

Takeover Panorama

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LEGAL UPDATE

Adjudicating Officer Order in the matter of Nivedita Mercantile and Financing Ltd.

Facts:

1. On July 25, 2009, Eskay Infrastructure Development Private Limited (Acquirer) filed a draft Letter of Offer ('LOO') before SEBI for acquiring 1,22,500 fully paid up equity shares of Rs. 10/- each constituting 50% of the total paid up capital or voting capital of Nivedita Mercantile and Financing Ltd.(Target Company)

AO imposed the penalty of Rs.60,000 on each of the Transferee and Rs.85,000 on each of the transferor for the violation of regulation 7(1A) of SEBI Takeover Regulations.

2. While examining the draft Letter of Offer, it was observed that the promoters of the Target Company viz Mr. Sunil Bajaj, Mr. Hargovind Bajaj Mr. Vinod Kumar Bajaj, Mr. Lav Bajaj, Mr. Rohit Bajaj, Ms. Bina Bajaj, Ms. Kumkum Bajaj, Ms. Gayatridevi Bajaj, Mr. Kush Bajaj, Mr. Vedant Bajaj, Mr. Varun Bajaj, Ms. Shakuntala Bajaj, Mr. Ashish Bajaj and Ms. Aishwariya Bajaj did not comply with the provisions of Regulation 7(1A) of the SEBI (SAST) Regulations within stipulated time.
3. Accordingly a Show Cause Notice was sent to the Noticee along with the other promoters for the aforesaid alleged non compliance of SEBI (SAST) Regulations, 1997.

Contention:

1. The non-compliance was due to lack of knowledge of Regulation 7(1A) of SEBI (SAST) Regulations, 1997;
2. Neither the company nor the promoter had and have any intention to take undue advantage from such non compliance;
3. Neither the investor nor the shareholders have lost anything due to such noncompliance;
4. During the relevant period there has not been any reduction in promoters overall holding in the company;

5. It was just mere interse family transfers which had not been complied or reported due to bonafide mistake;
6. That the alleged Inter Family Transfers had been made by Hargovind Bajaj and Shri Vinod Kumar Bajaj only for 5800 equity shares and 7800 Equity shares respectively to their family members. The other promoters as given above have never transferred any shares except Shri Hargovind Bajaj and Shri Vinod Bajaj.
7. Acquisition resulted in transfer of more than 2% of the paid up capital of the company. The shares acquired by Lav Bajaj, Mr. Kush Bajaj, Mr. Vedant Bajaj, Mr. Varun Bajaj, Mr Ashish Bajaj, Ms. Aishwarya Bajaj and Mrs. Shakuntalal Bajaj are interfamily transfer and the non-disclosures thereof is bonafide mistake.

Issue:

Whether the Noticee has violated Regulations 7(1A) of SEBI (SAST) Regulations, 1997? Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?

Decision:

Adjudicating Officer observed that no shares were transferred to Mr. Sunil Bajaj, Mrs. Gayatridevi Bajaj and Ms. Kumkum Bajaj by Mr. Hargovind Bajaj and Mr. Vinod Bajaj. Therefore, the provisions of Regulation 7(1A) of SEBI (SAST) Regulations, 1997 do not get attracted so far as these Noticees are concerned and no disclosure was therefore required to be made by them. Thus no penalty was imposed on the Noticees and thus disposes of the proceedings accordingly.

Further it was observed that the promoters Mr. Lav Bajaj, Mr. Kush Bajaj, Mr. Vedant Bajaj, Mr. Varun Bajaj, Mr. Ashish Bajaj, Ms. Aishwariya Bajaj and Mrs. Shakuntala Bajaj has acquired 11,600 shares (i.e. 5800 shares from Mr. Hargovind Bajaj and 5800 shares from Mr. Vinod Bajaj) on September 16, 2005 in off-market and such acquisition accounted for 4.73% of the paid up capital of the target company, thereby triggering Regulation 7(1A) of the SEBI Takeover Regulations. However no such disclosure was made by such Noticees. Therefore, Adjudicating Officer imposed the penalty of Rs 60,000 on each such Noticee.

