

TAKEOVER PANORAMA

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INSIGHT

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LEGAL UPDATE

Informal guidance in the matter of C & C Construction Limited

Facts:

1. As on 30th September, 2008 the promoter and Promoter group of C & C Construction Limited (Target Company) were holding 1,26,44,418 equity shares aggregating to 69.25% of the total paid up capital of the Target Company.
2. In accordance with SEBI notification dated 30th October, 2008, the Promoter and Promoter group of the Target Company had started purchasing the shares from the open market and till February, 2010, a total 2,12,766 equity shares were required. Further, on March 12, 2010, some Promoters and entities of Promoters' group were allotted 19,76,284 warrants on preferential basis.
3. On April 13, 2010, the Target Company had issued and allotted 31,53,000 equity shares of Rs. 10 each to QIBs and 19,76,284 warrants which were issued to the Promoters and entities of Promoters' group on March 12, 2010, were converted into equity shares and as a result of which the paid-up capital of the Target Company had increased to Rs. 23,38,92,600 comprising of 2,33,89,260 equity shares of Rs. 10 each and Promoters and Promoters' group holding had come down to 63.43% from 69.25% of paid up capital of the Target Company.

No interpretation is issued by SEBI as it is not in a position to respond to the query in terms of Clause 8 (viii) of SEBI (Informal Guidance) Scheme, 2003.

Issue:

Whether the limit of 5% is to be calculated on the then paid up capital of the Target Company when the promoters and promoters' group started purchasing shares from the market or it will be calculated on the increased paid up capital of the Target Company post issue of shares to QIBs and preferential allotment to promoters?

Decision:

No interpretation had been given by SEBI as the proposed transaction involves policy concerns and therefore, SEBI is not in a position to respond to the same in terms of clause 8 (viii) of SEBI (Informal Guidance) Scheme, 2003.

Adjudicating Officer Order

Target Company		Noticee		Regulations	Penalty Imposed/ Decision Taken
Zenzy Limited	Technocrats	Zenzy Limited	Technocrats	Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997	Rs. 2,50,000
Sanguine Limited	Media	C. V. Ravi		Regulation 7(1), 7(1A), 8A(2) and 8A(3) of SEBI (SAST) Regulations, 1997 and Regulation 13(4), 12 (1) of SEBI (PIT) Regulations, 1992	Rs. 3,00,000
Jyothi Ltd	Infraventures	Jyothi Ltd	Infraventures	Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997	Rs. 1,50,000

Consent order in the matter of APW President Systems Limited

APW President Systems Limited (Applicant) had failed to comply with Regulation 6 (4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8 (3) of the said regulations for the year 2004, 2005, 2007 to 2010 within the prescribed time. Therefore, the applicant had filed the consent application on March 3, 2011 and vide letter dated June 2, 2011, proposed the revised consent terms to settle the delay in compliance on the payment of Rs. 4,50,000 towards 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 delay in compliance of the applicant.

Consent order in the matter of Thyrocare Biotech Private Limited

Adjudication proceedings were initiated against Thyrocare Biotech Private Limited (Noticee) for the violation of regulations 3 (3) and 3 (4) of the SEBI (SAST) Regulation 1997 in the matter of acquisition of 23.67% shares of Thyrocare Laboratories Ltd. (Target Company) in the month of March, 2010 through inter se transfer. Pending the adjudication proceedings, the Noticee proposed to pay Rs.2,50,000 towards settlement charges. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI settled the above violations done by the Noticee.

Consent order in the matter of Thyrocare Diagnostics Private Limited

Adjudication proceedings were initiated against Thyrocare Diagnostics Private Limited (Noticee) for the violation of Regulation 3(3) and 3(4) of the SEBI (SAST) Regulations, 1997 in the matter of acquisition of 23.67% shares of Thyrocare Laboratories Ltd. (Target Company) in the month of March 2010 through inter se transfer. Pending the adjudication proceedings, the Noticee vide application dated 01.02.2011 proposed to pay Rs.2,50,000 towards settlement charges. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee(HPAC) and on the recommendation of the HPAC, SEBI settled the above violations done by the Noticee.

