

# TAKEOVER PANORAMA

A Monthly Newsletter by Corporate Professionals

Year VII—Vol V  
May Edition



Legal Updates



Latest Open Offers

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Hint of the Month



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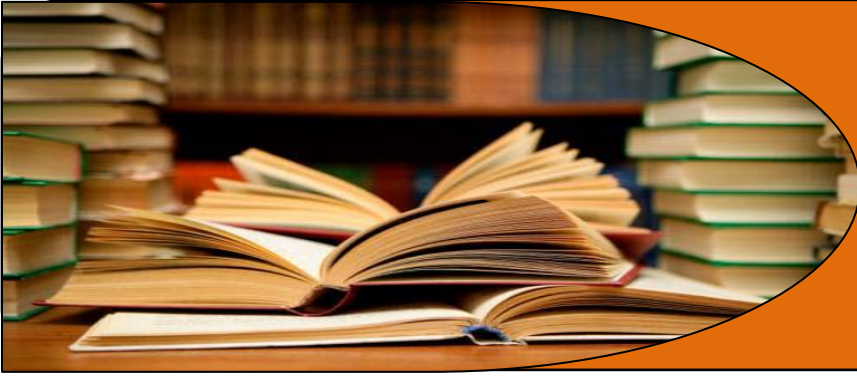
Queries



Quiz

Team





# LEGAL UPDATES

## SAT Order in respect of Ms. K. Nirmala & Ms. K. Nirupama vs SEBI

### FACTS:

1. This Appeal has been filed by Ms. K. Nirmala (Appellant 1) & Ms. K. Nirupama (Appellant 2) (hereinafter jointly referred to as “**Appellants**”) against the order of SEBI (“Respondent”) imposing a penalty of Rs.3,25,000 and Rs. 3,00,000 respectively.

### 2. Brief Facts of the Case:

a) SEBI conducted an investigation into the scrip of M/s Shrinivas Power & Infrastructure Ltd. (hereinafter called as “SPIL”) after an email received from CDSL regarding the high volume of trade of a client as compared to the market volume. Investigation revealed that Appellants, the promoters of SPIL, had pledged certain shares of SPIL and their shareholding had undergone changes consequent upon the invocation of the pledge.

The Hon'ble Tribunal set aside the contentions made by the Appellant for not making the disclosures as required under SEBI Takeover Regulations, 1997 however, reduced the penalty to 50% of the penalty imposed by the AO.

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b) Pursuant to the invocation of pledge of shares, the shareholding of the Appellants have come down by more than 2% thereby Appellants are required to make disclosures under Regulation 8(A)(2) & (3) of SEBI (SAST) Regulations 1997 (hereinafter “SEBI Takeover Regulations, 1997”) and 13(3) & (5) of SEBI (PIT) Regulations, 1992 (hereinafter “PIT Regulations”). However, the Appellants failed to make the required disclosures.

c) Accordingly show cause notices were issued to the Appellants and an opportunity of being heard was granted to them. However they did not respond to the SCN and not appear for the hearing. Accordingly the Adjudicating Officer proceeded with the enquiry ex parte based upon the material available on record.



3. However now in the appeal, the appellants argued that they did not play any fraud on the investors and there was no intention to do so and further submits that no undue gain has accrued to the two appellants by virtue of the non- disclosure of the pledges in question and no loss was caused to any of the investors by such inadvertent mistake. Further they have also stated in the appeal that they will not repeat this unintentional mistake or irregularity in future.

## ISSUES:

Whether the contention of the appellant that no undue gain has accrued to the two appellants by virtue of the non- disclosure of the pledges in question and no loss was caused to any of the investors by such inadvertent mistake is acceptable?

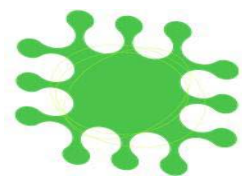
## DECISION:

Hon'ble SAT after hearing both the parties, considering the facts and circumstances of the case and considering the judgments of Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. v/s SEBI, observed that it is not inclined to interfere with the orders passed by the learned adjudicating officer in the matter. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. Therefore the contention of the appellants that violation was technical in nature and no loss was caused to any of the investors by such inadvertent mistake is not acceptable. However, keeping in view the totality of facts and circumstance of the matter and the sincere apologetic approach of the appellants, reflected in the pleadings and arguments, the penalty shall stand modified and reduced to 50 per cent of the penalty imposed by the adjudicating officer of SEBI in each case.

## SAT Order in respect of M/s Tropical Securities & Investments Pvt. Ltd. Vs SEBI

## FACTS:

1. The appeal has been filed by M/s Tropical Securities & Investments Pvt. Ltd. ("Appellant") against the order of SEBI imposing a penalty of Rs. 2.5 Lakhs on the Appellant for violating



Regulation 7 of the SEBI (SAST) Regulations, 1997 (hereinafter “SEBI Takeover Regulations, 1997”).

## 2. Brief facts of the case:

- a. SEBI conducted an investigation into the trading in shares of the M/s Prudential Pharmaceuticals Limited (Target Company/PPL) during the period from March 5, 2001 to July 6, 200. Investigation revealed that Appellant had acquired 7,00,000 shares (13.59%) of PPL from M/s Clip Securities Pvt. Ltd. The Appellant further acquired 3,12,301 shares (6.06%) of PPL on its own account.
- b. It was alleged that the Appellant was required to make necessary disclosure under Regulations 7 of SEBI Takeover Regulations, 1997 for the above acquisitions but the appellant failed to do so and accordingly Adjudicating officer imposed a penalty of Rs. 2.5 lakhs.

The Hon'ble Tribunal does not find any legal infirmity in the impugned order dated December 17, 2012 and not accepted the contention of the appellant. However, reduced the penalty to Rs. 1,00,000 from Rs. 2,50,000 as imposed by the AO.

