

# TAKEOVER

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# PANORAMA

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*A monthly publication by Corporate Professionals*

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# Insight

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# Legal Update

## Informal Guidance in the matter of OCL India Limited

### Facts:

1. OCL India Limited ("OCL") has set up Employees Welfare Trust to provide better material and financial help to the beneficiaries.
2. The surplus funds of the trust may be invested by the trust in the stock, debentures, movable or immovable property.
3. Now the trust proposes to invest the funds of the trust in the OCL and the same shall be held in the name of the trustees for the benefit of the beneficiaries.
4. No person who is the member of promoter group or a Director or key management personnel of the company or their relative can be appointed as Trustee of the Trust.

Where the trust created by the Target Company and trustee are independent of Promoter group, Directors as well as key management personnel of the Target Company, then, they will not be considered as PAC.

### Issues:

1. Whether the trustees will be treated as person acting in concert with the promoters of OCL and the above investment by the trust will be treated as the acquisition of shares by the promoters of OCL.
2. Whether the shares held by trust in the name of trustees will be consolidated with the shareholding of the promoters and PAC for the purpose of regulation 11 of the SEBI Takeover Code.
3. Whether the shares held by trust will be included in public shareholding?

**Decision:**

1. If the trust, trustee, or promoters have the common objective of acquiring the shares or control in OCL or satisfy other factors as specified in regulation 2(1)(e) of the SEBI Takeover Code, then they will be considered as the person acting in concert with each other.
2. If the trust, trustees and promoters are considered as the person acting in concert with each other, then their shareholding will be consolidated for the purpose of regulation 11 of the SEBI Takeover Code.
3. As it has been stated that the trustees and trust are independent of the promoters/promoter group and directors as well as key management personnel, therefore, they cannot be considered as part of the promoter group and their shareholding will be included in public shareholding.

**Informal Guidance in the matter of Bharti Airtel Limited****Facts:**

Bharti Airtel Limited envisaged a transaction with MTN Group Limited whereby BAL proposed to acquire 49% shares of MTN from MTN and its existing shareholders in exchange for issuance of GDRs carrying underlying equity shares of BAL, constituting 25% to MTN and 11% to the existing shareholders.

In case of acquisition of GDRs, disclosure under regulation chapter II of the SEBI Takeover Code has to be made immediately on the acquisition. However, the requirement of open offer arises only on the conversion of GDR into Equity Shares.

**Issues:**

1. Whether MTN is required to give open offer on acquisition of GDRs carrying underlying equity shares constituting 25% of the total of capital of Bharti?
2. Whether MTN is required to make disclosures under chapter II of SAST and regulation 13 of Insider Trading Regulations?

**Decision:**

1. On the basis of facts of the case, SEBI clarified that regulation 3(2) requires the acquirer of GDRs to make an open offer only upon conversion of the GDRs into equity shares with voting rights.

2. The regulation 3(2) of SAST gives exemption from requirement of open offer only. The disclosures under Chapter II are nevertheless required to be made. Similarly, the disclosures under Insider Trading Regulations are also required to be made by MTN and its shareholders.

**SEBI order in the matter of Vikas Granaries Limited  
(Formerly known as Adarsh Derivatives Limited)**

**Facts:**

On January 06, 2006, a letter was received by the SEBI from Mr. Narendra V. Jhaveri, one of the shareholders of Vikas Granaries Limited (Target Company) alleging the acquisition of control of the Target Company by Mr. Megh Raj Jindal, Mr. B. D. Agarwal and Mr. R.C. Jindal (acquirers). It was alleged by Mr. Narendra V. Jhaveri, without complying with public announcement or other conditions as prescribed under regulation 12 of the SEBI Takeover Code for the acquisition of control.

Where the resolution under regulation 12 of the SEBI Takeover Code has been duly passed for the acquisition of control, then, there is no violation of the SEBI Takeover Code.

Further, it was alleged that the Memorandum of Understanding (MOU) entered into between the acquirers and erstwhile directors of the Target Company was invalid for the lack of the consideration. Accordingly, vide letter dated October 03, 2007, a show cause notice was issued to the acquirers in the said matter of acquisition of control.

**Contention:**

The acquirer contended that the:

1. Acquisition of control was made by passing a Special Resolution in accordance with regulation 12 of the SEBI Takeover Code.
2. There is a legally valid and binding MOU between the acquirers and old directors of the Target Company supported by the due consideration.
3. The explanatory statement issued with the Notice clearly specifies that the acquirers intended to acquire the control over the Target Company. Further, a brief description of the acquirer was also mentioned there in.

4. All the requirements as specified under section 173 and section 192A of the Companies Act, 1956 with regard to the passing of resolution by the postal ballot have been complied with.

