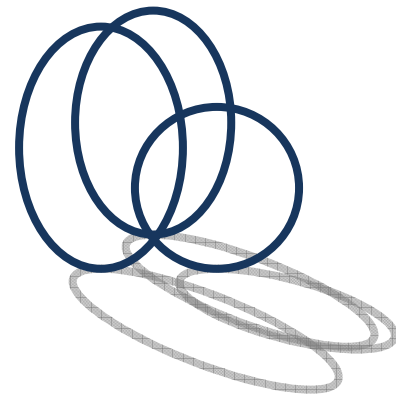


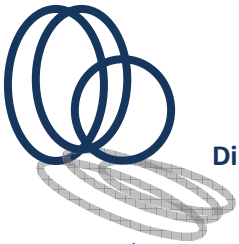
TAKEOVER *panorama*





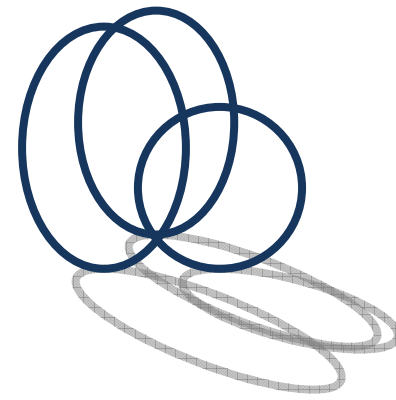
Insight

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Disclaimer:

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Latest update

Cementum IB. V. vs. Securities and Exchange Board of India and Ambit Corporate Finance Pvt. Ltd

“SAT reversed SEBI Order stating that payment of non-compete consideration is justified where the sellers have long association with the Company which enables them to start a competing venture”

Facts:

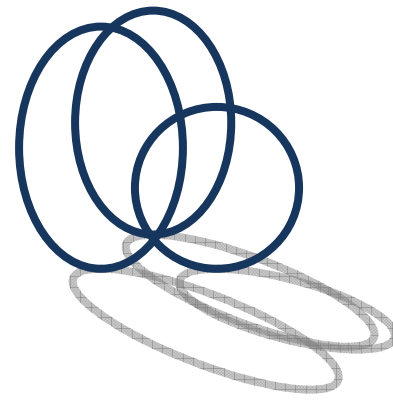
A tripartite share subscription and share purchase agreement (SSSPA) was executed among the appellant, the Mysore Cements Ltd. (Target Company) and certain promoters of the target company belonging to the S.K. Birla Group under which the appellant agreed to acquire aggregate 50.57% shares of the Target Company at a price of Rs. 58 per share. In addition to such price, the acquirer agreed to pay Rs.14.50 per equity share as non-compete consideration to the promoter sellers. Accordingly, the appellant alongwith its holding company Heidelberg Cement A.G. of Germany, acting in concert, has made a public announcement to acquire shares held by the public shareholders at a price of Rs.58 per share. Since the non-compete consideration is less than 25% of the acquisition price, the same has not been included in the offer price. On receiving the complaints from the shareholders, the Board passed an order directing the appellant to revise the offer price after including the payment of non compete fee because the payment of non- compete fee by the appellant was nothing but a ploy to pay a higher price to the promoter. The present appeal was filed against this order of Board.

Reason on which SEBI order is based:

1. The Target Company is a sick company, which indicates that the promoters of the target company did not possess the business expertise required to compete with the acquirers.
2. The promoter sellers included a charitable and an educational organization and such organizations can hardly be deserving of any non-compete fee.

Contentions in Appeal:

The acquirer- appellant contended that the fact that a company has fallen sick cannot ipso facto lead to the conclusion that the management or the promoters of the company are incompetent. The promoter sellers “are connected to a very established industrial family” and their industrial connection, their knowledge of the target company’s operations and their relatively easy access to market information are enough for them to start a competing venture.



Issue:

Whether, in such case, the payment of non-compete fees is justified?

Yes. Since the promoters sellers has a long association with the company which enables them to start a competing venture ,the fact that the target company has become a sick company is of no use and the payment of non-compete fees is justified.

