



Takeover Panorama

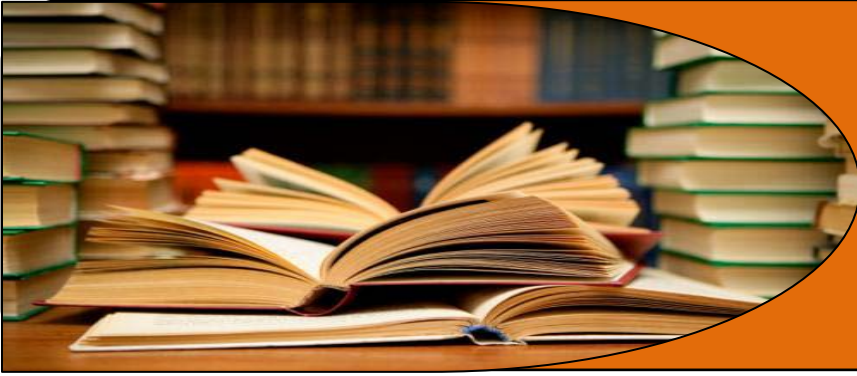
A Monthly Newsletter by Corporate Professionals

Year VII—Vol X

November Edition

INSIGHT

Legal Update <ul style="list-style-type: none">- SAT order in the matter of Vitro Commodities Private Limited- SAT order in the matter of Smt. Madhuri S Pitti, M/s Pitti Electrical Equipment Pvt. Ltd and and Shri. Akshay S Pitti- Exemption Order in the matter of M/s Visa Steel Limited- Exemption Order in the matter of M/s SPEL semiconductor Limited- Exemption Order in the matter of M/s Renaissance Jewellery Limited- Exemption Order in the matter of M/s Prozone Capital Shopping Center Limited- Consent Order in the matter of M/s Titan International Inc- Consent Order in the matter of M/s Spicejet India Ltd- Adjudicating/WTM orders	2
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LEGAL UPDATES

SAT Order in the matter of Vitro Commodities Private Limited

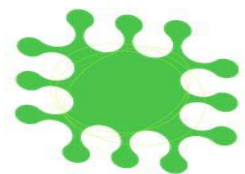
FACTS:

The present appeal is filed by Vitro Commodities Private Limited (Appellant) against the order dated March 28, 2013 passed by SEBI (Respondent) imposing a penalty of Rs. 10,00,000/- on the appellant for the violation of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992.

BRIEF FACTS OF THE CASE:

1. SEBI conducted an investigation in trading of Vitro Commodities Private Limited (“Appellant”) during the period from April 28, 2000 and August 31, 2009. Investigation revealed that Appellant had acquired 5.36% of the voting capital of the GEE (“Company”).
2. It was alleged that the Appellant was required to make necessary disclosures under Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulations 13(1) of SEBI (PIT) Regulations, 1992 for the above acquisitions but the appellant failed to do so. Accordingly a show cause notice was issued to the Appellant and an opportunity of being heard was granted to the Appellant. However Appellant did not respond to the SCN and not appeared for the hearing. Accordingly the Adjudicating Officer proceeded with the enquiry ex parte based upon the material available on record and imposed the penalty of Rs. 10 Lakhs.
3. The Appellant contended that it is not an active acquirer in relation to shares in question and had purchased only 50,000 (0.34%) shares of the company on November 12, 2008, from open markets and due disclosure to the company for this acquisition was made. Appellant has not bought shares of the company thereafter and increase in appellant shareholding was on

Reg. 7(1) of Takeover Regulations and Reg.13(1) of Insider Regulations are not substantially different i.e. violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed.



account of shares allotted to it by way of bonus shares and amalgamation of the company with other companies, due to court orders, that it believed “bonafide” that no disclosure was required due to such acquisition.

4. On the other hand, the Respondent contented that appellant had made disclosure of initial acquisition from open market of 50,000 shares; but no further disclosure of subsequent shares taking its shareholding to 5.36% paid up capital of GEE was made.

ISSUES:

Whether the penalty of Rs.10 lacs imposed on the appellant for violation of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and violation of Regulation 13(1) of SEBI (PIT) Regulations, 1992 is justified?

DECISION:

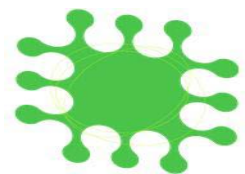
The Hon’ble Tribunal observed that it is an admitted fact that appellant acquired 5.36% of share capital of GEE but failed to make disclosures regarding this to GEE and BSE as specified under Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992.

The Hon’ble Tribunal further clarified that provision of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. Further, no cause for any harm to any investors due to non-disclosure has been made.

Thus, after considering all the facts and circumstances of the case, the Hon’ble Tribunal reduced the penalty from 10 Lacs to 1 Lac for the violation of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of SEBI (PIT) Regulations, 1992.

SAT Order in the matter of Smt. Madhuri S Pitti, M/s Pitti Electrical Equipment Pvt. Ltd and and Shri. Akshay S Pitti

The present appeal is filed by Smt. Madhuri S Pitti (“Appellant 1”), M/s Pitti Electrical Equipment Pvt. Ltd. (“Appellant 2”) and Shri. Akshay S Pitti (“Appellant 3”) (collectively referred to as “Appellants”) against the observation letter dated December 17, 2012 issued by SEBI



("Respondent") in respect of Takeover Open Offer made to the shareholders of Pitti Laminations Limited ("Target Company") directing Appellant 1 and 2 to increase the offer price under the said Takeover Open Offer.

