

Year VI—Vol IX

September Edition

# TAKEOVER PANORAMA

A Monthly newsletter by Corporate Professionals

Latest **Open Offers**



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INSIGHT

**Legal Updates**

**Hint of the Month**



**Regular Section**



**Case Study**

**Market Update**



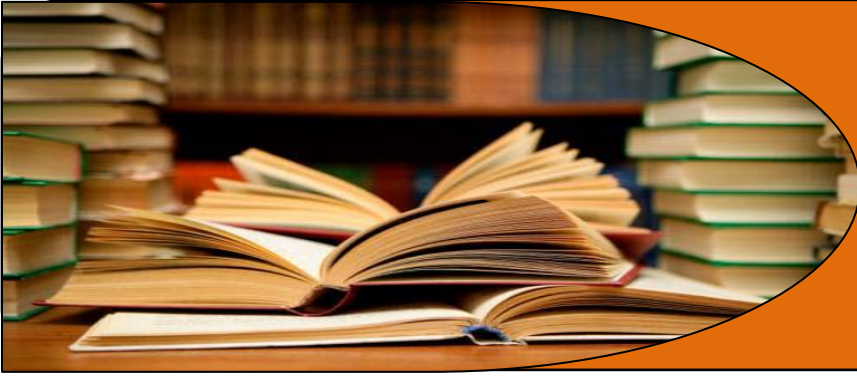
**Queries**

**Quiz**



**Team**





# LEGAL UPDATES

## Informal Guidance in the matter of M/s Arch Pharmalabs Limited

### FACTS:

1. Arch Pharmalabs Ltd. (Arch) presently holds 63.6% of the share capital of Avon Organics Limited (Target Company/Avon). Avon is listed on BSE, CSE and HSE whereas Arch is an unlisted company. The promoter group of Arch holds 34.27% of the total share capital of Arch.
2. One of the promoters of Arch, AMR Investments Limited (AMR) currently holds 7.16% of the share capital of Arch. AMR is now proposing to subscribe Zero Coupon Fully Convertibles Debentures (FCDs) of Arch convertible into Equity Shares within a period of 6 months from the date of allotment at a price not less than Rs. 490 per share. Pursuant to the conversion of FCDs, the shareholding of the promoter group of Arch will increase from 34.27% to 41.49%.
3. As the promoters of Arch are in control over the affairs of the Arch, therefore they are also in a position to influence the decision with respect to the voting rights of Arch in the Avon. However, after the conversion of FCDs, there will be no change in the voting rights of Arch that can be exercised in respect of Avon.
4. Further, the increase in promoter stake in Arch cannot be construed as proportional increase in its stake in Avon. Moreover there would be no change in the constitution of Board of Directors of Arch and Avon.

### Snapshot

Increase in shareholding of persons in control of Promoter Companies in it will not constitute change in control where there has been no change in the Voting Rights exercised by the promoter companies in the Target Company.

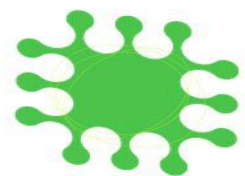


## ISSUES:

Whether the increase in the promoter shareholding of Arch will result in triggering the open offer requirements for the Target Company in terms of Regulation 3(1) and 5(1) of SEBI (SAST) Regulation, 2011?

## DECISION:

SEBI noted that pursuant to the conversion of FCDs, the individual shareholding of AMR will increase from 7.16% to 17.36% and total shareholding of promoter group will increase from 34.27% to 41.49% in Arch. There will be no change in the shareholding of Target Company and Arch will continue to hold 63.6% of the share capital of the Target Company. Further, it is seen that promoters of AMR are also the co-promoters of Arch, therefore the increase in shareholding of AMR in Arch would not result in change in control of Arch. Moreover after the increase in the shareholding, the promoters in Arch will continue to remain in control of Arch and consequently, continue to be in control of Target Company. Accordingly, the said transaction will not result into triggering of Regulation 3(1) and 5(1) of the SEBI (SAST) Regulations, 2011.



