

TAKEOVER PANORAMA

A Monthly newsletter by Corporate Professionals

Year VI—Vol VII

July Edition

Latest Open Offers



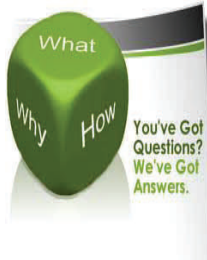
Legal Updates

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INSIGHT



Hint of the Month



Regular Section



Case Study

Market Update



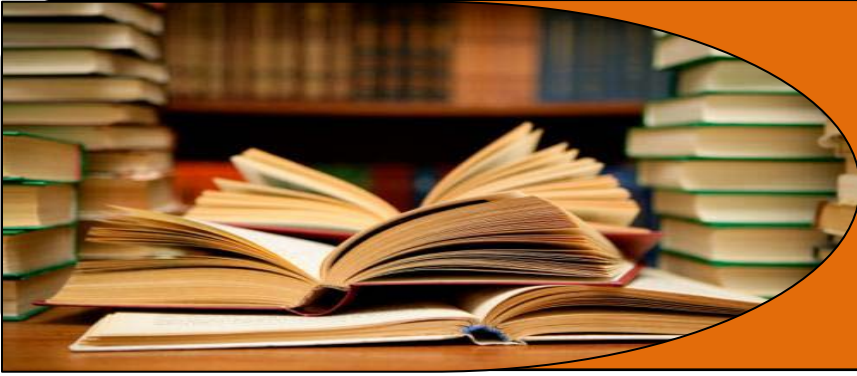
Queries



Quiz

Team





LEGAL UPDATES

SAT Order in the matter of Rajesh Toshniwal Vs SEBI

FACTS

1. The appellant, Mr. Rajesh Toshniwal was a shareholder of Surana Industries Ltd. (hereinafter referred to as “**Target Company**”). The Present appeal is directed against the decision of SEBI (Board) that relates to a petition filed by the appellant for payment of enhanced offer price in the Open Offer to acquire the shares of the Target Company.

2. The brief facts of the case are:

2.1. G R Surana, Shantlal Surana, Vijayraj Surana, Dineshchand Surana, Chandanbala Surana, Alka Surana and Vasantha Surana (Acquirers) belong to the promoter group of the Target Company. On September 1, 2008, the Acquirers were allotted 30 Lacs Equity Shares pursuant to conversion of warrants allotted on March 3, 2007. As a result of the said conversion of warrants, the shareholding of Acquirers increased from 43.15% to 51.62% that has resulted into triggering the Open Offer obligation as envisaged under Regulation 11(1) of SEBI (SAST) Regulation, 1997. However, the public announcement was made on March 25, 2009 at a price of Rs.150 per share with interest of Rs. 17.50 per share. The offer closed on February 1, 2010.

2.2. On February 28, 2010, the acquirers were allotted 70 Lacs Equity Shares on the conversion of warrants allotted on August 29, 2008, thereby increasing the shareholding of Acquirers from 51.61% to 64.09% requiring an Open Offer to the shareholders of the Target Company. However, no Open Offer was made at that time. The appellant informed the Board by way of several communications the failure of the acquirers to comply with the provisions of SEBI (SAST) Regulations, 1997. As a result of protracted correspondence by the appellant with the Board, a

Snapshot

Hon'ble SAT clarified that a Acquisition of further shares under regulation 11(1) relates to creeping acquisition and creeping acquisition takes place only in situations governed by regulation 11(1) and not under regulation 11(2) of the regulations.



show cause notice was issued to the acquirers. At this juncture, a public announcement was made on June 14, 2010.

- 2.3. The Appellant addressed a communication to the Board claiming that he should be given the benefit of higher price of Rs. 300 per share since the second acquisition had taken place within a period of 6 months from the closure of first open offer and requested to keep the second open offer in abeyance pending decision on enhanced payment to the appellant and to undertake investigation into the matters. Appellant argued that second open offer falls under the Regulation 11(1) and on this ground Regulation 20A (1) and 20(7) are attracted.
- 2.4. Learned counsel for the Board held that the provisions of regulation 20(7) are applicable only up to 7 working days prior to closure of an offer. Since the First Offer had closed on February 2, 2010 and the allotment of shares was made on February 28, 2010, therefore the provisions of regulation 20(7) are not attracted. Further, the provisions of regulation 20A(1) are applicable to acquisitions made under regulation 11(1) whereas the second offer has been made under regulation 11(2). Hence, the provisions of regulation 20A(1) do not apply to the same.
- 2.5. On April 20, 2011 the impugned communication was issued by the Assistant General Manager of the Board turning down the request of the appellant for enhanced payment for the shares tendered in the first open offer. This decision of the Board is under challenge in the present appeal.

ISSUES:

1. Whether the acquisition of shares pursuant to conversion of second tranche of warrants increasing the shareholding of the acquirers from 51.61% to 64.09% would be governed by the provisions of Regulation 11(1) or Regulation 11(2) of SEBI (SAST) Regulations, 1997?
2. Whether Regulation 20A of SEBI (SAST) Regulations, 1997 is attracted where the acquisition of shares is under Regulation 11(1) of SEBI (SAST) Regulations, 1997?
3. Whether the provision of Regulation 20(7) is applicable in the present case of conversion of second tranche of warrants?
4. Whether for the purpose of SEBI (SAST) Regulations, 1997, the entire promoter group has to be considered as a homogenous unit and, therefore, acting in concert in the acquisition of shares?