BRIEF FACTS OF THE CASE:

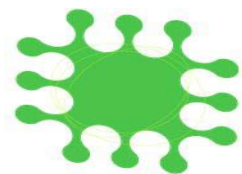
1. A public announcement was made on September 9, 2011 by the Appellants pursuant to the preferential allotment of 40,50,000 equity shares to Appellant 1 & 2 followed by filing of Draft Letter of Offer with SEBI on September 19, 2011. In response thereto and after a lapse of more than one year, the impugned letter dated December 17, 2012 was issued by the Respondent directing the appellants to incorporate in the letter of offer that the Offer is made in terms of regulation 10 of SEBI (SAST) Regulations, 1997 on account of acquisition of shares by Mr. Akshay S. Pitti on April 26, 2006 and April 11, 2007 entitling him to exercise more than 15% voting rights and acquisition by Pitti Electrical Equipment Limited which entitled it to exercise more than 15% shares or voting rights pursuant to preferential allotment in the Target Company and to revised the offer price on account of said two acquisitions by Mr. Akshay S. Pitti on April 26, 2006 and April 11, 2007.
2. Being aggrieved by the direction, the appellants have filed the appeal before Hon'ble Tribunal.

- Observation letter issued by SEBI can be challenged before SAT.
- For the purpose of Reg. 10 of SEBI Takeover Regulations, 1997, shareholding of Acquirer along with PACs would be considered.

ISSUES:

Two issues were come for consideration before the Hon'ble Tribunal i.e.

1. Whether the observation letter issued by SEBI under Regulation 18(2) of SEBI (SAST) Regulations, 1997 can be challenged before the Tribunal?
2. Whether for determining the applicability of regulation 10 of SEBI (SAST) Regulations, 1997, individual shareholding of acquirer is to be considered where the combined shareholding of acquirer along with PACs is more than the threshold as prescribed under Regulation 10 of SEBI (SAST) Regulations, 1997 i.e. more than 15%?



DECISION:

1. Observation letter issued under Regulation 18(2) of SEBI (SAST) Regulations, 1997 is challengeable or not?

In this respect, the Respondent submitted that the present appeal is not maintainable before this Tribunal on the ground that the impugned letter is not a direction but consists of mere comments issued by the Respondent which cannot be challenged under provisions of Section 15T of the SEBI Act.

However, the Hon'ble Tribunal was not agree with Respondent submission and stated that by using the expressions "advisory in nature" or " comments", the Respondent cannot turn a blind eye to the fact that inspite of issuing directions on the pretext of giving comments/ advice, the language of regulation 18(2) of SEBI (SAST) Regulations, 1997 is couched in mandatory terms. The said regulation clearly lays down that once the letter of offer is submitted to the Respondent and consequently the Respondent suggests any changes, then such changes shall necessarily be made in the letter of offer before making it public.

The Tribunal held that the directions issued under regulation 18(2) of SEBI (SAST) Regulations, 1997 could be challenged before this Tribunal and also made the reference of Hon'ble Tribunal order in the case of Akshya Infrastructure Private Limited Vs SEBI decided on June 19, 2013.

2. Determination of threshold for the purpose of Regulation 10 of SEBI (SAST) Regulations, 1997

In this respect, the Hon'ble Tribunal stated that for determining the crossing of threshold limit of 15% prescribed by Regulation 10 of SEBI (SAST) Regulations, 1997, it is the collective holding of the entire group/concert which would be the benchmark for determining the increase in shareholding and not Appellant No. 3's (Mr. Akshay S. Pitti) shareholding as an individual. In accordance with SEBI (SAST) Regulations, 1997, an individual is no longer regarded as a separate entity of the group as he becomes an integral part of the entire unit as one cohesive structure.



SEBI (SAST) Regulations, 1997 have since been replaced by SEBI (SAST) Regulations, 2011 with some significant changes i.e. in SEBI (SAST) Regulations, 2011, Regulation 3(3) is inserted that specifically provides that acquisition of shares by any person within the meaning of sub-regulations 3(1) and 3(2) would be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of its aggregate shareholding with persons acting in concert if the shareholding of such an individual person exceeds the threshold limit prescribed by regulation 3.

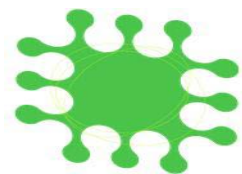
Such a specific and unambiguous provision, making an individual liable to make a public offer in case the individual shareholding increases during the course of the acquisition even while acting in concert with other persons, is conspicuously missing in SEBI (SAST) Regulations, 1997 and thus, SEBI could not invoked that regulation in respect of acquisition that took place during 2006 and 2007. Accordingly, the appeal was allowed.

Exemption Order in the matter of M/s Visa Steel Limited

FACTS:

1. Visa Group Family Foundation (“The Trust”/ “Applicant”) is a private trust settled by Mrs. Saroj Agarwal under Indian Trust Act, 1882 for the benefit of family member of the promoter of the “VISA Group”. Visa Steel Limited (“Target Company”) is one of the company in the VISA Group.
2. The trustees of the applicant are Mr. Vishambhar Saran, Mrs. Saroj Agarwal and their sons- Mr. Vishal Agarwal, Mr. Vikas Agarwal, and Mr. Vivek Agarwal.
3. As per the shareholding pattern of the Target Company as on June 30, 2013, the total shareholding of the promoter group was 75%. Out of which VISA Infrastructure Limited (“VIFL”) holds 53.37% and VISA International Limited holds 21.63%.
4. VIFL is a closely held company, whose shares are held by Mrs. Saroj Agarwal (12.43%), Vishambhar Saran and sons (HUF) (0.79%), VISA Minmetal Limited (“VML”) (39.54%) and VISA Realty Limited (“VRL”) (29.23%).
5. VINL is also a closely held company, whose shares are held by Mrs. Saroj Agarwal (63.62%), Vishambhar Saran and sons (HUF) (0.79%) and VIFL (19.41%)

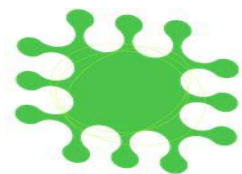
Exemption granted where proposed transfer is only an internal structuring of assets of the family through trust.



