

Takeover Panorama

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Legal Update

SAT order in the matter of Arvind Kumar B. Shah (HUF) and Narit Tradecom Pvt. Ltd.

Facts:

1. The total Promoter shareholding in Arvind Remedies Limited (Target Company) is 25.32% of which 1.51% is held by Arvind Kumar B. Shah (HUF) (Appellant) and remaining 74.68% is held by the public.
2. For the purpose of expansion of its business, the Target Company decided to establish a new plant at Haridwar, the cost of which worked out Rs. 250.08 crore. A consortium of bank agreed to sanction a term loan of Rs.184 cr with some pre-disbursement conditions, one of which was that the target company should raise upfront equity of Rs.50 crores. Thus, the Target Company approached its promoter group to contribute Rs. 50 crore to meet the requirement for financing the project. The Appellants consented for contributing the necessary finance for the project.
3. As a result of preferential allotment, the shareholding of the Appellants along with PACs with them would increase from 25.32% to 45.91% and would trigger the provision of Regulation 10 and 11(1) of SEBI Takeover Regulations.
4. The aforesaid preferential allotment is proposed to be made to Dr. Arvind Kumar B. Shah (HUF), M/s. Narit Tradecom Pvt. Ltd. and M/s. Aryaman Commerce Pvt. Ltd. (Appellants)
5. Consequently in November, 2009, the appellants filed an application with SEBI under Regulation 3(l) read with Regulation 4 of the SEBI Takeover Regulations seeking exemption from the provisions of Regulations 10 and 11(1) thereof. The Takeover panel recommended the exemption since it would enhance the shareholders' value as the expansion and timely contributions of the equity capital by promoters was in the interest of all the shareholders of the Target Company. However, the whole

SAT allowed the appeal and granted exemption to the appellants from Regulations 10 and 11(1) of SEBI Takeover Regulations where the preferential allotment is proposed to be made to comply with the stipulation of lending banks.

time member of the Board did not agree with the recommendation of the Takeover panel and declined exemption to the appellants. It is against this order that the present appeal has been filed.

Issue:

Whether the appellants should be granted exemption from complying with the provisions of Regulations 10 and 11(1) of SEBI Takeover Regulations where the preferential allotment is proposed to be made to comply with the stipulation of lending banks?

Decision:

The appeal was allowed and the exemption was granted to the acquirers considering the fact that the project was allotted to the Target Company with the condition that the Target Company will complete the implementation of the project and start the commercial production within 30 months from the date of allotment. In such circumstances, preferential allotment is the quickest route and surest method of raising the funds. Further, the approval of the shareholders has also been obtained by way of postal ballot. In the case of FPO and right issue, there is uncertainty about raising the money and will take ample of time. On the contrary, timely contribution of equity by the promoters through preferential allotment for the new project of the Target Company would enhance their share value. Furthermore, there will be no change in the management or control of the Target Company.

WTM order in the matter of Nirvana Holdings Private Limited

Facts:

1. The director and promoters of Nirvana Holdings Private Limited (Acquirer), Ms. Nara Bhuvaneshwari and Ms. Nara Lokesh belong to the promoter group of Heritage Foods (India) Limited (Target Company). The promoter group held 45.70% of the equity capital of the Target Company as on September 30, 2008.
2. The Acquirer had acquired 9,161 shares of the Target Company on November 13, 2008 and 7,02,260 shares on November 17, 2008 from Franklin Templeton Mutual Fund, which together constituted 6.17% of the equity capital of the Target Company, that has increased the shareholding of the promoter group from 45.70% to 51.87% and since it was not followed by the Public Announcement,

therefore, it has contravened Regulation 11(1) of the SEBI Takeover Regulations. Accordingly a show notice was issued to the Acquirer to which they made the following contentions:

1. The Acquirer was not holding any shares in the Target Company prior to November 13, 2008. Merely because their promoters/directors are also the promoters of the Target Company and are holding 33.38% in the Target Company, it had been concluded that its promoters/directors are person acting in concert with other promoters of the Target Company
2. In the notice it was no where mentioned that it was acting in concert with the promoter group of the Target Company at the time of acquisition.
3. The alleged violation is to the extent of only 1.17% of the shares of the Target Company, which is too insignificant and miniscule.
4. There is no change in control of the Target Company, since our promoters are already controlling the Target Company.
5. As the Acquirer does not belong to the promoter group of the Target Company, the impugned acquisitions cannot be clubbed with the holding of the promoter group of the target Company

WTM held that where the person controlling the Acquirer Company belongs to the promoter group of the Target Company, then the Acquirer could be considered as PACs with the other promoters of the Target Company and its shareholding will be clubbed with that of the other promoters of the Target Company for the purpose of SEBI Takeover Regulations.

