

TAKEOVER PANORAMA

A Monthly Newsletter by Corporate Professionals

Year VII—Vol II
February Edition

Latest Open Offers



Legal Updates

ENTER THE WORLD OF TAKEOVER

INSIGHT



Hint of the Month



Regular Section



Case Study

Market Update



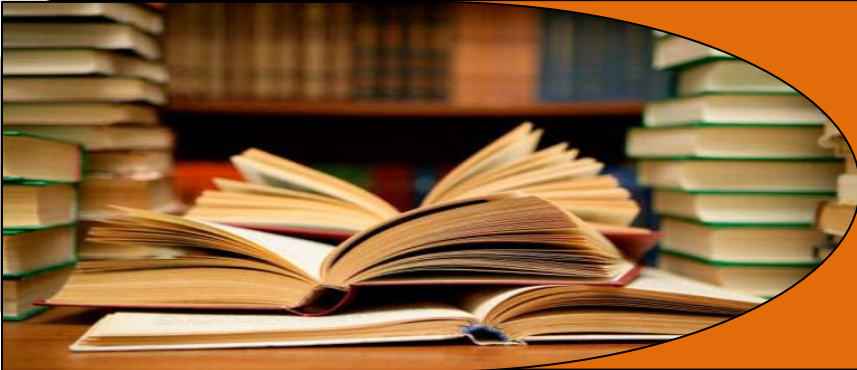
Queries



Quiz

Team





LEGAL UPDATES

Adjudicating/WTM orders

TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
M/s Associated Cereals Limited	Mr. Bimal Kumar Agarwal	Regulation 11(1) read with Regulation 14(2) of the SEBI (SAST) Regulations, 1997.	Rs. 2,00,000/-
M/s Bartronics India Limited	Mr. A.B Satyavas Reddy	Regulation 8A(1) and 8A(3) of the SEBI (SAST) Regulations, 1997 and Regulation 13(4) read with Regulation 13(5) of the SEBI (PIT) Regulations, 1992.	Rs. 2,00,000/-
M/s Empower Industries (India) Limited	Mr. Ashok Bhagat	Regulation 7(1) read with Regulation 7(2) and 10 of SEBI (SAST) Regulations, 1997, Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003.	Rs.82,00,000/-
M/s. Empower Industries (India) Limited	Mr. Devang D. Master	Regulation 7(1A) read with Regulations 7(2) and Regulations 10 and 11 of SEBI (SAST) Regulations,	Rs. 1,00,00,000/-



		1997, Regulation 13(4) read with 13(5) of SEBI (PIT) Regulations, 1992 and Regulations 3 (b), 3(c) and 3(d), 4 (1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003	
M/s Hasti Finance Ltd.	M/s Hasti Finance Ltd.	Regulations 6(2), 6(4) and Regulation 8(3) of SEBI (SAST) Regulations, 1997.	Rs. 4,00,000/-
M/s Hasti Finance Ltd	Mr. Dilip Chand Surana, Ms. Anju Devi Surana and Mr. Suresh Chand Surana	Regulations 11(2), 6(1), 6(2), 8(1) and 8(2) of SEBI (SAST) Regulations, 1997 for the year 1998 to 2009.	Matter disposed off
M/s Hasti Finance Ltd	Ms. Sonal Nitin Somani and Mr. Nitin Prabhudas Somani	Regulations 11(1) read with 14(2) and 7(1A) SEBI (SAST) Regulations, 1997.	Rs. 6,00,000/-
M/s Global Boards Limited (presently known as "Metroglobal Limited")	M/s Raj Investments Limited	Regulations 8(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(3) of the SEBI (PIT) Regulations, 1992.	Rs. 4,00,000/-
M/s Flawless Diamonds India Limited	M/s Rotomac Global Private Limited	Regulations 10 & 14 of the SEBI (SAST) Regulations, 1997	Rs. 5,00,000/-
M/s Kohinoor Foods Limited	M/s Venture Business Advisers Private Limited	Regulation 3(a), 4(1), 4(2) (a) & (g) of SEBI (PFUTP) Regulations, 2003, Regulation 7(1) of SEBI (SAST) Regulations, 1997.	Matter disposed off.



