

TAKEOVER PANORAMA

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LATEST UPDATE

Amendment in Regulation 11(2) of SEBI (SAST) Regulations, 1997

Acquisition to the extent of 5% allowed to shareholders of 55%-75% stake

Vide notification dated October 31, 2008, SEBI has allowed the acquisition of further shares by shareholders who already hold more than 55% shares of a listed Company. As per the present provisions of regulation 11 (2), if a person holds more than 55% shares but less than 75% shares of a Listed Company, then he cannot acquire any further share without making a public offer of atleast 20% shares of that Company. However pursuant to the above notification, now such shareholders can acquire further shares upto 5% of the total Capital, provided the following two conditions are satisfied:

- i. The transaction has been made through open market in the Normal Segment.
- ii. The total shareholding of acquirer does not exceed 75% of the total capital of the Company.

Background of the Amendment:

This amendment has been brought in the background of present economic and capital market scenario. Therefore, this acquisition is not allowed through any mode other than open market through normal segment.

It may be noted that the acquisition limit of 5% has been allowed in aggregate for one financial year. This limit is not for onetime acquisition.

Analysis of the Amendment

S. No.	Regulation No.	Limit	Acquisition	Mode of acquisition	Open offer
1	11(1)	15%-55%	Upto 5%	Any	No
2	11(1)	15%-55%	Beyond 5%	Any	Yes
3	11(2)	55%-75%	Upto 5%	Open market purchases in the normal segment & not through the bulk/ block/ negotiated deal or through preferential allotment or pursuant to the buy back by the Company.	No

4	11(2)	55%-75%	Beyond 5%	Open market purchases in the normal segment & not through the bulk/ block/ negotiated deal or through preferential allotment	Yes
5	11(2)	55%-75%	Any %	Other than specified in Pt.4	Yes

In the matter of Sudeep Chitlangia

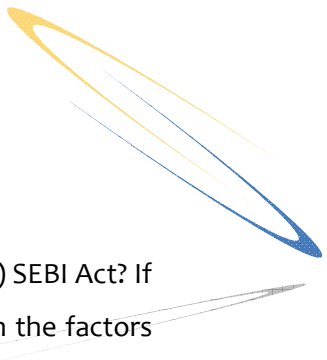
“SEBI held that it is the duty of the acquirer to ensure the receipt of the disclosure by the stock exchange.”

Facts:

Sudeep Chitlangia (“**acquirer**”) along with PACs acquired 32.87% shares of **Sarda Plywood Industries Limited (SPIL)** on **March 26, 2004** through the inter se transfer of shares amongst the qualifying promoters’ and therefore, sought the exemption from the applicability of regulation 10 of SAST Regulations under regulation 3(1)(e)(iii)(b) of SAST Regulations. As the individual as well as the collective acquisition of the acquirers exceeded 5% of the voting share capital of the company, they were required to notify the stock exchanges where the shares of the company are listed at least four working days in advance of the date of the proposed acquisition in terms of regulation 3(3) of SAST Regulations. However, the stock exchange denied of having received any intimation under regulation 3(3). In response to the notice issued by the adjudicating officer, the acquirer contended that they have dispatched the report on **March 20, 2004** and submitted the proof of dispatch before AO. However, the acquirer failed to produce the proof of delivery.

Issues:

1. Whether the proof of dispatch is sufficient to ensure that the acquirer had informed the stock exchanges 4 working days in advance of acquisition?



2. Whether the non-compliance, if any, attracts monetary penalty under section 15A (b) SEBI Act? If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

Decision:

1. No, the Regulations cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the stock exchange concerned. Therefore the failure to produce proof of delivery will lead to the conclusion that the report has not been submitted on or before the due date.

The Case of Arun Kumar Bajoria vs. SEBI was also referred for this purpose.