Issue:

Whether where the person controlling the Acquirer Company belongs to the promoter group of the Target Company, the Acquirer could be considered as PACs with the promoters of the Target Company and its shareholding can be clubbed with that of the promoter group for the purpose of SEBI Takeover Regulations?

Decision:

Whole time member held that Ms. Nara Bhuvaneshwari and Ms. Nara Lokesh belong to the promoter group of Target Company and holds 33.38% in the Target Company as on quarter ended September 30, 2008. As Ms. Nara Bhuvaneshwari and Ms. Nara Lokesh, holds 50% each of the share capital in the Acquirer company, then in terms of Explanation (1)(b)(ii) to Regulation 2(h) of the SEBI Takeover

Regulations, the Acquirer is to be considered as a part of the promoter group of the Target Company and thus, the acquisition made by him is in violation of Regulation 11(1) of SEBI Takeover Regulations to the extent of 1.17% of the paid up capital of the Target Company.

Moreover it was observed that in the shareholding pattern of the Target Company, the Acquirer is still shown as a part of “Public” category. As the Acquirer belong to the promoter group of the Target Company, therefore, the Target Company and Acquirer was directed to take effective steps to classify its shareholding in the Target Company under the promoter category and further directed the Acquirer to appoint a Merchant Banker and disinvest 1,34,905 shares (1.17%) of the Target Company within a period of 2 months from the date of the order and transfer the profits, if any, to Investor Protection Funds of the concerned Stock Exchange.

Takeover Panel order in the matter of Jaihind Projects Limited

Facts:

Dcom Systems Limited (Acquirer) belongs to the promoter group of Jaihind Projects Limited (Target Company) and currently holds 14.19% of the voting rights of the Target Company. Pursuant to the conversion of warrants, 24,90,000 equity shares of the Target Company were proposed to be allotted to the acquirer, which will increase the shareholding of the acquirer from 14.19% to 36.06% and that of the promoter group from 47.75% to 61.03% resulting into triggering of Regulation 11 of SEBI Takeover Regulations. Hence, the acquirer has filed the present application seeking exemption from the applicability of Regulation 11 of SEBI Takeover Regulations.

WTM rejected the exemption application where the increase in shareholding is pursuant to the conversion of warrants into equity shares and the conversion price is more than the market price.

Grounds for exemption:

1. The proposed subscription is for infusing funds into the Target Company for meeting its financial needs for financing the new overseas projects. To maintain its debt equity ratio, the company has to bring funds by way of share capital.
2. Approval of shareholders and stock exchange has been obtained.
3. The initial subscription of 25% of convertible warrants was utilized for regularizing one of the current accounts maintained with SBI. The additional funds would enhance the networth of the Target Company and improve the debt equity ratio. The Target Company is making bids for government tenders and the pre-requisite for the tender is the net worth of the Company.
4. No change in control.
5. The acquisition would be beneficial to the shareholders since the funds will be used for expanding operations of the Company.
6. Minimum public shareholding would be maintained

Decision:

WTM did not granted the exemption to the Acquirer from the applicability of Regulation 11 in respect of the proposed acquisition of 24,90,000 equity shares of the Target Company on the basis of following grounds:

1. The acquisition of shares through preferential allotment route is not automatically exempted from the applicability of SEBI Takeover Regulations and such exemption is granted by SEBI on case to case basis.
2. In the present case, the net worth of the Target Company would increase pursuant to the conversion of warrants irrespective of the fact that whether the open offer is made or not. Further the present market price of the Target Company is between Rs. 222.30 and Rs. 250.20 whereas the warrants are converted at a price of Rs. 60 per share which is not convincing.
3. The resolution passed by the members of the Target Company specifically resolved that the Company would comply with all the formalities related to the open offer for this preferential allotment, which is in contradiction of the present application.
4. The Target Company is neither sick company nor the infusion of funds pursuant to the conversion is for rehabilitating the company under CDR package.

Adjudicating Officer Orders

Target Company	Noticee	Alleged Violation	Decision Taken/ Penalty imposed
Fast Track Entertainment Limited	Ravi Panchal	Regulation 7(1) read with 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992	Rs. 1,00,000
Shukun Construction Limited	Rakesh H. Khese, Arunaben R. Patel, Govindbhai S. Patel, Hasmukhbhai M. Kansara, Nathiben S. Patel, Bahubali Sec. Pvt. Ltd., Jagruti S. Sheth, Darshana S. Bhatt, Bridge Securities Ltd., Neha J. Pandya and Rasilaben M. Kansara	Regulations 7(1A) and 7(2) of the SEBI (SAST) Regulations, 1997	Matter is disposed off as the allegation against the Noticee does not stand established.
Ritesh Properties and Industries Limited	Bhagyanagar India Limited	Regulation 7(1), 7(1A) read with Regulation 7(2) SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992	Rs. 2,00,000

Consent Order in the matter of Howard Hotels Limited

Howard Hotels Limited (Applicant) had failed to comply with the provisions of Regulation 6(4), 7(3) and 8(3) of the SEBI Takeover Regulations for the years 1997 to 2004. Therefore, vide letter dated March 10, 2010, the applicant has filed the consent application and proposed to pay a sum of Rs. 12,25,000 as settlement charges for the aforesaid violations. 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 non compliance of the applicant.

