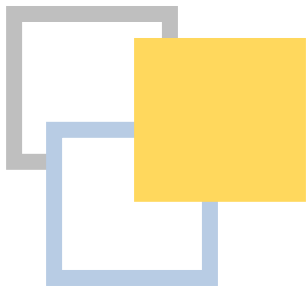


TAKEOVER PANORAMA

Volume - XVIII - March Issue





INSIGHT

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RECENT UPDATE

SEBI ORDER IN THE MATTER OF EXDON TRADING COMPANY LIMITED

“The fact that a Company is small in size cannot absolve a Company from complying with the provisions of regulation 6 & 8”

Regulation: 6 & 8 - Disclosure of shareholding

Facts:

The acquirers, namely, Mr. Ashok kumar Shah and Mr. Mansukhbhai Vagasia entered into a Share Purchase Agreement on September 06, 2006 with Mr. Sushil Kumar Sanghai and others - promoter group of ETCL (Target Company), to acquire 1,54,000 fully paid up equity shares of Rs.10/- each aggregating to 62.86% of the voting capital of the company at a price of Rs.8/- per share. Pursuant to this, the acquirers made a public announcement on September 08, 2006 in compliance with the provisions of the SEBI Takeover Regulations 1997 to acquire 49,000 equity shares representing 20% of the voting capital of the company at a price of Rs.41/- per share. It was observed from the draft letter of offer filed with SEBI that there was a delay on the part of ETCL in complying with the provisions of regulations 6(2), 6(4) & 8(3) of SAST from the year 1997 to 2003.

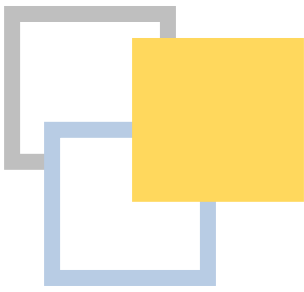
In response to the show cause notice issued by AO, the acquirers submitted that:

- There was no change in Promoters' holding of the company since 1997, except a sale of 50 shares.
- There was no trading in the shares of the Company during the period 1997 to 2003.
- The company was not having any Compliance Officer and the said failure occurred due to non-awareness of these regulations.

Hence, imposition of penalty is not justified in this case.

Decision:

On consideration of the above facts and circumstances, SEBI held that in the case of J.M. Financial and Investment Consultancy Services Limited Vs. Anant Barua, the Hon'ble SAT observed that “the fact that the company was small in size in terms of the paid up capital, and that its shares were hardly traded on the Bombay stock exchange, etc., did not, in any way, absolve the appellant from complying with the statutory requirements. Therefore, SEBI imposed a monetary penalty of Rs. 2,00,000 on the acquirers which will be commensurate with the violations committed by the acquirers.



SEBI ORDER IN THE MATTER OF FMR CORPORATION & FIDELITY INTERNATIONAL LIMITED

“Disclosure u/r 7 shall be made on or before the due date within the prescribed working hours”

Regulation 7- Disclosure of Shareholding

Facts:

E*TRADE Mauritius Limited (Acquirer) holding 48,80,000 (7.04%) equity shares of ILFS acquired 2,23,37,054 Equity shares of the Target Company by conversion of GDRs into shares thereby increasing his shareholding to 39.27% of the total voting capital of the Target Company. Pursuant to this, the acquirer gave an open offer under regulation 10 & 12 of SEBI Takeover Regulations. During the process of open offer, it was observed from the compliance status submitted to SEBI that the acquirer had made compliance of provisions of Regulation 7 (1) of SAST on September 12, 2006 delayed by 3 days. However, the acquirer submitted that the require disclosure in terms of Regulation 7(1) and Regulation 7(2) was duly made on September 11, 2006 by way of fax to ILFS and Bombay Stock Exchange. It was further submitted that September 9, 2006 (the last date for compliance), being a Saturday and September 10, 2006 being a Sunday, the offices were closed and the disclosures were made on September 11, 2006 i.e. Monday. Further, it is not mandatory on the part of the AO to impose penalty every time he comes to the conclusion that a person has failed to comply with the specified requirements, even though Sections 15A(b) of the SEBI Act contains the word “shall be liable to a penalty” On the other hand the Target Company contended that they had received the facsimile sent by the acquirers on September 11, 2006 after office hours at around 8. 30 p.m. and hence deemed to have been received by the Company on September 12, 2006.

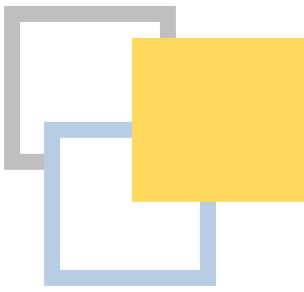
Issue:

Whether the acquirer has delayed in compliance of regulation 7(1) of SEBI Takeover Regulations?