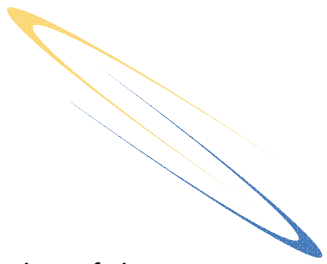
2. With the acquisition of the 32.87% of the voting share capital of SPIL, the management control exercisable by persons within the promoter group had changed. The said acquisition by the Noticees was of some importance from the point of view of outside share holders/other investors as that would have prompted them to sell or buy shares activating trading in the scrip of SPIL. In view of the above facts & circumstances of the case, SEBI imposed a monetary penalty of Rs.10000/- on the noticees.

In the matter of P V Ramaprasad Reddy

“Where no response in respect of the letter informing about the conversion of warrants is received from SEBI before the due date of the conversion, then the action of the appellant acquiring the shares on conversion of warrants is not invalid.”

Facts:

The appellant (part of the promoter group) filed an application seeking exemption in respect of the then proposed acquisition of 25,00,000 equity shares of Aurobindo Pharma Limited (target company) pursuant to the conversion of 25,00,000 convertible warrants which were allotted to him by the target company on February 4, 2004, which would have been increasing the shareholding of



appellant from 1,31,99,088 (26%) equity shares to 1,56,99,088 (29.47%) equity shares & that of the promoter group from 54.82% to 56.94% equity shares. However, in the absence of receipt of any reply from SEBI, pending the application, the acquirer converted the said warrants into equity shares. As the acquirer had already converted warrants into equity shares, the application filed by the acquirer was not found to be eligible for referral to the Takeover Panel, as Regulation 4 of the Takeover Regulations contemplates grant of exemption only in respect of proposed acquisition. The acquirer vide letter dated October 26, 2007 informed the SEBI that the target company had allotted 25,00,000 convertible warrants which were convertible into 25,00,000 equity shares of the target company on or before August 03, 2005. However, no response is received from the SEBI & therefore, the target company converted the warrants into equity shares.

Issues:

Whether, where the date of conversion of warrants is due and no response in respect of the letter informing about the said the conversion has been received from the SEBI before the due date, the acquisition of shares increasing the shareholding of the acquirer beyond 55% pursuant to the conversion of warrants is in violation of regulation 11 of SEBI (SAST) Regulations, 1997.

Decision:

No. Since the acquirer has already informed SEBI about the due date of conversion of warrants & the amount to crores will be forfeited if this exemption is not allowed, furthermore the application filed by the acquirer was kept pending for approximately six months without any cognizance, therefore, the action of the acquirer is not invalid.



In the matter of Roshan Anand Sujan & others

‘SAT held that for the purpose of calculating the public shareholding, the shareholding of non-promoter acquirer will be included.’

Facts:

Delta Hospitality Private Limited (respondent) made a public announcement after acquiring 14.93 per cent of the paid up equity share capital of the Advani Hotels and Resorts Limited (Target Company) from the open market. However, by the time letter of offer was issued to the shareholders, the acquirer further acquire 48, 16,328 shares taking its shareholding in the target company to 25.35 per cent. Since the shareholding of the promoter group at that time was 48.36 per cent & the combined shareholding of the promoter group and the acquirer (along with PAC) amounted to 73.71 per cent., therefore the appellant has filed this appeal on the ground that if the acquirer purchases mere 1.29 per cent, the public shareholding would fall below 25 per cent and the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003 would be triggered leading to the delisting of the target company which will hurt the interests of small shareholders like the appellants.

Contention:

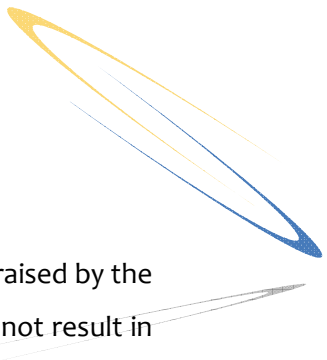
The appellant contended that the clause 3(1) (h) Delisting Guidelines defines “the public shareholding as the shareholding held by persons other than the promoter, the acquirer or the persons acting in concert with him”, therefore the shareholding of the acquirer will also be included in the promoter shareholding.

Issues:

Whether for the purpose of calculating the limit of public shareholding to be maintained as per the listing agreement, the shareholding of the non promoter acquirer will be included.