Consent Order in the matter of Sri Nirankar Nath Mittal and Others

Sri Nirankar Nath Mittal on behalf of himself and of Sri Nirvikar Nath Mittal, Sri Omkar Nath Mittal, Smt. Sarita Mittal, Smt. Neena Mittal, Sri Shri Kant Mittal, Sri Saurabh Kant Mittal, M/s Mittal Fragrances Pvt. Ltd. and Smt. Brij Lata Mittal (Applicants) had filed the consent application vide letter dated March 10, 2010. The applicants had acquired 10,62,100 equity shares of Howard Hotels Limited on November 18, 2003 but filed the disclosure under Regulation 7(1) of SEBI Takeover Regulations with error of date. The applicants rectified their mistakes by filing the said information with correct dates with the concerned stock exchange on March 09, 2010. Therefore, the applicant has filed the consent application for delay in compliance and proposed to pay a sum of Rs. 1,00,000 as settlement charges for the aforesaid violation. The terms as proposed by the applicant were placed before HPAC and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
<p>Sical Logistics Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 39.52 crores</p> <p>Listed At BSE & NSE</p>	<p>Tanglin Retail Reality Developments Private Limited along with Tanglin Developments Limited</p>	<p>Offer to acquire 1,17,07,608 (20%) Equity Shares at a price of Rs. 79.50 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Preferential allotment of 1,60,80,010 equity shares at a price of Rs. 76 per share increasing the shareholding of acquirer to 36.03%.</p>	<p>Merchant Banker Edelweiss Capital Limited</p> <p>Registrar to the Offer Cameo Corporate Services Limited</p>

<p>Gomti Finlease (India) Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 3 crores</p> <p>Listed At BSE & ASE</p>	<p>Chirania Trading Private Limited</p>	<p>Offer to acquire 6,00,240 (20%) Equity Shares at a price of Rs. 5 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 22,51,000 (75%) equity shares at a price of RS. 5 per share</p>	<p>Merchant Banker Comfort Securities Private Limited</p> <p>Registrar to the Offer Purva Shareregistry (India) Private Limited</p>
<p>Eduexel Infotainment Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 8.46 Crores</p> <p>Listed At BSE and MSE</p>	<p>Discovery Infoways Limited</p>	<p>Offer to acquire 16,92,200 (20%) Equity Shares at a price of Rs. 16 per share payable in cash.</p>	<p>Regulation 10</p> <p>Preferential allotment of 25,00,000 (29.55%) Equity shares at a price of RS. 16 per share</p>	<p>Merchant Banker Karn Merchant Bankers Limited</p> <p>Registrar to the Offer BTS Consultancy Service Pvt. Ltd.</p>
<p>Coimbatore Flavors and Fragrances Limited</p> <p>Regd. Office Coimbatore</p>	<p>Benny Abraham</p>	<p>Offer to acquire 6,00,000 (20%) Equity Shares at a price of Rs. 3 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 9,20,950 (30.70%) Equity Shares at a price of RS. 3 per share</p>	<p>Merchant Banker VIVRO Financial Services Private Limited</p> <p>Registrar to the Offer Integrated Enterprises (India)</p>

<p>Paid up capital Rs. 3 crores</p> <p>Listed At CSX, MSE, CSE & ASE</p>				Limited
<p>Bhoomi Infrastructures Corporation Limited</p> <p>Regd. Office Himachal Pradesh</p> <p>Paid up capital Rs. 5.07 crores</p> <p>Listed At BSE, DSE & LSE</p>	<p>Lt. Col (Retd.) S.S. Deswal, Mr. Virender Gandhi alias Dev Raj Gandhi and Mr. Vijay Patel along with Mr. Rajiv Kashyap</p>	<p>Offer to acquire 18,12,132 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 10 & 12 Preferential allotment of 39,87,460 (44.01%) equity shares and SPA to acquire 2,57,900 (5.08%) equity shares.</p>	<p>Merchant Banker RR Investors Capital Services (P) Ltd.</p> <p>Registrar to the Offer Skyline Financial Services Pvt. Ltd.</p>
<p>Tebma Shipyards Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 777.82 lakhs</p> <p>Listed At OTCEI</p>	<p>Nirupam Energy Projects Private Limited along with Bharati Shipyards Limited</p>	<p>Offer to acquire 1,54,72,301 (20%) Equity Shares at a price of Rs. 19.20 per share payable in cash.</p>	<p>Regulation 10 & 12 Preferential allotment of 3,94,53,125 (51%) Equity Shares at a price of Rs. 19.20 per share payable in cash.</p>	<p>Merchant Banker Yes Bank Limited</p> <p>Registrar to the Offer Link Intime India Pvt. Ltd.</p>