**Issues:**

1. Whether the appellant has failed to comply with the provisions of the regulation 12 of the SEBI (SAST) Regulations, 1997.
2. Whether the notice to the shareholders (issued by the target company) was deficient and lacks the material disclosures.
3. Whether the non compliance, if any, on the part of the appellant attracts the monetary penalty.

**Decision:**

On the basis of documents including the Postal Ballot notice for passing the Special Resolution, scrutinizers report and MOU produced by the acquirers and Target Company, SEBI accepted the contentions of the acquirers/target company in the matter of acquisition of control over the Target Company and dispose off the proceedings against the acquirers.

**Adjudicating Officer in the matter of Celica Developers Private Limited**

**Facts:**

On examination into the scrip of Magma Shraci Finance Limited (Target Company), it was observed that on May 18, 2006, 54,62,101 Equity Shares representing 37.95% of the share capital of the Target Company were transferred to Celica Developers Private Limited (hereinafter referred to as "Noticee") which was earlier held by Stratus Developers Private Limited, pursuant to the scheme of arrangement approved by the Hon'ble Calcutta High Court.

The requirement of disclosure under regulation 7(1) is independent of other compliances to be done in any other acts or regulations.

Further, NSE vide its letter dated August 29, 2006 also informed SEBI that the disclosure regarding aforesaid acquisition of shares by Noticee was received by them on September 11, 2006 whereas the acquisition was made on May 18, 2006. Thus, there is a violation of regulation 7(1) of

the SEBI Takeover Code and regulation 13(1) of the Insider Trading Regulations in as much as there has been a delay of 107 days and 105 days in making the disclosure under regulation 7(1) of the SEBI Takeover Code and regulation 13(1) of the Insider Trading Regulations respectively.

**Contention:**

1. The Noticee contended that there was no positive act to acquire the shares as acquisition is made pursuant to the scheme of arrangement duly approved by the Hon'ble Calcutta High Court.
2. As the information was already in public domain under the scheme of arrangement, therefore, no further disclosure is required to be made.

**Issues:**

1. Whether the Noticee has failed to comply with regulation 7(1) of the SEBI Takeover Code and Regulation 13(1) of the Insider Trading Regulations?
2. Whether the non compliance, if any, on the part of the appellant attracts the monetary penalty?

**Decision:**

On the basis of above facts and circumstances of the case, Adjudicating officer impose the penalty of Rs. 1,00,000 on the Noticee and held that contention of the Noticee that it was not required to make any disclosure under the said regulations cannot be accepted. Further, the letter dated 04.08.2006 submitted by the acquirers to the Target Company disclosing their shareholding after the above acquisition of shares does not bear any seal of the company as an acknowledgement, therefore, the authenticity of the said letter is doubtful.

**Adjudicating Officer order in the matter of Triumph International Finance India Limited**

**Facts:**

SEBI conducted an investigation into the dealing in the shares of Adani Exports Limited (AEL) with regard to the movement of shares and funds from AEL / its promoters / associate companies to Ketan Parekh entities / group (where companies associated to Ketan Parekh refer to - Classic Credit Ltd., Classic Share and Stock Broking Services Ltd., Panther Fincap &

Management Services Ltd., Panther Investrade Ltd., Triumph International Finance Ltd., and Triumph Securities Ltd.).

The investigation revealed that the total number of shares held by Ketan Parekh entities acting in concert on certain instances exceeded 5% of the total paid up equity capital of AEL. Thus, they have violated the provision of regulation 7(1) of the SEBI (SAST) Regulations, 1997. Accordingly a show cause notice was issued to Triumph International Finance Ltd. (Noticee).

SEBI imposed a penalty of Rs. 5,00,000 for violation of Regulation 7 (1) by Triumph International Finance Ltd.

**Contention:**

The Noticee contended that:

1. It was not associated with entity managed by and / or affiliated and / or otherwise connected with Mr. Ketan Parekh and / or Mr. Kartik Parekh.
2. Mr. Ketan and / or Mr. Karthik were Non-Executive Directors without any substantial powers of management.
3. Shares lying in the account of Noticee were its client's shares and it does not have any beneficial interest in the same.
4. It was not under the same management, as defined in Section 370 of the Companies Act 1956, with the remaining entities, which were considered to be a part of the Ketan Parekh group.
5. The default was merely an unintentional technical irregularity.
6. If the transaction were taken independently, then, the acquisition was never exceeded 5% of the paid up capital of AEL.

**Issues:**

1. Whether the Noticee have violated the provision of regulation 7(1) of SEBI (SAST) Regulations, 1997?
2. Whether the non compliance, if any, on the part of the Noticee attracts the monetary penalty in terms of section 15A (b) of SEBI Act, 1992?