Decision:

On the basis of above facts and circumstances, the Adjudicating officer ordered that the argument of the acquirers is untenable inasmuch as they ought to have made the disclosures to Target Company within the prescribed working hours i.e. during the working hours of 11th September, 2006, so as to enable it to fulfill the obligations enjoined by Regulation 7 (2A) and (3) of SAST Regulations.

However, the case does not warrant imposition of any monetary penalty inasmuch as there is no material available on record to indicate any disproportionate gain or unfair advantage or the amount of loss caused to an investor or group of investors and also the repetitive nature of the default on the part of the acquirers.



SEBI ORDER IN THE MATTER OF LANXESS ABS LIMITED

“Where the sellers are competent enough to give effective competition to the target Company, payment of non-compete consideration is justified”

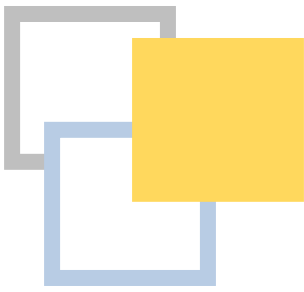
Regulation: 20(8) - Payment of Non-compete consideration

Facts:

Vide SPA dated 28th June, 2007 the acquirers had agreed to acquire 1,22,74,429 shares constituting the 69.8% of the equity share capital of the Target Company from its promoters at the highest price of Rs. 201/- per share. As per the SPA, the acquirers had agreed to pay Rs. 50.03/- per share as non-compete consideration to RA Group in addition to the negotiated price of Rs. 201/ per equity share. Pursuant to this, the acquirer has given an offer under regulation 10 & 12 of SEBI Takeover Regulations, to acquire upto 20% shares of the Target Company at a price of Rs.201/per equity share, being the highest of the negotiated price agreed to be paid to the selling promoters. On receipt of complaints from various shareholders, the SEBI issued a show cause notice to the acquirers. The merchant banker appointed by the acquirer submitted that the target company is in the business of thermoplastics and polymers and since incorporation Shri Rakesh Agrawal has been the managing director of the target Company having extensive knowledge of market and intimate knowledge of the target company’s business, employees, suppliers, systems and technological know and each member of the RA Group either has extensive knowledge of the market and the target company themselves. Therefore, the payment of non-compete consideration is justified.

Issues:

1. Whether a show cause notice is mandatory in this matter?
2. What is the negotiated price under the facts and circumstances of this case in terms of regulation 20(4) and (5) of the Takeover Regulations and whether the payment of additional Rs. 50.03/- per share to the RA Group is justified as non-compete consideration?



Decision:

1. If the Merchant banker and the acquirers are already aware of the issue, a show cause notice is not mandatorily required to be served.
2. Regulation 20(8) has been incorporated in the regulations to address the situations where the acquirer passes on a significantly large portion of the consideration to the outgoing promoter in the form of non-compete fee and only a token amount is shown as negotiated price for acquisition of shares under the agreement. Therefore, since in the present case, RA Group is competent enough to give effective competition to the target Company, the payment of Rs. 50.03 per equity share to RA Group sellers is justified as a non-compete consideration and is covered under the regulation 20(8) of the Regulations.

SEBI ORDER IN THE MATTER OF MULTIPLUS HOLDINGS LIMITED

“SAT decision re-established that once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant”

Regulation: 6 & 8 - Disclosure of Shareholding

Facts:

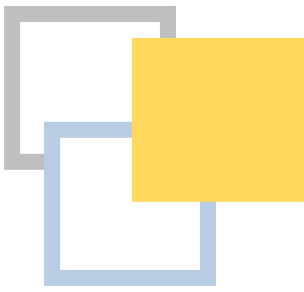
On March 6, 2007, the acquirers had acquired 1,13,000 shares representing 53.81% of total capital from promoter through a SPA. Pursuant to this, the acquirers made a public announcement on 10th of March, 2007 in terms of regulation 10 & 12. From the letter of offer submitted with SEBI, SEBI observed that there was a delay on the part of MHL in complying with the provisions of Regulations 6(2), 6(4) & 8(3) of SAST Regulations for the years **1997 to 2005**. The acquirers submitted that the shareholding of the erstwhile promoters had not changed since the year 1997 under takeover code till 31.03.2005 and there was no change in capital structure during that



period. It further submitted that MHL had complied with Regulation 8(3) for the year 1998, 1999, 2000, 2001 and 2002 and there was delay in complying with Regulation 6(2) and 6(4) for the year 1997. In support of this, a copy of the letter dated January 19, 2004 issued by BSE to MHL was also enclosed. It was observed from the BSE letter, the delay was even more than that stated in the SCN. The Company further submitted, inter-alia that it had complied with the regulations 8(3) for the years 1998, 1999, 2000, 2001 and 2002 and admitted that there was delay in compliance with regard to regulation 6(2) & 6(4) for the year 1997. The due date for compliance was 20.05.1997 but the company complied with the same on 31.03.1998. Further, with regard to compliance of Regulation 8(3) for the year 2003 and 2005, the company submitted that the delays reported by BSE were correct. MHL further submitted that for the year 2003, the actual date of compliance was 14.05.2003 instead of 14.7.2003. For the year 2005, the company submitted that the actual date of compliance is 10.11.2005 and a covering letter dated 02.11.2005 addressed by MHL to BSE was also enclosed.