Consent order in the matter of BT Frontline Pte. Ltd.

SEBI had initiated adjudication proceedings against BT Frontline Pte. Ltd. (Noticee) for the violation of Regulation 3(4) read with 3(5) of SEBI (SAST) Regulations, 1997 in the matter of acquisition of shares and voting rights of Accel Frontline Limited (Target Company). It is alleged that pursuant to inter se transfer of shares, Accel Ltd. (Transferor) had transferred 20,25,819 (9%) shares of the Target Company to the Noticee, thereby increasing the shareholding of the Noticee from 42% to 51%. The Noticee submitted the required report with a delay of 491 days. Therefore, the Noticee had filed the consent application on December 9, 2010 and vide letter dated June 2, 2011, proposed the revised consent terms to settle the delay in compliance on the payment of Rs. 5,00,000 towards settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settled the above delay in compliance of the applicant.

LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
<p>Circuit Systems (India) Limited</p> <p>Regd. Office Gandhinagar</p> <p>Paid up capital Rs. 15.70 Crore</p> <p>Listed At BSE</p>	Paresh N. Vasani	Offer to acquire 31,40,000 (20%) Equity Shares at a price of Rs. 14.75 per share payable in cash.	<p>Regulation 11 (1) & 12</p> <p>Acquisition of 50,55,090 (32.20%) equity shares increasing the shareholding of the Acquirer to 77,03,180 (49.07%) equity shares.</p>	<p>Merchant Banker PL Capital Markets Pvt. Ltd.</p> <p>Registrar to the Offer Cameo Corporate Services Ltd.</p>
<p>Yash Trading and Finance Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs 24.50 Lakhs</p> <p>Listed At BSE</p>	Pradeep Kumar Sethy	Offer to acquire 49,000 (20%) Equity Shares at a price of Rs. 157 per share payable in cash.	<p>Regulation 10 & 12</p> <p>SPA to acquire 1,71,500 (70%) Equity Shares at a price of Rs. 156.42 Per share.</p>	<p>Merchant Banker Indbank Merchant Banking Services Limited</p> <p>Registrar to the Offer Bigshare Services Private Limited</p>
<p>Jaihind Projects Limited</p> <p>Regd. Office Ahmedabad</p>	DCOM Systems Limited	Offer to acquire 19,51,489 (20%) Equity Shares at a price of Rs. 140 per share payable in cash.	<p>Regulation 10, 11 (1) & 11 (2)</p> <p>Conversion of 24,90,000 convertible warrants into</p>	<p>Merchant Banker Chartered Capital And Investment Ltd.</p>

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
<p>Paid up capital Rs.725.74 Lakhs</p> <p>Listed At BSE</p>			equity share at a price of Rs 60 per share thereby increasing the shareholding of Acquirer from 14.18% to 36.06%.	<p>Registrar to the Offer Link Intime India Private Limited</p>
<p>Molind Engineering Limited</p> <p>Regd. Office Mohali</p> <p>Paid up capital Rs 2.53 crore</p> <p>Listed At LSE, DSE & CSE</p>	Royal Beverages Private Limited	Offer to acquire 5,07,000 (20%) Equity Shares at a price of Rs. 52 per share payable in cash.	<p>Regulation 10 & 12 SPA to acquire 13,76,867 (54.31%) Equity Shares at a price of Rs. 45 Per share</p>	<p>Merchant Banker Master Capital Services Ltd.</p> <p>Registrar to the Offer Skyline Financial Services Private Limited</p>
<p>Shree Ram Urban Infrastructure Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs 28.17 crore</p>	Hanumesh Realtors Private Limited, Mandakini Hospitality Private Limited and Yashaswini Leisure Private Limited	Offer to acquire 82,26,908 (20%) Equity Shares at a price of Rs. 147 per share payable in cash.	<p>Regulation 11(2) Conversion of 1,15,84,678 convertible warrants into equity share at a price of Rs 140 per share thereby increasing the shareholding of</p>	<p>Merchant Banker Aryaman Financial Services Ltd.</p> <p>Registrar to the Offer Bigshare Services Private Limited</p>

