

# Takeover Panorama

A Monthly Newsletter by Corporate Professionals  
Year V-Vol.V-May 2011



# Insight

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# Legal Update

## SAT order in the matter of Asian Films Production and Distribution Limited

### Facts:

BSE carried out a snap investigation in the scrip of Asian Films Production and Distribution Limited (Appellant Company). Investigation revealed that there were significant changes in the shareholding pattern of the Appellant Company including those of its Promoters and PAC with them which required disclosures under Regulations 7 and 8 of SEBI (SAST) Regulations, 1997 and Regulation 13 of SEBI (PIT) Regulations, 1992. However, no such disclosures were made by it.

Therefore, a Show cause notice was served on the Applicant but he did not appear before the Adjudicating Officer who then considered the matter on the basis of the material collected during the course of the investigation and enquiry and imposed the monetary penalty of Rs. 5 Lakhs on the Appellant.

It is against this order, that the present appeal has been filed. The appellant contended that no notice for personal hearing was served on him and accordingly, the impugned order stands vitiated.

### Issues:

Whether the imposition of penalty where the notice affording an opportunity of personal hearing was served on appellant by affixing the same at the last known address and the same had come back undelivered is justified?

### Decision:

The Tribunal held that the imposition of penalty of Rs.5 lakhs is justified and the plea of the appellant cannot be accepted as the notice affording the personal hearing was served on the appellant on two

Where the Notice affording the personal hearing was served on the appellant and the same had come back undelivered as the appellant was changing its address from time to time, then the plea of the appellant, that no notice was served on him cannot be accepted.

occasions and the same had come back undelivered as the appellant has not only changed its name but has also been changing its address from time to time. It appears that multiple proceedings are going on against the appellant. Thus, the considering the facts and circumstances of the case, the Tribunal dismissed the appeal.

## Informal Guidelines in the matter of Surana Telecom and Power Ltd.

### Facts:

1. On September 05, 2008, an exemption was granted by SEBI to the Promoter Group of the Surana Telecom and Power limited (Target Company) for the proposed increased in their shareholding from 54.66% to 59.39% pursuant to buy back by the Target Company.
2. The Offer for the buyback of equity shares commenced on September 30, 2008 and Closed on January 06, 2009.
3. During the Offer Period, a proviso had been added to regulation 11(2) of SEBI (SAST) Regulations, 1997 which allows the further acquisition of 5% shares by the promoters who are holding 55% or more but less than 75% shares in the Target Company provided that the increase in their shareholding is pursuant to Open Market Purchase through Stock Exchange in normal segment or pursuant to buy back by the Target Company.
4. As on December 31, 2010, the promoters of the Target Company were holding 1,23,56,387 equity shares constituting 59.39% of the total shareholding of the Target Company.
5. Now the promoters are further desirous of consolidating their shareholding by 5% in terms of second proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997 without making Public Announcement and therefore a request for clarification on further acquisition of shares was made.

Where an exemption from Open Offer was granted by SEBI pursuant to an application, then a subsequent amendment in the regulations making that an automatic exemption will not affect right of the acquirer to avail the benefit of the amendment even though the amendment has taken place during the period when the benefit of exemption granted pursuant to the application is availed of.

### Issues:

Whether the above mentioned increase in the shareholding of the promoters due to the buyback will be treated as pursuant to exemption granted by SEBI and whether the promoters of the Target

Company are still eligible to avail the benefit of second proviso to regulation 11(2) of SEBI (SAST) Regulations, 1997.

#### Decision:

SEBI held that although the promoters had consolidated their shareholding from 54.66% to 59.39% by way of acquiring shares, which was incidental to the buyback offer made by the Target Company, but the same had been done with respect to the exemption granted under Regulation 4 of SEBI (SAST) Regulations, 1997 prior to the amendment in Regulation 11(2). Thus, the promoters had not availed the benefit of second proviso of Regulation 11(2) of SEBI (SAST) Regulations, 1997. Thus, in view of the facts and circumstances of the case, SEBI held that the promoters can further acquire additional 5% of the total share capital of the Target Company in terms of second proviso to regulation 11(2) of SEBI (SAST) Regulations, 1997 without making any Open Offer to the shareholders of the Target Company provided that the conditions as prescribed under the said proviso are complied with.