DECISION:

1. With respect to the issue regarding the applicability of Regulation 11(1) or 11(2) of SEBI (SAST) Regulations, 1997 on the conversion of second tranche of warrants, it can be seen that after the conversion of first tranche of warrants made on September 1, 2008, the shareholding of entire promoter group increased to 61.31% as evident from the shareholding pattern for the quarter ended September 2008 available on www.bseindia.com. Thus, when the second tranche of conversion of warrants took place, the acquirers along with other promoters of the Target Company were already holding more than 55% shares i.e. 61.41% and accordingly, the provisions of regulation 11(2) of SEBI (SAST) Regulations, 1997 would be applicable on the said conversion of second tranche of warrants as for the purpose of SEBI (SAST) Regulations, 1997, the shareholding of Acquirers along with PACs has to be considered.
2. Hon'ble SAT clarified that Regulation 20A deals with '*acquisition price under creeping acquisition*' and imposes a prohibition of 6 months for further acquisition from the date of closure of the first public offer. It deals with a scenario where "further shares" are acquired under regulation 11(1) of SEBI (SAST) Regulations, 1997. Acquisition of further shares under regulation 11(1) relates to creeping acquisition and creeping acquisition takes place only in situations governed by regulation 11(1) and not under regulation 11(2). In the present case, the acquisition of shares on the conversion of warrants took place under regulation 11(2) and thus the provision of Regulation 20A does not apply to the present case.
3. Upon contention made by the Appellant that there is a violation of Regulation 20(7) of SEBI (SAST) Regulations, 1997, Hon'ble SAT observed that the first proviso to the regulation imposes prohibition on acquisition during the last seven working days prior to the closure of the offer and there is no prohibition after the closure of the offer. Further the second proviso to regulation 20(7) deals with the case where the acquisition is under Regulation 11(2A) which is also not relevant to the present case. Thus, the provisions of Regulation 20(7) are also not applicable.

It was further observed that the Appellant while tendering his shares in the first public offer had reasonable knowledge of the outstanding share warrants and their possible conversion. Thus, now it cannot be pleaded that the second offer has taken place to the inconvenience of the appellant.



4. With respect to the issue whether the entire promoter group has to be considered as a homogenous unit, it was observed that in the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole. The promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant circumstances to be otherwise. In the public announcement document also the shareholding of the entire promoters group is specifically grouped together. The objective of the open offer was consolidation of shareholding and this could be achieved only by grouping the acquirers and other promoters together.

Therefore on the basis of the discussions held, the appeal stand dismissed and the order passed by the Board is upheld.

HJNT OF THE MONTH

'Minimum level of acceptance' implies minimum number of shares which the acquirer desires under the conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer.

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





Latest Open Offers

Target Company

Himachal Fibres Limited

Registered Office

Himachal Pradesh

Networth of TC

Rs. 2169.32 Lacs

Listed At

BSE

Industry of TC

Textile

Acquirer

Mayank Malhotra,
Brijeshwari Textiles (P)
Limited, Shiva Spinfab (P)
Limited, Balmukhi Textiles
(P) Limited (Acquirers),
Akhil Malhotra and
Rajinder Kumar (PACs)

Triggering Event: Preferential allotment of 40,00,000 equity shares at a price of Rs. 16/- per share, thereby, increasing the shareholding of the promoter group from 10.81% of pre-preferential equity share capital to 52.17% of post-preferential equity share capital.

Details of the offer: Offer to acquire 22,42,500 (26.00%) Equity Shares at a price of Rs. 17.50/- per share payable in cash.

Triggering Event: SPA for acquisition of 37,260 Equity Shares constituting 74.52% of the equity share capital of the Target Company at a price of Rs. 10 per share.

Details of the offer: Offer to acquire 12,740 (25.48%) Equity Shares at a price of Rs. 12 per share payable in cash.

Target Company

Kamalakshi Finance
Corporation Limited

Registered Office

Mumbai

Networth of TC

Rs. 5.87 Lacs

Listed At

BSE

Industry of TC

Investment

Acquirer

Vector Viniyog Private Limited



Target Company

Future Capital Holdings Limited

Registered Office

Mumbai

Networth of TC

Rs. 8,315.72 Mn

Listed At

BSE and NSE

Industry of TC

Finance

Acquirer

Cloverdell Investment Ltd. (Acquirer), Warburg Pincus Private Equity XI, L.P., Warburg Pincus Private Equity XI-B, L.P., Warburg Pincus XI Partners, L.P., WP XI Partners, L.P. and Warburg Pincus Private Equity XI-C, L.P. (PACs)

Triggering Event: SPA to acquire a maximum of 34,779,999 Equity Shares constituting 50.84% of Diluted Voting Share Capital of Target Company and SSA to subscribe to 6,172,840 CCPS.

Details of the offer: Offer to acquire 17,788,266 (26%) Equity Shares at a price of Rs. 162/- per share payable in cash.

Triggering Event: Voluntary Open Offer for the purpose of consolidation of holdings.

