the sole shareholder of the DISA Holding II A/S. The SSPA was subject to Austrian and German Competition Authorities. The Austrian competition authorities have given their consent on 23.04.2008 while the German competition authorities rendered their clearance decision subject to certain conditions on 21.08.2008 which have to fulfill within a period of six months.

Issues:

Whether date of consummation (in the matter of indirect acquisition of Disa India Ltd by the Hamlet Holding II ApS) as defined in 14(4) of the Regulations would be the date of conclusion of sale transaction or date of receiving the approval of government authorities?

Decision:

Regulation 14 (4) emphasis on the consummation of acquisition or change in control. On conclusion of sale, the acquirer becomes a beneficial owner and with registration as sole shareholder, it becomes a legal owner. Therefore, the transaction will relate back to the date of conclusion of sale and not from the date of obtaining final clearance from the competition authorities.

Consent order in the matter of James Hotels Limited

On examination of draft letter of offer submitted by the acquirers for the acquisition of shares of James Hotels Limited (Noticee), it was alleged that JHL had failed to make continual disclosures to the stock exchanges as required under regulation 8(3) of SAST Regulations for the years 1997 to 2005. Therefore, adjudication proceedings were initiated against the Noticee. Pending the adjudication proceedings, the noticee proposed to pay a sum of Rs.2,50,000/- towards the consent terms. The terms as proposed by the noticee were placed before the High Powered Advisory Committee (HPAC) & on the recommendation of HPAC, SEBI disposes of the said proceeding against the noticee.

Consent order in the matter of Madras Medical Care and Health Centre Pvt. Ltd.

SEBI had initiated adjudication proceedings against M/s Madras Medical Care and Health Centre Pvt. Ltd. (MMCHCPL) for the alleged violation of Regulation 7(1A) of the SEBI (SAST) Regulations, 1997 in the matter of M/s Devaki Hospital Ltd. Pending the adjudication proceedings, MMCHCPL proposed to pay a sum of Rs.75,000/- towards the consent terms. The terms as proposed by MMCHCPL were placed before the High Powered Advisory Committee & on the recommendation of the Committee, SEBI disposes of the said proceeding against the MMCHCPL

Consent order in the matter of Hardcastle & Waud Mfg. Co. Ltd.

M/s. Hardcastle & Waud Mfg. Co. Ltd. has failed to make the disclosures under Regulation 6(2) and 6(4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) of the said Regulations for the year 1999 and has thus filed this present consent application seeking the settlement of the enforcement action that may be initiated by the SEBI for the aforesaid failure and proposed to pay a sum of Rs.2,00,000/-. The terms as proposed by the applicant were placed before the High Powered Advisory Committee and on the recommendation of the HPAC, it is hereby ordered that SEBI shall not take any enforcement action against the applicant for its failure to comply with the aforesaid Regulations.

Consent order in the matter of Winsome International Limited

On the examination of the draft letter of offer filed for the acquisition of shares of Winsome International Limited (Noticee), SEBI observed that the Noticee made disclosures under Regulation 6(2) and 6(4) for the year 1997, Regulation 7(3) for the year 2004 and Regulation 8(3) of the Takeover Regulations for the years 1998 to 2006, with considerable delay. Therefore, the applicant has filed this present application seeking the settlement of the enforcement action that may be initiated by the SEBI for the above failure and proposed to pay a sum of Rs.3,00,000/- towards the consent terms. The terms as proposed by the SEBI were placed before the High Powered Advisory Committee (HAPC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any enforcement action against the applicant for the above failures to comply with the Takeover Regulations.