M/s Kohinoor Foods Limited	M/s. Temptation Foods Limited	Regulation 3(a), 4(1), 4(2) (a) & (g) of SEBI (PFUTP) Regulations, 2003, Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) & (3) of SEBI (PIT) Regulations, 1992	Matter disposed off.
----------------------------	-------------------------------	--	----------------------

HINT OF THE MONTH

Payment considerations by the acquirer under the open offer can be made by cash and / or by issue of equity shares and / or secured debt instruments (investment grade) and / or convertible debt instruments (convertible to equity shares) of acquirer (or PACs, if any) if such equity shares and secured debt instruments are listed.

The chosen mode of payment is required to be disclosed in the open offer document meant for shareholders of the target company.

{As substantiated from FAQ of SEBI on SEBI (SAST) Regulations, 2011}





Latest Open Offers

Target Company

M/s Grandma Trading and Agencies Limited

Registered Office

Mumbai

Net worth of TC

Rs. 12,70,63,814 (30.09.2012)

Listed At

BSE

Industry of TC

Trading

Acquirer

Mr. Bharat B. Jain

Triggering Event SPA for the acquisition of 77,700 (0.59%) existing total paid up equity shares and control over the Target Company

Details of the offer: Offer to acquire 33,95,600 (26.00%) Equity Shares at a price of Rs. 11/- per share payable in cash.

Triggering Event: SPA for the acquisition of 2,13,990 (41.78%) fully paid up equity shares and control over Target Company

Details of the offer: Offer to acquire 1,37,800 (26.91%) Equity Shares at a price of Rs. 15/- per share payable in cash.

Target Company

M/s. Tumus Electric Corporation Limited

Registered Office

Madhya Pradesh

Net worth of TC

Rs. 63.86 Lakhs (30.09.2012)

Listed At

BSE and MPSE

Industry of TC

Electric Equipment

Acquirer

Mr. Uttam Bagri



Target Company

M/s Orient Refractories Limited

Registered Office

New Delhi

Net worth of TC

Rs. 9474.23 Mn. (30.09.2012)

Listed At

BSE and NSE

Industry of TC

Industrial Goods

Acquirers

M/s. Dutch US Holding B.V.
and M/s. RHI AG (PAC)

Triggering Event: SPA for the acquisition of 5,24,01,579 (43.62%) fully paid up equity shares and control over Target Company

Details of the offer: Offer to acquire 3,12,36,192 (26.00%) Equity Shares at a price of Rs. 43/- per share payable in cash.

Triggering Event: SPA for the acquisition of 5,25,700 (48.34%) fully paid up equity shares and control over Target Company.

Details of the offer: Offer to acquire 2,82,750 (26.00%) Equity Shares at a price of Rs. 20/- per share payable in cash.

Target Company

M/s. Mapro Industries Limited

Registered Office

Mumbai

Net worth of TC

Rs. (2.99) Lakhs
(30.09.2012)

Listed At

BSE

Industry of TC

Chemicals

Acquirers

Mr. Sandeep Gupta, Mr.
Atul Kumar Sultania and
Mr. Umesh Kumar
Kanodia



Target Company

M/s Liberty Phosphate Limited

Registered Office

Vadodara

Net worth of TC

Rs. 143.21 Crores
(31.03.2012)

Listed At

BSE

Industry of TC

Fertilizers

Acquirer

M/s Coromandel International
Limited

Triggering Event: SPA for the acquisition of minimum 70,19,406 equity shares and maximum 81,25,107 equity shares (48.62% -56.28%) of the Voting Share Capital and control over Target Company

Details of the offer: Offer to acquire 37,53,933 (26.00%) Equity Shares at a price of Rs. 241/- per share payable in cash.

Triggering Event: Preferential Allotment of 40,00,000 Equity Shares constituting 39.90% of the post preferential allotment paid up capital of the Target Company at a price of Rs. 40 per share.

Details of the offer: Offer to acquire 20,06,303 (26.00%) Equity Shares at a price of Rs. 100/- per share payable in cash.

