

TAKEOVER PANORAMA

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LEGAL UPDATES

Consent Order in the matter of Rammaica India Limited

SEBI had initiated adjudication proceedings against Rammaica India Ltd (Noticee) for allegedly violating the provisions of Regulations 6(2) and 6(4) for the years 1997 to 2002 and Regulation 8(3) of SEBI (SAST) Regulations, 1997 for the years 1998 to 2006 and for 2008 to 2010. Pending the adjudication proceedings, the Noticee have filed the consent application for the settlement of above violations and proposed to pay a sum of Rs. 265,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and disposes of said proceedings against the Noticee.

Adjudicating Officer/WTM Orders

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
Platinum Corporation Limited	Robinson Worldwide Trade Limited	Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) and 13(3) of SEBI (PIT) Regulations, 1992.	Rs. 3,00,000.
Sarang Chemicals Limited	Atlanta Share Shopee Limited	Regulation 7(1) of SEBI (SAST) Regulations 1997 and Regulation 13(1) of the SEBI (PIT) Regulations, 1992. Clause A (2) of the Code of Conduct for Stock Brokers specified in Schedule II read with regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.	Rs. 2,00,000 for the violations of SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992 and Rs. 1,00,000 for violation of the provisions of Code of Conduct for Stock Brokers.

Target Company	Noticee	Regulations	Penalty Imposed/ Decision Taken
Zigma Software Limited	Anil Gandhi, Anil Gandhi (HUF), Amrutlal Gandhi, Sudhaben Gandhi, Priti Anil Gandhi, Pooja Anil Gandhi, and Presilco Impex Ltd.	Regulation 7(1) read with 7(2) and 10 of SEBI (SAST) Regulations 1997 and Regulation 13(1) and 13(3) read with 13(5) of the SEBI (PIT) Regulations, 1992.	Rs. 5,00,000 on all the Noticees except Presilco and Rs.50,000 on Priti Anil Gandhi and Presilco each.

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 15-Dec-2011 Detailed Public Statement 22-Dec-2011	R Systems International Limited Regd. Office New Delhi Net worth Rs. 18025.34 Lacs Listed At BSE and NSE	Bhavook Tripathi	Offer to acquire 33, 45,242 (26%) Equity Shares at a price of Rs.122 per share payable in cash.	Regulation 3 Acquisition of 9,24,142 equity shares thereby increasing the shareholding of the Acquirer to 31%, for the purpose of investment in the Equity Shares of the Target Company	Merchant Banker KJMC Global Market (India) Limited Registrar to the Offer Link Intime India Pvt. Limited
Public Announcement 20-Dec-2011	Cigniti Technologies Limited	Sapna Pennam, Kumar Bapuji Kukunuru,	Offer to acquire 43, 91,770 (26%) Equity Shares at	Regulation 3 & 4	Merchant Banker

Dates	Name of the Target Company	Name of the Acquirers/PACs	Details of the offer	Reason of the offer	Concerned Parties
Detailed Public Statement 27-Dec-2011	Regd. Office Hyderabad Networth Rs.1272.22 Lacs Listed At BgSE and MSE. Traded on BSE under Indonext catgeory	Srikant Chakkilam	a price of Rs. 39 per fully paid up equity share payable in cash.	Preferential allotment of 57,98,000 (34.33%) equity shares and conversion of 17,50,000 (10.36%) outstanding warrant issued on September 29, 2010.	Ashika Capital Limited Registrar to the Offer Aarthi Consultants Private Limited
Public Announcement 22-Dec-2011 Detailed Public Statement 29-Dec-2011	Surabhi Chemicals & Investments Limited Regd. Office Surat Networth Rs. 1489.57 Lacs Listed At BSE and ASE	Mahadhan Vincom Private Limited along with Bishnu Dutt Goenka, Bina Agarwal and Santosh Sharma	Offer to acquire up to 3,05,006 (26%) Equity Shares at a price of Rs. 232 per share payable in cash.	Regulation 3 and 4 SPA to acquire 6,404,00 (54.59%) equity shares at a price of Rs. 232 per share payable in cash.	Merchant Banker Comfort Securities Limited Registrar to the Offer MCS Limited

HINT OF THE MONTH

Any person who is holding less than 25% share or voting capital of the Target Company and intends to make voluntary open offer can do so subject to the minimum offer size of 26% and maximum for entire share capital of the Target Company. The eligibility criteria's, conditions and restrictions for the making the Voluntary Offer as prescribed under Regulation 6 will not be applicable on such Acquirer.

