

# TAKEOVER PANORAMA

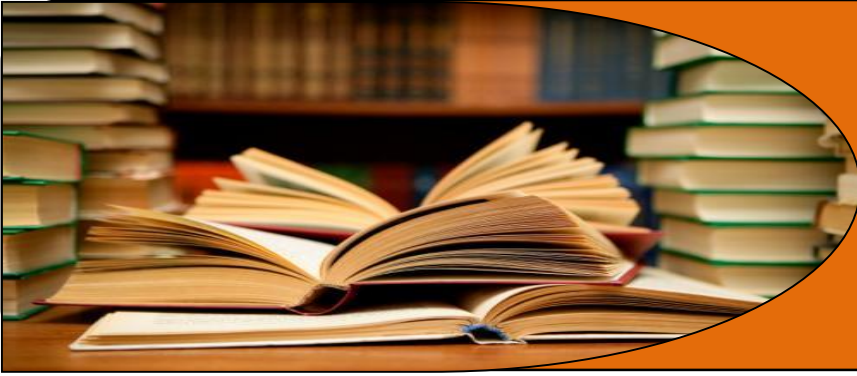
**A Monthly Newsletter by Corporate Professionals**

**Year VIII-Vol IV**

## INSIGHT

<b>Legal Update</b> <ul style="list-style-type: none"><li>– SAT order in the matter of Mr. Devang D. Master</li><li>– SAT order in the matter of Mr. G Suresh</li><li>– SAT order in the matter of M/s Gaylord Commercial Company Limited</li></ul>	<b>3</b>
<b>Hint of the Month</b>	<b>9</b>
<b>Latest Open Offers</b>	<b>10</b>
<b>Case Study</b> <ul style="list-style-type: none"><li>– Jet and Etihad deal is finally ready to take off</li></ul>	<b>15</b>
<b>Market Update</b>	<b>20</b>
<b>Our Team</b>	<b>21</b>





# LEGAL UPDATES

## SAT order in the matter of Mr. Devang D. Master

**Facts:** The present appeal is filed by Mr. Devang D. Master (“Appellant”), who was held guilty of violating the provisions of Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (PFUTP) Regulations, Regulation 7(1A) read with 7(2) and Regulations 10 and 11 of SEBI (SAST) Regulations, 2011 and also Regulation 13(4) read with 13(5) of SEBI (PIT) Regulations, 1992 and was levied a consolidated penalty of 1 crore.

### Brief facts of the case/Allegation imposed:

1. During March 2005, Appellant made misleading corporate announcement regarding preferential /rights issue with a view to lure investors which according to SEBI (“Respondent”), led to creation of artificial volumes. Further Appellant had made off-market transfers to various entities and had also received shares in the off-market for which he did not make requisite disclosures as per SEBI (SAST) Regulations, 2011 and SEBI (PIT) Regulations, 1992.

Matter remanded to the respondent for fresh adjudication after affording reasonable opportunity to the appellant to represent his case.

2. Accordingly SEBI imposed a penalty of Rs. 1 Crore to which Appellant made this appeal and submitted that the signature appearing on transfer deeds produced by the SEBI were forged as he did not sign the same.
3. During the proceedings before SAT, the appellant was granted leave to obtain and submit a signature comparison report from a Forensic expert. Accordingly, the appellant furnished a signature comparison report dated June 18, 2013. The respondent also filed reply / comments in response to the said report.

**Issues:** Whether the penalty of Rupees one crore imposed on the appellant is justified?



### **Decision:**

During the course of hearing, it was felt that in the facts and circumstances of the case, a comparison of the appellant's signature would be required to ascertain authenticity of his alleged signature on the transfer deed. Therefore SEBI order is hereby quashed and set aside and the matter is remanded to the respondent for fresh adjudication after affording reasonable opportunity to the appellant to represent his case.

## **SAT order in the matter of Mr. G Suresh**

**Facts:** The present appeal is filed by Mr. G Suresh ("Appellant") against the order dated December 17, 2013 passed by Adjudicating Officer imposing a penalty of Rs. 5,00,000/- on the Appellant for the violation of Regulation 13(4) read with 13(5) of SEBI (PIT) Regulation, 1992 and Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997.