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>Indo Tech Transformers Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs.10.62 Crore</p> <p>Listed At BSE and NSE</p>	<p>Prolec-ge Internacional,s. De r.l. De c.v.</p>	<p>Offer to acquire 21,24,000 shares (20%) of the face value of Rs. 10 each at a price of Rs. 406 per equity share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire 57,71,625 shares (54.35%) of the face value of Rs. 10 each at a price of Rs. 406 per Share amounting to Rs. 234,32,79,750/- payable in cash.</p>	<p>Merchant Banker Citigroup Global Markets India Pvt. Ltd.</p> <p>Registrar to the offer Karvy Computershare Private Limited (karvy Consul Ltd.)</p>

<p>Lifestyle Fabrics Limited</p> <p>Regd. Office Gujarat</p> <p>Paid up capital 5,500,0000</p> <p>Listed At BSE</p>	<p>Strategybot Finance Pvt. Ltd.</p>	<p>Offer to acquire 11,00,000 shares (20%) of Rs. 10/- each at a price of Rs. 2.00 per share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire 40,60,393 shares (73.83%) of Rs. 10/- each at a price of Rs. 2.00 per amounting to Rs.81,20,786.00/- Payable in cash.</p>	<p>Merchant Banker Chartered Capital & Investment Ltd.</p> <p>Registrar to the offer Beetal Financial & Computer Services Pvt. Ltd.</p>
<p>KIC Metaliks Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs.559.92 Lacs</p> <p>Listed At BSE</p>	<p>Karni Syntex Private Limited</p>	<p>Offer to acquire 1119840 shares (20%) of Rs.10 each at a price of Rs.28 per share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire 2668862 shares (47.67%) at a price of Rs.18 per share aggregating to Rs.48039516/- payable in cash.</p>	<p>Merchant Banker Microsec Capital Ltd(formerly Microsec India Ltd)</p> <p>Registrar to the offer CB Mangement Services (P) Ltd.</p>
<p>DISA India Limited</p> <p>Regd. Office Bangalore</p> <p>Paid up capital Rs.1.51 Crore</p> <p>Listed At BSE</p>	<p>Hamlet Holding II ApS and PACs</p>	<p>Offer to acquire 3,02,041 Shares (20%) at a price of Rs. 1,657/- per Share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>Indirect acquisition of 74.27% shares in the Target Company pursuant to the Global Acquisition.</p>	<p>Merchant Banker Ambit Corporate Finance Private Ltd.</p> <p>Registrar to the offer Alpha Systems Private Limited</p>

<p>Maloo Polymers Limited</p> <p>Regd. Office Ahmedabad</p> <p>Paid up capital Rs. 502.00 lacs</p> <p>Listed At ASE, JSE, SKSE and PSE</p>	<p>Dipan Patwa and Manish Janani</p>	<p>Offer to acquire 10,04,000 shares (20%) of Rs. 10/- each at a price of Rs.12/- per share payable in cash.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire 15,20,000 shares (30.28%) of Rs. 10/- each at a price of Re.1/- per share amounting to Rs.15,20,000/- against which 80% has been paid in cash and the remaining 20% will be paid after the completion of the offer.</p>	<p>Merchant Banker</p> <p>Corporate Strategic Allianz Pvt. Ltd</p>
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HINT OF THE MONTH