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

REGULAR SECTION

Open Offer Escrow Account under SEBI (SAST) Regulations, 2011

Meaning & Purpose:

Escrow Account means a bank account which is required to be opened by an acquirer who proposes to make public announcement of offer in pursuance of regulation 3, 4, 5 and 6 of SEBI (SAST) Regulations, 2011. The Regulations have made detailed provisions regarding the Escrow Account. These provisions are contained in regulation 17 of SEBI (SAST) Regulations, 2011. Regulation 17(1) of SEBI (SAST) Regulations, 2011 provides that "Not later than two working days prior to the date of the detailed public statement of open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as specified. The purpose of these provisions is to ensure that the acquirer has sufficient funds to pay the consideration under the offer and he has secured sufficient financial arrangement.

I. Timing of opening of Escrow Account: [Regulation 17(1)]

The Acquirer shall open an escrow account *atleast two working days* prior to the date of Detailed Public Statement.

II. Amount to be deposited in Escrow Account: [Regulation 17(1)]

Sl. No.	Consideration payable under the Open Offer	Escrow Amount
a.	On the first Rs. 500 Crores	25% of the consideration
b.	On the balance consideration	An additional amount equal to 10%

It is further provided that where offer is made conditional upon minimum level of acceptance, then higher of following two shall be deposited in the Escrow Account:

Hundred percent of the consideration payable in respect of minimum level of acceptance	Fifty per cent of the consideration payable under the open offer
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If the Acquirer makes any upward revision in the open offer, whether by way of increase in offer price, or of the offer size, then the Acquirer shall make corresponding increases to the amount kept in escrow account prior to making such revision. [Regulation 17(2)]

III. Mode of Deposit in Escrow Account: [Regulation 17(3)]

- (a) **Cash Deposit** with any scheduled commercial bank
- (b) **Bank guarantee** issued in favor of the manager to the open offer by any scheduled commercial bank
- (c) Deposit of **frequently traded and freely transferable equity shares** or other freely transferable securities with appropriate margin subject to compliance with regulation 9(2).

Important Points:

Applicable Regulation	Details	
17(4)	Bank Guarantee or Deposit of Security	Deposit at least 1% of the total consideration payable in cash with schedule commercial bank as part of Escrow Account.
17(5)	Cash deposit	Empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts

		lying to the credit of the escrow account
17(6)	Bank Guarantee	The bank guarantee shall be in the favor of manager to the offer and shall be kept valid throughout the offer period and additional 30 days after the payment to the shareholders who have tendered their shares have been made.
17(7)	Securities	Manager to the Open Offer shall be empowered to realize the value of escrow account by way of sale or otherwise. Further in case of any shortfall in the amount in the escrow account, such shortfall shall be made good by the Manager.

IV. Release of amount from Escrow Account

The amount lying in escrow account can be released in the following cases only:

1. In case of withdrawal of offer, the entire amount can be released only after certification by the merchant banker.
2. The amount deposited in escrow account is transferred to special bank account opened with the Bankers to an issue; however the amount so transferred shall not exceed 90% of the cash deposit.
3. The balance 10% is released to the acquirer on the expiry of thirty days from the completion of all obligations under the offer.
4. The entire amount to the acquirer on the expiry of thirty days from the completion of all obligations under the offer where the open offer is for exchange of shares or other secured instruments.
5. In the event of forfeiture of amount, the entire amount is distributed in the following manner:
 - 5.1. One third of the amount to Target Company;
 - 5.2. One third of the escrow account to the Investor Protection and Education Fund established under SEBI (Investor Protection and Education Fund) Regulations, 2009;
 - 5.3. Residual one third is to be distributed to the shareholders who have tendered their shares in the offer.

CASE STUDY

SAT Order in the matter of Mahesh Kothari

Hon'ble Securities Appellant Tribunal (SAT) on December 20, 2011 set aside the impugned order of the Adjudicating Officer against Mr. Mahesh Kothari (Appellant) in the matter of Alka Securities Limited for violating the provision of Regulation 7(1A) of SEBI (SAST) Regulations, 1997 and directed the Appellant to file its reply within 3 weeks from the date of order and thereafter the Adjudicating officer will pass the fresh order accordingly.