Target Company

M/s Wintac Limited

Registered Office

Bangalore

Net worth of TC

Rs. 2159.86 Lacs
(30.09.2012)

Listed At

BSE and BgSE

Industry of TC

Pharmaceuticals

Acquirers

GAVIS Pharma LLC and





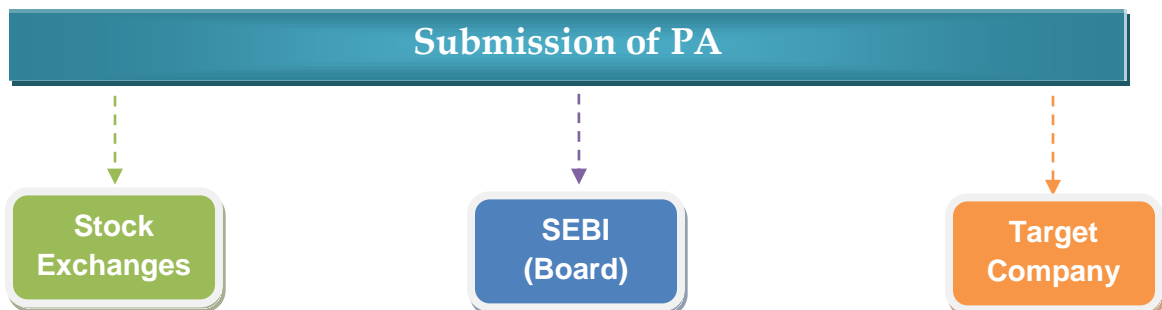
Regular section

Publication of Public Announcement and Detailed Public Announcement

SEBI (SAST) Regulation, 2011 (SAST Regulations) provides that whenever an Acquirer acquires the shares or voting rights of the Target Company in excess of the limits prescribed under Regulation 3 and 4, then the Acquirer is required to make an Open Offer to the shareholder of the Target Company. During the process of an Open Offer, the Acquirer is required to give Public Announcement and publish Detailed Public Statement. Regulation 14 of SAST Regulations prescribed the manner in which Public Announcement and Detailed Public Statement is to be made.

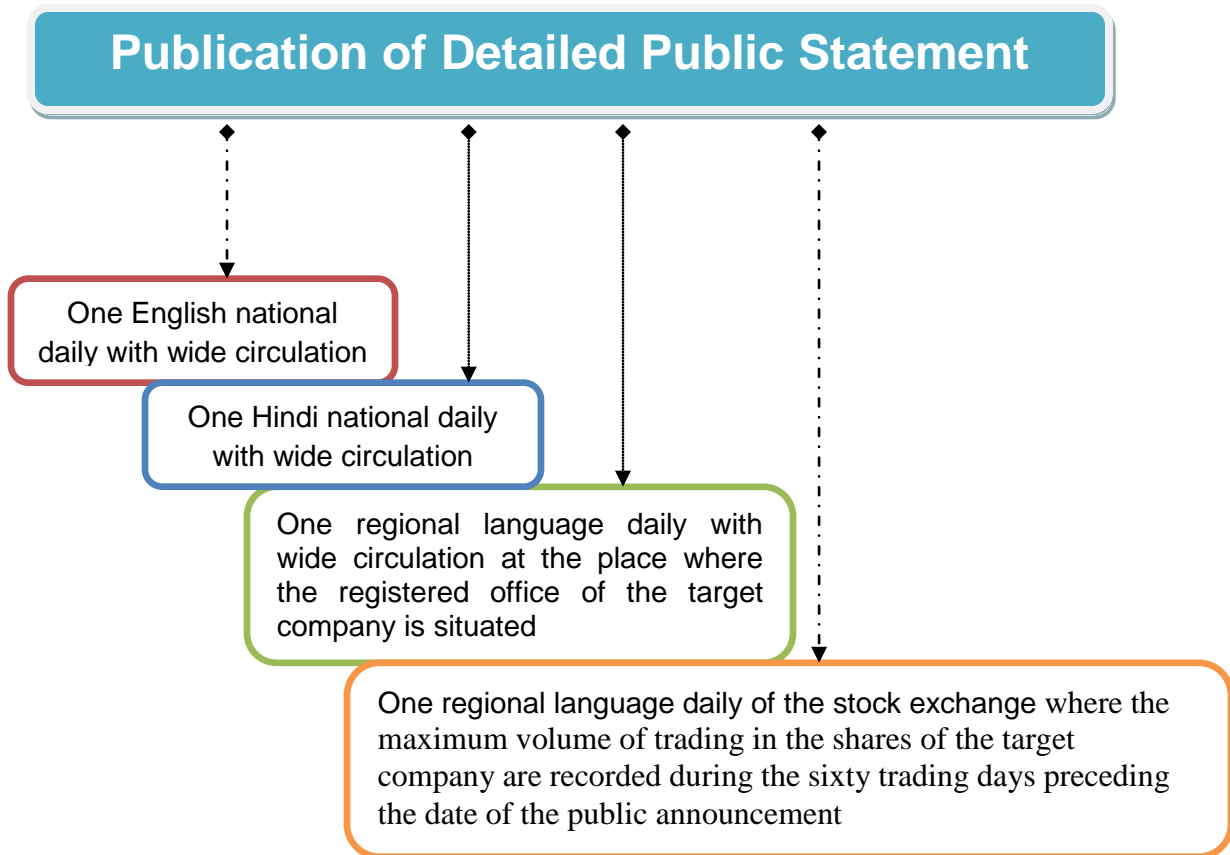
SUBMISSION OF PUBLIC ANNOUNCEMENT (PA)

