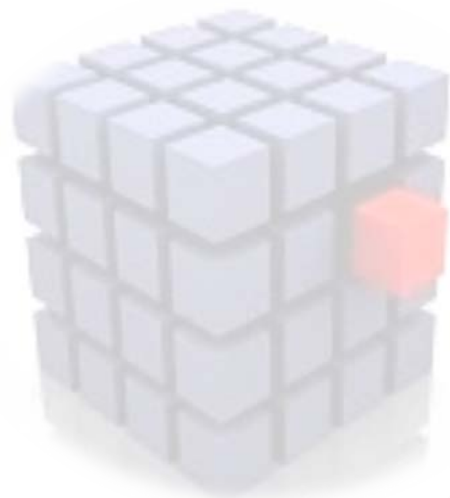


TAKEOVER PANORAMA

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LEGAL UPDATE

SAT Order in the Matter of Noida Trading Co. Pvt. Ltd

Facts:

1. Noida Trading Co. Pvt. Ltd (Appellant) belongs to the promoter group of Natura Hue Chem Limited (Target Company).
2. It was alleged that the appellant have sold 2,00,000 shares of the Target Company in July, 2003, which requires disclosure Regulation 7(1A) of SEBI (SAST) Regulations,1997 but the appellant failed to make the disclosure of the sales to the stock exchange where the shares of the Target Company are listed.
3. From the shareholding pattern filed by the Target Company with the stock exchange for the quarter ending June, 2003, the Adjudicating Officer observed that the name of the appellant was also shown as one of its promoters whereas the name of the appellant was missing in the statement for the subsequent quarter ending September 30, 2003. Since the name of the appellant was missing in the subsequent statement, therefore the adjudicating officer concluded that the 2,00,000 shares allotted to the appellant were sold during this period.
4. The appellant informed the adjudicating officer that it had not sold any shares of the target company during the financial years 2002-03 and 2003-04.
5. Moreover one of the directors of the appellant-company filed an affidavit before the adjudicating officer stating that the appellant-company had never been allotted any shares of the Target Company. But the affidavit is false because it is the appellant's own case that 2,00,000 shares were allotted to it by the Target Company in the promoters quota on June 18, 1996.

Hon'ble SAT remanded the case back to adjudicating officer for a fresh consideration.

Thus, the Adjudicating Officer imposed penalty on the Appellant for the aforesaid violation. It is against this order the appeal is filed with SAT.

Issue:

Whether the contention of the Appellant is acceptable? Whether the Appellant have sold the shares of the target company without making disclosure thereby violating Regulation 7(1A) of SEBI (SAST) Regulations 1997?

Decision:

The Hon'ble SAT did not agree with the conclusion of the adjudicating officer. The appellant is not bound by the disclosures made by the target company to the stock exchange and those disclosures do not justify a conclusion that the shares had been sold during that period. It further stated that the Target Company could have made a wrong statement to the stock exchange or could have made a bona fide error in reporting its shareholding pattern. There is no other material on the record regarding sale of shares.

Moreover by looking at the Balance Sheets as on March 31, 1997 and March 31, 1998, the plea of the appellant appears to be correct. If the shares were sold in January, 1998, then the charge that it violated regulation 7(1A) when it sold the shares in July, 2003 cannot stand. Further the balance-sheet as on March 31, 1998 has been placed for the first time and was never produced before the adjudicating officer. Further the authenticity of the balance-sheet has to be verified from the office of the Registrar of Companies.

Therefore the impugned order is set aside and SAT remanded the case to the adjudicating officer for proceeding a fresh in the matter and ordered to issue fresh show cause notice to the Appellant and after affording an opportunity of hearing, proceeds to pass an order in accordance with the law.