### Takeover Panel Order in the matter of Deccan Chronicle Holdings Limited

#### Facts:

1. As on December 31, 2010, Mr. T. Venkatram Reddy, Mr. T. Vinayak Ravi Reddy, Mr. P.K Iyer and Mrs. T. Urmilla Reddy (Acquirers), the promoters of Deccan Chronicle Holding Limited (Target Company) hold 63.37% stake in the Target Company.
2. Now, the Target Company proposes to buy-back upto 3,45,00,000 fully paid-up equity shares representing 14.17% of the paid up equity share capital at a price not exceeding Rs 180 per share through stock exchanges.

SEBI granted exemption to the Acquirers from the Open Offer obligations as envisaged under regulation 11(2) of the SEBI Takeover Regulations where the increase in shareholding is pursuant to Buy Back by the Target Company.

The proposed buy back would increase the shareholding of promoters from 63.37% to 73.83% i.e. an increase of 10.46% which would result into triggering Regulation 11(2) of the SEBI (SAST) Regulations, 1997.

3. Accordingly, they have filed the present application seeking exemption from the applicability of Regulation 11(2) of SEBI (SAST) Regulations, 1997.

### Grounds for exemption:

1. There is no direct acquisition of shares and voting rights by the acquirers.
2. No change in Control.
3. The public shareholding in the Target Company will remain at a level more than 25%.
4. Acquirers will not participate in the proposed buy back.

### Decision:

The Takeover Panel observed that the Acquirers had acquired 2.13% of the share capital during November 2008 by way of creeping acquisition under second proviso to Regulation 11(2) of SEBI (SAST) Regulation, 1997 as a result of which their shareholding has increased from 60.88% to 63.01%. It was further noted that the Acquirers had made similar application of exemption during January 2009 wherein 4.84% of the total voting capital of the Target Company are brought back. Assuming 100% acceptance of the buy back offer, the Acquirers would be deemed to have exhausted 5% acquisition limit permissible under the second proviso of Regulation 11(2).

Thus on the basis that the facts and statements the Acquirers, the Panel granted exemption to the Acquirers from complying with the Open Offer requirements provided that the Acquirers will comply with the other provisions of SEBI (SAST) Regulations, 1997, Buy Back Regulations, Listing Agreement or any other law as may be applicable. The Panel also advised the acquirers not to seek exemption from the applicability of the Takeover Regulations in respect of any increase in voting rights pursuant to any further buy-back offers by the Target Company.

### Adjudicating Officer/WTM Orders

Target Company	Noticee	Regulation No.	Penalty Imposed/Decision Taken
Suchitra Finance and Trading Company Limited	Suchitra Finance and Trading Company Limited	Regulations 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations 1997.	Rs. 1,00,000

Gemstone Investments Limited	Rajesh Mamania	Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 and Regulations 13 (1), 13(3) and 13(5) of SEBI (PIT) Regulations, 1992	Rs. 75,000
Gemstone Investments Limited	Bipinkumar Gandhi	Regulations 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992	Rs. 50,000
Ind Tra Deco Ltd.	Ind Tra Deco Ltd.	Regulation 7(1A) of the SEBI (SAST) Regulations, 1997 Regulation 13(6) SEBI (PIT) Regulations, 1992 and Sections 11C(2), 11C(3) and 11C(5) of the SEBI Act, 1992	Violation of regulation 7(1A) does not established. For the remaining violation, a penalty of Rs. 1,25,000 imposed.
Natura Hue Chem Limited	Noida Trading Company Private Limited.	Regulations 7(1A) of SEBI (SAST) Regulations, 1997	Rs. 5,00,000
J K Genetics Limited	Krishna Gopal Motilal Chandak	Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 and Regulations 13(1), 13(3) and 13(5) of SEBI (PIT) Regulations, 1992	Rs. 1,00,000

