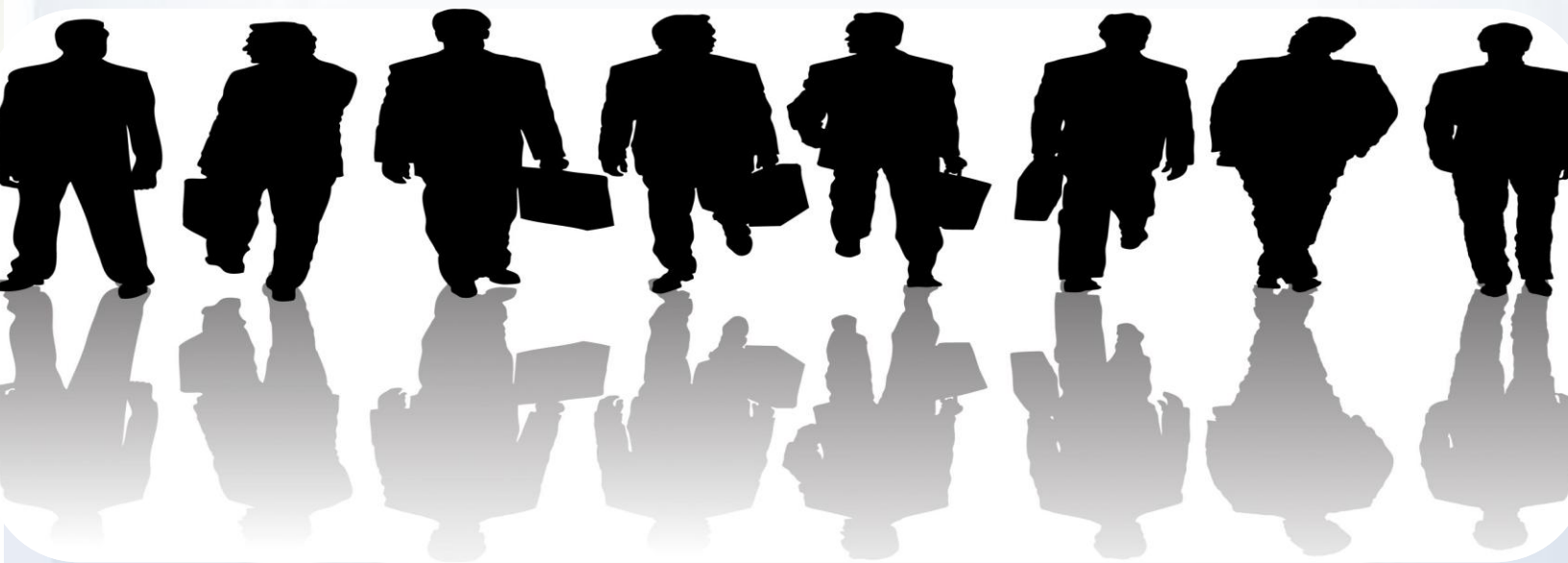




Takeover Panorama

A Monthly Newsletter by Corporate Professionals
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Insight

Legal Update - Takeover Panel Order in the matter of Hindustan Composites Limited - Takeover Panel Order in the matter of Jainex Aamcol Limited - Adjudicating Officer/WTM Orders	3
Latest Open Offers	7
Hint of the Month	11
Regular Section - Indirect acquisition of Shares or Voting Rights or Control – A comparison of SEBI (SAST) Regulations, 1997 and TRAC Report	12
Case Study - An analysis of Takeover Open Offer for APW President Systems Limited	14
Market Update	17
Our Team	18

Legal Update

Takeover Panel Order in the matter of Hindustan Composites Limited

Facts:

Mr. Pawan Kumar Choudhary (Acquirer) and other Acquirers belong to the promoter group of Hindustan Composites Limited (Target Company) and are presently holding 67.11% of the voting capital of the Target Company. Pursuant to the Buy Back of 5,78,320 equity shares of the Target Company from the open market at a price not exceeding Rs. 550/- per share, the voting rights of the Acquirers will increase from 67.11% to 75%, which would result into triggering of Regulation 11(2) of SEBI (SAST) Regulations, 1997. Therefore, the Acquirer on his behalf and on behalf of other Acquirers has filed the application seeking exemption from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997 on the following grounds.

