

TAKEOVER PANORAMA

A Monthly Newsletter by Corporate Professionals

Year VII—Vol IX
September Edition



Legal Updates



Latest Open Offers

ENTER THE WORLD OF TAKEOVER
INSIGHT



Hint of the Month



Regular Section



Case Study

Market Update



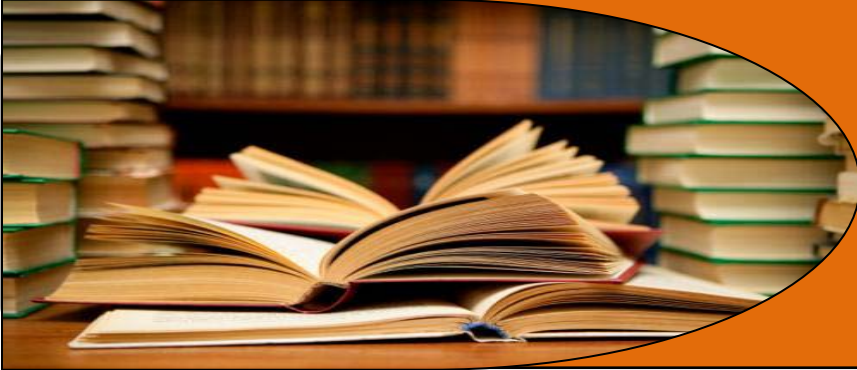
Queries



Quiz

Team





LEGAL UPDATES

Adjudicating/WTM orders

Target Company	Notices	Regulations	Penalty Imposed/ Decision Taken
M/s Indo Green Projects Limited	Ms. Usha Singhania and Shri Kamal Singhania	Regulation 7 (1A) of SEBI (SAST) Regulations, 1997	Rs 2,00,000
M/s Era Infra Engineering Limited	Alok Electricals Private Limited (Alok), Antique Texfab Private Limited (Antique), Arankari Risk Management Services Private Limited (Arankari), Balaji Texfab Private Limited (Balaji), Compact Texfab Private Limited (Compact), Coronation Builders & Engineers Private Limited (Coronation) and others	Regulation 7(1) & Regulation 7(2) of SEBI (SAST) Regulations, 1997	Rs 5,00,000
Ankur Drugs and Pharma Limited	Ankur Drugs and Pharma Limited	Regulation 8A of SEBI (SAST) Regulations, 1997 and Regulation 31 of SEBI (SAST) Regulations, 2011	Rs 40,00,000



HINT OF THE MONTH

ELIGIBLE SHAREHOLDERS

All shareholders of the target company other than the acquirer, persons acting in concert with him and the parties to underlying agreement which triggered open offer including persons deemed to be acting in concert with such parties, irrespective of whether they are shareholders as on identified date or not.

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





Latest Open Offers

Target Company

M/s Intec Capital Limited

Registered Office

New Delhi

Net worth of TC

Rs 12,484.54 Lacs
(31.03.2013)

Listed At

BSE and DSE

Industry of TC

Financial Services

Acquirer and PACs

M/s Intec Worldwide Private Limited, M/s Pantec Devices Private Limited, M/s Pantec Consultants Private Limited, M/s India Business Excellence Fund-II, M/s India Business Excellence Fund-IIA

Triggering Event: Direct acquisition of Equity shares pursuant to conversion of 5% CPS, conversion of CCPS and preferential allotment of Equity Shares.

Details of the offer: Offer to acquire 4,775,225 (26%) Equity Shares at a price of Rs. 109.45 per fully paid up equity shares payable in cash.

Target Company

M/s Hexaware Technologies Limited

Registered Office

Mumbai

Net worth of TC

Rs. 1263.09 Cr. (31.03.2013)

Listed At

BSE and NSE

Industry of TC

IT Consulting & Software

Acquirers and PACs

HT Global IT Solutions Holdings Limited (Acquirer), Parel Investment Holdings Limited and The Baring Asia Private Equity Fund V, L.P (PACs)

Triggering Event Share Purchase Agreement (SPA) for the acquisition of 12,49,73,436 (41.47%) equity shares and control over the Target Company.