### **Brief facts of the case:**

1. On September 27, 2010 Appellant, Managing Director of CG-Vak Software and Exports Ltd. ('the Company') had acquired 27,985 shares of the Company and also made necessary disclosure to the Company about this acquisition but failed to do so in case of Stock Exchange as required under Regulation 13(4) read with 13(5) of SEBI (PIT) Regulation, 1992.

For the purpose of disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997, the individual shareholding of the acquirer is to be considered.
2. On September 14, 2009 Appellant had acquired 6884 shares by which the Appellant's total shareholding in the Company exceeded 10% i.e. became 10.13%. The Appellant has thereafter acquired 6702 shares on March 30, 2010 by which the total shareholding of the Appellant in the said Company increased from 13.9% to 14.04% i.e. more than 14%. The Appellant was therefore under Regulation 7(1) read with 7(2) of the SEBI (SAST) Regulations, 1997 was required to make a disclosure within two working days of the said acquisitions which the Appellant failed and neglected to do.
3. Accordingly SEBI imposed a penalty of Rs.5,00,000/- on the Appellant. Being aggrieved by the direction, the appellants have filed the appeal before Hon'ble Tribunal.

#### **4. Appellant contention:**

- a. **With respect to violation of SEBI (PIT) Regulations, 1992:** There was delay of 31 days in making the disclosure to the Stock Exchange as he was travelling abroad.
- b. **With respect to SEBI (SAST) Regulations, 1997:** The Appellant together with the person acting in concert with him already held more than 15% of the share capital of the Company and therefore no disclosure under Regulation 7(1) read with 7(2) under SEBI (SAST) Regulations, 1997 was required to be made

**Issues:** Whether for the purpose of disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997, the individual shareholding of the acquirer is to be considered or the shareholding of acquirer along with PACs? Whether the penalty of Rs. 5 Lac imposed on appellant is justified?

#### **Decision:-**

##### **With respect to alleged violation of SEBI (PIT) Regulations, 1992**

After hearing Shri S.K. Jain, Practicing Company Secretary on behalf of the Appellant, the Hon'ble Tribunal held that Respondent has already taken a lenient view by imposing a penalty of Rs. 5 lakh on the Appellant. As the penalty imposable on the Appellant for the said violation is Rs. 1 lakh per day till the disclosure is made. Viewed from this angle, a penalty of Rs. 31 lakh could have been imposed by the Respondent but they have not done so and imposed a token penalty of Rs. 5 lakh.

##### **With respect to SEBI (SAST) Regulations, 1997**

SAT observed that the disclosure requirements under Regulation 7 of SEBI (SAST) Regulations, 1997 require every acquirer alone to make a declaration of his holding, if any, together with the shares acquired by him. Regulation 7(1) does not require the acquirer to aggregate the shares acquired and/or held by him together with shares of any other person including person acting in concert with him. The question of the Appellant holding shares along with person acting in concert with him aggregating to more than 15% is irrelevant for the purpose of making declarations under Regulations 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997.

After considering all the facts and circumstances of the case, SAT dismissed the case and said the penalty is justified.



## SAT order in the matter of M/s Gaylord Commercial Company Limited

**Facts:** The present appeal is filed by M/s Gaylord Commercial Company Limited (Appellant) against the order dated January 15, 2014 passed by Adjudicating Officer (Respondent) imposing a penalty of Rs. 2,00,000/- on appellant for the violation of Regulation 8(3) of SEBI (SAST) Regulations, 1997.

### Brief facts of the case:

1. The Appellant had delayed in filing the disclosure required under Regulations 8(3) of SEBI (SAST) Regulation for the year 2007 and 2008 by 165 days and 2 days respectively.
2. Accordingly SEBI imposed a penalty of Rs. 2 Lacs on the Appellant for the aforesaid violation. Being aggrieved by the direction, the appellant has filed the appeal before Hon'ble Tribunal and submitted the following:

Once the failure to comply with regulation 8(3) is established, the penalty will be imposed. The liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not.