6. Further the equity capital of VRL is being held by Mrs. Saroj Agarwal (92.37%), Vishambhar Saran and sons (HUF) (7.63%).
7. In VML, the equity capital is being held by Mrs. Saroj Agarwal (96.04%), VRL (1.94%) and Vishambhar Saran and sons (HUF) (1.94%).
8. Now the following transfer are proposed to be done is done:
 - Vishambhar saran and sons (HUF) will be partitioned in unequal distribution and pursuant to petition, all the shares held by HUF in the promoter holding would be distributed to Mrs. Saroj Agarwal.
 - Mrs. Saroj Agarwal will gift her shares in the promoter holding companies along with shares received on partition of HUF above without monetary consideration.
 - VRL would transfer its 1.94% shareholding in VML to acquirer at fair value.
9. The aforesaid transfer of shares to the acquirer would result in the acquirer being able to direct and control the exercise of all of the shareholding and voting rights of VIFL and VINL in the Target Company. Therefore, the applicant would be in effective control of the entire 75% shareholding of the 'promoter and promoter group' in the Target Company through VIFL and VINL, which constitute an indirect acquisition of shares and control in the Target Company.
10. Accordingly, the acquirer has filed the present application seeking exemption from the applicability of the provisions of regulation 3(1) read with regulation 5(1) of SEBI (SAST) Regulations, 2011 in respect of the proposed acquisition of 75% equity Shares and voting rights of the target company on the following grounds:

GROUNDS FOR EXEMPTION:

1. The proposed transfer of Shares is an internal restructuring of assets of the "Agarwal Family". The trustees of the applicant who would be in control of promoter holding companies subsequent to the proposed transaction are the members of the Agarwal family who currently in control of promoter holding companies. The member of the Agarwal Family is only the beneficiaries of the applicant. Thus, the proposed transfer would only result in a de jure change of shareholding in the promoter holding companies and consequently the beneficial ownership of the promoters in the target company would remain same.
2. The proposed transfer would not result in any change in the control or management of the Target Company and also not result in any change in composition of Board of Directors of the Target Company.



3. The promoter shareholding in the Target Company is 75%. Out of which VIFL holds 53.37% and VINL holds 21.63%. Thus the proposed transfer only results in a change in the shareholding pattern of VIFL and VINL and does not impact the total promoter holding in the target company.

DECISIONS:

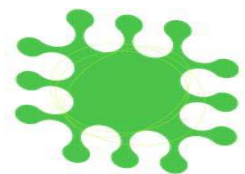
After considering the above facts and circumstances of the case, SEBI granted exemption to the applicant from the requirement of making open offer as envisaged under regulation 3(1) read with regulation 5(1) of the Takeover Regulations, 2011 in respect of proposed indirect acquisition of 8,25,00,000 (75%) shares of the Target Company provided the acquirer will comply with other provisions of SEBI (SAST) Regulations, 2011, SEBI (PIT) Regulations, 2009, Listing Agreement or any other law as may be applicable.

Exemption Order in the matter of M/s SPEL semiconductor Limited

FACTS:

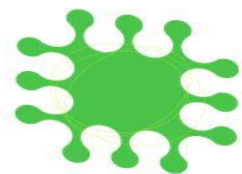
1. SPEL Semiconductor Limited ("Target Company") is a company incorporated under Companies Act, 1956, having its shares listed at BSE and DSE.
2. Southern Petrochemical Industries Corporation Limited ("SPIC"/"Seller"), promoter of Target Company holds 2,58,11,207 (55.97%) equity shares of the Target Company. Mrs. Valli Arun and Dr. A.C Muthiah holds 9,75,350 and 400 equity shares respectively of the Target Company constituting 2.12% and have been shown as PACs with SPIC.
3. Now SPIC proposed to sell off its shareholding in the Target Company to Natronix Semiconductor Technology Private Limited ("NSTPL"/"Acquirer"). The acquisition of said 55.97% equity shares in the Target Company would result into triggering of Regulation 3 and 4 of SEBI (SAST) Regulations, 2011 and therefore, the acquirer has filed this present application seeking exemption from the requirement of Open Offer as envisaged under Regulation 3 and 4 of SEBI (SAST) Regulations, 2011 on the following grounds:

Exemption granted where the shareholders of the Acquirer are PACs with the Seller in respect of shareholding in the Target Company and the proposed transfer is in accordance with scheme of compromise and arrangement.



GROUNDS FOR EXEMPTION:

- I. Mrs. Valli Arun and Dr. A.C Muthiah are the only shareholders of Acquirer that holds 9,75,350 and 400 equity shares respectively of the Target Company and have been shown as PACs with the promoter of the Target Company. Further, they are also the part of the promoter group of the Seller.
- II. Over the years, the financial performance of SPIC has been adversely affected due to variety of factors. In view of the same, SPIC went through financial distress resulting in payment defaults to its lenders and suppliers. Through SPIC availed of the Corporate Debt Restructuring in 2003, however, the proposal could not be implemented due to shortage of funds and several revised proposal were submitted. As per the most recent proposal approved by CDR Empowered group in February 2010 and modified in July and September 2011, SPIC was required to pay a total of Rs. 1425 Crores to its secured creditors as against the actual debt of Rs. 2042 Crores.
- III. Taking into consideration the financial position and its revival, SPIC had proposed a scheme of compromise and arrangement between itself and its creditors under section 391 of Companies Act, 1956. The scheme envisages a compromise with its creditors by way of full and final settlement of the liabilities upon the scheme becoming effective. Under the scheme, SPIC has offered three settlement options and the creditors are required to opt either of the three towards full and final settlement and discharge of liabilities.
- IV. In terms of the order dated August 16, 2012 of the Hon'ble High Court of Madras, one of the possible solutions is also the sale of investment of SPIC Limited in other non core business. Though, the order does not specifically mention about the disposal of investment in the Target Company, the management of SPIC desires that the investment in the Target Company which is not core to its business activities could also be disposed off.
- V. In case of the Target Company, they already have a buyer within the promoter group acting as PAC in the Target Company who could take over the reins and give a satisfaction that the business is still within the folds of the promoter group. Therefore, divesting to a promoter with the background in semiconductors would place the Target Company in a better futuristic position.
- VI. Dr. A.C Muthiah, one of the PACs of the Target Company, has been the Chairmen of the Target Company for two terms- 9th June 1988 to 21st March 1996 and from 3rd April 2002 till date. He was also the chairman in SPIC and thus can influence and exercise control directly through himself and indirectly through his relatives (who are the current promoters of SPIC) and would continue to hold control of the Target Company through the Acquirer.



DECISIONS:

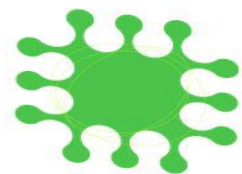
After considering the fact that the proceeds of the proposed sale of shares held by SPIC in the Target Company to the Acquirer would be utilized to meet the financial liabilities of SPIC in terms of the scheme of compromise and arrangement, as approved by Hon'ble High Court and also that such transfer would not result in change in control in Target Company or result in the reduction of the public shareholding below the stipulated levels in the Target Company, exemption granted to the Acquirer from complying with the requirement of regulation 3 and 4 of SEBI (SAST) Regulations, 2011 in respect of its proposed acquisition of 2,58,11,207 (55.97%) equity shares of the Target Company subject to the compliance with the conditions including with respect to pricing as mentioned in the order granting exemption.

Exemption Order in the matter of M/s Renaissance Jewellery Limited

FACTS:

1. Renaissance Jewellery Limited ("Target Company") is a company incorporated under the Companies Act, 1956. The equity shares of the Target Company are listed on BSE Limited and National Stock Exchange Limited.
2. Niranjana Family Private Trust ("Acquirer") is a trust, whose trustees are Mr. Niranjana Shah (Transferor), his wife Mrs. Kalpana Shah and his son Mr. Sumit Shah. These trustees also form a part of the promoter group of the Target Company.
3. Though the Acquirer has been shown as part of the promoter group in the shareholding pattern declared during June 2012. However presently does not hold any shares in the Target Company.
4. Now the Acquirer proposes to acquire 26,07,040 (13.66%) equity shares as a gift from Mr. Niranjana Shah. After the proposed acquisition, the shareholding of the Acquirer along with Promoter group excluding the shareholding of Mr. Niranjana Shah would increase from 45.87% to 59.53% in the Target Company, which limit is beyond the threshold limit mentioned under regulation 3(2) of SEBI (SAST) Regulations, 2011.

Exemption granted where proposed transfer is only an internal structuring of assets of the family through trust.



5. Therefore the Acquirer has filed the present application under regulation 11(1) of the SEBI (SAST) Regulations, 2011 with SEBI, seeking exemption from the applicability of the provisions of regulation 3(2) read with regulation 3(3) of the said regulations on the following grounds:

GROUNDS FOR EXEMPTION:

1. The acquisition would take place pursuant to private family arrangement intended to be streamline succession and welfare of the Niranjn Shah Family and would be an non commercial transaction which would not affect or prejudice the interest of public shareholders of the target company in any manner.
2. No change in control or management.
3. The change in identity of person who would exercise voting rights over the target company would only be between persons who, in their personnel capacity, are promoters of the target company and are also relatives of the Transferor.

DECISIONS:

After considering the facts and circumstances of the case, exemption granted to the acquirer from the requirement of open offer as envisaged under regulation 3(2) of SEBI (SAST) Regulations, 2011.

Exemption Order in the matter of M/s Prozone Capital Shopping Center Limited

FACTS:

1. Salil Chaturvedi Trust (Acquirer) is a private family trust, settle on 8th May 2013. Mr. Salil Anupendranath Chaturvedi, Settlor and trustee of the trust, is also a promoter of Target Company. The beneficiaries of the trust are his wife Ms. Anisha Chaturvedi, his minor daughter Myraa Chaturvedi, his minor son Shivaan Chaturvedi and his bloodline descendants.
2. Mr. Salil Anupendranath Chaturvedi owns 6.75% stake in the Target Company and is a part of promoter group of the Target Company.



3. Mr. Salil Anupendranath Chaturvedi proposed to transfer 6.75% to the Salil Chaturvedi Trust by way of gift which would increase the holding of the acquirer from 0% to 6.75% in the Target Company, thus triggering Regulation 3(2) of SEBI (SAST) Regulations, 2011.
4. Accordingly Mr. Salil Anupendranath Chaturvedi in his capacity as the trustee of Salil Chaturvedi trust (Trust) has filed an application with SEBI under Regulation 11 of the SEBI (SAST) Regulations, 2011 seeking exemption from the applicability of Regulation 3(2) of SEBI (SAST) Regulations, 2011 with respect to the proposed acquisition on the following grounds.

Exemption granted where proposed transfer is only an internal structuring of assets of the family through trust.