**Decision:**

Adjudicating officer held that the contention of the Noticee that it was not associated with the entities managed and control by Mr. Ketan Parekh cannot be accepted as noticee held 49% in Triumph Securities Ltd. (TSL), which was under the management and control of Mr. Ketan and Mr. Kartik. Further, pursuant to investment agreement executed between the Noticee and Mr. Ketan, the Noticee has acquired 100% shares of TSL. Both, the Noticee and TSL shared a common address and employee. The Noticee and TSL were enjoying a joint over draft facility of Rs.50 crores each from Global Trust Bank Ltd. against a common security to be provided by either of them.

Further, all the entities, Classic Share and Stock Broking Services Ltd., Panther Investrade Ltd., Classic Credit Ltd., Panther Fincap & Management Services Ltd., TSL and the noticee, had either Mr. Ketan or Mr. Kartik or both as Directors. Thus these instances show that the Noticee and entities managed by Ketan Parekh were associated with each other. Therefore, adjudicating officer imposed a monetary penalty of Rs.5,00,000 on the Noticee.

**Adjudicating Officer order in the matter of Vertex Securities Limited****Facts:**

On examination of letter of offer filed by Transwarranty Finance Limited (acquirer) for the acquisition of shares of Vertex Securities Limited (VSL), it was observed by SEBI, that Mr. Ranjan Verghese, the promoter and Managing Director of VSL, and Mr. Dilip Verghese, Mrs. Kunjumol Philip, Mr. George Varkey Thalody, Mr. Thomas Alappat, Mrs. Luciyamma Thalody, Mrs. Thressiyamma Nemri and Mr. Ivan J Coelho (Noticees), have delayed by more than 10 years in making the disclosure under regulation 6(1) and 6(3) of the SEBI (SAST) Regulations, 1997 for the year 1997.

Ignorance of law cannot be accepted as a defence for the non compliances of regulations. Accordingly adjudication officer imposed the monetary penalty of Rs.30, 00, 000 on the Noticee.

Further, the Noticees have also delayed in making the disclosure under regulation 8(1) and 8(2) of SEBI (SAST) Regulations, 1997 for the years 1997 to 2007. Furthermore, there has been many instances of transaction, though all were inter-se transfers except one, where the Noticees have failed to report their shareholding in terms of regulation 7(1A) of the SEBI (SAST) Regulations, 1997.

**Contention:**

1. The Noticees contended that they were not aware of the requirements of regulations 6(1), 6(3), and thus failed to make the disclosures within the stipulated time.
2. The Noticees further contended that as regards the disclosure under regulation 7(1A) of the SEBI (SAST) Regulations, 1997 is concerned, it was their genuine belief that only when any acquisition lead to an increase in the aggregate promoters holding exceeding 2% of the total paid up capital and the voting rights of the company, a reporting under Regulation 7(1A) is required to be done. Thus, as all the acquisition have been made through inter se except the one made by Mr. Ranjan Verghese which is only 0.05%, therefore, they are not are required to file the disclosure under the said regulation.
3. Further, as regards the violation of regulation 8(1) and 8(2) is concerned, the Noticees do admit the violation of regulation 8(1) and 8(2) by it. However, such violation was done unintentionally and the investors have been adequately compensated by making an open offer at price of Rs.31 per share.

**Issues:**

1. Whether the Noticees have failed to comply with regulation 6(1), 6(3), 7(1A), 8(1) and 8(2) of the SEBI Takeover Code?
2. Whether the non compliance, if any, on the part of the Noticees attracts the monetary penalty?

**Decision:**

On the basis of above facts and circumstances of the case, Adjudicating officer impose the penalty of Rs. 30,00,000 on all the Noticees for their violation of provisions of Regulation 6(1), 6(3), 7(1A), 8(1) and 8(2) of SEBI (SAST) Regulations, 1997.

## Adjudicating Officer order in the matter of Rishab Financial Services Limited

### Facts:

Mrs. Putal Kavar (Noticee) failed to make the disclosure under regulation 6(3) for the year 1997 and regulation 8(2) of the SEBI Takeover Code for the year 2000 within the prescribed time and has, thus, violated the provision of regulation 6(3) and regulation 8(2) of the SEBI Takeover Code. Consequently, vide order dated April 7, 2008, adjudication proceedings were initiated and show cause notice was issued to the Noticee. However on May 06, 2009, a letter was received by SEBI from Madan Chand Darda intimating that the Noticee to whom the show cause was issued had passed away on May 29, 2001.

*Non-disclosure of information under regulation 6 and 8 is a personal act and omission of the acquirer therefore, where the acquirer is dead at the time of adjudication, the proceedings are liable to be disposed off.*

### Issues:

Whether it is appropriate to put an end to the proceedings where the Noticee to whom the notice has been issued was dead at the time of issue of notice.