Details of the offer: Offer to acquire 17,34,040 (11.26%) equity shares at a price of Rs. 375/- per share payable in cash.

Target Company

Tata Sponge Iron Limited

Registered Office

Orissa

Networth of TC

Rs. 568.45 Cr.

Listed At

BSE and NSE

Industry of TC

Iron and Steel

Acquirer

Tata Steel Limited



Target Company

The Tinsplate Company
of India Limited

Registered Office

Kolkata

Networth of TC

Rs. 606.59 Cr.

Listed At

BSE and NSE

Industry of TC

Metals

Acquirer

Tata Steel Limited

Triggering Event: Voluntary Offer for the purpose
of consolidation of holdings.

Details of the offer: Offer to acquire
14,653,470 (14%) equity shares at a price of
Rs. 60 per equity share payable in cash.

Target Company

Advik Laboratories Limited

Registered Office

Gurgaon

Networth of TC

Rs. 1074.17 Lacs

Listed At

BSE and ASE

Industry of TC

Pharmaceuticals

Acquirer

Omkam Pharmaceuticals
Private Limited

Triggering Event: SPA for acquisition of
24,84,837 equity shares constituting 26.57% of the
paid up share capital of Target Company.

Details of the offer: Offer to acquire 24,31,884
(26.00%) Equity Shares at a price of Rs. 5/- per share
payable in cash.



Target Company

Shree Digvijay Cement
Co. Limited

Registered Office

Gujarat

Networth of TC

Rs. 1,837 Mn

Listed At

BSE

Industry of TC

Cement

Acquirer

Votorantim Cimentos
S.A., Inter Cement
Austria Holding GmbH
(Acquirers), Camargo
Corrêa S.A (PAC)

Triggering Event: Indirect acquisition of 104,091,537 Equity Shares constituting 73.63% of equity share capital of the Target Company.

Details of the offer: Offer to acquire 36,757,313 (26.00%) Equity Shares at a price of Rs. 10.94 per share payable in cash.

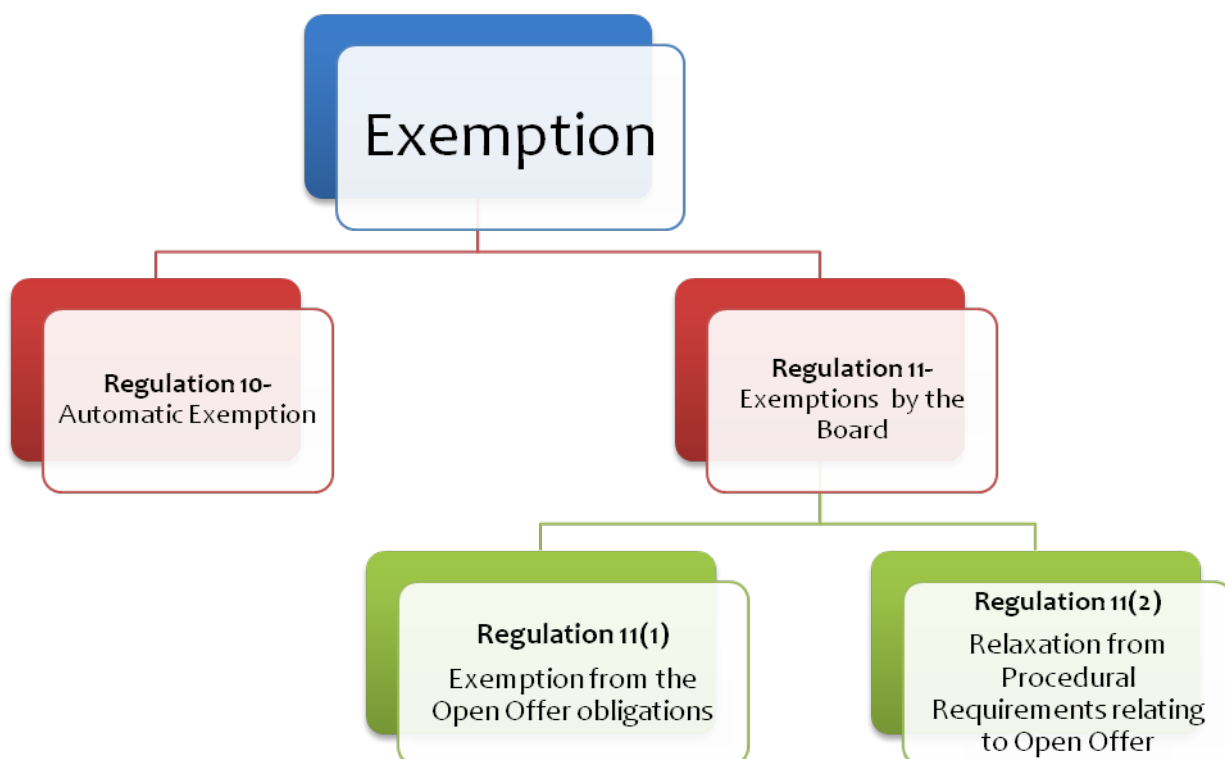




Regular section

AN ANALYSIS OF REGULATION 11 – EXEMPTIONS BY THE BOARD

Regulation 11 of SEBI (SAST) Regulations, 2011 provides the provisions whereby the Acquirer can apply to SEBI (“Board”) for availing the exemption from the Open Offer obligations and the Target Company can apply for relaxation from strict compliance with any procedural requirement relating to Open Offer as provided under Chapter III and Chapter IV of the Regulations.