SEBI order in the matter of M /s Kriti Industries (India) Limited

“Regulation 7 (1A) being introduced in the October 2004, therefore it need not to be complied with

Shares through inter-se amongst promoter-group representing 1.33% which were well within the percentages specified in regulation 7(1A) as existed at that point of time i.e. disclosure was required to be made if the acquisition exceeded 5% and 10%. Similarly, during the financial year 2003-04, the Appellant acquired from open market 96,746 shares representing 1.98% which is well in terms of the provisions of regulation 7(1A) as the disclosure was required to be made if the purchase or sale exceeded 2%. There was also a change in the shareholding of one of the appellant, viz. M/s Sakam Investments (P) Limited by 1,900 shares representing 0.03 due to rectification of some accounting mistake.

Decision:

Since the transaction executed by the appellant were well within the provision of regulation 7(1A) as existed at that time ,therefore the question of violation of regulation 7(1A) does not arise and the matter is accordingly disposed off.

SEBI order in the matter of Kriti Industries (India) Limited

“SEBI imposed a penalty of Rs. 1 Lac for violation of regulation 8(3)”

Facts:

An open offer was made by the appellant-acquirers to the shareholders of the M/s Kriti Industries (India) Limited (target company) vide public announcement dated September 14, 2006 for acquisition of 12, 40,088 equity shares constituting 20% of the total share capital of the target company. M/s Chartered Capital and Investment Limited, Manager to the open offer, informed the SEBI that the appellant had made delayed disclosure under regulation 8(3) of SAST.



Contention:

The noticee contended that it had complied with the annual disclosure requirement relating to financial year under regulation 8(3) of SAST. However, it fails to make disclosures within 30 days of record date. The notice further submitted that the delay was neither intentional nor deliberate but was bonafide and with no malafide intentions or malice

Decision:

In view of the above facts, adjudicating officer imposed a monetary penalty of Rs.1, 00,000 for non-compliance of regulation 8(3).

SEBI order in the matter of Inducto Steels Ltd and others

“Under regulation 7, the term acquirer includes PAC even if it has not been explicitly stated there because the definition of acquirer u/r 2 (1) (b) clearly includes PAC”

Facts:

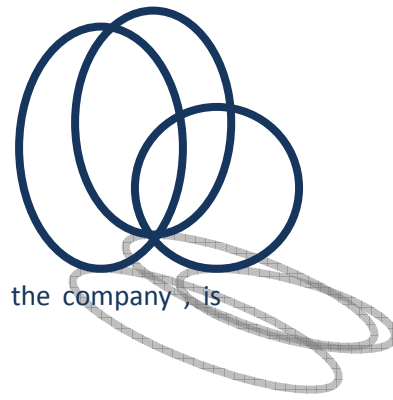
The appellants have altogether purchased 2, 95,215 shares constituting 11% of the market volume and 5.58% of the total share capital of the company. However, no disclosures under Reg. 7 (1) and 7 (2) of SEBI (SAST) Regulations, 1997 were made by them.

Contention:

1. No disclosures under 7 (1) and 7 (2) of SAST Regulations are required because their purchases singly had not exceeded 5% of the voting rights of the company.
2. That the term ‘person acting in concert’ has been used in addition to the term ‘acquirer’. It is only in Regulation 7 (1) where the term ‘acquirer’ has been used singly without the inclusion of the term ‘person acting in concert’. Had the intention of the takeover regulations been to include the persons acting in concert in the term ‘acquirer’, there would not have been repeated use of the term ‘person acting in concert’ in various regulations of the SAST Regulations.
3. No intention to gain the control.
4. No voting right has been exercised.

Issue:

Whether, where the term acquirer clearly provides that term acquirer include PACs, the contention of appellants that they are not required to make any disclosures under 7 (1) and 7 (2) of SAST



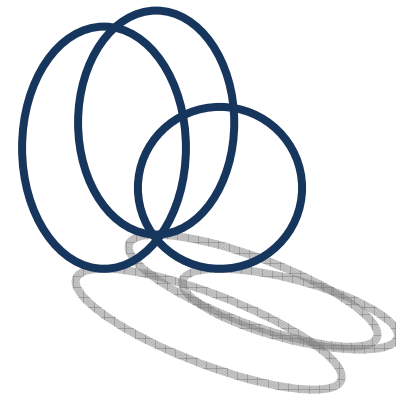
Regulations as there purchases singly had not exceeded 5% of the voting rights of the company , is untenable.