<p>Marathwada Refractories Limited</p> <p>Regd. Office Aurangabad</p> <p>Paid up capital Rs. 70 Lacs</p> <p>Listed At BSE & CSE</p>	<p>Sushil Pandurang Mantri</p>	<p>Offer to acquire 1,40,000 (20%) Equity Shares at a price of Rs. 397 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 3,50,760 (50.11%) equity shares at a price of Rs. 350 per share</p>	<p>Merchant Banker JM Financial Consultants Private Limited</p> <p>Registrar to the Offer Link Intime India Private Limited</p>
<p>Residency Projects and Infratech Limited</p> <p>Regd. Office Bangalore</p> <p>Paid up capital 95.88 Lacs</p> <p>Listed At BSE & BgSE</p>	<p>Valuemart Retail India Limited</p>	<p>Offer to acquire 1,91,770 (20%) Equity Shares at a price of Rs. 22 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 5,73,950 (59.86%) Equity Shares at a price of Rs. 22 per share payable in cash.</p>	<p>Merchant Banker IFCI Financial Services Limited</p> <p>Registrar to the Offer Integrated Enterprises (India) Limited</p>

Hint of the Month

“Identified Date” for the purposes of determining the name of the shareholders to whom the letter of offer shall be sent means the date which falls on the tenth business day prior to the commencement of the tendering period.

{As substantiated from Regulation 2(1)(I) of SEBI (SAST) Regulations, 2010-TRAC Report}

Regular Section

INTER SE TRANSFER OF SHARES

A Comparison of SEBI (SAST) Regulations, 1997 and TRAC Report

Regulation 3(1) (e) of the SEBI (SAST) Regulations, 1997 provides the automatic exemption from the provisions of regulation 10, 11 and 12 where the acquisition of shares has been made through inter se transfer that is to say acquisition through inter se transfer is not subject to open offer if it complies with the conditions as specified in the said sub regulation.

The provisions relating to inter se transfer of shares have been incorporated in the regulation 10(1) (a) of TRAC Report i.e. SEBI (SAST) Regulations, 2010.

A Comparison of provisions of Regulation 3(1)(e) of SEBI (SAST) Regulations, 1997 and Regulation 10(1)(a) of TRAC Report is detailed below:

I. Regulation 3(1)(e)(i) of SEBI (SAST) Regulations, 1997

Inter se transfer of shares amongst group coming within the definition of group as defined in the MRTP Act, 1969 where persons constituting such group have been shown as group in the last published Annual Report of the target company is exempt from the provisions of Open Offer obligations provided that the following conditions are satisfied:

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI (SAST) Regulations, 1997.
- ✓ If the proposed acquisition exceeds **5% of the voting share capital of the company**, then the acquirers for the intimation of public be notified of the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. **[Regulation 3(3) of SEBI (SAST) Regulations, 1997]**
- ✓ The acquirer is further required to file a report within 21 days of the date of acquisition to SEBI under regulation 3(4) of SEBI (SAST) Regulations, 1997 giving all details in respect of acquisitions along with supporting documents. Further the compliance under regulation 3(4) of SEBI (SAST) Regulations, 1997 is not a one-time compliance. The acquirer has to file a report within 21 days of the date of acquisition every time he claims exemption under this sub regulation. **[Regulation 3(4) of SEBI (SAST) Regulations, 1997]**

In case of convertible securities, the relevant date for filing the intimation with the Stock Exchange and report with SEBI shall be the date of conversion of such securities.

- ✓ Along with the report under regulation 3(4) the acquirer has to deposit fees of Rs 25,000/- to the Board either by a banker's cheque or demand draft in favour of Securities & Exchange Board of India. **[Regulation 3(5) of SEBI (SAST) Regulations, 1997]**

TRAC Report

Inter se transfer of shares between Group as defined under MRTP Act, 1969 – No longer Exist.