Name of the Target Company	Name of the Acquirers	Details of the offer	Reason of the offer	Concerned Parties
Listed At BSE			Acquirers (along with other promoter group members) from 59.68% to 69.04%.	
Hari Om Trades & Agencies Limited Regd. Office Mumbai Paid up capital Rs 24.90 Lakhs Listed At BSE	Delma Investments LLC and Ushadevi Pathiyil	Offer to acquire 49,800 (20%) Equity Shares at a price of Rs. 200 per share payable in cash.	Regulation 10 & 12 SPA to acquire 1,84,450 Equity (74.08%) Shares at a price of Rs. 200 Per share	Merchant Banker Fedex Securities Limited Registrar to the Offer Bigshare Services Private Limited
Dr. Wellman's Homoeopathic Laboratory Limited Regd. Office New Delhi Paid up capital 475.15 Lakhs Listed At BSE, DSE and ASE	Devinder Kumar Jain and Madhulika Jain	Offer to acquire 15,20,070 (30%) equity shares at a price of Rs 2.75 per fully paid up equity share and Rs. 1.38 per partly paid up equity share payable in cash.	Regulation 10 & 11 For the purpose of consolidation of holding.	Merchant Banker SPA Merchant Bankers Limited Registrar to the Offer Beetal Financial and Computer Services Private Limited

HINT OF THE MONTH

“Offer Period” means the period between the date of entering into an agreement to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, whichever is earlier, and the date on which the payment of consideration to shareholders who have accepted the Open Offer is made.

(As substantiated from regulation 2(1) (q) of SEBI (SAST) Regulations, 2010-TRAC Report)

REGULAR SECTION

Green Signal to New Takeover Regulations

On July 28, 2011, Market watchdog SEBI has finally approved the much awaited Recommendations of Achuthan Committee on New SEBI Takeover Regulations with some modifications based on the comments of Industry, Professionals and Chambers of Commerce. It's a good move in the direction of simplification of complicated law.

Highlights of New Takeover Regulations:

1) Increase in threshold for Open Offer from 15% to 25%

It seems to be beneficial from the point of Private Equity and Institutional investors who had to restrict themselves to 14.99% stake in every listed company in terms of existing regulations and also for the Companies raising funds from Private Equity and Institutional investors. It will support more capital inflows from private equity players and PE investment is likely to become a stable and important source of capital for Indian businesses in coming years.

2) Increase in Offer Size from 20% to 26%

This is owing to industry pressure against the 100% offer size. Its good move from the point of view of domestic promoters and industry as the cost concerns and funding of offer is addressed to a major extent.

3) Abolition of Non-compete fees

SEBI has accepted the TRAC recommendation of scrapping the non-compete fee. Outright scrapping may not be treated as a right move as the Promoters cannot be treated at par with the general public shareholders specifically where the promoters have real personal contribution in business.

4) Acquisition from the other competing acquirer

In cases of competitive offers, the successful bidder can acquire shares of other bidder(s) after the offer period without attracting Open Offer obligations.

5) Recommendation on the offer by the Board of Target Company has been made mandatory.

6) Voluntary offers have been introduced subject to certain conditions.

7) Existing definition of Control as provided in SEBI (SAST) Regulations, 1997 is retained as it is.

8) The Board did not accept the recommendation of TRAC to provide for delisting pursuant to an offer and proportionate acceptance.