## Consent Order in the matter of Multifarious Agencies and Trading Ltd.

SEBI had initiated the adjudication proceedings against Rajnikant Jaitha, Krishnakanth Jaitha, Anuradha Jaitha, Asha Jaitha, Nina Sanjay Jaitha, Manisha Manish Jaitha, Amish R Jaitha, Sanjay K Jaitha, Manish R Jaitha, Rohan Manish Jaitha and Gaurav Manish Jaitha (hereinafter referred to as **Noticees**) in the matter of Multifarious Trading and Agencies Ltd. (now known as Krishna Ventures Ltd.) for the alleged violation of provisions of Regulation 6(1), 6(3) 7(1A), 8(1) and 8(2) of SEBI (SAST) Regulations, 1997. It was alleged that the Noticees did not comply with regulation 6(1), 6(3), 7(1A) of SEBI (SAST) Regulations, 1997 and there has been substantial delay by the Noticees in complying with disclosure requirements for the year 1998 to 2005 as required under regulation 8(1) and 8(2) of the SEBI (SAST) Regulations 1997. While the adjudication proceedings were in progress, the Noticees made an application for the Consent Order vide letter dated September 21, 2010 and submitted the revised terms vide letter dated December 22, 2010 proposing to pay a sum of Rs.5,50,000/- towards settlement charges for the aforesaid violations.

The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the basis of the recommendations of HPAC, SEBI settle the above non compliance of the Noticees.

## Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
The Andhra Pradesh Paper Mills Limited  <b>Regd. Office</b> Andhra Pradesh	IP Holding Asia Singapore Pte. Ltd. along with International Paper Company	Offer to acquire 85,67,521 (21.54%) Equity Shares at a price of Rs. 544.20 per share payable in cash.	<b>Regulation 10 &amp; 12</b> SPA to acquire 2,12,60,008 (53.46%) Equity Shares at a price of Rs. 523 per	<b>Merchant Banker</b> Lazard India Private Limited

<p><b>Paid up capital</b> Rs. 39.77 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>			share.	<p><b>Registrar to the Offer</b> Karvy Computershare Private Limited</p>
<p>Golden Securities Limited</p> <p><b>Regd. Office</b> Kolkata</p> <p><b>Paid up capital</b> Rs. 300.02 Lacs</p> <p><b>Listed At</b> BSE &amp; CSE</p>	Risewell Credit Pvt. Ltd.	Offer to acquire 34,00,040 (20%) Equity Shares at a price of Rs. 18 per share payable in cash.	<p><b>Regulation 10</b></p> <p>Preferential allotment of 83,40,000 (49.06%) equity shares at a price of Rs. 18 per share.</p>	<p><b>Merchant Banker</b> VC Corporate Advisors Private Limited</p> <p><b>Registrar to the Offer</b> Niche Technologies Private Limited</p>
<p>Bombay Rayon Fashion Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 127.90 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	AAA United B.V. along with Aktieselskabet af 1/8 2004 and Ashwell Holding Company Pvt. Ltd.	Offer to acquire 2,84,20,000 (20%) Equity Shares at a price of Rs. 300 per share payable in cash.	<p><b>Regulation 10 &amp; 12</b></p> <p>Conversion of 3,30,00,000 GDRs into Equity Shares, thereby, increasing the shareholding of Acquirer to 35.89%.</p>	<p><b>Merchant Banker</b> Axis Bank Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>

