

# TAKEOVER PANORAMA

A Monthly newsletter by Corporate Professionals

Year VI—Vol VI

June Edition

Latest Open Offers

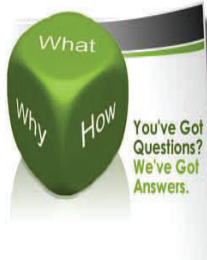


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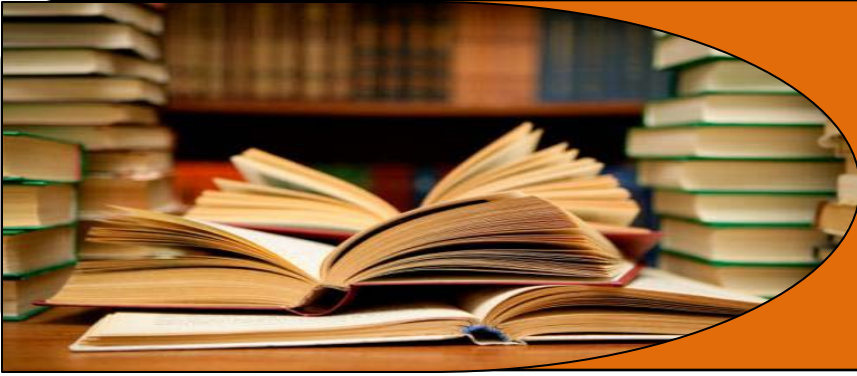
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# LEGAL UPDATES

## SAT Order in the matter of Nikhil Mansukhani (MAN Industries (India) Limited)

### FACTS

1. This Appeal is filed before the Hon'ble SAT by Nikhil Mansukhani (Appellant) against the order passed by the Adjudicating Officer on September 30, 2011 imposing a penalty of Rs.10 crores on the appellant and other entity namely Mrs. Anita Mansukhani and M/s JPA Holdings Ltd. (Appellants) for violating the provisions of Regulation 11(1) read with second proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997 in respect of acquisition of shares of MAN Industries (India) Limited (Target Company).

#### 2. The brief facts of the case are:

2.1. The Target Company was promoted by Mr. J. L. Mansukhani and his two sons Mr. R. C. Mansukhani (RCM) and Mr. J. C. Mansukhani (JCM).

2.2. Mr. Nikhil Mansukhani (Appellant) belongs to RCM group whereas Mrs. Anita Mansukhani and M/s JPA Holdings Ltd. belong to the JCM group.

2.3. Acquisition of shares from market by Mr. J. C. Mansukhani during the quarter ended September 2010.

2.4. On June 15, 2010- Allotment of 2,50,000 equity shares to Mr. Nikhil Mansukhani, promoter of Company upon conversion of 2,50,000 warrants

2.5. On June 19, 2010-Allotment of 10 lacs equity shares to Mr. Nikhil Mansukhani, Mrs. Anita Mansukhani and M/s JPA Holdings Ltd. upon conversion of 10 lacs warrants.

2.6. Pursuant to the conversion of aforesaid warrants and acquisition from market, the shareholding of promoter group increased from 53.36% to 55.18%, which has resulted into triggering Regulation 11(1) read with second proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997. However no Public Announcement was made by appellants.

#### Snapshot

Hon'ble SAT held that a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer.



2.7. On being show cause notice issued, the appellants denied that they were 'persons acting in concert' within the meaning of regulation 11(1) read with second proviso to regulation 11(2) of SEBI (SAST) Regulations, 1997.

### 3. Contention:

- 3.1. There was a serious rift between RCM and JCM, two of the promoters of the company since October 2009.
- 3.2. Mr. J. C. Mansukhani, did not disclose the acquisition of shares of Target Company by him and his associate company from the market a few days earlier to the conversion of warrants into shares as stated above. The total shareholding of the promoter group, consequent to the allotment against conversion of warrants, increased to 54.93% only of the total capital of the company which was well within the permissible limits. Since the three entities i.e. Mr. Nikhil Mansukhani, Mrs. Anita Mansukhani and M/s JPA Holdings Ltd. were not acting in concert, they have not violated the provisions of SEBI (SAST) Regulations, 1997.
4. The adjudicating officer did not accept the explanation given by the appellant and imposed a penalty of Rs. 10 crores on all the three entities.