Decision:

On consideration of all the facts and circumstances of the case, SEBI held that the default under 6(2) , 6(4) for the year 1997 and 8(3) for the years 1998, 1999, 2000, 2001, 2002, 2003 and 2005 stands established and it has been committed repetitively. Further, as held by SC in the matter of SEBI Vs. Shri Ram Mutual Fund, once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Therefore, SEBI imposed a monetary penalty of Rs.3,00,000/- considering the provisions of Section 15A(b) as in force on the date of default. For this, SEBI referred the decision of SAT in Rameshchandra Mansukahni vs SEBI to the effect that penalties unless specifically made retrospective must inevitably be only with effect from the date of amendment.



SEBI ORDER IN THE MATTER OF S. PRASAD REDDY AND OTHERS

“The due date for the purpose of compliance of Regulation 3(3) shall be calculated from the actual date of Acquisition as mentioned in Report filed u/r 3(4)”

Regulation: 3 (3)- Intimation to stock exchange atleast four working days in advance on acquisition of 5% or more shares u/r 3.

Facts:

Mr. S. Prasad Reddy acquired 29,81,600 shares representing 13.54% of the share capital of Sharat Industries Limited from its promoters on December 11, 2006 as mentioned in the report was filed with SEBI on December 26, 2006 claiming exemption from regulation 10 of SAST as the said acquisition was an ‘inter-se transfer of shares amongst qualifying promoters’ in terms of regulation 3(1)(e)(iii)(b) of SAST. It was observed from the aforesaid report that the disclosure required to have been made under regulation 3(3) of SAST was made by the Noticees on December 11, 2006 and therefore, it was alleged that the Noticees had not complied with the requirements of regulation 3(3) of SAST.

The acquirers inter-alia submitted that intimation under regulation 3(3) of SAST to the Stock Exchanges at Bombay and Hyderabad on December 6, 2006. Subsequently, the sellers changed their mind and demanded a higher price. After a lot of persuasion, they agreed to sell at the originally negotiated price of Rs.2/- per share, signed the transfer deeds and handed them over to me along with the share certificates on December 17, 2006. Thus, the acquisition took place on December 17, 2006 and not on December 11, 2006. Therefore, the intimation under regulation 3(3) was well in advance of the actual date of acquisition i.e. December 17, 2006. The acquirer also submitted register of members and minutes of Board Meeting also in support thereof. During the hearing, Mr. S Prasad Reddy clarified that the date of acquisition was mentioned as December 11, 2006 in the report filed with SEBI under regulation 3(4) of SAST as they thought that it may not be appropriate to indicate another date in the report as they have already intimated to the stock exchanges the date of the proposed acquisition as December 11, 2006, vide their letter dated December 06, 2006.

Decision:

On the basis of above facts and submissions, SEBI held that the acquirer had complied with the requirements of regulation 3(3) of SAST with regard to the acquisition of 29,81,600 shares representing 13.54% of the share capital of SIL. Therefore the alleged violations do not stand established.



SEBI ORDER IN THE MATTER OF ARUN KUMAR AND OTHERS

“Regulation 3 comes into play only if a violation of the substantive clauses 10, 11 or 12 is first established. Therefore, the date of claiming exemption under regulation 3 cannot be prior to the date when regulation 10, 11 or 12 is attracted”

Regulation: 3(1) (c) & 10 - Acquisition of 15% or more shares of a Company by way of preferential allotment.

Facts:

On June 17, 2002, Strides Arcolabs Limited (Target Company) issued and allotted 30,68,875 convertible warrants on a preferential basis to the acquirers belonging to promoter group of SAL. On December 11, 2003, the Board of Directors of the Target Company issued and allotted 30,68,875 equity shares to the acquirers upon exercise of the option of conversion by them. As a result of the aforesaid acquisition, the combined shareholding/voting rights of the acquirers in the Target Company increased from 11.25% to 19.31% of the post-issued share/voting capital of SAL. However the acquirers neither filed any report with SEBI u/r 3(4) nor made any public announcement to the shareholders of Target Company even though the shareholdings of the acquirers had crossed the threshold limit of 15% specified in regulation 10 of SAST Regulations. Therefore, SEBI initiated adjudication proceedings against the acquirers.

