



# *Takeover Panorama*

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# { Insight }

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## Legal Update

### SAT Order in the matter of Ranjan Verghese

#### Facts:

On the examination of letter of offer filed by Transwarranty Finance Limited (acquirer) for the acquisition of shares of Vertex Securities Limited (VSL), SEBI observed that Mr. Ranjan Verghese (Appellant), along with Mr. Dilip Verghese, Mrs. Kunjumol Philip, Mr. George Varkey Thalody, Mr. Thomas Alappat, Mrs. Luciyamma Thalody, Mrs. Thressiyamma Nemri and Mr. Ivan J Coelho have delayed by more than 10 years in making the relevant disclosure to be made under regulation 6(1), 6(3), 7(1A), 8(1) and 8(2) of the SEBI (SAST) Regulations, 1997 for the year 1997 to 2007. Accordingly, vide order dated 30th June 2009, Adjudicating officer imposed the penalty of Rs. 30,00,000 on all the Noticees for the said violations. Therefore, the appellant has made the appeal against the said order.

#### Contentions:

Appellant contended that the required disclosures were already in the public domain and thus no damage was caused either to market or to any investor and thus the penalty imposed should be considerably reduced.

SAT dismissed the appeal when there is continued violation of SEBI Takeover Regulations for 10 years and held that monetary penalty of Rs.30,00,000 imposed by the Adjudicating Officer is justified.

### Issues:

Whether the monetary penalty of Rs. 30,00,000 being imposed by Adjudicating officer for the non compliance of Regulations 6(1), 6(3), 7(1A), 8(1) and 8(2) of the SEBI (SAST) Regulations, 1997, on the appellant is justified?

### Decision:

Hon'ble Tribunal dismissed the appeal on the facts that the appellant has violated the aforesaid provisions of SEBI (SAST) Regulations, 1997 for the continued 10 years, and thus the quantum of penalty being imposed by the Adjudicating officer is justified.

## SAT Order in the matter of Goldstone Exports Limited

### Facts:

On January 25, 2007, the Board of Directors of Goldstone Infratech Limited (Target Company) passed a resolution to convene an EGM for seeking the approval of its shareholders for issue of 1.5 crore Share Warrants to the Goldstone Exports Limited (appellants) on preferential basis. Accordingly, on February 24, 2007, the shareholders of the Target Company approve the preferential allotment and on April 30, 2007, the BOD allotted the Shares Warrants to the appellant on preferential basis. Thereafter, on Oct 29, 2008, the BODs of the Target Company allotted 1.5 crore Equity Shares to the appellant pursuant to the conversion of warrants, thereby, increasing the shareholding of appellant from 9.51% to 47.19% resulting in to triggering Regulation 11(1) of the SEBI (SAST) Regulations, 1997.

In case of conversion of share warrants, the date on which the BODs authorize the allotment of equity shares should be taken as the reference date for the determination of offer price.

Accordingly, the appellant made the public announcement to the shareholders of Target Company in terms of SEBI (SAST) Regulations, 1997 at a price of Rs.23 per share taking the date of Board meeting i.e. January 25, 2007 as reference date. However, on examining the letter of offer, SEBI directed the appellants to revise the offer price taking the date on which BODs authorized the preferential

allotment of Shares i.e. Oct 29, 2008 as reference date which comes to be Rs. 43 per share. This is against this order of SEBI, that the present appeal has been filed.

**Issues:**

Which date should be considered as the reference date for determination of offer price in terms of SEBI (SAST) Regulations, 1997 where the public announcement has been made pursuant to the conversion of Share Warrants into Equity Shares?

**Decision:**

It is held that for the purpose of determination of offer price, the date on which the BODs authorized the preferential allotment of equity shares to appellant upon conversion of Warrants, should be considered as reference date and not the date of Board Meeting in which they approve the issue of Share Warrants as no voting rights accrued on that date. Considering the similar judgments passed in case of Eight Capital Master Fund Ltd & Others and Sohel Malik, SAT dismissed the appeal.

**SAT Order in the matter of Tata Tea Limited**

**Facts:**

On 1 June 2007, a share subscription, a share purchase and a shareholder's agreement (SSSPA) was executed between Tata Tea Ltd. (appellant) and certain promoters of the Mount Everest Mineral Water Limited (Target Company) under which the appellant agreed to subscribe 50,99,396 Equity Shares on preferential basis and also agreed to purchase 31,10,440 Equity Shares from the promoter collectively representing 24.15% of the expanded paid up equity share capital. As the appellant acquired more than 15% and is also acquiring control after the above acquisition, this resulted into triggering the Regulation 10 & 12 of SEBI (SAST) Regulations, 1997. Accordingly, on 4 June, 2007, the appellant made the public announcement to acquire 20% shares at a price of Rs.140 per share.

Payment of non compete fees is justified where the promoters have the expertise in the industry in which the Target Company is involved and the amount is within the limit as prescribed under the regulations.