Decision:

No, the contention of the appellants was untenable as the term acquirer defined in Regulation 2 (1) (b) of SAST Regulations clearly provides that term acquirer include PACs. In view of the above facts, Adjudicating officer imposed the monetary penalty of Rs.1, 50,000 on the appellants.

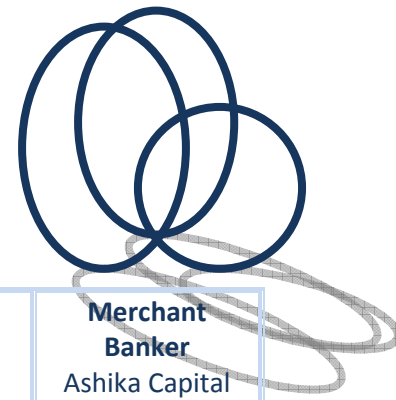
SEBI consent order in the matter of Usha Kanoria & PACs

Vide order dated March 12, 2006, SEBI initiated adjudication proceedings against Usha Kanoria (acquirer) and PACs for the alleged non-compliance with the provisions of Regulations 3(3) and 3(4) read with 3(5) of SEBI Takeover Code in the matter of acquisition of 3,10,000 (31%) shares/voting rights of Bhatpara Jute and Properties Ltd by way of inter-se transfer. Pending the adjudication proceedings, the noticee had proposed to pay a sum of Rs. 50,000/- towards consent terms plus Rs. 25,000/- towards legal and administrative expenses aggregating to Rs. 75,000/-only).The noticee has also remitted a sum of Rs. 75,000/- vide Demand Draft No. 451094 dated July 17, 2008 towards the terms of consent in the matter. On the basis of recommendation of High Powered Advisory Committee, SEBI disposed off the said adjudication proceedings on consent terms

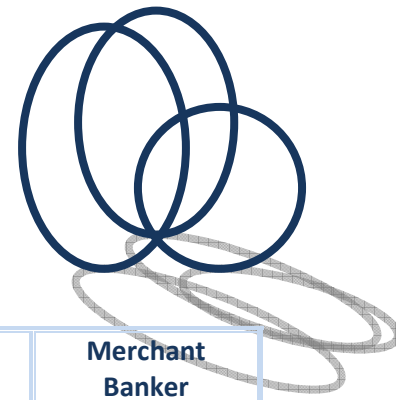


Latest open offers

Name of the Target Company	Name of the Acquirer	Details of the offer	Reason of the offer	Concerned Parties
<p>Lotus Chocolate Company Limited</p> <p>Regd. Office Hyderabad</p> <p>Paid up capital Rs.12,83,80,490/-</p> <p>Listed at BSE</p>	<p>Peraje Prakash Pai and Peraje Anantha Pai</p>	<p>Offer to acquire upto 25,68,210 (20%) equity shares of Rs. 10 each at a Price of Rs. 16/- per fully paid up Equity Share payable in cash</p>	<p>Regulation 10 & 12</p> <p>SPA to acquirer in aggregate 54,46,440 (42.41 %) Equity Shares of the Target Company at a price of Rs 15/- per fully paid Equity Share and 73,96,600 (100%) Preference Shares at a price of Rs 4/- per Preference Share.</p>	<p>Merchant Banker CIL Securities Ltd.</p> <p>Registrar to the Offer CIL Securities Ltd.</p>
<p>Shyamal Holdings & Trading Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs.24,00,000/-</p> <p>Listed at BSE</p>	<p>Emperor Consultancy Services Pvt. Ltd.</p>	<p>Offer to acquire upto 85500 (35.63 %) fully paid-up Equity Shares of Rs.10/- each, at a price of Rs.13.50/- per share.</p>	<p>Regulation 10 and 12</p> <p>SPAs to acquire in aggregate 23900 (9.96 %) Equity shares of Rs 10/- each at a price of Rs 6/-per share</p>	<p>Merchant Banker VC Corporate Advisors Pvt. Ltd.</p> <p>Registrar to the Offer Purva Sharegistry P Ltd</p>



