

# TAKEOVER PANORAMA

A monthly newsletter by Corporate Professionals

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## INSIGHT

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## LEGAL UPDATE

### Takeover Panel Order in the matter of Pasupati Acrylon Limited

#### Facts:

1. Gurukripa Finvest Private Limited, Sulabh Plantation and Finance Private Limited and Accurex Traders Private Limited (Acquirers) belong to the promoter group of Pasupati Acrylon Limited (Target Company) and holds 1.40% of the paid up capital of the Target Company.
2. In accordance with the sanction letters of the lending banks for proposed expansion plans, the Promoters were required to infuse Rs. 18 Crores by way of acquisition of equity share. The said condition was also imposed by the CDR Empowered Group.
3. Thus, to meet the stipulation, the acquirers proposed to acquire 1,80,00,000 equity shares at par as against the running market price of Rs. 7. The proposed acquisition would increase the shareholding of promoters from 57.25% to 65.88% i.e. an increase of 8.63% which would result into triggering Regulation 11(2) of the SEBI (SAST) Regulations, 1997.
4. Accordingly, they have filed the present application seeking exemption from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997.

SEBI granted exemption to the Acquirers from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997 where the increase in shareholding is on account of CDR stipulation and to comply with the covenants imposed by the lending bank.

#### Grounds of Exemption:

1. The proposed preferential allotment of equity shares is an allotment on account of compulsion and also CDR stipulation to meet the covenants imposed by the lender for bringing the funds required for the expansion. If the promoter failed to meet the lenders stipulation, they would withdraw the financial support, which would hamper the expansion process of Target Company and ultimately its shareholders.
2. The most feasible option available to the management of the Target Company to meet the lenders stipulation is only by way of a preferential allotment.

3. The proposed plan has been approved by CDR, which has directed the Target Company to infuse fresh equity by promoters.
4. No change in Control.
5. The public shareholding in the Target Company will remain at a level more than 25%.
6. The proposed allotment is done with the intent to undertake expansion of the production facility and in the interest of the Target Company and its 61,000 shareholders.

**Decision:**

The Takeover Panel observed that the Target Company was registered as a sick company with BIFR in the year 2003 and got itself de-registered from BIFR in the year 2006. In the year 2004, the Target Company approached the Financial Institution and banks for restructuring of its debt under CDR Mechanism which was approved on November 9, 2004. The CDR package stipulated conversion of loans into Equity shares, as a result of which the shareholding of the promoter group had increased from 47.43% to 56.93% in the enhanced equity capital of the Target Company. In respect of the same, SEBI granted exemption to the promoter group from Regulation 11 of SEBI (SAST) Regulations, 1997.

However, the Target Company was still suffering losses as on March 31, 2010. Thus, to overcome the losses, the Target Company proposed to install additional machinery at its factory in Moradabad, to expand the capacity by 12,000 MT per annum and attain economies of scale, the estimated cost of which was Rs. 45 crore and CDR Empowered Group had approved the same. The cost of the project would be financed by promoter contribution of Rs. 18 crore, internal accruals of Rs. 6.7 crore and TLs of Rs. 27 crore from joint lender banks. Therefore it is proposed that funds to the extent of Rs. 18 crores be brought in by the promoters by way of a preferential allotment of 1,80,00,000 equity shares at par, that would increase the shareholding of the acquirers in the Target Company from 1.40% to 21.32% and that of the promoter group from 57.25% to 65.88%.

On the basis of above facts and circumstances of the case, SEBI granted exemption to the Acquirers from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997 provided that the acquirers will comply the other provision of the Companies Act, 1956, SEBI (ICDR) Regulations, 2009, the Listing Agreement or any other law.