Furthermore, Mr. Vinod Kumar Bajaj transferred 7800 shares (3.19%) and Hargovind Bajaj has transferred 5800 shares (2.36%) on September 16, 2005 in contravention of Regulation 7(1A) of

the SEBI Takeover Regulations. Therefore, Adjudicating Officer imposed the penalty of Rs 85,000 on each such Noticee.

Adjudicating Officer Order in the matter of Somani Cement Limited

Facts:

1. SEBI conducted an investigation into the alleged irregularity in the trading in shares of Somani Cement Ltd.
2. Investigation revealed that Shri Bimlesh Kumar Mishra (Noticee) has acquired more than 5% of the paid up capital of Somani Cement Ltd. on several occasions and on a number of occasion his shareholding increased/decreased by more than 2%. However no disclosure was made by him under Regulation 7(1) read with 7(2) of the SEBI (SAST) Regulations, 1997 and regulation 13(1) & 13(3) read with Regulation 13(5) of the SEBI (PIT) Regulations, 1992.
3. Further, the SCCL was under the control of the Noticee since 1997 when the Noticee and Shri A. K. Singh took over the Company. Since the Noticee was having control over the Company, therefore he was required to make disclosure under and Regulation 8(2) of the SEBI (SAST) Regulations, 1997. However, he failed to do so.

Adjudicating Officer imposed a penalty of RS. 5,00,000 on the Noticee for violation of Regulation 7(1), 7(2) and 8(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13 (3) and 13(5) of SEBI (PIT) Regulations, 1992

Issue:

Whether the Noticee has violated the provisions of Regulation 7(1), 7(2) and 8(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13 (3) and 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992?

Decision:

The Adjudicating Officer observed that there is nothing on record to show that the Noticee has complied with the provisions of SEBI (SAST) Regulations, 1997 or SEBI (PIT) Regulations, 1992. Accordingly considering the judgment given in the matter of *Milan Mahindra Securities Pvt. Ltd. Vs SEBI*, wherein SAT held that “the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions

in the market, the Adjudicating Officer imposed the penalty of Rs 5,00,000 on Noticee for the violation of Regulation 7(1), 7(2) and 8(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13 (3) and 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

Takeover Panel Order in the matter of Jainex Aamcol Limited

Facts:

The Acquirers belongs to the Promoter Group of Jainex Aamcol Limited (Target Company) and proposed to acquire 8,10,000 equity shares of the Target Company as a result of which their shareholding would increase from 45.75% to 74.92% of the Target Company and they would be required to give open offer in terms of regulation 10 of SEBI (SAST) Regulations, 1997. Accordingly, they have filed the present application seeking exemption from the applicability of regulation 10 of SEBI (SAST) Regulations, 1997.

SEBI recommended the matter back to the Takeover Panel for fresh consideration as according to Acquirer the Takeover Panel has not considered the relevant facts.

Grounds for exemption:

The financial health of the company did not enable it to repay the secured loans infused into it by the acquirers and it deemed prudent to the company that the unsecured loans be converted into equity shares and allot the same on preferential basis to acquirers

Decision:

The Takeover Panel in its report dated March 27, 2010, recommended that "it was observed by the Panel that the sale of the Target Company has been increased by 667% from 2001-20002 to 2007-2008 resulting in the profitability of the company. As on 31/03/2008 the Target Company has a credit balance in the Profit & Loss Account of Rs. 107.52 lacs (after payment of Income Taxes of Rs 77.55 lacs). The networth of the Target Company is Rs. 258.10 lacs. The aforesaid financials of the Target Company clearly reveal that its financial health is fairly good which does not call for any favorable treatment from the compliance of regulations. In normal circumstances, any preferential allotment is required to comply with the open offer requirements as laid down in the Takeover Regulations. The panel did not find any justification for granting

exemption to the Acquirers and consequently rejected their application from exemption from the applicability of the provisions of Regulation 11(1) and 11(2) of the Takeover Regulations". However, in the personal hearing, Mr. Ronojoy Mazumdar contended that the Takeover Panel has completely ignored to consider the Balance Sheet as on March 31, 2009 and instead considered the Balance Sheet as on March 31, 2008, which is not relevant for their application. Since the main argument of the acquirers was that the Takeover Panel has not considered the relevant facts, therefore in the interest of justice the matter is recommended back to the Takeover Panel for fresh consideration.