Adjudicating Officer Orders

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
Drillco Metal Carbides Limited	Jogeshwar Rijumal Karachiwala and others	Regulation 3(4), 7(1) and 8(1) of SEBI (SAST) Regulations 1997.	Rs. 5,00,000
Radix Industries (India) Ltd.	Radix Industries (India) Ltd.	Regulations 6(2), 6 (4) and 8 (3) of SEBI (SAST) Regulations, 1997	Rs. 2,00,000
Cupid Trades and Finance Ltd.	Parvati Minerals Pvt. Ltd.	Regulation 7 (1) and 7 (2) of SEBI (SAST) Regulations 1997	Rs. 50,000

Amendment in SEBI (Prohibition of Insider Trading) Regulations, 1992

In furtherance of the decision taken in its Board Meeting dated July 28, 2011, SEBI vide notification dated August 16, 2011 approved the amendment to SEBI (Prohibition of Insider Trading) Regulations, 1992 mandating disclosures of interest or holding by the promoters and persons who are part of promoter group of a Listed Company at the time of becoming the promoter or part of promoter group and also whenever there is a change in the shareholding of such persons in excess of the limit as given below. Presently, similar disclosures were required to be made by the directors and officers of the company only. The following provisions have been inserted namely:

Regulation No.	Particulars	By whom	To whom	Time limit	Form
13(2A)	Disclosure of shares or voting rights on becoming the promoter or part of promoter group	Promoter or person belonging to promoter group	Company	2 working days	B
13(4A)	Change in holding in excess of Rs.5 Lakh in value or 25,000 shares or 1% of total shareholding or voting rights <i>from the last disclosure made under Listing Agreement or under sub regulation (2A) or under this sub regulation.</i>	Promoter or person belonging to promoter group	Company as well as Stock Exchange	2 working days	D
13(6)	On the receipt of disclosure under 13(1), 13(2), 13(2A), 13(3), 13(4) and 13(4A)	Company	Stock Exchange	2 working days	A or B or C or D as the case may be

For the purpose of this regulation, the term “Promoter” and “Promoter Group” shall have the same meaning as assigned to them in terms of regulations framed under clause (h) of sub-section (2) of section 11 of the Act” i.e. as given in regulation 2(1)(h) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned offer
<p>Platinum Ocean Energy Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 104.85 Lacs</p> <p>Listed At BSE</p>	<p>Chandu L. Chavan along with Ravindra W. Katre, Sanjay H. Waghulade, Parag M. Mulye, Sanjay T. Bhade and Shivaji R. Katke</p>	<p>Offer to acquire 30,31,008 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 30,000 (0.20%) Equity Shares and preferential allotment of 1,44,20,036 (74.75%) Equity Shares at a price of Rs. 10 per share.</p>	<p>Merchant Banker Intensive Fiscal Services Private Limited</p> <p>Registrar to the Offer Purva Shareregistry (India) Private Limited</p>
<p>Pharma Com (India) Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs 300 Lakhs</p> <p>Listed At BSE and ASE</p>	<p>Anil Babulal Agarwal</p>	<p>Offer to acquire 6,00,000 (20%) Equity Shares at a price of Rs. 1.40 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 14,43,000 (48.10%) Equity Shares at a price of Rs. 1.40 per share.</p>	<p>Merchant Banker Microsec Capital Limited</p> <p>Registrar to the Offer Purva Shareregistry (India) Private Limited</p>

HINT OF THE MONTH

An increase in voting rights in a Target Company of any shareholder beyond the limit as provided under regulation 3(1) i.e. 25% or more pursuant to buy-back of shares shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding so that his voting rights fall below the threshold referred to in regulation 3(1) within ninety days from the date on which the voting rights so increase.

{As Substantiated from Regulation 10(3) of SEBI (SAST) Regulations, 2010 – {TRAC Report}

REGULAR SECTION

Concept of “Competing Offers”

SEBI (SAST) Regulations, 2010 (TRAC Report)

When an Acquirer makes an offer to acquire the shares of the Target Company and subsequently some other Acquirer makes the offer for acquisition of the shares of the same Target Company, then such subsequent offer is known as the **Competing Offer**. Thus, any bid for the shares of the same Target Company and addressed to the same body of shareholders is considered to be competitive bid notwithstanding the variation in the number of shares to be acquired and the offer price. Once a Competing offer is made such other person will also become an Acquirer and should comply with all the provisions of SEBI Takeover Regulations. The objective behind such provisions is to achieve orderly competition between acquirers striving for the same Target Company.