## Takeover Panel Order in the matter of Surana Infocom Private Limited

### Facts:

1. Narender Surana, G. Mangilal Surana, Devendra Surana, Manish Surana, Namrata Surana, Sunita Surana, Chand Kanwar, Nivriti Surana, Vinita Surana, Rahul Surana, Sresha Surana, Mitali Surana, Advait Surana, G.M. Surana HUF, G.M. Surana HUF, Narendra Surana HUF, Devendra Surana HUF, Surana Infocom Private Limited, Surana Telecom & Power Limited (Acquirers) belongs to the promoter group of Bhagyanagar India Limited (Target Company) and holds 4,45,14,446 equity shares representing 65.08% of the total equity share capital of the Target Company. The Acquirers proposes to buy-back 80,00,000 equity shares at a price not exceeding Rs.35/- per equity shares from the open market through stock exchange.
2. Pursuant to the proposed buy-back, the shareholding of the promoter group of the Target Company would increase to 73.70% and that of the acquirers from 65.08% to 73.07% which would result into triggering Regulation 11(2) of the SEBI (SAST) Regulations, 1997.
3. Accordingly, the Acquirers have filed the present application seeking exemption from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997

SEBI granted exemption to the Acquirers from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997 where the increase in shareholding is pursuant to Buy Back of shares by the Target Company.

### Grounds of Exemption:

1. The increase in the shareholding of the promoter group is incidental to proposed buyback offer.
2. No change in control.
3. The maximum price at which the buyback is proposed is Rs. 35 and is higher than the book value of Rs. 32.25 and the minimum price of Rs. 21.46 as computed in accordance with Regulation 20 of SEBI (SAST) Regulations, 1997.

### Decision:

The Takeover Panel observed that pursuant to the proposed buy-back the shareholding and voting rights of the promoter group in the Target Company would increase from 65.08% to 73.70% while the number of shares held by them would remain the same at 4,45,14,446. It was further noted that the

acquirers had previously filed an exemption application with regard to their increase in voting rights in the Target Company from 59.75% to 69.01% in respect of buy-back offer proposed in the year 2009.

On the basis of above facts and circumstances of the case, SEBI granted exemption to the Acquirers from complying with the Regulation 11(2) of SEBI (SAST) Regulations, 1997 provided that the acquirer will comply the other provision of the SEBI (SAST) Regulations, 1997, the Listing Agreement or any other law.

### Takeover Panel Order in the matter of Indus Fila Limited

#### Facts:

1. Nitin N Mandhana, Shashikant Mandhana, Prakash G Mandhana, Kavita S Mandhana, Savita N Mandhana and Sneha A Mandhana (hereinafter collectively referred to as Acquirers) belong to the promoter group of Indus Fila Limited (Target Company) and holds 83,41,282 equity shares constituting 43.02% of the paid up capital of the Target Company. The other entities (who are not related to the acquirers) in the promoter group holds 7,64,182 shares constituting 3.95% of the paid up capital of the Target Company.
2. The Acquirers proposes to acquire 29,71,070 equity shares by way of preferential allotment, thereby, increasing their holding from 43.02% to 50.60% of the expanded capital of the Target Company that would result into triggering Regulation 11(1) of the SEBI (SAST) Regulations, 1997.
3. Therefore, the acquirers have filed the present application seeking exemption on the following grounds:

SEBI granted exemption from the applicability of regulation 11(1) where the increase in shareholding is pursuant to the CDR scheme and the same has been approved by the shareholders.

#### Grounds of Exemption:

1. To revive the financial position and to meet short term and long term working capital requirement, the Target Company had decided to convert the unsecured loans into equity shares by way of preferential allotment to the acquirers.

2. The proposed allotment is being made with the sole purpose of meeting the obligations of the promoters and promoter directors to offer security by way of pledge as per CDR proposal.
3. No Change in Control.
4. The approval of the shareholders was already obtained by way of special resolution passed in AGM held on September 28, 2010.

**Decision:**

The Takeover Panel observed that the preferential allotment of 29,71,070 shares is proposed to be made pursuant to the CDR scheme and the same has been approved by the shareholders in the AGM on September 28, 2010 through a special resolution. Further, the Target Company continues to be in compliance with the minimum public shareholding requirement as specified in Clause 40A of the Listing Agreement and there would be no change in control.

On the basis of above facts, SEBI granted the exemption to the Acquirers from complying with Regulation 11(1) of SEBI (SAST) Regulations, 1997.