Takeover Panel Order in the matter of Panacea Biotec Limited

Facts:

The Acquirers belong to the promoter group of the Panacea Biotec Limited (Target Company) and currently holds 68.73% of the paid up capital of the Target Company. Now the company proposes to buy back maximum of 55,92,000 equity shares from the open market through stock exchange, which will result in increasing the shareholding of the promoter group from 68.73% to 74.99% constituting a change of 6.26%, thereby triggering Regulation 11(2) of the SEBI (SAST) Regulations, 1992. Accordingly, they have filed the present application seeking exemption from the applicability of regulation 11(2) of SEBI (SAST) Regulations, 1997.

SEBI granted exemption from the applicability of Regulation 11(2) where the increase in shareholding is pursuant to Buy Back.

Grounds for exemption:

1. Increase in shareholding of promoter group is pursuant to buy back
2. Minimum public shareholding would be maintained.
3. No change in control
4. Acquirers will not participate in buyback offer.
5. The proposed buy back will enhance shareholders value and provide exit option to those who desire to exit from the Target Company.
6. The maximum offer price of the Buy Back is Rs. 229 per share which is higher than the Book Value of Rs. 92.10 per share as on March 31, 2009 and minimum price of Rs.210.08 computed as per the pricing formula laid down in the Takeover Regulations.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making open offer on the basis that the facts and statements given by the acquirer are true and the acquirers will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable. Further, it is to be noted that in terms of the SEBI circular dated October 30, 2008, the acquirers have earlier acquired an aggregate of 3.53% shares through open market in normal segment on Stock Exchange. Accordingly, in this case the exemption needs to be granted only in respect of the balance 4.79% i.e. 6.26% minus 1.47%.

Consent Order in the matter of Camphor & Allied Products Limited

Adjudicating Proceedings were initiated against Camphor & Allied Products Limited (Noticee) for alleged violation of the provisions of Regulation 6(2), 6(4), 7(3) and 8(3) of SEBI (SAST) Regulations, 1997. Pending the adjudication proceedings, on February 25, 2010, the Noticee has filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 4,75,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticee.

Consent Order in the matter of Shakti Met-Dor Limited (Shri M.V.S.S. Subba Raju)

M.V.S.S. Subba Raju (Applicant) has violated the provisions of Regulation 3(4) and 7(1A) of SEBI (SAST) Regulations, 1997. Therefore, vide letter dated February 15, 2010, the applicant has the filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 3,50,000 towards the consent terms as settlement charges. 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 Shakti Met-Dor Limited

Shakti Met-Dor Limited (Applicant) has violated the provisions of Regulation 6(2) and 6(4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the years 1998, 2000-2004 and 2008 and Regulation 8(3) for the years 2006-2008 for delay with respect to filing of disclosures in the matter of record date for dividend. Therefore, vide letter dated February 10, 2010, the applicant has filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 5,55,000 towards the consent terms as settlement charges. 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 Ravindra Energy Limited

Adjudicating Proceedings were initiated against Ravindra Energy Limited (Noticee) for alleged violation of the provisions of Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997. Pending the adjudication proceedings, on February 02, 2010, the Noticee has filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 5,85,000 towards the settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticee.

Consent Order in the matter of Vinod Securities & Investment Pvt. Ltd.

Adjudicating Proceedings were initiated against Ms. Aarti Boob, Ms Vandana Boob, Mr. Vinod Kumar Boob, M/s Vinod Securities & Investments Pvt. Ltd. and Mr. Vishal Kumar Boob (Noticees) for alleged violation of the provisions of Regulation 7(1A) and 7(2) of SEBI (SAST) Regulations, 1997. Pending the adjudication proceedings, on March 04, 2010, the Noticees have filed the joint consent application for the settlement of above violation and proposed to pay a sum of Rs 1,00,000 towards settlement charges. The terms as proposed by the Noticees were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticees.

