

TAKEOVER PANORAMA

A monthly newsletter by Corporate Professionals

Year VI-Vol II-February 2012



INSIGHT

Legal Update <ul style="list-style-type: none">– SAT Order in the matter of O.P. Gulati and Indra Gulati vs. SEBI– Exemption Rejected in the matter of Surya Pharmaceutical Limited– Exemption Order in the matter of Kharikatia Tea & Industries Limited– Exemption Order in the matter of MSD Properties Limited– Adjudicating Officer/WTM Orders	3
Latest Open Offers	14
Hint of the Month	17
Regular Section <ul style="list-style-type: none">– Inter se transfer of shares under SEBI (SAST) Regulations, 2011	17
Case Study <ul style="list-style-type: none">– An analysis of Takeover Open Offer of Kamat Hotels (India) Limited	21
Market Update	24
Our Team	25

LEGAL UPDATES

SAT Order in the matter of O.P. Gulati and Indra Gulati vs. SEBI

Facts:

1. This Appeal is filed before the Hon'ble SAT by O. P. Gulati (Appellant 1) and Indra Gulati (Appellant 2) against a common order passed by the Adjudicating Officer on July 26, 2011 imposing a penalty of Rs.1 lakh each on the two appellants for failure to make disclosures under the provisions of regulation 7(1A) of SEBI (SAST) Regulations, 1997.
2. Upon examination of offer document filed by Deora Associates Pvt. Ltd to acquire the shares of Integrated Capital Services Limited (Target Company), the Board observed certain non compliance of provisions of the SEBI (SAST) Regulations, 1997 by the promoters of the Target Company who are the appellants in this case. It was noted by the Board that promoters acquired shares of the Target Company during the period between March 1998 to March 2004 without making disclosure as required under Regulation 7(1A) of SEBI (SAST) Regulations, 1997 to the Target Company and Stock Exchange.

Hon'ble SAT held that a person who falls within the definition of Acquirer under SEBI (SAST) Regulations, 1997 but has not acquired any shares and is not a person acting in concert with the acquirer for acquiring the shares, then that person is not required to make disclosure under regulation 7(1A).
3. Upon the SCN issued, both the appellants replied that there was no need to make disclosure for the acquisition made during the period March 1998 to March 2001 since provision of regulation 7(1A) itself came into existence with effect from October 24, 2001. With regard to period ending March 2004, the disclosures were made by O P Gulati with bonafide intention and there was no suppression of fact. There was no intentional violation on the part of the appellants and the purpose of disclosure was duly served by filing disclosures, though belatedly. So default, if any, is purely technical in nature and should be accepted as bonafide.
4. The learned counsel for the Board held that any acquirer, whether he has acquired the shares or voting rights of the company or not, if he falls within the definition of the acquirer under regulation 2(b) or is a 'person acting in concert' within the meaning of regulation 2(e), is required

to file a declaration under regulation 7(1A). Indira Gulati, being wife of O. P. Gulati and also a promoter of the company, falls within the definition of 'person acting in concert, therefore she was also required to file disclosure under Regulation 7(1A) of SEBI (SAST) Regulations, 1997. However the authorized representative of the appellant held that the adjudicating officer has not identified any purchases by Indira Gulati, therefore she cannot be held to be acquirer of the shares in question. Further the requirement of making a disclosure under regulation 7(1A) is of the "acquirer who acquires the shares" and not of all the acquirers within the meaning of regulation 2(b) of the SEBI (SAST) Regulations, 1997.

5. Thus after considering the facts of the case, the Adjudicating officer exonerated the Appellants in respect of the acquisitions made during the period March 1998 to March 2001. However found the Appellants guilty of violating the provisions of Regulation 7(1A) for the remaining period and imposed the penalty of Rs. 100,000 on each of them.

It is against this order, the present appeal has been filed.

Issues:

Whether all the persons falling within the purview of definition of Acquirer or PAC are under an obligation to give the disclosure under Regulation 7(1A) of SEBI (SAST) Regulations, 1997 irrespective of the fact whether they have acquired any shares of the Target Company or not?

Decision:

Hon'ble SAT clarified that for the purpose of making disclosure under Regulation 7(1A), it is necessary that all the below mentioned conditions should be satisfied:

- i. person is an acquirer;
- ii. that person has acquired shares or voting rights;
- iii. such acquisition is under sub-regulation (1) to regulation 11; and
- iv. purchase or sale aggregates two per cent or more of the share capital of the target company.

Hon'ble SAT held that a person who may fall within the definition of acquirer under the SEBI (SAST) Regulations, 1997 but has not acquired the shares and is not a person acting in concert with the person for acquiring the shares is not obliged to make disclosure under regulation 7(1A). Moreover it was held that the statutory provision is to be read in a manner so as to do justice to all the parties and any construction leading to confusion must be avoided. The adjudicating officer has not recorded any finding that there was any understanding or agreement, direct or indirect between O. P. Gulati and Indra Gulati to acquire the shares of the Target Company. Thus,

in the absence of any such finding or material on record, the adjudicating officer erred in holding Indra Gulati guilty of violating regulation 7(1A) of the SEBI (SAST) Regulations, 1997.

Moreover Hon'ble SAT held that as O. P. Gulati stated in his argument that defaults is purely technical in nature and should be accepted as bonafide and no undue gain or undue advantage was taken either by the management of the Target Company or by the appellant is not acceptable. Thus the penalty of Rs 1 lakh imposed on O P Gulati by the adjudicating officer is justifiable.