II. Regulation 3(1)(e)(ii) of SEBI (SAST) Regulations, 1997

Inter se transfer of shares amongst relatives within the meaning of section 6 of the Companies Act, 1956 is exempt from the provisions of Open Offer obligations provided that the following conditions are satisfied:

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI (SAST) Regulations, 1997
 - ✓ If the proposed acquisition exceeds **5% of the voting share capital of the company**, then the acquirers for the intimation of public be notified of the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [**Regulation 3(3) of SEBI (SAST) Regulations, 1997**]
 - ✓ The acquirer is further required to file a report within 21 days of the date of acquisition to SEBI giving all details in respect of acquisitions along with supporting documents. [**Regulation 3(4) of SEBI (SAST) Regulations, 1997**]
- In case of convertible securities, the relevant date for filing the intimation with the Stock Exchange and report with SEBI shall be the date of conversion of such securities.
- ✓ Along with the report under regulation 3(4) the acquirer has to deposit fees of Rs 25,000/- to the Board either by a banker's cheque or demand draft in favour of Securities & Exchange Board of India. [**Regulation 3(5) of SEBI (SAST) Regulations, 1997**]

Regulation 10(1)(a)(i) of TRAC Report:

In the TRAC Report, the scope of exemption from Takeover Open Offer in the case of inter se transfer of shares amongst the relatives is proposed to be shortened. In the sense that in the TRAC Report, the provisions for exemption from Takeover Open Offer is made only in respect of inter se transfer of shares amongst the immediate relatives as define under the said report and not in respect of inter se transfer of shares amongst the relatives as given under Section 6 read with Schedule IA of the Companies Act, 1956.

The term “**Immediate Relative**” is defined under Regulation 2(m) of TRAC Report which provides that immediate relatives means any spouse of a person, and includes parent, sibling or child of such person or of the spouse.

For availing the exemption under this clause, following conditions are required to be complied with:

- ✓ The acquisition price per share shall be maximum of 25% of volume weighted average market price for a period of 60 trading days preceding the date of issuance of notice for proposed inter se transfer on the stock exchange where the maximum volume of trading in the shares are recorded.

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with Chapter V of TRAC Report i.e. disclosure under Regulation 28-Disclosure of acquisition and disposal, Regulation 29-Continual Disclosure and Regulation 30-Disclosure of encumbered shares.
 - ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed, the details of the proposed acquisition at least 4 business days prior to the proposed acquisition. **[Regulation 10(5) of TRAC Report]**
 - ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the Stock Exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. *It is to be noted that such post acquisition reporting is not required in SEBI (SAST) Regulations, 1997.* **[Regulation 10(6) of TRAC Report]**
 - ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. *It is to be noted that under SEBI (SAST) Regulations, 1997, the said report is required to be filed with 21 days inclusive of Saturday and Sunday and other holidays. Whereas in terms of TRAC Report, the report is to be filed within 21 clear days i.e. excluding Saturday and Sunday and other holidays as declared by the SEBI.* **[Regulation 10(7) of TRAC Report]**
- In case of convertible securities the date of acquisition shall be the date of conversion of such securities.

III. Regulation 3(1)(e)(iii) of SEBI (SAST) Regulations, 1997

Inter se transfer of shares amongst:

- a) Qualifying Indian promoters and foreign collaborators who are shareholders
- b) Qualifying Promoters

is exempt from the provisions of Open Offer obligations provided that the following conditions are satisfied:

- ✓ The transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of **at least three years prior to the proposed acquisition.**
- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI (SAST) Regulations, 1997.

- ✓ If the proposed acquisition exceeds **5% of the voting share capital of the company**, then the acquirers for the intimation of public be notified of the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. **[Regulation 3(3) of SEBI (SAST) Regulations, 1997]**
- ✓ The acquirer is further required to file a report within 21 days of the date of acquisition to SEBI giving all details in respect of acquisitions along with supporting documents. **[Regulation 3(4) of SEBI (SAST) Regulations, 1997]**

In case of convertible securities, the relevant date for filing the intimation with the Stock Exchange and report with SEBI shall be the date of conversion of such securities.

- ✓ Along with the report under regulation 3(4) the acquirer has to deposit fees of Rs 25,000/- to the Board either by a banker's cheque or demand draft in favour of Securities & Exchange Board of India. **[Regulation 3(5) of SEBI (SAST) Regulations, 1997]**
- ✓ The additional condition for the purpose of inter se transfer between promoters is that the price for executing transaction is not exceeding 25% of the price determined under Regulation 20(4) & (5) of SEBI (SAST) Regulations, 1997. The exemption will not be available if the price at which the inter –se transfer has been executed, is greater than 25% of the price as determined u/r regulation 20(4) and (5) of the said regulations.

Regulation 10(1)(a)(ii) of TRAC Report:

Inter se transfer of shares between persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations **for not less than three years prior to the proposed acquisition.**

In the TRAC Report, the scope of inter se transfer of shares amongst the promoters of the company has been contracted as the report provides the exemption only in the case of inter se transfer of shares amongst the persons named as promoters in the shareholding pattern which is only one of the clause amongst the others which have been exempted under SEBI (SAST) Regulations, 1997 as detailed in above in Para III of this section.

The exemption under this clause is available subject to the compliance of the following conditions:

- ✓ The acquisition price per share shall be maximum of 25% of volume weighted average market price for a period of 60 trading days preceding the date of issuance of notice for proposed inter

se transfer on the stock exchange where the maximum volume of trading in the shares are recorded.