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3. The learned counsel for the Appellant contended that it has been a stock broker since the year 1998 and had never defaulted in any manner, whatsoever, to by-pass or violate any of the rules or regulations framed by the SEBI or for that reason any other law. He further contended that the appellant did not receive the shares in question in a single transaction and was under a bona fide belief that it was not required to convey it to the stock exchange and was simply required to intimate to the Target Company (PPL). It is also urged that the appellant has suffered severe losses in the process and ultimately it ceased to act as a broker in the year 2001 onwards. In this backdrop, it has been prayed that the penalty in question is highly disproportionate to the alleged violation even if it is assumed, for the sake of arguments, that the appellant was guilty of violating the same.

## ISSUES:

Whether the contention of the appellant that it was under a bona fide belief that it was not required to convey to the stock exchange the acquisition made by it in terms of Regulations 7 of SEBI Takeover Regulations, 1997 and was simply required to intimate to the Target Company (PPL) is acceptable?



## DECISION:

Hon'ble SAT observed that undoubtedly the Appellant had acquired 7,00,000 shares (13.59%) of PPL from M/s Clip Securities Pvt. Ltd and further acquired 3,12,301 shares (6.06%) of PPL on its own account.

A bare reading of Regulation 7 of SEBI Takeover Regulations, 1997 in question makes it clear that the appellant was required in law to make the disclosure of the aggregate of shareholding/voting rights in PPL to the Target Company (PPL) as well as to the stock exchanges where the shares of the Target Company have been listed. Accordingly, it does not find any legal infirmity in the impugned order dated December 17, 2012 and the contention of the appellant was not acceptable. However, keeping in view of the totality of facts and circumstances of the case and also the fact that the appellant has ceased to carry on the business of broker since 2001 after suffering huge losses as claimed by it, the Hon'ble Tribunal is of the considered opinion that a penalty of Rs. 100,000/- would meet the ends of justice. With this modification, the impugned order dated December 17, 2012 is upheld and the appeal is dismissed with no order as to costs.

### **SAT Order in respect of M/s Vashi Construction Pvt. Ltd., Mr. Rajesh C. Shah, Ms. Bhavana Rajesh Shah Vs SEBI**

This appeal has been filed by M/s Vashi Construction Pvt. Ltd., Mr. Rajesh C. Shah, Ms. Bhavana Rajesh Shah, M/s Dhanlaxmi Lease Finance Ltd., Mr. Bipin Ratilal Shah, Mr. Bharat Ratilal Shah, Mr. Girish G. Doshi, M/s Rudra Securities and Capital Ltd., Mr. Nilesh Kumar T. Kava, Mr. Ketan D. Sorathiya and Mr. Vipul Shantilal Trivedi (Appellants) against the order of SEBI (Respondent) imposing a penalty of Rs. 20,00,000

The Hon'ble Tribunal held that 7 allottees acted with a common purpose and design in the matter of allotment of Rs. 2.90 crore preferential shares and therefore liable to pay the penalty jointly and severally as imposed by the Adjudicating Officer

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#### FACTS:

1. SEBI conducted an investigation relating to preferential allotment of 2,90,00,000 shares by Platinum Corporation limited ("PCL") to 7 allottees acted in concert with each other. However, they failed to come out with a public announcement as per the requirement of Regulation 10 of



the erstwhile SEBI (SAST) Regulations, 1997 (hereinafter “SEBI Takeover Regulations, 1997”). Accordingly the show cause notice was issued to the Allottees and an opportunity of being heard was granted to them. On the conclusion of the proceedings, Adjudicating Officer imposed the penalty of Rs. 20,00,000 on them and the present appeal is filed against the said order.

## **2. Submissions made by the appellants:**

- a. All transactions are bonafide purchases and they have nothing to do with the act of PCL in giving money to some other party.
  - b. The conclusion of the learned adjudicating officer regarding rotation of money is based on assumptions and that the appellants, being bona fide investors, have paid the amount through cheques.
  - c. Ms. Neha Shethwala, a common signatory for all the companies and Mr. Ashok Shah has also been similarly situated and have been exonerated by the adjudicating officer.
  - d. The appellants submit that on the basis of mere assumption that three noticees namely, M/s Sarang Chemicals Ltd., M/s. Hirak Biotech Ltd., and Mr. Dinkar B. Shreemali have been connected, the appellants cannot be termed as being connected to each other by any stretch of imagination.
  - e. It is also submitted by the appellants that PCL preferably allotted the shares in question to its own directors and to the three appellant-companies and not to the directors of these three companies. There are no common directors between three appellant-companies and the directors of the PCL. Therefore, the directors of the three appellant companies are not liable to pay the penalty of Rs.20 lacs jointly and severally as they are not persons acting in concert. There was no common interest or motive in the matter of preferential allotment of shares in question.
3. On the other hand Respondent have submitted that the preferential allotment of shares to the tune of 2,90,00,000 on 13th January, 2009 was made to 7 persons, out of which 4 are directors, and other three are the companies. They opened their accounts either immediately preceding the date of allotment of preferential shares to them or their accounts with the concerned Bank had negligible amounts. All the shares were pledged with the banks in order to raise the loan. Thus money comes to the Company and goes back to the persons from whom it came and that too in cash.



## ISSUES:

Whether the abovementioned appellants are PACs and thus liable for penalties as imposed by the Adjudicating Officer for the violation of Regulation 10 of SEBI Takeover Regulations, 1997?

## DECISION:

Hon'ble SAT after hearing both the parties, considering the facts and circumstances of the case observed that 7 allottees in question acted with a common purpose and design in the matter of allotment of 2.90 crore shares. Thus, having acted in concert with each other, Regulation 10 of SEBI Takeover Regulations, 1997 gets attracted and in view of the non-compliance with the provisions thereof, all the appellants are liable to pay the penalty in question jointly and severally as imposed by the Adjudicating Officer.

## SEBI Order in the matter of M/s Filatex Fashions Limited

## FACTS:

1. SEBI conducted an investigation in respect of trading in the scrip of M/s Filatex Fashions Limited ("Filatex"/ "Target Company") during the period April 2, 2007 to November 21, 2007. Investigation revealed that Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran acting as the front entities of Mr. Prabhat Sethia, the promoter and Managing Director of Filatex (Collectively referred as "**Acquirers**") have acquired 3,00,000 shares each from M/s IFCI Ventures Capital Limited ("IFCI") thereby increasing the combined holding of the promoters from 28.88% to 35.73% requiring public announcement under Regulation 11(1) of the SEBI (SAST) Regulations, 1997 (hereinafter "SEBI Takeover Regulations, 1997"). However, no such public announcement has been made by the promoters.