Comparison of Major Provisions of New Takeover Regulations

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
Initial Trigger	Acquisition of $\geq 15\%$	Acquisition of $\geq 25\%$	Accepted the Recommendation of TRAC Report	Beneficial from the point of Private Equity and Institutional investors who had to restrict themselves to 14.99% stake in every listed company in terms of existing regulations and also for the

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
				Companies raising funds from Private Equity and Institutional investors.
Offer Size	20% of the Voting Capital	For all the remaining shares of the Company	Increase from 20% to 26% of the Voting Capital. Not Accepted the Recommendation of the TRAC Report	This is due to the industry pressure against the 100% offer size as the proposal for 100% offer size will make the offer a costly affair for the acquirer as it will involve a larger cash outflow and can be a deterrent for takeover offers and might cause negative impact on M&A activities.
Non Compete Fees	Allowed upto 25% of the Offer Price	Scrapped	Accepted the Recommendation of TRAC Report	Outright scrapping may not be treated as a right move as the Promoters cannot be treated at par with the general public shareholders specifically where the promoters have real personal contribution in business.
Control	Control shall include the right to appoint majority of the directors or to control the management or	Control includes the right or the ability to appoint majority of the directors or to control the management or policy decisions of	Not Accepted the Recommendation of TRAC Report Existing definitions of control as given in SEBI (SAST)	The TRAC Report has widened The scope of term Control to include not only the right but also the situations where the persons have the ability to appoint majority of the directors or to exercise

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
	policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.	the target company, exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;	Regulations, 1997 is retained.	control in any other manner. The existing definition of Control covers within its ambit only the right to appoint majority of the directors or to exercise control in any other manner. However, the Board has not accepted the definition and decided to retain the existing one.
Voluntary Open Offer	No Separate Provisions.	Separate Provisions provided. <ul style="list-style-type: none"> • Prior holding of $\geq 25\%$; • Offer Size-Minimum for 10% 	Voluntary offers have been introduced subject to certain conditions. Accepted the Recommendation	The rationale of this option of lower size offer is that the purpose of offer is just consolidation of holding and no one is being given preferred treatment as in case of transfer of shares or

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
			of TRAC Report	control.
Recommendation by the Board of the Target Company	Voluntary	Mandatory	Accepted the Recommendation of TRAC Report	The new regulations have casted an obligations on the Board of the Target Company to constitute a committee of independent directors which shall provide its written reasoned recommendations on the open offer to the shareholders of the Target Company. This is in contrast with the existing regulations which have left this requirement at the choice of the directors of the Target Company.
Acquisition from the other competing acquirer	No Provision.	The Committee has made a provision allowing the competing acquirer to acquire either himself or through or with PACs with him, the shares acquired by the other competing acquirer in the open offer without attracting the obligation to	Accepted the recommendation of TRAC Report	Keeping in view the increasing trend of competitive biddings in India this may be taken as an imperative step as compelling two warring groups to continue in a company may not be in the interest of the company and smooth passage to one of the competitive bidders is desirable.

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
		make another Open Offer provided that the acquisition has been made at the price not exceeding the offer price governing the competing offer made by the acquirer acquiring the shares and the acquisition has been made within 21 business days from the expiry of the offer period for such competing offer.		
Delisting Pursuant to the Offer	No Provision	The TRAC gives an option for the Delisting of the Company pursuant to the Open Offer where the shareholding of the Acquirer along with PACs post Offer has exceeded the delisting threshold and he has declared his intention upfront	Not Accepted the recommendation of TRAC Report	The declining of the automatic delisting recommendation is probably, with the intent that the public shareholders of the company should upfront take a conscious decision as to tendering or not, keeping in mind that the company will continue to be a listed company or will become an unlisted entity. Furthermore, with this automatic delisting provision, the “Success of

Heading	SEBI (SAST) Regulations, 1997	TRAC Report	New Takeover Regulations	Remarks
		for the delisting.		Offer' provision, as stipulated in the Delisting Regulations would have become redundant and promoters would have taken shelter under this route, thus circumventing the Delisting provisions.