Exemption Rejected in the matter of Surya Pharmaceutical Limited

Facts:

1. Futuristic Garments Private Limited (Acquirer), part of the promoter group of Surya Pharmaceuticals Limited (Target company), had filed an application dated April 7, 2008 to SEBI under Regulation 3(1)(I) and 4(2) of the SEBI (SAST) Regulations, 1997 for availing exemption from the applicability of the provision of Regulation 11 and 12 of the SEBI (SAST) Regulations, 1997 in respect of the proposed acquisition of control of two companies i.e. Mangal Kamna Buildwell Pvt. Ltd. and Dynamic Finvest Services Pvt. Ltd which are collectively holding 14.30% equity shares in the Target Company and direct acquisition of 10.41% equity shares of the target company from Creative Capital Services Ltd. by way of an off-market deal.

The above acquisitions were proposed for increasing the shareholding of the promoter group to 51% in the company in terms of the sanction of working capital facility of Rs. 38 crore extended to the Target Company by IDBI Bank on March 19, 2008. SEBI on September 24, 2008 declined the exemption in the above matter. The acquirer then filed the appeal in SAT challenging this order of SEBI contending that Target Company shall make preferential allotment in favor of the acquirer and the acquirer shall file a fresh exemption application with the SEBI.

Exemption not granted to the Acquirer where the increase in shareholding of the Acquirer is in terms of the sanction of the working capital extended by Bank to Target Company wherein SEBI observed that the Target Company is in a good financial position and it has already received the sanctioned loan amount.

2. Subsequently, the Target Company filed an exemption application on January 14, 2009 for preferential allotment to the acquirer of 47,00,000 Zero Coupon Convertible Share Warrants, convertible into 4,70,00,000 equity shares at the option of acquirer. SEBI rejected the same on the ground that grant of exemption will not be in the interest of the public shareholders of the Target Company. The Target Company then filed the appeal before the SAT challenging the order of SEBI. Hon'ble SAT disposed of the appeal holding that application seeking exemption was premature and same should be applied for at the time of conversion of warrants into equity shares.
3. The Target Company made preferential allotment of 47, 00,000 warrants convertible into equity shares on October 28, 2011. The Acquirer has converted 9, 50,000 warrants into 95, 00,000 equity shares on March 31, 2011 increasing the promoters shareholding to 34.90% and 10,00,000 warrants into 1,00,00,000 equity shares on April 7, 2011 which further increased the shareholding to 38.11%. These acquisitions were within the creeping acquisition limit as provided under Regulation 11(1) of SEBI (SAST) Regulations, 1997. On May 4, 2011 the Acquirer expressed its desire to convert the remaining 27, 50,000 warrants into 2, 75, 00,000 equity shares which would increase the promoters shareholding from 38.11% to 45.50%. Since the acquisition will result into triggering of Regulation 11(1) of SEBI (SAST) Regulations, 1997, therefore the Acquirer has filed the present exemption application seeking exemption from the applicability of Regulation 11(1) of SEBI (SAST) Regulations, 1997.

Grounds for exemption:

- a) The acquisitions were made in terms of the sanction of working capital facility of Rs. 38 crore extended to the Target Company by IDBI Bank. The control of the target company is already with the promoter group of which the acquirer is a part. The objective of the proposed acquisition is the consolidation of promoters' holding in view of this stipulation of the IDBI Bank.
- b) The allotment of 47, 00,000 warrants to the Acquirer by the Target Company were as per SEBI Regulations and Companies Act, 1956.
- c) The proposed acquisition is not in any way detrimental to the interest of the shareholders. The shares of the company have always remained strong in the market and have always remained above the share issue price. Further, there is no fear relating to exit for the shareholders as there is excellent liquidity in the scrip.
- d) The proposed allotment of equity shares upon conversion of share warrants shall not in any way affect the rights of existing shareholders rather it shall help the company to run its business more

effectively and efficiently by raising the additional finance to meet its ever growing working capital requirements as there is consistent growth in the progress of the company.

Decision:

After considering the preceding SEBI order, SAT Order and views of the Takeover panel, the Whole Time Member observed that neither the SEBI nor the SAT orders suggest grant of exemption merely because preferential allotment has been made and exemption application has been filed. In the instant case IDBI Bank as a general covenant of the financial assistance reserved the right to withdraw the loan facility in the event of the promoter's stake in the target company falling below 51%. However it was also observed that even after the conversion of all 47,00,000 warrants the shareholding of the promoter in the Target Company would reach only to 45.50%. Further the IDBI Bank has already sanctioned and released the entire amount of working capital loan of Rs. 38 crore to the target company and has not insisted on the withdrawal of the said financial assistance already released to the target company even though the promoters have not increased their stake to 51%. Furthermore the Target Company is in good financial position, thus even if IDBI Bank decides to call back loan amount of Rs.38 crore released to the target company, it will not have any adverse impact on the financial health of the target company.

It was also noted that as per the regulation 77 (4) of the SEBI (ICDR) Regulations, 2009 if a warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the upfront 25% consideration paid in respect of such warrants shall be forfeited by the company. Therefore, the argument of the target company to refund the 25% money received at the time of allotment of warrants is not correct. The target company would rather be entitled to forfeit the amount of 25% of the consideration paid for the allotment of warrants in case the acquirer decides not to convert the same. The argument of the target company of being deprived of the opportunity to receive the finance from IDBI Bank is also not tenable since the target company has already received the sanctioned loan amount of Rs.38 crore from IDBI Bank.