It is to be noted that this regulation only provides exemption/relaxation from strict compliance of making Open Offer under Regulation 3 & 4 of SEBI (SAST) Regulations, 2011. However, the acquirer has to comply with the disclosure requirements as provided under regulation 29, 30 and 31 and any other condition as may be imposed by the Board in this behalf.

ANALYSIS OF THE PROVISIONS

Regulation 11(1) – Exemption from Open Offer

Regulation 11(1) provides that on an **application being made by the acquirer** in writing giving the details of the proposed acquisition and grounds on which the exemption is sought alongwith duly sworn affidavit, the Board may grant exemption to the acquirer from the Open Offer obligations subject to compliance with such conditions as it may deems fits.

Some of cases where exemption has been granted to the Acquirer from making Open Offer are illustrated below:

- **IDBI Bank**

SEBI granted exemption to the Government of India (Acquirer) from making open offer for conversion of Tier I bonds into equity shares of the bank to enable the bank to meet the prudential norms set under Basel I and to protect the interest of its customers as well as public shareholders who have invested in its capital.

- **Dr. Reddy's Laboratories Ltd.**

SEBI granted exemption to APS Trust (Applicant) in respect of indirect acquisition of shares of Target Company pursuant to the acquisition of a company holding 23.08% in the Target Company and also belongs to its promoter group.

- **Gem Spinners India Limited**

SEBI granted exemption to Mr. R. Veeramani, Mr. S.R. Asaithambi, Mr. R. Sekar and Mr. S.R. Kumar (Applicants) from making open offer pursuant to preferential allotment of equity shares upon conversion of unsecured loan of the applicant to keep the Target Company's Networth positive so that it is out of BIFR reference and it can get investment and business subject to the fulfillment of the conditions as may be imposed by SEBI.



Regulation 11(2) – Relaxation from Procedural Requirements relating to Open Offer

The acquirer may also be granted the relaxation from the procedural requirements relating to Open Offer by the Board on an **application being made in writing by the Target Company** giving the details of the proposed acquisition and grounds on which the relaxation is sought alongwith duly sworn affidavit. The purpose and intent of regulations is to safeguard the interest of investor and not to act as an impediment in the furtherance of their interest.

The SEBI has been given the power to relax the procedural requirements under Chapter III and IV, subject to such conditions as it deems fit on being satisfied that:

- I. The Central Government or State Government or any other regulatory authority has **removed the Board of Directors of the Target Company and has appointed new directors** to hold office as directors under any law for the time being in force if:
 - a. such board of directors has devised a plan which provides transparent, open, and competitive process for acquisition of shares or voting rights or control over the target Company to secure the smooth and continued operation of the target company in the interests of all stakeholders of the target company and such plan does not further the interests of any particular acquirer;
 - b. The conditions and requirements of the competitive process are reasonable and fair;
 - c. The process adopted by the Board provides for details including the time when the public offer would be made, completed and the manner in which the change in control would be effected;
- II. The provisions of Chapter III and Chapter IV are likely to act as impediment to implementation of the plan of the Target Company and exemption from strict compliance with one or more of such provisions are in interest of public, investors and the securities market.



Some of cases where relaxation is granted to the Acquirer from strict compliances of making Open Offer are illustrated below:

- **Kharikatia Tea & Industries Limited**

SEBI granted exemption/relaxation to Bijay Kumar Garodia, Ramesh Kumar Sarawagi and Shankar Lall Ajitsaria (Applicants) from strict compliances of making open offer where the

