

TAKEOVER PANORAMA

A Monthly Newsletter by Corporate Professionals

Year VII—Vol VII
July Edition

Latest Open Offers



Legal Updates

ENTER THE WORLD OF TAKEOVER
INSIGHT



Hint of the Month



Regular Section



Case Study

Market Update



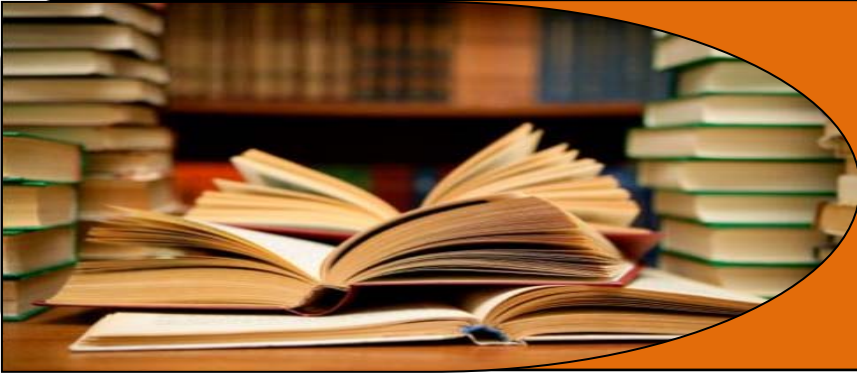
Queries



Quiz

Team





LEGAL UPDATES

Exemption granted in the matter of GMR INFRASTRUCTURE LIMITED

FACTS:

1. The promoter and promoter group of GMR Infrastructure Limited ("Target Company") consists of GMR Holdings Private Limited ("GHPL"), GVMR Trust, SBR Trust, GBSRSS Trust, GKCR Trust, GMR Infra Ventures LLP, Rajam Enterprises Private Limited, GMR Enterprises Private Limited, Mr. G. Mallikarjuna Rao, Mrs. G. Varalakshmi, Mr. Srinivas Bommidala, Mrs. B. Ramadevi, Mr. G.B.S. Raju, Mrs. G. Satyavathi Smitha, Mr. G. Kiran Kumar and Mrs. G. Ragini.

SEBI granted exemption to Trusts (Acquirers) where beneficiaries of Acquirers are family members of the Transferor.

GIST
2. The Trusts (constituting part of the promoter group) are private family Trusts settled under separate deeds of settlement for the purpose of providing for the welfare and maintenance of the family of Mr. G. Mallikarjuna Rao consisting of his children, their spouses and their bloodline descendants ("the GMR family").
3. As on the date of the application, GHPL holds 70.30% of the equity share capital and the promoter and promoter group (including GHPL) hold 71.43% of the equity share capital of the Target Company.
4. The equity shares of GHPL are only held by Mr. G. Mallikarjuna Rao (99.997%) and Mrs. G. Varalakshmi (0.003%) (Collectively referred to as "Transferors"). Now the Transferor proposed to transfer their holding in the following manner:
 - a. 7,55,061 equity shares constituting approximately 25% of the paid up equity share capital of GHPL to each of the following Trusts – GVMR Trust, SBR Trust, GBSRSS Trust and GKCR Trust ; and
 - b. 3 shares to the GMR Family Fund Trust.



(All the aforesaid 5 Trusts would be collectively referred to as the Acquirers)

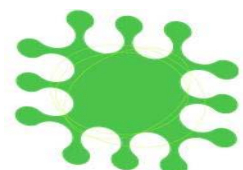
5. Pursuant to the proposed transfer, the Acquirers in their capacity as Trustees of the Trusts would directly and indirectly hold 71.43% of the voting rights of the Target Company that would result into triggering of regulation 3(1) of the SEBI (SAST) Regulations, 2011.
6. Therefore, Mr. G. Mallikarjuna Rao as authorized by the other trustees has filed an exemption application under Regulation 11(3) of SEBI (SAST) Regulations, 2011 seeking exemption from the applicability of Regulation 3(1) of SEBI (SAST) Regulations, 2011 on the following grounds:

GROUNDS FOR EXEMPTION:

1. The indirect acquisition pursuant to the proposed settlement by way of gift is only an internal reorganisation of the shareholding of GHPL within the GMR family for the benefit of the members of the GMR family. The indirect acquisition would not be a commercial transaction.
2. There will be no change of control or management of the Target Company pursuant to the proposed settlement by way of gift of shares of GHPL to the Acquirers.
3. Regardless of whether the Acquirers exercise control in their personal capacity or as trustees, the GMR family would continue to be in control of the Target Company.
4. The indirect acquisition for which exemption is sought will not affect or prejudice the interests of the public shareholders of the Target Company in any manner.

DECISIONS:

SEBI observed that pursuant to the proposed transfer, there would be no change either in the shareholding of GHPL in the Target Company or in the shareholding pattern of the promoter and promoter group in the Target Company. It is only in the manner in which shares of GHPL (*a promoter entity*) are held which would change pursuant to the proposed transfer of shares of GHPL held by Mr. Mallikarjuna Rao and Mrs. G. Varalakshmi (*the Acquirers*). It is further observed that there would be no change in the shareholding/voting rights of the public shareholders and that the proposed transaction would not in any manner affect their interests.



Accordingly exemption was granted to the acquirers from the requirement of open offer as envisaged under regulation 3(1) of the SEBI (SAST) Regulations, 2011 in respect of proposed indirect acquisition of shares/voting rights of the Target Company.