In addition to the offer price, the acquirer agreed to pay Rs.3 crore as non-compete consideration to the promoter sellers. A shareholder, Arun Kumar challenged the payment of non-compete consideration on the ground that the same should also be paid to the shareholders of the target company, as the non-compete consideration is being paid because promoters are selling their shares and not because they have some expertise. Pending the Board decision, Merchant Banker of appellant filed an application to Board on August 21, 2008 referring the similar case Cementum IB.V v SEBI in which SAT justified the payment of non-compete fees to promoters only and not to shareholders. Further, the non-compete fees paid by the appellant constitute only 6.96% which is far less than the limit of 25% of offer price as specified in Reg. 20(8) of SEBI(SAST) Regulations,1997

However, the Board was not satisfied with the contention of the appellant and passed an order directing the appellant to include non-compete consideration paid to the promoters in the offer price payable to the public shareholders who tender their shares in the open offer with an interest of 10% for delay in making the payment. The present appeal was filed against this order of Board.

**Issues:**

Whether, where the non-compete fees paid to the promoter is less than 25% of the offer price and is paid to those promoters who are having the expertise in the business in which the Target Company is engaged, the direction of SEBI to revise the offer price by including the non-compete fees paid to the promoters is justified.

**Decision:**

SAT observed that the promoters of Target Company had comprehensive knowledge of their business which could be exploited outside and can be detrimental to the business of Target Company. Also, the payment of non-compete fees to the promoter is just 6.96% of the offer price which is far less than the limit of 25% of offer price as specified in Reg. 20(8) of SEBI(SAST) Regulations,1997. Since the appellant has entered in to non-compete agreement with the promoter sellers with a view to safeguard the interest of the Target Company and its continuing shareholders and not with an attempt to reduce the cost of acquisition, thus, the appeal was allowed setting aside the order of SEBI.

## Adjudicating Order in the matter of Rishabh Financial Services Limited

### Facts:

On examination of letter of offer filed by the Mangal Kiran Securities Limited (Acquirer) in the matter of proposed acquisition of shares of Rishabh Financial Services Limited (Target Company), SEBI observed that Shri Madan Chand Darda (promoter of the Target Company) had made the disclosure on behalf of Shri Deoja Darda, Moti Lal Darda, Pushpa Kavar, Laxmi Kavar, Sunil M Darda, Sadhana Darda, Gaurav Darda (Noticees) under Regulation 6(3) of the SEBI (SAST) Regulations, 1997 with the considerable delay. Subsequently, a show cause notice was issued to the Noticees.

The disclosure under regulation 6(3) is not required where the Noticees are neither the promoters nor the persons having control over the Target Company.

### Contention:

1. The Noticees contented that they are neither the promoters nor the persons having control over a company and is only acting as person acting in concert (PACs) with the Promoter Shri Madan Chand Darda and thus does not fall under the purview of Reg. 6(3) and 8(2) of SEBI (SAST) Regulations, 1997.
2. They further contented that during the year of alleged violation, their individual holding was less than 1% of share capital of Target Company and their name was never included in the offer document or any other document issued by the target company offering securities to public or other shareholders of the company
3. With regard to minor delay in compliance by Shri Madan Chand Darda, he has already opted for consent process to regularize the delay and the same has been accepted by SEBI.

### Issues:

Whether the Disclosure under Regulation 6(3) is required to be made by a person who is neither a promoter nor person having control over the Target Company?

### Decision:

In view of the above facts and circumstances, AO found that Regulation 6(3) of SEBI (SAST) Regulations, 1997 requires the disclosure to be made by the Promoter or Person having a control over the company of his own shareholding along with the holding of PAC. Shri Madan Chand Darda who is promoter of the Target Company had made the disclosures in terms of Regulation 6(3) which includes the disclosure of his own holding as well as of the Noticees who are acting as PACs with him in due compliance of SEBI (SAST) Regulations, 1997 and has also regularized the delay in compliance through SEBI Consent Order. As Noticees are neither the Promoters nor the Persons having control over the company, thus, does not require the compliance of Regulation 6(3) of SEBI (SAST) Regulations.

## Takeover Panel Exemption in the matter of Maral Overseas Limited

### Facts:

1. Agarwal Trademart Private Limited (Acquirer) belongs to the promoter of the Maral Overseas Limited (Target Company) and holds 0.05% individually and 54.93% along with other promoters and PACs of the Target Company.
2. Target Company had incurred losses during the last 5 years and had a total debt of Rs. 30418.11 lacs.
3. In order to reschedule its debt, the Target Company has approached the lenders for the financial restructuring package which was approved by the CDR cell on March 26, 2009 subject to the condition to implement same within 120 days.
4. The CDR scheme provides for the conversion of unsecured loan of Rs.1975 lakhs and interest advanced by BMD Private Limited (one of the promoter) to the Target Company. However,

SEBI granted the exemption where the increase in shareholding is pursuant to CDR scheme and there is no change in control.

pursuant to the order of Hon'ble High Court approving the scheme of arrangement/demerger between BMD Private Limited and the acquirer, the said loan was transferred to the acquirer.