- a. *Appellant is a small company and never in the past appellant had committed any such violations*
- b. *Delay in making disclosures has neither caused any loss to investors nor has the appellant gained any benefits.*
- c. *There was no malafide intention to conceal any information to the detriment of the investors and disclosures have been in fact made, though belatedly.*
- d. *Penalty imposed upon the appellant is arbitrary, unreasonable and excessive.*

**Issues:** Whether the penalty of Rs. 2 lacs imposed on each appellant is justified?

**Decision:** The Hon'ble Tribunal observed that the Penalty prescribed for such violations under Section 15A (b) of SEBI Act, 1992 is Rs. 1 Lac for each day during which such failure continues or Rs.1 Crore whichever is less. In the present case, since the failure to comply with regulation 8(3) of SEBI (SAST) Regulations, 1997 continued for 165 days, penalty at the rate of Rs. 1 Lac per day would be Rs.1.65 Crores and as per Section 15A(b) of SEBI Act, 1992 appellant was liable to pay penalty to the extent of Rs. 1 Crore. However, the AO after taking into consideration all mitigating factors has imposed penalty of Rs. 2 Lac which cannot be said to be unreasonable or excessive.



## *Adjudicating/WTM orders*

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
M/s Tak Machinery & Leasing Limited	M/s E-Ally Consulting (India) Private Limited, M/s Shree Jaisal Electronics & Industries Limited, Mr. Sandeep Maloo, Mrs. Neeta Maloo, Mr. Labh Chand Maloo, Mrs. LataMaloo, Sandeep Maloo (HUF), Labh Chand Maloo (HUF)	Regulation 30(1) & Regulation 30(2) read with Regulation 30(3) of SEBI(SAST) Regulations, 2011	Rs 3,00,000
M/s. Coimbatore Flavors and Fragrances Limited	M/s. Coimbatore Flavors and Fragrances Limited, Shri Benny Abraham and Ms. S. Subashini	Regulation 30(1) and (2) read with 30(3) of the SEBI (SAST) Regulations, 2011 along with Regulation 8(1) and 8(2) and 8(3) of the SEBI (SAST) Regulations, 1997	2,00,000 on each M/s. Coimbatore Flavors and Fragrances Limited and Shri Benny Abraham and a penalty of Rs. 2,50,000 on Ms. S. Subashini



M/s. Inland Printers Limited	M/s. Inland Printers Limited, M/s. Insight Management Services Pvt Ltd., M/s. Inland Dataforms Pvt Ltd., Ms. Indumati Raman, Ms. Shanti Gopalakrishnan and Mr. Gopalakrishnan Raman,	Regulation 8 (2), 8(3) of SEBI (SAST) Regulation,1997 and Regulation 30(1) and 30(2) read with 30(3) of SEBI(SAST) Regulation,2011	Rs. 5,00,000
M/s Greenearth Resources and Projects Limited	M/s Greenearth Resources and Projects Limited	Regulation 8(3) of SEBI(SAST) Regulations, 1997	Rs. 5,00,000
M/s Greenearth Resources and Projects Limited	Mr. Rishiraj Agarwal, M/s. Anarcon Resources Pvt. Ltd., M/s. Shri Hanuman Investments Pvt. Ltd., Mrs. Sangeeta Agarwal, Mrs. Lalita Agarwal & Mr. Ashok Agarwal	Regulation 30 (2) read with 30 (3) of SEBI(SAST) Regulations 2011	Rs. 4,00,000
M/s Drillco Metal Carbides Limited	M/s La Tim Sourcing (India) Pvt. Ltd.	Regulation 29(2) read with Regulation 29(3) of SEBI(SAST) Regulations, 2011	Rs. 50,000
M/s Drillco Metal Carbides Limited	M/s Drillco Metal Carbides Limited	Regulation 7(3) of SEBI (SAST) Regulations, 1997	N.A
M/s. Ethelbari Tea Company Limited	Mr Chandra Prakash Kanoi, Mr Santosh Kumar Kanoi and MrNirmal Kumar Kanoi	Regulation 7(1) read with 7(2) of the SEBI(SAST) Regulations, 1997	N.A



M/s. Aster Silicates Limited	Mr. Mahesh Maheshwari and Ms. Namrata Maheshwari	Regulation 8A(3) of SEBI(SAST)Regulation, 1997; and Regulations 30(2) read with 30(3), 31(1) and 31(2) read with 31(3) of SEBI(SAST)Regulation,2011	Rs 6,50,000 on Mr. Mahesh Maheshwari and Rs. 4,50,000 on Ms. NamrataMaheshwari
M/s. Grandma Trading & Agencies Limited	M/s. Grandma Trading & Agencies Limited	Regulation 6(2) and 6(4) and 8(3) of the SEBI(SAST)Regulation,1997	Rs. 7,00,000
M/s. Rasoi Limited	M/s. Rasoi Limited	Regulation 8(3) of SEBI (SAST) Regulations, 1997	Rs. 8,00,000

## ***HJNT OF THE MONTH***

An acquirer, who (along with PACs, if any) holds less than 25% shares or voting rights in a target company and agrees to acquire shares or acquires shares which along with his/ PAC' s existing shareholding would entitle him to exercise 25% or more shares or voting rights in a target company, will need to make an open offer before acquiring such additional shares.