SAT order in the matter of M/s AKSHYA INFRASTRUCTURE PRIVATE LIMITED Vs SEBI

FACTS:

1. On October 20, 2011, Akshya Infrastructure Private Limited (“Appellant”) made a voluntary public announcement through M/s. Motilal Oswal Investments Advisors Private Limited (Merchant Banker) to the shareholders of MARG Limited (Target Company) and subsequently filed the Draft Letter of Offer with SEBI (“Respondent”)
2. The tendering period was scheduled to commence on December 1, 2011 and conclude on December 20, 2011. The consideration for the tendered shares was to be paid before January 4, 2012.
3. On October 25, 2011, the Respondent sought certain details relating to an earlier change in the shareholding of the Promoter Group. The same was provided forthwith by the Merchant Banker on behalf of the Appellant vide letter dated November 8, 2011.
4. Despite of timely submission of all the details as required by the Respondent, there was no clear indication as to when the Draft LO would be cleared by them. Therefore, Appellant requested respondent to withdraw the open offer. However Respondent declined the same and directed the Appellant to go ahead with the same offer after making certain modifications as per the comments contained in the impugned letter dated November 30, 2012.

Withdrawal of voluntary open offer allowed where there has been an inordinate delay in issuing the observation letter by SEBI.

GIST

CONTENTIONS OF APPELLANT

- a. The Appellant submits that the open offer in question was made voluntarily and because of the lapse of a period of more than one year from the date of the open offer, the same has been rendered non-feasible and now remains only academic in nature and therefore the same ought to be allowed to be withdrawn.



- b. **Vide letter dated November 11, 2011, the respondent stated that the Promoter Group appeared to have acquired shares in excess of the limits prescribed by Regulations 11(1) and 11(2) of the SEBI (SAST) Regulations of 1997 on March 30, 2007, October 12, 2007 and February 19, 2011. In this respect, the Appellants contended that at no point of time was there any acquisition by the Promoter Group which could lead to its shareholding going beyond the threshold of 5% during any financial year.**
- c. An amount of Rs. 17.46 crore deposited by the Appellant in an escrow account in relation to the open offer was also lying dormant without any productive use and, therefore, it be allowed to be withdrawn.
- d. The Promoter Group would not derive any benefit out of withdrawal of the open offer.

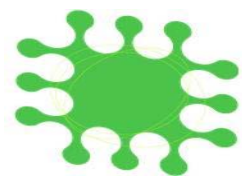
ISSUES:

- a. Whether the Appellants should be allowed to withdraw the Open Offer?
- b. Whether the Appellants have violated the provisions of Regulations 11 (1) and (2) of SEBI (SAST) Regulations, 1997

DECISION:

The Hon'ble Tribunal observed that the open offer in question was not triggered by any crossing of the statutory limit to acquire the shares instead was made voluntarily to consolidate its holding in the Target Company. This move was considered viable as on the date of the Public Announcement. However, due to the long lapse of time in securing the Respondent's approval the same was rendered futile. Therefore, the request for withdrawal by the Appellant was bona fide and direct the Respondent to consider the case of the Appellant in view of the provisions of Regulation 27 of the SEBI (SAST) Regulations of 1997 and graciously granted permission to withdraw the voluntary open offer.

Further, it was observed that the alleged violation of Regulations 11(1) and (2) against the Appellant could have been proceeded with only as per law laid down in the SEBI Act, particularly provisions of Regulation 11C, 15I and 15J read with provisions of Chapter V of the SEBI (SAST) Regulations. However, the said provisions have not been followed by the Respondent. Therefore, SAT did not intend to make any observation on the merit of the issue



regarding the three Alleged Triggers date i.e. March 30, 2007, October 12, 2007 and February 19, 2011 and the contentions of parties in this regard are kept open.

SAT order in the matter of S. R. B. Ramesh Chandra and others Vs. SEBI

FACTS:

1. The present appeal is filed by S. R. B. Ramesh Chandra, S. R. B. Ramesh Chandra (HUF), Mr. S. Chandra Mohan, S. Chandra Mohan (HUF) Ms. S, Laxmi Mohan, Mr. S. Karthik Sarat Chandra, Ms. Deepthi Sunethri, Ms. Vimala Kumari, Mr. S. Chatur Swaroop Chandra, Ms. S. Dharani, Mr. S. Kishore Chandra, S. Kishore Chandra (HUF), Ms. S. Sasi Rekha (“Appellants”) against the order dated July 19, 2011 passed by SEBI (“Respondent”) directing the Appellants to disinvest 41,96,760 shares of M/s Bheema Cements Limited (“Target Company”) within a period of two months from the date of the order for the violation of Regulation 11(2) of the SEBI (SAST) Regulations, 1997.

The Hon’ble Tribunal set aside the order to divestment 41,96,790 equity shares and the case was remanded back to SEBI for reconsideration.

GIST
2. The Appellants are promoters of the Company holding 63.26% of the equity share capital of the Target Company, out of which 45.17% have been pledged with banks.
3. In 2005, the Target Company approached banks for term loans of approximately Rs. 20 Crore, against which a margin of around Rs. 6 Crore was demanded by the banks. Therefore, Appellants have agreed to infuse Rs. 3 Crore into the Target Company by way of preferential allotment of shares. As a result of which, the shareholding of the Appellants in the Target Company would go up from 63.26% to 69.11% resulting into triggering of Regulation 11(1) of SEBI (SAST) Regulations, 1997. Therefore in order to circumvent this situation, the Applicants made an application to SEBI seeking exemption from the obligation of making an open offer under Regulation 11(1) and SEBI graciously granted the exemption sought by the Appellants.
4. Following the aforesaid exemption, the Company held an EGM on December 13, 2005 wherein the shareholders granted their approval to the preferential allotment of 30,00,000 shares along with the allotment of 41,96,790 warrants in favour of the Appellants. It is important to note that



exemption was sought by the appellants and granted by SEBI only in respect of 30,00,000 shares.