<p>Baid Global Ventures Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 1.97 crore</p> <p><b>Listed At</b> BSE</p>	<p>Vijayrath Mercantile Private Limited and Pushpesh Kumar Baid</p>	<p>Offer to acquire 3,95,911 (20%) Equity Shares at a price of Rs. 202 per share payable in cash.</p>	<p><b>Regulation 10</b></p> <p>Conversion of 5,20,000 warrants into equity shares, thereby, increasing the shareholding of Acquirer and PACs from 13.64% to 34.60%.</p>	<p><b>Merchant Banker</b> Sobhagya Capital Options Limited</p> <p><b>Registrar to the Offer</b> Adroit Corporate Services Private Limited</p>
<p>Beeyu Overseas Limited</p> <p><b>Regd. Office</b> Kolkata</p> <p><b>Paid up capital</b> Rs. 14.14 crore</p> <p><b>Listed At</b> BSE &amp; CSEL</p>	<p>Classic Nirman Private Limited and Quantum Wealth Solutions Private Limited</p>	<p>Offer to acquire 28,28,291 (20%) Equity Shares at a price of Rs. 3 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 36,62,843 (25.90%) Equity Shares at a price of Rs. 2.85 per share.</p>	<p><b>Merchant Banker</b> VC Corporate Advisors Private Limited</p> <p><b>Registrar to the Offer</b> Niche Technologies Private Limited</p>
<p>Aksharchem (India) Limited</p> <p><b>Regd. Office</b> Gujarat</p> <p><b>Paid up capital</b> Rs. 3.40 crore</p>	<p>Paru M. Jaykrishna, Gokul M. Jaykrishna and Munjal M. Jaykrishna</p>	<p>Offer to acquire 9,90,750 (20%) Equity Shares at a price of Rs. 18.50 per share payable in cash.</p>	<p><b>Regulation 11 (2)</b></p> <p>Preferential allotment of 15,50,000 (31.30%) equity shares at a price of Rs 18.50 per</p>	<p><b>Merchant Banker</b> Vivro Financials Services Private Limited</p>

<b>Listed At</b> BSE & ASE			share, thereby, increasing the shareholding of the Acquirers along with PACs from 59.95% to 72.49%.	<b>Registrar to the Offer</b> Link Intime India Private Limited
Syschem (India) Limited  <b>Regd. Office</b> Panchkula  <b>Paid up capital</b> Rs 12.31 Crore  <b>Listed At</b> BSE & DSE	Ranjan Jain, Kushal Pal Singh, Rajesh Gupta, M/s Ally Chem Laboratories Private Limited, Allychem Securities Private Limited and Classic Securities Private limited along with PAC Ruchika Jain and Jagmohan Arora	Offer to acquire 2,46,20,800 (20%) Equity Shares at a price of Rs. 1.50 per share payable in cash.	<b>Regulation 10 &amp; 12</b> SPA to acquire 1,50,92,400 (12.26%) Equity Shares at a price of Rs. 1.20 Per share, thereby, increasing the shareholding of the Acquirers along with PACs from 12.94% to 25.20%.	<b>Merchant Banker</b> D & A Financial Services (P) Limited  <b>Registrar to the Offer</b> Beetal Financial & Computer Services Pvt. Limited
Marvel Capital & Finance (India) Limited  <b>Regd. Office</b> Mumbai  <b>Paid up capital</b> Rs 5.60 Crore  <b>Listed At</b> BSE	Mahagauri Investments Limited	Offer to acquire 10,00,000 (20%) Equity Shares at a price of Rs. 27.60 per share payable in cash.	<b>Regulation 10 &amp; 12</b> SPA to acquire 7,86,100 (15.72%) Equity Shares at a price of Rs. 12.50 Per share	<b>Merchant Banker</b> Imperial Corporate Finance & Services Pvt. Ltd.  <b>Registrar to the Offer</b> Sharex Dynamic (India) Pvt. Ltd.

## Hint of the Month

After the third business day prior to the commencement of the tendering period and till the closure of tendering period, the Target Company shall be prohibited from fixing any record date for any corporate action.

*{As substantiated from Regulation 26(4) of SEBI (SAST) Regulations, 2010- TRAC Report}*

## Regular Section

### Voluntary Open Offer - Window for Consolidation

#### Voluntary Open Offer

Voluntary Open Offer means the Open Offer given by the Acquirer voluntarily without triggering the mandatory Open Offer obligations as envisaged under the SEBI Takeover Regulations for the purpose of consolidation of shareholding.

The provision relating to Voluntary Open Offer are indirectly provided under Regulation 11(2A) of SEBI (SAST) Regulation, 1997 which provides that the acquirer who holds the shares or voting rights between 55%-75% and who is desirous of consolidating its shareholding, can do so by making an Open Offer under the said sub regulation.