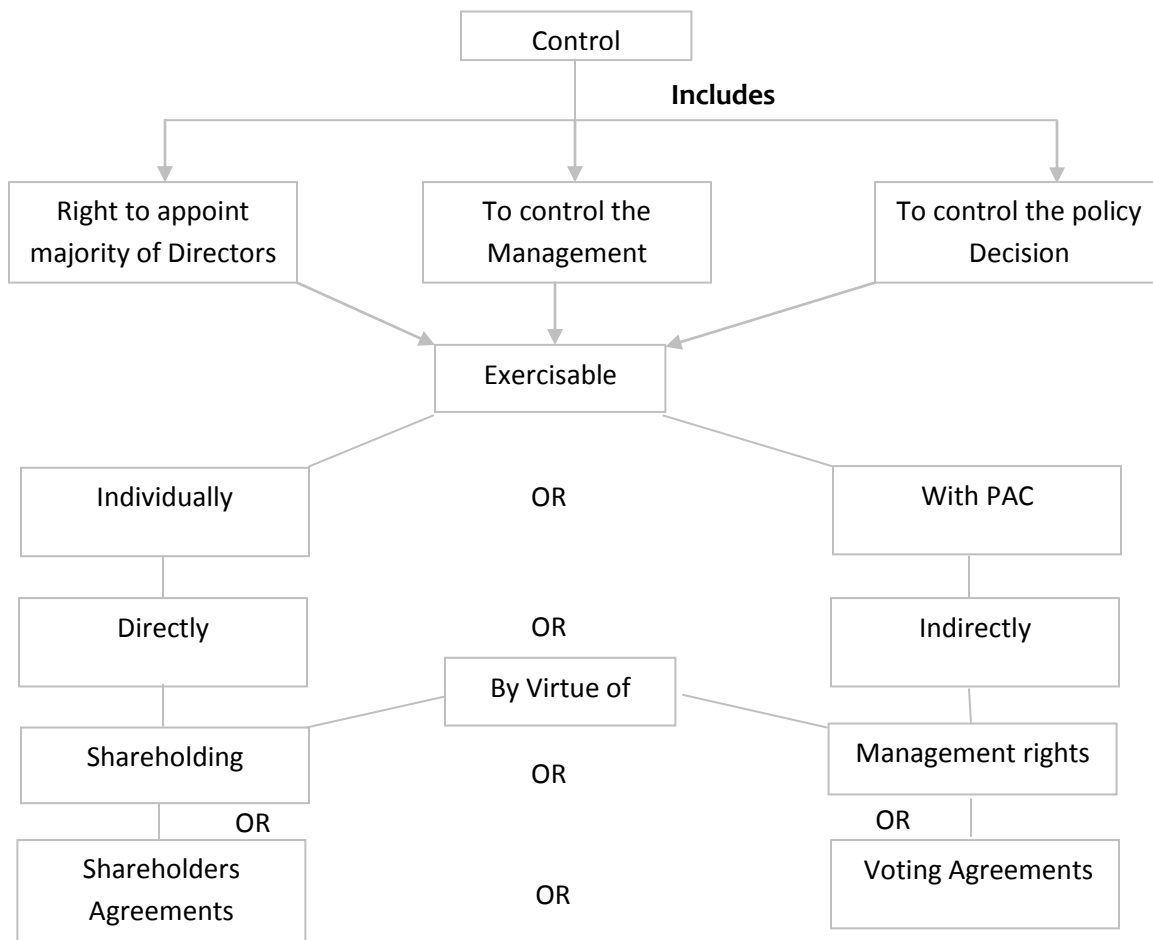
“Where the partly paid up shares have been acquired in the open offer made in pursuance of SEBI Takeover Code Regulations, 1997, then, the offer price to be paid for such shares shall be determined as the difference between the offer price and the amount due towards calls-in-arrears or calls remaining unpaid together with interest, if any, payable on the amount called up but remaining unpaid.”

{As Substantiated from regulation 20(10)}

REGULAR SECTION

Concept of Control

As per SEBI (SAST) Regulations, 1997 Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.



In the following circumstances, it shall not be deemed to be change in control of management:

1. The cesser of any one person from the group of person exercising the control over the company.
2. Change in the nature and quantum of control amongst the persons exercising the control over the company.
3. Change in control in accordance with regulation 3 where the control acquired is equal to or less than the control exercised by person(s) prior to such acquisition of control.

However, the transfer from the joint control to sole control shall be deemed to be change in control except where such transfer takes place in accordance with regulation 3 of the SEBI Takeover code Regulations.

Legal Precedent:

In *Hitachi Home & Life Solutions Inc*, SAT held that in case of Joint Management Agreement, if one of the parties acting in concert exits, then he will still continue to be in control over the company until he actually exits in the manner prescribed under regulation 3(1)(e).

Regulation 12- Acquisition of control over a company.