### Decision:

In view of the fact that adjudication proceedings were initiated against the personal acts or omission of a person and person against whom the proceedings were initiated is no more alive, adjudication officer disposes the proceedings against the Noticee.

## Takeover Panel order in the matter of Secur Industries Limited

### Facts:

Mr. H.P. Agarwal along with persons acting in concert with him namely, Mr. Ashutosh Agarwal, Utpal Agarwal, H.P. Agarwal & Company Private Limited, Mrs. Bandana Agarwal, and H.P. Agarwal (HUF) (acquirers) are part of the promoter group of the Secur Industries Limited (Target Company) and currently holds 7,13,207 equity shares of the target company constituting 17.49% of its paid up capital.

Takeover Panel granted the exemption where the Target Company is financial weak company and there is no change in control.

Now the acquirers proposes to acquire 12 Lakh equity shares by way of preferential allotment and 10 Lakh warrants (convertible into equity shares) thereby increasing the holding of the acquirers from 17.49% to 46.40% of post conversion of warrants resulting into triggering regulation 11(1) of the SEBI Takeover Code. Therefore, the acquirers have filed this present application seeking the exemption from the applicability of SEBI Takeover Code on the following grounds:

### Grounds of Exemption:

1. No change in control.
2. The target company owes unsecured loan of Rs.1.20 Crore to the acquirers. However, due to the loss for last many years, it was not in a position to pay off such debts.
3. Thus, to revive the financial position and to meet the long term and short term working capital requirements, it is proposes to convert the unsecured loan into equity shares and to induce further funds by way of preferential allotment.

### Decision:

The application was presented to the Takeover Panel who directed the Target Company to once again pass the resolution through the postal ballot and thereafter approach to SEBI for exemption. Accordingly after passing the resolution, the acquirers have once again approached the SEBI. The said application was once again forwarded to Takeover Panel for consideration. On the basis of above facts and circumstances and considering present financial position of the

Target Company, Takeover Panel recommended the case for exemption and SEBI also accepted its recommendation.

### Takeover Panel order in the matter of Surya Pharmaceutical Limited

#### Facts:

1. Futuristic Garments Private Limited (acquirer) belongs to the promoter group of the Surya Pharmaceutical Limited (Target Company) and holds in 35.15% of the paid up capital of the Target Company along with other promoters.
2. To comply with the stipulation imposed by IDBI for the release of financial assistance, the promoters of the Target Company are desirous to increase their holding to 51% by acquisition of 47,00,000 equity shares of the Target Company by way of preferential allotment of 47,00,000 zero coupon convertible share warrants optionally convertible into equity shares.
3. On April 07, 2008, the acquirer has filed the application seeking the exemption from the applicability of regulation 10, 11 and 12 of the SEBI Takeover Code in respect of above acquisition of shares. However, the application was rejected by Takeover Panel on the ground that certain information/ documents are not provided by the acquirer.
4. Thus, on March 9, 2009, the Target Company has filed the revised application on behalf of the acquirer.

Takeover Panel rejected the exemption application where the Target Company is a financial sound company and the public shareholding is quiet substantial.

#### Grounds of Exemption:

1. The Target Company is in need of fund and had therefore approach the IDBI.
2. The IDBI has sanctioned Fund Based and Non Fund Based facilities of Rs. 38 crores subject to the acquirer increasing their shareholding to 51%.
3. No change in the Management.
4. Funds are required to meet the working capital requirement
5. Making public offer would not be suitable because of the volatile market conditions

**Decision:**

Takeover Panel rejected the exemption application on the ground that the preferential allotment of Equity Shares/Warrants convertible into shares is not eligible for exemption per se but the exemption may be granted on case-to-case basis, particularly, where the target company has become sick and infusion of funds by the promoters/acquirers is stipulated under CDR Mechanism. However, proposed acquisition does not fall into any such category which deserves the grant of exemption from the provisions of the Takeover Regulations. Further as the public shareholding in the Target Company is approx 65%, therefore, granting an exemption would prejudice the interest of large group of shareholders.

**Consent Order in the matter of Veronica Laboratories Limited**

Adjudication proceedings were initiated by the SEBI against VSFL Capital Limited (Noticee) for the alleged violation of regulation 10, 11(1) and 12 of the SEBI Takeover Code in the matter of acquisition of shares of Veronica Laboratories Limited. Pending the adjudication proceedings, the Noticee has vide letter dated March 11, 2008 filed this consent application and proposed to pay Rs.5,00,000 towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said proceedings against the Noticee.

**Consent Order in the matter of Whitemoon Trading Company Private Limited**

Whitemoon Trading Company Private Limited (Noticee) failed to make the disclosure under regulation 7(1) and 7(2) of the SEBI Takeover Code and regulation 13(1),13(3) and 13(5) of SEBI Insider Trading Regulations. Therefore, SEBI vide its letter dated June 2 , 2006 initiated the adjudication proceedings against the Noticee for the above non compliances. Pending the adjudication proceedings, the Noticee has filed this consent application and proposed to pay Rs.1,50,000 towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said proceedings against the Noticee.