The concept of Voluntary Open Offer has been separately dealt with in the draft SEBI (SAST) Regulations, 2010 (TRAC Report). The Committee felt that Voluntary Offers are an important means

for substantial shareholders to consolidate their stake and therefore recognized the need to introduce a specific framework for such Open Offers. Regulation 6 of TRAC Report provides the threshold and conditions for making the Voluntary Open Offer which are detailed below:

✓ **Eligibility- Prior holding of atleast 25% shares**

To be eligible for making a Voluntary Open Offer, the TRAC Report mandates the **prior holding of atleast 25% stake** in the Target Company by the Acquirer along with the PACs.

✓ **Shareholding of the Acquirer and PACs post completion of Open Offer**

Post completion of the Open Offer, the shareholding of the Acquirer along with PACs shall not exceed the **“maximum permissible non-public shareholding”**.

*Maximum permissible non-public shareholding means such percentage shareholding in the target company excluding the minimum public shareholding required under the listing agreement*

✓ **Acquisition of shares prior to the Voluntary Open Offer**

The Acquirer shall become ineligible to make a Voluntary Open Offer if during the preceding 52 weeks, the Acquirer or PACs with him has acquired shares of the Target Company without attracting the obligation to make a Public Announcement of an Open Offer.

This condition is given because the Voluntary Open Offer is permitted as an exception to the general rule on the offer size, thus the ability to voluntarily make an Open Offer should not be available if in the proximate past, any of such persons have made acquisitions within the creeping acquisition limits permitted under the Regulations.

✓ **Prohibition on the acquisition of shares during the Offer Period**

TRAC Report prohibits the acquirer who has made a Voluntary Open Offer from further acquiring the shares during the Offer Period otherwise than under the Open Offer.

✓ **Restriction of the acquisition of shares post completion of Voluntary Open Offer**

An acquirer and PACs who have made a Voluntary Open Offer shall not be entitled to further acquire shares for a period of 6 months after completion of the Open Offer except pursuant:

- a. To another Voluntary Open Offer.
- b. To Competing Open Offer to the Open Offer made by any other person for acquiring shares of the Target Company.

## ✓ Offer size

### I. Under SEBI (SAST) Regulations, 1997

The minimum size of the public offer shall be the lesser of the following:

- a. twenty per cent of the voting capital of the company; or
- b. such other lesser percentage of the voting capital of the company as would, assuming full subscription to the offer, enable the acquirer, together with the persons acting in concert with him, to increase his holding to the maximum level possible, which is consistent with the target company meeting the requirements of minimum public shareholding laid down in the Listing Agreement.

### II. Under the TRAC Report

In General, the TRAC Report provides that the Open Offer shall be made for the acquisition of all the shares held by all the other shareholders of the Target Company as of the last day of the tendering period. However, as an exception to the 100% offer rule and to discourage non-serious Voluntary Offers, the Committee decided to set a minimum offer size of 10%. The Voluntary Open Offer under proposed SEBI Takeover Regulations shall be made for the acquisition of at least ten per cent (10%) of the voting rights in the Target Company and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and PACs with him exceeding the maximum permissible non-public shareholding applicable to such Company.

## ✓ Competing offers

Where a Competing Offer has been in respect of the Voluntary Open Offer, then the acquirer who has made the Voluntary Open Offer shall be entitled to increase the number of shares to the extent as prescribed for the Open Offer in general within a period of 15 business days from the competing Offer.

Further, in such an event of increase in the Offer Size, the Offer shall not be treated as the Voluntary Open Offer and the provisions of the TRAC Report as are applicable in respect of the normal size Open Offer shall apply accordingly.

There have been various instances in the past where the promoters of the Target Company have made the voluntary Open Offer to the shareholders for the purpose of consolidation of shareholding. For Examples:

### Siemens Limited (Target Company)

Siemens Aktiengesellschaft (Acquirer) belongs to the promoter group of Target Company and holds 55.18% of the voting share capital of the Target Company. For the purpose of consolidation of the shareholding, the Acquirer had made the Voluntary Open Offer to acquire 19.82% of the voting share capital of the Target Company.

### Nahar Poly Films Limited (Target Company)

The Acquirer belongs to the Promoter Group of the Target Company and holds 65.09% of the paid up capital of the Target Company. For the purpose of consolidation of holdings, the Acquirer had made the Voluntary Open Offer to the shareholders to acquire 9.91% of the paid up capital of the Target Company.