## ISSUES:

Whether a co-promoter of Target Company, merely by reason of his being a co-promoter, can be presumed as person acting in concert with the acquirer who also happens to be one of promoters of Target Company even if they does not have any common objective or purpose for acquisition of shares or voting rights?

## DECISION:

While interpreting the definition of Person acting in concert as given under Regulation 2(1) (e) of SEBI (SAST) Regulations, 1997, Hon'ble SAT relied on the judgment of Supreme Court in the case of ***Daichi Sankyo Co. Ltd.*** wherein it was observed that:

*"The idea of "person acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal*



*or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine qua non for the relationship of “person acting in concert” to come into being.”*

Further the Bombay High Court in the case of **K. K. Modi vs. Securities Appellate Tribunal** had observed that:

*“a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer.”* Therefore after considering the submissions, Hon’ble SAT held that the adjudicating officer, while passing the impugned order has not considered the principles of law laid down in the above noted two judgments. There was sufficient material available on record to show that the dispute between the two promoter groups is continuing since 2009. Thus it was for the Board to bring sufficient material on record to show that inspite of conflict among the promoters, the members of the two groups were acting in concert while acquiring the shares.

Accordingly the Hon’ble SAT set aside the impugned order and remand the matter to the Board for passing a fresh order dealing with the submissions made by the appellants in their reply dated June 20, 2011 and more particularly, the law laid down in the two judgments referred to above.

## **Exemption Order in the matter of Gem Spinners India Limited**

### **F**ACTS

1. Mr. R. Veeramani, Mr. S.R. Asaithambi, Mr. R. Sekar and Mr. S.R. Kumar (Applicants) are Promoters of the Target Company. The Target Company is engaged in manufacturing of cotton yarn and had setup a spinning unit with 25,000 Spindles during 1994 with a project cost of Rs. 68 crores funded by IDBI Bank and ICICI Bank in foreign currency loan in Deutsche Mark.



2. In the year 1999, due to 100% erosion of capital, the Target Company was referred to BIFR. However, the performance of the Target Company had improved during 2005 and 2006 and the Target Company opted out of BIFR on August 17, 2006. However, as a measure to strengthen the Target Company's eroding Network, the applicants promoters have brought in Rs 36.75 crores towards their equity and unsecured loan for the business of the Target Company.
3. On March 31, 2009, the net worth of Target Company's had again become negative (Rs.66.58 lakhs) due to the factors beyond its control, therefore the Target Company again filed a reference with BIFR on November 04, 2009.
4. By March 28, 2011 the Target Company had settled all the dues aggregating to Rs. 1232.56 lakhs of ICICI Bank and IDBI Bank under the OTS scheme.
5. The IOB (Target Company's banker) while granting credit facilities to fund the working capital of the Target Company insisted the promoters (applicants) to convert their unsecured loans into equity shares to make the net worth of the Target Company positive so that it can come out of the BIFR.
6. Accordingly, the Target Company proposes to make preferential allotment of 2,00,00,000 equity shares (32.59% of the expanded capital) of Rs.5/- each to the applicants pursuant to the conversion of a portion of (Rs. 10 crore) their unsecured loan and the same was approved by the shareholders of the Company and thereafter on November 30, 2011, the company has been deregistered from BIFR.
7. Pursuant to the proposed acquisition of 2,00,00,000 equity shares by the applicants, the total promoters shareholding will increase from 54.25% to 69.16% and the applicants' shareholding would increase from 54.03% to 69.02% in the Target Company which would result into triggering of Regulation 3 of SEBI (SAST) Regulations, 2011. Accordingly, the Applicants have filed the application seeking exemption from compliance of Regulation 3 of SEBI (SAST) Regulation, 2011 for acquisition of shares of Target Company on the following grounds.