SEBI granted exemption to the acquirers from the requirement of making Open Offer under Regulation 11(2) of SEBI (SAST) Regulations, 1997 where the increase in shareholding of the Acquirers is pursuant to Buy Back of shares.

Grounds of Exemption:

1. There is no direct acquisition of shares or voting rights by the acquirers and the increase in their voting rights is on account of buy-back of 5,78,320 equity shares;
2. There would be no change in management control of the target company;
3. The acquirers will not acquire a single share of the Target Company;
4. Minimum public shareholding would be maintained;
5. The proposed buy-back is expected to enhance earnings per share and overall shareholder value.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirers from the requirement of making Open Offer under Regulation 11(2) of SEBI (SAST) Regulations, 1997 subject to the acquirers complying with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable.

Takeover Panel Order in the matter of Jainex Aamcol Limited

Facts:

Mr. Bhagat Singh Dugar and Mr. Ronojoy Mazumdar (Acquirers) belongs to the Promoter Group of Jainex Aamcol Limited (Target Company) and has filed application dated December 16, 2009 read with subsequent application dated January 11, 2010 seeking exemption from the applicability of Regulation 10 and 11 of SEBI (SAST) Regulations, 1997 for proposed acquisition of 8,10,000 equity shares of the Target Company at a price of Rs. 40 per share through preferential allotment by the Target Company, as a result of which their shareholding would increase from 45.75% to 74.92% of the Target Company.

Exemption was rejected where the increase in shareholding is pursuant to preferential allotment of shares and there are no justifiable grounds for exemption.

However the application for exemption was rejected by the Takeover Panel. The Acquirers contended that the takeover panel 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. Therefore in the interest of justice the matter is remanded back to the Takeover Panel for fresh consideration.

Grounds of Exemption:

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

2. No change in control of the Target Company.

Decision:

WTM observed that the networth of the Company was positive as on 31 March 2009 and 31 March 2010. Further the networth of the Company for 2011 is projected at Rs. 159.17 Lacs (if the unsecured loans are not converted into equity) and Rs. 479.17 Lacs (if the loans are converted into equity). Moreover the credit balance (projected) in Profit & Loss Account after deferred tax credit for 2011 is (-)Rs. 37.17 Lacs. From the annual reports of the Company for 2010, it has been observed that the sales of the Company have increased from Rs. 664.37 Lacs as on 2009 to Rs. 767.52 Lacs on 31 March 2010. Moreover, the market price of the share of the Target Company is in the range of Rs. 109 to Rs. 121 during December 2010 and Rs. 110 to Rs. 134.50 during the period from November 2009 to December 2010. And the proposed allotment would increase the shareholding of the Acquirers from 45.75% to 74.92%, at a price less than half of the market price. Furthermore, if an offer is made for the said price, the public shareholders can avail an opportunity to exit their shareholding more particularly when the shares of the Target Company are illiquid.

WTM also noted that the acquisition of shares through preferential allotment is not exempted automatically from the applicability of provisions of SEBI (SAST) Regulations, 1997 and such an exemption is given by SEBI on case to case basis particularly when the Target Company has become sick and infusion of funds is for the purpose of rehabilitating the Company or required under CDR package.

Therefore after considering all the facts and circumstances of the case, WTM did not find the present application fit for grant of exemption from the applicability of Regulation 11(1) and (2) of SEBI (SAST) Regulations, 1997. Accordingly, the application is rejected.

Adjudicating Officer/WTM Orders

Target Company	Noticee	Regulation No.	Penalty Imposed/Decision Taken
Veronica Laboratories Limited	VFSL Capital Limited (Earlier known as Veronica Financial Services Limited)	Regulation 10, 11(1) and 12 of SEBI (SAST) Regulations, 1997.	Proceedings were disposed off.
Blue Coast Hotels and Resorts Limited	Morgan Securities and Credits Private Limited, Northern Projects Ltd, Praveen Electronics Pvt. Ltd. , Morgan Ventures Ltd.	Regulation 10 of SEBI (SAST) Regulations, 1997.	Rs. 40,00,000 on each Noticee.
Blue Coast Hotels and Resorts Limited	Namedi Leasing and Finance Limited (NLFL) and Poysha Fincorp Private Limited	Regulation 10 of SEBI (SAST) Regulations, 1997	No violation established and hence, no penalty was imposed.
Orissa Sponge Iron and Steel Limited	Torsteel Research Foundation in India	Regulations 3(4) and 3(5), 7(1) read with 7(2), Regulation 10 and 11 of SEBI (SAST) Regulations, 1997	Rs. 20,00,000/-
Adam Comsof Limited	Shri Rajesh Sakharie	Regulation 7 (1) & 7 (2) of SEBI (SAST) Regulations, 1997 and Regulation 3 (a), 3(c), 4 (1), 4(2)(a) and 4 (2) (e) of SEBI PFUTP Regulations	Rs. 1,00,000/-