Therefore after considering all the facts and circumstances of the case, the Whole Time Member held that the present case is not a fit case for granting exemption, therefore it was held that the acquisition of equity shares by the acquirer pursuant to conversion of warrants shall be made in compliance with the open offer obligations under Regulation 3(2) of SEBI (SAST) Regulations, 2011.

Facts:

1. The existing promoters of Kharikatia Tea & Industries Limited (Target Company) holds 8,21,300 equity shares amounting to 74.31% of the paid-up capital of the Target Company. Now Bijay Kumar Garodia, Ramesh Kumar Sarawagi and Shankar Lall Ajitsaria (Applicants) proposes to acquire 8,21,300 equity shares amounting to 74.31% of the paid-up capital of the Target Company which will increase their shareholding from 0% to 74.31%, resulting into triggering of Regulation 10, 11(1) and 11(2) of SEBI (SAST) Regulations, 1997.
2. Accordingly the Applicants have filed the present application with SEBI under regulation 3 and 4 of SEBI (SAST) Regulations, 1997 seeking exemption from the applicability of provisions of Regulation 10, 11(1) and 11(2) of the said regulations.

SEBI granted exemption/relaxation to the Acquirers from strict compliances of making open offer where the Target Company is on recovery path and the Acquirer has acquired control to rehabilitate and expand the business subject to making individual offer to all public shareholders and fulfillment of the conditions as may be imposed by SEBI.

Grounds for exemption:

1. The Target Company is on a recovery path after incurring huge losses in the past and the running of the tea business and also the expansion of the same would require huge amount of fresh capital infusion into the business, which the promoters of the target company are finding difficult to do under the present scenario.
2. Thus in order to rehabilitate and expand the business, the applicants has acquired control over the Target Company by passing special resolution through Postal ballot under section 192A of the Companies Act, 1956 and also in a duly convened Extra Ordinary General Meeting. Further the promoters propose to sell their entire shareholding to the Applicants.
3. There are only 123 public shareholders in the Target Company, holding 25.69% of the total paid-up capital and in order to expedite the acquisition and unwanted expenditure, exemption is sought from making public announcement.
4. The applicants have not made any acquisition during the twenty six week period prior to the date of the application. Since the shares of the Company are infrequently traded, the offer price is fixed at Rs. 111 per share.

5. The Applicants proposed that they would take the necessary steps under SEBI (SAST) Regulations, 2011 (*repealing SEBI (SAST) Regulations, 1997*) and shall:
- i. Make individual offer to all the public shareholders to buy their share at a price of Rs. 111 per share and would send the offer notice to all the shareholders at their registered address by registered post followed by newspaper publication informing the shareholders about dispatch of offer to them.
 - ii. Publish the facts of acquiring 74.31% shares from outgoing promoters at a negotiated price of Rs. 111 per share and undertake to acquire further voting rights from other intending sellers at the same price. The publication is proposed to be made in two leading newspapers with wide circulation, one in English and one in Bengali, being the vernacular language of the State of West Bengal in which the registered office of the target company is situated.
 - iii. In the event public shareholding exceeds the Non public shareholding they will offload the same in accordance with the provisions of the Securities Contract (Regulation) Rules, 1957.
 - iv. Appoint a SEBI registered merchant banker in terms of regulation 12 of the SEBI (SAST) Regulations, 2011 to monitor and oversee the steps and the due compliance of the alternate mechanism and inform the Calcutta Stock Exchange about steps taken by acquirers.
 - v. Comply with such other conditions as may be stipulated by the SEBI while deciding on the revised proposal.

Decision:

Since SEBI (SAST) Regulations, 1997 have been repealed and the SEBI (SAST) Regulations, 2011 have come into force with effect from October 22, 2011, thus the WTM considered this application in accordance with the SEBI (SAST) Regulations, 2011. WTM held that the applicants have proposed to provide an exit opportunity to all 123 public shareholders of the Target Company and have sought exemption from the strict compliance of making public announcement and filling letter of offer to the Board. Since the applicants proposed to make exit offer to all the shareholders at a price of Rs. 111 per share being the negotiated price between the Acquirer and sellers, it would be in line with the objective of the said Takeover Regulations. It was also noted that the approval of the shareholders for change in control have been obtained by passing Special Resolution by way of postal ballot, thus there would be no change in control/management of the Target Company.

Furthermore it was held that in the interest of the investors, the offer price should also be determined in terms of regulation 8 of the SEBI (SAST) Regulations, 2011 and the applicants should offer the price so determined or Rs.111/- per equity share, whichever is higher.

Thus after considering all the facts and circumstances of the case, the exemption/relaxation is granted to the Applicants subject to the fulfillment of the submissions made by the Applicants.

Moreover the offer shall be completed within a period of 3 months from the date of this order and on completion of the offer; the applicants shall submit a certificate of the merchant banker to SEBI and CSE, within 7 days of completion of the acquisition, certifying compliance with the conditions of this order.

Exemption Order in the matter of MSD Properties Limited

Facts:

1. Mr. Vinod Kumar Agrawal and Mr. Subash Chand Agrawal (Acquirers) hold 18.94% shares in MSD Properties Limited (Target Company). The shares were issued to the Acquirers by the Target Company pursuant to a scheme of arrangement, between the Target Company, Shinshon India Limited and Bhagwati Abasan Limited, sanctioned by the Hon'ble Calcutta High Court.
2. The Acquirers together with R. N. Commotrade Private Limited and Singhal General Traders Private Limited (PACs) (together referred to as Applicants) have proposed to acquire 15,34,200 equity shares constituting 33.85% equity shares of Target Company, thereby increasing their shareholding from 18.94% to 52.78%, which will result into triggering of Regulation 11(1) of the SEBI (SAST) Regulations, 1997 requiring the public announcement. Thus the Applicants have filed the present application with SEBI under regulation 4(2) read with Regulations 3(1)(I) of SEBI (SAST) Regulations, 1997 seeking exemption from the applicability of provisions of Regulation 11(1) of the said regulations.

