

TAKEOVER PANORAMA

A Monthly Newsletter by Corporate Professionals
Year V-Vol. IV-April 2011




Insight

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LEGAL UPDATE

Adjudicating Officer/WTM/ SAT Orders

Target Company	Noticee/ Appellant	Regulation No.	Penalty Imposed/Decision Taken
Saumya Consultants Limited	Arun Kumar Agarwalla	Regulations 7(1A), 8(1) and 8(2) and 10 of the SEBI (SAST) Regulations, 1997 and Regulation 13(4) of SEBI (PIT) Regulations, 1992.	Violations do not established thus proceedings were disposed off.
Star Leasing Limited, presently known as Remidicheria Infra & Power Ltd	Remidicheria Infra & Power Ltd	Regulations 7(3) and 8(3) of the SEBI (SAST) Regulations, 1997	Rs. 1,50,000/-
Gemstone Investments Limited	Bhavesh Pabari	Regulation 7(1) and 7(2) of the SEBI (SAST) Regulations, 1997 and Regulations 13(1), (3) and (5) of SEBI (PIT) Regulations, 1992 and Regulation 4(1) and 4(2) (a), (b), (e) and (g) of the SEBI (PFUTP) Regulations, 2003.	Rs. 12,00,000/-
Liberty Shoes Limited	M/s Geofin Investments Private Limited	Regulation 3(3) of SEBI (SAST) Regulations, 1997	No Violation established thus proceedings were disposed off.



Autolite India Ltd.	Mr. Kapil Gupta	Regulation 11 (1) of SEBI (SAST) Regulations, 1997	Proceedings were disposed off as the Noticee is no more alive to face the penalty.
ETP Corporation Ltd.	Mr. Mukesh Choksi and M/s Parklight Securities Ltd.	Regulation 7 (1) read with Regulation 7 (2) SEBI (SAST) Regulations, 1997	Rs. 50,000 on each Noticee
JK Agri Genetics Ltd.	M/s Religare Finvest Ltd.	Regulation 7 (1) read with Regulation 7 (2) of SEBI (SAST) Regulations, 1997 and Regulation 13 (1), 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992	Rs. 1,00,000
Vision Organics Limited	Smt. Shilpa Dave	Regulations 7 and 10 of SEBI (SAST) Regulation, 1997	Rs. 12,00,000
K C Bokadia Films Limited	Mr. Hitesh Bhatt, Ms. Nita Patel, Mr. Vipul P Patel	Regulations 7(1A), 7(2) and 8(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(3) and 13(5) of SEBI (PIT) Regulations, 1992.	Proceedings were disposed off.
K C Bokadia Films Limited	M/s Glacier Credit Capital Limited, M/s Prime Finstocks Limited	Regulations 7(1A), 7(2) and 8(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(3) and 13(5) of SEBI (PIT) Regulations, 1992.	Rs. 50,000 on each Noticee



K C Bokadia Films Limited	Rajesh Kumar V. Patel	Regulations 7(1A), 7(2) and 8(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(3) and 13(5) of SEBI (PIT) Regulations, 1992.	Rs. 75,000
Blue Coast Hotels Limited	Liquid Holdings Private Limited	Regulation 11(1) of SEBI (SAST) Regulations, 1997	When the shares pledged were invoked by the bank and bank became beneficial owners of shares and thereafter on repayment of loan shares were transferred back to pledgors, then the re-transfer of shares will be considered as fresh acquisition of shares and would attract the provisions of SEBI Takeover Regulations.

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>Khatau Exim Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 24.90 Lacs</p> <p>Listed At BSE & PSE</p>	<p>Nav Rattan Munjal</p>	<p>Offer to acquire 49,800 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 1,38,950 (55.80%) equity shares at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker</p> <p>Corporate Professionals Capital Pvt. Ltd.</p> <p>Registrar to the Offer Alankit Assignments Ltd.</p>
<p>Woolite Mercantile Company Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 199.20 Lacs</p> <p>Listed At BSE</p>	<p>Seema Alok Pathak</p>	<p>Offer to acquire 3,98,400 (20%) Equity Shares at a price of Rs. 33 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 9,80,000 (49.20%) equity shares at a price of Rs. 25.35 per share payable in cash.</p>	<p>Merchant Banker</p> <p>Systematix Corporate Services Limited</p> <p>Registrar to the Offer Purva Shareregistry (India) Private Limited</p>
<p>Yogi Infra Projects Limited</p> <p>Regd. Office Vadodra</p>	<p>Moongipa Development and Infrastructure Limited and</p>	<p>Offer to acquire 33,69,160 (20%) Equity Shares at a price of Rs. 12 per share payable in</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 55,30,407 (32.83%) Equity Shares at a</p>	<p>Merchant Banker</p> <p>Aryaman Financial Services Limited</p>