Regulation 12 deals with acquisition of control over a Company as different form acquisition of shares. As per these regulations, no acquirer shall acquire the control over the company without making the public announcement to acquire the shares in accordance with SEBI Takeover Code Regulations whether such acquisition of control is with or without the acquisition of shares.

Exception:

However, the above public announcement is not required where the approval of shareholders has been obtained in general meeting through the special resolution and the facility of postal ballot has been used. It is noteworthy to mention here that, in the matter of *Swedish Match AB*, the court has held that exemption from making public announcement under regulation 12 will not exempt the acquirer from making public announcement under regulation 11(1) if the shares have been acquired beyond creeping acquisition limit.

Further, in the matter of Ashwin K Doshi, SAT has clearly laid down the principals for determining control for the purpose of regulation 12, that must be considered:

- A pure assessment of numerical composition of Board by itself would lead one too far to identify seat of control.
- The fact that a company is professionally managed does not mean that nobody is in control over Company.
- Even majority holding of shares is not a decisive factor in determining effective control. Therefore, a person not holding majority shares, say even less than 15%, can be said to have control over the Company if he has effective de facto control over the Company.

CASE STUDY

Background

Satyam is a leading global information technology company, delivering consulting, systems integration, and outsourcing solutions to clients in over 20 industries. The top IT company of India has a miniscule promoters' shareholding of 8.6% as of September 2008 which includes most of shares pledged to institutional lenders. The fourth largest software company has shown high financial figures in terms of revenue as well as profits during the last few financial years. In the mid of this financial year, the company proposed to purchase 51 per cent stake in Maytas Infrastructure and 100 per cent stake in Maytas properties, the two companies in which the satyam promoters' themselves are the major stake holders. The deal raised most blemish issues of corporate governance which implies fairness, transparency and accountability.

Blemished issues of Corporate Governance:

The twin Maytas companies are owned by the family members of Ramalinga Raju only and his two sons are major interested party in the twin companies. The deal would have made the cash reach company Satyam into a debt ridden company as it's entire holding of \$1.3 billion cash would have gone to Maytas Properties (where promoters were 100 per cent holding) and in Maytas

Infrastructures. Further, Ramalinga Raju was holding only 8.6 per cent stake of Satyam computer so how can he take decisions of transferring its cash to a company owned by his son without asking the rest of the 91.5 per cent stake holders? Why this important decision was not put before EGM which was held at most relevant time, instead passed unilaterally at the Board Meeting? What were the independent directors doing at the Board Meeting? In the name of diversification from software to entirely new area of reality why has a relatively new company Maytas been chosen when several other big players are still there? Lastly, is it really time to go for shopping in a sector where the economic slowdown is at its severest form?

In the background of these issues, the pressure from Mutual Funds and minority stakeholders forced the management to shun the decision to purchase two infra companies.

Unveiled Satyam's Lies:

The issues of CG lead to unveiling of a series of frauds and lies committed in the internal operations a company which has been awarded ROC award is the upper most recognition for an internal audit department. The Chairman, Mr. B Ramalinga Raju himself confessed that the company had been cooking its books to show higher revenues and lower liabilities, thereby grossly overstating the profits of the company as well as its reserves. The net result of this massaging of accounts is that as of September last year the last quarter for which results are available — the company's bank balance is overstated by Rs 5,040 crore and its receivables in the form of accrued interest by Rs 376 crore.

On the other side of the balance sheet, liabilities have been understated by Rs 1,720 crore. The combined effect of overstating the positives and understating the negatives is that the overall balance looks Rs 7,136 crore healthier than it would otherwise do.

Offloading of shares by Top Management Team

During the last nine months, the Top management team of the company has not acquired any shares where as the FII such as Aberdeen Asset Management Asia Ltd. has purchased 12 million shares. The Top management team of Satyam has offloaded 6.01 lakh shares during the year. The sale of such larger number of shares could be considered as the case of the Insider Trading. Further, because of the failure to pay the money back, two institutional investors have already sold the shares pledged with them as result the promoters stake in the company has dropped to below 5%. The end result of these sales by the lenders is the dilution of management control for Raju Family.