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>Patni Computer Systems Limited</p> <p>Regd. Office Pune</p> <p>Paid up capital Rs. 2633.03 Lacs</p> <p>Listed At BSE and NSE</p>	<p>Pan - Asia iGATE Solutions and iGATE Global Solutions Limited along with iGATE Corporation</p>	<p>Offer to acquire 2,70,85,565 (20.6%) Equity Shares at a price of Rs. 503.50 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Share Purchase Agreement to acquire 6,28,43,283 (47.73%) equity and Securities Purchase Agreement to acquire 2,01,61,867 ADS (15.31%) at a price of Rs. 503.50 per share.</p>	<p>Merchant Banker Kotak Mahindra Capital Company Limited</p> <p>Registrar to the Offer Karvy Computershare Private Limited</p>
<p>Punalur Paper Mills Limited</p> <p>Regd. Office Kerala</p> <p>Paid up capital Rs. 274.16 Lacs</p> <p>Listed At CoSE & DSE</p>	<p>Mohammad Illyas, Venkata Ratnam, K. Raveendran, T. K. Sundaresan, Nelson Sebastain and Omana Subash along with PACs</p>	<p>Offer to acquire 4,48,318 (20.6%) Equity Shares at a price of Rs. 10.75 per share (including interest @10% from May 18, 2010) payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 11,82,696 (52.76%) fully paid up equity shares at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker Keynote Corporate Services Limited</p> <p>Registrar to the Offer S.K.D.C. Consultants Limited</p>

<p>The Anandam Rubber Company Limited</p> <p>Regd. Office Kerala</p> <p>Paid up capital Rs. 5 Lacs</p> <p>Listed At MSE</p>	<p>Mr. Nirej V. Paul, Mr. V. M. Paulose, Dr. T. J. Leelamma and Ms. Jaya Paul</p>	<p>Offer to acquire 10,000 (20%) Equity Shares at a price of Rs. 235.06 per Share (including interest @ 10% for 43 days i.e. Rs. 2.74) payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 31,000 (62%) fully paid up equity shares at a price of Rs. 232.32 per share payable in cash.</p>	<p>Merchant Banker VIVRO Financial Services Pvt. Ltd.</p> <p>Registrar to the Offer SKDC Consultants Limited</p>
<p>Luminaire Technologies Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 240 Lacs</p> <p>Listed At BSE</p>	<p>Vandana Cloth Centre Pvt. Ltd.</p>	<p>Offer to acquire 48,00,000 (20%) Equity Shares at a price of Rs. 6 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 1,18,28,030 (49.28%) fully paid up equity shares at a price of Rs. 5.50 per share payable in cash.</p>	<p>Merchant Banker V C Corporate Advisors Pvt. Ltd.</p> <p>Registrar to the Offer Adroit Corporate Services Pvt. Ltd.</p>
<p>Indian Bright Steel Company Limited</p> <p>Regd. Office Thane</p>	<p>Vitesse Telecom Private Limited</p>	<p>Offer to acquire 1,29,000 (20%) Equity Shares at a price of Rs. 5 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 1,37,100 (21.26%) fully paid up equity shares at a</p>	<p>Merchant Banker Aryaman Financial Services Ltd.</p>