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with Chapter V of TRAC Report i.e. disclosure under Regulation 28-Disclosure of acquisition and disposal, Regulation 29-Continual Disclosure and Regulation 30-Disclosure of encumbered shares.
- ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed, the details of the proposed acquisition at least 4 business days prior to the proposed acquisition.

[Regulation 10(5) of TRAC Report]

- ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the stock exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. *It is to be noted that such post acquisition reporting is not required in SEBI (SAST) Regulations, 1997.* **[Regulation 10(6) of TRAC Report]**
- ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. *It is to be noted that under SEBI (SAST) Regulations, 1997, the said report is required to be filed with 21 days inclusive of Saturday and Sunday and other holidays. Whereas in terms of TRAC Report, the report is to be filed within 21 clear days i.e. excluding Saturday and Sunday and other holidays as declared by the SEBI.* **[Regulation 10(7) of TRAC Report]**

In case of convertible securities the date of acquisition shall be the date of conversion of such securities.

IV. Regulation 3(1)(e)(iv) of SEBI (SAST) Regulations, 1997

Inter se transfer of shares between the acquirer and persons acting in concert with him, where such transfer of shares takes place **three years after the date of closure of the public offer** made by them under these regulations subject to the compliance of the following conditions:

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI (SAST) Regulations, 1997.
- ✓ If the proposed acquisition exceeds **5% of the voting share capital of the company**, then the acquirers for the intimation of public be notified of the details of the proposed transaction at

least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI (SAST) Regulations, 1997]

- ✓ The acquirer is further required to file a report within 21 days of the date of acquisition to SEBI giving all details in respect of acquisitions along with supporting documents. Further the compliance under regulation 3(4) is not a one-time compliance. The acquirer has to file a report within 21 days of the date of acquisition every time he claims exemption under this regulation.

[Regulation 3(4) of SEBI (SAST) Regulations, 1997]

In case of convertible securities the relevant for filing report under sub regulation 3 and 4, shall be the date of conversion of such securities.

- ✓ Along with the report under regulation 3(4) the acquirer has to deposit fees of Rs 25,000/- to the Board either by a banker's cheque or demand draft in favour of Securities & Exchange Board of India. [Regulation 3(5) of SEBI (SAST) Regulations, 1997]
- ✓ The additional condition for the purpose of inter se transfer between acquirer and PACs is that the price for executing transaction is not exceeding 25% of the price determined under Regulation 20(4) & (5) of SEBI (SAST) Regulations, 1997. The exemption will not be available if the price at which the inter –se transfer has been executed, is greater than 25% of the price as determined u/r regulation 20(4) and (5) of the said regulations.

Regulation 10(1)(a)(iv) of TRAC Report:

Inter se transfer of shares amongst **persons acting in concert for not less than three years prior to the proposed acquisition**, and disclosed as such pursuant to filings under the listing agreement.

SEBI (SAST) Regulations provides the exemption in respect of inter se transfer of shares amongst the acquirer and PACs who have been shown as such in the public offer made by them earlier and where such transfer takes place three years after the public offer was made them. Whereas TRAC Report exempt the inter se transfer of shares amongst the PACs who have been shown as such in any filing under the Listing Agreement for a period of not less than years.

Conditions to be fulfilled are:

- ✓ The acquisition price per share shall be maximum of 25% of volume weighted average market price for a period of 60 trading days preceding the date of issuance of notice for proposed inter se transfer on the stock exchange where the maximum volume of trading in the shares are recorded.

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with compliance of Chapter V of TRAC Report i.e. disclosure under Regulation 28- Disclosure of acquisition and disposal, Regulation 29-Continual Disclosure and Regulation 30- Disclosure of encumbered shares.
- ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed for the purpose of dissemination of information to public, the details of the proposed acquisition at least 4 business days prior to the proposed acquisition. **[Regulation 10(5) of TRAC Report]**
- ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the stock exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. **[Regulation 10(6) of TRAC Report]**
- ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. *It is to be noted that under SEBI (SAST) Regulations, 1997, the said report is required to be filed with 21 days inclusive of Saturday and Sunday and other holidays. Whereas in terms of TRAC Report, the report is to be filed within 21 clear days i.e. excluding Saturday and Sunday and other holidays as declared by the SEBI.* **[Regulation 10(7) of TRAC Report]**

In case of convertible securities the date of acquisition under sub regulation 5, 6 and 7, shall be the date of conversion of such securities.