**Adjudicating Officer Orders**

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
Alka Securities Limited	Mahesh Kothari	Regulation 7(1A) read with 7(2) of SEBI (SAST) Regulations 1997 and Regulation 13(4) read with 13(5) of SEBI (PIT) Regulations, 1992	Rs. 2,00,000
Alka Securities Limited	Alka Pandey	Regulation 7 (1A) and 7(2) of SEBI (SAST) Regulations, 1997 Regulation 13(3) and 13(4) read with 13(5) of SEBI (PIT) Regulations,	Rs. 25,00,000

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
		1992, and Regulation 3(a), 3(b), 3(c), 3(d), 4(1),4(2)(e), 4(2)(f) and 4(2)(r) of SEBI Regulation 2003	
Channel Guide (India) Ltd.	Kamaladevi N. Jain, Anupama R. Jain and Jaishree R. Jain	Regulation 7 (1A) read with 7 (2) of SEBI (SAST) Regulations, 1997	Rs. 20,000 on each Noticee
Channel Guide (India) Ltd.	Channel Guide (India) Ltd.	Regulation 6(2), 6 (4), & 7 (3) and 8 (3) of SEBI (SAST) Regulations, 1997	Rs. 2,00,000
Cupid Trades and Finance Ltd.	Shamanjwali Metals Pvt. Ltd.	Regulation 7 (1), 7 (1A) read with 7 (2) and 8 (1) of SEBI (SAST) Regulations 1997 and Regulation 13 (3) of the SEBI (PIT) Regulations, 1992	Rs. 50,000
Cupid Trades and Finance Ltd.	Cupid Trades and Finance Ltd.	Regulation 7 (3) of SEBI (SAST) Regulations, 1997 and Regulation 13 (6) of SEBI (PIT) Regulations, 1992	Rs. 50,000

#### **Consent order in the matter of Archisha Investments Private Ltd.**

Archisha Investments Private Ltd. (Applicant) failed to comply with the provisions of Regulation 7(1A) and 8(2) of SEBI (SAST) Regulations, 1997 for the year 2002-03 and 2003-04 within time in respect of its shareholding in Uttam Galva Steels Ltd. Therefore, the applicant had filed the consent application on January 31, 2011 and vide letter dated April 18, 2011, proposed the revised consent terms to settle the delay in compliance on the payment of Rs. 3,00,000. 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 delay in compliance with Regulation 7(1A) and 8(2) of SEBI (SAST) Regulations, 1997.

#### **Consent order in the matter of Kredence Multi Trading Limited**

Kredence Multi Trading Limited (Applicant) failed to comply with the provisions of Regulation 8(2) of SEBI (SAST) Regulations, 1997 for the year 1999-2000 and 2000-01 within time in respect of its shareholding in Uttam Galva Steels Ltd. Therefore, the applicant had filed the consent application on January 31, 2011 and vide letter dated April 18, 2011 proposed the revised consent terms to settle the delay in compliance on the payment of Rs. 2,00,000. 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 delay in compliance with Regulation 8(2) of SEBI (SAST) Regulations, 1997.

#### **Consent order in the matter of Sainath Trading Company Private Limited**

Sainath Trading Company Private Limited (Applicant) failed to comply with the provisions of Regulation 8(2) of SEBI (SAST) Regulations, 1997 for the year 1999-2000 and 2000-01 in respect of its shareholding in Uttam Galva Steels Ltd. Therefore, the applicant had filed the consent application on January 31, 2011 and vide letter dated April 18, 2011 proposed the revised consent terms to settle the delay in compliance on the payment of Rs. 2,00,000. 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 delay in compliance with Regulation 8(2) of SEBI (SAST) Regulations, 1997.

## LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
<p>Globus Constructors &amp; Developers Limited</p> <p><b>Regd. Office</b> New Delhi</p> <p><b>Paid up capital</b> Rs. 4.58 crore</p> <p><b>Listed At</b> BSE, DSE &amp; LSE</p>	<p>Pandora Developers and Infrastructure Private Limited</p>	<p>Offer to acquire 9,17,923 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 6,45,776 (14.07%) equity share at a price of Rs. 10 per share along with complete change in management and control of the Company.</p>	<p><b>Merchant Banker</b> D&amp;A Financial Services (P) Ltd.</p> <p><b>Registrar to the Offer</b> Beetal Financial &amp; Computer Services Pvt. Ltd.</p>
<p>Camlin Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 6.10 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	<p>Kokuyo S&amp;T Co., Ltd. along with Kokuyo Co., Ltd.</p>	<p>Offer to acquire 1,38,57,370 Equity Shares representing 22.7% of the current equity capital (20% of the diluted equity capital) at a price of Rs. 110 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>JVA for allotment of 69,34,000 (10%) equity shares on preferential basis at a price of Rs. 85 per share and SPA to acquire 1,40,44,850 (20.3%) equity shares at a price of Rs. 110 per share.</p>	<p><b>Merchant Banker</b> Kotak Mahindra Capital Company Limited</p> <p><b>Registrar to the Offer</b> Sharepro Services (India) Private Limited</p>