Contentions:

In response to the SCN, the acquirers made the following contentions:

1. SAL allotted 30,68,875 warrants on June 17, 2002 by way of preferential allotment, on which date “**preferential allotment u/s 81 (1A)**” was exempt under regulation 3(1) (c). Further, as per clause (k) of Regulation 2(1) shares includes any security which would entitle the holder to receive shares with voting rights i.e. warrants. Therefore, the acquirers are not required to make public announcement of offer.
2. As per regulation 3(4), as applicable on that date, the acquirers were required to file the report to SEBI under regulation 3(4) of the SAST Regulations only when these warrants were converted into shares. When these warrants were converted into equity shares on December 11, 2003, preferential allotments made under regulation 3(1)(c) were excluded from the applicability of regulation 3(4) of the SAST Regulations which came into effect on September 09, 2002. Therefore, on that date, the acquirers were



not required to file report u/r 3(4).

3. Further, the conversion of warrants into shares is merely a legal consequence and not a fresh acquisition and hence, the same is eligible for exemption from the applicability of the regulations 10, 11 and 12 of the SAST Regulations, as the original acquisition of warrants on June 17, 2002 was exempted under regulation 3(1) (c) of the SAST regulations (as existed at that point of time).
4. Even if assumed that the acquirers were required to file report u/r 3(4), the default were mere technical in nature.

Issues:

1. Whether the acquisition of 30,68,875 warrants by the acquirers on June 17, 2002, attracted the provisions of regulation 10 of the SAST Regulations?

It was held that what is contemplated under regulation 10 of SAST Regulations is 'entitlement to exercise 15% or more of the voting rights' and if voting rights are not acquired by acquisition of any instrument, whether be it shares or warrants, the provisions of the regulation 10 will not get triggered. Therefore, since the acquirer did not acquire any addition voting rights by acquisition of 30,68,875 warrants on June 17, 2002, the provisions of regulation 10 were not attracted.

2. Whether the aforesaid acquisition was covered under regulation 3(1) (c) of SAST Regulations as existed at that point of time and consequently, eligible for exemption from the applicability of regulation 10 of the SAST Regulations?

Referring the SAT decision in B.B. Singal V/s. SEBI, where it was held that

“Regulation 3 comes into play only if a violation of the substantive clauses 10, 11 or 12 is first established because the very first sentence of Regulation 3 reads “nothing contained in Regulations 10, 11 and 12 of these Regulations shall apply to”.



SEBI held that the date of claiming exemption under regulation 3(1)(c) cannot be prior to the date when regulation 10 is attracted. Any acquisition through preferential allotment on or after September 09, 2002 will not fall under automatic exemption category (by virtue of omission of regulation 3(1)(c)) but attract regulations 10, 11 and/or 12 of SAST Regulations depending upon the extent of acquisition. Therefore, since regulation 10 of the SAST Regulations was not attracted when the warrants were acquired on June 17, 2002, the question of claiming exemption under regulation 3(1) (c) of SAST Regulations does not arise at all. Therefore, the acquisition is not covered under clause 3(1) (c).

3. Whether the acquisition of 30,68,875 equity shares by the acquirers consequent upon the conversion of the warrants and the resultant increase in their combined voting rights from 11.25% to 19.31% on December 11, 2003, attracted the provisions of regulation 10 of SAST Regulations?

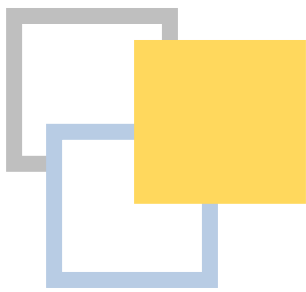
On a perusal of the scheme of the SAST Regulations, it appears that both the acquisitions, namely, voluntary acquisition and involuntary acquisition are within the purview of the SAST Regulations. From the exemptions provided under clause (ff), (j), (ja), (ka) of regulation 3, it can be concluded that involuntary acquisitions do attract the substantive provisions of the SAST Regulations, namely, regulations 10, 11 and 12. However, the applicability of the same is exempted under regulation 3 as detailed above. However, the acquisition of shares and consequent voting rights is out of a voluntary action on the part of the Acquirers and it is not due to compulsion under or operation of any law. Therefore, the contention of Acquirers that conversion of warrants into equity shares is merely a 'legal consequence' and not a fresh acquisition is not tenable. Therefore, the acquisition of 30,68,875 equity shares attracts the provisions of regulation 10 and consequently, the acquirers are required to make public announcement to the shareholders of Target Company.