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

TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
Circuit Systems (India) Ltd	Paresh N. Vasani	Regulation 10 read with Regulation 14 of the SEBI (SAST) Regulations, 1997.	Rs. 50,000
Subway Finance and Investment Company Limited	Frontier Leasing and Finance Limited	Regulation 7(1A) of the SEBI (SAST) Regulations, 1997.	Rs. 50,000
Empower Industries (India) Ltd.	Shri. Shantibhai Shah, Smt. Bhartiben Shah and Smt. Amita H Shah	Regulations 7(1) and 7(2) of SEBI (SAST) Regulations, 1997, Regulation 13(1), 13(3) and 13(5) of SEBI (PIT) Regulations, 1992.	Rs.1,50,000
Gujarat Arth Ltd.	Cavalier Securities Ltd.	Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the SEBI (PFUTP) Regulations, 2003 Regulation 7 (1) read with 7 (2) and 10 of SEBI (SAST) Regulations, 1997 and Regulation 13 (1) & 13 (3) read with 13 (5) of SEBI (PIT) Regulations, 1992.	Rs. 37,00,000



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

The shares of the target company will be deemed to be frequently traded if the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month, in which the PA is made, is at least 10% of the total number of shares of the target company. If the said turnover is less than 10%, it will be deemed to be infrequently traded.

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





## Latest Open Offers

### Target Company

M/s Rajlaxmi Industries Limited

### Registered Office

Thane

### Networth of TC

Rs. (357.69) Lacs

### Listed At

BSE

### Industry of TC

Textile

### Acquirer

M/s Caren Trading Private Limited

**Triggering Event:** SPA for acquisition of 4,80,000 (48%) equity shares at a price of Rs. 5 Per Share payable in cash.

**Details of the offer:** Offer to acquire 2,60,000 (26%) Equity Shares at a price of Rs. 30 per share payable in cash.

**Triggering Event:** SPA for acquisition of 12,60,000 (12.20%) equity shares at a price of Rs.4 per share payable in cash.

**Details of the offer:** Offer to acquire 26,84,500 (26%) Equity Shares at a price of Rs. 11 per share payable in cash.

### Target Company

M/s Synergy Infrastructures Limited

### Registered Office

Indore

### Networth of TC

Rs. 1015.03 Lacs

### Listed At

MPSE

### Industry of TC

Infrastructure

### Acquirers

Mr. Shwet Dhirajbhai Koradiya and M/s Koradiya Mile Stone Private Limited



**Target Company**

M/s Euro Finmart Limited

**Registered Office**

New Delhi

**Networth of TC**

Rs. 568.38 Lacs

**Listed At**

BSE and DSE

**Industry of TC**

Trading in shares and commodity

**Acquirer**

Mr. Alok Kumar Agarwal

**Triggering Event:** SPA for acquisition of 76,550 (1.58%) equity shares at a price of Rs.30 Per Share payable in cash along with management control over Target Company.

**Details of the offer:** Offer to acquire 12,60,500 (26%) Equity Shares at a price of Rs. 30 per share payable in cash.

**Triggering Event:** Preferential allotment of 13,00,000 Equity Shares at a price of Rs. 10 per share.

**Details of the offer:** Offer to acquire 13,00,000 (20%) Equity Shares at a price of Rs. 23 per share payable in cash.

**Target Company**

M/s UNNO Industries Limited

**Registered Office**

Mumbai

**Networth of TC**

Rs. 578.87 Lacs

**Listed At**

BSE and MPSE

**Industry of TC**

Non-alcoholic Beverages

**Acquirers**

M/s Conventional Traders Private Limited, Mr. Narendra Kumar Gangwal and Mr. Pradeep Patni





## Regular section

### AUTOMATIC EXEMPTION – BUY-BACK OF SHARES

#### WHAT IS BUY-BACK?

Buy-Back is the process of repurchase of its outstanding shares by a Company in order to reduce the number of shares in the market. Companies buy back their shares either to increase the value of shares still available, or to eliminate any threats by shareholders who may be looking for a controlling stake. Section 77A of the Companies Act, 1956 grants the power to the Company to purchase its own securities subject to the compliance of the conditions prescribed in it.