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





# Latest Open Offers

## Target Company

M/s Greycells Education Limited

## Registered Office

Mumbai

## Net worth of TC

Rs.2,281.90 Lacs  
(30.09.2013)

## Listed At

BSE

## Industry of TC

Education

## Acquirer

M/s Krishna Investment Private Limited

**Triggering Event:** Preferential Allotment of 19,00,000 (24.03 %) equity shares by the Target Company to the Acquirer.

**Details of the offer:** Offer to acquire 20,56,006 Equity Shares at a price of Rs. 10/- per fully paid up equity share payable in cash.

## Target Company

M/s. Bangalore Fort Farms Limited

## Registered Office

Bangalore

## Net worth of TC

271.59 Lacs  
(31.12.2013)

## Listed At

BgSE

## Industry of TC

NA

## Acquirer

M/s Revati Holding Private Limited

**Triggering Event:** Share Purchase Agreement (SPA) for the acquisition of 47,825 (59.78%) equity shares and control over the Target Company.

**Details of the offer:** Offer to acquire 20,800 (26%) Equity Shares at a price of Rs. 360/- per fully paid up equity share payable in cash.



**Target Company**

M/s Zenotech  
Laboratories Limited

**Registered Office**

Andhra Pradesh

**Net worth of TC**

NA

**Listed At**

BSE

**Industry of TC**

Pharma

**Acquirers**

M/s Sun Pharmaceutical  
Industries Limited

**Triggering Event:** Indirect acquisition of 16,127,293 (46.79%) equity shares and control over the Target Company

**Details of the offer:** Offer to acquire 9,693,332 (28.10%) Equity Shares at a price of Rs. 19/- per fully paid up equity share payable in cash.

**Triggering Event:** Preferential Allotment Agreement (PAA) for the acquisition of 41,827,132 (28.78%) equity shares and control over the Target Company

**Details of the offer:** Offer to acquire 37,785,214 Equity Shares at a price of Rs. 3,030 per fully paid up equity share payable in cash.

**Target Company**

M/s. United Spirits  
Limited

**Registered Office**

Bangalore

**Net worth of TC**

Rs. 47,873 Mn  
(31.03.2013)

**Listed At**

BSE, NSE & BgSE

**Industry of TC**

Breweries & Distilleries

**Acquirer**

M/s Relay B.V. (Acquirer)  
and  
M/s Diageo plc (PAC).



**Target Company**

M/s New Markets  
Advisory Ltd

**Registered Office**

Mumbai

**Net worth of TC**

Rs.121.89Lacs  
(31.12.2013)

**Listed At**

BSE

**Industry of TC**

Consultancy

**Acquirer**

Mr Mohammed Fasihuddin

**Triggering Event:** Share Purchase Agreement (SPA) for the acquisition of 6,82,750 (55.06%) Equity Shares and control over Target Company.

**Details of the offer:** Offer to acquire 3,22,400 Equity Shares at a price of Rs. 13/- per fully paid up equity share payable in cash.

**Triggering Event:** Share Purchase Agreement (SPA) for the acquisition of 27,50,220 (29.01%) Equity Shares and control over Target Company.

**Details of the offer:** Offer to acquire upto 24,65,227 (26.00%) Equity Shares at a price of Rs. 5/- per fully paid up equity share payable in

**Target Company**

M/s Medinova  
Diagnostic Services  
Limited

**Registered Office**

Hyderabad

**Net worth of TC**

Rs.(338.53)Lacs  
(31.12.2013)

**Listed At**

BSE

**Industry of TC**

Pharma

**Acquirer**

M/s. Viiava Diagnostic  
Centre Private Limited



**Target Company**

M/s Mangalore Chemicals  
& Fertilizers Limited

**Registered Office**

Bangalore

**Net worth of TC**

Rs. 5014.86 Mn  
(31.03.2013)

**Listed At**

BSE, NSE and BgSE

**Industry of TC**

Fertilizers

**Acquirer and the PAC**

SCM Soilfert Limited  
(Acquirer) and Deepak  
Fertilizers and  
Petrochemicals (PACs)

Corporation Limited

**Triggering Event:** Acquirer placed a Purchase Order in the open market to acquire upto 20,00,000 (1.7%) Equity Share of the Target Company.