### **Consent Order in the matter of Devaki Hospital Limited**

Adjudication proceedings were initiated against Subhash Ganeriwala and Saroj Ganeriwala (Noticees) for the violation of regulation 7(1) of the SEBI Takeover Code in the matter of acquisition of shares of M/s Devaki Hospital Limited. Pending the adjudication proceedings, the Noticees have filed this consent application and proposed to pay Rs.1,00,000 as settlement charges and Rs.25,000 as administrative charges towards the consent terms. The terms as proposed by the SEBI were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said proceedings against the Noticees.

### **Consent Order in the matter of Universal Print Systems Limited**

Vide gift deed dated July 21, 2005, Rakesh Kukillaya (Applicant) acquired 3.20% of the share capital of Universal Print Systems Limited (Target Company) from his grand father Mr. R. B. Kukillaya (Transferor). It is to be noted that as both the applicant as well as the transferor belongs to the promoter group of the Target Company, therefore, the acquisition is qualified for exemption under regulation 3(1)(e)(iii) of the SEBI Takeover Code. However, one of the condition for availing the exemption in terms of regulation 3(1) (e) (iii) is the compliance with regulation 3(4) of the SEBI Takeover Code. However, the applicant failed to file the report under the said regulation. Accordingly, vide letter dated June 21, 2008, the applicant has filed this present consent application and proposed to pay Rs.75000 towards the consent terms. The terms as proposed by the SEBI were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said proceedings against the applicant.

### **Consent Order in the matter of Shivalik Rasayan Limited**

Shivalik Rasayan Limited ('applicant') failed to make disclosures under Regulations 6(2) and 6(4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and under Regulation 8(3) of the said Regulations for the years 1997 to 2007. Therefore, the applicant has vide letter dated February 12, 2008 filed this consent application and proposed to pay Rs.2,65,000 as settlement charges and Rs.10,000 as administrative charges towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above violation done by the applicant.

### **Consent Order in the matter of Veronica Laboratories Limited**

Adjudication proceedings were initiated by the SEBI against Nazir Hakeem (Noticee) for the alleged violation of regulation 10, 11(1) and 12 of the SEBI Takeover Code in the matter of acquisition of shares of Veronica Laboratories Limited. Pending the adjudication proceedings, the Noticee has filed this consent application and proposed to pay Rs.5,00,000 towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of the said proceedings against the Noticee.

#### **Consent Order in the matter of Fusion Fittings (I) Limited**

Fusion Fittings (I) Limited ('applicant') made the disclosures under Regulations 6(2) and 6(4) of the SEBI (SAST) Regulations for the year 1997 and under Regulation 8(3) of the said Regulations for the years 1997 to 2007 with considerable delay.

Therefore, vide letter dated February 14, 2009, the applicant has filed consent application for the settlement of the violations done under SEBI (SAST) Regulations, 1997 and proposed to pay Rs.2,75,000 as settlement charges and Rs.10,000 as administrative charges towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI settled the violations done by the applicant.

#### **Consent Order in the matter of Greaves Cotton Limited**

Mr. Karan Thapar (applicant) made the disclosure under regulation 3(3) of the SEBI Takeover Code in respect of acquisition of 49,49,306 shares of Greaves Cotton Limited (Target Company) on April 03, 2006 with a delay of 16 days. Therefore vide letter dated May 21, 2008, the applicant has filed this consent application for the settlement of above violation and proposed to pay Rs.25,000 as the settlement charges and Rs.10,000 as administrative charges. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI settle the above violation of the applicant.

#### **Consent Order in the matter of English Indian Clays Limited**

Mr. Karan Thapar (applicant) made the disclosure under regulation 3(3) of the SEBI Takeover Code in respect of acquisition of 4,24,809 shares of English Indian Clays Limited (Target Company) on April 03, 2006 with a delay of 16 days. Therefore vide letter dated May 21, 2008, the applicant has filed this consent application for the settlement of above violation and proposed to pay Rs.25,000 as the settlement charges and Rs.10,000 as administrative charges. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI settle the above violation of the applicant.

## Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Capital Trust Limited <b>Regd. Office</b> Gwalior <b>Paid up capital</b> Rs.7.50 crore <b>Listed At</b> BSE	I. C. Construction & Services Limited along with PACs	Offer to acquire 15,00,000 (20%) Equity Shares at a price of Rs 10.00 per share payable in cash.	<b>Regulation 11(1)</b> SPA to acquire 1816500 (24.22%) Equity Shares at a price of Rs.7 per share payable in cash increasing the holding of Promoters Group from 28,95,206 (38.60%) Equity Shares to 4711706 (62.82 %) Equity Shares.	<b>Merchant Banker</b>  D&A Financial Services (P) Limited  <b>Registrar to the Offer</b>  Mas Services Private Limited
Globe Capital Market Limited <b>Regd. Office</b> New Delhi <b>Paid up capital</b>	CVCIGP II Client Rosehill Limited and CVCIGP II Employee Rosehill Limited along	Offer to acquire 3,12,501 Equity Shares representing 20% of the expanded	<b>Regulation 10</b> Conversion of Compulsorily Convertible	<b>Merchant Banker</b>  Ernst & Young Merchant Banking Services Private

Rs.1.56 Crores <b>Listed At</b> DSE	with PACs	capital of the Target Company at a price of Rs.5,248 per share payable in cash.	Preference Shares into Equity Shares increasing the acquirer's shareholding from 2,19,724 (14.95%) Equity Shares to 3,12,501 Equity Shares representing 20% of the expanded capital.	Limited. <b>Registrar to the Offer</b> Skyline Financial Services Private Limited
Confidence Trading Company Limited <b>Regd. Office</b> Chennai  <b>Paid up capital</b> Rs.5.0 Lacs <b>Listed At</b> BSE	Suresh Kumar Somani	Offer to acquire 10,000 Equity Shares representing 20% of the paid up capital at a price of Rs.5 per share payable in cash.	<b>Regulation 10 and 12</b> SPA to acquire 36,500 (73%) Equity Shares at a price of Re. 1.0 per share aggregating to Rs.36,500 payable in cash	<b>Merchant Banker</b>  Anand Rathi Financial Services Limited.  <b>Registrar to the Offer</b> Adroit Corporate Services Private Limited
Great Offshore Limited (Competitive Bid) <b>Regd. Office</b> Mumbai <b>Paid up capital</b> 37.14 crores <b>Listed At</b> BSE & NSE	Eleventh Land Developers Private Limited and ABG Shipyard Limited (PAC)	Competitive Bid to acquire 1,25,71,072 Equity Shares representing 32.12% of the diluted share capital at a price of Rs.375 per share.	<b>Regulation 10, 12, 25(1) and 25(3)</b> Competitive bid to the offer of Bharati Shipyard Limited.	<b>Merchant Banker</b>  Kotak Mahindra Capital Company Limited.  <b>Registrar to the Offer</b> Karvy Computershare

				Private Limited
<p>Sterling Holiday Resorts (India) Limited</p> <p><b>Regd. Office</b> Chennai</p> <p><b>Paid up capital</b> Rs.18.22 Crores</p> <p><b>Listed At</b> ASE, CSE, BSE and DSE</p>	<p>Indus Hospitality Fund Limited along with India Discovery Fund Limited</p>	<p>Offer to acquire 95,85,717 Equity Shares representing 20% of the expanded capital at a price of Rs.36.25 per share payable in cash.</p>	<p><b>Regulation 10 and 12</b></p> <p>Preferential allotment of 78,82,200 Equity Shares representing 18.80% of the share capital at a price of Rs. 35 per share amounting to Rs.27,58,77,000.</p>	<p><b>Merchant Banker</b> Collins Stewart Inga Private Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>
<p>Great Offshore Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> 37.14 Crores</p> <p><b>Listed At</b> BSE &amp; NSE</p>	<p>Natural Power Ventures Private Limited (NPVPL), Bharati Shipyard Limited (BSL) and Dhanshree Properties Private Limited (DPPL)</p>	<p>Voluntary Offer to acquire up to 78,26,788 Equity Shares representing 20% of the Emerging Capital at a price of Rs.344 per share payable in cash.</p>	<p><b>Regulation 10</b></p> <p>On date of PA the acquirers along with the PACs holding 14.89% share capital have made this Voluntary open offer For Substantial acquisition of shares.</p>	<p><b>Merchant Banker</b> SBI Capital Markets Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>
<p>OCL Iron and Steel Limited</p> <p><b>Regd. Office</b> Orissa</p> <p><b>Paid up capital</b> Rs.13.41 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	<p>Garima Buildprop Private Limited and Gateway Impex Private Limited</p>	<p>Offer to acquire 26,828,632 (20%) Equity Shares at a price of Rs.21 each payable in cash.</p>	<p><b>Regulation 10 and 12</b></p> <p>Acquisition of 13,414,316 (10%) through the Block Deal and SPA to acquire 68,185,546 (50.83%) Equity Shares at a price of Rs.21 per share payable in cash.</p>	<p><b>Merchant Banker</b> ICICI Securities Limited</p> <p><b>Registrar to the Offer</b> Beetal Financial &amp; Computer Services Private Limited</p>