Details of the offer: Offer to acquire 7,83,49,823 (26%) Equity Shares at a price of Rs. 135.00 per fully paid up equity shares payable in cash.



Target Company

M/s Anup Malleable Limited

Registered Office

Kolkata

Net worth of TC

Rs 360.35 (31.03.2013)

Listed At

BSE and CSE

Industry of TC

Iron & Steel Products

Acquirers

Mr. Alope Agarwalla, Mr.
Ayush Agarwalla, Mrs.
Sushma Agarwalla, Mr.
Harsh Agarwalla and others

Triggering Event: Share Purchase Agreement (SPA) for the acquisition of 18,93,850 (72.15%) equity shares and control over the Target Company.

Details of the offer: Offer to acquire 6,82,500 (26%) Equity Shares at a price of Rs. 34.10 per fully paid up equity shares payable in cash.





Regular section

EVENT BASED DISCLOSURE

Regulation 29 of SEBI (SAST) Regulations, 2011 provides for disclosure of shareholding in the event of acquisition or disposal of shares in a Listed Company at the specified limits in order to enable the stakeholders and Investors to take the appropriate decisions.

BASIC CONCEPTS

Disclosure of Aggregate shareholding of Acquirer or Promoter or PACs

Convertible Securities shall be treated as Shares

LEGAL PROVISION

Regulation 29- Disclosure of Acquisition and Disposal

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.]

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—



(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

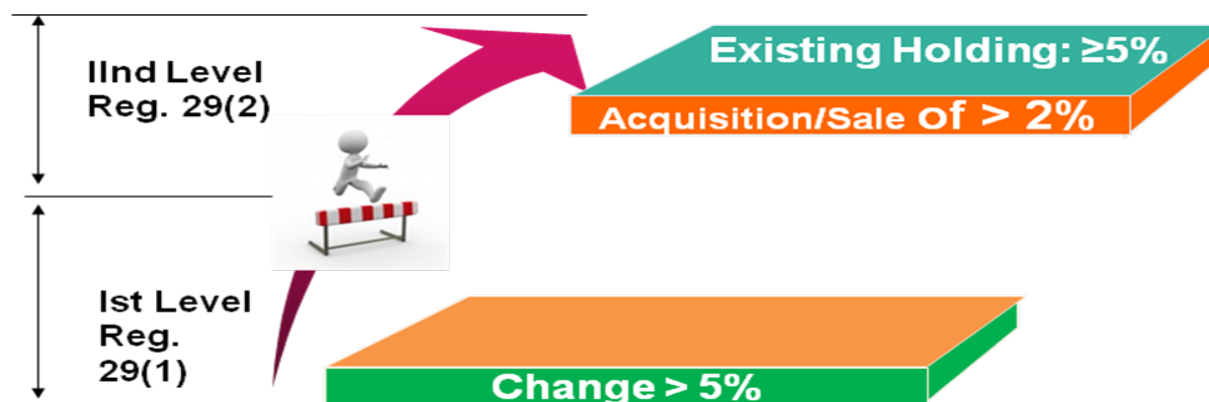
Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

ANALYSIS

Regulation 29 provides the provision for the disclosure of shareholding by the acquirers/sellers in the event of acquisition or disposal of shares by them beyond the limits as specified under the said regulation.

The limits as specified under the regulations are given below:

- Acquisition of 5% or more shares or voting rights.
- Change exceeds 2% or more shares or voting rights by an acquirer already holding 5% or more shares or voting rights. The change of 2% would be calculated from the last disclosure made under Regulation 29(1) and 29(2) by the Acquirer/ Seller as the case may be.



Within 2 working days of Acquisition or receipt of Intimation of Allotment or sale of shares.



IMPORTANT POINTS

- No obligation on the Target Company to give any disclosure;
- Acquisition includes shares acquired by way of Encumbrance*;
- Disposal includes shares given upon release of encumbrance* ;
- Disclosure to be given to STX and Target Company.

****Not Applicable to scheduled commercial banks or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.****

How to compute trigger limits specified above for disclosures ?