Consent Order in the matter of Camphor & Allied Products Limited

Adjudicating Proceedings were initiated against Midland Finance and Investment Enterprises Pvt. Ltd., Mr. Harshul Dalal, Mrs. Nina Dalal, Ms. Punya Dalal, Ms Stuti Dalal and Mr. Harshul Dalal (Karta) (HUF) (Noticees) for alleged violation of the provisions of Regulation 6(1), 6(3), 7(1A), 8(1) and 8(2) of SEBI (SAST) Regulations, 1997. Pending the adjudication proceedings, on March 31, 2010, the Noticees have filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 6,00,000 towards settlement charges. The terms as proposed by the Noticees were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticees.

Consent Order in the matter of Capital Trust Limited

Upon examination of the offer document pertaining to the open offer made by I C Construction & Services Limited to the shareholders of Capital Trust Limited (Noticee), SEBI alleged the Noticee for violation of the provisions of Regulation 8(3) of SEBI (SAST) Regulations, 1997 for the year 2008. Therefore, adjudication proceedings were initiated against the Noticee. Pending the adjudication proceedings, on March 25, 2008, the Noticee have filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 30,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticee.

Consent order in the matter of Wellworth Overseas Limited

Adjudicating proceedings were initiated against Mr. Nareshbhai B. Raval, Nareshbhai B. Raval-HUF, Ms. Shwetambari S. Raval, Ms. Sonia Arora and Ms. Daksha N. Raval (Noticees) for alleged violation of the provisions of Regulation 7(1) read with Regulation 7(2) of the SEBI (SAST) Regulations, 1997. Pending the adjudicating proceedings, the Noticees have filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 20,00,000 towards settlement charges. The terms as proposed by the Noticees were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticees.

Consent order in the matter of Choice International Limited

Adjudicating proceedings were initiated against Choice International Limited (Noticee) for alleged violation of the provisions of Regulation 6(2), 6(4) and 8(3) of the SEBI (SAST) Regulations, 1997. Pending the adjudicating proceedings, the Noticee has filed the consent application on March 4, 2010 for the settlement of above violation and proposed to pay a sum of Rs 3,85,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticee.

Consent order in the matter of Dash Pharmaceuticals Pvt. Ltd.

Adjudicating proceedings were initiated against Dash Pharmaceuticals Pvt. Ltd. (Noticee) for alleged violation of the provisions of Regulation 7(1) and 7(2) of the SEBI (SAST) Regulations, 1997. Pending the adjudicating proceedings, the Noticee have filed the consent application on February 09, 2010 for the settlement of above violation and proposed to pay a sum of Rs 2,00,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance and disposes of said proceedings against the Noticee.

LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Surana Industries Limited Regd. Office Chennai	G.R. Surana, Shantilal Surana, Vijayraj Surana, Dineshchand Surana, Chandanbala Surana,	Offer to acquire 54,30,000 (20%) Equity Shares at a price of Rs. 309 per share (inclusive of interest for	Regulation 11(2) Conversion of shares warrants into equity shares thereby increasing the shareholding of	Merchant Banker SAL Securities Pvt. Ltd.