GROUNDS FOR EXEMPTION:

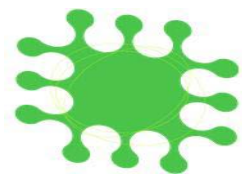
1. No change in control or management.
2. The Acquirer and the Transferor are part of the Promoter group of the Target Company. The Trustee and the beneficiaries of the acquirer are family members.
3. The shareholding of the Target Company after the proposed acquisition shall be same, except that the said 6.75% of the issued, subscribed and paid up capital of the Target Company shall held by the acquirer represented by the Transferor.
4. The Proposed gift of 6.75% of shares of the Target Company to acquirer by Transferor is an internal reorganization within the transferor's family.
5. The proposed acquisition is non commercial and the same will not prejudice the interest of the public shareholders of the Target Company.

DECISIONS:

After considering the facts and circumstances of the case, exemption granted to the acquirer from the requirement of open offer as envisaged under regulation 3(2) of SEBI (SAST) Regulations, 2011

Consent Order in the matter of M/s Titan International Inc

Titan International Inc (Applicant) had delayed by 117 days in complying with the provisions of Regulation 13 (2) (e) of SEBI (SAST) Regulations, 2011 in respect of indirect acquisition. Therefore, the Applicant had voluntary filed the consent application for the settlement of above non compliances on the payment of Rs. 19,31,340 towards settlement charges. The terms as



proposed by the applicant were placed before High Power Advisory Committee (HPAC and on recommendation of HPAC, SEBI settle the above non-compliances of the Applicant.

Further, the applicant submitted that the price offered to the public shareholders of Target Company for tendering shares pursuant to the open offer made had factored in the interest component, payable on the offer price for the period of delay and hence the interest of the shareholders had been adequately protected.

Consent Order in the matter of M/s SPJCEJET JNDJA LTD

SEBI had initiated adjudication proceedings against WLR Recovery III (India) Ltd., WLR Recovery IV/ESC (India) Limited, India Asset Recovery Fund Ltd. and WLR/GS (India) Limited (Noticees) for the alleged violations of regulation 10, regulation 45(5) and regulation 22(16) of SEBI (SAST) Regulations, 1997.

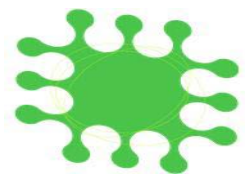
Pending the adjudicating proceedings, the Noticees have filed the consent application for the settlement of above violations and proposed to pay a sum of Rs 1,10,23,158 towards settlement charges. The terms as proposed by the Noticees were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliances and disposes of said proceedings against the Noticees.

Adjudicating/WTM orders

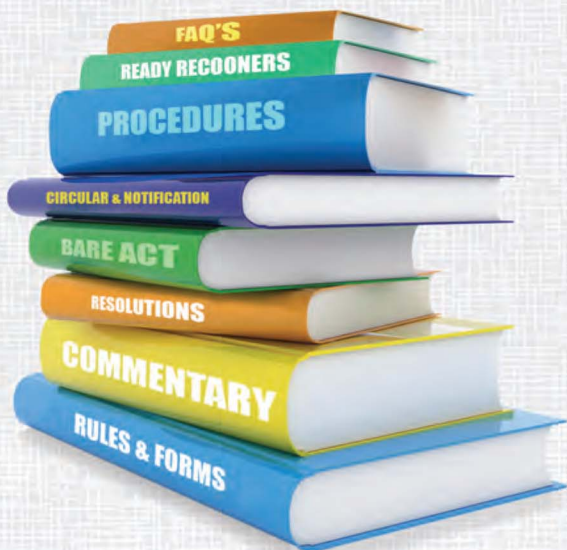
TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
M/s GHCL Ltd.	M/s Altar Investment Private Limited and others	Regulation 8 (2) and 7 (1A) of SEBI (SAST) Regulations, 1997	Rs. 16,00,000
M/s GHCL Ltd.	M/s Carissa Investment Private Limited	Regulations 8 (2) and 7 (1A) of SEBI (SAST)	Rs. 4,00,000



		Regulations, 1997 and Regulations 13 (3) and (5) of SEBI (PIT) Regulations, 1992?	
M/s GHCL Ltd.	M/s Dear Investment Private Limited	Regulations 8 (2) and 7 (1A) of SEBI (SAST) Regulations, 1997	Rs. 2,00,000
M/s Orchid Chemicals and Pharmaceuticals Limited	Shri. K Raghavendra Rao	Regulation 31(1) & (2) read with 31(3) of SEBI (SAST) Regulations, 2011 and Regulation 13(4) & (4A) read with 13(5) SEBI (PIT) Regulations, 1992.	Matter disposed off
M/s Subway Finance and Investment Company Limited	Shri. Kawaljit Singh Chawla, Smt. Priti Kaur Chawla, Smt. Kiran Ajit Chawla and Jagjit Singh Chawla - HUF	Regulation 11(1) and 7(1A) of SEBI (SAST) Regulations, 2011	Rs. 2,00,000 in addition of Rs. 50,000 on Shri Kawaljit Singh
M/s Kamalakshi Finance Corporation Ltd.	M/s Kamalakshi Finance Corporation Ltd.	Regulation 8(3) of SEBI (SAST) Regulations, 1997	Rs. 50,000/-
M/s Kamalakshi Finance Corporation Ltd.	Shri Lakshmi Kant J. Tanna, Shri Tushar T Tanna, Shri Dipak K. Tanna and M/s Trisect Investments and Trading Pvt. Ltd.	Regulation 30(1) and (2) SEBI (SAST) Regulations, 2011.	Rs. 50,000/-
M/s Arvind International Ltd.	Ms. Komal Nahata	Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.	Rs. 1,00,000/-

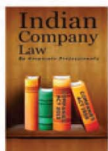


WITH THE CHANGE IN ERA, CHANGE THE WAY YOU READ...