<p>Silicon Leasing and Investment Limited</p> <p>Regd.office Hyderabad</p> <p>Paid up capital Rs. 300.00 Lakhs</p> <p>Listed at HSE and ASE</p>	<p>Nagarjun Valluripalli</p>	<p>Offer to acquire upto 6,00,000 equity shares of Rs. 10/- each representing 20% of the subscribed capital comprising of 3,63,400 fully paid up shares representing 30.06% of voting capital, and 2,36,600 partly paid shares from the existing shareholders at a price of Rs.9.30/- per fully paid share and Rs.1.80 for partly paid shares.</p>	<p>Regulation 10 and 12</p> <p>SPA with the existing Promoter Group of the Target Company to acquire in aggregate 8,45,800 fully paid-up equity shares of Rs.10/- each, representing 69.94% of voting capital and 28.20% subscribed capital of the Target company, at a price of Re. 1/- per share</p>	<p>Merchant Banker Ashika Capital Ltd.</p> <p>Registrar to the Offer CIL Securities Limited</p>
<p>Brahmaputra Infraproject Limited</p> <p>Regd. office New Delhi</p> <p>Paid up capital Rs 300.92 Lacs</p> <p>Listed at BSE & DSE</p>	<p>Brahmaputra Finlease (P) Limited, Brahmaputra Holdings (P) Limited, M. L. Singhi & Associates (P) Limited and Mr. Suresh Kumar Prithani</p>	<p>Offer to acquire 14,01,840 equity shares of Rs. 10/- each representing 20.00 % of the total post preferential capital / voting share capital of "BIL" at a price of Rs. 11.00.</p>	<p>Regulation 10 & 12</p> <p>Allotment on preferential basis of 40,00,000 (Rs 10/-) equity shares at a price of Rs 10.80 & SPA to acquire 1049300 (Rs.10/-) equity shares representing 34.87% of the total capital at a price of Rs. 10.00.</p>	<p>Merchant Banker Chartered Capital & Investment Ltd.</p> <p>Registrar to the Offer Beetal Financial & Computer Services Pvt. Ltd.</p>
<p>Vaghani Techno-Build Limited</p> <p>Regd. office Ahmedabad</p> <p>Paid up capital Rs.522 lacs</p> <p>Listed at BSE</p>	<p>Kantilal Manilal savla,Pratiksha Popatlal Gala and Kartik Popatlal Gala</p>	<p>Offer to acquire 1044000 (20%) equity shares of Rs.10 each at a price of Rs.5/-per share.</p>	<p>Regulation 10 and 12</p> <p>SPA to acquire 320814 equity shares representing 6.15% of the total paid up and voting capital of the company at a price of Rs.3/- per share.</p>	<p>Merchant Banker Fedex Securities Ltd.</p> <p>Registrar to the Offer Intime Spectrum Registry Ltd.</p>