The glimpse of the important aspects of the Competing Offers as provided in the SEBI (SAST) Regulations, 2010 (TRAC Report) are provided herein below:

I. Timing of Competing Offer

A competing offer can be made within a period of **15 business days** from the date of the **first detailed public announcement of the offer**. {Regulation 20(1)}

However, where no competing offer is made within a period of 15 business days from the date of first detailed public announcement of the offer, then in that event regulation 20(4) of SEBI (SAST) Regulations, 2010 puts a restriction and provides that a person shall not acquire shares or enter into any transaction that would attract the obligation to make a Public Announcement of an Open Offer after the period of 15 business days from the date of first detailed public announcement and until the expiry of the offer period for such open offer.

II. Restriction on Competing Offer

Regulation 20(6) of SEBI (SAST) Regulations, 2010 restricts a person from making a public announcement or from acquiring the shares or entering into any transaction that would attract the obligation to make the Public Announcement until the expiry of the offer period where:

- i. the open offer is for acquisition of shares pursuant to disinvestment, in terms of Regulation 13(2)(d); or
- ii. the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub-regulation (2) of regulation 11.

III. Conditional Offer Not Allowed

The Competing Offer shall not be made conditional as to minimum level of acceptance unless the first public announcement made is conditional as to minimum level of acceptance.

IV. Schedule of activities

The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.

V. Upward Revisions in the Offer Price

The acquirers making competing offers are allowed to make upward revisions in the offer price at any time up to 3 business days prior to the commencement of the tendering period.

VI. Acquisition by Competing Acquirer

For efficient and smooth running of the business operations of the Target Company, any competing acquirer can negotiate and acquire the shares tendered to the other competing acquirer, within 21 business days from expiry of the offer period at the same price that was offered by him to the public, without attracting the obligation to make another Open Offer. However, the holding of the acquirer and persons acting in concert with him ought not to increase beyond the maximum permitted non-public shareholding.

VII. Impact of Competing Offer on a earlier Voluntary Offer

If a competing offer is made to a voluntary offer, then the acquirer who has made a voluntary offer can enhance the size of his Open Offer to the extent as provided in respect of mandatory offer within a period of 15 business days from the date of competing offer.

VIII. Appointment on Board of Target Company

During the pendency of competing offers, irrespective of the amount deposited in the escrow account, no appointment of any new directors shall be made to the board of directors of the Target Company. However in the event of vacancy arising out of the death or incapacitation of any director, then such a position may be filled by any person if the shareholders of the Target Company have given their approval for such appointment through postal ballot.

IX. Obligation of the Target Company

The board of directors of the Target Company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.

Competing Offers made under SEBI (SAST) Regulations, 1997

Target Company	Acquirer	Acquirer (Competing Offer)
Fame India Limited	Inox Leisure Limited along with Gujarat Fluorochemicals Limited	Reliance MediaWorks along with Reliance Capital Partners and Reliance Capital Limited
Great Offshore Limited	Natural Power Ventures Private Limited (NPVPL), Bharati Shipyard Limited (BSL) and Dhanshree Properties Private Limited (DPPL)	Eleventh Land Developers Private Limited and ABG Shipyard Limited (PAC)
Orissa Sponge Iron & Steel Limited	Bhushan Power and Steel Limited and PACs	I. Mounteverest Trading & Investment Ltd. and PACs II. Bhushan Energy Ltd and along with Brij Bhushan Singal, Neeraj Singal, BNS Steel Trading Pvt Ltd, BBN Transportation Pvt. Ltd, BNR Infotech Pvt. Ltd, BNR Consultancy Services Pvt. Ltd and Bhushan Steel Ltd

CASE STUDY

An analysis of Takeover Open Offer for ADC India Communications Limited

About ADC India Communications Limited (Target Company/ ADC India)

ADC India Communications Limited (Earlier known as KRONE Communications Private Limited) is a leading provider of copper and fiber physical connectivity and data networking solutions in telecommunications and data networking sectors primarily in India. The Company offers various enterprise solutions, including structured cabling solutions, fiber solutions, and fiber plug-and-play

solutions for data center applications. The shares of the Company are listed on Bombay Stock Exchange (BSE).