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
<p>Nova Iron &amp; Steel Limited</p> <p><b>Regd. Office</b> Chhattisgarh</p> <p><b>Paid up capital</b> Rs 150.58 crore</p> <p><b>Listed At</b> BSE, NSE, ASE, DSE, CSE and MSE</p>	Bushan Power & Steel Limited	Offer to acquire 3,01,16,240 (20%) Equity Shares at a price of Rs. 14 per share payable in cash.	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 1,70,59,000 (11.33%) Equity Shares at a price of Rs. 13 Per share, thereby, increasing the shareholding of the Acquirer to 26.21%.</p>	<p><b>Merchant Banker</b></p> <p>Master Capital Services Ltd.</p> <p><b>Registrar to the Offer</b></p> <p>Skyline Financial Services Pvt. Ltd.</p>
<p>Sabero Organics Gujarat Limited</p> <p><b>Regd. Office</b> Gujarat</p> <p><b>Paid up capital</b> Rs 33.85 Crores</p> <p><b>Listed At</b> BSE, NSE, VSE, ASE, CSE, DSE and HSE</p>	Coromandel International Limited	Offer to acquire 1,05,00,000 (31%) Equity Shares at a price of Rs. 160 per share payable in cash.	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 1,42,98,112 (42.22%) Equity Shares at a price of Rs. 160 Per share.</p>	<p><b>Merchant Banker</b></p> <p>Enam Securities Private Limited</p> <p><b>Registrar to the Offer</b></p> <p>Karvy Computershare Private Limited</p>
<p>Wendt (India) Limited</p> <p><b>Regd. Office</b> Bangalore</p>	3M (Schweiz) AG	Offer to acquire 4,00,000 (20%) Equity Shares at a price of Rs. 1366.64 per share	<p><b>Regulation 10 &amp; 12</b></p> <p>Indirect acquisition of 7,97,352</p>	<p><b>Merchant Banker</b></p> <p>JM Financial Consultants Private Limited</p>

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
<p><b>Paid up capital</b> Rs 2.00 Crores</p> <p><b>Listed At</b> BSE and NSE</p>		payable in cash.	(39.87%) equity shares	<p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>
<p>Seshachal Technologies Limited</p> <p><b>Regd. Office</b> Visakhapatnam</p> <p><b>Paid up capital</b> Rs 694.36 Lacs</p> <p><b>Listed At</b> BSE</p>	Narendra Chitturi	Offer to acquire 13,88,720 (20%) Equity Shares at a price of Rs. 7.50 per share payable in cash.	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 14,15,716 (20.39%) Equity Shares at a price of Rs. 2 Per share</p>	<p><b>Merchant Banker</b> Systematix Corporate Services Ltd.</p> <p><b>Registrar to the Offer</b> Bigshare Services Private Limited</p>
<p>Shree Bhawani Paper Mills Limited</p> <p><b>Regd. Office</b> Allahabad</p> <p><b>Paid up capital</b> Rs. 34.81 Cr.</p> <p><b>Listed At</b> BSE</p>	Omprakash Goenka, Kiran Goenka, Gaurav Goenka, Girija Goenka, Mirah Dekor Limited and Badri Vishal Tandon	Offer to acquire 69,65,445 (20%) Equity Shares at a price of Rs. 10 per fully paid up equity share and Rs. 5 per partly paid up equity share payable in cash.	<p><b>Regulation 10, 11 (2) &amp; 12</b></p> <p>Preferential allotment to the Promoters and Investor Acquirers aggregating their shareholding to 2,33,04,948 (66.92%) Equity Shares.</p>	<p><b>Merchant Banker</b> Antique Capital Markets Private Limited</p> <p><b>Registrar to the Offer</b> Skyline Financial Services Private Limited</p>