Within the time specified under Regulation 13 of SAST Regulations, the Public Announcement shall be sent to all the stock exchanges on which the shares of the Target Company are listed. Further, a copy of the same shall also be sent to the Board and to the Target Company at its registered office within one working day of the date of the public announcement.



PUBLICATION AND SUBMISSION OF DETAILED PUBLIC STATEMENT

A detailed public statement shall be published by the acquirer through the manager to the open offer not later than five working days of the public announcement in the following newspaper:



Simultaneously with the publication in the newspaper, a copy of the same shall be sent to:

- ✚ The Board;
- ✚ All the Stock Exchanges on which the shares of the Target Company are listed; and
- ✚ The Target Company at its registered office.



CONTENTS OF PUBLIC ANNOUNCEMENT AND DETAILED PUBLIC STATEMENT

The public announcement shall contain such information as may be specified, including the following-

- (a) name and identity of the acquirer and persons acting in concert with him;
- (b) name and identity of the sellers, if any;
- (c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;
- (d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
- (e) the offer price, and mode of payment of consideration; and
- (f) offer size, and conditions as to minimum level of acceptances, if any.

The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.

NOTE: *The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.*



PROCEDURE OF FILING PA AND DPS

Submission of Public Announcement in accordance with the manner prescribed with the Stock Exchange(s), SEBI and at the registered office of the Target Company within the time specified



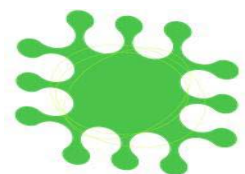
Stock Exchange shall disseminate such PA on its website forthwith



Publication of Detailed Public Statement in the newspapers prescribed within the specified time



Submission of the copy of the Detailed Public Statement with the SEBI, Stock Exchange(s) and at the registered office of the Target Company



Adjudicating Order in the matter of Kohinoor Foods Limited

ABOUT KOHINOOR FOODS LIMITED (COMPANY/KFL):

Kohinoor Foods Limited embarked upon its journey in 1989. Since then it has been treating every milestone achieved as a stepping stone to go past another one. At present, the company's offerings are preferred by connoisseurs across the globe - from the USA, Canada, Australia, New Zealand and the UK to the Middle East and South East Asian countries. The shares of the Noticee are listed at NSE and BSE.

ABOUT TEMPTATION FOODS LIMITED (NOTICEE / TFL)

Incorporated in the year 1991, TFL is managed by Mr. Vinit Vijay Kumar as Managing Director. The registered office of TFL is located at Mumbai. TFL is engaged in the processing and Individually Quick Freezing (IQF) of fruits and vegetables using the latest technology and processes. TFL is a major player and one of the largest organized sector enterprises in the Indian food processing industry.

BACKGROUND OF THE CASE:

1. SEBI conducted investigation into the trading in the scrip of M/s Kohinoor Foods Limited (Target Company/KFL) for the period December 31, 2007 to February 17, 2009 (Investigation period/IP) wherein it was observed that M/s Temptation Foods Limited ("Noticee/TFL") had entered into synchronized and self trades thereby allegedly creating artificial volumes in the Target Company and thus violated Regulation 3(a), 4(1), 4(2) (a) & (g) of SEBI (PFUTP) Regulations, 2003 (PFUTP Regulations).
2. It was further alleged that Noticee had violated the provisions of Regulation 7(1) of SEBI (SAST) Regulations, 1997 ("Takeover Regulations") and Regulation 13(1) of SEBI (PIT) Regulations, 1992 ("Insider Trading Regulations") by making wrong disclosures and violated Regulation 13(3) of Insider Trading Regulations by not making any disclosure when the aggregate



shareholding of the Noticee exceeded or reduced by 2% of the share capital of the Target Company.