Other Exemption in respect of inter se transfer of shares which are not available in SEBI (SAST) Regulations, 1997

Regulation 10(1)(a)(iii) of TRAC Report:

Acquisition pursuant to inter se transfer of shares amongst qualifying parties being

- i. a company,
- ii. its subsidiaries,
- iii. its holding company,
- iv. other subsidiaries of such holding company,
- v. persons holding not less than 50% of the equity shares of such holding company,
- vi. other holding companies in which such persons hold not less than 50% of the equity shares, and
- vii. their subsidiaries subject to control over such qualifying parties being exclusively held by the same persons.

Conditions to be fulfilled are:

- ✓ The acquisition price per share shall be maximum of 25% of volume weighted average market price for a period of 60 trading days preceding the date of issuance of notice for proposed inter se transfer on the stock exchange where the maximum volume of trading in the shares are recorded.
- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with compliance of Chapter V of TRAC Report i.e. disclosure under Regulation 28-Disclosure of acquisition and disposal, Regulation 29-Continual Disclosure and Regulation 30-Disclosure of encumbered shares.
- ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed for the purpose of dissemination of information to public, the details of the proposed acquisition at least 4 business days prior to the proposed acquisition. **[Regulation 10(5) of TRAC Report]**
- ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the stock exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. **[Regulation 10(6) of TRAC Report]**
- ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. *It is to be noted that under SEBI (SAST) Regulations, 1997, the said report is required to be filed with 21 days inclusive of Saturday and Sunday and other holidays. Whereas in terms of TRAC Report, the report is to be filed within 21 clear days i.e. excluding Saturday and Sunday and other holidays as declared by the SEBI.* **[Regulation 10(7) of TRAC Report]**

In case of convertible securities the date of acquisition under sub regulation 5, 6 and 7, shall be the date of conversion of such securities.

Regulation 10(1)(a)(V) of TRAC Report:- Inter se transfer of shares between

- i. Shareholders of a target company who have been **persons acting in concert for a period of not less than three years prior to the proposed acquisition** and are disclosed as such pursuant to filings under the listing agreement, and

- ii. any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company.

Conditions to be fulfilled are:

- ✓ The acquisition price per share shall be maximum of 25% of volume weighted average market price for a period of 60 trading days preceding the date of issuance of notice for proposed inter se transfer on the stock exchange where the maximum volume of trading in the shares are recorded.
- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with compliance of Chapter V of TRAC Report i.e. disclosure under Regulation 28- Disclosure of acquisition and disposal, Regulation 29-Continual Disclosure and Regulation 30- Disclosure of encumbered shares.
- ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed for the purpose of dissemination of information to public, the details of the proposed acquisition at least 4 business days prior to the proposed acquisition. **[Regulation 10(5) of TRAC Report]**
- ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the stock exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. **[Regulation 10(6) of TRAC Report]**
- ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. *It is to be noted that under SEBI (SAST) Regulations, 1997, the said report is required to be filed with 21 days inclusive of Saturday and Sunday and other holidays. Whereas in terms of TRAC Report, the report is to be filed within 21 clear days i.e. excluding Saturday and Sunday and other holidays as declared by the SEBI.* **[Regulation 10(7) of TRAC Report]**

In case of convertible securities the date of acquisition under sub regulation 5, 6 and 7, shall be the date of conversion of such securities.

SEBI (SAST) Regulations, 1997

Particulars	Inter se transfer among MRTTP group	Inter se transfer among relatives	Inter se transfer among Qualifying promoters	Inter se transfer between Acquirer and PACs
Compliance with the regulation 6, 7 and 8	√	√	√	√
Advance Intimation under regulation 3(3)	√	√	√	√
Report to SEBI under regulation 3(4)	√	√	√	√
Pricing Norms i.e. Inter se transfer cannot be at a price exceeding 25% of the price determined under regulation 20(4) or 20(5)	X	X	√	√
Prior holding of three years	X	X	√	X

TRAC Report

Particulars	Inter se transfer among Immediate relatives	Inter se transfer among promoters named in shareholding pattern	Inter se transfer among company, its holding & subsidiary and other as given in 10(1)(a)(iii)	Inter se transfer among PACs	Inter se transfer between shareholders who are PACs and the company in which such PACs are the shareholders
Pricing Norms	√	√	√	√	√
Compliance with Chapter V	√	√	√	√	√
Advance Intimation to Stock Exchange under Regulation 10(5)	√	√	√	√	√
Report to Stock Exchange under Regulation 10(6)	√	√	√	√	√
Report to SEBI under regulation 10(7)	√	√	√	√	√

Case Study

An analysis of Axis Bank –Enam Deal

About Axis Bank (Acquirer)

Incorporated in 1994, Axis Bank was first of the new private banks that started its operations after the Government of India allowed new private banks to be established. It was originally incorporated as UTI Bank and was jointly promoted by Administrator of the Specified Undertaking of the Unit Trust of India(UTI-I), Life Insurance Corporation of India (LIC), General Insurance Corporation Ltd., National Insurance Company Ltd., The New India Assurance Company, The Oriental Insurance Corporation and United India Insurance Company. The name of the UTI bank was then changed to Axis Bank in 2007. The Bank offers a vast spectrum of services including Investment Banking, Commercial Banking, Retail Banking, Private Banking, Asset Management, Mortgages and other related activities.