### ABB Limited (Target Company)

ABB Asea Brown Boveri Ltd and ABB Ltd. (Switzerland) (Acquirers) belongs to the promoter group of Target Company and holds 46.19% of the voting capital directly and 52.11% indirectly through one of its subsidiary. For the purpose of consolidation of holding and to increase the control in the Target Company, the Acquirers had made the Voluntary Open Offer to acquire 22.89% of the voting capital of the Target Company.

## Case Study

### Acquisition of Henkel by Jyothy Labs

#### Henkel India Limited (Company/Henkel)

Headquartered in Chennai, Henkal is a subsidiary of Henkel AG & Co. KGaA, Germany. The Company was incorporated in the year 1916 under the name of **“The Calcutta Chemical Company Limited”** and subsequently, in the year 2003, the name of the Company was changed to Henkal India Limited. Later on, pursuant to the scheme of amalgamation between Henkal and Henkal SPIC India Limited as on approved in the year 2005, the entire business of Henkal SPIC India Limited was transferred to Henkal.

The Company operates in the business of manufacturing and marketing of Laundry Care Products, Dishwashing Products and Personal Care Products. The major national and international brands of Henkel include Pril, Henko, Fa, Margo, Mr. White, Chek, Bref, Igora Royal, BC Bonacure, Strait Therapy, Glatt & Natural Styling and Osis.

### **Jyothy Laboratories Limited (Acquirer/Jyothy Labs)**

Started as a proprietary by Mr. M P Ramachandran, the current Chairman and Managing Director of Jyothy Labs, for manufacturing and selling a single product in a single district, the organization has now grown to become a multi-brand, multi-product company with operations all over the nation. Jyothy Labs is a well established name in India's manufacturing and distributing brands across various product categories as diverse as, Household Insecticide *Maxo*, Utensil Cleaners under the brand *Exo*, Fragrances named *Maya*, Personal Care product *Jeeva Naturals*, Fabric Care services, besides marketing tea and coffee brands.

**Target Company:** Henkel India Limited

**Acquirer:** Jyothy Laboratories Limited

**Deal Size:** Rs. 1187.20 Million

**Reason for Acquisition:** Substantial acquisition of shares accompanied with change in control

**Offer Size:** 23,290,855 equity shares (20%)

**Merchant Banker:** MAPE Advisory Group Private Limited

**Registrar:** Cameo Corporate Services Limited

### **An Insight into the deal**

In the month of February, Germany's Henkel AG had mandated HSBC India for the sale of some of its brands of Indian detergent and personal care brands, along with the manufacturing facility at Karaikal in Tamil Nadu. The most likely suitors for the transactions are Wipro, Godrej Consumer Products, Emami, Cavinkare, Dabur, Jyothy Labs. According to the reports, the German parent was not satisfied with the performance of its Indian arm that has made losses of around Rs 50-70 crore for each of last four calendar years.

Since the London-headquartered private equity giant, Apax Partners was eyeing a strong presence in the FMCG sector in India, thus it was expected to throw its weight behind one of the bidders who will be interested in buying some brands of Henkel.

### **Jyothy Labs gains footing in Henkel**

In March 2011, Jyothy Labs acquired a 14.9% stake in Henkel from Tamilnadu Petroproducts Ltd, one of the promoters of Henkel for a consideration of Rs 60.73 crore and became the single largest Indian shareholder in Company. After this acquisition, the price of Henkel rose by 4.9% to hit the upper circuit for the day at Rs 47.6 per share. However as per the market experts, this could be based on the fact that there will be aggressive bidding for Henkel's stake that could push up share price and thereby the price of mandatory Open Offer in the future could be much higher.

### **Next Move, High Stake**

Following the acquisition of strategic stake in Henkel, Jyothy Labs was looking to acquire the 50.97% stake in Henkel from Germany's Henkel KG&A. Other FMCG companies Dabur and Emami were also keen to acquire the Henkel AG's stake in Henkel, even though Jyothy Labs bagged a 14.9% stake in the Company. The strong presence of Henkel in Eastern India is prompting Emami to go ahead with the bidding. But later Dabur and Emami opted out of the race to acquire controlling stake in the Henkel.