<p>Paid up capital Rs. 27.15 crores</p> <p>Listed At BSE, NSE, MSE</p>	<p>Saraladevi Surana, Alka Surana and Vasantha Surana</p>	<p>delay in making the PA) payable in cash.</p>	<p>Acquirers form 61.31% to 71.28%.</p>	<p>Registrar to the Offer Cameo Corporate Services Ltd.</p>
<p>Spicejet Limited</p> <p>Regd. Office New Delhi</p> <p>Paid up capital Rs. 321 crores</p> <p>Listed At BSE</p>	<p>Kal Airways Private Limited and Kalanithi Maran along with PAC</p>	<p>Offer to acquire 8,29,80,161 (20%) Equity Shares at a price of Rs. 57.76 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 15,65,23,900 equity shares representing 48.70% of the exiting capital and 37.73% of the Resulting shares and voting capital of Target Company</p>	<p>Merchant Banker Enam Securities Private Limited</p> <p>Registrar to the Offer Karvy Computershare Pvt. Ltd.</p>
<p>Suchitra Finance and Trading Company Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital 9.32 crore</p>	<p>Marigold Investrade Private Limited</p>	<p>Offer to acquire 18,64,510 (20%) Equity Shares at a price of Rs. 32 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 43,27,750 (46.42%) equity shares of the Target Company at a price of Rs 13 per share.</p>	<p>Merchant Banker Chartered Capital and Investment Limited</p> <p>Registrar to the Offer Niche Technologies Pvt. Limited</p>

Listed At CSE & GSE				
Maytas Infra Limited Regd. Office Hyderabad Paid up capital Rs.58.85 crore Listed At NSE & BSE	SBG Projects Investments Limited along with PAC	Offer to acquire 1,54,23,236 (20%) Equity Shares at a price of Rs. 195.72 per share payable in cash.	Regulation 10, 11(1) & 12 SSA to acquire 1,54,59,133 (20.80%) Equity Shares of the Target Company and a shareholders agreement to provide certain management rights to the Acquirer.	Merchant Banker Edelweiss Capital Limited Registrar to the Offer Karvy Computershare Pvt. Ltd.

HINT OF THE MONTH

The acquisition in terms of second proviso to regulation 11(2) of SEBI Takeover Regulations is allowed only where the acquisition has been made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company.

(As substantiated from second proviso to regulation 11(2) of SEBI Takeover Regulations)

REGULAR SECTION

APPLICABILITY OF SEBI TAKEOVER REGULATIONS ON THE ISSUE OF ADR AND GDR

The applicability of SEBI Takeover Regulations arises when the acquirer acquires the shares carry voting rights in excess of the threshold limit provided under the said regulations. The regulations provides separate threshold limit for the purpose of making the disclosure and for making the Open Offer to the shareholders of the Target Company. As in case of ADR/GDR, the voting rights generally arises on the conversion into equity shares, therefore, SEBI Takeover Regulations provides separate provisions in case of acquisition of ADR or GDR which are detailed below.

Meaning of ADR and GDR

Depository Receipts (DRs) are negotiable securities issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

Exemption from the applicability of Open Offer Obligations

Before the amendment dated November 06, 2009	After the amendment dated November 06, 2009
<u>Legal Provision</u> Nothing contained in Chapter III of the Regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts so long as they are not converted into shares carrying voting rights.	<u>Legal Provision</u> Nothing contained in regulation 10, regulation 11 and regulation 12 of these regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts unless the holders thereof, - a. become entitled to exercise voting

	<p>rights, in any manner whatsoever, on the underlying shares; or</p> <p>b. exchange such Depository Receipts with the underlying shares carrying voting rights.</p>
<p><u>Analysis</u></p> <p>Under regulation 3(2) of the SEBI Takeover Regulations, acquisition of ADRs / GDRs is exempted from open offer requirement under Chapter III of the SEBI until the time of conversion into the underlying equity shares. It was generally understood that this position would remain unchanged even when customary voting arrangements are entered into between depositories and ADR / GDR holders.</p>	<p><u>Analysis</u></p> <p>Vide amendment dated November 06, 2009, it is now provided by SEBI that such exemption from Open Offer would be available only as long as ADR / GDR holders remain passive investors without any kind of voting arrangement with the depository banks on the underlying equity shares. Thus, in general, the acquisition of ADR or GDR is exempt from the Open Offer obligations. However, where the holders thereof is become entitled to exercise voting rights, in any manner whatsoever, on the underlying shares; or exchange such Depository Receipts with the underlying shares carrying voting rights, then no exemption from the open offer obligations would be available.</p>

Disclosure under regulation 7

It is noteworthy to mention here is that regulation 3(2) of SEBI Takeover Regulations gives exemption from requirement of Open Offer only. The disclosures under Chapter II are nevertheless required to be made.