The word “shares” for disclosure purposes include convertible securities also. Hence for computation of trigger limits for disclosures given above, percentage w.r.t. shares shall be computed taking in to account total number of equity shares and convertibles and the percentage w.r.t voting rights shall be computed after considering voting rights on equity shares and other securities (like GDRs, if such GDRs carry voting rights)

An illustration is provided below for the calculation of trigger limits:

Company A	100 equity shares	50 PCDs	10 GDRs (1 GDR carries 1 voting right)	Total Shares: 160	Total Voting Rights: 110	Disclosure
B holding in Company A	8 Shares	7 PCDs	1 GDR	16 Shares (10%)	9 Voting Rights (8%)	
Scenario I						
“B” Acquires	2 Shares	2 PCDs	-	4 Shares (2.5%)	2 Voting Rights (1.8%)	Disclosure under regulation 29(2).
Scenario II						
“B” Acquires	-	20 PCDs	-	20 Shares (12.5%)	-	Disclosure under regulation 29(2)
Scenario III						
“B” Acquires	2 Shares	-	-	2 Shares (1.25%)	2 Voting Rights (1.8%)	No Disclosure under regulation 29(2).



ANALYSIS OF SAT ORDER IN THE MATTER OF SPS SHARE BROKERS PRIVATE LIMITED

ABOUT SPS SHARE BROKERS PRIVATE LIMITED (“Appellant”/ “SPS”)

SPS Share Brokers Pvt. Ltd. (“Appellant”/“SPS”) is a company incorporated under the Companies Act, 1956 having its registered office in Mumbai. The appellant is a registered stock broker with membership of BSE Limited (BSE) and National Stock Exchange of India Ltd. (NSE).

Background of the Case

SEBI has conducted an investigation into the trading in the scrip of Prudential Pharmaceuticals Limited (‘PPL’) wherein SEBI observed that the Appellant has acquired 8.75 lakhs shares constituting 16.98% of the total paid-up capital of PPL. However, the appellant failed to comply with the provisions of Regulation 7 of the SEBI (SAST) Regulations, 1997. Therefore, SEBI imposed a penalty of amount 2,50,000/- on the appellant.

Against the said order of SEBI, the Appellant has filed an appeal and made the following submission:

- Appellant had purchased only 6 Lakh shares of PPL through two separate transactions; viz., 2,50,000 shares on April 9, 2001, followed by 3,50,000 shares on May 8, 2001. The rest of the trading in the scrip of PPL was undertaken by the appellant on behalf of its client and, therefore, the same cannot be clubbed with its own personal trade in the same scrip for the purposes of determining the acquisition limit prescribed by the SEBI (SAST) Regulations, 1997.
- The appellant specifically submitted that all the necessary disclosures in relation to the said acquisition of 6 lakh shares were made as per the requirement laid down in Regulation 7 of the SEBI (SAST) Regulations, 1997 to the company i.e. PPL and also to



the Ahmedabad Stock Exchange Ltd. ('ASE') and duly annexed proof of dispatch of the said disclosure Under Certificate of Posting (UCP).

- The appellant also submits that Regulation 7 of the SEBI (SAST) Regulations, 1997 was amended on September 9, 2002. The earlier requirement under Regulation 7 of SEBI (SAST) Regulations, 1997 was restricted only to providing information to the company. However, it also informed the ASE of the acquisition in question.

In this case, two issues have been raised and decided i.e.

- I. Whether the acquisition of shares of PPL by the Appellant on April 9, 2001 and May 8, 2001 would attract the provisions of Regulation 7 of the SEBI (SAST) Regulations, 1997 as in force w.e.f. September 9, 2002?**
- II. Whether the shares acquired by the appellant on behalf of its client should be clubbed with its shareholding for determining the applicability of Regulation 7 of SEBI (SAST) Regulations, 1997?**

Issue I:

Analysis of Regulation 7 of SEBI (SAST) Regulations, 1997

Provision of Regulation 7(1) of SEBI (SAST) Regulations, 1997 as in force till 08.09.2002 is reproduced herein below:

“Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company.”

Provision of Regulation 7(1) of SEBI (SAST) Regulations, 1997 as amended on 09.09.2002 is reproduced herein below:

“Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.”



As from the abovementioned Provisions, it can be seen that as the acquisition has been made during the year 2001 and would be governed by the unamended provisions of SEBI (SAST) Regulations, 1997 which were in vogue on the relevant dates and as per the same, Appellant is required to give the disclosures of its holding only to the Company not to stock Exchange. However, it also informed the ASE of the acquisition in question.