Decision:

Yes. Since Regulation 2(1)(i) of Takeover Code defines public shareholding as “shareholding held by persons other than promoters, therefore the for the purpose of calculating the shareholding of the



public, the shareholding of the non promoter acquirer will be included & the contention raised by the appellant are premature. Therefore, acquisition of shares by non-promoter acquirer cannot result in reducing the minimum public shareholding.

In the matter of Sohel Malik

“For the purpose of computing the offer price, the date of Board meeting when the shares were actually allotted upon the conversion of warrants should be taken as the relevant date.”

Facts:

Appellant is the acquirer (promoter) of shares of the Target Company. Appellant made a public announcement on 21.06.2008 upon the conversion of warrants increasing the shareholding of the acquirer from 50.38% to 60.48%. For calculating the offer price, the appellant has taken the date of board meeting in which the board of directors decided to convene the EGM for the purpose of allotment of warrants to appellant i.e. 16.12.2006, as reference date in terms of Regulation 20 (4) and Explanation (ii) below Regulation 20 (11) of takeover regulations. However, SEBI directed the appellant to take the date of public announcement as the reference date for the purpose of computing the offer price because preferential allotment was only of warrants and not of shares, therefore Regulation 20(11) would not come into the picture at all. It is against this direction that the present appeal has been filed.

Issues:

For the purpose of calculating the offer price, which date should be taken as reference date i.e. date of board meeting in which the board of directors decided to convene the EGM for the purpose of allotment of warrants or the date of public announcement or date of the Board meeting when the shares were allotted.

Decision:

SAT held that the date of the BOD meeting when the shares were allotted should be taken as the reference date for the purpose of computing the offer price and directed the SEBI to issue a fresh communication to the appellant.



Consent order in the matter of Rohit Pulp and Paper Mills Limited

SEBI initiated the adjudication proceedings against the Noticees for their failure to notify the details of the acquisition to the stock exchanges at least 4 working days prior to the acquisition in terms on regulation 3(3) of SAST & to submit the report to SEBI within the prescribed time under regulation 3(4) read with 3(5) of SAST. Pending the adjudication proceeding, the noticees have proposed to pay a sum of Rs.20, 000/- towards consent terms. Thereafter, the Noticees vide letter dated August 4, 2008 proposed to offer a sum of Rs.1, 00,000/- towards revised consent terms. The revised terms as proposed by the noticees were placed before the High Powered Advisory Committee & on the recommendation of the committee, SEBI disposes of the said proceedings pending against the Noticees.

Consent order in the matter of Consolidated Securities Limited

Consolidated Securities Limited (applicant) made disclosures of its shareholding pattern under Regulations 6(2) and 6(4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) of the said Regulations for the years 1998- 2003 and 2005 with considerable delay. Therefore, the applicant has filed this consent application & proposed to pay Rs.2, 00,000/- as settlement charges and Rs.50, 000/- as administrative charges, seeking settlement of the enforcement actions, that may be initiated by SEBI, for the aforesaid failures. The terms as proposed by the applicant were placed before the High Powered Advisory Committee. On the recommendation of the HPAC, it is hereby ordered that SEBI shall not take any enforcement action against the applicant for its failure to comply with the aforesaid Regulations.

Consent order in the matter of Karuna Impex Enterprises Limited

Karuna Impex Enterprises Limited (applicant) made disclosures of its shareholding pattern under Regulations 6(2) and 6(4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) of the said Regulations for the years 1997-2004 and 2006 with considerable delay & has thus filed the instant consent application seeking the settlement of the enforcement actions, that may be initiated by SEBI, for the aforesaid failures & proposed to Rs. 300000 as settlement charges. The terms as

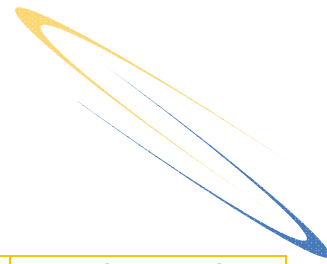
proposed by the applicant were placed before the HPAC & on the recommendation of HPAC, it is hereby ordered that the SEBI will not take any action against the applicant.