**Details of the offer:** Offer to acquire 30,813,939 (26%) Equity Shares at a price of Rs. 61.75/- per fully paid up equity share which was further revised to Rs. 63.00/-per fully paid up equity share payable in cash.

**Triggering Event:** Indirect Acquisition which will be regarded as a deemed direct acquisition.

**Details of the offer:** Offer to acquire 50,53,181(25.08%) Equity Shares at a price of Rs. 15.50/- per fully paid up equity share payable in cash.

**Target Company**

M/s Cimmco Limited

**Registered Office**

Kolkata

**Net worth of TC**

Rs.(2,027.44) Lakhs  
(31.12.2013)

**Listed At**

NSE, BSE, CSE,  
DSE & MpSE

**Industry of TC**

Diversified

**Acquirer and PAC**

M/s Titagarh Wagons  
Limited (Acquirer) and  
Cimco Equity Holdings  
Private Limited (PAC).



**Target Company**

M/s Seamec Limited

**Registered Office**

Mumbai

**Net worth of TC**

Rs. 4,736.2 Mn  
(31.03.2013)

**Listed At**

BSE and NSE

**Industry of TC**

Shipping

**Acquirer and the PAC**

HAL offshore Limited

**Triggering Event:** Share Purchase Agreement (SPA) for the acquisition between 17,289,000 and 25,425,000 (51.00%-75.00%) Equity Shares and control over Target Company.

**Details of the offer:** Offer to acquire 8,814,000(26%) Equity Shares at a price of Rs. 97/- per fully paid up equity share payable in cash.





## *Case Study*

### **Jet and Etihad deal is finally ready to take off .....**

Jet-Etihad deal which was announced a year back after the government allowed 49% Foreign Direct Investment (FDI) in Indian aviation companies has finally cleared all the regulatory hurdles in India and is ready to take off.

The deal was announced last year in April when Abu Dhabi-based Etihad Airways (hereinafter referred to as “**Etihad**”) entered into an Investment Agreement (IA) with Jet and its existing promoters to subscribe to 24% equity shares in Jet for USD 379 million (price per share of INR 754.74). Apart from the Investment Agreement, the following documents were also executed/drawn:-

- Shareholders Agreement (SHA) between Jet, Etihad and existing promoters;
- Commercial Cooperation Agreement (CCA) between Jet and Etihad;
- Corporate Governance Code (Code).

The transaction was subject to number of regulatory approvals in India such as Foreign Investment Promotion Board (“FIPB”), the Competition Commission of India (“CCI”) and SEBI. Accordingly, the applications were moved before the said regulators along with the abovementioned agreements for their approvals.

#### **FIPB and SEBI Approval:**

Before giving its final nod to go ahead with the transaction, the Central Government, Ministry of Finance has sought the comments of SEBI on the above agreements. In response thereto, SEBI vide its letter dated September 25, 2013 has given its comments including the following:

- The rights proposed to be acquired by Etihad do not, prima facie, appear to result in change in control and consequently, do not attract the provisions of regulation 2(1)(e) read with regulation 4 of SEBI (SAST) Regulations, 2011. Consequently, Etihad would not be deemed as person acting in concert (PAC) with the current Promoter group of Jet in terms of regulation 2(1)(q) of SEBI (SAST) Regulations, 2011.
- With regard to CCA, SEBI has stated that it would be guided by the decision taken by the other regulators.

On October 10, 2013, the FIPB accorded its approval and accordingly, on November 20, 2013, Jet issued and allotted the equity shares to Etihad.

#### **CCI Approval:**

The CCI vide its order dated November 12, 2013 approved the transaction and inter-alia held that the combination proposed in the transaction/ deal was not likely to have “appreciable adverse effect” on competition in India.

However in the said order CCI has stated about the Joint Control over jet i.e.