About Tyco Electronics Ltd (Acquirer)

Incorporated under the laws of Switzerland, Tyco Electronics Ltd. is a Swiss joint stock company. The Company is engaged in the business of designing, manufacturing and marketing products for customers in a broad array of industries including automotive; data communication systems; consumer electronics; telecommunications; aerospace, defense and marine; medical; energy; and lighting. The Company is listed on New York Stock Exchange. With effect from March 10, 2011 the name of the Acquirer was changed from Tyco Electronics Ltd to TE Connectivity Ltd.

About ADC Telecommunications Inc. (ADC)

Incorporated under the laws of Minnesota, USA, ADC Telecommunications Inc. is the parent company of ADC India Communications Limited. As on the date of offer ADC Telecommunications Inc. directly holds 4,967 fully paid-up equity shares and indirectly through its indirect wholly owned subsidiaries ADC GmbH holds 30,80,824 Shares together representing 67.08% of the equity share capital of the Target Company.

Name of the Target Company: ADC India Communications Limited

Name of the Acquirer: Tyco Electronics Ltd.

Regulation: 10 and 12

Reason for the offer: Global Acquisition resulting in indirect acquisition of Shares and voting rights along with change in control

Name of the Merchant Banker: Kotak Mahindra Capital Company Limited

Name of the Registrar to the offer: Karvy Computershare Private Limited

Background of the offer

Merger Agreement

On July 12, 2010, Tyco Electronics Minnesota Inc., an indirectly wholly owned subsidiary of the Acquirer has entered into an Agreement and Plan of Merger ("**Merger Agreement**") with ADC Telecommunications, Inc. (**ADC**)

Pursuant to the Merger Agreement, on July 26, 2010, Tyco Electronics Limited commenced a tender offer, through Tyco Electronics Minnesota, Inc., to purchase all outstanding shares of common stock at par value of US\$ 0.20 per share of ADC together with the associated preferred stock purchase rights for US\$ 12.75 per share in cash.

Subsequent to the completion of the offer on December 9, 2010, the Acquirer has acquired:

- i. 86.80% of the outstanding ADC common shares; and
- ii. The exercise of its option under the Merger Agreement to purchase newly issued shares of ADC at the offer price of US\$ 12.75 per share such that total shares acquired represented at least 90% of the outstanding shares of ADC.

Further on the same day the Acquirer announced the merger of Tyco Electronics Minnesota, Inc. with and into ADC, wherein ADC will continue as the surviving corporation and will become an indirect wholly owned subsidiary of Tyco Electronics Ltd. ("**Global Acquisition**").

Trigger of Open Offer under SEBI (SAST) Regulations, 1997

Subsequently to completion of the Global Acquisition, the Acquirer has indirectly acquired 67.08% of the paid up equity share capital and control of the Target Company that has resulted into triggering of regulation 10 and 12 of SEBI (SAST) Regulations, 1997. Accordingly, on March 04, 2011, the Acquirer has made the open offer to the shareholders of the Target Company to acquire 9,20,000 Equity Shares representing 20% of the voting equity capital of the Target Company at a price of Rs. 137.15 payable in cash.

MARKET UPDATE

Acquisition of 50% stake in Legacy Iron Ore by NMDC

NMDC is all set to purchase 50% stake in Legacy Iron Ore for around \$100 Mn. Legacy Iron Ore is an Australia based company and holds iron ore tenements in both the central Yilgarn and Pilbara areas of western Australia. NMDC will float a subsidiary in Australia to look after the deal and the investment options available.

Acquisition of 14% stake in BIAL by GVK

GVK Power and Infrastructure Limited has acquired additional 14% stake in Bangalore International Airport Limited (BIAL) from Siemens Project Ventures for Rs. 614 Cr. With this acquisition, the shareholding of GVK in BIAL would increase to more than 43%. Further, GVK is also planning to acquire 26% share in the next couple of year.

ADAG may divest 49% stake in BigTV

Anil Ambani is planning to raise upto Rs. 2000-2500 Cr by selling upto 49% stake in Reliance Big TV, his DTH Venture. If this deal goes through, it will be the largest in the direct-to-home space. The likely buyers for the deal are said to be a few overseas buyers as well as a few Indian corporations.

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