Timing of Public Announcement of Offer (“Regulation 14)

In case of acquisition of ADR/GDR which taken together with the voting rights, if any already held by him or with person acting in concert with him, entitle him to exercise voting rights, exceeding the threshold limits in Regulation 10 or Regulation 11, the public announcement shall

be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be:

Further, vide amendment dated November 06, 2009, it has been provided that where on the acquisition of such ADRs or GDRs the holder thereof is entitled to exercise the voting rights on the underlying shares in excess of percentage specified in regulation 10 or regulation 11 and such public announcement is required to be made within four working days of acquisition of such depository receipts.

CASE STUDY

Takeover battle for Parkway Holdings

About Parkway Holdings Limited (Target Company)

Listed on the Singapore Stock Exchange since 1975, **Parkway Holdings Limited** is one of the region's leading providers of healthcare services, with a network of 16 hospitals throughout Asia, including Singapore, Malaysia, Brunei, India and China. In Singapore, the Group owns **Parkway Group Healthcare Pte Ltd** and **Parkway Hospitals Singapore Pte Ltd**, which operates three of Singapore's premier healthcare providers: **Gleneagles, Mount Elizabeth and Parkway East Hospitals**. The Group also operates 37 **ParkwayHealth Patient Assistance Centres (PPAC)** across the globe.

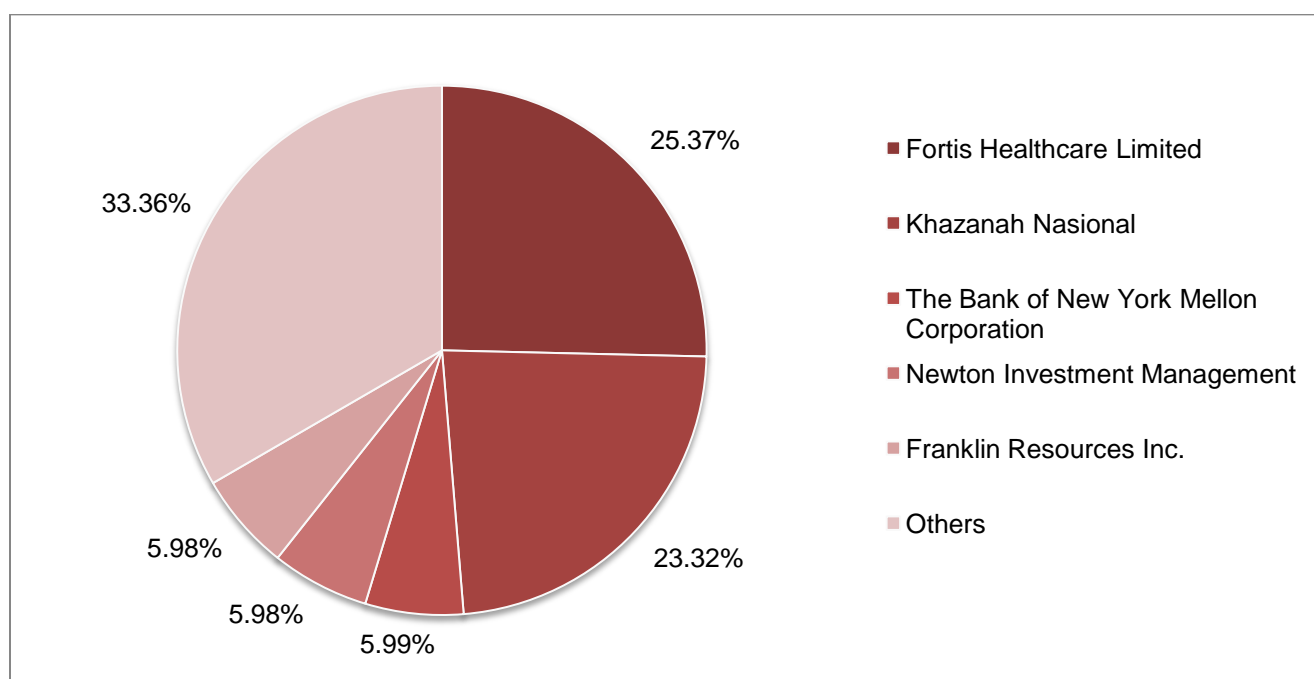
About Khazanah Nasional

Khazanah Nasional is the investment holding arm of the Government of Malaysia and is empowered as the Government's strategic investor in new industries and markets. It has investments in over 50 major companies, both in Malaysia and abroad, and the companies are involved in a broad spectrum of industries.