#### APPLICABILITY OF SEBI (SAST) REGULATIONS, 2011

As the increase in shareholding pursuant to buy back by the Target Company is not an active acquisition, accordingly considering this fact, SEBI (SAST) Regulations, 2011 explicitly provides the provisions for increase in the shareholding as a result of buy back by the Company.

#### REGULATION 10(3) OF SEBI (SAST) REGULATIONS, 2011

Regulation 10(3) of SEBI (SAST) Regulations, 2011 provides the exemption from the Open Offer where consequent to the buy back, the shareholding of the acquirer would increase beyond the threshold provided in regulation 3(1) i.e. beyond 25% of the voting capital of Target Company. The provision of regulation 10(3) is reproduced below:

*“An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-*



back of shares shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date on which the voting rights so increase.”

Regulation 10(3) exempts the increase in shareholding beyond 25% where such increase is pursuant to the buy back by the Target Company. However, this exemption is available for a certain time period and the acquirer is again required to reduce its shareholding below the threshold provided in regulation 3(1) within 90 days from the date of increase in voting rights.

***However, a question arises from the interpretation of regulation 10(3) i.e. whether the acquirer has to again come back to its previous shareholding as exist prior to the buy back or has to simply maintain its shareholding at any level below 25%.***

#### **Compliances Required for availing the exemption under regulation 10(4)(c):**

- ✓ The acquirer is required to file a report within 4 working days of the date of acquisition to the stock exchange in such form as specified and the stock exchange shall disseminate the information to public. **[Regulation 10(6)]**
- ✓ The acquirer is further required to file a report along with supporting documents within 21 working days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees of Rupees Twenty Five Thousand by way of banker's cheque or demand draft payable in Mumbai in favor of Securities & Exchange Board of India. **[Regulation 10(7)]**

### **REGULATION 10(4)(C) OF SEBI (SAST) REGULATIONS, 2011**

Regulation 10(4)(c) of SEBI (SAST) Regulations, 2011 provides the exemption from the Open Offer in case of buy back by the Target Company where the acquirer shareholding prior to the buy back by the Target Company is within the limit of 25%-75% and the increase in shareholding is more than 5%.

For availing the exemption under this sub regulation, the following conditions are required to be fulfilled by the Acquirer:



**i. Such shareholder has not voted in favour of the resolution authorizing the buy-back of securities under Section 77A of the Companies Act, 1956**

Section 77A (2)(b) of the Companies Act, 1956 provides that a **Special Resolution** has to be passed for authorising the buy-back for more than 10% of the paid up equity share capital and free reserves and upto 25% of the paid up share capital and free reserves . However, the first pre condition for obtaining the exemption under this sub regulation is that the **Acquirer has not voted in favour of the resolution** authorizing the buy-back of shares i.e. he is either against the resolution or has remained neutral.

**ii. In the case of a shareholder resolution, voting shall be by way of postal ballot;**

**iii. Where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956**

Section 77A (2) of the Companies Act, 1956 provides that if the buy-back is or less than 10% of the total paid-up equity capital and free reserves of the company and such buy-back has been authorised by the Board by means of a resolution passed at its meeting, then the shareholders approval by way of Special Resolution is not required by the Target Company.

Accordingly, in order to get the exemption where the buy back is pursuant to the resolution passed by the Board of Directors, it is required that the Acquirer in his capacity as director or any other interested director has **not voted in favour of the resolution** authorizing the buyback.