5. Now, pursuant to the CDR scheme, it is proposed to convert the unsecured loan of Rs. 1975 lacs into Equity by issuing 1,97,50,000 (47.58%) Equity Shares on preferential basis to Acquirer, thereby, increasing the shareholding of the promoter group including acquirer from 54.93% to 76.40% which has resulted into triggering regulation 10 and 11(1) of the SEBI (SAST) Regulations, 1997. Therefore, the acquirer has filed this present application seeking the exemption from the applicability of SEBI (SAST) Regulations, 1997.
6. The Target Company has also filed the draft letter with SEBI for the right issue to repay the unsecured loan which will be drop if exemption is granted to the acquirer.

#### **Grounds of Exemption:**

1. The unsecured loan of Rs. 1975 lacs was provided to meet the working capital requirement of the Target Company.
2. The aforesaid conversion has been proposed under the scheme of Corporate Debt Restructuring which mandates the conversion of unsecured loan of Rs. 1975 lacs into Equity Shares;
3. The special resolution under section 81(1A) of the Companies Act, 1956 has already been passed at the EGM held on Aug 26, 2009;
4. Promoters undertakes to reduce their shareholding before proposed preferential allotment so as to maintain the public shareholding at 25%;
5. No change in control.
6. Non execution of the said restructuring package would be against the interest of the Target Company.

#### **Decision:**

On the basis of above facts and circumstances of the case and taking into consideration the recommendation of the Takeover Panel, SEBI granted the exemption to the acquirer.

## Takeover Panel Exemption in the matter of Poddar Pigments Limited

### Facts:

The acquirers belongs to the Promoter group of the Target Company and holds in aggregate 59, 54,380 equity shares representing 48.81% of the paid up capital of the Company. The Board of Directors of the Target Company in their meeting held on July 6, 2009, has decided to buy back the shares from the Shareholders of the Target Company. Pursuant to above buy back, assuming the full response to the buyback offer, the shareholding of the acquirers will increase from 48.81% to 61.01% resulting into triggering regulation 11(1) and 11(2) of the SEBI Takeover Code requiring the open offer be made to the shareholders of the Target Company. Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making the open offer on the following grounds:

SEBI granted the exemption where the increase in shareholding is pursuant to the buy back by Target Company and there is no active acquisition by the promoters.

### Grounds of Exemption:

1. No change in control.
2. No direct acquisition of Equity Shares.
3. Minimum Public shareholding will be maintained.
4. Increase in Earning Per Share.
5. Buy Back is proposed to be made at a price of Rs.42 per share which is more than the Book Value i.e. Rs. 31.18.
6. The acquirers will not participate in the buyback offer.

### Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirers from the requirement of making the open offer subject to the acquirers complying with

the other provisions of the SEBI Takeover Code, Listing Agreement and any other law as may be applicable.

### Takeover Panel Exemption in the matter of Bhagyanagar India Limited

#### Facts:

The acquirer belongs to the Promoter group of the Target Company holds 4,45,14,446 equity shares representing 59.75% of the paid up capital of the Company. The Board of Directors of the Target Company in their meeting held on April 09, 2009, has decided to buy back the shares from the Shareholders of the Target Company. Pursuant to above buy back, assuming the full response to the buyback offer, the shareholding of the acquirers will increase from 59.75% to 69.01% resulting into triggering regulation 11(2) of the SEBI Takeover Code requiring the open offer be made to the shareholders of the Target Company. Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making the open offer on the following grounds:

SEBI granted the exemption where the increase in shareholding is pursuant to the buy back by Target Company and there is no active acquisition by the promoters.

#### Grounds of Exemption:

1. No change in control;
2. Increase in shareholding is incidental to buy back;
3. Minimum Public shareholding will be maintained;
4. The acquirers will not participate in the buy back offer.

#### Decision:

The Takeover Panel recommended the exemption to the acquirer considering that even after the 100% response to the buyback offer, minimum public shareholding as required under Listing Agreement would be maintained. Further, the buyback will also enhance the value of shareholders.

On the basis of above facts and circumstances of the case and taking into consideration the recommendation of the Takeover Panel, SEBI granted the exemption to the acquirer from the

requirement of making the open offer subject to the acquirers complying with the other provisions of the SEBI Takeover Code, Listing Agreement and any other law as may be applicable.