SEBI granted exemption/relaxation to the Acquirers from strict compliances of making open offer where the Target Company is loss making and the Acquirer will infuse fund to revive the business of Target Company subject to making individual offer to all public shareholders and fulfillment of the conditions imposed by SEBI.

Grounds for Exemption:

1. The target company has incurred huge losses in the recent past due to lack of any business and it needs further capital infusion to start some new ventures and to expand its areas of operation;

2. The applicants have very rich experience in various business modules and have resources and are willing to infuse funds to revive and expand the business of the target company;
3. They have already taken over the management and control of the Target Company under regulation 12 of the SEBI (SAST) Regulations, 1997 by obtaining the requisite approval from its shareholders through postal ballot in a duly held extra-ordinary general meeting of the target company and are willing to consolidate their holding in the target company by acquiring further shares from public shareholders;
4. There are only 288 public shareholders in the target company;
5. Since the shares of the target company are infrequently traded, the minimum offer price is fixed at Rs. 2/- per share (the negotiated price) as per regulation 20(5)(a);
6. The exemption is sought only from procedural compliances and to save expenditure;
7. While agreeing for consideration of the application under the SEBI (SAST) Regulations, 2011 (*repealing SEBI (SAST) Regulations, 1997*), the applicants later proposed that they would:
 - i. make individual offer to all the public shareholders of the target company offering to buy their shareholding in the target company at the negotiated price of Rs. 2/- each equity share
 - ii. send the offer notice to the shareholders at their registered address by registered post with acknowledgement due followed by newspaper publication informing the shareholders about the dispatch of the offer to them;
 - iii. publish the facts about the applicants proposing to acquire entire 33.85% of voting rights from intending sellers at negotiated price of Rs.2/- for each equity share and do undertake to acquire further voting rights from other intending sellers at the same price. The publication is proposed to be made in two leading news papers with wide circulation, one in English and one in Bengali, being the vernacular language of the State of West Bengal in which the registered office of the target company is situated
 - iv. in the event the equity shares offered by the public together with the voting rights acquired in terms of the proposed negotiated deals exceeds the maximum permissible limit of 75%, the acquirers will offload the excess in accordance with the provisions of the Securities Contract (Regulation) Rules, 1957;
 - v. appoint a SEBI registered merchant banker to monitor and oversee the steps and the due compliance of the alternate mechanism
 - vi. appraise and inform CSE of all the steps to be undertaken by the acquirers; and
 - vii. comply with such other conditions as may be stipulated by the SEBI while deciding on the revised proposal.

Decision:

Since SEBI (SAST) Regulations, 1997 have been repealed and the SEBI (SAST) Regulations, 2011 have come into force with effect from October 22, 2011, thus the WTM considered this application in accordance with the SEBI (SAST) Regulations, 2011. WTM observed that the Target Company is loss making company as shown in the latest annual report of the company and acquirer desires to invest in the company to rehabilitate the same. Further there is no change in the control of the company. Moreover, the Acquirer is willing to provide exit opportunity to the public shareholders of the Target Company and consolidate their shareholding without compromising on the interest of the public shareholders. They only desire exemption from the strict compliance of making Public Announcement thus the revised proposal would be fulfilling the objective of the takeover regulations.

However the WTM held that book value per share of the target company is Rs. 13.53/- per share therefore the offer price of Rs. 2/- per equity per share is not justified in terms of regulation 8 of the SEBI (SAST) Regulations, 2011. Hence in the interest of the public the price should be determined by the independent Merchant Banker registered with SEBI who shall also monitor and supervise the entire process in compliance of this order. Further in order to ensure information disclosure to all shareholders, the proposed public offer should be published and information about the same should be disseminated to the public through public notice and the disclosure to CSE.

Thus after considering all the facts and circumstances of the case, the exemption/relaxation is granted to the Applicants subject to the fulfillment of the submissions made by the Applicants.

The offer shall be completed within 3 months from the date of this order and on completion of the offer, the applicants shall submit a certificate of the merchant banker to SEBI and CSE, within 7 days of completion of the acquisition certifying compliance with the conditions of this order.

Adjudicating/WTM Orders

Target Company	Noticee	Violations	Penalty Imposed/ Decision Taken
Platinum Corporation Limited	Pratik Rameshchandra Shah	Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13(3)	Rs. 4,00,000

		and 13(4) of SEBI (PIT) Regulations, 1992	
S Kumars.com Ltd	Hanumesh Realtors Private Ltd.	Regulation 11 (1) of SEBI (SAST) Regulations, 1997	Rs. 1.87 crore
Platinum Corporation Limited	Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah, Bhavana R Shah, Neha R Shethwala, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Neha R Shethwala, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah, Girish G Doshi, Neha R Shethwala	Regulation 10 of SEBI (SAST) Regulations, 1997	Rs. 20,00,000 except on Ashok H Shah and Neha R Shethwala
Platinum Corporation Limited	Ashaben Ambani, Ashok Ambani, Manish Ashokbhai Ambani and Meena Ashokbhai Ambani	Regulation 10 of SEBI (SAST) Regulations, 1997	Rs. 10,00,000
Fact Enterprises Ltd.	Homiyar Firoze Mistry, Uday Chandra Mohite and Urmila Lakhotia	Regulation 7(1) read with 7(2) of SEBI (SAST) Regulations, 1997	Rs. 1,00,000 on each Noticee