## Hint of the Month

*“Where the acquirer has deposited in escrow account, after assuming the full acceptances, 100% of the consideration payable in cash where the consideration payable is in cash and in the form of securities where the consideration payable is by way of issue, exchange or transfer of securities or combination thereof, 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 except where the offer has been made under regulation 21 A.”*

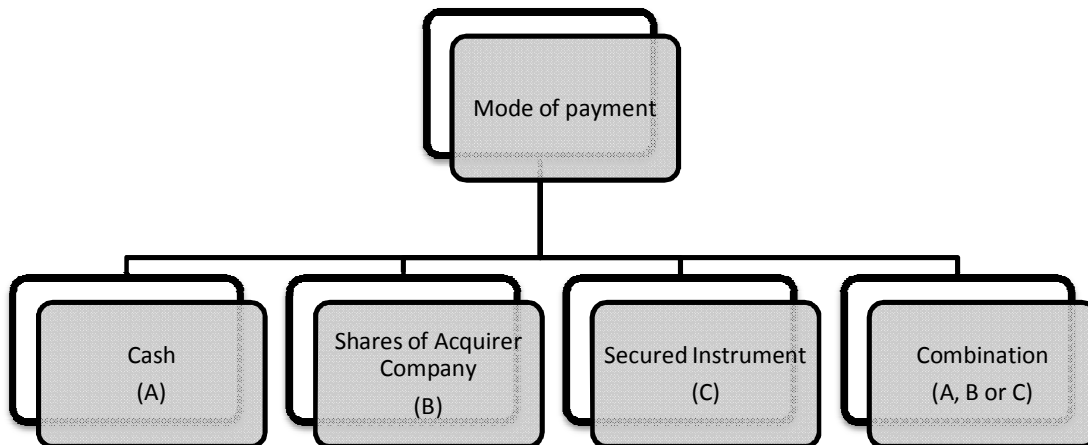
*{As substantiated from Second proviso to regulation 22 (7)}*

## Regular Section

### Mode of Payment of offer price

When an acquirer has made the open offer under the SEBI (SAST) Regulations, 1997, the acquirer is required to pay the consideration for the shares tendered in the open offer. For payment of consideration to the shareholders for the shares tendered by them, he has been given an option under the regulations with regard to the mode of payment of offer consideration. It is

noteworthy to mention here is that SEBI (SAST) Regulations, 1997 have separately prescribed the provision relating to the mode of payment of offer consideration and the method of deposit of payment consideration in the escrow account. The method of deposit in escrow account may be different from the mode of payment of offer consideration to the shareholders. A brief analysis of provisions relating to the mode of payment of offer consideration to the shareholders is detailed below:



Regulation 20(2) of the SEBI (SAST) Regulations, 1997 dealt with the mode of payment of offer consideration and provides that offer price shall be payable -

- (a) in cash ;
- (b) by issue, exchange and, or transfer of shares (other than preference shares) of acquirer Company, if the person seeking to acquire the shares is a listed body corporate; or
- (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum “A” grade rating from a credit rating agency registered with the Board;
- (d) a combination of clause (a),(b)or (c).

Thus, in terms of regulation 20(2), the acquirer is free to make the payment to the shareholders of Target Company in any mode as he desires.

**Points to be taken into consideration:**

However, the following points are relevant to determine the mode of payment of consideration to the shareholders for shares tendered by them in the open offer:

- Where the acquirer has purchased any shares from the existing shareholders of the Target Company during the preceding 12 months under any agreement or pursuant to the acquisition in the open market or in any other manner and has made the payment in cash, then he is required to give an option to the shareholders of Target Company to accept payment either in cash or by exchange of shares or other secured instruments.
- The mode of payment of offer consideration may also be altered by the acquirer in case of revision in the offer price or offer size provided that the amount to be paid in cash as provided in the public announcement or letter of offer is not reduced.
- In case the offer price consists of consideration payable in the form of securities issuance of which requires approval of the shareholders, then such approval shall be obtained by the acquirer within seven days from the date of closure of the offer.

Provided that in case the requisite approval is not obtained, then the acquirer shall pay the entire consideration in cash.

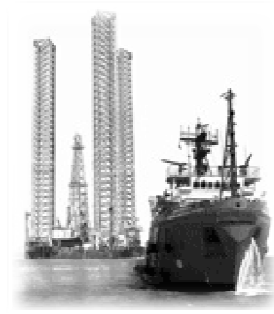
- Where an option has been given by the acquirer to the shareholders of the Target Company to accept payment either in cash or by way of exchange of security, then in that case pricing for the cash offer could be different from that of a share exchange offer or offer for exchange with secured instruments provided that the disclosures in the letter of offer contains suitable justification for such differential pricing and the pricing is subject to other provisions of this regulation as may be applicable.
- The determination of price of shares of Acquirer company shall be determine in the same manner as provided under the regulations for the determination of offer price for the shares of Target Company and shall be duly certified by independent Merchant Banker other than the Manager to the offer or an independent chartered accountant of minimum 10 years standing or a Public Financial Institution.