About Fortis Healthcare Limited

Incorporated on February 28, 1996, Fortis Healthcare Ltd is one of the largest private healthcare companies in India. The company is having a network of 28 Hospitals, Satellite Centers and Heart Command Centres with about 3300 beds capacity. These hospitals include multi-specialty hospitals as well as super-specialty centers providing tertiary and quaternary healthcare to patients in areas such as cardiac care, orthopedics, neurosciences, oncology, renal care, gastroenterology and mother and child care. They are delivering quality healthcare services to our patients in modern facilities using advanced technology. Fortis Healthcare Ltd.

PARKWAY HOLDINGS SHAREHOLDING STRUCTURE



Khazanah Acquisition in and Offer for Parkway Holdings Limited

On April 30, 2008, Khazanah acquired an additional of 18.33% stake in Parkway Holdings or S\$581.5m, or S\$4.20 apiece, hence bringing its total shareholding in the group to 20.8%. Later on, on May 27, 2010, Integrated Healthcare Holdings, a unit of Khazanah, announced a S\$1.18b **voluntary conditional cash partial offer** for 313m shares in Parkway at S\$3.78/share. The deal could potentially bring its stake in Parkway to 51.5%, giving it a controlling interest in the group. Entitled shareholders have until 8 July to vote on and (not) accept the partial offer.

Requisite for Partial Offer (Rule 16 of the Singapore Code on Takeovers and Mergers)

■ **Council's consent required**

The Council's consent is required for any partial offer.

■ **Offers for less than 30%**

The Council will normally consent to a partial offer which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

■ **Offers for between 30% and 50%**

The Council will not consent to any partial offer which could result in the offeror and its concert parties holding shares carrying not less than 30% but not more than 50% of the voting rights of the offeree company.

■ **Offers for more than 50%**

The Council will not normally consent to a partial offer which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company, unless the conditions prescribed under Rule 16.4 are satisfied. For instance:

- I. The partial offer is not a mandatory offer under Rule 14.
- II. The partial offer is conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the offeree company's shareholders, where the offeror together with parties acting in concert with it hold 50% or less in the offeree company prior to the announcement of the partial offer.

Presently Khazanah extended its partial offer for Parkway Holdings Ltd by 18 days i.e. till July 26. The move has been made to buy more time to firm up its decision on Fortis Counter bid.

On the original closing date of the partial offer i.e. on June 8, Khazanah failed to get the minimum votes of Parkway Holding shareholders in support of its partial offer to buy 27% stake in the company. A little less than half of the shareholders voted in favor of Khazanah. However, Khazanah requires the support of at least 50% of the voting to push through its partial offer.

According to Rule 22.3 of the Singapore Code on Takeovers and Mergers, An offer must initially be open for at least 28 days after the date on which the offer document is posted.

However, the offer period may be extended which is substantiated from the Rule 22.4 of the **Singapore Code on Takeovers and Mergers which is reproduced herein below:**

Any announcement of an extension of an offer must state the next closing date or if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, those shareholders who have not accepted the offer should be notified in writing at least 14 days before the offer is closed.

However, the option of extending the duration of offer will not be available in the circumstance as mentioned in Rule 22.7 of the **Singapore Code on Takeovers and Mergers which is stated below:**

If statements in relation to the duration of an offer such as "the offer will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to extend the offer beyond the stated date except where required by Rule 22.6, where the right to do so has been specifically reserved or in wholly exceptional circumstances.