Background of the Case

SEBI conducted an investigation in dealing in the scrip of Alka Securities Limited (Company) during the period from September 2008 to July 2009 due to sudden spurt in the price and trading volumes in the shares of the Company. The investigation revealed that the shareholding pattern disclosed by the company to BSE was significantly different from the actual shareholding, particularly with respect to promoters. It was observed that Mr. Mahesh Kothari had sold 15,00,000 shares constituting 3% of the paid up capital of the Company but failed to make necessary disclosures required under Regulation 7(1A) read with 7(2) of SEBI (SAST) Regulations 1997 and Regulation 13(4) read with 13(5) of SEBI Regulations, 1992, thereby violating the provisions of the regulations. Accordingly a show cause notice was issued to him.

In respect to the show cause notice issued, the Appellant contended that he along with other promoters of the Company had pledged the shares of the Company with Dena Bank and subsequently upon settlement of the dues of Dena Bank; the shares were released and pledged to certain other entities at the request of the promoters. The discrepancy in figures between the shares disclosed and actual shares held was on account of pledged shares. Moreover during the relevant time there was no requirement to disclose the pledged shares separately therefore, there were no separate disclosures of pledged shares by the promoter's upto December 31, 2008. Thereafter, the Company has separately filed the disclosure of pledged shares.

However, the Adjudicating Officer held that no share is shown as pledged in the demat statement, therefore the submission that the discrepancy in figures between the shares disclosed and actual shares held was on account of pledged shares is incorrect and consequently

not acceptable. Therefore, a monetary penalty of Rs. 2,00,000 was imposed for violation of Regulation 7(1A) of SEBI (SAST) Regulations, 1997. However, as the Appellant was neither an officer nor director of the Target Company during the investigation period, thus he is not guilty of violating the provisions of Regulation 13(4) of SEBI (PIT) Regulations, 1992.

Appeal against the Adjudicating Officer Order

It is against this order of the Board that the present appeal has been filed by the Appellant.

Observations of Hon'ble SAT

Regulation 7(1A) of SEBI (SAST) Regulation, 1997 requires that *“any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of Regulation 11 or under second proviso to sub regulation (2) of Regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and the stock exchanges where shares of the target company are listed within two days of such purchase or sale alongwith the aggregate shareholding after such acquisition of sale.”*

Hon'ble Tribunal observed that while recording his findings in the impugned order, the adjudicating officer has not recorded any finding whether the Appellant had acquired shares or voting rights in question under sub-regulation (1) of Regulation 11 or under second proviso to sub-regulation (2) of Regulation 11 of the SEBI (SAST) Regulation, 1997. In the absence of any finding in this issue, the appellant cannot be held guilty of violating Regulation 7(1A) of the SEBI (SAST) Regulation, 1997.

Decision of SAT

After considering the facts of the case, Hon'ble SAT set aside the impugned order of Adjudicating Officer and remanded the matter back to the Board with a direction to the appellant to file its reply, if any, within a period of three weeks and thereafter the Board will pass a fresh order in accordance with law.

MARKET UPDATE

International Breweries to make acquisition in South India

International Breweries, a Canada based Brewer which sells beer under different brands, is now planning to invest another 100 crore for the acquisition of a 2,00,000 hector litre beer plant in South India in next six months. The Company will add a new brand Australian Draught to its portfolio.

DLF to sell its hotel subsidiary to Square Four Housing

DLF is selling its hotel subsidiary “DLF Hotels & Hospitality” to Square Four Housing and Infrastructure Private Limited in order to pay off its debts for a consideration of Rs. 550 crore. The Company is selling its noncore assets like hotels and plots to cut its huge debt. It has already sold its IT Park in Noida to IDFC and is looking to sale its stake in Aman resorts and its Pune IT Park.

Future Supply Chain gets hold on Transmart India

Future Supply Chain Solutions, an arm of Future’s Group has purchased the warehousing business of Transmart India consisting of 2 lacs square feet distribution centre and some of its clients for an anonymous consideration. Established in 2008, Transmart India provides 3PL services. Future Supply Chain operates through strategically located hubs and retail outlets spread across the country.

CMS Infosystems Acquires Securitrans India

Blackstone backed CMS Info Systems, considering the demand of security services, has acquired the Securitrans India Pvt. Ltd., a New Delhi based company for the consideration of about 200-250 crore. Securitrans India Pvt. Ltd. is a part of APS Group established in the year 1986 which is engaged in providing services of security coverage to banks, financial institutions, hotels etc. On the other side CMS Info Systems, deals in IT services and training, print services, cash management services and card services.

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