Content & Style

- Companies Act 2013 with Rules, Notifications, Forms to assess its impact over your company or your client's.
 - Detailed analysis of the New Act in comparison to the old Act for easy understanding.
 - "My Section" segment for understanding various aspects of Act with respect to specific person or class like, for Investor, Private Company, Directors etc
 - Update on the implementation process of the Act.
 - Get Answer to your questions through customized calculators.
 - FAQs, Glossory, Articles, Presentations etc.
 - Connects you with bests through Articles, Forums & Lot more..
- Presentation on important topics & Articles of experts
 - Real Time Update of content and information.
 - Quick & precise search options.
 - Innovative understanding with calculators.
 - Cumulative knowledge bank by experts across nation through forum.
 - Developed & Managed by Experienced and Expert team of professionals.



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HINT OF THE MONTH

“Mere Non Disposal Undertaking (NDU) by promoters will not be covered under the scope of disclosures of “Encumbrance” under the Regulations. However if NDUs are given along with side-agreements which may entail the risk of shares held by the promoters being appropriated or sold by a third party, directly or indirectly, the same needs to be disclosed.”

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





Latest Open Offers

Target Company

M/s Wellington
Commercial Limited

Registered Office

Kolkata

Net worth of TC

Rs. 64.69 Lacs
(31.03.2013)

Listed At

CSE

Industry of TC

Investment

Acquirers

Mr. Devansh Dugar and
M/s Bhairavkripa
Realcon Pvt. Ltd.

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 95,820 (17.74%) Equity Shares and control over the Target Company.

Details of the offer: Offer to acquire upto 1,40,400 Equity Shares at a price of Rs. 10/- per fully paid up equity share payable in cash.

Target Company

M/s Asian Oilfield
Services Limited

Registered Office

Gujarat

Net worth of TC

Rs.7,224 Lacs
(31.03.2013)

Listed At

BSE

Industry of TC

Exploration &
Production

Acquirer

M/s Samara Capital
partners Fund I Limited

Triggering Event: Preferential allotment of 70,00,000 (31.36%) fully paid up equity shares of Target Company.

Details of the offer: Offer to acquire upto 58,04,355 Equity Shares at a price of Rs. 21/- per fully paid up equity shares payable in cash.



Target Company

M/s RCL Retail Limited

Registered Office

Chennai

Net worth of TC

Rs.1257.40 Lacs
(31.03.2013)

Listed At

BSE

Industry of TC

Departmental Stores

Acquirers

Mr. G. Rikhab Chand,
Mr. R Prakash Chand,
Mr. R Vinodh Chand, Mr.
Suresh Chand, Mr. P
Kamlesh, Mr. P Vikash,
Mr. V Vishal, Mr. S
Hitesh, Mrs. P
Chandrakala, Mrs. V
Santhoes Kumari, Mrs. S
Latha Kumari and Mrs K
Nikita.

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 27,85,000 (22.62%) Equity Shares and control over Target Company.

Details of the offer: Offer to acquire upto 32,00,600 Equity Shares at a price of Rs.16 per fully paid up equity share payable in cash.

Target Company

M/s. Broadcast
Initiatives Limited

Registered Office

Mumbai

Net worth of TC

Rs. (4850.16) Lacs
(31.03.2012)

Listed At

BSE and NSE

Industry of TC

Broadcasting & Cable
TV

Acquirer

M/S Prosperity Agro
India Limited

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 1,32,40,168 (52.30%) Equity Shares and control over the Target Company.

Details of the offer: Offer to acquire upto 65,81,640 Equity Shares at a price of Rs. 4.00/- per fully paid up equity share payable in cash.



Target Company

M/s A. F. Enterprises
Limited

Registered Office

New Delhi

Net worth of TC

Rs. (94.68) Lacs
(31.03.2013)

Listed At

DSE

Industry of TC

Investment and
Finance

Acquirers

M/s RMS Mosquito
Private Limited

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 47,600 (1.19%) Equity Shares and control over Target Company.

Details of the offer: Offer to acquire upto 10,40,000 Equity Shares at a price of Rs.10 per fully paid up equity share payable in cash.

Target Company

M/s. Newtime
Infrastructure Limited

Registered Office

Haryana

Net worth of TC

Rs. Lacs
(31.03.2012)

Listed At

BSE

Industry of TC

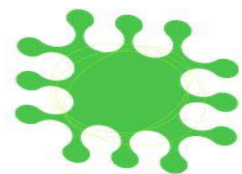
Trading and Distribution

Acquirers and PAC

M/s Futurevision
Consultants (P)
Limited, M/s
Faithadvisory
Services (P) Limited
and Mrs. Anita Dham

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 12,00,00,000 (70.44%) Equity Shares and control over the Target Company.

Details of the offer: Offer to acquire upto 442,89,960 Equity Shares at a price of Rs. 13.00/- per fully paid up equity share payable in cash.



Target Company

M/s Goyal Achal
Sampatti Vikas and
Niyojan Nigam Limited

Registered Office

New Delhi

Net worth of TC

Rs. 0.008 Lacs
(30.06.2013)

Listed At

ASE , DSE , JSE &
MPSE

Industry of TC

NBFC

Acquirers

M/s Donjon Financial
Services Private
Limited

Triggering Event: Acquisition of 15,43,000 (26.01%) Equity Shares through share sale confirmation and control over Target Company.

Details of the offer: Offer to acquire upto 15,43,000 Equity Shares at a price of Rs.5.50 per fully paid up equity share payable in cash.