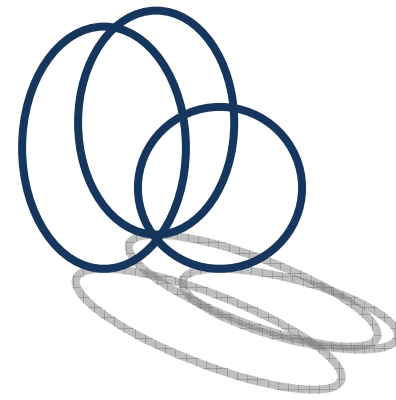
<p>Corporate Merchant Bankers Limited</p> <p>Regd. office Delhi</p> <p>Paid up capital Rs 330.00 Lacs</p> <p>Listed at DSE & UPSE</p>	<p>Cosmos Industries Limited, Deepak Yadav and Bhawana Yadav</p>	<p>Offer to the shareholders of target company to acquire 6,60,000 (20.00 %) equity shares of Rs. 10/- each at a price of Rs. 10.50/- per fully paid up equity share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire an aggregate of 1970780 (59.72%) fully paid up equity shares of Rs.10/- each at a price of Rs. 1.00 per fully paid up equity share.</p>	<p>Merchant Banker Chartered Capital & Investment Ltd.</p> <p>Registrar to the Offer Beetal Financial & Computer Services Pvt. Ltd.</p>
<p>KDL Biotech Limited</p> <p>Regd. office Maharashtra</p> <p>Paid up capital Rs.167,624,240</p> <p>Listed at BSE & NSE</p>	<p>Unimark Remedies Limited</p>	<p>Offer to acquire upto 4,807,030 Shares being 20% of the Expanded Equity Capital at a price of Rs.12 each.</p>	<p>Regulation 10 & 12</p> <p>SPSSA to acquire 13152752 shares aggregating the shareholding of the acquirer to 15,634,366 Shares constituting 65.05% of the Expanded Equity Capital of the Target Company.</p>	<p>Merchant Banker Edelweiss Capital Ltd.</p> <p>Registrar to the Offer Bigshare Services Pvt. Ltd.</p>

Hint of the month

“In case of disinvestment of public sector undertaking, an acquirer having once made the public announcement, is not required to make the another public announcement at the subsequent stage of acquisition of shares or voting rights or control provided that:

- i. Both the acquirer and seller are the same at all stages of acquisition, and*
- ii. Disclosures regarding all stages of acquisition are made in the letter of offer and the first public announcement.*

(Substantiated through Regulation 11 (3))



Regular Section

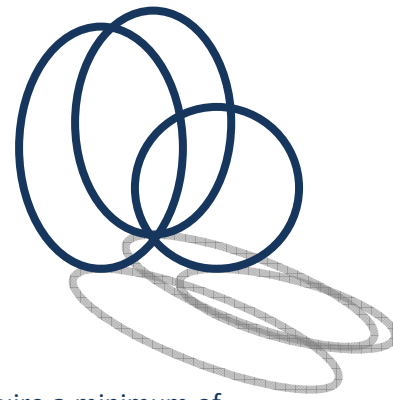
Open Offer Escrow Account

Meaning & Purpose:

Escrow Account means a bank account which is required to be opened by an acquirer who proposes to make public announcement of offer in pursuance of regulation 10, 11 & 12 of SEBI Takeover Code. The code has made detailed provisions regarding the Escrow Account. These provisions are contained in regulation 28 of SEBI Takeover Code. As per **Regulation 22 (10)**, on or before the date of issue of public announcement of offer, the acquirer shall create an escrow account as provided under regulation 28 and deposit therein a specified minimum amount. The purpose of these provisions is to ensure that the acquirer has sufficient funds to pay the consideration under the offer and he has secured sufficient financial arrangement.

Amount of deposit in escrow Account

Consideration payable under public offer (Assuming full acceptances)	Amount of %	Example
Upto and including Rs 100 crores	25%	Consideration = 90 crores Amount to be deposited in escrow: 25% of 90 crores = 22.5 Cr
Above 100 crores	25% upto 100 crores and 10% thereafter.	Consideration = 120 cr Amount to be deposited in escrow account (25% of 100 cr) + (10% of 20 cr) = 25 Cr + 2 Cr = 27 Cr



Escrow amount in different cases

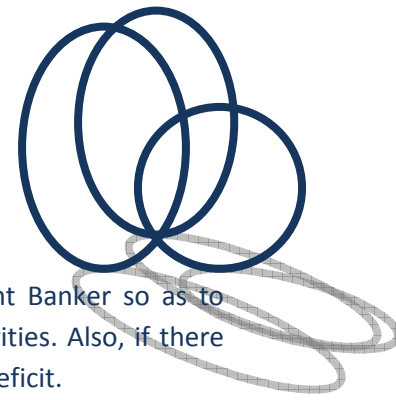
1. In case of minimum level of acceptance where the acquirer does not want to acquire a minimum of 20 %, then the acquirer shall deposit a minimum of 50% consideration payable under the offer in the Escrow Account in cash.
2. As per regulation 20, the consideration for offer can be paid either in cash or in securities. Where the shareholders have been given an option to accept the consideration in cash or in securities, the price payable in cash can be different from that payable in the form of securities. In case of such differential pricing (in case the consideration is paid in cash and in securities) the acquirer is required to deposit the highest price in the escrow account as arrived under differential pricing.
3. In case of upward revision of offer, the acquirer is required to increase the escrow value to equal to 10% of the consideration payable upon such revision.
4. If the acquirer proposes to appoint himself or any other person on his behalf on the Board of Target Company within 21 days of public announcement, then he can do so provided he has deposited 100% of consideration payable in the offer in Escrow Account.