SEBI held that Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were operating for a common objective and purpose of acquisition of shares of the target company and can be referred to as PAC in terms of the Takeover Regulations.

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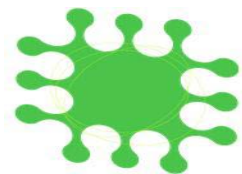
2. Accordingly, a Show Cause Notice was issued to individuals/ entities namely Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran, Mr. Prabhat Sethia, Mr. Chand Sethia, Mr. Naresh Chand Chandak, Mr. Prashant Kumar Sethia, M/s Ivy League Schools Limited, Ms. Ratna Devi Sethia, Mr. Mahavir Golecha, Mr. Rajkumar Sethia and Ms. Shailaja Katar (the original subscribers/ promoters/ PACs to the Memorandum of Association of Filatex) (collectively referred to as 'Noticees') to which they made the following submissions:
  - a. None of the Noticees except Mr. Prabhat Sethia is the member of the board of Filatex. Further, these promoters were not aware of the transactions of Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran.
  - b. After the notification of regulation for compulsory dematerialization of Equity Shares, IFCI who had subscribed to 4,00,000 shares of Filatex during the public issue, approached them to sell their shares in the physical form. Likewise, other small investors also approached them to sell their shares in physical form. In order to facilitate them, they had bought the shares in physical form and converted them into demat form. Thereafter, they sold these shares immediately in the market. They had no intention to increase their shareholding or voting power in Target Company.
  - c. As on April 01, 2007, Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran had held 3,91,673 shares i.e., 3.63% of the share capital and they were required to make public announcement for open offer only if their combined holding would have crossed 8.63% of the capital as Regulation 11(1) triggers only after acquisition of an additional 5% of shares or voting rights.
  - d. Further there was no change of control and the same was done in the interest of the Target Company and its shareholders.

## ISSUES:

- a. Whether the Noticees were part of a single group and were acting in concert?
- b. Whether the acquirers have triggered Regulation 11(1) of SEBI Takeover Regulations, 1997?

## DECISION:

- a. It was observed that Mr. Naresh Chand Chandak, Mr. Mahavir Golecha, Ms. Shailaja Katar, Rajkumar Sethia, Mr. Chand Sethia, Mr. Prashant Kumar Sethia, Ms. Ratna Devi Sethia and M/s Ivy League Schools Limited were the original subscribers/ promoters/ PACs to the Memorandum of Association of Filatex. However, they not involved in the management of the Target Company.



Further, they were not were aware of the transactions of Ms. Sangeeta Sethia and Mrl Swaminathan Rajendran in the Target Company. Therefore they cannot be said to be operating for a common objective and purpose of acquisition of shares of the Target Company.

**Connection between Mr. Prabhat Sethia, Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran-**

SEBI further observed that Ms. Sangeeta Sethia is the wife of Mr. Prabhat Sethia. She acted as introducer/ nominee for bank account/demat account of Mr. Swaminathan Rajendran, employed as accountant in Filatex during the period of investigation and was having the same address as that of Filatex. Mr. Prabhat Sethia has acquired the shares from IFCI and later on the shares were transferred in the account of Mr. Swaminathan Rajendran and Ms. Sangeeta Sethia after dematerialization.

Moreover, it has been observed that Mr. Swaminathan Rajendran had transferred Rs. 36,50,000 to Filatex, being the sale proceeds of selling the shares of Filatex in the market. However, Mr. Prabhat Sethia mentioned that the amount was taken as a loan by Filatex from Mr. Swaminathan Rajendran. But no document has been produced in this respect.

From the above observation it is clear that Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were only acting as front entities to Mr. Prabhat Sethia thus all the three notices were operating for a common objective and purpose of acquisition of shares of the Target Company and can be referred to as 'persons acting in concert (hereinafter referred to as 'PAC') in terms of the SEBI Takeover Regulations, 1997.

- b. During the investigation, SEBI observed that Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were continuously acquiring the shares of the Target Company for which the consideration money/sale proceeds were coming from Sethia, which resulted in increase of promoters holding from 28.88% as on quarter ended June 30, 2007 to 35.73% as on August 31, 2007 requiring them to make a public announcement as per regulation 11(1) of SEBI Takeover Regulations, 1997. However they failed to make the open offer.

Therefore after considering the facts, SEBI ordered Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran and Mr. Prabhat Sethia to make public announcement to the shareholders of the



Target Company and directed to pay interest rate of 12% per annum to the shareholders or the loss of interest caused to the shareholders for the period of delay.

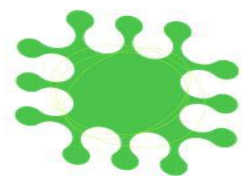
## Informal Guidance in the matter of M/s D B Corp Ltd.

### FACTS:

1. M/s. D B Corp Ltd. (Target Company) is a listed company engaged in the business of publication of newspapers and periodicals and operation of FM radio stations.
2. Mr. Ramesh Chandra Agarwal and his 3 sons including their wife namely, Mr. Sudhir Agarwal his wife Mrs. Jyoti Agarwal, Mr. Girish Agarwal his wife Mrs. Namita Agarwal, and Mr. Pawan Agarwal his wife Mrs. Nikita Agarwal (Agarwal Family) are the immediate relative and promoters of the Target Company.
3. Now it is proposed to transfer the shareholding of the promoter group companies, inter se amongst the promoters who are immediate relatives. The details of the transfers are as follows:
  - a. Mr. Ramesh Chandra Agarwal (Father) proposed to transfer their shares to Mr. Girish Agarwal, Mr. Sudhir Agarwal and Mr. Pawan Agarwal (Sons) in the six companies viz M/s Bhaskar Infrastructure Ltd., M/s Bhopal Financial Services Ltd., M/s Chambal Trading Pvt. Ltd., M/s Dev Fiscal Services Pvt. Ltd., M/s Peacock Trading and Investment Pvt. Ltd. and M/s Stitex Global Ltd. (Father to Sons).
  - b. Mr. Sudhir Agarwal and Mr. Girish Agarwal proposed to transfer their shares to Mr. Pawan Agarwal in M/s Peacock Trading and Investment Pvt. Ltd. and M/s Chambal Trading Pvt. Ltd. (Between Brothers).
  - c. Further Mrs. Namita Agarwal proposed to transfer their shares in M/s Bhopal Financial Services Ltd. to Mr. Sudhir Agarwal and Mrs. Jyoti Agarwal proposed to transfer their shares in M/s Dev Fiscal Services Pvt. Ltd. to Mr. Girish Agarwal. (Sister-in-law to Brother-in-law)

### ISSUES:

Whether the abovementioned proposed inter se transfer qualifies for exemption in terms of Regulation 10(1)(a)(i) of SEBI Takeover Regulations, 2011 i.e. inter se transfer of shares amongst the relatives?