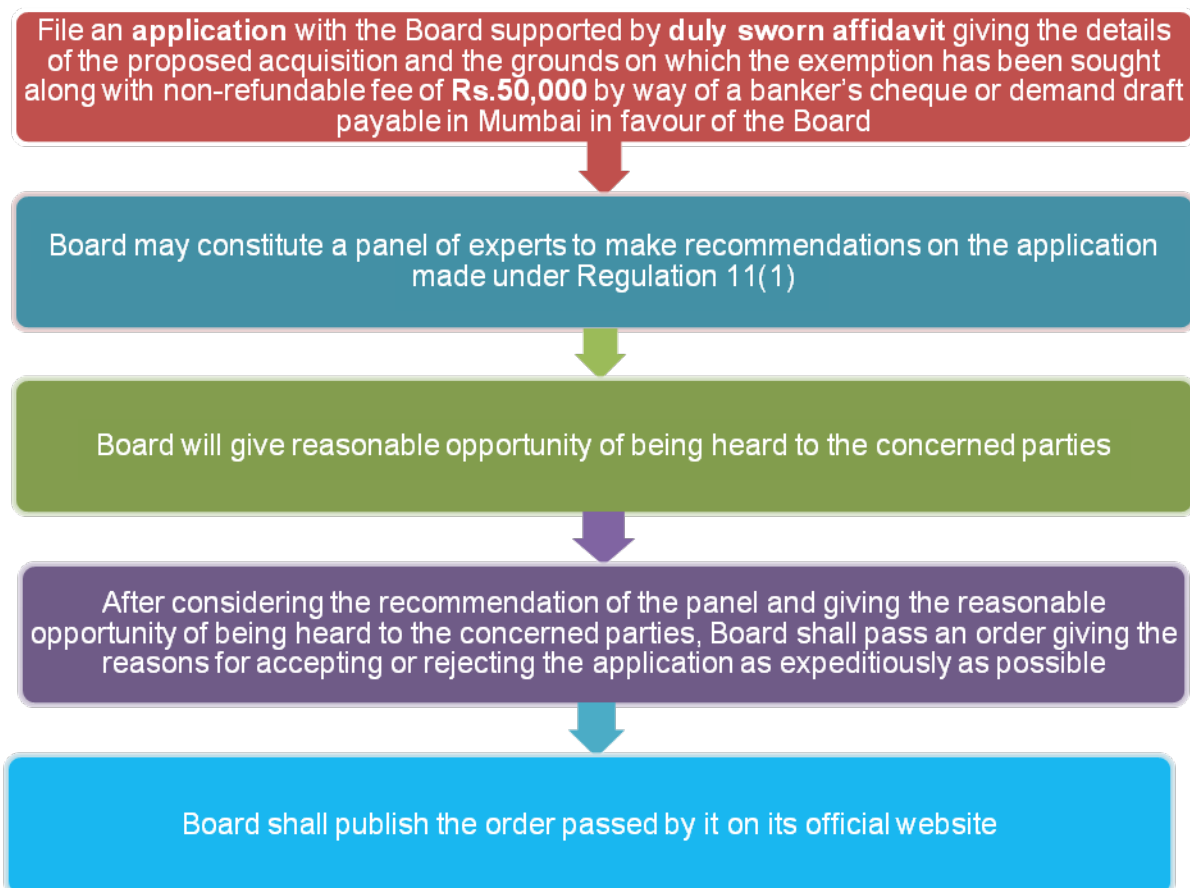


Target Company is on recovery path and the Acquirer has acquired control to rehabilitate and expand the business subject to making individual offer to all public shareholders and fulfillment of the conditions as may be imposed by SEBI.

- **MSD Properties Limited**

SEBI granted exemption/relaxation to Mr. Vinod Kumar Agrawal and Mr. Subash Chand Agrawal (Applicants) 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.

Procedure for filing the application under Regulation 11



Case Studies

ANALYSIS OF TAKEOVER OPEN OFFER OF SHREE DIGVIJAY CEMENT CO. LIMITED

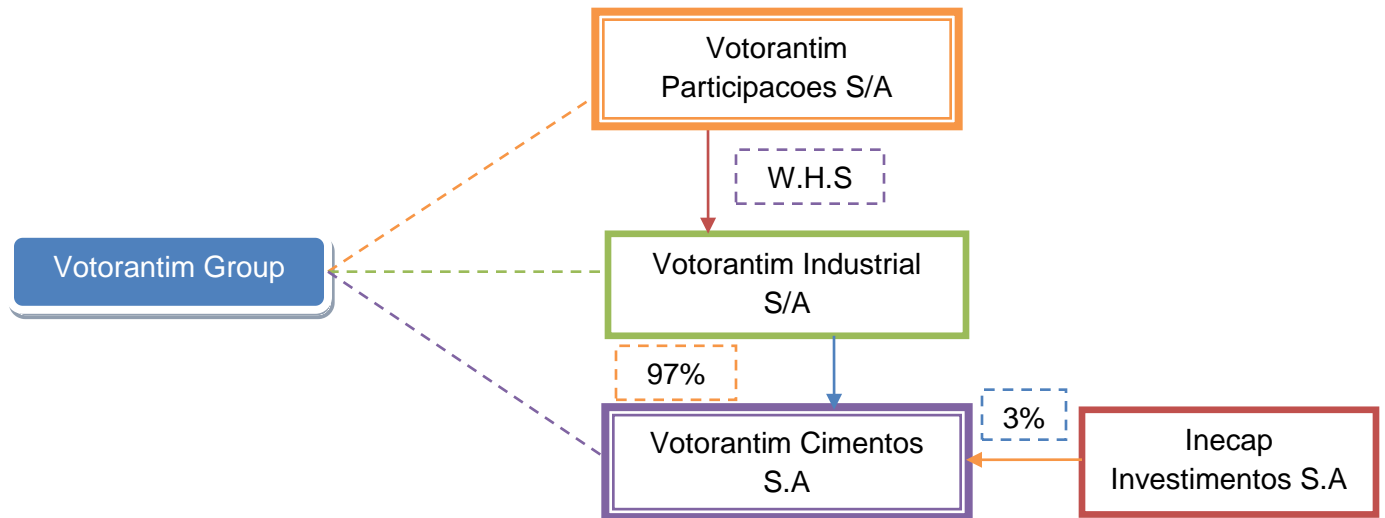
About Shree Digvijay Cement Co. Limited (“DCCL/Target Company”):

Shree Digvijay Cement Co. Limited was incorporated on November 6, 1944 under the Companies Act, 1913. In 1949, the Target Company started its commercial production of cement and now is one of the Pioneers in the cement business. Its product includes special cements like Oil Well Cement, Sulphate Resisting Portland Cement and Railway Sleeper Manufacturing Cement in addition to other varieties of Ordinary Portland Cement etc. The Company is a flagship Company of Cimpor. The shares of the Target Company are listed on BSE Limited (BSE).