<p>Paid up capital Rs. 64.50 Lacs</p> <p>Listed At BSE</p>			price of Rs. 2 per share payable in cash.	<p>Registrar to the Offer Bigshare Services Pvt. Ltd.</p>
<p>Confidence Trading Company Limited</p> <p>Regd. Office Chennai</p> <p>Paid up capital Rs. 5 Lacs</p> <p>Listed At BSE</p>	Taranya Projects Private Limited	Offer to acquire 10,000 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.	<p>Regulation 10 & 12 SPA to acquire 36,500 (73%) fully paid up equity shares at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker Comfort Securities Private Limited</p> <p>Registrar to the Offer Purva Sharegistry (India) Pvt. Ltd.</p>
<p>Vinaditya Trading Company Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 15 Lacs</p> <p>Listed At BSE & PSE</p>	Clarus Advisors (India) Private Limited and Manas Strategic Consultants Private Limited	Offer to acquire 45,000 (30%) Equity Shares at a price of Rs. 550 per share payable in cash.	<p>Regulation 10 & 12 SPA to acquire 64,195 (42.80%) fully paid up equity shares at a price of Rs. 550 per share payable in cash.</p>	<p>Merchant Banker Intensive Fiscal Services Private Limited</p> <p>Registrar to the Offer Sharex Dynamic (India) Private Limited</p>

<p>Siemens Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 67.43 crore</p> <p>Listed At BSE & NSE</p>	<p>Siemens Aktiengesellschaft</p>	<p>Offer to acquire 66,829,060 (19.82%) Equity Shares at a price of Rs. 930 per share payable in cash.</p>	<p>Regulation 11(2A) Consolidation of shareholding.</p>	<p>Merchant Banker HSBC Securities and Capital Markets (India) Private Limited</p> <p>Registrar to the Offer Karvy Computershare Private Limited</p>
<p>Rammaica (India) Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 320 Lacs</p> <p>Listed At BSE, ASE, DSE, MSE and CSE</p>	<p>Kyner Trading Private Limited and Tien Trading Private Limited</p>	<p>Offer to acquire 6,40,000 (20%) Equity Shares at a price of Rs. 12.10 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 13,78,800 (43.09%) fully paid up equity shares at a price of Rs. 5 per share payable in cash.</p>	<p>Merchant Banker Systematix Corporate Services Limited</p> <p>Registrar to the Offer Adroit Corporate Services Private Limited</p>
<p>National Standard (India) Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 20 crore</p>	<p>Anantnath Constructions and Farms Private Limited</p>	<p>Offer to acquire 40,00,000 (20%) Equity Shares at a price of Rs. 21 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 1,17,84,000 (58.92%) fully paid up equity shares at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker Arihant Capital Markets Limited</p> <p>Registrar to the Offer CB Management Services (P) Ltd.</p>

Listed At BSE & CSE				
APW President Systems Limited Regd. Office Mumbai Paid up capital Rs. 6.04 crore Listed At PSE, BgSE and BSE	Schneider Electric South East Asia (HQ) Pte Limited along with Schneider Electric SA	Offer to acquire 12,09,600 (20%) Equity Shares at a price of Rs. 195 per share payable in cash.	Regulation 10 & 12 SPA to acquire 43,12,501 equity shares at a price of Rs.195 per share payable in cash.	Merchant Banker DSP Merrill Lynch Limited Registrar to the Offer Karvy Computer Private Limited

Hint of the Month

The acquirer is allowed to complete the acquisition of shares or voting rights in or control over the Target Company under any agreement attracting the obligation to make an Open Offer after a period of 21 days from the date of public announcement subject to the acquirer depositing 100% of the consideration payable under the Open Offer assuming the full acceptance in the escrow account.

{As substantiated from Regulation 22(2) of SEBI (SAST) Regulations, 2010-TRAC Report}

Regular Section

Indirect acquisition of Shares or Voting Rights or Control – A Comparison of SEBI (SAST) Regulations, 1997 and SEBI TRAC Report

Indirect Acquisition means acquisition of shares or voting rights or control over the Target Company by virtue of acquisition of some other companies.

In **SEBI (SAST) Regulations, 1997**, acquisition has been defined to include direct as well as indirect acquisition of shares or voting rights in or control over the Target Company and all the provisions of SEBI (SAST) Regulations, 1997 equally applies to indirect acquisition as they apply to direct acquisition except relating to time within which the public announcement is to be made and the determination of Offer Price i.e. in case of direct acquisition, the public announcement has to be made within 4 working days of the date of triggering of Open Offer obligations whereas in case of indirect acquisition, the public announcement is to be made within 3 months of consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India. Further, the Offer Price in case of indirect acquisition shall be determined with reference to the date of public announcement for the parent company and the date of public announcement of Target Company considering the parameters as prescribed under regulation 20(4) and 20(5) of SEBI (SAST) Regulations, 1997.