## DECISION:

Considering the abovementioned proposed inter se transfer of shares and the relevant provision of Regulation 10 of SEBI Takeover Regulations, 2011, it was clarified that the above transaction would be covered under Regulation 10(1)(a)(i) of the said regulations and would be exempt from the requirement of open offer subject to the compliance of Chapter V and Regulation 10(5), 10(6) and 10(7) of SEBI Takeover Regulations, 2011.

### Consent Order in respect of M/s Signet Industries Limited

SEBI had initiated adjudication proceedings against M/s Signet Industries Limited (Noticee/SIL) for the alleged violation of the provisions of the SEBI Takeover Regulations, 1997 as observed from the Letter of Offer (Dated June 12, 2010) and other documents filed with SEBI by Almondz Global Securities Limited (Manager to the Offer) in the matter of acquisition of shares of SIL by Mr. Mukesh Sangla, Mr. Saurabh Sangla and other acquirers.

Pending the adjudicating proceedings, the Noticee has filed the consent application for the settlement of above violations and proposed to pay a sum of Rs 4,46,250 towards settlement charges. The terms as proposed by the Noticee were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and disposes of said proceedings against the Noticee.

### Consent Order in respect of M/s CIL Nova Petrochemicals Limited and M/s GSL Nova Petrochemicals Limited

SEBI had initiated adjudication proceedings against M/s CIL Nova Petrochemicals Limited and M/s GSL Nova Petrochemicals Limited (Erstwhile M/s Nova Petrochemicals Limited) (**“Noticee”**) for the alleged violation of Regulation 7(3) & 8(3) of SEBI Takeover Regulations, 1997.

Pending the adjudicating proceedings, the Noticee has filed the consent application for the settlement of above violations and proposed to pay a sum of Rs. 10,00,000 towards settlement charges. The terms as proposed by the Noticee were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and disposes of said proceedings against the Noticee.

### **Consent Order in the matter of M/s Cityman Ltd.**

Cityman Ltd. (Applicant) had delayed in complying with the provisions of Regulation 6(2), 6(4) & 8(3) of SEBI Takeover Regulations, 1997 for the year 1998 to 2009. Therefore, the Applicant had voluntarily filed the consent application for the settlement of above non compliances on the payment of Rs. 9,00,000 towards settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and HPAC recommended the settlement of the proceeding on the payment of Rs.10,00,000. The recommendation of HPAC were communicated to the Applicant and the matter was settled.

### ***Adjudicating/WTM orders***

TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
M/s Flawless Diamond (India) Ltd.	M/s. Rotomac Global Pvt. Ltd.	Regulation 7 SEBI Takeover Regulations, 1997	Rs. 7,50,000/-



## ***HINT OF THE MONTH***

Acquirer is required to complete the payment of consideration to shareholders who have accepted the offer within 10 working days from the date of closure of the open offer. If there is a delay in payment of consideration (not due to non receipt of statutory approvals), it would be treated as a violation of SEBI Takeover Regulations, 2011 and SEBI may issue direction to such acquirer including direction to pay interest.

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





# Latest Open Offers

**Target Company**  
M/s Seasons Furnishings Limited

**Registered Office**  
New Delhi

**Net worth of TC**  
Rs.924.13 Lacs  
(31.12.2012)

**Listed At**  
BSE

**Industry of TC**  
Comm. Trading & Distribution

**Acquirers**  
Mr Mandeep Singh Wadhwa, Mrs Manjit Kaur Wadhwa (Acquirers) along with PACs

**Triggering Event:** Share Purchase Agreement (SPA) for the acquisition of 13,12,100 (17.74%) Equity Shares and control over Target Company.

**Details of the offer:** Offer to acquire 19,22,414 (26%) Equity Shares at a price of Rs. 10 per fully paid up equity share.

**Triggering Event:** Conversion of warrants allotted in December 2012 into 37,00,000 (28.43%) Equity Shares and acquisition of control over Target Company.

**Details of the offer:** Offer to acquire 33,83,432 (26%) Equity Shares at a price of Rs. 20/- per fully paid up equity share.

**Target Company**  
M/s Champion Finsec Limited

**Registered Office**  
Mumbai

**Net worth of TC**  
1,139.81 Lakhs  
(31.03.2012)

**Listed At**  
BSE

**Industry of TC**  
Misc. Commercial Services

**Acquirers**  
Mr. Dhirajlal G. Hirpara and Mr. Jitendra G. Hirpara



**Target Company**

M/s Drillco Metal  
Carbide Limited

**Registered Office**

Mumbai

**Net worth of TC**

Rs.357.69 Lacs  
(31-03-2012)

**Listed At**

BSE and PSE

**Industry of TC**

Trading and Distributing

**Acquirers**

Mr. Rahul M Timbadia,  
Mr. Kartik M Timbadia,  
Mr. Parth R Timbadia,  
Ms. Jalpa K Timbadia,  
M/s La Tim Sourcing  
(India) Pvt. Limited

**Triggering Event:** Market purchase of 5,00,000  
(31.66%) equity shares of Target Company.

**Details of the offer:** Offer to acquire 5,70,538 (26%)  
Equity Shares at a price of Rs. 30.45/- per equity share.

**Target Company**

M/s Seasons Textile  
Limited

**Registered Office**

New Delhi

**Net worth of TC**

Rs. 2087.43 Lacs  
(31.12.2012)

**Listed At**

BSE and CSE

**Industry of TC**

Textiles

**Acquirers**

Mr. Inderjeet Singh  
Wadhwa, Mrs. Neelam  
Wadhwa along with  
PACs

**Triggering Event:** Share Purchase Agreement (SPA)  
for the acquisition of 15,26,550 (20.38%) equity shares  
and control over Target Company.