LATEST OPEN OFFERS

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
Public Announcement 04-Jan-2012 Detailed Public Statement 11-Jan-2012	Cinerad Communications Limited Regd. Office Mumbai Net Worth Rs. 5.23 lakh Listed At BSE	Pradeep Kumar Daga and Vinita Daga	Offer to acquire 13,52,000 (26%) Equity Shares at a price of Rs. 6.05 per equity share payable in cash.	Regulation 3(1) & 4 SPA for acquisition of 23,53,222 (45.25%) equity shares at a price of Rs. 6.05 per share payable in cash.	Merchant Banker VC Corporate Advisors Private Limited Registrar to the Offer ABS Consultant Private Limited
Public Announcement 06-Jan-2012 Detailed Public Statement 13-Jan-2012	Tibrewal Global Finance Limited Regd. Office Ahmedabad Networth Rs. 359.94 Lacs Listed At ASE, DSE and JSE	Manish Shah and Mitul Shah	Offer to acquire 9,36,000 (26%) Equity Shares at a price of Rs. 5 per share payable in cash.	Regulation 3(1) & 4 SPA for acquisition of 12,60,590 (35.02%) equity shares at a price of Rs. 1.50 per share payable in cash, thereby increasing their shareholding from 24.54% to 59.56%.	Merchant Banker Arihant Capital Markets Limited Registrar to the Offer MCS Limited
Public Announcement 11-Jan-2012	Kamat Hotels (India) Limited	Clearwater Capital Partners (Cyprus)	Offer to acquire 49,64,283 (26%) Equity Shares at a	Regulation 3(1) Conversion of the FCCBs	Manager to the Issue Systematix

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
Detailed Public Statement 18-Jan-2012	Regd. Office Mumbai Net worth Rs. 1919.16 Million Listed At BSE and NSE	Limited along with Clearwater Capital Partners Singapore Fund III Private Limited (PAC)	price of Rs. 135 per equity share payable in cash.	into equity shares which will increase the shareholding of the Acquirer and PAC to 32.23%	Corporate Services Limited Registrar to the Offer Link Intime India Private Limited
Public Announcement 11-Jan-2012 Detailed Public Statement 18-Jan-2012	Sunrise Asian Limited Regd. Office Mumbai Networth Rs. (15.77) Lacs Listed At BSE	D C B Plus N Holdings Private Limited and Liberal Securities and Financial Services Private Limited	Offer to acquire 11,08,100 (26%) Equity Shares at a price of Rs. 29 per equity share payable in cash.	Regulation 3(1) & 4 SPA for acquisition of 20,36,320 (47.78%) equity shares at a price of Rs. 2 per share payable in cash.	Merchant Banker Intensive Fiscal Services Private Limited Registrar to the Offer Adroit Corporate Services Pvt. Ltd.
Public Announcement 18-Jan-2012	ESAB India Limited Regd. Office Chennai Listed At NSE and BSE	Colfax Corporation along with Colfax UK Holdings Ltd, Exelvia Group India B.V. and ESAB Holdings Limited (PACs)	Offer to acquire 40,02,185 (26%) Equity Shares at a price of Rs. 529 per fully paid up share payable in cash.	Regulation 3(1), 4 and 5(1) Indirect acquisition of 55.65% voting rights and control of the Target Company.	Merchant Banker HSBC Securities and Capital Markets (India) Private Limited

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
Public Announcement 24-Jan-2012	Ashok- Alco Chem Limited Regd. Office Mumbai Listed At BSE, DSE and ASE	Auro Alkalies and Chemicals Private Limited along with Dr. Anil M Kadakia (PAC)	Offer to acquire 9,81,590 (26%) Equity Shares at a price of Rs. 19.15 per share payable in cash.	Regulation 3 (1) and 4 Agreement for acquisition of 7,55,069 (20%) equity shares of the Target Company, thereby increasing the shareholding of the Acquirer to 44%.	Merchant Banker Pioneer Money Management Limited
Public Announcement 31-Jan-2012	Pankaj Piyush Trade And Investment Ltd Regd. Office Mumbai Listed At BSE	Vinod Kumar Bansal	Offer to acquire 1,04,000 (26%) Equity Shares at a price of Rs. 20 per share payable in cash.	Regulation 4 Shares Purchase Agreement for acquisition of 60,000 (15%) equity shares at a price of Rs. 20 per share along with control.	Manager to the Issue Intensive Fiscal Services Private Limited

HINT OF THE MONTH

The acquisition resulting from any agreement triggering the open offer cannot be executed through transactions such as **block/ bulk deal**, settled on a recognized stock exchange, since the same would get completed/ settled on T+2 basis i.e. within 2 days after the date of such transaction. Such transaction will not be in line with the provisions of Regulation 22(1) as it would result in completion of the triggering acquisition before the expiry of the offer period.