## HINT OF THE MONTH

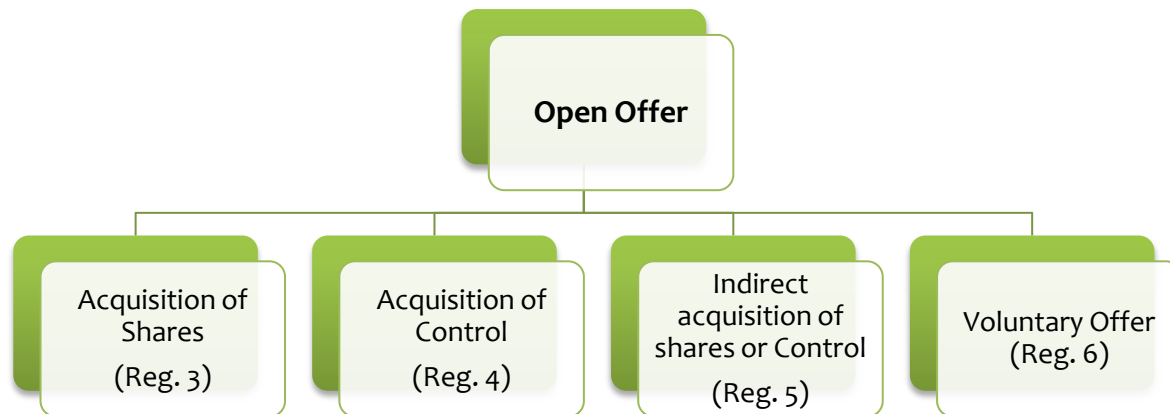
**“Delisting threshold”** means a shareholding entitling exercise of ninety per cent of the voting rights in a target company, excluding voting rights on shares held by a custodian and against which depository receipts have been issued overseas, with reference to the share capital of the target company as of the last day of the tendering period.

**As Substantiated from Regulation 2(1)(h) of SEBI (SAST) Regulations, 2010**

## REGULAR SECTION

### Takeover Open Offer and Its Related Concepts (TRAC Report)

Takeover Regulations Advisory Committee Report (TRAC Report) or SEBI (SAST) Regulations, 2010 provides certain triggering events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity. The objective behind giving opportunity to the shareholders of the Target Company is to safeguard their interest in the event of change in management and control of the Target Company or where the promoters desires to consolidate their shareholding to the maximum permissible level. Besides this, TRAC Report also provides the provisions for Voluntary Open Offer i.e. an Open Offer not triggered pursuant to the acquisition of shares or voting rights or control over the Target Company.



The glimpse of the important aspects relating to Open Offer is provided herein below:

### I. Short Public Announcement

A short public announcement shall be made on the same day or as prescribed under Regulation 13(1), (2) and (3) of the Regulations as the date of transaction which triggered the Open Offer to all the stock exchanges where the shares of the Company are listed for the purpose of dissemination of the information to the public. Further, a copy of the public announcement shall be sent to SEBI and to the Target Company at its registered office within one business day of the date of short public announcement. **[Regulation 13 read with Regulation 14(1) and 14(2)]**

### II. Detailed Public Announcement

After the short Public Announcement, a detailed Public Announcement shall be made by the Acquirer within 5 business days from the date of short Public Announcement. Such public announcement is required to be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the Target Company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement. **[Regulation 13(4) read with Regulation 14(3)]**

Simultaneously, a copy of the publication shall be sent to SEBI, Stock Exchanges where the shares of the Company are listed and to the Target Company at its registered office. **[Regulation 14(4)]**

### **III. Provision of Escrow**

The Acquirer shall open an escrow account atleast two business days prior to the date of detailed Public Announcement and deposit an amount aggregating to 25% of the consideration on first Rs. 500 crore and additional amount of 10% of the balance consideration. **[Regulation 17(1)]**