<p>Paid up capital Rs. 16.84 crore</p> <p>Listed At BSE & VSE</p>	<p>Shiva Shakti Enclaves Private Limited</p>	<p>cash.</p>	<p>price of Rs. 10 per share.</p>	<p>Registrar to the Offer Sharex Dynamic (I) Pvt. Ltd.</p>
<p>ADC India Communications Limited</p> <p>Regd. Office Bangalore</p> <p>Paid up capital Rs. 4.60 crore</p> <p>Listed At BSE</p>	<p>Tyco Electronics Ltd.</p>	<p>Offer to acquire 9,20,000 (20%) Equity Shares at a price of Rs. 137.15 per share payable in cash.</p>	<p>Regulation 10 & 12 Indirect acquisition of 67.08% of the paid up equity share capital and control of the Target Company</p>	<p>Merchant Banker Kotak Mahindra Capital Company Limited</p> <p>Registrar to the Offer Karvy Computershare Private Limited</p>
<p>Automobile Products of India Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 48.17 Lacs</p> <p>Listed At BSE</p>	<p>Kiyana Real Estate Private Limited</p>	<p>Offer to acquire 9,63,532 (20%) Equity Shares at a price of Re. 1 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 31,96,189 (66.34%) Equity Shares at a price of Re. 1 per share.</p>	<p>Merchant Banker Collins Stewart Inga Private Limited</p> <p>Registrar to the Offer Universal Capital Securities Private Limited</p>



HINT OF THE MONTH

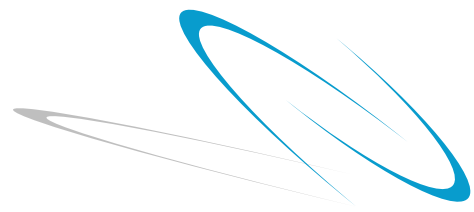
Acquisition of voting rights or of preference shares carrying voting rights arising in pursuance of Section 87(2) of the Companies Act, 1956 is exempt from the applicability of regulation 3 and 4 of TRAC Report.

{As substantiated from Regulation 10(1)(h) of SEBI (SAST) Regulations, 2010-TRAC Report}

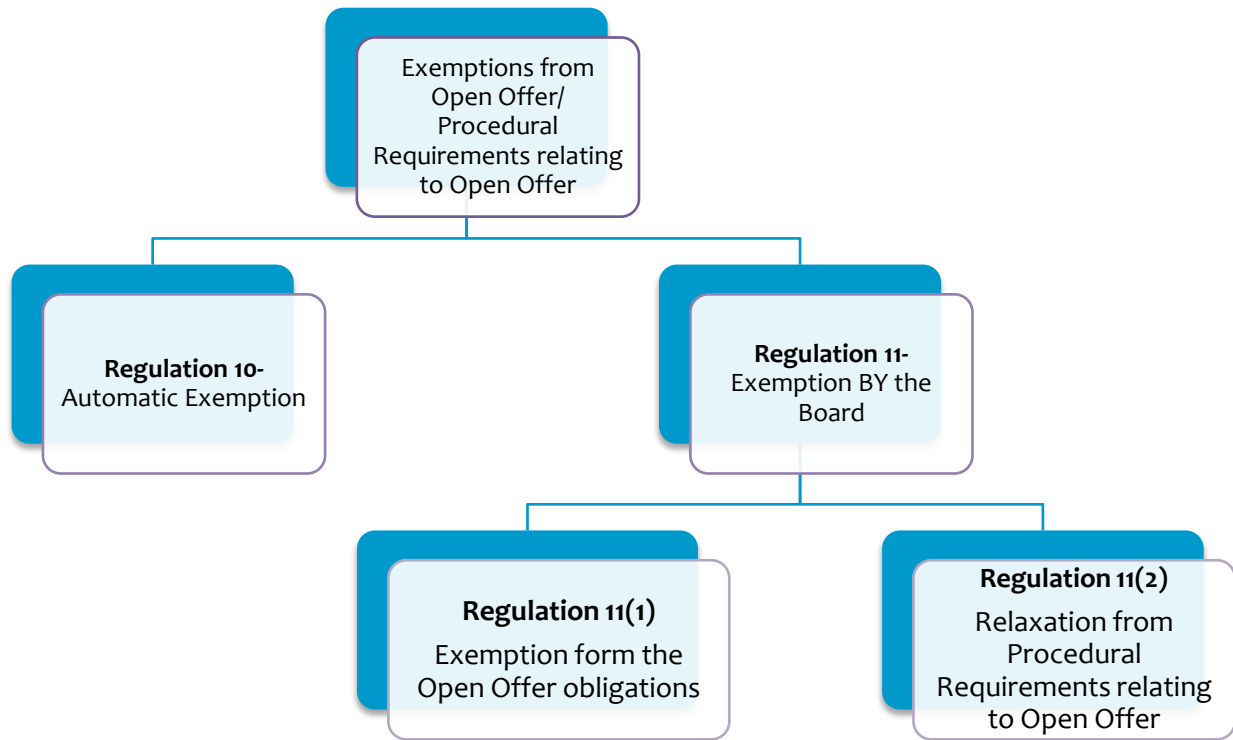
REGULAR SECTION

An Analysis of Regulation 11 of SEBI (SAST) Regulations, 2010 (TRAC Report)