{As substantiated from FAQs on SEBI (SAST) Regulations, 2011 prescribed by SEBI}

REGULAR SECTION

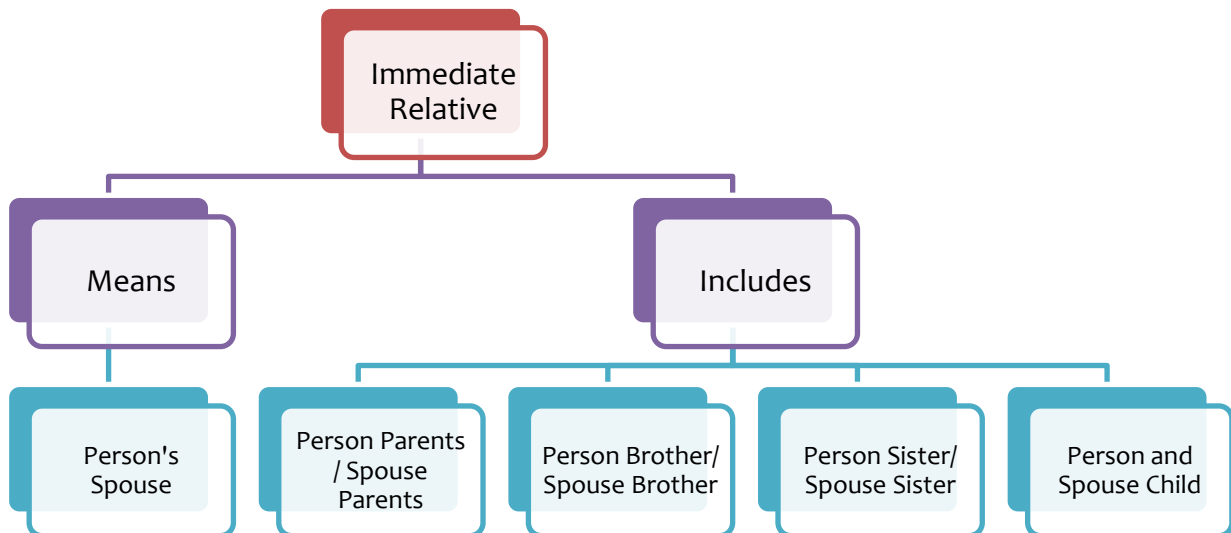
Inter se transfer of shares under SEBI (SAST) Regulations, 2011

SEBI (SAST) Regulations, 2011 provides that whenever an acquirer acquires the shares/voting rights in excess of the threshold or control over the Target Company as prescribed under regulation 3, 4 and 5 of SEBI Takeover Regulations, then the acquirer is required to make a public announcement of offer to the shareholders of the Target Company. However, Regulation 10 of the SEBI (SAST) Regulations, 2011 provides the automatic exemption from the provisions of making Open offer under regulation 3 and 4. Regulation 10(1) (a) provides the automatic exemption from the provisions of regulation 3 and 4 where the acquisition of shares has been made through inter se transfer that is to say acquisition through inter se transfer is not subject to open offer if it complies with the conditions as specified in the said sub regulation.

Acquisition pursuant to inter se transfer of shares amongst qualifying parties, being,—

I. Immediate Relatives

The term “**Immediate Relative**” is defined under Regulation 2(I) which provides that Immediate Relatives means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.



II. Inter se transfer of shares between persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition.

If there is any transfer of shares between persons shown as promoters in the shareholding pattern filed by the Target Company as per

- i. Listing Agreement or
- ii. SEBI Takeover Regulations

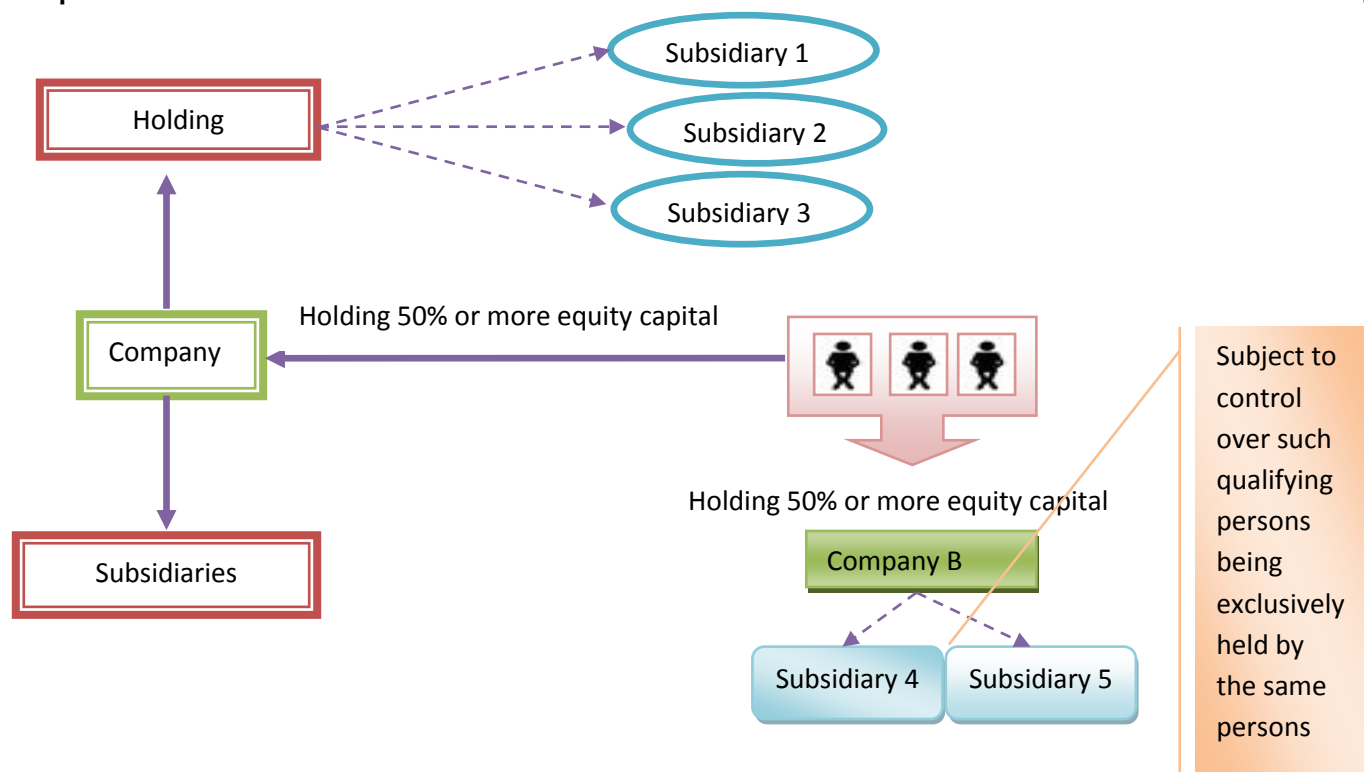
for atleast 3 years prior to the proposed acquisition, then any transfer of shares between these promoters is exempt from Regulation 3 and 4 of SEBI (SAST) Regulations, 2011.