Irony of the case:

The irony in the whole case has been that these tarnished issues of Corporate Governance have been appeared in a company which has bagged a number of excellence awards over the years. As recently as September 2008, Satyam was awarded the coveted Golden Peacock Global Award for Excellence in Corporate Governance, an honor bestowed on companies for following best practices. This has lead to severe rattling of investor confidence.

Disciplinary Actions against Satyam:

- World Bank has barred the Satyam from doing business with it for eight years on the charges of data theft and bribing its staff.
- Investigation by Ministry of Corporate Affairs and Securities and Exchange Board of India
- Sacking of Board Members and appointment of three member Board consisting of Mr. Deepak Parekh (Chairman, HDFC Bank), Mr. Kiran Karnik (Former chief of Nasscom), and Mr. C Achutan (Former head of SAT)
- 12 Lawsuits in US charged with duping thousands of ADR holders
- Civil cases of fraud against Directors in Indian Courts.

Change in Management and Control:

After all the sequences in Satyam Sage, now the management and control have been shifted to M member Board consisting of financial, legal and international investments experts to restore the interest of Indian community and foreign investor in Indian corporate and capital market.

Conclusion:

The Satyam episode is shocking, painful and a good warning for other companies and management but still this case should be treated as an isolated case. On the other hand, the case has also revealed certain good things which shall not go unnoticed and should be build upon that if corporate governance breaks down, the minority and institutional investors can stop the management from turning their tainted dreams into reality. Further, the government has also shown responsible attitude by stepping in that will restore confidence among investors, customers and employees.

MARKET UPDATE

➤ Wipro acquires CITI IT arm

Wipro Technologies has acquired Citigroup's subsidiary, Citi Technology Services for \$127 million in all cash deal. Wipro has also signed an agreement with the Citi group under which it has agreed to deliver infrastructure services and provide application development and maintenance services for a period of six years worth at least \$500 million.

➤ Rolta proposed to acquire US IT consultancy firm

Rolta, an information technology company has proposed to acquire US IT consultancy firm, which provides the software and IT related services to the oil and gas industry. Earlier, Rolta had acquired WhittmanHart Consulting, a Chicago-based business intelligence firm. The deal once completed will give the Rolta consulting and IT skills specific to the oil and gas industry.

➤ India Tales acquires a 41% stake in Thai studio

India Tales Media, an Animation Filmmaker has acquired a 41% stake in Thai Studio for \$3-5 million. It has been the first outside investment in the Thailand entertainment sector. India Tales can further acquired only 8% stake in the Thai studio as the Thailand does not allow the foreign investment beyond 49% in a company.

➤ M & M selling its stake in Swaraj

M&M has decided to sell off its 14.04% stake in Swaraj Mazda to Sumitomo through the inter se transfer at a price of Rs.272 per share. The total payout for the acquisition will be around Rs.40 crore.

➤ War between Temptation Foods and Kohinoor Foods

A war is going on between Temptation Foods and Kohinoor Foods regarding the shares. While the former says that it holds more than 11% in the Kohinoor Foods, the later says that Temptation holds only 2.59% stake. Further the register of members of the Kohinoor shows the shareholding of the Temptation as 2.59% whereas the disclosures displayed on the BSE and NSE shows the shareholding of the Temptation as 11.23%.

➤ **GMR Holdings acquisition in GMR Infra**

GMR Holdings Pvt. Ltd. has bought 13,602,600 shares in GMR Infrastructure Ltd. between November 28, 2008 to December 18, 2008 in the open market through the stock exchange route increasing their stake to 73.72% in the company. The above acquisition has been made pursuant to the recent amendment in the SEBI Takeover Code Regulations allowing the creeping acquisition beyond 55% if the acquisition is made through the stock exchange in open market. If the company crosses the limit of 74%, then it will get the right to pass the special resolution under the Companies Act, 1956.

OUR TEAM

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