### Takeover Panel Exemption in the matter of Ucal Fuel Systems Limited

#### Facts:

1. Minica Real Estate Pvt. Ltd., Dr. V. Krishnamurthy, Jayakar Krishnamurthy, Southern Ceramics Pvt. Ltd. Sujo Land & Properties Pvt. Ltd. and Carburetters Ltd. are the promoters/PAC (Acquirers) of the UCAL Fuel Systems Limited (Target Company) holding 53.25% share capital in the target company.
2. AMTECH Ltd is the wholly owned subsidiary of Target Company based in US. Amtech Ltd. suffered considerable loss in yr. 05-06 and borrowed heavy loans from SBI, BOI, EXIM Bank and Target Company.
3. Target Company had an initial investment of Rs.100 crore in AMTEC which was financed through SBI and EXIM Bank.
4. Target Company has also given corporate Guarantee for the loans obtained by AMTEC.
5. The Target Company had borrowed heavy loans from SBI and EXIM Bank to secure its financial crisis and to sustain the operation of AMTECH Ltd.
6. To prevent the Target Company from becoming sick, promoter Group intends to subscribe to the share capital of the Target Company by acquiring Equity shares of Rs.15 Cr. and by conversion of unsecured loan advanced by the Carburetters Ltd to an extent of Rs. 14 Cr. through preferential allotment. Subsequently the shareholding of the Carburetters Ltd will raise from Nil to 17.69% and of Acquirers(Promoter Group) will increase from 53.25% to 70.62% of voting share capital of Target Company resulting into triggering SEBI(SAST)Regulations, 1997. Therefore acquirers have sought the exemption from the compliance of SAST Regulations on the following Submissions:

SEBI granted the exemption where the infusion of funds and consequent allotment of equity shares is necessary to prevent the Target Company from becoming sick.

### Grounds of Exemption:

1. The infusion of funds will reduce the interest burden of the Target Company and will strengthen its leverage position to borrow more funds in future, as the SBI and EXIM Bank have also considered the restructuring of the facilities extended to AMTECH Ltd.
2. The funds are required for preventing the Target Company from becoming sick.
3. The Proposal for preferential allotment has been unanimously approved by the Company's shareholders at its EGM held on 19/08/09.
4. The proposed preferential allotment would not result in change of control.

### Decision:

SEBI has granted the exemption to the acquirers taking into consideration the recommendation of Takeover Panel and the following facts:

1. In case, financial assistance is not provided to AMTEC, then the guarantee obligations will devolve on the Target Company.
2. Further, the loan given by the Target Company to AMTEC will also become in fructuous.
3. Conversion of loan will reduce the interest burden of the Target Company.
4. The infusion of funds will give more leverage to the Target Company to borrow the funds in the future.
5. SBI and EXIM bank have also considered their restructuring facilities.
6. The approval of the shareholders has been obtained.

### Consent Order in the matter of K C Bokadia Films Limited

SEBI initiated the adjudication proceedings against K C Bokadia (Noticee) for the alleged violation of Regulations 7(1A), 7(2) and 8(2) of SEBI (SAST) Regulations, 1997 and Regulations 13(4) and 13(5) of the SEBI (PIT) Regulations, 1992 in the matter of having failed to disclose change in shareholding or voting rights in K C Bokadia Films Limited. Pending the adjudication proceedings, the Noticee filed an consent application dated August 30, 2008 and proposed to pay a consolidated amount of Rs.1,25,000/- towards consent terms. The consent terms as proposed by the Noticees were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said adjudicating proceeding against the Noticee.

### Consent Order in the matter of Karuturi Global Limited

While conducting an investigation into the scrip of M/s Karuturi Global Limited (Noticee) during the period from Oct 23, 2006 to Nov 22, 2006, BSE observed that Noticee has failed to made the disclosure under regulation 7(3) of SEBI (SAST) Regulations, 1997 and regulation 13(6) of SEBI (PIT) Regulations, 1992 with regard to the sale of 5,40,000 shares by Rhea Holdings Private Limited. Consequently Adjudicating proceedings were initiated by the SEBI against the Noticee for the aforesaid failure. Pending the adjudicating proceedings, the Noticee made an application dated Jan 30, 2009 and proposed to pay Rs.1,75,000 towards settlement terms and Rs. 25,000 towards administrative charges. The terms proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI dispose of the said adjudicating proceedings against the Noticee.

### Consent Order in the matter of Alpine Housing Development Corporation Limited

Vide order dated March 09, 2007, SEBI initiated the adjudication proceedings against Shri S.A. Kabeer and PACs (Noticees) for the alleged violation of Regulations 11(1) of SEBI (SAST), Regulations,1997 on April 01, 1998, January 19, 2000, June 9, 2004 and during April- May 2005. Pending the adjudicating proceeding, the Noticees proposed to pay a consolidated amount of Rs.1,00,000/- towards consent terms. The consent terms as proposed by the Noticees were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said adjudicating proceeding against the Noticees.