**Details of the offer:** Offer to acquire 19,47,478 (26%) Equity  
Shares at a price of Rs. 11/- per fully paid up equity share.



**Target Company**

M/s Continental Profiles  
Limited

**Registered Office**

Kolkata

**Net worth of TC**

Rs. 336.40 Lacs  
(31.12.2012)

**Listed At**

CSE

**Industry of TC**

Manufacturing

**Acquirer**

Mr Shyam Manohar  
Maheshwari

**Triggering Event:** Share Purchase Agreement (SPA) for acquisition of 7,10,079 (36.38%) equity shares and control over Target Company

**Details of the offer:** Offer to acquire 5,07,520 (26%) Equity Shares at a price of Rs. 8/- per equity share.

**Triggering Event:** Share Purchase Agreement (SPA) for acquisition of 48,86,000 (70.17%) equity shares and control over Target Company.

**Details of the offer:** Offer to acquire 11,28,600 (16.21%) Equity Shares at a price of Rs. 8/- per equity share.

**Target Company**

M/s Blue Blends  
Finance Limited

**Registered Office**

Mumbai

**Net worth of TC**

Rs. 539.02 Lakhs  
(31.12.2012)

**Listed At**

BSE

**Industry of TC**

Finance (including  
NBFCs)

**Acquirers**

M/s Vishwamitra India  
Finvest Services  
Limited, M/s Infinity  
Dealmark Private  
Limited, Mr. Manoj  
Kumar Chand and Mr.  
Pankaj Kumar Chand



**Target Company**

M/s Hindustan Unilever  
Limited

**Registered Office**

Mumbai

**Net worth of TC**

28,856 Mn  
(31.03.2013)

**Listed At**

BSE and NSE

**Industry of TC:**

Personal Products

**Acquirers**

M/s Unilever PLC  
(Acquirer) and M/s  
Unilever N.V. (PAC)

**Triggering Event:** Voluntary Open Offer.

**Details of the offer:** Offer to acquire 487,004,772  
(22.52%) Equity Shares at a price of Rs. 600/- per equity  
share.



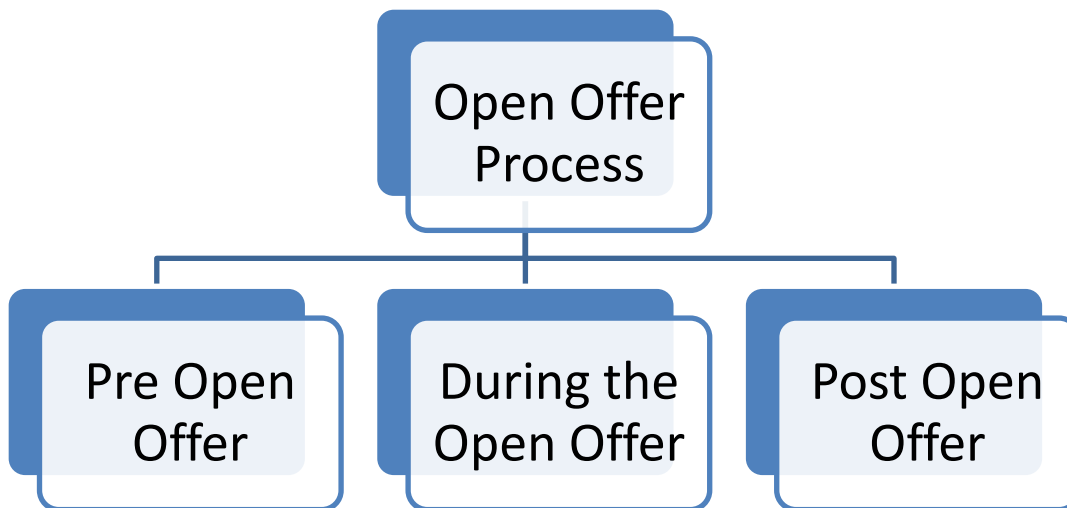


## *Regular section*

### **A walk through Open Offer Process**

SEBI Takeover Regulations, 2011 provides certain triggering events wherein the Acquirer is required to give Open Offer to the shareholders of the Target Company to provide them exit opportunity. The objective behind giving opportunity to the shareholders of the Target Company is to safeguard their interest in the event of change in management and control of the Target Company or where the promoters desires to consolidate their shareholding to the maximum permissible level.

**The whole process of Open Offer is divided into three parts:**



## PRE OPEN OFFER:

### Triggering Event:

The process of open offer starts from the date of happening of triggering event itself. The triggering event may be signing of Share Purchase Agreement or actual acquisition of shares from the market or the Board Meeting held for considering the preferential issue of Equity Shares or acquisition of control over Company. Thus as soon as the intention of acquirer to acquire the shares of Target Company beyond the prescribed threshold limits is expressed unequivocally, the process of Takeover Offer is initiated provided the acquisition is not exempted under regulation 10 of these regulations.

It is noteworthy to mention here that the triggering event itself is very time-consuming process which requires lots of structuring and planning as regards the number of shares to be acquired considering the future plans of the Company, the terms of acquisition etc.

### Appointment of Merchant Banker:

As soon as the triggering event happens as mentioned above, the acquirer is required to appoint a Merchant Banker registered with the Board, who is responsible for executing the entire open offer process. ***[Regulation 12 of SEBI Takeover Regulations, 2011]***

### Public Announcement:

A Public Announcement shall be made on the same day or as prescribed under Regulation 13 of the Regulations as the date of transaction which triggered the Open Offer to all the stock exchanges where the shares of the Company are listed for the purpose of dissemination of the information to the public. Further, a copy of the public announcement shall be sent to SEBI and to the Target Company at its registered office within one working day of the date of short public announcement. ***[Regulation 13 read with Regulation 14(1) and 14(2) of SEBI Takeover Regulations, 2011]***

### Escrow Account:

The Acquirer shall open an escrow account atleast two working days prior to the date of detailed public statement and deposit an amount aggregating to 25% of the consideration on first Rs.