About Enam Securities Pvt. Ltd. (Target Company)

Founded by Manek Bhanshali, Nemish Shah, Vallabh Bhanshali and Jagdish Master in 1984, Enam Securities Pvt. Ltd. (Enam) is a SEBI Registered Merchant Banker. Enam is presently India's leader in mobilizing resources for IPOs and offers a vast spectrum of services including Investment Banking, Mutual Assets, Asset Management, Currency Derivatives and Insurance Broking. Enam is a member of Bombay Stock Exchange and National Stock Exchange.

Axis Bank acquired Enam Securities

To expand its broking and investment banking business, Axis Bank is acquiring investment banking unit, equity distribution and corporate advisory divisions of Enam Securities, in an all stock deal valued at approx. Rs 2,067 crore.

Enam shareholders will be issued 5.7 shares of Axis Bank for every one share of Enam Securities, which is about 3.3 % of the expanded capital of Axis Bank.

Valuation of the business

Taking an average of last year's profits and annualised earnings for the current year, Enam fiscal year 2011, profit after tax (PAT) comes out at around Rs. 120 crore, while in the previous fiscal year it stood at Rs. 90 crore. With the deal valued at more than Rs. 2000 crore, Axis is paying more than 20 times of the Net Profit of Enam which is in line with the current scenario. The value of the business being transferred to Axis Bank works out to about Rs 1,750 crore. This translates into a PE of 14.6. But this deal will give an edge to Axis Bank which will now compete with bigger competitors in the financial sector such as ICICI Bank.

Post acquisition structure

According to the scheme Enam Securities will demerge its investment banking, institutional & retail equities and related businesses such as distribution of financial products and non-banking financial company to a wholly-owned subsidiary of Axis Bank. The bank will also demerge its investment banking unit into the wholly owned subsidiary. Enam will now hold mutual fund and portfolio management services. Further, both the parties have signed non-compete agreement whereby the promoters of Enam will not be able to enter the investment banking and equities business for a period of five years. Axis Bank can use the brand name of Enam for two years. Moreover 400 employees of Enam will become the part of Axis Bank and Enam will also transfer net current assets worth Rs. 300 crore.

The deal will help Enam to reinforce its position in the investment banking sector. With Axis Bank's distribution platform of almost 1,100 branches and Enam's retail network, it is expected that the combined entity will have an opportunity to build a dominant retail franchise as well. These kinds of deals will facilitate the domestic Investment banker to consolidate and strengthen their businesses in domestic market and also helps them in facing the competition from global investment banks that have set up their office in India.

Statutory and Regulatory approvals

While the Axis-Enam deal has been signed, it needs regulatory approvals from the High Court's of Maharashtra and Gujarat and from the shareholders and creditors of respective companies. Further, the deal is also subject to approval from Securities & Exchange Board of India (SEBI) and Reserve Bank of India (RBI). Thus, the deal is likely to go through in six months time.

Market Update

APL Apollo completed acquisition of Lloyds Line

APL Apollo Tubes Limited (Formerly Known as Bihar Tubes Limited) has completed the acquisition of Lloyds Line Pipes Limited, a subsidiary of Lloyds Metal and Engineers Limited in an all cash deal. The deal has taken place at a value of \$8.81Mn.

Financial Technologies sold its stake in NSE

Financial Technologies, a promoter of MCX-SX, has sold 4.4 lakh shares of National Stock Exchange, for Rs 167.2 crore to an unknown buyer making a profit of Rs. 42.2 crore. Post sale the shareholding of the firm in NSE has come down to 10,000 shares. Both the companies, MCX-SX and NSE compete with each other in exchange-related software development business and currency futures trade through their stock exchange platforms.

Sun Pharma further stake acquisition in Taro

Sun Pharmaceutical Industries Ltd. has acquired Templeton Asset Management Ltd stake in Taro Pharmaceutical Industries Ltd. at a price of Rs. \$16 per share aggregating to \$82 million. This acquisition has raised the Sun Pharma shareholding in Taro from 53.2% to 65.2%

Sahara to get hold on London's Grosvenor House Hotel

Sahara India Pariwar is in the process to acquire the landmark Grosvenor House hotel in central London. The deal is expected to take place at around 470 million pounds and may be completed before Christmas.

Our Team

Ruchi Hans
ruchi@indiacp.com

Priyanka Gupta
priyanka@indiacp.com

Visit us at



A Venture of



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

T: 40622200 F: 91.40622201

E: info@takeovercode.com

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