About Votorantim Cimentos S.A. (“VC/Acquirer 1”)

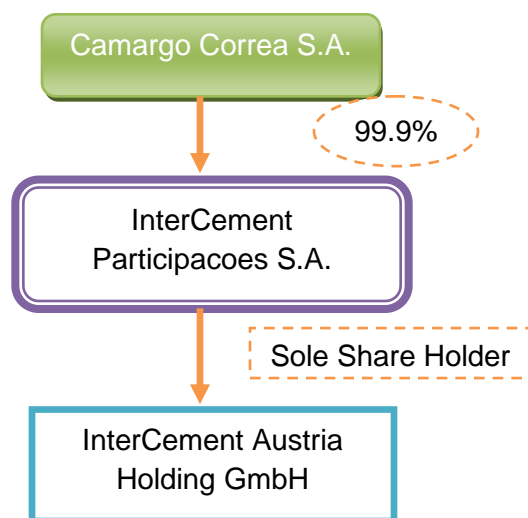
Votorantim Cimentos S.A. was originally incorporated on January 30, 1997 under the name Votorantim Cimentos Ltda in the state of Sao Paulo in the Federative Republic of Brazil. The name of Acquirer 1 was changed to Votorantim Cimentos S.A. with effect from July 15, 2009 pursuant to conversion into Joint Stock Company. The Acquirer 1 is engaged in the production and sale of cement, aggregates and supplemental products, as well as of raw materials and byproducts, and other activities relating to its cement operations such as mining and the use of mineral reserves, and the transportation and distribution of cement. Acquirer 1 belongs to the Votorantim Group and is a subsidiary of Votorantim Industrial S/A which in turn is a wholly owned subsidiary of Votorantim Participacoes S/A. The shares of the Acquirer 1 are not listed on any stock Exchange.





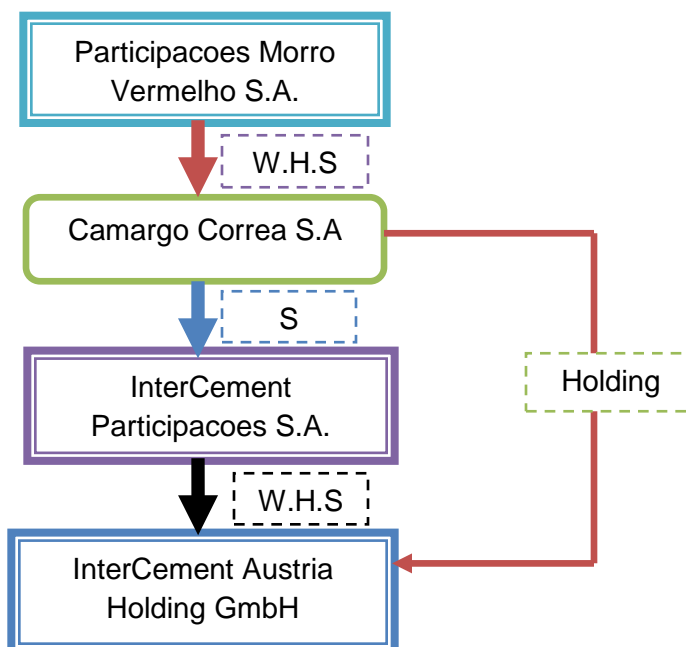
About InterCement Austria Holding GmbH (“IAH/Acquirer 2”)

InterCement Austria Holding GmbH was incorporated on February 2, 2011 as a ‘Limited Liability Company’ in Austria for the purpose of acquisition, holding and management of shareholding in any kind of companies, whether incorporated in Austria or elsewhere, as well as the assumption of personal liability and the management and representation of such companies or undertakings. Acquirer 2 belongs to Camargo Correa Group. InterCement Participacoes S.A. is the only shareholder of Acquirer 2, which in turn controlled Camargo Correa S.A holding 99.9% of InterCement Participacoes S.A. The shares of the Acquirer 2 are not listed on any stock Exchange.



About Camargo Correa S.A (“CC/PAC)

Camargo Correa S.A was incorporated on March 12, 1996 under the laws of the Federative Republic Brazil. PAC is controlled by, and is a wholly owned subsidiary of Participacoes Morro Vermelho S.A. and is the holding company of Acquirer 2 through its subsidiary, InterCement Participações S.A. The shares of the PAC are not listed on any stock Exchange



BACKGROUND OF THE CASE:

Cimentos de Portugal, SGPS, S.A. (Cimpor) indirectly holds 73.63% equity share capital of the Shree Digvijay Cement Co. Limited (Target Company) through its wholly owned subsidiary company Cimpor Inversiones S.A.

Camargo Corrêa S.A. (PAC) indirectly holds 33.25% and Votorantim Cimentos S.A. (Acquirer 1) directly holds 21.40% of the voting share capital of Cimpor.