500 crore and additional amount of 10% on the balance consideration. [**Regulation 17(1) of SEBI Takeover Regulations, 2011**].

#### **Publication of Detailed Public Statement:**

A Detailed Public Statement shall be made by the Acquirer within 5 working days from the date of Public Announcement. Such detailed public statement is required to be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the Target Company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the Target Company are recorded during the sixty trading days preceding the date of the public announcement. [**Regulation 13(4) read with Regulation 14(3) of SEBI Takeover Regulations, 2011**]

Simultaneously, a copy of the publication shall be sent to SEBI, Stock Exchanges where the shares of the Target Company are listed and to the Target Company at its registered office. [**Regulation 14(4) of SEBI Takeover Regulations, 2011**]

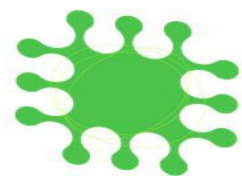
#### **Submission of Draft Letter of Offer**

The Acquirer shall submit a draft letter of offer to SEBI within 5 working days from the date of detailed public statement along with a non-refundable fee. [**Regulation 16(1) of SEBI Takeover Regulations, 2011**]

Simultaneously, a copy of the draft letter of offer shall be send to the Target Company at its registered office and to all the Stock Exchanges where the shares of the Company are listed. [**Regulation 18(1) of SEBI Takeover Regulations, 2011**]

#### **Identified Date**

The Acquirer shall fix a date for determining the names of the shareholders to whom the letter of offer would be send which shall be a date falling on the tenth working day prior to the commencement of the tendering period. [**Regulation 2(1) (I) of SEBI Takeover Regulations, 2011**]



**Dispatch of letter of offer:**

The Acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the Target Company as of the identified date, and to the custodian of shares underlying depository receipts of the Target Company within maximum 7 working days from the date of receipt of communication of comments from the Board or where no comments are offered by the Board, within 7 working days from the expiry 15 working days from the date of receipt of draft letter of offer by SEBI. ***[Regulation 18(2) of SEBI Takeover Regulations, 2011]***

**Upward Revision:**

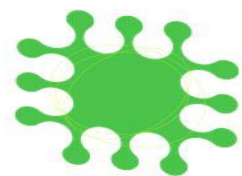
The Acquirer is allowed to make upward revision to the Offer Price and the number of shares sought to be acquired under the Open Offer, at any time prior to the commencement of last three working days before the initiation of the tendering period. ***[Regulation 18(4) of SEBI Takeover Regulations, 2011]***

**Recommendation by the Independent Directors**

On the receipt of detailed public statement, the Board of Directors of the Target Company shall constitute a committee of Independent Directors to provide reasoned recommendations on the Open Offer to the shareholders of the Target Company and such recommendations shall be published at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the Open Offer was published and a copy of the same shall also be sent to SEBI, all Stock Exchanges where the shares of the Target Company are listed and to Manager to the Offer. ***[Regulation 26 (6) and (7) of SEBI Takeover Regulations, 2011]***

**Tendering Period**

The tendering period shall start not later than 12 working days from the date of receipt of comments from the Board and shall remain open for 10 working days. ***[Regulation 18(8) of SEBI Takeover Regulations, 2011]***



## DURING THE OFFER

### **Disclosure during Offer Period:**

The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the Target Company to each of the stock exchanges on which the shares of the Target Company are listed and to the Target Company at its registered office within twenty-four hours of such acquisition. . ***[Regulation 18(6) of SEBI Takeover Regulations, 2011]***

### **Restriction on Acquisition of Shares:**

The acquirer and persons acting in concert with him shall not acquire or sell any shares of the Target Company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period. ***[Proviso of Regulation 18(6) of SEBI Takeover Regulations, 2011]***

## POST OPEN OFFER:

### **Completion of requirements**

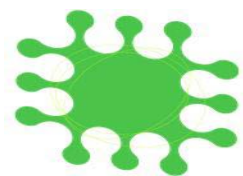
Within 10 working days from the last date of the tendering period, the acquirer shall complete all requirements as prescribed under these regulations and other applicable law relating to the Open Offer including payment of consideration to the shareholders who have accepted the open offer. ***[Regulation 18(10) of SEBI Takeover Regulations, 2011]***

### **Post offer Advertisement:**

The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration. ***[Regulation 18 (12) of SEBI Takeover Regulations, 2011]***

### **Report to SEBI by Manager to the Offer**

The manager to the Open Offer shall file a report with the Board within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various Open Offer requirements. ***[Regulation 27 (7) of SEBI Takeover Regulations, 2011]***



### Restriction on acquisition

The acquirer shall not acquire any shares of the Target Company for a period of 26 weeks after the tendering period at a price higher than the offer price paid except by way of another Open Offer, or SEBI Delisting Regulations, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the Target Company whether by way of bulk deals, block deals or in any other form. **[Regulation 8(10) of SEBI Takeover Regulations, 2011]**

### Activity Chart for Open Offer

S. No.	Particulars	Timeline (Legal)
1.	Public announcement through notice to Stock Exchange	X
2.	Opening of Bank Escrow & Securities Escrow	X+2 Working Days
3.	Deposit of Escrow Amount in Escrow A/c	
4.	Detailed Public Statement in newspapers	X+5 Working Days
5.	Draft letter of offer to be submitted to SEBI and sent to Target Company	X+10 Working Days
6.	Receipt of comments from SEBI on draft letter of offer	X+25 Working Days
7.	Identified date for determining name of shareholders to whom the letter of offer should be sent	X+27 Working Days
8.	Dispatch of the Letter of Offer to shareholders	X+32 Working Days
9.	Upward revision in offer	X+33 Working Days
10.	Comments on the offer by independent directors of Target Company	X+34 Working Days
11.	Issue of advertisement announcing the schedule of activities for open offer	X+36 Working Days
12.	Date of opening of offer	X+37 Working Days
13.	Date of closing of offer	X+46 Working Days
14.	Payment of Consideration	X+56 Working Days
15.	Filing of report to SEBI by Merchant Banker	X+61 Working Days