5. On June 26, 2007, SEBI had written a letter to the Target Company stating that the exemption granted was only with respect to the 30,00,000 shares and not for allotment of 41,96,790 warrants. However, on July 6, 2007, the Target Company finally allotted the said shares and warrants to appellants which were converted into equity shares on December 15, 2008 thereby increasing the shareholding of the appellants from 69.11% to 74.01% resulting into triggering of open offer requirement. However, no such open offer was made by the appellants at that time.
6. On September 10, 2010, the Appellants had applied for post-facto exemption from making an open offer under SEBI (SAST) Regulations, 1997 with respect to the warrants converted into shares on December 15, 2008 which was rejected by SEBI.
7. Accordingly, a show cause notice was issued to the Appellants alleging the violation of Regulation 11(2) read with Regulation 14(2) of SEBI (SAST) Regulations, 1997 and subsequently Impugned Order was finally passed on July 19, 2011 asking the Appellants to disinvest 41,96,790 of their shares within the next two months.

CONTENTIONS OF THE APPELLANTS:

1. As a promoter group, the Appellants have always acted in a bonafide manner to infuse capital into the Target Company and the amount of Rs. 4,19,67,900 paid by the Appellants in order to subscribe to the warrants has been utilized for the betterment of the Target Company and its shareholders.
2. The Appellants stated that they have always been in control of the Company and the conversion of the warrants into equity shares has not change their position in any way. Further they have not been the beneficiaries of any undue advantage, nor have the public shareholders suffered in any way owing to the actions of the Appellants.
3. Further it is also contended that the shares of the Target Company not being very liquid, the market will not be able to absorb 41,96,790 shares. Also, the price of the shares will fall drastically which would lead to undermining of the value of the shares held by the public and the banks.



4. There have been no complaints by public investors with respect to the transactions undertaken by the Appellants.
5. The adjudication proceedings have already commenced with respect to the same alleged violation in question.
6. SEBI having granted postfacto exemption in the cases of Jaiswal Neco Limited and Seahorse Hospitals Ltd. cannot have different yardsticks with respect to different entities. However, SEBI is of the view that prior to the conversion of the warrants in question, no application was made as required by Regulation 4(2) of SEBI (SAST) Regulations, 1997 even though a letter was sent to the appellants on June 26, 2007.
7. SEBI failed to understand the gravity of the Appellants situation when it was forced to take the decision to convert the 41,96,760 warrants into shares and the Appellants were constrained to take such a decision not for any hidden agenda which would lead to any sort of undue benefit to the Appellants, but in the interest of the Company.

ISSUES:

Whether, considering the contentions of the appellants and the financial position of the Target Company at the time when the allotment and conversion of warrants took place, it is justified to direct the appellants to divest the shares acquired in violation of Regulation 11(2) of SEBI (SAST) Regulations, 1997?

DECISION:

The Hon'ble Tribunal observed that the Target Company was a sick unit going into major losses therefore in order to bring the Target Company out of its unfortunate predicament, the appellants infused capital into the Company through the allotment of preferential shares and warrants. However SEBI had warned the Appellants vide letter dated June 26, 2007 that the exemption granted to the Appellants was only with respect to the 30,00,000 shares and not for the warrants.



Further, the Hon'ble Tribunal observed that immediately after the boost in capital owing to the equity shares acquired by the Appellants and warrants subscribed to, the value of the shares held by investors at large increased substantially. The Appellants at all times kept the stock exchanges in the loop by informing them of the proposed conversion of 41,96,790 warrants into equity shares and had also received the in-principle permission from BSE in 2007 itself for the aforesaid conversion of warrants into shares.

Thus, considering all the facts and circumstances of the case, the Hon'ble Tribunal is of the view that divestment of 41,96,790 equity shares would not be in anyone's interest. On the contrary, this might sent the Company back into sickness. However, since the Appellants were found guilty of violation of the regulation in question, therefore, the case was remanded back to SEBI for reconsideration.

Adjudicating/WTM orders

Target Company	Notices	Regulations	Penalty Imposed/ Decision Taken
<p style="text-align: center;">Sterling Greenwoods Limited</p>	<p style="text-align: center;">Sterling Green Woods Limited, Paksh Developers Private Limited and Mr. Anurag Dineshchandra Agarwal</p>	<p style="text-align: center;">Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (a), (b) & (e) of the SEBI (PFUTP) Regulations, 2003, Regulation 7(1) and 10 of SEBI (SAST) Regulations, 1997, Regulation 13(1), 13(4) of the SEBI (PIT) Regulations, 1992, Section 21 of the SCRA, 1956 and Clause 35 of the Listing Agreement.</p>	<p style="text-align: center;">1,25,50,000</p>



HINT OF THE MONTH

A voluntary offer cannot be made if the acquirer or PACs with him has acquired any shares of the target company in the 52 weeks prior to the voluntary offer. The acquirer is prohibited from acquiring any shares during the offer period other than those acquired in the open offer. The acquirer is also not entitled to acquire any shares for a period of 6 months, after completion of open offer except pursuant to another voluntary open offer.