III. Acquisition pursuant to inter se transfer of shares amongst qualifying parties being:

- ✓ a company,
- ✓ its subsidiaries,
- ✓ its holding company,
- ✓ other subsidiaries of such holding company,
- ✓ persons holding not less than 50% of the equity shares of such company,

- ✓ other companies in which such persons hold not less than 50% of the equity shares, and their subsidiaries subject to control over such qualifying parties being exclusively held by the same persons.

Explanation:



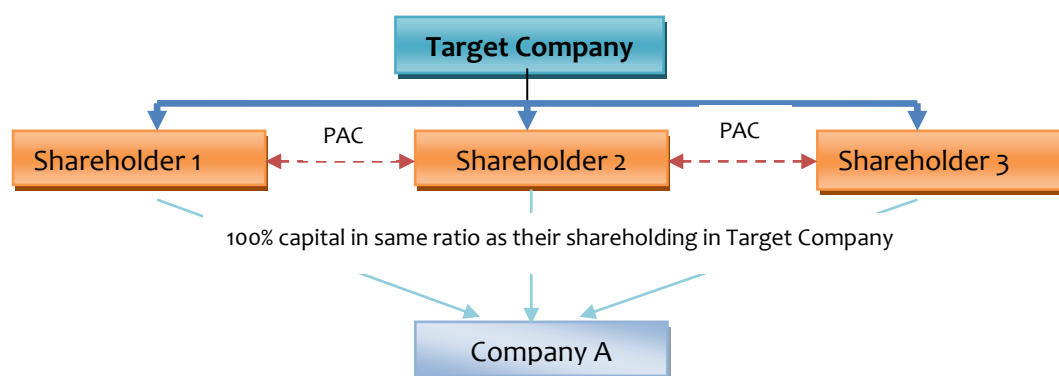
IV. Inter se transfer of shares amongst persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement.

If there is any transfer of shares between persons shown as person acting in concert in the shareholding pattern filed by the Target Company as per listing agreement for atleast 3 years prior to the proposed acquisition, then any transfer of shares between these person acting in concert is exempt from Regulation 3 and 4 of SEBI (SAST) Regulations, 2011.

V. Inter se transfer of shares between shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company.

Inter se transfer of shares amongst the following persons/entities shall be exempt from making Open Offer under Regulation 3 and 4 of SEBI (SAST) Regulations, 2011

- i. Shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and
- ii. Any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company.



The exemption is available subject to the compliance of the following conditions:

✓ **Pricing for the transfer:**

If the shares of the Target Company are frequently traded - The acquisition price per share *shall not be higher by more than 25% of the volume-weighted average market price for a period of 60 trading days* preceding the date of issuance of notice for the proposed inter se transfer under regulation 10 (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

If the shares of the Target Company are infrequently traded - The acquisition price shall *not be more than 25% of the price determined under Regulation 8(2)(e) of the Regulations.*

- ✓ The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with Chapter V i.e. disclosure under Regulation 29-Disclosure of acquisition and disposal, Regulation 30-Continual Disclosure and Regulation 31-Disclosure of encumbered shares.
- ✓ The Acquirer shall intimate the stock exchange where the shares of the company are listed, the details of the proposed acquisition at least 4 working days prior to the proposed acquisition. **[Regulation 10(5)]**
- ✓ The Acquirer is required to file a report within 4 working days of the date of acquisition to the Stock Exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. **[Regulation 10(6)]**

- ✓ The Acquirer is further required to file a report within 21 working days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees of Rs. 25,000 by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. [**Regulation 10(7)**]

CASE STUDY

Analysis of Takeover Open Offer of Kamat Hotels (India) Limited

About Kamat Hotels (India) Limited (“KHIL/Target Company”)

Incorporated on 21st March, 1986, Kamat Hotels (India) Limited is engaged in the business of hospitality and allied businesses, and its activities may be broadly categorized into (i) operation of hotels owned by the Company, (ii) management of hotels owned by other parties under contract (iii) catering services and (iv) timeshare. The Company has established four brands viz. Gadh, Orchid, Vits and Lotus. The shares of the Target Company are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange Limited of India Limited (NSE).

About Clearwater Capital Partners (Cyprus) Limited (“Acquirer”)

Clearwater Capital Partners (Cyprus) Limited was incorporated in 2004 as a ‘Limited Liability Company’ having its registered office in Cyprus for the purpose of investment in securities particularly in Asia. The Acquirer belongs to “Clearwater Capital Partners” group. The Acquirer holds 3,941,803 equity shares representing 23% of the total existing paid-up and voting capital of the Target Company.