## { Latest Open Offers }

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Ojswi Trades Investment and Finance Limited  <b>Regd. Office</b> New Delhi	Sandeep Garg	Offer to acquire 6,00,000 (20%) Equity Shares at a price of Rs. 11/- per share payable in cash.	<b>Regulations 10 and 12</b> SPA to acquire 16,75,040(55.84%) Equity Shares at a price of Rs.2/- per share aggregating	<b>Merchant Banker</b> Chartered Capital and Investment Limited  <b>Registrar to the</b>

<p><b>Paid up capital</b> Rs 3 Crore</p> <p><b>Listed At</b> DSE &amp; JSE</p>			to Rs.33,50,000 payable in cash.	<p><b>Offer</b> Link Intime (India) Private Limited</p>
<p>Omega Interactive Technologies Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 5 Crore</p> <p><b>Listed At</b> BSE and CSE</p>	Renu Soni and Kanchan Soni	Offer to acquire 10,00,000 (20%) Equity Shares at a price of Rs. 7.25/- per share payable in cash.	<p><b>Regulations 10 and 12</b> Indirect Acquisition of 6,97,400(13.95%) Equity Shares and SPA to acquire 1,52,700 (3.05%) Equity Shares at a price of Rs. 6/- per share payable in cash.</p>	<p><b>Merchant Banker</b> Fedex Securities Limited</p> <p><b>Registrar to the Offer</b> Sharex Dyanamic (India) Pvt. Ltd</p>
<p>Zenu Infotech Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 5.12 crore</p> <p><b>Listed At</b> BSE</p>	Choice International Limited	Offer to acquire 10,25,520 (20%) Equity Shares at a price of Rs. 10.50/- per share payable in cash.	<p><b>Regulations 10 and 12</b> SPA to acquire 15,57,650 (30.38%) Equity Shares of Rs.10 each at a price of Re. 4 per share payable in cash.</p>	<p><b>Merchant Banker</b> Fedex Securities Limited</p> <p><b>Registrar to the Offer</b> Sharex Dyanamic (India) Pvt. Ltd</p>
<p>Sayaji Industries Limited</p> <p><b>Regd. Office</b> Ahmedabad</p>	Priyam Bipin Mehta and Sujata Priyam Mehta	Offer to acquire 12,000 Equity Shares 20% of the paid up capital at a price of Rs. 1500/-per	<p><b>Regulations 11(1)</b> Acquisition of 9,533 (15.89%) Equity Shares at a</p>	<p><b>Merchant Banker</b> Meghraj Capital Advisors Private Limited</p>

<p><b>Paid up capital</b> Rs. 60 Lacs</p> <p><b>Listed At</b> ASE</p>		share payable in cash.	price of Rs. 1500 per share, thereby, increasing the shareholding of the promoter group from 46.41% to 62.30%.	<p><b>Registrar to the Offer</b> Karvy Computershare Private Limited</p>
<p>Vardhman Holdings Limited</p> <p><b>Regd. Office</b> Ludhiana</p> <p><b>Paid up capital</b> Rs. 3.19 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	Pradeep Mercantile Company Private Limited (PMCPL)	Offer to acquire 2,52,163 (7.9%) Equity Shares at a price of Rs.223/- per share payable in cash.	<p><b>Regulation 11(2A)</b></p> <p>The acquirer belongs to the promoter group and holds 67.10% shares in the Target Company. For the purpose of consolidation of Shareholdings, the acquirer is giving this open offer.</p>	<p><b>Merchant Banker</b> Sobhgaya Capital Options Ltd</p> <p><b>Registrar to the Offer</b> Skyline Financial Services Limited</p>
<p>Wall Street Finance Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 1159.77 lacs</p> <p><b>Listed At</b> BSE</p>	Spice Investments & Finance Advisors Private Limited	Offer to acquire 23,25,000 (20%) Equity Shares at a price of Rs.55.50 per share payable in cash.	<p><b>Regulations 10 and 12</b></p> <p>Term Sheet to acquire 5,928,650 (51%) Equity Shares at a price of Rs. 52 per share.</p>	<p><b>Merchant Banker</b> IDBI Capital Market Services Limited</p> <p><b>Registrar to the Offer</b> Karvy Computershare Private Limited</p>

<p>Yamuna Syndicate Limited</p> <p><b>Regd. Office</b> Haryana</p> <p><b>Paid up capital</b> Rs. 2.11 Crore</p> <p><b>Listed At</b> DSE</p>	<p>Ranjit Puri &amp; Aditya Puri along with Nina Puri &amp; Tanu Puri (PACs)</p>	<p>Offer to acquire 42,330 (20%) Equity Shares of Rs. 100 each at a price of Rs.1000 per share payable in cash.</p>	<p><b>Regulations 11(1)</b></p> <p>SPA to acquire 13,168 (6.22%) Equity Shares at a price of Rs. 700 per share, thereby, increasing the shareholding of promoter 52.76% to 58.98%.</p>	<p><b>Merchant Banker</b> D &amp; A Financial Services (P) Limited</p> <p><b>Registrar to the Offer</b> Beetal Financial &amp; Computer Services Private Limited</p>
<p>Uttam Galva Steels Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 113.97 crore</p> <p><b>Listed At</b> BSE, NSE, CSE and DSE</p>	<p>Arcelor Mittal Netherlands B.V.</p>	<p>Offer to acquire 3,52,26,233 Equity Shares representing 25.76% of the Emerging Voting Capital and 29.39% of the existing voting capital at a price of Rs. 120/- per share payable in cash.</p>	<p><b>Regulations 10 &amp; 12</b></p> <p>Co- promotion Agreement to acquire the joint control and stake in the Target Company</p>	<p><b>Merchant Banker</b> SBI Capital Markets Limited</p> <p><b>Registrar to the Offer</b> Mondkar Computers Private limited</p>
<p>Tilak Finance Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 24.50 lacs</p>	<p>Handful Investrade Private Limited</p>	<p>Offer to acquire 49,000 (20%) Equity Shares at a price of Rs.15 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 1,49,250 (60.92%) Equity Shares of Rs.10 each at a price of Re. 15 per share payable in</p>	<p><b>Merchant Banker</b> Intensive Fiscal Services Private Limited</p>