**iv. The increase in voting rights does not result in an acquisition of control by such shareholder over the target company.**

**IMPORTANT NOTE:**

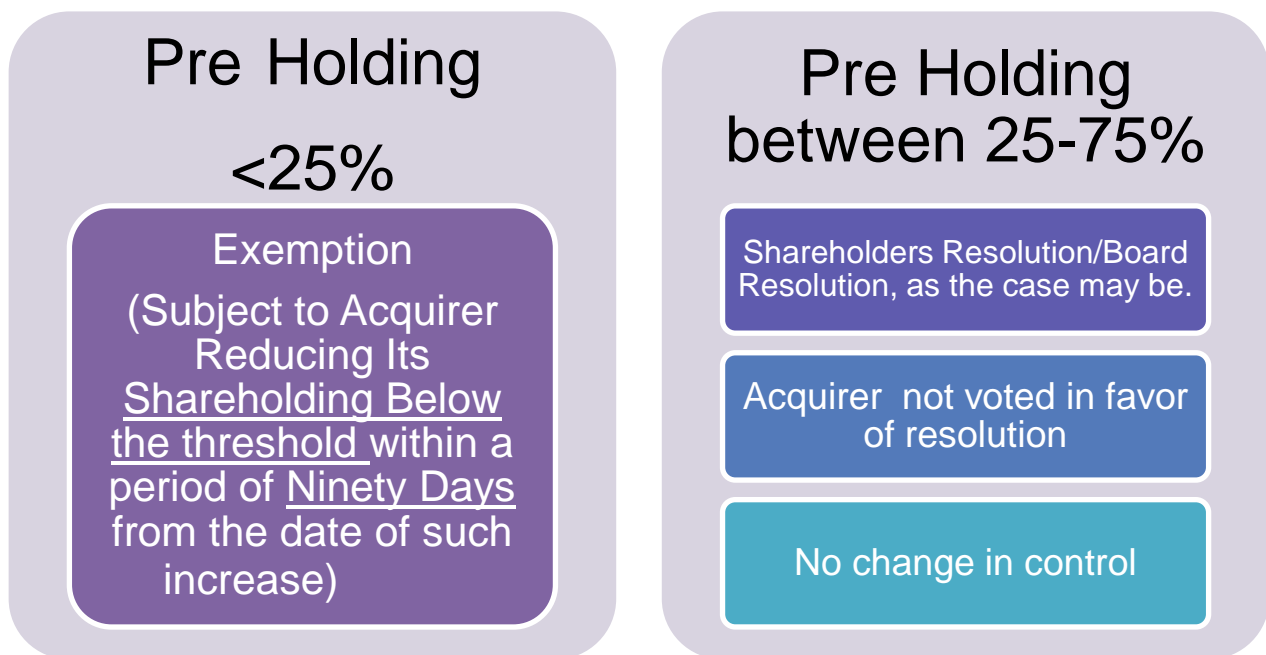
Where the conditions specified in Regulation 10(4)(c) are not met by the Acquirer and pursuant to Buy-Back his shareholding increases beyond the threshold limit as specified in Regulation 3(2) then such Acquirer shall also be exempted from the obligation of making Open Offer provided that such shareholder has reduced his shareholding below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3 within ninety days from the date on which the voting rights so increase.



### Compliances Required for availing the exemption under regulation 10(4)(c):

- ✓ The acquirer is required to file a report within 4 working days of the date of acquisition to the stock exchange in such form as specified and the stock exchange shall disseminate the information to public. **[Regulation 10(6)]**
- ✓ The acquirer is further required to file a report along with supporting documents within 21 working days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees of Rupees Twenty Five Thousand by way of banker's cheque or demand draft payable in Mumbai in favor of Securities & Exchange Board of India. **[Regulation 10(7)]**