Mode of Deposit:

The escrow account can consist of the following:

1. In the form of cash deposited with scheduled commercial bank. The acquirer in such a case is required to empower the appointed merchant banker to instruct the bank to issue banker's cheque or demand draft for the amount lying to the credit of the escrow account.
2. In the form of bank guarantee and such bank guarantee shall be in favor of merchant banker. The bank guarantee is valid for the period of 20 days from the closure of public announcement.
3. The bank guarantee shall not be returned to the acquirer by merchant banker till the completion of all obligations under the regulations.

The acquirer is further required to deposit as security for fulfillment of the obligations 1% of the total consideration payable under the offer.



4. By deposit of acceptable securities with appropriate margin with the Merchant Banker so as to empower him to realize the value of such escrow account by sale of such securities. Also, if there being any deficit in the value so realized, the merchant banker has to fulfill such deficit.

The securities so deposited shall not be returned to the acquirer by merchant banker till the completion of all obligations under the regulations

The acquirer is further required to deposit as security for fulfillment of the obligations 1% of the total consideration payable under the offer.

Forfeiture of Escrow Account

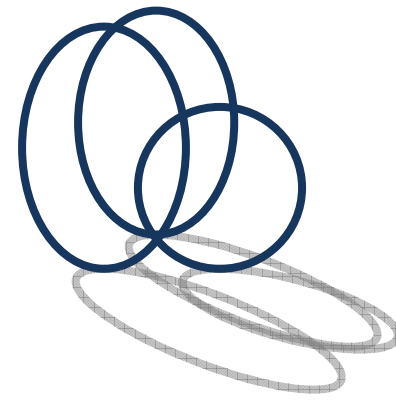
The escrow account is forfeited in the following cases:-

1. In case of non-fulfillment of obligations under the Regulations.
2. In case the acquirer fails to obtain shareholders approval, which is required, in case of payment of consideration by way of exchange of securities.

Release of amount from Escrow Account

The amount lying in escrow account can be released in the following cases only:

1. In case of withdrawal of offer, the entire amount can be released only after certification by the merchant banker.
2. The amount deposited in escrow account is transferred to special bank account opened with the Bankers to an issue; however the amount so transferred shall not exceed 90% of the cash deposit.
3. The amount of 1% security deposited as bank guarantee to the acquirers only after completion of all the formalities. The balance 10% is released to the acquirer on completion of all obligations under the offer.
4. In the event of forfeiture of amount, the entire amount is distributed in the following manner:
 - 4.1. One third of the amount to Target Company
 - 4.2. One-third to the amount to regional stock exchange for credit of investor protection fund or any such fund prescribed by SEBI.
 - 4.3. Residual one third is to be distributed to the shareholders who have tendered their shares in the offer.



Case Study

Zandu-Emami- Pharma co.s goes hostile this time...

Background of the offer

Parekh family, founder of Zandu, has the management control of the Zandu and holds 18% of the share capital of the company. The Parikh family's erstwhile partner and co-founder of Zandu, the Vaidya family, hold 24% stake in the Zandu.

Emami (acquirer) which holds 3.5% in the Zandu had raised its stake to 27.5 per cent by buying out the 24 per cent stake from Vaidya family at a price of Rs 6,900 per share amounting to Rs 130 crore which has resulted into triggering the SEBI (SAST) Regulations, 1997. Pursuant to the above acquisition, Emami has given open offer to public to acquire 20 per cent of Zandu shares.