Regulation 11 of SEBI (SAST) Regulations, 2010 (“**TRAC Report**”) provides the provisions whereby the acquirer can apply to SEBI (“**Board**”) for availing the exemption from the Open Offer obligations and the Target Company can apply for relaxation from strict compliance with any procedural requirement relating to Open Offer as provided under Chapter II of TRAC Report. Presently, these provisions are regulated by regulation 4 and regulation 29A of SEBI (SAST) Regulations, 1997.



The provision of regulation 11 of TRAC Report is depicted below:



It is to be noted that the exemptions provided under regulation 11 of TRAC Report and under regulation 4 and 29A of SEBI (SAST) Regulations, 1997 falls under the approval route. Both the SEBI (SAST) Regulations, 1997 as well as the TRAC Report also provides the provisions relating to the automatic exemptions wherein the exemption is available subject to the compliance with the conditions as provided under the said regulations.

An analysis of the provisions of regulation 11 of TRAC is given below:

Exemption from Open Offer

Regulation 11 provides that on an **application being made by the acquirer** in writing giving the details of the proposed acquisition and grounds on which the exemption is sought alongwith duly sworn affidavit, the Board may grant exemption to the acquirer from the Open Offer obligations subject to the compliance with such conditions as it deems fits. For instance, in case where the exemptions is sought from the Open Offer obligations which has been triggered pursuant to the issue of shares by way preferential allotment, the Board may require that the approval of shareholders should be obtained by way of postal ballot.



Further, along with the application, the acquirer is also required to pay a non refundable fee by way of banker's cheque or demand draft in payable in favour of Mumbai.

However, it is to be noted that the Acquirer is not exempted from making other compliances related to the disclosure requirements as provided under regulation 28, 29 and 30 of TRAC Report.

Relaxation from Procedural Requirements relating to Open Offer

The acquirer may also be granted the relaxation from the procedural requirements relating to Open Offer by the Board on an **application being made in writing by the Target Company** giving the details of the proposed acquisition and grounds on which the relaxation is sought alongwith duly sworn affidavit. The purpose and intent of regulations is to safeguard the interest of investor and not to act as an impediment in the furtherance of their interest.

The SEBI has been given the power to relax the conditions of Chapter II, which contains the provisions relating to open offer, in the following circumstances:

- I. Where pursuant to the powers conferred under the Companies Act or any other law, the Central Government or State Government or any other regulatory authority has removed the Board of Directors of the Target Company due to the serious mismanagement of operations by the management and has appointed new directors, to hold office as directors for orderly conduct of the affairs of the target company; and
 - a. For the orderly conduct of the affairs of Target Company, such new directors have devised a plan. The plan devised by such directors is transparent, open, and competitive process for the acquisition of shares or voting rights or control over the Target Company to secure smooth and continued operation of the target company which is in the interests of all stakeholders in the target company and such plan does not further the interests of any particular acquirer;
 - b. The conditions and requirements of the competitive process are reasonable and fair;
 - c. The process adopted by the Board provides for details including the time when the public offer would be made, completed and the manner in which the change in control would be effected;
- II. As per the said plan devised by the government appointed directors, the provisions of this Chapter relating to open offer cannot be complied with in the wake of extra-ordinary

circumstances of the case and they are likely to act as impediment to implementation of the plan
circumstances of the case and they are likely to act as impediment to implementation of the plan
of the target company and relaxation from one or more of such provisions is in public interest,
the interest of investors and the securities market.

Before passing any order under regulation 11, the Board may provide an reasonable opportunity of
being heard to the applicant. However, if necessary the Board may refer the application for
exemption made under Regulation 11(1) to the penal of experts constituted by it for their
recommendations.

CASE STUDY

Vodafone-Essar Deal

About Vodafone Essar Limited

Vodafone Essar, commonly referred to as Vodafone, is a cellular operator in India that covers 23 telecom circles in India. It was formerly known as Hutchison Essar. Vodafone is the world's largest mobile telecommunications company measured by revenues.