{As substantiated from FAQ of SEBI on SEBI Takeover Regulations, 2011}





Latest Open Offers

Target Company

M/s Crisil Limited

Registered Office

Mumbai

Net worth of TC

Rs. 5,290 Mn (31.12.2012)

Listed At

BSE and NSE

Industry of TC

Financial Services

Acquirer and PACs

McGraw-Hill Asian Holdings (Singapore) Pte. Ltd. ("Acquirer"), S&P India LLC, Standard & Poor's International LLC and McGraw Hill Financial, Inc. (PACs)

Triggering Event: Voluntary Open Offer

Details of the offer: Offer to acquire upto 15,670,372 (22.23%) Equity Shares at a price of Rs1,210 per fully paid up equity share.

Target Company

M/s S.V. Trading and Agencies Limited

Registered Office

Mumbai

Net worth of TC

Rs. (464.80) Lacs
(31.03.2013)

Listed At

BSE

Industry of TC

Other Financial Services

Acquirers

Mr. Manoharbai P. Joshi
& Mr. Gopal Lal Paliwal

Triggering Event: Off Market Purchase and Share Purchase Agreement for the acquisition of 59,000 (59.00 %) equity shares and control over the Target Company.

Details of the offer: Offer to acquire 26,000 Equity Shares at a price of Re. 10/- per share for the fully paid up equity share.



Target Company

M/s Mahindra Forgings Limited

Registered Office

Mumbai

Net worth of TC

Rs. 7,544 Mn (31.03.2013)

Listed At

BSE and NSE

Industry of TC

Other Industrial Products

Acquirers and PACs

M/s Participaciones Internacionales Autometal Dos, S.L (Acquirer), M/s Autometal S.A and M/s CIE Automotive S.A (PACs)

Triggering Event: Share Purchase Agreement for the acquisition of 48,529,500 (51.50%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire 24,502,193 Equity Shares at a price of Rs. 81/- per fully paid up equity share.

Target Company

M/s Mahindra Composites Limited

Registered Office

Mumbai

Net worth of TC

Rs. 146 Mn. (31.03.2013)

Listed At

BSE

Industry of TC

Plastic Products

Acquirers and PACs

M/s Participaciones Internacionales Autometal Dos, S.L (Acquirer), M/s Autometal S.A. and M/s CIE Automotive S.A (PACs)

Triggering Event: Share Purchase Agreement for the acquisition of 1,561,203 (34.85%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire 1,164,616 Equity Shares at a price of Rs. 74.70/- per fully paid up equity share.

Target Company

M/s Anugraha Jewellers Limited

Registered Office

Coimbatore

Net worth of TC

Rs. 208.55 Lacs
(31.03.2013)

Listed At

BSE , CSX and MSE

Industry of TC

Apparels & Accessories

Acquirer

B. P. Jhunjhunwala &
Others (HUF)

Triggering Event: Share Purchase Agreement for the acquisition of 14,09,399 (31.32%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire 11,70,000 Equity Shares at a price of Rs. 1.70/- per fully paid up equity share.

Triggering Event: Share Purchase Agreement for the acquisition of 883,300 (26.10%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire 879,810 Equity Shares at a price of Rs. 12/- per fully paid up equity share.

Target Company

M/s Emed.Com Technologies Limited

Registered Office

Hyderabad

Net worth of TC

Rs. 404.73 lacs (31.03.2013)

Listed At

BSE and HSE

Industry of TC

Comm.Trading & Distribution

Acquirers

Mr. Kamleshbhai Dharshibhai Koradiya and Mr Hirenbhai Rasiklal Doshi



Target Company

M/s Ellenbarrie Industrial
Gases Limited

Registered Office

Kolkata

Net worth of TC

Rs. 2627.35 Lacs
(31.03.2012)

Listed At

CSE

Industry of TC

Industrial Gases

Acquirer

Air Water Inc

Triggering Event: Share Purchase Agreement for the acquisition of 3,338,858 (51.00%) Equity Shares and control over the Target Company.

Details of the offer: Offer to acquire 17,02,163 Equity Shares at a price of Rs. 316.94/- per fully paid up equity share.

Target Company

M/s Intellvisions Software
Limited

Registered Office

Mumbai

Net worth of TC

Rs. 3691.50 lacs
(31.03.2013)

Listed At

BSE

Industry of TC

IT Technology

Acquirers and PACs

M/s Sam Financial Services Pvt Ltd. and Mr. Ajay Dilkush Sarupria (Acquirers), Mrs. Jasmine Ajay Sarupria, Mr. Rajasekharan Menon, Mrs. Anuradha R. Menon and Mrs. Pruthu P. Patel (PACs)

Triggering Event: Preferential Conversion of warrants into 28,90,000 (25.33%) Equity Shares of Target Company.

Details of the offer: Offer to acquire 29,66,600 Equity Shares at a price of Rs. 15.50/- per fully paid up equity share.

Target Company

M/s Gujarat Automotive
Gears Limited

Registered Office

Vadodara

Net worth of TC

Rs. 1403.78 Lacs
(31.03.2013)

Listed At

BSE

Industry of TC

Auto Parts & Equipment

Acquirers

M/s Him Teknoforge
Limited, M/s Globe Precision
Industries Private Ltd., Mr.
Vinod Aggarwal and Mrs.
Asha Aggarwal

Triggering Event: Share Purchase Agreement for the acquisition of 1,92,500 (55.00%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire up to 91,000 Equity Shares at a price of Rs.1137/- per fully paid up equity share.

Target Company

M/s JMT Auto Limited

Registered Office

Kolkata

Net worth of TC

Rs 14241.89 lacs
(31.03.2013)

Listed At

BSE and NSE

Industry of TC

Auto Parts & Equipment

Acquirer

M/s Amtek Auto Limited

Triggering Event: Share Purchase Agreement for the acquisition of 38,30,358 (26.61%) Equity Shares and control over the Target Company

Details of the offer: Offer to acquire 37,42,760 Equity Shares at a price of Rs. 149/- per fully paid up equity share.