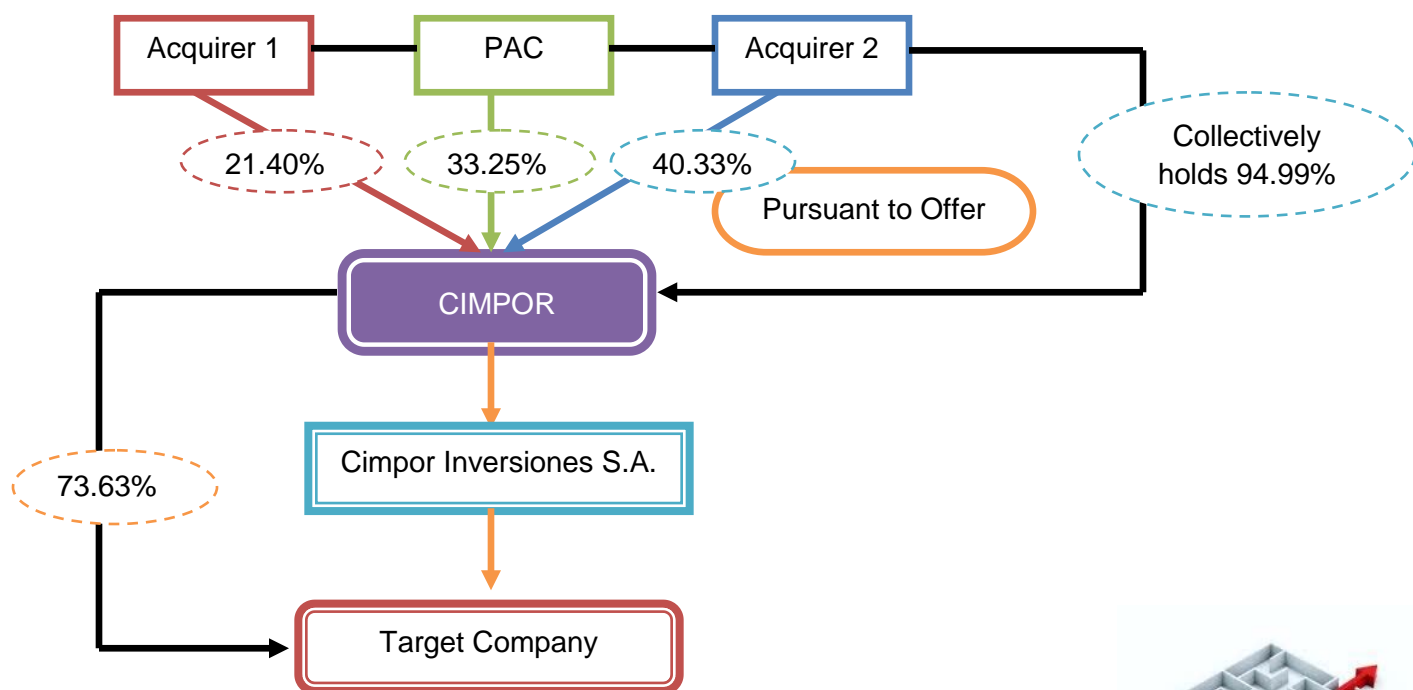


On March 30, 2012, Inter Cement Austria Holding GmbH (Acquirer 2) made voluntary tender offer (Portuguese Tender Offer) for the acquisition of remaining shares of Cimpor. Acquirer 2 initiated negotiations with Acquirer 1 for its stake and distribution of certain of Cimpor's multijurisdictional assets. On account of such negotiations amongst the Acquirers, the



Portuguese Securities Commission directed that the Portuguese Tender Offer be revised to a mandatory tender offer by Acquirer 1 along with Acquirer 2 as a co-offeror.

Pursuant to the Portuguese Tender Offer, Acquirer 2 acquired 268,544,654 voting shares of Cimpor, aggregating to 40.33% of the voting share capital of Cimpor. As a result, the Acquirers and PAC collectively hold directly or indirectly 94.99% of the voting share capital of Cimpor.



RESTRUCTURING AGREEMENT:

On June 25, 2012, the Acquirers and a wholly owned subsidiary of the PAC has entered into a restructuring agreement, based on which certain assets held by Cimpor and the Acquirers are expected to be restructured and distributed among the Acquirers by way of asset swaps, Pursuant to which the indirect shareholding (73.63%) of Cimpor in the Target Company will be transferred to and be indirectly held by Acquirer 1 through a holding entity.