CASE STUDY

An Analysis of Takeover Open Offer for Petron Engineering Construction Limited

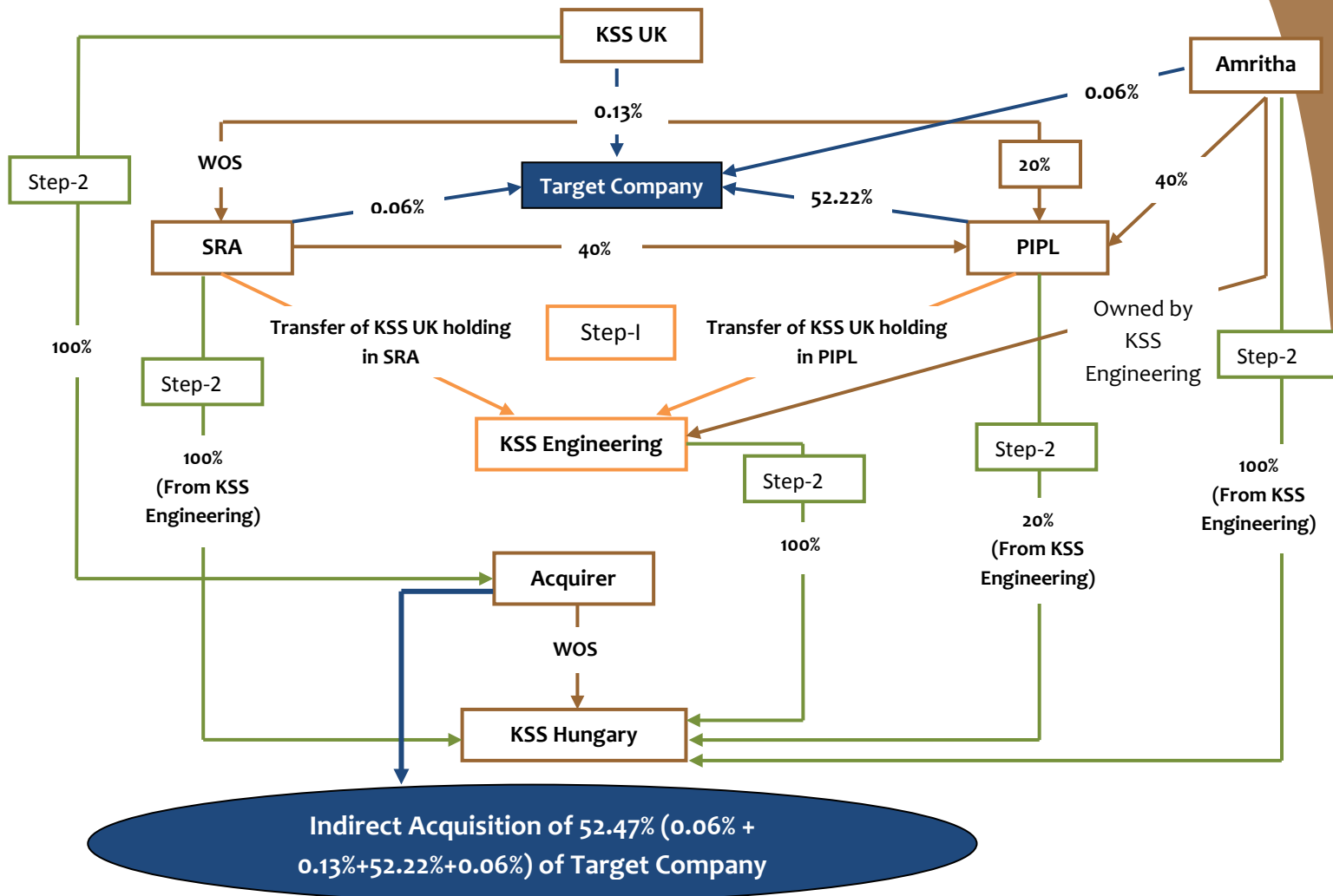
About Petron Engineering Construction Limited (Target Company)