Regular Section

Automatic Exemption from Open Offer

SEBI (SAST) Regulations, 2011 provides that whenever an acquirer acquires shares/voting rights in excess of the threshold or control over the Target Company as prescribed under regulation 3 and 4 of SEBI (SAST) Regulations, 2011, then the acquirer is required to make a public announcement of offer to the shareholders of the Target Company.

BRIEF INTRODUCTION OF REGULATION 3 AND 4

Regulations 3

Regulation 3 of SEBI (SAST) Regulation, 2011 contains provisions regarding substantial acquisition of shares or voting rights of the Target Company. It deals with the specific limits triggering which the acquirer(s) are required to come out with an open offer in accordance with these Regulations.

Regulation 4

Regulation 4 provides that No acquirer shall acquire, directly or indirectly, control over such target company, irrespective of acquisition or holding of shares or voting rights in a target company unless the acquirer makes a public announcement of an open offer.

Reg. 3 (1)

- Open Offer on crossing initial threshold, i.e. 25%.

Reg. 3 (2)

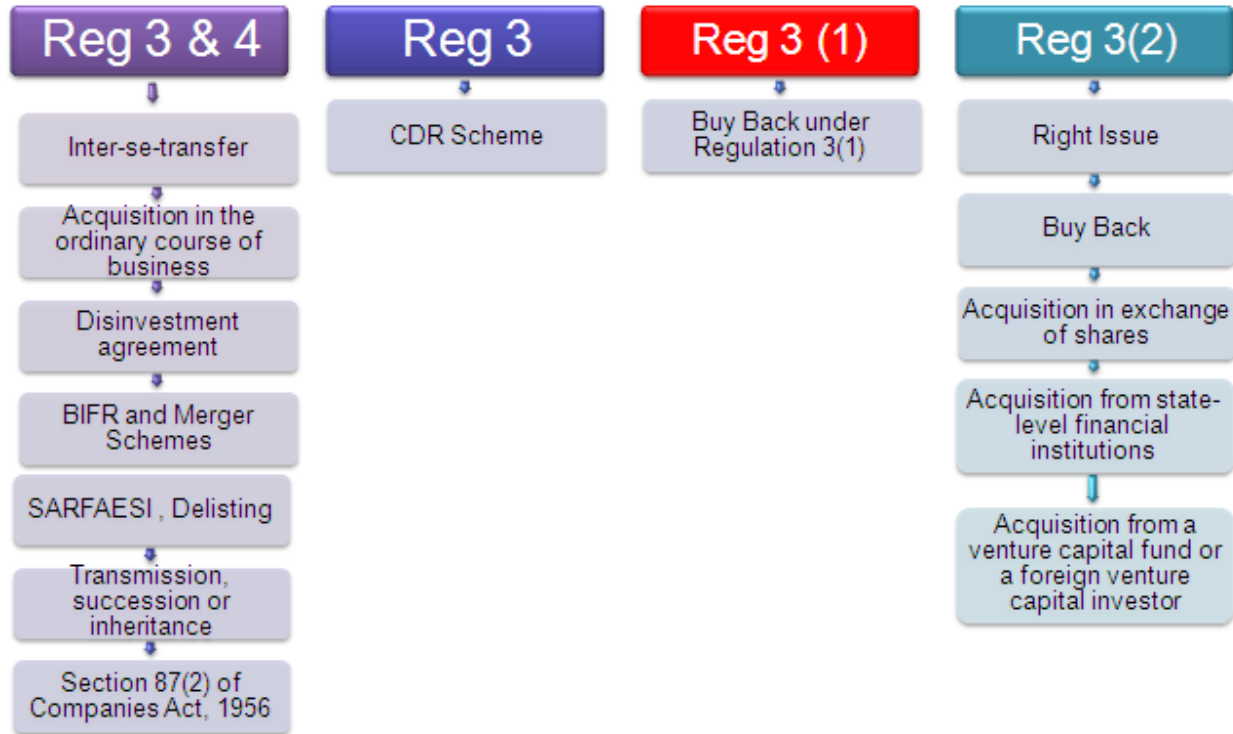
- Open offer for crossing creeping acquisition limit, i.e. 5%

Reg. 4

- Change in Control

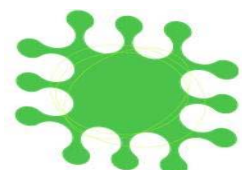


Regulation 10 of SEBI (SAST) Regulations, 2011 provides automatic exemption to the following acquisitions from the requirement of making Open offer under regulation 3 and 4 subject to the compliance of the conditions as prescribed therein.



ACQUISITION EXEMPT FROM REGULATION 3 & 4

- Acquisition pursuant to inter se transfer of shares amongst qualifying persons such as Immediate relatives, Promoters and other as provided under Regulation 10 (1) (a).
- Acquisition in the ordinary course of business by an underwriter, stock broker, Merchant Banker, Scheduled Commercial Bank etc as provided under Regulation 10 (1) (b).
- Acquisition pursuant to an agreement of disinvestment subject to the fulfillment of the conditions as provided under Regulation 10 (1) (c).
- Acquisition pursuant to schemes made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, Merger, demerger etc. as provided under Regulation 10 (1) (d).
- Acquisition pursuant to the provisions of SARFAESI Act 2002, SEBI (Delisting of Equity Shares) Regulations, 2009, by way of transmission, succession or inheritance.



- Acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 87 of the Companies Act, 1956.