SAT Observation:

The appellant cannot be held guilty of violating a substantive provision which came into force on September 9, 2002 for an alleged violation which took place on April 9, 2001 and May 8, 2001. No retrospective effect is given to the amended Regulation 7 of the SEBI (SAST) Regulations, 1997. In fact it appears that the passing of the impugned order relying on a provision clearly inserted post the happening of the alleged violation exhibits a sort of pre-conceived inclination on the respondent's part to impose a penalty on the appellant without really considering whether or not such an act of the respondent might be sustained in law. Therefore, this issue has to be decided in favour of the appellant and against the respondent.

Issue II:

The Hon'ble Tribunal observed that a broker is rightfully entitled to trade on his client's behalf as well as on behalf of himself. The point to be borne in mind is that there is a marked distinction between the trades executed by a broker for his own purposes, and those executed by him on behalf of his clients, albeit in the scrip of the same Company. Therefore, for the purposes of acquisition under Regulation 7 or any other similar provision in other regulations, the two aforementioned transactions have to be treated separately unless it is proved that the client and the broker acted in league with each other, and the client funded the broker's own transactions as well.

Accordingly, the appellant cannot be held guilty of violating the provision of Regulation 7 of SEBI (SAST) Regulations, 1997 as it has duly made the disclosure in respect of acquisition made by it and has also submitted the proof in respect of the same.





Market Updates

ASIAN PAINTS INCREASES STAKE IN BERGER INTERNATIONAL

Asian Paints India, through its wholly owned subsidiary Asian Paints International, has acquired 26,725,122 shares of its indirect subsidiary Berger International from Aegis Estates Ltd. at SGD 6.68 million. The acquisition hikes its stake by 25.7% to 75.82%. The company has also come up with an unconditional cash offer to purchase the remaining shares of the Singapore listed entity at the same price at which it bought from Aegis to make it a wholly owned subsidiary and delist it from the exchange.

ABU DHABI WATER & ELECTRIC AUTHORITY TO ACQUIRE JAYPEE'S HYDRO ASSETS IN HIMACHAL FOR \$2 BILLION

Abu Dhabi government's flagship public utility holding company Abu Dhabi Water & Electric Authority (ADWEA) has emerged as the frontrunner to acquire two mega operating hydro-power projects in Himachal Pradesh from the diversified infrastructure conglomerate Jaypee Group.

STANDARD CHARTERED PRIVATE EQUITY MAURITIUS III LTD ACQUIRED STAKE IN FORTIS HEALTHCARE

Fortis Healthcare has raised R37.7 Cr through a preferential allotment of 3.7 million shares to Standard Chartered Private Equity Mauritius III Ltd. With this, Fortis has cumulatively raised Rs. 1040 Cr. this year through equity and equity-linked instruments.



Quiz

PLAY The QUIZ
TEST YOURSELF

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

As on April 2012:

Total Capital of the Company: 5000 Equity Shares

Total Promoters shareholding: 2000 Equity Shares (60%)

A: 1000 Equity Shares (20%)

B: 1000 Equity Shares (20%)

C: 1000 Equity Shares (20%)

Now A proposes to acquire 250 Equity Shares (5%) through market purchase during the F.Y.2013-14. Prior to the proposed acquisition, the promoters of the Company have not acquired even a single share during the F.Y.2013-14. What is the applicability of SEBI (SAST) Regulations, 2011 on the above proposed acquisition of equity shares by "A"?

- A. Within the Creeping Acquisition
- B. Triggered the Open Offer
- C. Eligible for automatic exemption
- D. Not Applicable

Q.1 The total capital of the Target Company as on September 01, 2013 is 5,000 Equity Shares. There are 5,000 warrants in the Target Company convertible into equal number of equity shares in the month of October 2013. In such a circumstance, what will be the offer size for mandatory Open Offer if the Offer is proposed to be made on September 20, 2013?

- A. 1000
- B. 2600
- C. 1300
- D. 2000

Winners of Quiz – August 2013-edition

Sonia Maheshwari

Tanu Garg

Anant Chandak



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