Incorporated on July 19, 1976, the Target Company is engaged in the business of fabrication, erection and installation of plant and machinery and equipment for refineries, cement plants, fertilizer plants, petro-chemical plants, power plants and other industrial plants and undertaking, shutdown and annual turnaround contracts for repairs, revamp and reconditioning of large industrial projects. The shares of the Target Company are listed at BSE and NSE.

About KazStroyService Global B.V. (Acquirer)

Incorporated on February 13, 2009 as a limited liability company under the laws of Netherland, the Acquirer is an Investment Holding Company.

Deal Structure



The above deal structure is explained below:

- I. SRA Finance and Investments Private Limited (“**SRA**”) is a wholly owned subsidiary (WOS) of KazStroyService Limited (“**KSS UK**”).
- II. Petron Investments Private Limited (“**PIPL**”) was held by Amritha Sharanya Leasing and Investments Private Limited (“**Amritha**”), SRA and KSS UK in the ratio of 40:40:20.
- III. **The promoters of the Target Company comprises of:**
 - a. PIPL (52.22%)
 - b. KSS Engineering (0.13%)
 - c. SRA (0.06%)

d. Amritha (0.06%)

IV. Step-1 (Agreement dated May 13, 2011)

- a. Transfer of legal ownership of shares held by KSS UK in SRA and PIPL to KazStory Engineering (UK) Limited (“KSS Engineering”).
- b. The beneficial ownership in Amritha and PIPL was already held by KSS Engineering.

V. Step-2 (Agreement dated May 19, 2011)

- a. **Transfer of 100% beneficial ownership of KSS UK to Acquirer;**
- b. **Transfer of**
 - i. **100% beneficial ownership of KSS Engineering;**
 - ii. **100% beneficial ownership of SRA;**
 - iii. **100% beneficial ownership of Amritha;**
 - iv. **20% beneficial ownership of PIPL;****to KSS Hungary, a wholly owned subsidiary of the Acquirer.**

Pursuant to the agreement dated May 13, 2011 and May 19, 2011, the Acquirer indirectly acquired 52.47% shares of the Target Company which has resulted into triggering of regulation 10 and 12 of SEBI (SAST) Regulations, 1997.

Takeover Open Offer

Pursuant to above indirect acquisition of shares, the Acquirer along with PACs had made an Open Offer to the shareholders of the Target Company to acquire 15,07,680 (20%) equity shares of the Target Company at a price Rs.386.58 per share.

MARKET UPDATE

Loyalty One acquired 26% stake in Direxions Marketing Solutions

Loyalty One, a Canada-based Company had acquired 26% stake in Direxions Marketing Solutions Private Limited, a customer relationship management solutions and data analytics company. LoyaltyOne is a global provider of customer analytics and relationship marketing services. The acquisition will help Loyalty One to enter into Indian market which is one of the world's fastest-growing consumer markets.

Dialog Group proposed to acquire 51% stake in Anewa Engineering

Malaysia's Dialog Group is acquiring 51% stake in Anewa Engineering Private Limited through its wholly owned unit Dialog Systems (Asia) Pte Ltd for around \$2.6 Mn. The deal would be funded by Dialog Group through its own funds and borrowings and will help Dialog to add new customers in India, Middle East and South East Asia.

Acquisition of JP Morgan, India Advantage stake in PVR Pictures by PVR

PVR Limited has acquired 40% stake from JP Morgan Mauritius Holding IV and India Advantage fund V in PVR Pictures Ltd. With this acquisition, PVR Pictures has become a wholly owned subsidiary of PVR Limited.

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