Consent order in the matter of Savant Infocomm Limited

SEBI had initiated adjudication proceedings against M/s Savant Infocomm Limited (noticee) in the matter of violation of Regulation 6 (2), 6(4) and 8(3) the SEBI (SAST) Regulations, 1997. Pending the adjudication proceeding, the noticee had proposed to pay Rs. 1, 25,000/- towards consent terms in the present matter. The terms as proposed by the noticee were placed before the High Powered Advisory Committee (HPAC) & on the recommendation of HPAC, SEBI disposes of the said adjudication proceeding against the noticee.

LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirer	Details of the offer	Reason of the Offer	Concerned Parties
<p>Alfa Laval India Limited</p> <p>Regd. Office Pune</p> <p>Paid up capital Rs.18.16 crores</p> <p>Listed At BSE & NSE</p>	Alfa Laval Corporate AB	Offer to acquire up to 2,408,604 equity shares (13.26%) of Rs. 10/- each at a price of Rs.950 each.	<p>Regulation 11 (2A)</p> <p>The Acquirer forms the part of the Promoter Group and holds 13,934,014 equity shares (76.73%) collectively. For the purpose of consolidation of holding, the acquirer has given this voluntary open offer.</p>	<p>Merchant Banker DSP Merrill Lynch Ltd.</p> <p>Registrar to the offer Bigshare Services Pvt. Ltd.</p>



<p>Alipurduar Tea Company Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs.50 lacs</p> <p>Listed At CSE</p>	<p>IIC Container Line Limited & Indev Intermodal Carriers Private Limited</p>	<p>Offer to acquire upto 1,80,000 equity shares (36.00%) of Rs.10/- each at par.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 97,780 equity shares (19.56%) of Rs. 10/- each at par amounting to Rs.9, 77,800/- from existing promoters.</p>	<p>Merchant Banker</p> <p>VC Corporate Advisors Pvt. Ltd.</p> <p>Registrar to the offer</p> <p>Niche Technologies Private Limited</p>
<p>Shah Petroleums limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs.16 crore</p> <p>Listed At BSE & NSE</p>	<p>NAF India Holdings Ltd</p>	<p>Offer to acquire 88,00,000 Shares representing 27.50% of the Current Share Capital (20% of the Diluted Share Capital) at a price of Rs.48.50/- per share.</p>	<p>Regulation 10 & 12</p> <p>Share Subscription- Cum- Share Purchase-Cum- Shareholders Agreement pursuant to which the Acquirer would be allotted by the way of a preferential allotment 1, 20, 00,000 Shares (27.27%) in SPL at a price of Rs.26.65 per Share to be paid in cash and the Acquirer would purchase from the Promoters of SPL, 65, 00,000 Shares (14.77%) of Diluted Share Capital at a price of Rs.48.50 per Share to be paid in cash.</p>	<p>Merchant Banker</p> <p>Kotak Mahindra Capital Company Ltd.</p> <p>Registrar to the offer</p> <p>Sharepro Services India Pvt. Ltd.</p>



REGULAR SECTION

An Analysis of Regulation 8 -Continual Disclosures

Regulation 8 of SEBI (SAST) Regulations, 1997 casts an obligation upon the persons having control over a listed Company to make disclosures of their shareholding as well as changes therein on a regular basis. This obligation is also upon those shareholders who hold more than 15% shares of a company. These disclosures are required to be made at the end of each Financial Year. However, for promoters, they are required to disclose their shareholding on record date as well. The purpose of elaborating this section is that numerous numbers of cases for violation of regulation 6& 8 comes before SEBI due to non-awareness of regulations at that time. We have given an analysis of SEBI's judgments in this regard.

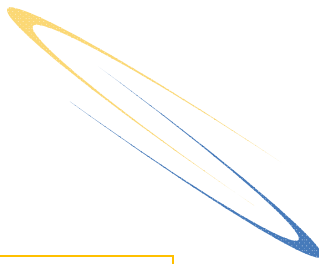
The provision of this regulation 8 has been elucidated hereunder:

- i. Every person who holds more than 15% shares or voting rights in any company & every promoter of the company irrespective of his shareholding in the company, shall within 21 days from the financial year ending march 31, make the yearly disclosures of his shareholding to the company as on march 31. Further, disclosures shall also be made by the promoter of the company within 21 days from the record date announced for the purpose of declaration of dividend.