## BUY BACK OF SHARES



# Case Studies

## Analysis of Takeover Open Offer of UNNO INDUSTRIES LIMITED

### ABOUT UNNO INDUSTRIES LIMITED (“TARGET COMPANY/UII”)

Incorporated on August 04, 1992 in the name and style of “Patni Foods and Beverages Limited”, the Company made its maiden public issue of Equity Shares in the year 1993 and got its shares listed on BSE Limited (BSE), Ahmedabad Stock Exchange and the Madhya Pradesh Stock Exchange (MPSE). The name of the Company was thereafter changed to “Unno Industries Limited” on April 30, 1996. The Company is engaged in the business of finance and investments. Presently, the equity shares of the Target Company are listed on BSE and MPSE. As on date of the Public Announcement, the promoters/persons in control do not hold any Equity Shares in the Target Company.

### ABOUT M/S CONVENTIONAL TRADERS PRIVATE LIMITED (“ACQUIRER 1/CTPL”)

Conventional Traders Private Limited is a closely held private limited company incorporated on December 21, 2011. The Company proposes to act as an export house and to carry on the business of acting as advisors and consultants of all kinds of consumable goods and is yet to commence any commercial operation. The promoters of the Company are Shri. Surendra Yadav and Shri. Dinesh Kumar Premi.

### ABOUT MR. NARENDRA KUMAR GANGWAL (“ACQUIRER 2”)

Mr. Narendra Kumar Gangwal has more than 50 years of experience in trade and Industry. His expertise and special functional area includes Administration and Finance. He is the Director of Target Company. Mr. Narendra Kumar Gangwal is Father-in-Law of Mr. Pradeep Patni (Acquirer 3).



## ABOUT MR. PRADEEP PATNI (“ACQUIRER 3”)

Mr. Pradeep Patni has been associated with the Patni Carbide Private Limited and has been instrumental in the installation and commissioning of the Plant. His special area of expertise is Investments and Finance. He is the Director of Target Company.



## BACKGROUND OF THE CASE:

On December 22, 2003, the Board of Directors of the Target Company, after complying with the provisions of the Companies Act, the listing agreement with the Stock Exchanges and SEBI (Disclosure and Investor Protection) Guidelines, allotted 13,00,000 Equity Shares of face value of Rs.10/- each constituting 20% of the Post Issue Preferential Capital of UIL to the Promoters of the Target Company i.e. Shri. Narendra Kumar Gangwal, Pradeep Patni and their family members, at a price of Rs.10/- per Equity Share.

Pursuant to preferential allotment, the shareholding of the promoter group of the Target Company increased from 13,00,000 equity shares constituting 25% of the paid up capital to 26,00,000 equity shares constituting 40% of the expanded paid up share capital of the Company, which had necessitated the Open Offer in terms of Regulation 11(1) of SEBI (SAST) Regulations 1997. The Public Announcement in respect of the same should have been made on Tuesday, December 16, 2003 and the consideration for the Equity Shares accepted should have been paid on or before Thursday, April 15, 2004. However, no Open Offer was made at that time in compliance with the now repealed SEBI (SAST) Regulations 1997.

As on the date of PA, the promoters/persons in control of UIL are Shri. Narendra Kumar Gangwal, Shri. Pradeep Patni and their family members. However at present, they do not hold any Equity Shares in the Target Company. Moreover, Acquirer 1 i.e. CTPL also do not holds any equity shares in the Target Company.

Therefore in terms of Regulation 35(2)(b) of SEBI (SAST) Regulations, 2011 which states that *“the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence*



committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed”, the Acquirers have now made the Open Offer in terms of SEBI (SAST) Regulations, 1997.

## THE OFFER

The Public Announcement of Open Offer was made by the Acquirers to the shareholders of the Target Company to acquire 13,00,000 Equity Shares of Rs. 10/- each representing 20% of paid up & voting Capital of UIL ("the Offer") at a price of Rs. 23/- per share (the Offer Price of Rs.10/- per share plus Interest @10% p.a. of Rs. 12.64/- per Share).