LATEST OPEN OFFERS

Name of Target Company	Name of Acquirer	Details of Offer	Reason of Offer	Concerned Parties
<p>Uniflex Cables Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 14,50,35,660/-</p> <p>Listed At BSE</p>	Apar Industries Limited	Offer to acquire 49,96,075 equity shares representing 20.00% of the fully diluted likely paid-up equity share capital (after conversion of securities) of UCL, from the public shareholders of UCL, at a price of Rs. 48.50 per share payable in cash.	<p>Regulation 10 and 12</p> <p>Acquisition of shares Through SPA - 40,81,000 (28.14%) fully paid up equity shares, and</p> <p>Through Conversion of securities - 29,50,000 Warrants and 29,26,800 Fully Convertible Debentures (28.84%), and</p> <p>Through Preferential Allotment - 40,00,000 Equity Warrants</p>	<p>Merchant Banker</p> <p>Yes Bank Ltd.</p> <p>Registrar to the Issue</p> <p>Mondkar Computers Pvt. Ltd.</p>
<p>Chromatic India Limited</p> <p>Regd. Office Maharashtra</p> <p>Paid up capital Rs. 242.51 Lacs</p> <p>Listed At BSE & ASE</p>	Cheetah Multitrade Private Limited	Offer to acquire upto 5,36,420 (20%) Equity share of Rs. 10 each at a price of Rs. 42 per fully paid up Equity share and Rs. 12 per partly paid up Equity share.	<p>Regulation 10 & 12</p> <p>SPA dated February 9, 2008 with the promoter group of CIL to acquire 13,36,500 Equity shares (49.83%) at a price of Rs. 42 per share payable in cash.</p>	<p>Merchant Banker</p> <p>Fedex Securities Limited</p> <p>Registrar to the Issue</p> <p>Bigshare Services Pvt. Ltd.</p>



<p>UTV Software Communications Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 22,89,36,080</p> <p>Listed At BSE and NSE</p>	<p>The Walt Disney Company (Southeast Asia) Pte. Ltd., along with Unilazer Exports and Management Consultants Limited, Unilazer (Hong Kong) Limited and Mr. Rohinton Screwvala (PAC)</p>	<p>Offer to acquire upto 77,45,494 Shares representing 20% of the total voting equity share capital of the Target Company at a price of Rs. 860.79 per Share payable in cash.</p>	<p>Regulation 10, 11(1) and 12</p> <p>Preferential allotment to the acquirer holding 14.85% shares individually and 30.67% shares alongwith other promoters, of 93,52,500 Shares at a price of Rs. 860.79 to the Acquirer and 45,32,000 warrants to Unilazer.</p>	<p>Merchant Banker</p> <p>Goldman Sachs (India) Securities Pvt. Ltd.</p> <p>Registrar to the Issue</p> <p>Karvy Computershare Private Limited</p>
<p>Sterlite Projects Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 97,11,000/-</p> <p>Listed At BSE, CSE, DSE and UPSE</p>	<p>Gaurav Kumar Bhandari</p>	<p>Offer to acquire upto 1,97,000 Equity Shares of Rs.10/- each, representing 20.00 % of the subscribed Equity Share Capital and 20.58% of the voting Share Capital at a price of Rs.10/- per fully Paid-up Equity Share and adjusted price for the partly-paid up shares</p>	<p>Regulation 10 & 12</p> <p>SPA dated 12.02.2008 to acquire 2,71,900 Equity Shares of Rs. 10/- each representing 27.60% of the Equity Share Capital and 28.41% of voting Share Capital of SPL from its promoter shareholders at a fixed price of Rs.8.00 per Share payable in cash.</p>	<p>Merchant Banker</p> <p>Sumedha Fiscal Services Limited</p> <p>Registrar to the Issue</p> <p>Maheshwari Datamatics Private Limited</p>



<p>Roselabs Finance Limited</p> <p>Regd. Office Gujarat</p> <p>Paid up capital Rs. 1000 lakh</p> <p>Listed At BSE & ASE</p>	<p>Poonam Fast Foods Private Limited</p>	<p>Offer to acquire additional 20,00,000 (20.00 %) equity shares of Rs.10/- each at a price of Rs. 12.75 per fully paid up equity share / voting rights payable in cash.</p>	<p>Regulation 10 and 12</p> <p>Market Acquisition of shares in various trenches and SPA to acquire 44,72,650 (44.73%) Equity Shares of face value Rs.10/- each fully paid-up at a price of Rs. 8.50 per share payable in cash.</p>	<p>Merchant Banker</p> <p>Arihant Capital Markets Limited</p> <p>Registrar to the Issue</p> <p>Intime Spectrum Registry Ltd.</p>
<p>Yogi Sung Won (India) Limited</p> <p>Regd. Office Gujrat</p> <p>Paid up capital Rs. 684.58</p> <p>Listed At BSE & VSE</p>	<p>Lokesh Kapoor and Mr. Palanetra Bharath</p>	<p>Offer to acquire upto 13,69,160 (20%) equity shares of YSWIL at a price of Rs. 5 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA on 22nd February 2008 to acquire 12,24,808 (17.89%) equity shares of Rs. 10 each for cash at a price of Rs. 4.50 per share.</p>	<p>Merchant Banker</p> <p>Aryaman Financial Services Ltd</p> <p>Registrar to the Issue</p> <p>Sharex Dynamic (India) Pvt. Ltd</p>
<p>Advani Hotels & Resorts (India) Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 9,24,38,500/-</p> <p>Listed At BSE, NSE and DSE</p>	<p>Fasttrack Impex Private Limited along with Arrow Webtex Limited</p>	<p>Offer to acquire upto 92,43,850 (20%) fully paid up equity shares of Rs. 2/- each, at a price of Rs. 102/- per share payable in cash.</p>	<p>Regulation 10</p> <p>Voluntary Open Offer</p>	<p>Merchant Banker</p> <p>Mondkar Computers Pvt Limited</p> <p>Registrar to the Issue</p> <p>YES BANK Limited</p>