<b>Listed At</b> BSE			cash.	<b>Registrar to the Offer</b> Sharex Dynamic (India) Private Limited
Maytas Infra Limited  <b>Regd. Office</b> Hyderabad  <b>Paid up capital</b> Rs. 58.85 crore  <b>Listed At</b> BSE and NSE	Infrastructure Leasing and Financial Services Limited along with IL&FS Financial Services Limited(PAC)	Offer to acquire 11,782,620 Equity Shares representing 20% of the Emerging voting capital at a price of Rs.112.80 per Share payable in cash.	<b>Regulations 10 and 12</b> Invokation of pledged shares due to non payment of Loan and acquisition of 37.01% shares of Target Company.	<b>Merchant Banker</b> SBI Capital Markets Limited  <b>Registrar to the Offer</b> Karvy Computershare Private Limited

## { Hint of the Month }

Where pursuant to change in control effected in accordance with regulation 3 of SEBI (SAST) Regulations, 1997, the control acquired is equal to or less than the control exercised by person(s) prior to such acquisition of control, such control shall not be deemed to be a change in control.

As substantiated from explanation (ii) of regulation 2(c) of SEBI (SAST) Regulations, 1997

## { Regular Section }

### A Glance at key Obligations of Acquirer in SEBI (SAST) Regulations, 1997

SEBI (SAST) Regulations, 1997 has provided certain triggering points requiring the acquirer to make the open offer to the shareholders of the Target Company to provide them an exit opportunity. The objective behind giving such an opportunity is to safeguard the interest of the small investors. Therefore, to ensure that the acquirer who has acquired the shares in excess of the threshold limit as provided in the regulations and has given a public announcement is genuinely fulfilling his/its responsibilities, SEBI (SAST) Regulations, 1997 provides certain obligations for the acquirer, a glance at important provisions is given below:

- In addition to submitting the draft letter of offer to SEBI, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address, and to all the stock exchanges where the shares of the company are listed within 14 days of the public announcement of the offer.
- The acquirer shall ensure that the letter of offer is sent to all the shareholders (including non-resident Indians) of the target company as on the specified date mentioned in the public announcement, so as to reach them within 45 days from the date of public announcement.
- The acquirer shall ensure that a copy of the letter of offer is also sent to the Custodians of Global Depository Receipts or American Depository Receipts to enable such persons to participate in the open offer, if they are entitled to do so and to warrant holders or convertible debenture holders, where the period of exercise of option or conversion falls within the offer period.
- The acquirer has to make sure that the date of opening of offer is not later than the fifty fifth day from the date of public announcement and keep the offer open for a minimum period of 20 days.

- During the offer period, the acquirer or persons acting in concert with him shall not be entitled to be appointed on the board of directors of the target company. However, where the acquirer has deposited 100 percent consideration payable under the offer in escrow account, then he may be entitled to be appointed on the Board of Directors of the target company after a period of twenty-one days from the date of public announcement.

***For Instance, in the case of OC Oerlikon Corporation AG, where the Acquirer along with its PAC appointed a new director on the board of Target company without depositing the 100% of Consideration in the Escrow account, Adjudicating Officer held, that the contention of Acquirer that there is no new appointment but only an replacement of resigned nominee directors cannot be accepted, and imposed the penalty of Rs. 15,00,000 each on both the Acquirer and the PAC.***

- Where an offer is made conditional upon minimum level of acceptances, the acquirer or any PAC with him—
  - i. shall, acquire shares from the public **to the extent of the minimum percentage** specified in regulation 21(1). Provided that the provisions of this clause shall not be applicable in case the acquirer has deposited 50 per cent of the consideration payable in cash in the escrow account,
  - ii. shall not acquire, during the offer period, any shares in the target company, except by way of fresh issue of shares of the target company,
- The acquirer shall create an escrow account before or on the date of issue of public announcement of offer.
- The acquirer shall complete all procedures relating to the offer within a period of fifteen days from the date of the closure of the offer.
- If the acquirer, in pursuance of an agreement, acquires shares which along with his existing holding, increases his shareholding beyond 15 per cent, then such agreement shall contain a clause that in case of non-compliance of any provisions of this regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer.
- Where the acquirer has acquired any shares after the date of Public Announcement in terms of regulation 20(7) of SEBI Takeover Regulations at a price equal to or less or more than the offer price, then he shall disclose the number, percentage, price and the mode of acquisition of the shares acquired by him along with the PAC to all the stock exchanges on which the

shares of the target company are listed and to the merchant banker within 24 hours of such acquisition.