Target Company

M/s. Gee Gee
Granites Limited

Registered Office

Tamil Nadu

Net worth of TC

NA

Listed At

BSE & MSE

Industry of TC

Construction Materials

Acquirers and PAC

Mr. Asit Kumar Ghosh

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 21,60,300 (48.00%) Equity Shares and control over the Target Company.

Details of the offer: Offer to acquire upto 11,70,000 Equity Shares at a price of Re. 1.00/- per fully paid up equity share payable in cash.



ANALYSIS OF AO ORDER IN THE MATTER OF R SYSTEMS INTERNATIONAL LIMITED

About Target Company

R Systems International Limited, a company listed on BSE and NSE is engaged in providing full service IT solutions, software engineering services, technical support, customer care and other IT enabled services to the high technology sector, independent software vendors (ISV's), banks, financial services companies, telecom, insurance and health care sector.

About the Noticee

Mr. Bhavook Tripathi (Noticee) is engaged in the business of manufacturing ancillary auto parts through his proprietorship concern Sanshu Industries and has experience of more than 12 years in this field.

Race to Acquire stake in Target Company

On December 15, 2011, the Noticee made the public announcement to acquire 26% stake in the Target Company at an offer price of Rs.122/- and then placed the orders for further acquisition of 9,24,142 (7.18%) equity shares on the Stock Exchange. With the completion of purchase order on the Stock Exchange, the Noticee was holding 30.97% stake including 30,65,000 equity shares (23.82%) already held by him prior to placing of order.

Subsequently, the Noticee submitted the draft letter of offer with SEBI. On examination of the draft letter of offer, SEBI observed violation of Regulation 10 read with Regulation 14 of SEBI (SAST) Regulations, 1997 in the year 2011 and Regulation 22(1) read with 22(2) of SEBI (SAST) Regulations, 2011 in the abovementioned Open Offer by the Noticee i.e. completion of acquisition of 7.18% shares of the Target Company post the PA dated December 15, 2011 without first depositing 100% consideration of the open offer in an escrow account and accordingly while issuing the observation letter directed the Noticee:



- i. *To recalculate the offer price as well as interest taking July 29, 2011 as the trigger date. Further, SEBI stated that it may initiate appropriate penal action for the aforesaid violations of SEBI (SAST) Regulations, 1997/2011 and asked him to disclose, in the letter of offer dated December 29, 2011 and corrigendum to PA dated December 15, 2011, the details of the violations alleged and the possibility for penal action.*
- ii. *To deposit 100% consideration of the open offer in an escrow account.*

Noticee's rejoinder to SEBI direction

- ✓ Appeal to Hon'ble Tribunal for the alleged violation of Regulations 22(1) and 22(2) of SEBI (SAST) Regulations, 2011 and direction to deposit 100% consideration in the escrow account.
- ✓ As regards the alleged violation of Regulation 10 read with 14 of SEBI (SAST) Regulations, 1997 is concerned, no appeal is filed as the Noticee had voluntarily revised the offer price from Rs. 122 to Rs. 150.05 pursuant to acquisition of 10 equity shares of the Target Company through market purchase on March 9, 2012 i.e. even before receiving the said Observation Letter dated July 25, 2012 which was higher than the price what was required to be paid as per the SEBI directions.

Hon'ble Tribunal Direction

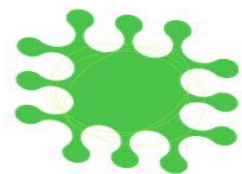
On September 7, 2012, SAT passed an order directing SEBI to provide Noticee the relevant material, if any, relied upon by it as basis for its Observation Letter, and directed Noticee to respond thereto, within three weeks thereafter.

Voluntary Action of Noticee

Keeping the interest of fellow minority shareholders in mind and to avoid any further delay, Noticee voluntarily agreed to go ahead with the open offer by depositing 100% consideration in the escrow account (instead of 25%), subject to the following conditions:

- ✓ That no penal action shall be initiated against him with regard to the alleged violations under the SEBI (SAST) Regulations, 1997 and SEBI (SAST) Regulations, 2011 in context of acquisition of shares of the Target Company;
- ✓ That if the open offer is stayed by any authority/court, Noticee shall be entitled to withdraw the

SEBI agreed that it may not initiate any proceeding against Noticee for the alleged violation of Regulation 22(1) and 22(2) of SEBI (SAST) Regulations, 2011.



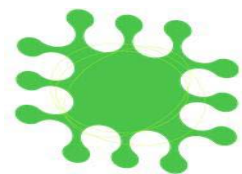
Completion of Open Offer

On January 21, 2013, the Noticee completed the Open Offer and paid interest to the shareholders of the Target Company for the alleged period of delay i.e. from the date of triggering of the alleged open offer (July 29, 2011) till the actual date of the PA (December 15, 2011) without admitting any violation of Regulation 10 read with 14 of SEBI (SAST) Regulations, 1997.

Show cause Notice

On March 12, 2013, a show cause was issued to the Noticee for the alleged violation of Regulation 10 read with Regulation 14(1) of SEBI (SAST) Regulations, 1997 in respect of acquisition of 2,71,004 (2.1%) equity shares on July 29, 2011 increasing his shareholding to 17.06% i.e. more than the threshold prescribed under Regulation 10 to which he made the following submissions:

- i. He never acquired the said shares of the Target Company as he was not in possession or control of the same;
- ii. He never became member/beneficial owner of the said shares as they were not delivered to his demat account due to netting off of the trades intraday;
- iii. Since he never became beneficial owner of the said shares, he was never entitled to exercise voting rights with respect to the said shares of the Target Company;
- iv. A plain reading of Regulation 10 of SEBI (SAST) Regulations, 1997 suggests that it is the entitlement to exercise voting rights which would trigger the open offer requirement contained in Regulation 10 of SEBI (SAST) Regulations, 1997. In other words the plain language of the Regulation 10 states that acquisition of shares or voting rights is qualified by the phrase “entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company” would trigger the open offer norms.” So if one were to acquire shares which didn’t have voting rights or had a miniscule voting right, there would be no trigger if the voting rights acquired were below the threshold.
- v. An acquirer i.e. Mr. Tripathi in the instant case, who is not entitled to exercise voting rights beyond a certain threshold limit, i.e., 15% in the instant case, is not obligated to make an open offer pursuant to Regulation 10 read with Regulation 14(1) of SEBI (SAST) Regulations, 1997.