Conventional Traders Private Limited is providing only financial support to the Promoters by joining in making this Open Offer. The Shares accepted in this Open Offer will be acquired by Conventional Traders Private Limited.

Since the shares accepted in the offer will be acquired only by Conventional Traders Private Limited, therefore Post offer it will become part of the promoter group of the Target Company.

**Pre and Post Offer Shareholding pattern of UIL shall be as follows:**

Shareholders' Category	Shareholding Prior to Agreement / PA which triggered the Regulations		Shareholding after the acquisition and the offer (Assuming full acceptance)	
	No. of shares	%	No. of shares	%
<b>1. Promoters Group/ Acquirers</b>				
Narendra K Gangwal	0	0.00	0	0.00
Pradeep Patni	0	0.00	0	0.00
Conventional Traders	0	0.00	13,00,000	20.00

Private Ltd				
Other Promoter Group Shareholders	0	0.00	0	0.00
<b>Total (1)</b>	<b>0</b>	<b>0.00</b>	<b>13,00,000</b>	<b>20.00</b>
<b>2. Public Holding (2)</b>	<b>65,00,000</b>	<b>100.00</b>	<b>52,00,000</b>	<b>80.00</b>
<b>Total (1+2)</b>	<b>65,00,000</b>	<b>100.00</b>	<b>65,00,000</b>	<b>100.00</b>





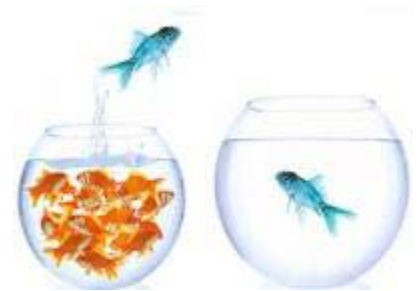
## Market Updates

### RELIANCE POWER PARTNERED WITH DATANG CORPORATION

With a view to provide and offer operation and maintenance services to Indian and overseas power plants, Reliance Power has entered into a partnership with the Chinese government owned Corporation China Datang. The Partnership will primary focus on Coal-based power projects built on Chinese equipment. The Chinese firms would also be assisting Reliance in commencing the projects.

### TATA GLOBAL ACQUIRES RUSSIA BASED SUNTYCO HOLDING

TATA Global Beverages Limited has acquired remaining 49% stake in SuntyCo Holding Limited, the owner of the `Grand` business in Russia, through its overseas subsidiary. Earlier in year 2009, TATA acquired 51% stake in SuntyCo through its subsidiary along with European Bank of Reconstruction and Development (EBRD). TATA has made this acquisition with a view to enter into Russia's fast-growing beverages market.



### MAHINDRA FORMS JV WITH TELEPHONICS CORPORATIONS

Mahindra & Mahindra has formed a Joint venture with Telephonics Corporations to provide radar, surveillance systems, identification Friend/Foe devices and communication systems. Moreover the JV also proposes to provide systems for Air Traffic Management Services, Homeland Securities and other emerging surveillance requirements. The JV will be known as Mahindra-Telephonics Integrated Systems Limited.



# Quiz

**PLAY The QUIZ  
TEST YOURSELF**

The name of winners of the quiz will be posted on our website [Takeovercode.com](http://Takeovercode.com) and will also be mentioned in our next edition of **Takeover Panorama**. So here are the questions of this edition:

## Question: 1

Whether the Target Company is under any obligation to give the annual/continual disclosure to the Stock Exchange in respect of shareholding of its promoters?

- A. Yes
- B. No

Mail your answer at [info@takeovercode.com](mailto:info@takeovercode.com)

## Question: 2

Whether the shareholders have been given a right under SEBI (SAST) Regulations, 2011 to withdraw the shares tendered under the Open Offer during the offer period?

- A. Yes
- B. No

Mail your answer at [info@takeovercode.com](mailto:info@takeovercode.com)

## Winners of Quiz – August 2012.

1. Shashi Singhvi
2. Nidhi Bajaj



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