### Snapshot

SEBI granted exemption/relaxation to the Applicant from strict compliances of making open offer pursuant to preferential allotment of equity shares upon conversion of unsecured loan of the applicant to keep the target company's net worth positive so that it is out of BIFR reference and it can get investment and business subject to the fulfillment of the conditions as may be imposed by SEBI.



## GROUNDS OF EXEMPTION

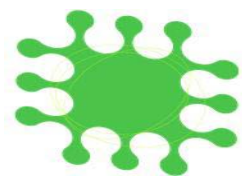
1. The proposed allotment of equity shares is pursuant to the direction given by IOB while granting the fund to the Target Company.
2. Loan amount of Rs.10 crores against which the equity shares are proposed to be allotted to the promoters has made the Net worth of the Target Company positive as it was adjusted as 'share application money' and now it forms part of net worth of the Target Company.
3. The facts, circumstances and the reasons for exemption still survive and if the exemption is not granted, the promoters may not convert the portion of their unsecured loan as proposed and the Target Company will have to face the consequential impact of again becoming its net worth negative.
4. The proposed preferential allotment of equity shares upon conversion of unsecured loan of the applicants is for the benefit of the Target Company and its shareholders
5. No change in control over the Target Company.



## DECISION

WTM noted that the applicants have extended financial assistance to the Target Company from time to time by way of loans so as to save it from financial problems. The applicants have given an unsecured loan of Rs. 20.17 crore out of which only Rs. 10 crore is proposed for conversion into equity shares. The proposed conversion of loan of the applicants would keep the target company's net worth positive. It was further noted that if the applicants do not convert unsecured loan into equity shares, financial health of the company will worsen and public shareholders will suffer. Therefore, proposed infusion of funds by the applicants would be in the interest of the Target Company and also its public shareholders. Further the applicants will not make any personal gain from the proposed conversion.

Therefore after considering all the facts of the case, SEBI granted exemption to the Applicants from the requirement of making Open Offer under Regulation 3 of SEBI (SAST) Regulations, 2011 on the basis that the facts and statements given by the Applicants are true and the Applicants will comply with the other provisions of SEBI (SAST) Regulations, 2011, Listing Agreement or any other law as may be applicable. Further the proposed transaction shall be completed within 15 days from the date of order and the applicants shall file a report with SEBI as specified under Regulation 10(7) of SEBI (SAST) Regulation, 2011.



## Exemption Order in the matter of Dr. Reddy's Laboratories Ltd

### FACTS

1. Dr. Reddy's Laboratories Ltd (Target Company) is a Pharmaceutical Company having its shares listed on BSE and NSE and its Depository Receipt are listed on New York Stock Exchange. As per shareholding pattern of the Target Company as on June 30, 2011, the total promoter shareholding was 25.61%. Out of the said shareholding Dr. Reddy's Holding Limited (DRHL) holds 23.08% and other promoters collectively hold 2.53%.
2. APS Trust (Acquirer/Applicant) is a private family trust. The Trustees of the APS Trust are Dr. K. Anji Reddy, Mr. Satish Reddy and Mr. G. V. Prasad.
3. Dr. K. Anji Reddy, Mr. Satish Reddy, Mr. G.V. Prasad, Ms. G. Anuradha, Ms. Deepti Reddy, Ms. K. Samrajyam and Ms. G. V. Sanjana Reddy ("Transferors") holds 83.17% shares in DRHL and remaining 16.83% shares hold by K. Satish Reddy (HUF) & G.V. Prasad (HUF).
4. The Reddy Family proposes to transfer their 83.17% shareholding in DRHL to APS Trust as represented by its trustees by way of gift/settlement in the trust. Pursuant to said transfer, the acquirer would indirectly hold 23.08% in the Target Company. The PACs are indirectly holding 2.53% shares in Target Company. Therefore the acquirer along with PAC would collectively be holding 25.61% in the Target Company which would trigger Regulation 3(1) of SEBI (SAST) Regulations, 2011.
5. Accordingly G. V. Prasad (Applicant/Acquirer) in the capacity of Trustee of the APS Trust subsequent to the notification of SEBI (SAST) Regulation 2011, have filed the application under Regulation 11(1) seeking exemption from compliance of Regulation 3(1) of SEBI (SAST) Regulation, 2011 for the indirect acquisition of shares of Target Company on the following grounds:

#### Snapshot

SEBI granted exemption to the Applicant in respect of indirect acquisition of shares of Target Company pursuant to the acquisition of a company holding 23.08% in the Target Company and also belongs to its promoter group.



## GROUND OF EXEMPTION

1. The indirect acquisition will take place pursuant to a private family arrangement intended to streamline succession and welfare of the Reddy family and is a non-commercial transaction which will not prejudice the interests of the public shareholders of the Target Company.
2. The proposed gift of 83.17% of the shares of DRHL to the APS Trust is only an internal reorganization within the Reddy Family. There will be no change in control or management of the Target Company pursuant to the proposed gift to the APS Trust.
3. There will be no change in the shareholding pattern for promoter group of the Target Company.
4. The change in the identity of persons who will indirectly exercise voting rights over the Target Company through DRHL will only be between persons who, in their personal capacities, are promoters of the Target Company and are also relatives of the Transferors.



## DECISION

WTM noted that the trustees of APS are also promoters of Target Company. The Acquirer currently does not hold any shares in the Target Company. However pursuant to the proposed indirect acquisition the shareholding of the Acquirer along with PAC would go up from 2.53% to 25.61%. It is further observed that the transaction will take place between two entities namely Trustees of APS Trust and promoters-transferors of Target Company which comprises same set of individuals i.e. Dr Reddy's family. Moreover pursuant to the said indirect acquisition, the pre and post shareholding of Promoter Group of the Target Company will remain unchanged and there will not be any change in the management or control of the Target Company. .

Therefore after considering the recommendation of Takeover Panel and facts of the case, SEBI granted exemption to the Acquirer from the requirement of making Open Offer under Regulation 3(1) of SEBI (SAST) Regulations, 2011 on the basis that the facts and statements given by the Acquirers are true and the acquirers will comply with the other provisions of SEBI (SAST) Regulations, 2011, Buy Back Regulations, Listing Agreement or any other law as may be applicable. Further the proposed transaction shall be completed within 30days from the date of order and report will be filled with the SEBI within 21 days from the date of acquisition in a manner provided SEBI (SAST) Regulation, 2011.





## Adjudicating/WTM orders

TARGET COMPANY	NOTICEE	REGULATIONS	PENALTY IMPOSED/ DECISION TAKEN
Gujarat Arth Ltd.	Kaustubh Credit and Holdings Ltd.	Regulation 4(1), 4(2) (a), (b), (e) and (g) of the SEBI (PFUTP) Regulations, 2003, Regulation 7(1) read with 7(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(1) & 13(3) read with 13(5) of SEBI (PIT) Regulations, 1992.	Rs. 12,00,000

## HINT OF THE MONTH

“**Conditional Offer**” means an offer in which acquirer has stipulated a minimum level of acceptance i.e. minimum number of shares which the acquirer desires to acquire under the offer.

If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer.

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





## Latest Open Offers

### Target Company

Artech Power Products Limited

### Registered Office

Cochin

### Networth of TC

Rs. 11.53 Lacs

### Listed At

BSE, MSE, DSE and CSE

### Industry of TC

Electric Equipment

### Acquirer

Nirmal Kumar Tiwari and  
Vikram Kumar Karanraj  
Sakaria

**Triggering Event:** SPA for acquisition of 9,83,900 Equity Shares constituting 26.07% of paid up equity share capital of the Target Company at a price of Re. 1 per share.

**Details of the offer:** Offer to acquire 9,81,318 (26%) Equity Shares at a price of Rs. 1.25 each payable in cash.

**Triggering Event:** SPA for acquisition of 31,26,400 Equity Shares constituting 45.61% of paid up equity share capital of the Target Company at a price of Rs. 4 per share payable in cash.