- vi. It has been a consistent interpretation/recommendation of various committee reports on takeover regulations, Securities Appellate Tribunal (“SAT”), and SEBI itself that grossing of acquisition should be taken into account only in cases of creeping acquisition. Therefore grossing of purchase of shares is not applicable to Regulation 10 of SEBI (SAST) Regulations, 1997.
- vii. SEBI Circular 2009 suggests that only in case of one time acquisition under the second proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997, the 5% limit shall be calculated by aggregating all purchases, without netting the sales. Therefore, it is pertinent to note here that under Regulation 10, the concept of grossing is not provided.

Issue:

Whether for the purpose of determining the threshold for Open Offer under Regulation 10 of SEBI (SAST) Regulations, 1997, grossing of acquisition is to be done without netting off the intraday trades i.e. intraday purchase and sale?

SEBI Observations:

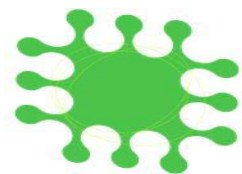
Applicability of Regulation 10 of SEBI (SAST) Regulations, 1997

- ✓ From the various provisions of Companies Act, 1956 and decisions of SAT in the matter of Liquid Holdings Private Limited v. SEBI , SEBI observed that an acquirer, under Regulation 10 of SEBI (SAST) Regulations, 1997, is entitled to exercise voting rights in the target company, only if, he becomes beneficial owner of the shares. In the instant case Noticee has netted of his position intraday and no delivery was made to his beneficiary account.
- ✓ Further from the circulars issued by SEBI, it was noted that clearing members shall transfer the funds and securities from their respective pool accounts to the respective beneficiary accounts of their clients, within 1 working day after the pay-out day i.e., within 1 working day after the T+2 settlement date. Since the Noticee had sold them on the same day i.e., on ‘T’ day, it cannot be said that beneficial ownership rested with him.

Thus, SEBI concluded that Noticee vide his transaction dated July 29, 2011 did not become beneficial owner of the acquired shares and therefore, was not entitled to exercise fifteen percent or more voting rights in the company.

Applicability of Regulation 14(1) of SEBI (SAST) Regulations, 1997

Regulation 14(1) of SEBI (SAST) Regulations, 1997 imposes following pre-condition on the acquirer to make a public announcement within four working days of:

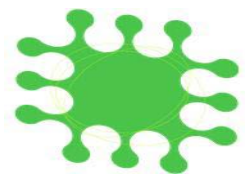


- a) Agreement to acquire;
- b) Deciding to acquire.

Although Noticee did not entered into an agreement but whether his act of acquiring more than fifteen percent shares be attributed to his "decision" to acquire shares for which he was required to make necessary public announcement under Regulation 14(1). Owing largely to SAT's interchanging use of the word's "intend" and "decide" in its description of triggering of an open offer, it can be inferred that "deciding" to acquire shares amounts to "intent" to acquire shares. ***However, legally, it is clear that the position was articulated correctly by SAT in a different context in Hitachi vs SEBI: "Mere intention to acquire shares without a definitive concluded contract cannot be the basis for triggering the code".***

Conclusion

It was concluded that Regulation 10 is triggered once the acquirer entered into a definitive concluded contract to acquire shares or voting rights which entitles to exercise fifteen percent or more of the voting rights in the company. However, in the present case, Noticee did not enter into any agreement in the first place to acquire shares but instead merely crossed the fifteen percent threshold limit. The claim of the Noticee that Regulation 10 r/w 14(1) is not applicable to him since he was not "entitled" to exercise fifteen percent or more of the voting rights in the company is a tenable argument and violation of Regulation 10 r/w Regulation 14(1) of SEBI (SAST) Regulations, 1997 does not stand.





Market Updates

L'Oreal India Buys Cherly's Cosmeceuticals

L'Oreal, French cosmetics & beauty giant has acquired Mumbai based Cheryl's Cosmeceuticals, a professional skin-care products and treatment firm. This is the first acquisition of L'Oreal in India. The acquisition is expected to strengthen L'Oréal's professional products division, which targets salons and beauty parlours.

Acquisition of Social App Adepto by Kuliza

Software developer Kuliza has acquired social app tool Adepto, product-focused social media application development company. As a part of the deal, it will now be available for brand marketers as 'MobiChirp', as a part of Kuliza's suite of social and mobile offerings. In 2011, Blume Ventures and Rajiv Dadlani Group invested about \$300,000 in the company.

BSE, S&P Dow Jones Partner to Form Asia Index

BSE and S&P Dow Jones, two of the premier stock exchanges have come together to form a 50:50 JV, Asia Index Pvt Ltd., to calculate, disseminate, and licence the widely followed suite of S&P BSE indices. Asia Index which brings together India index suite, which includes the Sensex, with S&P Dow Jones Indices' 115 years of experience in publishing transparent and independent global benchmarks would facilitate an array of indices enabling global and domestic investors to participate in South Asian economies.



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- ⊕ Issue Management.

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