***This is the minimum timeline as prescribed under SEBI Takeover Regulations, 2011 and the actual time taken by SEBI in approving the draft letter of offer would take an approx. period of 45-60 days. Accordingly, the total time would extend by further 2 months.***



# Case Studies

## An Analysis of Order in the matter of M/s Saurashtra Cement Limited (In Relation to Reg.3(1)(c) of erstwhile SEBI Takeover Regulations, 1997)

### ABOUT TARGET COMPANY

Saurashtra Cement Limited (SCL) formed in the year 1956, is the flag ship company of The Mehta Group. SCL is one of the leading players in the Indian cement industry, manufacturing Portland Pozzolana Cement (PPC), Ordinary Portland Cement (OPC) and Sulphate Resisting Portland Cement (SRPC).

### BACKGROUND OF THE CASE:

1. During the financial year 1997-1998, Saurashtra Cement Limited (“Target Company”) made the following allotments to the five private companies which are wholly owned subsidiaries of a main promoter (Jagmi Investments Limited) [hereinafter collectively referred to as “**Applicants**”] as well as to the non promoter companies:

Name of the entities	Number of equity shares allotted		
	March 11, 1998	March 27, 1998	March 31, 1998
M/s Pallor Trading Company Private Limited (Pallor Trading)	7,996,000	-	-
M/s Fern Trading Company Private Limited (Fern Trading)	1,000	-	-
M/s Fawn Trading Company Private Limited (Fawn Trading)	1,000	-	-
M/s Tejashree Trading Company Private Limited (Tejashree Trading)	1,000	4,000,000	-
M/s Willow Trading Company Private Limited (Willow Trading)	1,000	-	-
F. L. Smitdth & Co.	-	-	1,905,300
Denmark and Industrialisation Funds	-	-	
<b>Change in total</b>	<b>48.64% to 69.19%</b>	<b>69.19% to 74.33%</b>	<b>74.33% to 64.14%</b>



promoter shareholding			
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2. Since at the relevant time, preferential allotment of Equity Shares was exempt from the requirement of Open Offer subject to the compliance of Regulation 3(1)(c) of SEBI Takeover Regulations, 1997, therefore, the applicants claimed the exemption under the said Regulations.
3. However one of the condition as prescribed under Regulation 3(1)(c) for claiming the exemption is not complied with i.e the requisite disclosure as prescribed under Regulation 3(1)(c)(ii) of the SEBI Takeover Regulations, 1997 (since repealed) were not made. Therefore SEBI directed the Applicants to make a public announcement to the shareholders of the Target Company for minimum of 20% of voting capital of the Target Company.
4. The SEBI Order was challenged by Fawn Trading and the Target Company by way of two separate appeals before the Central Government. However, the Central Government rejected the appeals and upheld the SEBI Order. Thereafter Fawn Trading and the others appealed the SEBI Order by way of a Writ Petition before the Hon'ble High Court which was disposed off. However gave the liberty to the Applicants to make the representation to the SEBI.
5. Pursuant to the order of the High Court, the Applicant has filed the present application before SEBI and made the following submission:

## SUBMISSIONS OF THE APPLICANT:

- i. In the Notice issued for convening a General Meeting, it has been specifically stated that the allotment is to be made, amongst other persons, to the promoters. However, the names of the promoters were not mentioned in the notice. Further, the specific price at which allotment would be made was also not mentioned.
- ii. The basis of SEBI order directing the Applicants to give open offer is non-disclosure of some information by the Target Company in its notice dated December 2, 1997, which has no correlation with the nature of direction (open offer) issued to them.
- iii. The requirements of Regulation 3(4) are procedural and disclosure related and non filing of a report does not vitiate the allotment nor takeaway the exemption.
- iv. There was no change in control of the Target Company.
- v. The Hon'ble Supreme Court in the case of **Clariant International Limited** has concluded that the shareholders who did not appear as such on the date when the impugned acquisition of the voting rights took place were not entitled to an open offer. Hence, in the present case the open



offer will be more of a formality and will not serve any purpose. The shareholder base of the Target Company has reduced from 14,869 shareholders to 8,361 shareholders.

- vi. The Target Company is registered with the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industries (Special Provisions) Act, 1956.
- vii. The share price has reduced by more than 45% and therefore the question that arises for consideration is - At what price the applicants are required to make a public announcement?
- viii. Except Pallor Trading (which is holding 25,136 shares as on February 29, 2008) all the other applicants have ceased to be the shareholders of the Target Company.
- ix. The net worth of the five applicants as on date is in the negative. They do not have funds or resources to acquire shares.
- x. The applicants cannot be regarded as having acted in concert as they are separate and independent entities. Considering all of them as a group is misconceived and directing all of them to make a joint offer without considering their individual acquisition is unfair and inequitable.
- xi. There was no economic loss caused to the then shareholders on account of the preferential issue and failure to make any public offer by the applicants.
- xii. The purported violation of disclosures in the notice dated December 2, 1997 was by the Target Company. However, the Order of SEBI dated January 15, 1999 was against the applicants. Therefore, there is a mismatch of parties. The applicants cannot be penalized for the lapse by the Target Company.
- xiii. The SEBI Takeover Regulations, 1997 has been repealed and the SEBI Takeover Regulations, 2011 cannot be made applicable to their case.

## SEBI OBSERVATIONS:

### 1. **Non disclosure of information as prescribed under Regulation 3(1)(C)(ii) of SEBI Takeover Regulations, 1997**

SEBI clarifies that the exemption from the obligation to make a public announcement to acquire shares, as mandated under regulations 10, 11 or 12, would be available to the applicants only when the conditions stipulated under regulation 3(1)(c) are strictly complied with. It has already been proved that the applicants had failed to comply with regulation 3(1)(c)(ii) requiring disclosure of certain information in the Notice of General Meeting, therefore they were not entitled to any exemption. The applicants, in order to avail the benefit of exemption available



under regulation 3(1)(c), could have ensured that the notice to the shareholders disclosed all those details that would have given them the said benefit. Therefore, the contention of the applicant that non-disclosure of some information by the Target Company in its notice of General Meeting has no co-relation with the nature of direction (open offer) issued to them cannot be accepted.