Fortis General Voluntary Offer for Parkway Holdings

The bidding war for Parkway Holdings, entered a new orbit with a counter bid from Fortis Healthcare. Fortis, which already owns 25.3 per cent stake in Parkway, on July 1, 2010, announced that it intends to make a **full general voluntary offer** to acquire the remaining equity in the company for S\$3.80 apiece aggregating around \$2.3 billion (S\$3.2 billion). Out of the 25.3% stake already held by Fortis in Parkway, 23.9% had been acquired from TPG Capital and the remaining from the open market purchases.

Voluntary Offer (Rule 15.1 of Singapore Code on Takeovers and Mergers)

A voluntary offer is a take-over offer for the voting shares of a company made by a person when he has not incurred an obligation to make a general offer for the company under Rule 14.1. **A voluntary offer must be conditional upon the offeror receiving acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and person acting in concert**

with it holding more than 50% of the voting rights. In addition, a voluntary offer must not be made subject to conditions whose fulfillment depends on the subjective interpretation or judgement by the offeror or lies in the offeror's hands. Normal conditions, such as level of acceptance, approval of shareholders for the issue of new shares and the Securities Exchange's approval for listing, may be attached without reference to the Council. The Council should be consulted where other conditions would be attached.

Thus, the offer by Fortis could only be successful if they managed to get another 25 percent shares, taking their total stake in Parkway to 50 percent.

Options available to Khazanah

Various options are available to Khazanah like

- Exit Parkway by selling off its shares and earn a healthy premium, an option unlikely to exercise, as it has declared strategic interest in healthcare.
- Declare a full general offer revising its partial offer.
- Increase its offer price better than the Fortis and continue with the partial offer.

Fortis — at an edge

Though Fortis' counter-bid offers little premium over the one from Khazanah, it seems to have an edge over the latter on two counts.

- Fortis is offering to buy out the entire stake in the company. This is in contrast to the partial offer from Khazana. Doing this would give Khazanah a majority 51.5 per cent stake in Parkway as it already has 23.8 per cent holding in the company. However, since both the offers are priced at almost similar levels, it seems more likely that the existing shareholders looking to tender their shares in either of the offers would find Fortis' more attractive. Tendering to Fortis' offer promises a 100 per cent acceptance ratio as against that of its rival suitor.
- As Fortis enjoys better synergies of operation with Parkway by virtue of being an established hospital chain in India, therefore, it may also help it to win more brownie points over Khazanah, which is only a sovereign wealth fund.

With two advisory groups, Morgan Stanley and Glass Lewis, terming Khazanah's offer as not compelling and unfavourable may put some more pressure on Khaznah to put out a lucrative offer for Parkway. And with this bidding war Parkway shareholders will be a happy lot.

MARKET UPDATE

■ SC ruled in favour of Daiichi over Zenotech Offer Price

Supreme Court of India has settled a long standing dispute between pharma major Daiichi Sankyo (“Acquirer”) and the minority shareholders of Zenotech Laboratories over the Open Offer Price to paid to the shareholders of Zenotech Laboratories Limited (“ZLL”) and ruled that the Offer Price of Rs.113.62 per share offered by the Acquirer was lawful and fair.

■ BSE purchases 16% Stake in CDSL

BSE has acquired an additional approx. 16% stake in Central Depository Services Limited for Rs 84-92 Cr from HDFC Bank(7%), Bank of Baroda(4.5%) and Bank of India(4%). This deal values the depository at Rs 522-575 Cr.

■ Star India to exit Balaji Telefilms

Star India is planning to exit Balaji Telefilms by selling its 26% stake in the company. Reliance Big Entertainment may buy the stake in the company and if the transaction goes through, Reliance Big Entertainment will have to make a mandatory open offer to buy another 20% stake in the Balaji Telefilms.

■ SBI to buy back 13.84% stake in SBI Caps

SBI is buying back its 13.84% stake in SBI Capital Markets Limited from ADB. After the Buy Back, SBI CAPS will operate as a wholly owned subsidiary of SBI. ADB had acquired this stake in SBI for \$21.2 million.

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