- Where the acquirer who has acquired control over the target company has neither in the public announcement nor in the letter of offer, stated his intention to dispose of or encumber any assets of the target company, shall be debarred from disposing of or otherwise encumbering the assets of the target company for a period of two years from the date of closure of the public offer.
- In the event of withdrawal of offer, the acquirer shall not make any offer for acquisition of shares of the target company for a period of six months from the date of public announcement of withdrawal of offer.
- In the event of non-fulfillment of obligations under Chapter III or Chapter IV of the Regulations, the acquirer shall not make any offer for acquisition of shares of any listed company for a period of twelve months from the date of closure of offer.
- The acquirer and the persons acting in concert with him shall be jointly and severally responsible for fulfillment of obligations under these Regulations.
- If any of the persons representing or having interest in the acquirer is already a director on the board of the target company or is an "insider "within the meaning of Securities and Exchange Board of India (Insider Trading) Regulations, 1992, he shall recuse himself and not participate in any matter(s) concerning or 'relating' to the offer including any preparatory steps leading to the offer.

## { Case Study }

An Analysis of Takeover Offer by Daiichi to Ranbaxy Laboratories Limited and Zenotech Laboratories Limited

### Ranbaxy-Zenotech Deal:

On October 03, 2007, Ranbaxy entered into share purchase agreement with the promoters of "ZLL" for acquiring 27.35% shares of "ZLL" at a price of Rs.160 per share. Further, on October 03, 2007, the Board of Directors of "ZLL" has agreed to issue 54,69,538 Equity Shares to "RLL" at a price of Rs.160 per share.

Pursuant to the above acquisition, RLL made a public announcement to the shareholders of "ZLL" to acquire upto 20% shares at a price of Rs.160 per share which closes on January 15, 2008 and the last

date for payment is January 28, 2008. On the completion of above acquisition, “RLL” holds 46.79% shares of “ZLL”.

#### **Ranbaxy-Daiichi Deal:**

On June 11, 2008, the acquirer has entered into share purchase and share subscription agreement with the promoters of the “RLL” (“sellers”) and with “RLL” to acquire 129,934,134 Equity Shares representing 34.81% of the paid up capital of “RLL” at a price of Rs.737 per share from the sellers. Further, the agreement also provides for the allotment of 46,258,063 (11.03%) Equity Shares and 23,834,333 warrants of RLL to acquirer at a price of Rs.737 per share.

Since the above acquisition of shares constitute more than 15% and there is change in control of RLL, therefore, in accordance with regulation 10 and 12 of SEBI (SAST) Regulations, 1997, on June 14, 2008, the acquirer has given public announcement to the shareholders of “RLL” to acquire up to 92,519,126 Equity Shares constituting 20% of paid up capital of RLL at a price of Rs.737 per share.

As a result of the above, on October 20, 2008, the Acquirer holds 52.5% of “RLL” and “RLL” became the subsidiary of the Acquirer. The remaining 48,020,900 equity shares held by the Sellers were acquired by the Acquirer on November 7, 2008, taking the shareholding of the acquirer to 63.92%.

#### **Daiichi acquisition of Zenotech Laboratories Limited (“ZLL”):**

As on October 20, 2008, “RLL” held 46.85% shares of “ZLL”, thus, as a result of acquisition of RLL, the acquirer has indirectly acquired 46.85% shares of “ZLL”. Accordingly in terms of SEBI (SAST) Regulations, 1997, the acquirer has given an open offer to the shareholders of “ZLL” to acquire up to 68,85,000 Equity Shares representing 20% of the paid up equity share capital of “ZLL” at a price of Rs. 113.62 per share.

#### **Complaint to SEBI**

After the issue of public announcement, Dr. Jayaram Chigurupati and others shareholders of ZLL made a complaint to SEBI against Daiichi alleging the violation of SEBI Takeover Regulations in relation to the determination of offer price to be paid to the shareholders of “ZLL”. It has been alleged in the complaint that Daiichi is required to make the public announcement at a price of Rs.160 per share being the price the paid by the “RLL” to the shareholders of “ZLL” during the period between January 15, 2008 to January 28, 2008.

SEBI vide its communication dated June 22, 2009, rejected the claim of the complainant with respect to the determination of offer price and allowed the acquirer to proceed with offer.

## Appeal to SAT:

Against the above communication of SEBI, the complainant filed the appeal to SAT on two issues:

- The price offered by Daiichi was not in conformity with the SEBI Takeover Regulations;
- Open offer to the shareholders of “ZLL” was not made within the time as Daiichi was required to make the open offer to the shareholders of “ZLL” simultaneously with the offer made to the shareholders of “RLL”.

In the appeal, SAT gives its order as follows:

### 1. Determination of Offer Price:

In case of indirect acquisition of Indian Listed Company, the offer price shall be computed in accordance with regulation 20(4) or 20(5) read with regulation 20(12) of SEBI (SAST) Regulations, 1997.