Regulation 5 of SEBI TRAC Report provides the provisions relating to indirect acquisition of shares or control over the Target Company and the circumstances in which indirect acquisition would be treated as the direct acquisition.

Indirect Acquisition:

Indirect acquisition is define to mean the acquisition of shares or voting rights in or control over the target company which would enable any person and PACs to ***exercise or direct the exercise of voting rights*** in the Target Company in excess of the limit as prescribed under SEBI TRAC Report or Control over the Target Company that would attract the Open Offer Obligations.

Further, indirect acquisition would be treated as direct acquisition where:

- i. the **proportionate net asset value** of the target company as a **percentage of the consolidated net asset value** of the entity or business being acquired; or
- ii. the **proportionate sales turnover** of the target company as a **percentage of the consolidated sales turnover** of the entity or business being acquired; or
- iii. the **proportionate market capitalisation** of the target company as a **percentage of the enterprise value** for the entity or business being acquired;

On the basis of the latest audited annual financial statements is **more than eighty per cent.**
{Regulation 5(2)}

The market capitalisation mentioned in clause (iii) shall be calculated on the basis of the volume-weighted average market price of such shares on the stock exchange where the maximum volume of trading in the shares of the target company are recorded for a period of 60 trading days preceding the date on which the primary acquisition is contracted, or the date on which the intention or the decision to make the primary acquisition is announced in the public domain, whichever is earlier.

In General, in case of Indirect acquisition, the public announcement shall be made **within four business days** of:

- i. date on which the primary acquisition is contracted, or
- ii. date on which the intention or the decision to make the primary acquisition is announced in the public domain; whichever is earlier.

However, if the Acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights or control over the target company, the acquirer shall not be required to make a detailed public statement of an Open Offer for acquiring shares under these regulations.

However, **in case where the criteria's as mentioned in regulation 5(2) of SEBI TRAC Report are met,** then the public announcement shall be made on:

- i. the date on which the primary acquisition is contracted; or
- ii. date on which the intention or the decision to make the primary acquisition is announced in the public domain; whichever is earlier

Further, it is to be noted that as the public announcement in case of indirect acquisition will be made at the time when primary transaction is contracted or is being announced in the public domain, therefore, the TRAC Report provides for the increase in Offer Price at the rate of **10 % per annum** calculated on a pro-rata basis for the period on the date on which primary transaction is contracted or from the date of the primary transaction being announced in the public domain, whichever is earlier until the date of actual detailed public statement in respect of the target company where such period is more than 5 business days.

Thus, it can be said that in TRAC Report, the provisions relating to Indirect Acquisition has been provided in detail and focus is given on the fact whether pursuant to the indirect acquisition, the acquirer is ultimately able to exercise the voting rights or control over the Target Company or not.

Case Study

An analysis of Takeover Open Offer for APW President Systems Limited

About APW President Systems Limited (“Target Company/APW”)

Incorporated in the year 1984, APW is engaged in the businesses of manufacturing of modular enclosures and offers a wide range of products covering the electronics and data communication industry. It is a designer, manufacturer and supplier of enclosure systems in India. The shares of APW are listed on Pune Stock Exchange (“PSE”) and the Bangalore Stock Exchange (“BgSE”) and are permitted to trade on “BSE- INDONext” segment of the Bombay Stock Exchange (BSE).

About Schneider Electric South East Asia (HQ) Pte Ltd (“Acquirer”)

Established under the laws of Singapore in 1973, the Acquirer is engaged in providing services relating to general management and administration service, technical support services, marketing & planning, research & development, industrial management and procurement support services in power and its related fields. It is the wholly owned subsidiary of Schneider Electric Industries SAS which in turn is a wholly owned subsidiary of Schneider Electric SA which is the flagship company of

Schneider Group, one of the global market leaders in energy management with diverse interest in electrical distribution and automation and control.

About Schneider Electric SA (“PAC/SESA”)

Schneider Electric SA (SESA) was incorporated in the year 1871 under the laws of France. SESA is listed on the Paris Stock Exchange and is engaged in the business of electrical distribution and industrial engineering equipment.