***It is observed that the Parties have entered into a composite combination comprising inter alia the IA, SHA and the CCA, with the common/ultimate objective of enhancing their airline business through joint initiatives. The effect of these agreements including the governance structure envisaged in the CCA establishes Etihad’s joint control over Jet, more particularly over the assets and operations of Jet.***

The said observation of CCI has raised the concern for SEBI about the Joint Control over Jet and accordingly, on February 11, 2014, SEBI issued a show cause notice (“SCN”) to M/s Tail Winds Limited, Mr. Naresh Goyal, Ms. Anita Nares Goyal and Etihad Airways PJSC (Noticees) alleging Joint Control over Jet by Etihad and the promoters under SEBI (SAST) Regulations, 2011 requiring an open offer to the shareholders of Jet under Regulation 4 of the said Regulations.

In response to the said show cause notice, the Noticees made the representation before SEBI and made the following submissions:

- I. **M/s Tail Winds Limited** submitted that it was no longer a shareholder of Jet and was also not a party to CCA. Thus, the question of acquiring control as alleged does not arise at all.
- II. **Mr. Naresh Goyal and Ms. Anita Naresh Goyal** submitted that:



- The observations made by CCI are made in the context of the provisions of Competition Act, 2002 and thus reference to or reliance upon the observations in the order of the Competition Commission are wholly irrelevant, immaterial and not germane to the provisions of SEBI (SAST) Regulations, 2011.
- Moreover, the objective of both the legislation are different i.e. CCI regulate combinations which cause appreciable adverse effect on competition in the market whereas SEBI (SAST) Regulations, 2011 aims at providing an exit to shareholders in case of change in control.
- The Transaction documents do not accord Etihad (i) any affirmative, veto or blocking rights; (ii) More than 2 out of 12 directors on the board of Jet; (iii) Any quorum rights at the board of general meeting; (iv) any casting vote rights; (v) any pre-emptive or tag along rights.
- The Promoters of Jet have (i) 51% shareholding in Jet; (ii) the right to appoint 4 out of 12 directors; (iii) the right to nominate the Chairman and the Chairman so nominated will have a casting vote on any matter.

**III. Etihad Airways PJSC submitted that:**

- CCA types of agreements are entered into by airlines to expand their respective networks to compete more effectively with other airlines and such an agreement merely facilitates rationalization of costs, efficiencies of scale and the ability to service different parts of the world by leveraging the presence of the partner airlines in that market.
- It is inconceivable for Etihad to have the intention to control Jet as this would result in endangering the operating license of Jet. It would also jeopardize the rights of Jet to continue to fly to third countries as bilateral agreements with such countries generally require control to vest with nationals of a particular country.
- Press Note 6 requires that for a lawful investment into an Indian airline, effective control must remain with Indian nationals. Since, FIPB has already opined that the investment by Etihad in Jet, is in accordance with Press Note 6, the Etihad cannot, by law, be said to have acquired control over Jet under SEBI (SAST) Regulations, 2011.
- The concept of “control” for the purposes of competition law is specific to its own statute and applies to an entirely different context as opposed to the definition of control for the purposes of Takeover Regulations. The focus of the Competition Act is to determine whether there is control over an enterprise so as to constitute a “combination”.



- In the SCN, it has been alleged that a PAC relationship arises out of the CCA. In *Daiichi Sankyo v. Jayaram Chigurupati*, the Supreme Court has held that a target company cannot be a PAC with the alleged acquirer. As the CCA is entered into between Etihad and Jet, the alleged target company, the allegation that a PAC relationship arises out of the said CCA is legally unsustainable.
- Etihad cannot be said to have acquired control over Jet as none of the requirements of regulation 2(1)(e) have been fulfilled in the instant case as (i) mere existence of a shareholder's agreement is not evidence of acquisition of control; (ii) the Noticee can appoint only two out of 12 members on the Board of Jet and one member on certain committees of the Board; (iii) the Noticee does not have any veto rights at the Board or Shareholders level; (iv) decision taken at co-operation committees and facilitation groups are under CCA are recommendatory in nature.
- Etihad has voluntarily decided to delete/modify various clauses of CCA including those which were basis of the observations of Competition Commission to ensure that there is absolute certainty that effective control of Jet Airways is and continues to vest in Indian nationals and the board of Jet Airways.

### **SEBI Nod to the deal**

On analysis of submissions made by the Noticees and the comments submitted by MoF, SEBI accorded its approval to the deal and held that the transaction would not attract the provisions of SEBI (SAST) Regulations, 2011.