**1.1.** Regulation 20(12) of SEBI Takeover Regulations provides that offer price for indirect acquisition or control shall be determined with reference to the offer price computed, **in accordance with Regulation 20(4) or 20(5) based on the date of the public announcement for the parent company and the date of public announcement for acquisition of shares of the target company, whichever is higher.**

**The date of public announcement for the parent company i.e. “RLL” is June 16, 2008 and the date of public announcement of Target Company i.e. “ZLL” is January 19, 2009.** Thus, the offer price shall be computed in accordance with reg. 20(4) or 20(5) taking June 16, 2008 as well as January 19, 2009 as reference date and the higher of two will be offered.

**1.2.** Since the shares of “ZLL” are frequently traded, therefore, the offer price shall be computed in accordance with regulation 20(4) of SEBI Takeover Regulations that has laid certain parameters which are given below:

- i. Negotiated Price;
- ii. Price paid by the **acquirer or person acting in concert** with him for the acquisition if any, including by way of allotment in a public or rights or preferential issue during the twenty six week period prior to the date of public announcement, whichever is higher;
- iii. Average of the weekly high and low of the closing prices of the shares of the target company during the twenty-six weeks preceding the date of Public announcement or

- iv. Average of the daily high and low of prices of the shares during the two weeks preceding the date of public announcement; whichever is higher.

The appellant do not dispute the calculations made by the acquirer in terms of Pt. (i), (iii) and (iv) as stated above. The dispute is with regard to Pt. (ii). The acquirer has stated in the Public announcement that it has not acquired any shares of "ZLL" during 26 weeks prior to date of Public announcement to the shareholders of "ZLL" as well as 26 weeks prior to the date of Public announcement of "RLL".

It is noteworthy to mention here is that Pt.(ii) as stated above specifically provide that price paid by the acquirer or **person acting in concert** with him during 26 weeks preceding the date of public announcement has to be considered.

As on the date of public announcement to the shareholders i.e. January 19, 2009, "RLL" was the subsidiary of Daiichi and thus will be deemed to be person acting in concert with the Daiichi for the purpose of SEBI Takeover Regulations.

Although Daiichi has not acquired any shares of "ZLL" during 26 weeks prior to January 19, 2009 or June 16, 2008, however, "RLL" has acquired the shares of "ZLL" at a price of Rs.160 per share between January 15, 2008 to January 28, 2008 i.e. within 26 weeks prior to June 16, 2008.

**Thus, "RLL" being person acting in concert with Daiichi, the price of Rs.160 paid by it to the shareholders of "ZLL" would also be considered while determining the offer price to be paid to the shareholders to "ZLL" by Daiichi.**

**In its order, SAT held that Daiichi has wrongly computed the price and directed that the letter of offer be modified and the Price of Rs.160 be offered to the shareholders of "ZLL."**

## **2. Timing of Public announcement:**

A public announcement in case of indirect acquisition has to be made within 3 months of consummation of acquisition of parent company. As the acquisition of "RLL" which resulted into indirect acquisition of "ZLL" was completed on October 20, 2008, therefore, the public announcement by Daiichi on January 19, 2009 was within time.

## { Market Update }

### ■ Takeover Tussle between Essar and Jindal group for acquiring Rocklands

Essar Group and Jindal Steel & Power (JSPL) are in race for acquiring a coal mining company in Australia, named **Rocklands Richfield**. Jindal owns 10.5% stake in Rockland and has made a takeover bid offering 42 cents per share valuing the company at \$ 108.37 million (about Rs. 500 crore). As against the Jindal offer, Essar has launched a counter bid at a price of Rs. 50 Australian cents per share for the acquisition valuing the company at \$ 128.1 million (about Rs. 600 crore).

### ■ Bharti Airtel may bid for Millicom's Lankaops

Bharti Airtel is now looking to acquire 100% stake in Luxembourg based telecom firm Millicom's Lankaops. Nasdaq listed Millicom has its operations in Srilanka and provides pre paid telecom services in Latin America, Africa and Asia. Apart from Sri Lanka, Millicom has assets in Laos and Cambodia ready for sale.

## { Highlight of the Month }

**Continuing with the efforts to solve the intricacies involved in the SEBI Takeover Code, we feel immensely grateful in announcing our latest endeavours towards the simplification of SEBI Takeover Regulations.**

<u>Determination of Offer Price</u>	<u>Navigate Past Regulations</u>
An easier and simplified way of calculating offer price in accordance with the complicated provisions of regulation 20(4) or 20(5) of SEBI (SAST) Regulations, 1997.  To know more about it, click <a href="http://www.takeovercode.com/pricecal/price_calculator.php">www.takeovercode.com/pricecal/price_calculator.php</a>	A search engine providing the text of legal provision of SEBI (SAST) Regulations, 1997 as existed from the year 1997 to till date at one place on just one click as per your required date.  To know more about it, click <a href="http://www.takeovercode.com/regulation_search.php">www.takeovercode.com/regulation_search.php</a>

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