ACQUISITION EXEMPT FROM REGULATION 3

The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001 subject to the conditions as provided under Regulation 10 (2).

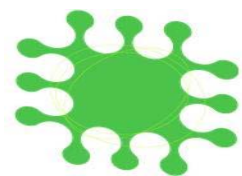
ACQUISITION EXEMPT FROM REGULATION 3 (1)

Acquisition pursuant to Buy-back as provided under Regulation 10 (3).

ACQUISITION EXEMPT FROM REGULATION 3 (2)

- Acquisition pursuant to Rights Issue subject to the conditions as provided under Regulation 10 (4) (a) and 10 (4) (a).
- Acquisition pursuant to Buy Back subject to the conditions as provided under Regulation 10 (4) (c).
- Acquisition in exchange of shares as mentioned under Regulation 10 (4) (d).
- Acquisition from state-level financial institutions or their subsidiaries or companies promoted by them as mentioned under Regulation 10 (4) (e).
- Acquisition from a venture capital fund or a foreign venture capital investor registered with the Board as mentioned under Regulation 10 (4) (f).

The above mentioned acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the following compliances:



Regulation 10(5) – Acquirer shall give advance intimation to the stock exchange atleast 4 working days prior to the proposed acquisition.

Following transactions are required to comply with **Regulation 10(5)**

- Inter se transfer of shares
- Acquisition from State Level Financial Institution
- Acquisition from VCF or a foreign venture capital investor

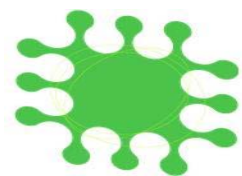
Regulation 10(6) – Any acquirer seeking exemption shall file a **report** with the stock exchanges not later than four working days from the acquisition.

All category of automatic exemptions as specified under Regulation 10 are required to comply with Regulation 10 (6)

Regulation 10(7) - The Acquirer shall file a report to SEBI within 21 working days of the date of acquisition along with supporting documents to the Board giving all details in respect of acquisitions and fee of Rs 25,000.

Following transactions are required to comply with **Regulation 10(7)**

- Inter se transfer of shares
- Scheme of Arrangement not directly involving Target Company
- Acquisition of voting rights or preference shares carrying voting rights
- Acquisition through CDR scheme
- Buy Back of shares
- Acquisition through Right Issue
- Acquisition from VCF or a foreign venture capital investor



SAT Order in the matter of acquisition of Shares of Khaitan Electricals Limited

(Applicability of Regulation 10 and 11 of SEBI (SAST) Regulations, 1997)

INTRODUCTION

1. Khaitan Electricals Limited (hereinafter referred to as “Target Company/KEL”) is a company incorporated under the Companies Act, 1956 having its registered office at A-13, Co-operative Industrial Estate, Balanagar, Hyderabad- 500 037. The shares of the Target Company are listed at BSE and NSE.
2. Mr. Sunil Khaitan, Mr. Krishna Khaitan, Khaitan Lefin Limited (KLL) and the Orientale Mercantile Company Limited (OMCL) (hereinafter collectively referred to as “Acquirers”/ “Appellants”) belong to Promoter Group of the Target Company.
3. This appeal has been filed by the Appellants against the direction of SEBI (Respondent) to make a combined public announcement under regulation 10 and 11(1) of SEBI (SAST) Regulations, 1997 and also to pay interest at the rate of 10% per annum from June 16, 2007 to the date of payment of consideration to the shareholders who were holding shares in the Target Company on the date of violation and whose shares have been accepted in the open offer.

BACKGROUND OF THE CASE

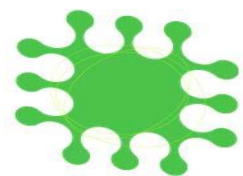
1. On March 12, 2007, the Appellants acquired 13,00,000 shares pursuant to the conversion of warrants in the Target Company. Out of 13,00,000 shares, Mr. Sunil Khaitan and Mr. Krishna Khaitan acquired 50,000 shares each and KLL and OMCL acquired 9,00,000 and 3,00,000 shares respectively. The total shares were allotted in two trenches i.e. 5,00,000 in one transaction and 8,00,000 in second transaction.
2. Pursuant to the said acquisition, there was an increase in their shareholding as given below—



- The individual shareholding of KLL increased from 10,73,415 shares (10.52%) to 19,73,415 shares (17.16%) thereby triggering Regulation 10 of SEBI (SAST) Regulations, 1997 but KLL failed to make an open offer.
- The collective shareholding of promoter group increased from 26,34,639 shares (25.83%) to 39,34,639 shares (34.21%) i.e. acquisition of more than 5% shares in one F.Y. thereby, triggering Regulation 11(1) of SEBI (SAST) Regulations, 1997. However, no public announcement was made.