## **2. Whether the applicants are PACs with each other**

All the five acquirers (applicants) are admittedly the wholly owned subsidiaries of the main promoter, i.e., *Jagmi Investments Limited* and in terms of the Takeover Regulations, such acquirers are deemed to be *persons acting in concert*. Further, it is an admitted position that the applicants have been classified as promoters and have been allotted shares in the preferential issue. Therefore, the submission cannot be accepted.

## **3. Whether the fact that Target Company is registered with the BIFR would have any impact on SEBI Order**

SEBI clarified that if anyone is required to make Open Offer, then it would be against the applicants (as acquirers) only and not against the Target Company. Therefore, the financial status of the Target Company has no relevance in this regard.

## **4. Who can participate in the Open Offer?**

SEBI after considering the order of Hon'ble Supreme Court in the matter of Clariant International Limited, clarified that if a public offer is directed against the applicants now, only the shareholders who were holding shares on the relevant date (when the public offer of the applicants became due under the Takeover Regulations, 1997) and eligible to participate in the public offer would be eligible to tender shares in the open offer.

***Our View:*** *In our view and considering the order of Hon'ble Supreme Court in the matter of Clariant International Limited, those shareholders who were holding shares on the relevant date (when the public offer of the applicants became due under the Takeover Regulations, 1997) and eligible to participate in the public offer would be additionally entitled to interest for delay in Open Offer. However, the shareholders holding shares as on date would also be entitled to participate in the Open Offer without any entitlement for interest.*



**5. With respect to the submission that except Pallor Trading Company Private Limited all the other applicants have ceased to be the shareholders of the Target Company.**

In this regard SEBI clarified that majority of the shares in the said preferential issue were allotted to Pallor Trading. This entity is still a shareholder in the Target Company, under the promoter group category. All the applicants (being the subsidiaries of a main promoter) are part of the promoter group of the Target Company. Regulation 11 is triggered once the shares or voting rights are acquired in excess of the percentages mentioned therein. As the applicants had lost the benefit of exemption available under regulation 3(1)(c), for the reasons stated above, they were under the obligation to make the public offer and that liability would still exist, even if the others applicants have ceased to be the shareholders. Therefore, the said submissions are of no merit.

**6. With respect to the submission that the SEBI Takeover Regulations, 1997 have been repealed and the SEBI Takeover Regulations, 2011 cannot be made applicable to their case.**

SEBI clarified that the acquisition by the applicants and their obligation to make a public offer arose when the Takeover Regulations, 1997 were in force. Regulation 35(2)(b) of the Takeover Regulations, 2011, provides that any obligation or liability acquired, accrued or incurred under the repealed Takeover Regulations, 1997 and any legal proceeding in respect of such liability shall remain unaffected as if the repealed regulations were never repealed. Therefore, the applicants shall be under the obligation to make the public offer under the Takeover Regulations, 1997, as provided for under regulation 35(2)(b) of the new Takeover Regulations.

SEBI directed the applicants to make a combined public announcement to acquire, jointly and severally, the shares of the Target Company, in terms of regulation 11 of the SEBI Takeover Regulations, 1997.



# NEWS

Latest news

...sit-in over money owed to them  
...attracting investors

## Market Updates

### NUCLEUS SOFTWARE IS PLANNING FOR ACQUISITIONS

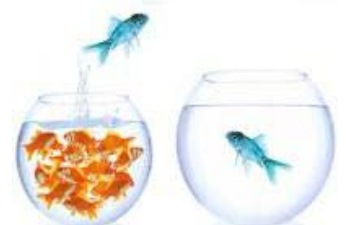
Nucleus Software Exports, provider of software solutions for banks and financial institutions globally, specially in the retail lending and cash management divisions is looking at acquiring companies with intellectual property in the financial services area that will enable Nucleus to deal with loan origination and loan servicing applications and also looking at acquiring players that have capabilities in the mobile banking space in order to strengthen its offering for the banking and financial services.

### DTDC HAS ACQUIRED STAKE IN NIKKOS LOGISTICS

DTDC courier and cargo company has acquired majority stake in South India based Nikkos Logistics Pvt. Ltd. After the acquisition, DTDC Courier & Cargo Ltd. will own 70% and Nikkos will have the balance 30% in the new JV entity to be formed called "DTDC Nikkos International Logistics".

### SUZLON TO EXIT NON CORE ASSETS

Suzlon has planned to reduce debt and interest by selling non-core assets and cut its fixed costs by nearly 20% The company has already initiated the process to sell stake in its wholly-owned Chinese subsidiary Suzlon Energy Tianjin, through which it will realise \$60 Mn and the entire proceeds from these planned sales will go into retire debt.



# Quiz

**PLAY The QUIZ**  
**TEST YOURSELF**

The name of winners of the quiz will be posted on our website [Takeovercode.com](http://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 On December 22, 2012, M/s A Ltd. has issued a public announcement to the Stock Exchange. The Offer is proposed to be Open on February 14, 2013. On January 26, 2013, he sold out 3% shares in the market. Whether the above transaction is in line with SEBI (SAST) Regulations, 2011?**

- A. Yes
- B. No

*Mail your answer at [ruchi@indiacp.com](mailto:ruchi@indiacp.com)*

## Question: 2

**Q.2 Whether the acquisition of preference shares on which voting rights have been accrued as a result of operation of sub-section (2) of section 87 of the Companies Act, 1956 beyond the threshold limit of 25% will result into triggering of Open Offer?**

- C. Yes [In terms of regulation of 3(1)]
- D. Yes [In terms of regulation of 3(2)]
- E. No
- F. Yes [In terms of regulation of 4]

*Mail your answer at [ruchi@indiacp.com](mailto:ruchi@indiacp.com)*

## Winners of Quiz – April 2013-edition

*Harish Lodha  
Renuka Garg  
Priyanka Maggu*



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