RAGULAR SECTION

PERSON ACTING IN CONCERT - 'PAC'

The definition of person acting in concert has been profusely modified. Under regulation 2 (1) (e), the term 'Person Acting in Concert' has been defined in two parts. In the first part, the term has been defined in the general terms.

✓ Commonality of objective

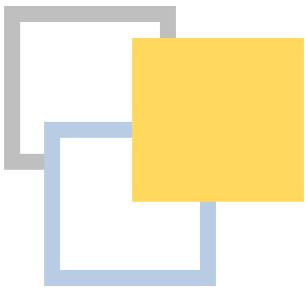
The persons who are acting in concert on the basis of commonality of objective of acquisition of shares or voting rights or gaining control over the target company. The commonality can be achieved pursuant to any agreement or any understanding entered by such person. The agreement or understanding can be formal or may be informal. This must be implicit in the concerted action of these persons must be an element of co-operation. This co-operation could be extended in several ways, directly or indirectly, or through an agreement, formal or informal. Further, the term common objective has been restricted by the subsequent words in the sense that the common objective shall be the substantial acquisition of shares or voting rights or gaining control over the target Company.

Therefore, it becomes clear that the two persons must share a common intention of substantial acquisition of shares or voting rights to be treated as persons acting in concert.

✓ Business Relations

Further, the code identifies persons who virtue of their business relations is presumed to be person acting in concert. The responsibility has been cast on these persons to show that the fact is otherwise in given situation.

The second part of the definition lists out certain instances where two persons will be deemed to be persons acting in concert. Therefore, where first part is general, second part is specific in nature. The section part of the definition lists out certain instances where two persons will be **deemed to be** 'person acting in concert.'



EXAMPLES,

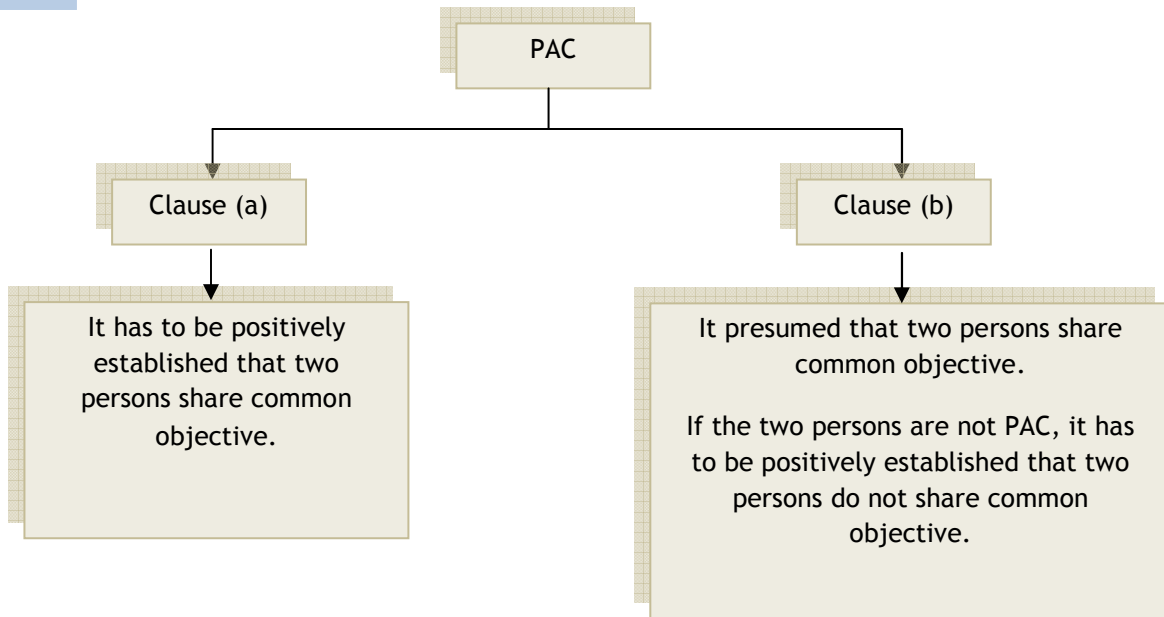
- A company has been defined to be in concert with its directors, likewise a merchant banker with his clients who are acquirers, banks, financial advisors, etc.
- If the acquirer is a holding company, then subsidiary company shall be deemed to be acting in concert with it
- A Sponsor of mutual fund could be presumed to be acting in concert with the Trustee Company or asset Management Company of the same mutual fund.
- Venture capital with its sponsors is deemed to be acting in concert.
- Portfolio managers with their clients and so many other instances.