CONTENTIONS OF APPELLANTS

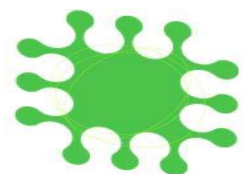
1. No Change in control.
2. As a promoter group, the Appellants have always acted in a bonafide manner by complying with SEBI (SAST) Regulations, 1997 and other connected norms of law prescribed by the Respondent from time to time by duly informing them of all the transactions in question and that the Respondent raised no objection for years together and rather allowed things to settle down and gather dust.
3. The process of acquisition of shares/voting rights was carried out in an extremely transparent and compliant manner.
4. Approval of shareholders has been duly obtained for the allotment of warrants.
5. The Appellants also contended that the learned WTM has not correctly applied the provisions of law. The Impugned Order, at the outset, mentions that it has been passed in accordance with the provisions of SAST Regulations, 2011 read with SAST Regulations, 1997.
6. SEBI (SAST) Regulations, 2011 are not applicable to the present matter in as much as the alleged violations took place in the year 2006-07. The said regulations of 2011 do not have any retrospective application.
7. It is also contended that regulations 10 and 11(1) of SAST Regulations, 1997 are mutually exclusive and either one of them, but not both, may triggered at a time. Therefore, the learned WTM erred in concluding that there was violation of both the regulations, i.e, 10 and 11(1) of SEBI (SAST) Regulations, 1997. Further, no clarity has been given by the learned WTM as to in what cases regulations 10 and 11 may overlap.
8. The shareholding of KLL taken together with that of the other Appellants in the promoter group falls under regulation 11(1) of SEBI (SAST) Regulations, 1997 and therefore, there has been no violation of regulation 10 whatsoever.



9. SEBI (SAST) Regulations, 2011 have clarified that persons acting in concert individually on crossing the threshold as prescribed under the Regulations would be required to make an open offer. There was no such obligation imposed prior to the introduction of SEBI (SAST) Regulations, 2011 coming into force. The submission is, therefore, that the learned WTM has tried to introduce the provisions of the amended regulations of SAST Regulations, 2011 from the back door, which is not permissible in law.
10. Turning to regulation 11 of SEBI (SAST) Regulations, 1997, the submission advanced on behalf of the Appellants is that it applies to those acquirers who, either by themselves or together with other persons acting in concert, hold atleast 15% of the shares or voting rights in the company, which at the same time must be less than 55%. The provisions make it mandatory for an acquirer to make an open offer if he acquires more than 5% of the company's shares or voting rights in any financial year. Thus, the crux of the submissions is that the creeping limit of acquisition of shares in the target company by an acquirer, whether by himself or with persons acting in concert with him, is the 5% increase in the percentage shareholding/voting rights of the target company. For this purpose, the financial year is to be reckoned as of the end of March 31. Therefore, there has been no violation of regulation 11 of SAST Regulations, 1997.
11. The Appellants contended that the reference date for determining the pre-allotment and post-allotment shareholding for the purposes of regulation 11(1) should be the first acquisition of shares by the acquirer in the financial year ending March 31, 2007, i.e. June 30, 2006. Thus the shareholding of the promoter group immediately preceding this acquisition was 29.63% and the acquisition made during the year was of only 4.58%, which is within the creeping acquisition limit.
12. No benefit has accrued to the Appellants by virtue of the allotment of the said shares to the Appellants due to conversion of warrants by the Target Company. This has resulted in no loss to investors and no gain to the Appellants.

SEBI VIEW

1. On analyzing the expression "acquire shares or voting rights which taken together with shares or voting rights, if any, held by him or by persons acting in concert with him" of Regulation 10, SEBI observed that an acquirer is under obligation to make the public announcement to acquire shares of the Target Company in following two situations:-



- shares/voting rights sought to be acquired by an acquirer + shares/voting rights already held by the acquirer prior to the acquisition entitle him to exercise 15% or more voting rights; OR
- shares/voting rights sought to be acquired by an acquirer + shares/voting rights already held by the acquirer + shares/voting rights already held by person acting in concert with the acquirer, entitle him to exercise 15% or more voting rights.

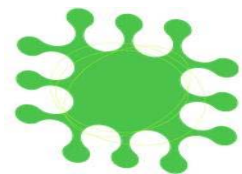
Thus it was held that even if the individual acquisition of any person in a group breaches the threshold limit of 15%, then such acquirer is under an obligation to make open offer under Regulation 10. In the present case, the acquisition of KLL individually exceeds 15% limit as prescribed under regulation 10, therefore, KLL is liable to make an open offer. SEBI further observed that if the interpretation of the regulation 10 is made in such a manner that shareholding of the acquirer along with the PAC must be taken into consideration while calculating the limit of 15% and not individually, then an individual may acquire shares beyond specified threshold and evade the obligations by claiming benefit of creeping acquisition under regulation 11 by joining the holdings of other persons who might be PAC or who may join the acquirer as such to enable him to evade the obligation under regulation 10.

2. To avail benefit of creeping acquisition, the additional acquisition should not entitle the acquirer to exercise more than 5% of the voting rights in the Target Company in any financial year that starts on April 01 and ends on March 31. Regulation 11(1) had put a limit on percentage of creeping acquisition and did not allow netting of acquisition and disinvestment for determining the percentage of increase. If at any point of time, in that financial year, the acquisition breaches the threshold of 5% creeping acquisition, the obligation to make public announcement is triggered at that time itself.

Such intention is noted from Justice P.N. Bhagwati Committee Report of 1997 wherein the Committee had recommended that –

“The percentage of acquisition referred to above is on absolute basis i.e. there should be no netting of acquisition and disinvestment during the said period. In other words, if a person acquired x% during a period of 12 months, sold y% and acquired z% his aggregate acquisitions of (x% + z%) would be reckoned for the purpose of the Regulation and not (x% - y% + z%).”

With regard to determination of reference date for calculating creeping acquisition limit, it was



held by SEBI that on analyzing the definition of Acquirer under Regulation 2(1)(b) and provision of Regulation 11, the shareholding shall be calculated taking into account the shareholding of the acquirer immediately prior to the acquisition.

The gross acquisitions by way of conversion of warrants or purchase of shares, if any, during the financial year 2006-2007 are relevant for calculating the 5% creeping benchmark. Further, the 5% increase in the financial year has to be calculated on gross basis without netting the dilution and/or divestment and acquisition.