### **IV. Submission of Draft Letter of Offer**

The Acquirer shall submit a draft letter of offer to SEBI within 5 business days from the date of detailed public announcement along with a non-refundable fee. **[Regulation 16(1)]**

Simultaneously, a copy of the draft letter of offer shall be send to the Target Company at its registered office and to all the Stock Exchanges where the shares of the Company are listed. **[Regulation 18(1)]**

### **V. Identified Date**

The Acquirer shall fix a date for determining the names of the shareholders to whom the letter of offer would be send which shall be a date falling on the tenth business day prior to the commencement of the tendering period. **[Regulation 2(1) (I)]**

### **VI. Dispatch of Letter of Offer**

The Acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the Target Company as of the identified date, and to the custodian of shares underlying depository receipts of the Target Company within maximum 7 business days from the date of receipt of communication of comments from the Board or where no comments are offered by the Board, within 7 business days from the expiry 15 business days from the date of receipt of draft letter of offer by SEBI. **[Regulation 18(2)]**

### **VII. Upward Revision of Offer Price or Number of Shares to be acquired**

The Acquirer is allowed to make upward revision to the Offer Price and the number of shares sought to be acquired under the Open Offer, at any time prior to the commencement of the last three business days prior to the commencement of the tendering period. **[Regulation 18(4)]**

### **VIII. Recommendation by the Independent Directors**

On the receipt of detailed public announcement, the Board of Directors of the Target Company shall constitute a committee of Independent Directors to provide reasoned recommendations on the Open Offer to the shareholders of the Target Company and such recommendations shall be published at least two business days before the commencement of the tendering period, in the same newspapers where the public announcement of the Open Offer was published and a copy of the same shall also be sent to SEBI, all Stock Exchanges where the shares of the Target Company are listed and to Manager to the Offer. **[Regulation 26 (6) and (7)]**

### **IX. Issue of Advertisement**

One business day before the commencement of the tendering period, the Acquirer shall publish an advertisement in all the newspapers in which the detailed public announcement had been made announcing the details of schedule of activities, status of statutory and other approvals, if required, any unfulfilled conditions, the procedure of tendering acceptance and any such other material details as may be specified. Such advertisement shall also be send to the Board, Stock Exchanges and to the Target Company. **[Regulation 18(7)]**

### **X. Opening of the Offer**

The tendering period shall start within maximum 12 business days from date of receipt of comments from the Board and shall remain open for 10 business days. **[Regulation 18(8)]**

### **XI. Completion of requirements**

Within 10 business days from the last date of the tendering period, the acquirer shall complete all requirements as prescribed under these regulations and other applicable law relating to the Open Offer including payment of consideration to the shareholders who have accepted the open offer. **[Regulation 18(10)]**

### **XII. Report to SEBI by Manager to the Offer**

The manager to the Open Offer shall file a report with the Board within fifteen business days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various Open Offer requirements. **[Regulation 27 (7)]**

### XIII. Restriction on acquisition

The acquirer shall not acquire any shares of the Target Company for a period of 26 weeks after the tendering period at a price higher than the offer price paid except by way of another Open Offer, or SEBI Delisting Regulations, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the Target Company whether by way of bulk deals, block deals or in any other form. **[Regulation 8(10)]**

#### Activity Chart for Takeover Open Offer

Activity	Timeline as per TRAC Report
Short Public Announcement (PA) to SE	X (on the date of agreeing to acquire voting rights or control)
PA to Target Company	X+1
Detailed Public Announcement in newspapers, sending to SEs, SEBI, Target company	Not later than 5 business days from PA*
Draft letter of offer to be submitted to SEBI and sent to Target Company	Not later than 5 business days from Detailed Public Announcement
SEBI provides its comments on the Letter of Offer (LoF)	Not later than 15 business days from filing the draft LoF with SEBI
Identified Date for determination of names of shareholders to whom letter of offer is to be sent	10th business days prior to start of the tendering period
Dispatch of letter of offer to shareholders	Not later than 7 business days from the date of receipt of comments from SEBI
Upward revision in offer	Up to 3 business days prior to commencement of tendering period
Comments on the offer by independent directors of Target Company	2 business days prior to commencement of the tendering period
Issue of advertisement announcing the schedule of activities for open offer	1 business day prior to commencement of the tendering period
Date of opening of Offer	Not later than 12 business days from the date of receipt of comments from SEBI
Last date for withdrawal of tendered shares by shareholders	Withdrawal not permitted
Date of closure of offer	10 business days from the opening of the tendering period
Payment to shareholders	Not later than 10 business days from the close of the tendering period
<b>Overall time for completion of offer formalities</b>	<b>57 business days</b>
Report to be sent by Merchant Banker to SEBI	Within 15 business days from the close of the tendering period