It may be noted that in case of promoters, every promoter is required to make disclosure irrespective of his shareholding. Further, they are required to make disclosures twice i.e. on record date and at the end of Financial year whereas other shareholders holding more than 15% shares are required to make disclosure only at the end of Financial year.

- ii. The company in turn shall disclose the changes in the shareholding of the persons who holds more than 15% as well as the shareholding of the promoters to the stock exchanges where it is listed within 30 days from the financial year ending march 31. Such disclosures shall also be made by the company within 30 days from the record date for the purpose of declaration of dividend with regard to the shareholding of the promoters.

The gist of regulation 8 can be tabulated as under:



<u>Regulation No.</u>	<u>By whom</u>	<u>Existing Shareholding</u>	<u>To whom</u>	<u>Time limit</u>
8(1)	Every Shareholder	Holding more than 15% shares or voting rights	Company	Within 21 days from the financial year ended on March 31 st .
8(2)	Promoter or any person having control over the company	No requirement of shareholding	Company	Within 21 days from the financial year ended on March 31 st as well as the record date of the company for the purpose of declaration of dividend.
8(3)	Company	Disclosures received under regulation 8(1) & 8(2)	Stock Exchange	Within 30 days from the financial year ended on March 31 st as well as the record date of the company for the purpose of declaration of dividend.

Regulation 8(4)-Every listed company shall maintain a register to record the information received under regulation 6(3), 7(1) and 8(2).

Regulation 6- Transitional Provision

Regulation 6 is a transitional provision which required every person who held more than 5% shares of a listed Company on the date of coming into force of these regulations and every person having control over a Company to make disclosures at the time of enactment of these regulations.

- i. Any person who holds more than 5% shares or voting rights in any company & every promoter or any person having the control over the company shall within 2 months of the notifications of these regulations disclose the number & percentage of the shares or voting held by him or the person acting in concert with him in that company, to the company. **[Regulation 6(1) & 6(3)]**
- ii. Every company shall within three months of the notifications of these regulations disclose the shareholding of the person mentioned in “Pt. i” above to the stock exchange. **[Regulation 6(2) & 6(4)]**

<u>Regulation No.</u>	<u>By whom</u>	<u>Existing Shareholding</u>	<u>To whom</u>	<u>Time limit</u>
6(1)	Any person	More than 5% shares or voting rights	Company	Within 2 months of the notification of these regulations.
6(2)	Company	As mentioned in 6(1)	Stock Exchange	Within 3 months of the notification of these regulations.
6(3)	Promoter or any person having control over the company	No requirement of existing shareholding	Company	Within 2 months of the notification of these regulations.
6(4)	Company	As mentioned in 6(3)	Stock Exchange	Within 3 months of the notification of these regulations.

Is there any exemption from the requirement of disclosures under regulation 6 & 8?

Regulation 3 of Takeover Code provides the exemption from Takeover Code. The opening lines of regulation provide that nothing in Regulation 10, 11, & 12 shall apply to certain types of acquisitions beyond the allowable limit under Regulation 10 & 11, but it does not exempt the acquirer to comply with the disclosures requirement as laid down in regulation 6, 7 & 8. In other words, it relieves the acquirer only from giving public offer not from the requirement of making disclosures.

Analysis of Judgments:

There are many instances where the companies have failed to make the disclosures as required under regulation 8. Further presently, the Companies have been allowed to make an application for consent order to the SEBI for compounding of violation of these regulations. In all these cases the amount of penalty is decided having regard to the facts of each case.

For example, in the matter of Lata Engg. Co (P) Ltd., the penalty of Rs. 25,000 was imposed on the ground that the Company is a sick Company referred to BIFR.

On another note, in the matter of SMIFS Capital Markets Limited, SEBI imposed a token penalty where the disclosures, though made, but not in specified format.