Accordingly, during the financial year, the promoters have acquired 12.97% shares (4.57%+0.02%+8.38%), hence, are liable to make open offer under Regulation 11(1) of SEBI (SAST) Regulations, 1997.

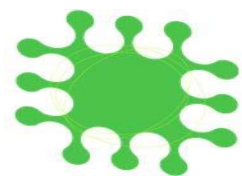
ISSUES:

1. Whether the four Appellants should be treated as a single unit/group for the purpose of attracting the provisions of regulation 10 of SEBI (SAST) Regulations, 1997 or should they be individually seen in the matter of acquisition of additional shares and their respective shareholdings for invoking regulation 10 for determining the crossing of the threshold laid down therein?
2. Whether the Noticees triggered the obligation to make public announcement under regulation 11(1) by virtue of acquisition of shares by the promoter group on March 12, 2007 and what should be the reference date for determining the pre acquisition shareholding?

DECISION:

1. The Hon'ble Tribunal noted that KLL has not acquired the shares in question individually. Admittedly, KLL has acted in concert with the other three Appellants for the said purpose. Therefore, for determining the threshold limit of 15% prescribed by Regulation 10 of SEBI (SAST) Regulations, 1997, it is the collective holding of the entire unit which would be the benchmark for identifying the increase in shareholding and not KLL's individual shareholding.

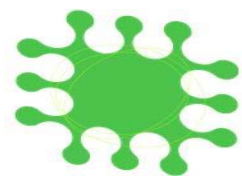
Regulation 3(3) of SEBI (SAST) Regulations, 2011 specifically provides that acquisition of shares by any person within the meaning of sub-regulations 3(1) and 3(2) of the said regulations



would be attracting the obligation to make an open offer for acquiring shares of the Target company irrespective of its aggregate shareholding with persons acting in concert if the shareholding of such individual person exceeds the threshold limit prescribed by regulation 3. Such provision making an individual liable to make a public offer in case the individual shareholding increases during the course of the acquisition even while acting in concert with other persons was missing in SEBI (SAST) Regulations, 1997. Therefore KLL was not required to make a public offer.

2. With respect to violation of Regulation 11(1) of SEBI (SAST) Regulations, 1997, the Hon'ble SAT observed that the reference date for determining the pre acquisition shareholding should be the date on which the additional shares were acquired. Thus, agreeing with the WTM order, it was held that there has been a violation of Regulation 11(1) by the appellants on the conversion of 8 lacs warrants.

However, considering the fact that the acquisition pertains to the year 2006-07 and there has been inordinate delay of 5 years in issuing the show cause notice to the appellants, the end of justice would be met by imposing the monetary penalty on the appellants instead of requiring them to make a combined open offer and thus imposed the monetary penalty of Rs. 25 lacs on them.





Market Updates

MORGAN STANLEY OFFLOADED SHARES OF JYOTHY LABORATORIES

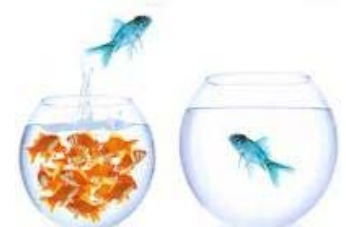
Morgan Stanley Asia (Singapore) Pte sold 8,48,925 shares of Jyothy Laboratories (FMCG firm) at an average price of Rs.201 each for an aggregate value of Rs 17.06 Cr. through an open market deal. As on quarter ended March, Morgan Stanley held 30.88 lakh shares of Jyothy Laboratories representing 1.92%. Other major shareholder in the company includes - ICICI Prudential Life Insurance (4.08%); Fidelity Investment (2.38%); Swiss Finance Corporation (1.91) among others.

GMR INFRA ACQUIRED STAKE IN DELHI DUTY FREE SERVICES

GMR Infra has acquired 17.03% equity stake in Delhi Duty Free Services Pvt. Ltd. which is engage into operating, maintaining and managing the Duty Free outlets at IGI Airport, New Delhi under concession from Delhi International Airport Pvt. Ltd. for a period of 15 years upto 2024-25. Delhi International Airport Pvt. Ltd. (49.9%) and Yalorvin Ltd. (33.07%) are the other shareholders of the company.

MUKESH AMBANI ACQUIRES STAKE IN EPIC TV

Mukesh Ambani has acquired 25% stake in Epic TV, new television channel, which will go on air next month. The investment is being done in Ambani's personal capacity and is being routed through Reliance Ports and Terminal Ltd.



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

Q.1 Whether the acquirer can withdraw the Open Offer made pursuant to the acquisition of shares on preferential basis where the proposed acquisition through the preferential issue is not successful?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Question: 2

Q.2 What is the time limit for submitting the draft letter of offer with SEBI?

- A. Within five working days from the date of the detailed public statement
- B. Within five working days from the date of public announcement.

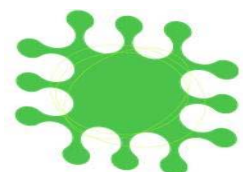
Mail your answer at info@takeovercode.com

Winners of Quiz – June 2013-edition

P Tripathy

Swati Gupta

Anjali Chaurasia



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)

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:-

- ✦ Equity Capital Market
- ✦ Corporate Finance
- ✦ Valuation & Business Modelling;
- ✦ Transaction Advisory Services;
- ✦ Tax Services
- ✦ Assurance & Due Diligence
- ✦ Drafting & Documentation
- ✦ Regulatory Interpretations & Compliance
- ✦ Issue Management
- ✦ Representations and Settlement
- ✦ Indian and Global Business Setup

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 erstwhile 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.