## CASE STUDY

### An analysis of Open Offer for Wendt (India) Limited

#### **About 3M (Schweiz) AG (Acquirer)**

Incorporated under the laws of Switzerland, 3M (Schweiz) AG is a wholly owned subsidiary of 3M Company (“3M”), company incorporated under the laws of Delaware. 3M is a diversified technology company and have its global presence in industrial and transportation; healthcare; display and graphics; consumer and office; safety, security and protection services; and electro and communications sectors. With more than 50,000 products, 3M supplies all key sectors and market, the Company offers their customers comprehensive know-how in research and product development, technology, production methods and marketing.

#### **About Winterthur Technologies AG (Winterthur)**

Winterthur is a company incorporated under the laws of Switzerland and is globally engaged in the business of providing precision grinding technology. Wendt GmbH was amongst one of the promoters of the Target Company.

#### **About Wendt (India) Limited (Target Company)**

Incorporated on August 21, 1980, Wendt (India) Limited is a leading manufacturer of super-abrasive grinding wheels (diamond and cubic boron nitride), special purpose grinding machines and tools. These products find applications in industries like automobile, cutting tools, engineering, bearing, aerospace, steel, defense, refractory, ceramic, glass, textile, among other. The shares of the Target Company are listed on BSE and NSE. The Target Company was jointly promoted by Mr. S C Khatau and Wendt GMBH. In the year 1990-91, Carborundum Universal Ltd. (CUMI) acquired 30% stake of Mr. S C Khatau in the Target Company and further purchased the additional shares from the market and became joint promoter with Wendt GMBH.

As on the date of PA, the promoters of the Target Company namely Wendt GMBH and CUMI holds 797,352 (39.87%) Equity Shares each in the Target Company.

## **Background of the Offer**

### **I. Global offer:**

On December 6, 2010, 3M (Schweiz) AG (Acquirer) made a public announcement (Global Announcement) to acquire all publically held ordinary shares of Winterthur from its shareholders at a price of 62 CHF per Global Offer Share. On December 22, 2010, the Acquirer published a prospectus for the Global Offer which extended to 57,16,261 Global Offer Shares representing 97.42% of the total registered ordinary shares of Winterthur.

Salient Features of Global Offer:

1. The Global offer was open for a period of 21 trading days from January 10, 2011 to February 7, 2011.
2. The Global Offer has been made by the Acquirer to achieve the full (100%) control over Winterthur and Winterthur will be integrated in 3M Group.
3. The Acquirer will apply for de-listing of Winterthur Shares at the SIX Swiss Exchange after the completion of the Global Offer.
4. The Global Offer is governed by Swiss material law and the exclusive jurisdiction is Zug, Switzerland.

### **II. Transaction Agreement:**

On December 5, 2010, the Acquirer has also entered into a Transaction Agreement with Winterthur governing the modalities of Global Offer. Moreover on the same day, Dr. Edgar Rappold (Chairman of the Board of Director of Winterthur) has committed to tender 8,44,749 shares of Winterthur owned by him constituting 14.4% of the total equity share capital of Winterthur into the Global Offer.

With the completion of the Open Offer on March 7, 2011 the acquirer was holding:

- i. 1,43,358 shares representing 2.44% of all registered ordinary shares of Winterthur already held by him;
- ii. 32,93,956 Global Offer Shares constituting 56.14% of all registered ordinary shares of Winterthur;
- iii. 8,44,749 shares constituting 14.4% of the total equity share capital as held by Dr. Edgar Rappold; and
- iv. Additional shares purchased in stock exchange transactions between December 17, 2010 and March 7, 2011;

thereby aggregating its holding to 57,49,902 Global Offer Shares representing 98.13% of all registered shares of Winterthur.