3. Accordingly a SCN dated July 12, 2012 was issued to the Noticee to which the following contentions were made:

CONTENTIONS OF NOTICEE:

- i. The Noticee has duly informed BSE/NSE/SEBI and KFL regarding the market transactions dated 09/09/2008 and 19/12/2008.
- ii. As regard to the off market transaction dated 20/10/2008, Noticee contended that this was merely an internal transaction resorted by the broker funding the acquisition. Nevertheless between the Noticee and PAC (Venture Business Advisor Private Limited) there was no change in the % holding and hence were they advised that no disclosure is called for as the % of total holding retained under changed, between TFL and VBAPL (PAC) and was done unilaterally by the broker to merely facilitate the funding for the shares acquired.
- iii. The alleged two off market transactions dated 02/12/2008 and 24/12/2008 is again merely in exchange between TFL and PAC to get margin funding and was done by this broker to fund this shares. It may also note that the share brokers vide circular dated 28/08/1998 issued by RBI given guideline to fund shares including transfer to their DPID and this cannot be construed as sale/purchase as it is merely lending of securities against funds required. Thus, there is no infringement of Regulation 13 of Insider Trading Regulations as made out to be.
- iv. All alleged off market transactions were done within VBAPL and TFL and /or share broker for purpose of margin funding. At no time was there a sell order or buy order and there was no acquisition of fresh shares or disposal of existing shares. Further, Regulation 7(1) SAST Regulations relates only to acquisitions of shares and every disclosure has been made. Thus the Noticee has made no wrong disclosures at any time to SEBI and other authorities and have done all it was required to do so as per law.
- v. Moreover the Noticee further submitted that the Noticee is now in liquidation with OL having been appointed by the Hon'ble Mumbai High Court and this letter is being



addressed in personal capacity and with you to understand the nuances of market especially low funding is done by marketers.

WINDING UP ORDER

A winding up petition was filed by SBI Global Factors Limited against the Noticee and Hon'ble High Court of Judicature at Bombay vide its order dated March 28, 2012 has ordered winding up of Noticee.

DETAILS OF EVENTS

March 22, 2012 - Appointment of Adjudicating Officer to conduct the adjudication proceedings against the Noticee.

March 28, 2012 - Winding up order passed by the Hon'ble Bombay High Court.

July 12, 2012 - Issuance of Show cause Notice to the Noticee by the Adjudicating Officer

ISSUE UNDER CONSIDERATION:

Whether the adjudication proceedings initiated by SEBI against the Noticee can be continued in view of the order of winding up of the Noticee by the Hon'ble Bombay High Court?

ANALYSIS OF THE CASE

Legal Provision

Section 446 of the Companies Act, 1956

- (1) When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company except by leave of the (Tribunal) and subject to such terms as the (Tribunal) may impose.



INTERPRETATION UNDER VARIOUS CASES:

Madras High Court in *Burmah- Shell Oil Storage vs Associated Industrial* on 23 February, 1971:

"Through Section 446 of the Companies Act legislature has comprehended two situations: the first is commencement of a suit or other legal proceeding and the second is proceeding with a suit or other legal proceeding if such suit or proceeding was pending at the date of the winding-up order. In the latter case, the proceeding must be a proceeding pending at the date of the winding-up order. Only in such a case, the leave of the court for further proceeding with the proceeding would arise. But in the case of a proceeding to be commenced, there is no question of a proceeding being proceeded with. If a proceeding is commenced without the leave of the court and subsequent to the commencement, leave is asked for the continuation of that proceeding, it would not be a proceeding pending at the date of the winding up order within the meaning of Section 446 of the Companies Act, and obviously no leave can be granted under Section 446 for that purpose."

Hon'ble High Court of Bombay, in the case of *Deutsche Bank v. S.P. Kala* ((1990) 67 Com Cases)

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Sub section (2) further lays down that the court which is winding up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceedings by or against the company is vested in the company court without any kind of



restriction... The expression “any suit or proceeding by or against the company” is wide enough to bring within its sweep any kind of suits.”