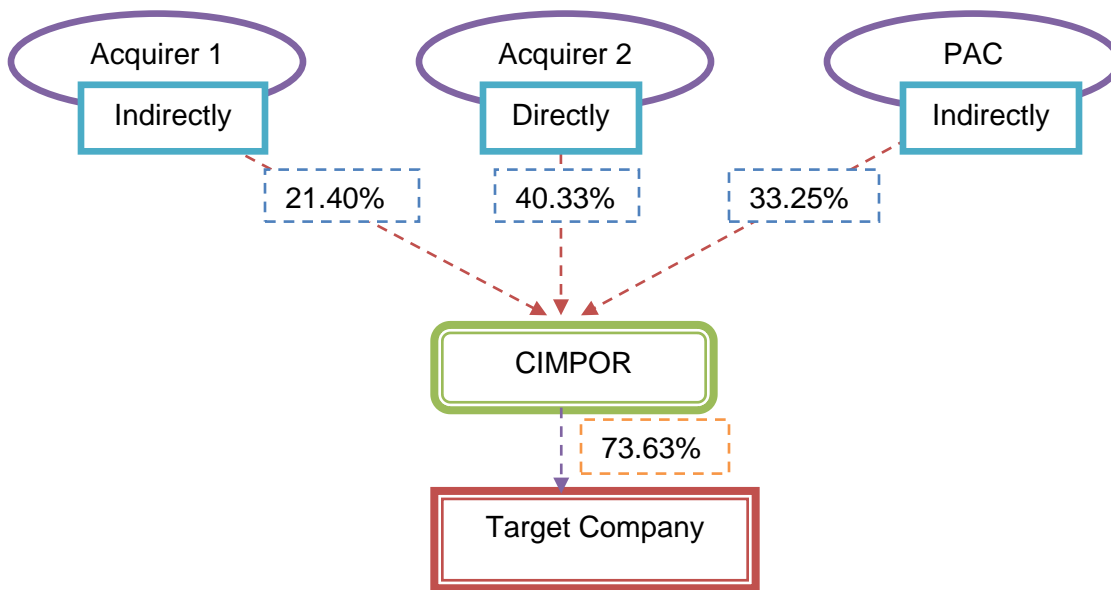


THE OFFER:

Pursuant to the above acquisition of shares, the Acquirers along with PAC are making this Public Announcement to the shareholders of the Target Company to acquire 36,757,313 equity shares constituting 26% of the total paid up share capital of the Target Company at a price of Rs.10.94 per fully paid up equity share payable in cash.

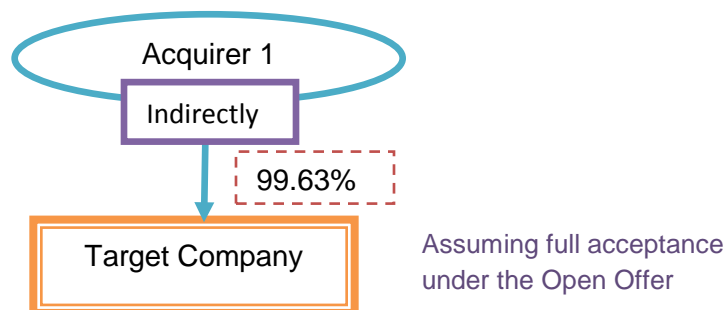
PRE AND POST SHAREHOLDING OF ACQUIRERS AND PAC

PRE HOLDING



POST OPEN OFFER HOLDING

Post open offer assuming full acceptances under the Takeover Open Offer, the Acquirer would directly and indirectly hold 99.63% shares in the Target Company.





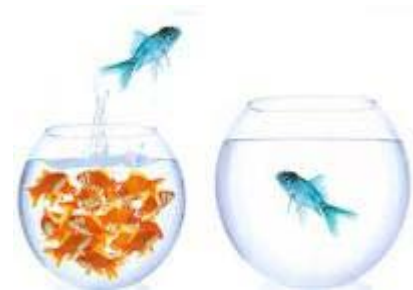
Market Updates

RELIANCE INDUSTRIES PLANS TO EXIT FROM ITS TEXTILE BUSINESS

To exit from the loss making textile business, Reliance Industries is planning to sell its textile business along with the “**Only Vimal**” brand and its retail network. Reliance is focusing on businesses which can generate it around 25% return and textile industries hardly come in that category.

ACQUISITION OF SINGAPORE BASED INFOSTACK SOLUTION BY BLUE STAR

Blue Star Infotech Limited, through its subsidiary company Blue Star Infotech (Singapore) Pte., Ltd has acquired Singapore based Infostack Solutions Pte Ltd. for an undisclosed amount. Infostack Solutions Pte Ltd. is a Consulting & IT services providing value chain management solutions and offers expertise in the areas of BFSI, Web Development, ERP, Client Server Technologies and Infrastructure while Blue Star Infotech is engaged in the business of providing software services.



LIC SOLD ITS PART STAKE IN WOCKHARDT

LIC has part exited from Wockhardt Limited by selling its 22.11 Lakhs shares constituting 2.01% for a total consideration of Rs. 129.09 crores through market sale reducing its stake to 3.01% in the company. Wockhardt Limited is engaged in the business of formulations, biopharmaceuticals, nutrition products, vaccines and APIs.



Quiz

**PLAY THE QUIZ
TEST YOURSELF**

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

Question: 1

Whether the acquisition can be made by the acquirer during the tendering period?

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Question: 2

Whether the inter se transfer of shares amongst X and X's brother son is eligible for exemption in terms of regulation 10 of SEBI (SAST) Regulations, 2011.

- A. Yes
- B. No

Mail your answer at info@takeovercode.com

Winners of Quiz – June 2012-edition

- 1. Avani Gandhi**
- 2. R.Gopalakrishnan**
- 3. CS Shashi Singhvi**





Rejoices its successful completion of 4 years

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During the last year we have come up with the Complete New Takeovercode.com in line with the SEBI Takeover Regulations 2011 presenting new look & all new calculators to help our users

..... and the journey of innovation goes on

We sincerely thank all our members and hope that this journey will flourish to new heights in the years to come.



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