As on the date of this PA, Winterthur indirectly through Wendt Holding GmbH and Wendt GmbH, its wholly owned subsidiaries, holds 7,97,352 fully paid-up equity shares in Wendt (India) Limited representing 39.87% of the voting equity capital of the Target Company.

**CLB Proceeding:**

On January 6, 2011, CUMI filed a petition in the Company Law Board, Chennai *inter-alia* against Winterthur and the Acquirer under Sections 397 and 398 of the Companies Act, 1956 alleging that the Global Offer amounted to an act of oppression.

CUMI has alleged in the Petition that:

1. The Acquirer is engaged in a business which directly competes with the business of the Target Company and therefore the Global Offer is prejudicial to the interests of the Target Company.
2. The consummation of the Global Offer would be a breach of the applicable foreign direct investment regulations (“**FDI Regulations**”), as it would lead to the 3M Group operating two joint ventures in the same field of activity.
3. The acquisition of shares of Winterthur by the Acquirer is in breach of shareholder agreements between CUMI and Wendt GmbH which is ultimately held entirely by Winterthur.
4. The acquisition of shares of Winterthur by the Acquirer is in breach of certain governmental approvals granted in connection with a collaboration agreement entered into between the Target Company and Wendt GmbH on January 7, 2008.

CUMI has also informed certain regulatory authorities in India bringing to their attention its belief that the consummation of the Global Offer would result in breach of the FDI Regulations.

**Order:**

The CLB in its order has restrained the Winterthur and the Acquirer from altering the shareholding pattern and composition of the Board of Directors of the Target Company in any manner. Further, the CLB order also states that if the respondents or the petitioner are to hold the meeting of the shareholders of the Target Company, they shall obtain the prior permission of the CLB.

However, as on the date of this PA, the CLB Order continues to be operative which restrains the Acquirer from changing the shareholding pattern of the Target Company.

#### **Regulation 14(4) of SEBI (SAST) Regulations, 1997**

Regulation 14(4) provides that where an offer is triggered on account of an indirect acquisition of shares or voting rights or change in control, then the public announcement of such offer is required to be made by the acquirer within 3 months of consummation of acquisition of voting rights or change in control of the parent company holding shares of or control over the Target Company in India. Accordingly, since the Global Offer has been completed on March 7, 2011, the Acquirer is required to make a public announcement by June 6, 2011, and is making this PA to comply with the provisions of regulation 14(4) of the SEBI (SAST) Regulations, 1997.

#### **Offer Details:**

This Offer is made to all public shareholders of the Target Company to acquire 4,00,000 Shares from the shareholders of the Target Company representing 20% of the voting equity capital of the Target Company at a price of Rs. 1,366.34 per Share payable in cash.

#### **Approvals required for the offer**

The acquisition of Shares under this Offer is subject to the restraint imposed by the CLB Order being vacated and obtaining the approval of the RBI under the Foreign Exchange Management Act, 1999 and the rules and regulation issued there under, as amended from time to time.

## MARKET UPDATE

### Datamatics Software acquires vista Info Systems

Datamatics Software Services Ltd, a subsidiary of Datamatics Global Services Ltd. has acquired a controlling stake in Bangalore-based Vista Info Systems Private Limited that offers IT solutions and services including enterprise solutions, testing, IT Infrastructure management and BPO.

### Rio Tinto Acquired Tata Steels stake in Riversdale

Rio Tinto acquired entire 26.27% stake of Tata steel Limited in Australian coal miner Riversdale Mining Ltd for A\$ 1.06 Bn (\$1.11 Bn / Rs. 5.074 Cr.). Tata Steel will continue to hold 35% in Riversdale Energy (Mauritius) Ltd, a subsidiary of Riversdale Mining.

### KK Modi likely to acquire majority control in Godfrey Phillips

KK Modi Group may acquire majority control in Godfrey Phillips India Limited (GPI), a JV between the KK Modi Group and Phillips Morris, from American tobacco major Philip Morris. As per the JV agreement, Modi Group has right to take up his holding to 51% by acquiring further into Philip Morris' holding to get a majority control of the company.

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### OUR GAMUT OF SERVICES:-

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