## Case Study

### Takeover Battle for Great Offshore Limited

### **About Great Offshore Limited (“Target Company”)**

Great Offshore is India's prominent integrated offshore oilfield services provider offering a broad spectrum of services to upstream oil and gas producers to carry out offshore exploration and production (E&P) activities.



### **Bidders in Race**

Bharati Shipyard Limited (“**BSL**”) is engaged in the business of shipbuilding, shipping, naval architecture, ocean engineering, repairs and maintenance for all kinds of ships and trade in vessels.

On May 30, 2009, BSL decided to make the voluntary open offer to the shareholders to the shareholders of Target Company through its wholly owned subsidiary Natural Power Ventures Private Limited (“**Acquirer or NPVPL**”). As on the date of PA, NPVPL along with the BSL and Dhanshree Properties Private Limited (“**DPPL or PACs**”) holds 14.89% of the paid up capital of the Target Company.

On June 03, 2009, the acquirer along with PACs have made this voluntary open offer to acquire upto 78,26,788 Equity Shares representing 20% of the Emerging Capital (assuming full conversion of outstanding FCCBs) of the Target Company at a price of Rs.344 per share payable in cash amounting to Rs.269,24,15,072.

### **Competitive Bid by Eleventh Land Developers Private Limited**

Chasing the offer of BSL, on June 23, 2009, Eleventh Land Developers Private Limited along with ABG Shipyard Limited (PAC) have made the competitive bid to the offer of BSL to acquire 1,25,71,072 Equity Shares representing 32.12% of the diluted share capital of the Target Company at a price of Rs.375 per shares.

### **Analysis of open offers**

Although Eleventh Land Developers Private Limited has made the open offer at a price (Rs.375 per share) higher than the price offered by BSL i.e. Rs.344 per share, however, taking into consideration the ruling market price (approx. Rs. 425.55 per share) of shares of the Target Company, it is apprehended that both the BSL and Eleventh Land Developers Private Limited have to revise their offer price in harmony with the ruling market price.

## Market Update

### **Revision in the offer price of Pfizer Limited**

Pfizer Investments Netherlands B.V. and Pfizer Inc.(PAC) who has earlier made the offer for the acquisition of shares Pfizer Limited has revised the offer price from Rs.675 per share to Rs.830 per share.

### **Gitanjali Gems acquisition in MobileNXT**

Gitanjali Gems, a Jewellery maker, has acquired a 70% stake in mobile retail chain MobileNXT Teleservices Private Limited. Now onwards, MobileNXT will be branded as 'Hoop' and will also sell items like fashion jewellery, watches, eyewear, etc. besides the mobile phones.

### **Another preferential allotment to Tech Mahindra in Satyam**

Satyam Computers is now planning to make another preferential allotment to Tech Mahindra taking into consideration the bad response received in the open offer made by the Tech Mahindra. The reason behind such response could be offer price as the ruling market was around Rs.70 per share which is much higher than the offer price of Rs.58 per share or the confidence of investors in new management.

### **Private equity majors in race for acquisition of stake in USL**

Kohlberg Kravis Roberts & Co (KKR), Blackstone and Capital International are in race to acquire stakes in world's third-largest liquor marketer "United Spirits" (USL). The acquisition will be made through issue of fresh shares, and sale of the remaining treasury stock.

## Takeovercode.com successfully completed its 1<sup>st</sup> Year

Takeovercode.com, a web portal to provide online solutions for SEBI Takeover Code completed its first year on 1st July 2009. The website which was launched last year by Sh. C B Bhave, Chairman, SEBI has come out as a unique venture to solve the legal complexities and has gained successful recognition. During the year, this knowledge portal has added various useful features for the users which aids in preparing the pledge disclosures, annual disclosures required under the Code. The features for analysis of open offers, open offer score board and determination of non-compete fees has also added. In its first year itself, this business model has also received TATA –NEN Hottteststartups Award 2008 for being the most innovative business model. In order to further address the issues of users, it had also launched two books on SEBI Takeover Code.

Takeovercode.com owes this entire success to its members, therefore now on completion of its first year, takeovercode.com has given a new look and feel to its users with latest features of Zoom-in which gives a detailed analysis of hot takeover cases to address the queries and issues of users and SEBI Structure.

The journey so far of takeovercode.com has been full of achievements and continuing with the same zeal, and it is our confidence that we will be able to reach new heights in the coming year with the continuous support and appreciation of our users.

## Our Team

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