While giving its order, it relied upon the following facts:

- The **MoF** has clarified that the mandate of FIPB/CCEA is to ensure compliance with FDI policy which inter-alia states that "a scheduled Operator Permit can be granted only to a company the substantial ownership & the effective control of which is vested in Indian nationals". Thus, the approval from FIPB shows that the deal is in compliance with the FDI policy.
- The **Competition Commission**, vide letter dated April 9, 2014, has inter-alia, advised that - ".....for determination of "control" in a proposed combination, the Commission is guided only by the provisions relating to regulation of combinations in the Competition Act, 2002 (Act) and the facts and circumstances of each case. Every regulatory authority decides the cases as per their appreciation of the facts and documents made available and in accordance with the provisions of its statute and regulations.
- One regulatory agency may be guided by the findings of other regulatory agency on a particular issue only if the two laws are parimateria in their substance and are being applied on the same



set of facts and circumstances. The definition of Control in the Competition Act, 2002 is a purposive definition and applies for the specific purpose of combination of enterprises by way of inter alia, acquisition of one or more enterprises or 'control' over an enterprise by one or more persons. The expression 'affairs and management' as used in Competition Act is of much wider connotation than the expression "management or policy decisions" as used under SEBI (SAST) Regulations, 2011. There could be a situation wherein by controlling "the affairs and management" in a company, a person may be in a position to control "management or policy decisions" but it may not always be the case.

- To be acting in concert with an acquirer, persons must fulfil certain "bright line" tests. They must have commonality of objectives and a community of interests which could be acquisition of shares or voting rights beyond the threshold limit, or gaining control over the company and their act of acquiring the shares or voting rights in a company must serve this common objective. Implicit in the concerted action of these persons must be an element of cooperation.
- Since the Promoters were not parties to the CCA, and as per the Supreme Court's verdict in Daiichi Sankyo, an acquirer cannot be a person acting in concert with the target company itself, it was held that the Etihad and Jet are not persons acting in concert.
- Even the terms of agreement including the following shows that the Etihad is not in Joint Control over Jet:
  - Etihad's right to nominate only 2 out of 12 directors;
  - Promoters right to nominate the chairman of the board of Jet, who shall have a casting vote;
  - Etihad does not have any quorum rights at the board or general meeting;
  - Lack of any veto/ affirmative voting rights, pre-emptive/ tag along rights with Etihad.





## *Market Updates*

### **Acquisition of stake in Cleartrip by Concur**

Concur Technologies; US based company has acquired shares in Cleartrip Private Limited from Sheralo and Kleiner Perkins and has hiked its stake in the Company.

### **Offloading of Stake in Tree House by Matrix Partners**

Matrix Partners Investment Holding LLC held 24.24% in Tree House Education & Accessories Limited as on the year end of 2013. Out of which it has offloaded around 4.83% stake for Rs.50.4 Cr. The sale brings in a new shareholder Bajaj Holdings and Investments Limited which acquired the shares at Rs.280 per share.

### **Indiabulls AMC Head acquired Majority Stake in Azure Capital**

Sanjay Chandel, CEO of Indiabulls Asset Management Company Limited has acquired a majority of 86% stake in Azure Capital Private Limited, a PE firm majorly owned by Mantri Developers.



# Our TEAM



**Ruchi Hans**  
E: [ruchi@indiacp.com](mailto:ruchi@indiacp.com)  
D: [+91.11.40622251](tel:+911140622251)

**Divya Vijay**  
E: [divya@indiacp.com](mailto:divya@indiacp.com)  
D: [+91.11.40622248](tel:+911140622248)

Visit us at



A venture of



D- 28, South Extn. Part I New Delhi – 110049

T: 40622200 F: 91.40622201

E: [info@takeovercode.com](mailto:info@takeovercode.com)

OUR GAMUT OF SERVICES:-

- ⊕ Investment Banking;
- ⊕ Valuation & Business Modelling;
- ⊕ Merger & Acquisition;
- ⊕ Tax & Transaction Advisory;
- ⊕ ESOP/ESPS;
- ⊕ Domestic & Cross Border Investment Structuring;
- ⊕ Group Reorganisation;
- ⊕ Corporate Funding;
- ⊕ Issue Management.

## Disclaimer:

This paper is a copyright of Corporate Professionals (India) Pvt. Ltd. The entire contents of this paper have been developed on the basis of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and latest prevailing SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in India. The author and the company expressly disclaim all and any liability to any person who has read this paper, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this paper.