Triggering Event

The Acquirer proposes to acquire up to 75% of the Voting Share Capital (**“Target Threshold”**) of the Target Company and for this purpose has entered into two Share Purchase Agreements (SPA’s) namely APWUK SPA and Indian SPA with the promoters of APW on January 07, 2011. The SPA provides for certain minimum number of equity shares which the Acquirer would purchase from the promoters irrespective of the response received in the Open Offer. Further, a clause has been added in the SPA which provides for the purchase of additional equity shares depending upon the shares tendered in the Open Offer by the shareholders of APW so as to make the shareholding of Acquirer equal to the target threshold.

Overview of Transaction-SPA’s:

The SPA provides for the acquisition of:

- i. 33,26,394 Shares constituting 55% of the Voting Share Capital from the promoters of the Target Company (**“Minimum Shares”**);
- ii. maximum of 9,86,107 Shares, that would together with the Minimum Shares and the Shares purchased in this Open Offer represent the Target Threshold i.e. 75% (**“Additional Shares”**).

APWUK SPA:

SPA with APW Electronics Group Limited to acquire up to maximum of 1,764,000 Shares in accordance with the terms of the APWUK SPA for a consideration of Rs. 175.50/- per Share.

Indian SPA

SPA with the remaining Promoter Sellers (excluding APWUK) to acquire a maximum of 2,548,501 Shares in accordance with the terms of the Indian SPA for a consideration Rs. 195/- per Share.

Highlights of the SPA's

1. Sale Consideration

The Acquirer proposes to retain a portion of the consideration payable to the Promoter Sellers under the SPA towards damages, if any, suffered by the Acquirer in connection with the SPA subject to the prior approval of the Reserve Bank of India (“RBI”).

2. Escrow Arrangements and Retention

The parties to the SPA have entered into escrow agreements for the shares committed to be sold under the SPA and consideration payable for such shares. As stated above, if the permission is granted by RBI the amount retained will be held by the escrow agent. It is to be noted that the maximum amount proposed to be retained under the SPA is 15% of the pro rata consideration payable to each of the Promoter Sellers under the SPA.

3. Non Compete and Non Solicitation

The promoters sellers for no additional consideration have agreed and undertaken that they shall not for a period of 5 years from the date of closing of SPA own, manage or in any way relate to any business that compete with the business of Target Company in India. However they may make the passive investment of up to 3% of the issued share capital of company that may compete with the business of the Target Company

4. Appointment of Acquirer’s nominee as directors

The Acquirer has deposited 100% of the Consideration payable under the Open Offer in the Escrow Account and accordingly, is entitled to appoint its nominees on the board of the Target Company after a period of 21 days from the date of public announcement.

Takeover Open Offer-Opportunity to the shareholders

On January 11, 2011, the Acquirer along with PAC has made a public announcement to the shareholders of APW to acquire up to 12,09,600 Equity Shares representing 20% of the Voting Share Capital of the Target Company at a price of Rs.195 per share payable in cash.

The completion of the transaction is subject to the approval of RBI under the Foreign Exchange Management Act, 1999.

Market Update

ONGC asked govt. to resolve royalty issue before approving Cairn-Vedanta deal

ONGC has requested the government to first resolve the issue of excessive royalty that Cairn pays on Rajasthan crude oil and then to approve Vedanta Resources' \$9.6 billion acquisition of Cairn India. ONGC holds a 30% stake in Cairn India's mainstay Rajasthan oilfields.

Fortis Healthcare gets hold on Lifeline Hospital

Fortis Healthcare Ltd has bought 100-bed **in Rajasthan based Lifeline Hospital**. The addition is part of Fortis' tactics to strengthen its presence in India's tier-II Cities. With this move Fortis has taken its network to a total of 53 hospitals with over 8,000 beds spread across 13 states in the country.

R Systems Acquires UK-Based Computaris International

R Systems International Limited has acquired **Computaris International Limited** for about Rs.65.25 Cr. Computaris International is engaged in the business of providing system integration, telecom technical consultancy, and software development for software vendors and communication services providers. R System will fund this acquisition largely from its internal funds. This deal will help the company to grow its business operations in the parts of Europe.

Our Team

Ruchi Hans
ruchi@indiacp.com

Priyanka Gupta
priyanka@indiacp.com

Visit us at



A Venture of



D- 28, South Extn. Part I New Delhi – 110049

T: 40622200 F: 91.40622201

E: info@takeovercode.com

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