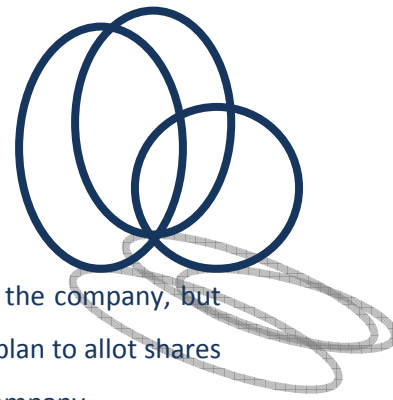
The 54.5% of the company's equity that is not held by Emami or the Parikh family is owned by the public and some investment companies.

If Emami's open offer gets a positive response then its stake would go up to 47.5 per cent, which will bring them close to a controlling stake.

Strategy followed by the Parekh family

After Emami acquisition of 24% stake in Zandu and subsequent open offer, Parikh family has also started increasing its stake in the herbal health care company by buying shares in the open market instead of giving the counter-bid to the open offer made by the Emami.

Zandu's directors Ajay K. Parikh and Girish G. Parikh has bought 3,416 shares of the company on 13 June at an average price of Rs12,344 a share raising their stake to 21% in the company.



The Parikhs had also proposed to subscribe to a preferential allotment of shares by the company, but independent directors of Zandu spiked the proposal. Emami, too, had challenged the plan to allot shares to Zandu's promoters, saying it was not in the interests of other shareholders in the company.

Response to open offer

It is believed that Emami's open offer would not get the good response, as after ,Emami has announced its purchase of 23.6% stake in Zandu for Rs 130 crore, the share price of Zandu has gone to Rs.20,300 per share which is many times higher than the open offer price of Rs.7,135 per share.

Emami's offer to Parikh family

Emami has now asked the Mumbai based promoters of **Zandu**, the **Parikh** family, to either share management control in the firm or sell out its holding.

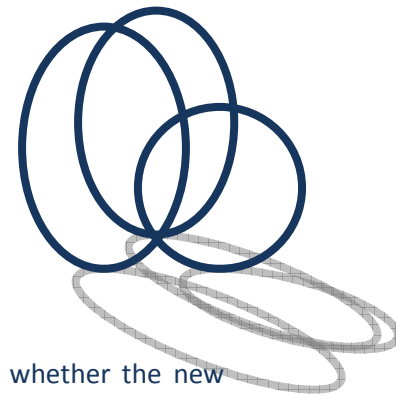
Market Update

QIP Failure

QIPs, which had emerged as one of the biggest tools for raising the funds fails to benefit the shareholders as 80% of the firms who raised the funds through the QIPs, are trading below their issue price. As much as Rs.1, 70,000 were raised by 46 companies through this route. However, only nine companies out of 46 are giving the positive returns.

Education-A profitable venture

The government is working on the proposal on public-private partnership into the primary education as a profit making venture This will enable the shareholder of such companies to receive the dividend as against the present legal restriction which requires the companies to plough back profit for the stated objective of providing education. The proposed relaxation would be available only to the companies that are getting into partnership with the government. However, this will disqualify them from getting any tax exemption, which is now available to the trusts and charitable companies providing the education.



■ SEBI sought detail regarding issuance of PNs

SEBI has sought details relating to the issue of Participatory Notes (PNs) to verify whether the new norms on the issuance of PNs issued by the regulator in October last year have been followed by the Foreign Portfolio Investors. Participatory notes, issued by the Foreign portfolio Investor to overseas investors, are like the derivative instrument issued against an underlying security.

■ Government invites bids for selling BGML stake

The Govt. has invited bids to sell off its stake in Bharat Gold Mines Limited (BGML). The company was closed for several years and the govt.wants to sell it but was unable to do it due to the opposition from the workers union and the matter landed in the Karnataka High Court.

■ Sterlite Industries is stepping to acquire remaining 49% stake in Balco

The Government is taking a final decision on the call option notice given by sterlite Industries to acquire the remaining 49% government equity in Balco. The Company was privatized when the govt. sold its 51% stake in Balco to Sterlite in 2001 for Rs.551.50crore at a price of Rs.49.01 a share.

Our Team

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