As the bidding process closed, Jyothy Labs emerged as sole bidder for acquiring majority stake in Henkel.

### **Acquisition of 50.97% stake in Henkel by Jyothy Labs**

Finally, on May 5, 2011, Jyothy Labs executed a Share Purchase Agreement (SPA) with Henkel AG & Co. KGaA to acquire 59,360,203 (50.97%) equity shares in the Company at a price of Rs. 20 per share aggregating to Rs. 1187.20 Million which has mandated the Open Offer to the shareholders of the Company in terms of SEBI Takeover Regulations.

### **Highlights of the SPA**

- I. The aggregate consideration is subject to certain adjustments based on the net debt and net cash available in the Company at the time of closing;

- II. Jyothy Labs shall acquire 40,000,000 4% redeemable cumulative preference shares and 28,000,000 9% redeemable non-cumulative preference shares constituting 100% of the preference share capital of the Company for an aggregate consideration of Rs. 439,000,000;
- III. Jyothy Labs itself or through its wholly owned affiliate will provide an inter corporate deposit to the Company to repay Rs. 4539 Million owned by Henkel to its lenders;

Further Jyothy Labs and Henkel Germany have agreed that Henkel Germany shall have an option to acquire up to 26% of the equity share capital of Jyothy Labs, either through purchase of shares or through issue of shares by Jyothy Labs, after a period of 5 years subject to the terms and conditions specified and approval of the shareholders or other statutory approvals.

Jyothy Labs will fund the acquisition through internal accruals and debt. Last year, Jyothy Labs raised Rs.228 Crore through QIP and a portion of that is also available. Further, Jyothy Labs has also tied up with the Banks and is also in talks with some PE to raise the funds through the issue of new shares.

#### **Exit Opportunity to the shareholders of Henkal**

On May 09, 2011, Jyothy Labs has given a public announcement to the shareholders of the Company to acquire 23,292,895 representing 20% of the Emerging Voting Capital of the Company at a price of Rs. 41.20 per share payable in cash in accordance with the provisions of SEBI Takeover Regulations.

#### **Jyothy Labs to streamline the debt of Henkel**

Jyothy Labs will restructure the debts on the detergent and soap maker's books in 3-6 months by selling some of its assets and possibly diluting equity. These could include Henkel's factories in Karaikal and Ambattur, both in Tamil Nadu. These idle assets could fetch Jyothy Labs Rs.100-150 crore approximately.

Since its inception, Jyothy Labs remained a debt free company but now it now has a debt-equity ratio of 0.75:1, which is high for a consumer goods company.

#### **Future plans of Jyothy Labs**

Jyothy Labs plans to double the advertising budget for Henkel brands such as Pril, Margo, Fa and Henko and will reposition and look at new prices and packaging for the brands.

The Henkel acquisition is synergistic for Jyothy Labs as both the companies are present in the same categories of detergents and fabric care. But while Jyothy Labs, an economy to mid-market player, earns about 70% of its revenue from rural India, Henkel gets a similar contribution from the cities. Henkel also earns a third of its revenue from defence canteens and modern trade, where Jyothy Labs has negligible presence.

## Market Update

### **Sovereign Fund may be allowed to hike the stake to 20% without triggering Open Offer**

SEBI may allow Sovereign Wealth Funds who are having Economic Co-operation Agreement (CECA) with India to invest in Indian companies to a maximum of 20% without triggering the Open Offer requirement provided that such stake increase does not lead to change in control. At present, India has CECA with Singapore and South Korea.

### **Ravi Kumar Distilleries Acquires 51% In SV Distilleries**

Ravi Kumar Distilleries Ltd has acquired 51% stake in SV Distilleries Pvt. Ltd., a Karnataka-based Company for the purpose of expansion of the Company. After the acquisition, SV Distilleries will become a subsidiary of Ravi Kumar Distilleries. The cost of the project would be around Rs. 86 crore which will be funded through the proceedings from its recent IPO.

## Our Team

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