Vodafone-Essar Deal

In February 2007, Hutchison Telecom had entered into a binding agreement with a subsidiary of Vodafone Group Plc to sell its 67% direct and indirect equity and loan interests in Hutchison Essar Limited for a total cash consideration of approximately \$11.1 billion. The Joint Venture was named as Vodafone Essar. Essar's 33 per cent in Vodafone Essar is held in two entities. A foreign entity, Mauritius-based Essar Communications (Mauritius) Ltd (ECML), holds 22.03 per cent. An Indian entity, Essar Telecommunications Holdings Pvt Ltd (ETHPL), holds 10.97 per cent.

Vodafone Essar Limited

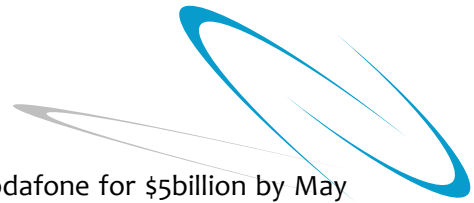
Industry: Telecommunication

Predecessor: Hutchison Essar

Founded: 1994

Products: Mobile Networks, Telecom Services. Etc.

Owners: Vodafone Group



Vodafone granted an option to Essar to either sell its 33% holding to Vodafone for \$5 billion by May 2011 or to dispose of a part of it at a fair market value arrived at by an independent entity. The group also has the choice of not invoking the option and continuing as a partner.

Conflict between Vodafone and Essar with respect to Essar Telecommunications reverse listing

In January 2011, Essar planned for Essar Telecommunications Holdings' reverse listing into India Securities Limited (ISL), a small public company, through a scheme of merger. However, this plan was objected by Vodafone on the ground that ISL was a "highly illiquid vehicle" and more than 95 per cent of its shares would be under the control of the Essar Group and two other shareholders. Accordingly, small amounts of buying or selling could distort ISL's share price and it is possible that the value of ISL could be misinterpreted as a fair market value of Vodafone Essar."

Nevertheless, the Essar has decided to go ahead with its plan for reverse listing.

Core Dispute between Vodafone and Essar's


The bone of disputation is basically the fair market valuation of Essar's stake in the JV. The value of the option in the overseas entity has almost a 50 premium compared to the value of the option held by the Indian entity. The 22.03 per cent in ECML is valued at \$3.8 billion and the 10.97 per cent in the Indian vehicle, ETHPL, is valued at \$1.2 billion.

According to the Foreign Exchange Management Act, the transfer of shares between two foreign entities is not subject to its guidelines. However, the transfer from an Indian entity to a foreign one does come under its jurisdiction.

Further, the FEMA guidelines on FDI in India governing the price of shares transferred by way of sale by a resident to a non-resident provides that where the shares of an Indian company are in an unlisted entity, "then the value of those shares shall not be less than the fair value to be determined by a Sebi-registered Category I merchant banker or a chartered accountant as per the discounted free cash flow method."

Thus, the transfer of 10.97% shares by Essar's should be valued at a fair market price, determined by an I-Bank. Both Essar and Vodafone have appointed investment bankers Standard Chartered Bank, UBS and Goldman Sachs to help them evaluate the fair market valuation of the JV.

It is to be noted that the Essar was keen to stand by its contractual obligations and would honour the call option for the 10.97 per cent stake in Vodafone Essar Ltd. It has already applied to RBI, seeking



permission to transfer these shares for \$1.2 bn in terms of the call option exercised by Vodafone. But the exercise has to comply with the applicable laws and regulatory approvals.

However, Vodafone insists that its transaction, including the valuation that was done for the entire 33 per cent stake, complies with RBI norms.

Post shareholding pattern

The final shareholding pattern post this deal was not provided by the company as it was not clear whether Vodafone's stake would exceed the 74 per cent FDI limit. Indian laws don't allow foreign companies to own more than 74% in a local mobile-phone operator. Vodafone has assured it will comply with local rules. completion of the deal would be subject to meeting certain conditions which include Reserve Bank of India's permission as well as valuation of the deal.



MARKET UPDATE

SEBI approves iGate Patni takeover deal

Market regulator SEBI has approved the iGate takeover offer for Patni of around \$1.22 billion which was awaiting regulatory nod for about two months. Earlier, SEBI had sought certain clarifications on the deal which was duly provided by the Company.

Monnet Ispat acquires Indonesian Coal Firm

Monnet Ispat and Energy Limited (MIEL) has acquired PT Sarwa Sembada Karya Bumi, an Indonesian coal company, for \$24 Mn. MIEL has made the investment through its wholly-owned subsidiary, Monnet Global Ltd (MGL). MIEL also plans to sell the surplus coal in the open market, which will provide the company a long term source of revenue for the company. The deal was initially executed in 2008 but was blocked due to process and regulatory procedures.

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