OBSERVATION OF HON'BLE ADJUDICATING OFFICER:

Adjudicating Officer observed that Section 446 is to safeguard the assets of the company in winding up against the wasteful or expensive litigation in regard to matters capable of being determined expeditiously and cheaply by the winding-up court itself with a view to ensure equitable distribution of the assets among those entitled thereto and also to prevent the administration from being embarrassed by a scramble among the creditors and others having rights against the company.

Further he observed that the adjudication proceedings against the Noticee has been initiated on March 22, 2012 and the winding-up order of the Noticee was passed on March 28, 2012 which was before the issue of the show cause notice in July 2012. The Noticee at the time of the hearing on October 30, 2012, informed that the winding up order has been passed and submitted documents in that regard.

VERDICT OF HON'BLE ADJUDICATING OFFICER:

Considering the facts of the case, provision of the Companies Act and various judgments of Hon'ble Supreme Court of India , it was held that the Noticee is covered under the provisions of section 446 of the Companies Act and proceedings cannot be proceeded with without the leave of the court.





Market Updates

INVESTMENT IN ASG EYE HOSPITALS BY SEQUOIA CAPITAL

Sequoia Capital has invested Rs. 50 Cr in ASG Eye Hospitals, a super specialty eye hospital chain providing the entire range of eye-care treatment facilities under one roof from basic eye-care to advanced surgeries and the only private hospital chain to operate an eye bank. The funds would be utilized for pan-India presence, particularly in the northern and central areas along with a target to have 30 centres operating by 2014

EDUCOMP EXECUTED AN AGREEMENT TO SELL ITS 50% STAKE IN EUROKIDS INTERNATIONAL

In 2008, Educomp Solution invested Rs. 39 Cr to acquire 50% stake in EuroKids International Pvt. Ltd. Now, Educomp Solutions is selling its entire (50%) shareholding in Eurokids International Limited to a group led by GPE India, a leading investor in education subject to fulfillment of customary conditions precedents.

AMANSA SOLD ITS STAKE IN LAKSHMI MACHINE WORKS

Amansa Investments Limited has sold off 2 Lakhs shares of Lakshmi Machine Works (LMW) through NSE and BSE at a price of Rs. 2,125 per shares for a total consideration of Rs. 42.50 crores. LMW is engaged in the textile machines manufacturing business and having 60% market share in the domestic Textile Spinning Machinery Industry.



Quiz

PLAY The QUIZ
TEST YOURSELF

The name of winners of the quiz will be posted on our website Takeovercode.com and will also be mentioned in our next edition of **Takeover Panorama**. So here are the questions of this edition:

Question: 1

What is the applicability of SEBI (SAST) Regulations, 2011 in respect of acquisition of shares constituting 25% of the issued and paid up capital of the Target Company by way of transmission of shares?

- A. Open Offer Requirement
- B. Disclosure Requirement
- C. Open Offer as well as Disclosure Requirement
- D. Not Applicable

Mail your answer at info@takeovercode.com

Question: 2

Mr. A acquired 90% stake in M/s Z Pvt. Ltd. that holds 35% equity shares in Indian Listed Target Company. What is the applicability of SEBI (SAST) Regulations, 2011 on the said transaction?

- A. Disclosure Requirement
- B. Open Offer as well as Disclosure Requirement
- C. Eligible for Exemption
- D. Not Applicable

Mail your answer at info@takeovercode.com

Winners of Quiz – January 2013-edition

Aanchal wagle

Anisha gupta

Shankar Kumar Jha



Our TEAM



Ruchi Hans

E: ruchi@indiacp.com

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

Divya Vijay

E: divya@indiacp.com

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

Vivarth Dosar

E: vivarth@indiacp.com

D: [+91.11.40622218](tel:+911140622218)

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;
- ⊕ Valuation & Business Modelling;
- ⊕ Merger & Acquisition;
- ⊕ Tax & Transaction Advisory;
- ⊕ ESOP/ESPS;
- ⊕ Domestic & Cross Border Investment Structuring;
- ⊕ Group Reorganisation;
- ⊕ Corporate Funding;
- ⊕ Issue Management.

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.