PAC vs. DEEMED PAC

The term 'Person Acting in Concert' has been defined in two parts. In the first part, the term has been defined in the general terms whereas in the second part certain instances have been specifically listed out where the two persons will be deemed as PAC, unless contrary is established. These are called deemed PAC.

However it is of utmost importance to mention here that second part starts with the words "*without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established*". It means that the first part will prevail over the second part. Therefore, at the first instance, the persons mentioned thereafter will be deemed to be person acting in concert as suggested by the words "*unless the contrary is established*". However, **notwithstanding the fact that two persons fall in one or other category of second part of the definition, it has nevertheless to be established that they share common objective.** This intention of the law-makers has been made clear by the starting words of second part i.e. "*without prejudice to the generality of this definition*". **Therefore, if the two persons does not share common objective of substantial acquisition of shares or voting rights or acquisition of control, they will not be treated as persons acting in concert even if they fall in one or the other category of the second part of the definition.**

Therefore, the main difference between the persons not falling in the second part of the definition and person falling in the second part of the definition is that in the former case it is to be positively established that two persons share common objective whereas in the latter case this presumption is already there and it has to be rebutted that the two persons does not share common objective.



LEGAL DECISIONS:

Whether to be a person acting in concert are necessarily to be relative?

It was held in '*Kishore Rajaram Chhabria v. Chairman*', SEBI' that two persons can fall under the category of persons acting in concert even if they are not related with each other. In such circumstances, the commonality of objects is to be seen.

Whether there is no hard and fast rule that a promoter could never be an acquirer or person acting in concert?

It was decided in '*Modi Spg. & Wvg. Mills Co. Ltd. v. Securities & Exchange Board of India*' that if a promoter acquires or agrees to acquire shares or voting rights or gains control over target company he can be safely considered as an acquirer who in turn would be subject to provisions of regulation 11. A promoter need not be an acquirer automatically and it is conduct of party, which decides its identity.

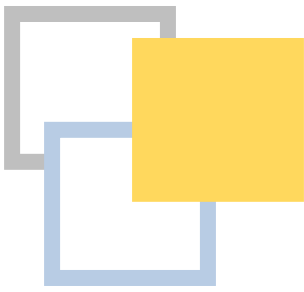
MARKET UPDATE

UNION BUDGET 2008 - KEY FEATURES

1. Threshold limit of exemption from personal income tax in the case of all assesses increased to Rs.150,000. The slabs and rates of tax are :

Up to Rs.150,000	NIL
Rs.150,001 to Rs.300,000	10 per cent
Rs.300,001 to Rs.500,000	20 per cent
Rs.500,001 and above	30 per cent

2. In case of a woman assessee, the threshold limit increased from Rs.145,000 to Rs.180,000; for a senior citizens, the threshold limit increased from Rs.195,000 to Rs.225,000.
3. No change in the corporate income tax rates.
4. No change in the rate of surcharge.
5. Senior Citizen Saving Scheme 2004 and the Post Office Time Deposit Account added to the basket of saving instruments under Section 80C of the Income Tax Act.
6. Additional deduction of Rs.15,000 allowed under Section 80D to an individual paying medical insurance premium for his/her parent or parents.
7. Business of production of seeds and manufacture of agricultural implements added to the list of companies allowed weighted deduction of 150 per cent on any expenditure on in-house scientific research.
8. Benefit of amortisation of certain preliminary expenses under Section 35D allowed to assesseees in the services sector.
9. Corporate debt instruments issued in demat form and listed on recognised stock exchanges exempted from TDS.



10. Crèche facilities, sponsorship of an employee-sportsperson, organising sports events for employees and guest houses excluded from the purview of FBT.
11. Parent company allowed to set off the dividend received from its subsidiary Company against dividend distributed by the parent company; provided that the dividend received has suffered DDT and the parent company is not a subsidiary of another company.
12. A new sub-section (11C) inserted in Section 80-IB to grant a five year tax holiday to hospitals located in any place outside the urban agglomerations especially in tier- 2 and tier-3 towns; this window will be open for the period April 1, 2008 to March 31, 2013.
13. Five year holiday from income tax being granted to two, three or four star hotels established in specified districts having UNESCO-declared 'World Heritage Sites'; the hotel should be constructed and start functioning during the period April 1, 2008 to March 31, 2013.
14. Rate of tax on short term capital gains under Section 111A & Section 115AD increased to 15 per cent.
15. STT paid to be treated like any other deductible expenditure against business income; Levy of STT, in the case of options to be only on premium, where the option is not exercised; liability to be on the seller; where the option is exercised, levy to be on the settlement price and the liability on the buyer; no change in the present rates.
16. Commodities Transaction Tax (CTT) to be introduced on the same lines as STT on options and futures.
17. Law being amended to exclude entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes from claiming that their purposes also fall under "charitable purpose"; Genuine charitable organisations not to be affected in any way.
18. Banking Cash Transaction Tax (BCTT) being withdrawn with effect from April 1, 2009.