About Clearwater Capital Partners Singapore Fund III Private Limited (“PAC”)

Incorporated on August 28, 2007 under the companies Act in the Republic of Singapore, Clearwater-Singapore is a financial investor and belongs to “Clearwater Capital Partners” group. The shares of the company are not listed on any stock exchange in India or/and abroad. At present, the PAC holds 257,431 equity shares aggregating to 1.50% of the total existing paid-up and voting capital of the Target Company.

Triggered Event:

The Acquirer had subscribed to the bonds offered by the Target Company in terms of the Offering circular dated March 13, 2007 of which US\$ 5,966,000 Bonds are still held by the acquirer and are mandatorily due for conversion on January 30, 2012. The Acquirer has exercised its right to convert the remaining US\$ 5,966,000 Bonds into equity shares of the Target Company and to effect the conversion, a written “Conversion Notice” is served to the Principal Paying and Conversion Agent after the Board of Directors of Clearwater-Cyprus has passed a resolution to convert the remaining Bonds on January 11, 2012.

Shareholding of the Acquirer and PAC before and after the conversion:

	Acquirer	PAC	Total
Pre Transaction shareholding			
• Number of equity shares	3,941,803	257,431	4,199,234
• % of total share capital/voting rights	23%	1.50%	24.50%
Proposed shareholding after the acquisition of equity shares which triggered the Open Offer	5,895,999 30.88%^	257,431 1.35%	6,153,430 32.23%^

^Calculated on post-conversion equity share capital of the Target Company.

Pursuant to conversion of remaining Bonds into equity shares, the Acquirer along with PAC has triggered Regulation 3(1) of SEBI (SAST) Regulations, 2011; accordingly a Public Announcement was made to BSE and NSE by the Acquirer and PAC on January 11, 2012.

Takeover Open Offer

Pursuant to above conversion of bonds into equity shares, the Acquirer along with PAC has made Open Offer to the shareholders of the Target Company for acquisition of 4,964,283 equity shares representing 26% of the post-conversion paid-up equity share and voting capital at Rs.135 per equity share payable in Cash.

If the ongoing ‘Composite Scheme of Arrangement and Amalgamation’ (“the Scheme”) of promoters’ group entities of the Target Company is completed within 10 working days from the closure of the Tendering Period, the Acquirer and the PAC will increase the Offer Size to the extent of 26% of the post-amalgamation equity share capital of the Target Company in accordance with Regulation 7(1) of the said Regulations.

Compliance with Regulation 22(1) of SEBI (SAST) Regulations, 2011

The Manager to the Offer has opened a “Demat Escrow Account” wherein the Conversion Equity Shares will be kept in compliance with Regulation 22(1) of the Regulations which restrict the completion of acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period.

Upon fulfilment of the Offer related formalities, the Conversion Equity Shares will be transferred to the Acquirer’s DP account.

The relevant text of regulation 22(1) of SEBI (SAST) Regulations, 2011 is reproduced hereinbelow:

The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period:

Provided that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009.

MARKET UPDATE

Saga Music acquires music brand Lucky Stars

In an effort to expand its presence in Indian regional and devotional music distribution, Saga music has acquired Lucky Stars, a regional music company focused on the Punjabi songs. Through this acquisition, the Company will add its catalogue over 125 albums released by Lucky Stars in 5 different languages.

Yatra Online gets hold on Buzzintown.com

For the purpose of expanding its customer base, Yatra Online has acquired events and entertainment portal Buzzintown.com for an anonymous consideration. Post acquisition, Yatra Online will add over 3 million registered users of Buzzintown.com. Buzzintown is a ticketing site and offers information on deals and events in major cities of India.

Raymond in process to acquire major stake in Trinity India

Raymond is in the process of acquiring majority stake in Trinity India Ltd, a forged auto components maker through its subsidiary Ring Plus Aqua Ltd. Trinity India Ltd. has raised its equity funds from Tata Investment Corporation Limited holding 8.8% stake and Altina Finance Private Limited having 6.7% stake. Trinity India has five manufacturing units and exports more than 60% of its total sales.

Dalmia Cements to pick upto 50% holding in Calcom Cements

Dalmia Bharat Enterprises Limited is in the process to acquire upto 50% Stake of Calcom Cements through Dalmia Cement Bharat Ltd for an aggregate amount of Rs. 238 crore. The investment will be made by way of combination of new issuances and acquisitions. Dalmia Cement Bharat Limited was incorporated to operate as the investing arm for Dalmia Bharat Sugar and Industries Ltd. Whereas Calcom Cements is a JV between Kolkata based Vinay Cements and Assam Industrial Development Corporation.

OUR TEAM

Ruchi Hans

E: ruchi@indiacp.com

D: [+91.11.40622251](tel:+911140622251)

Priyanka Gupta

priyanka@indiacp.com

D: [+91.11.40622235](tel:+911140622235)

Divya Vijay

divya@indiacp.com

D: [+91.11.40622248](tel:+911140622248)

Visit us at



A Venture of



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

T: 40622200 F: 91.40622201

E: info@takeovercode.com

OUR GAMUT OF SERVICES:-

Investment Banking; Corporate Restructuring-M & A; FEMA Advisory; Securities Laws Advisory; Corporate Finance & Taxation; India Entry Services; Capital Market & Intermediaries Services; Corporate Compliances & Due Diligence.

Disclaimer:

This paper is a copyright of Corporate Professionals (India) Pvt. Ltd. The entire contents of this paper have been developed on the basis of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and latest prevailing SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in India. The author and the company expressly disclaim all and any liability to any person who has read this paper, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this paper.