Further, having a look at consent orders passed by SEBI in the month of October, SEBI has compounded the violations of regulation 6 & 8 as under:

Name of the company	Violation	Penalty
Consolidated Securities Limited	6(2) and 6(4) for the year 1997 and Regulation 8(3) for the years 1998- 2003 and 2005 with considerable delay.	Rs.2,50,000/-
Karuna Impex Enterprises Limited	Regulations 6(2) and 6(4) for the year 1997 and Regulation 8(3) for the years 1997-2004 and 2006 with considerable delay	Rs. 300000/-
Savant Infocomm Limited	6(2), 6(4) & 8(3)	Rs. 1,25,000/-



CASE STUDY

Impact of Economic Crisis on Takeover Deal of GMR – SA

Background of GMR Infrastructure Limited

GMR Group is one of the fastest growing infrastructure organisations in the country with interests in Airports, Energy, Highways and Urban Infrastructure (including SEZ).

GMR Infrastructure Limited is the infrastructure holding company formed to fund the capital requirements of various infrastructure projects in the Group's Energy, Highways and Airport business. It undertakes the development of the infrastructure projects through its various subsidiaries.

Gist of Acquisition Plans

In April 2008, GMR Energy Ltd., 100% subsidiary of the GMR Infrastructure Limited has acquired 5% stake in Homeland Mining and Energy SA (Pty) Ltd., South Africa, subsidiary of Homeland Energy Group Ltd., Toronto, Canada for Rs. 600 million. Later on, it has increased this stake to 10%.

This acquisition would ensure fuel security for GMR Group's power projects in India and will also acts as a catalyst in the development of the energy business of the group.

The company was in process to increase this stake by another 40% taking their shareholding to 50% in the Homeland Mining and Energy SA (Pty) Ltd.

Impact of Economic Crisis:

However, owing the economic crisis leading to the falling coal prices and the findings in the due diligence have forced the company to withdraw the offer.

Since the company has already bought 10% stake in Homeland for USD 30 million therefore, the company is now evaluating the various exiting options to sell off the stake already acquired & to get the investment back.



HINT OF THE MONTH

Where the acquirer has acquired any shares for cash during the preceding 12 months from the date of the open offer under any agreement or pursuant to open market acquisition, for which payment in cash has already been made, then the letter of offer shall provide an option to the shareholders to accept the payment either in cash or by exchange of shares or other specified securities. This option is mandatorily to be given. However, the acquirer may later on revise this option by extinguishing the option of payment of consideration by exchange of shares. Thus, in any case, the amount of cash payment cannot be reduced.

Substantiated by Proviso to regulation 20 (1)



MARKET UPDATE

Revision in purchase consideration by the sterlite

Since the Copper prices have dropped from \$8000 per tonne to \$5000 per tonne, therefore Sterlite Industries is planning to reduce the purchase consideration to be paid to Asarco.

Parikh family has sold its stake in Zandu to Emami

Emami has further acquired the 18.18% stake in Zandu held by the Parikh family at a price of Rs.16500 per share inclusive of non compete fees of Rs.1500 per share.

Ranbaxy - Daiichi deal faces further problems

Ranbaxy promoters had to execute their deal with the Daiichi outside the stock exchange or through the direct sale route. If the deal takes place outside the stock exchange then, it would have attract the long term capital gain tax of 10%. However, if the deal route through the stock exchange, then the promoters would be required to pay nominal securities transaction tax. However, SEBI rejected the deal to be conducted through stock exchange. Therefore, now the deal has executed outside the stock exchange by payment of capital gain tax to the amount of approx. Rs. 1000 Crores.

RELEASE OF BOOKS ON TAKEOVER CODE

In the 36th National Convention of Company Secretaries held at Goa on 6-8 November, 2008, takeovercode.com has released two books on SEBI Takeover Regulations. The first book named 'SEBI Takeover Code – Queries and Issues' answers all possible queries relating to these regulations. The unique feature of this book is that all the answers in this book are substantiated with a case decision. The second book named 'SEBI Takeover Code – Open Offers' contains synopsis with distinguished features of all open offers made so far. The index provides an elaborative insight of all open offers. The strategies followed in the previous open offers can be used for driving the strategies of prospective acquirers as they are equally binding as any other legal precedent. These two books can surely be a valuable asset for all concerned.

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