HINT OF THE MONTH

DETERMINATION OF OFFER CONSIDERATION IN CASE OF PRICE PAYABLE IN THE FORM OF ACQUIRER COMPANY'S SHARES

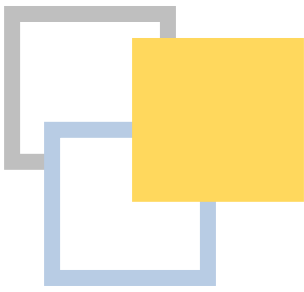
“The consideration for the shares acquired in open offer given in terms of SEBI Takeover Regulations, can be paid either in cash or in the form of shares or secured instruments of Acquirer Company, if it is a body corporate.

Where shares or secured instruments of the acquirer company are offered in lieu of cash payment as a consideration for the shares of the Target Company acquired in the open offer, then the value of such shares or secured instruments shall be determined in the same manner as specified in sub-regulation (4) or sub-regulation (5) to the extent applicable. In other words, if the Acquirer Company is a listed Company, its price shall be determined on the basis of parameters specified for determination of price in case of frequently and infrequently traded share. Further, if the Acquirer Company is an unlisted Company, its price shall be determined on the basis of parameters specified for determination of price in case of infrequently traded shares or any other parameter as duly certified by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant of a minimum ten years' standing or a public financial institution.”

CASE STUDY

NEW ERA OF INTERNATIONAL PRIVATE EQUITY INVESTMENT IN INDIAN COMPANIES

Indian companies especially broking firms are getting suitors from new geographies. One of the recent major deals for acquisition of Indian companies is acquisition of Globe Capital Market Ltd. by Citigroup Venture Capital International. Citigroup Venture Capital International has made its third investment in the broking space. The private equity arm of Citigroup has invested \$42 million in Globe Capital Markets, a Delhi based broking and clearing house. Earlier, Citi had picked up less than 20 per cent stake in Anand Rathi Securities and a majority stake in online trading firm Sharekhan.



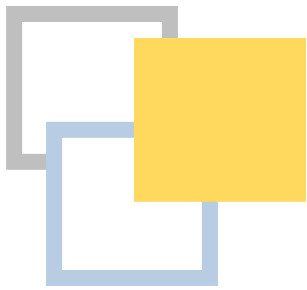
Citigroup is attracted by Globe's presence in North India as a leading clearing house with some 84 members in NSE F&O segment, and 11 members in the BSE F&O segment. It has an average daily trading turnover of Rs 8,700 crore with a 10 per cent market share. Globe is now getting into retail broking and financial product distribution such as mutual funds, margin financing and IPOs. Globe has also formed a subsidiary in Dubai, besides it has acquired a London-based company, ICON Capital, a member of the London Stock Exchange. The company also plans to acquire a small broking houses.

During the previous few months, the number of international player investing in India companies in the form of private equity has grown manifold. Recently, Acacia Real Estate Ltd, a real estate investment company promoted by Bahrain-based TAIB Bank, has acquired 49 per cent stake in Logix TechnoPark , a mid-sized IT park in Noida, for \$69 million. Logix TechnoPark, located in Delhi's suburb in Uttar Pradesh, has properties along the Greater Noida Expressway, which consists of four newly built office towers with an area of 461,120 sq/ft. They are currently leased to companies like Oracle, Mentor Graphics, Conexant Systems and SafeNet InfoTech.

OTHER BALLS IN THE BASKET...

Another ball in the basket has been put by International private equity fund AIG which has picked 14.9 per cent in Firodias' Kinetic Engineering. AIG picked the stake through subscription of compulsory convertible preferential shares of the public listed firm at a price of 156 per share cumulating to Rs 25.6 crore. These shares are convertible within the next 18 months. The rest (about Rs 72 crore) has been raised through FCCBs listed at the Singapore Stock Exchange.

Another deal worth mentioning has struck by ICICI Venture to acquire 14.99 per cent stake in Arrow Webtex, which is into a niche sector of textile. The mode of acquisition is through a preferential allotment by the company.



INTERMEDIARY SEARCH

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FOR ANY CLARIFICATION

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