**Details of the offer:** Offer to acquire 17,82,248 (26%) Equity Shares at a price of Rs. 5.50 per share payable in cash.

### Target Company

Swagruha Infrastructure Limited

### Registered Office

Hyderabad

### Networth of TC

Rs. 53.99 Lacs

### Listed At

BSE

### Industry of TC

Infrastructure

### Acquirer

Somaraju Lakshmi Kalyani

**Target Company**

Emmsons International Limited

**Registered Office**

New Delhi

**Networth of TC**

Rs. 9761.63 Lacs

**Listed At**

BSE

**Industry of TC**

Trading

**Acquirer**

Anil Monga, Rajesh Monga, Manya Monga, Rashi Monga, Renu Monga, Shivaz Monga, Poonam Monga, B.B. Gandhi and Jagroop Singh (Acquirers) along with M/s Emmpac Holdings Pvt. Ltd. (PAC)

**Triggering Event:** Preferential allotment of 8,50,000 equity shares on conversion of warrants constituting 14.17% of the expanded paid up equity share capital of the Target Company post conversion of warrants.

**Details of the offer:** Offer to acquire 15,59,486 (26%) Equity Shares at a price of Rs. 123 per share payable in cash.

**Triggering Event:** SPA for acquisition of 16,34,71,449 Equity Shares constituting 76.81% of paid up equity share capital of the Target Company at a price of Rs. 50 per share payable in cash.

**Details of the offer:** Offer to acquire 5,20,93,447 (24.17%) Equity Shares at a price of Rs. 65.48 per share payable in cash.

**Target Company**

Thomas Cook (India) Limited

**Registered Office**

Mumbai

**Networth of TC**

Rs. 3,922.70 Millions

**Listed At**

BSE and NSE

**Industry of TC**

Travel Agencies

**Acquirer**

Fairbridge Capital (Mauritius) Limited (Acquirer) along with Fairfax (Barbados) International Corp., FFHL Group Limited and Fairfax Financial Holdings Limited (PACs)



**Target Company**

Welspun India Limited

**Registered Office**

Gujarat

**Networth of TC**

Rs. 668.96 Crore

**Listed At**

BSE and NSE

**Industry of TC**

Textiles

**Acquirer**

Krishiraj Trading Ltd. ("Acquirer") along with Welspun Mercantile Limited ("PAC")

**Triggering Event:** Purchase order with Prime Broking Company (India) Limited to acquire upto 50,00,000 (5.61%) equity shares at a price not exceeding Rs. 54 per share payable in cash.

**Details of the offer:** Offer to acquire 2,31,69,775 (26%) Equity Shares at a price of Rs. 54 per share payable in cash.

**Triggering Event:** Introduction in the Promoter Group and subscription to 12,12,800 (19.97%) Equity Share for a total consideration of Rs. 3.41 Cr. along with acquisition of control.

**Details of the offer:** Offer to acquire 15,79,153 (26%) Equity Shares at a price of Rs. 28.10 per share payable in cash.

**Target Company**

Delta Magnets Limited

**Registered Office**

Nasik

**Networth of TC**

Rs. 802.62 Lacs

**Listed At**

BSE and NSE

**Industry of TC**

Manufacturing of Megnets

**Acquirer**

SSI Trading Private Limited and Delta Real Estate Consultancy Private Limited



**Target Company**

Kailash Auto Finance  
Limited

**Registered Office**

Kanpur

**Networth of TC**

Rs. (135.26) Lacs

**Listed At**

BSE

**Industry of TC**

Finance

**Acquirer**

Panchshul Marketing  
Limited and Careful  
Projects Advisory  
Limited

**Triggering Event:** SPA for acquisition of 26,23,317 equity shares constituting 68.93% of paid up share capital of the Target Company

**Details of the offer:** Offer to acquire 9,89,534 (26%) equity shares at a price of Rs. 8 per share payable in Cash.

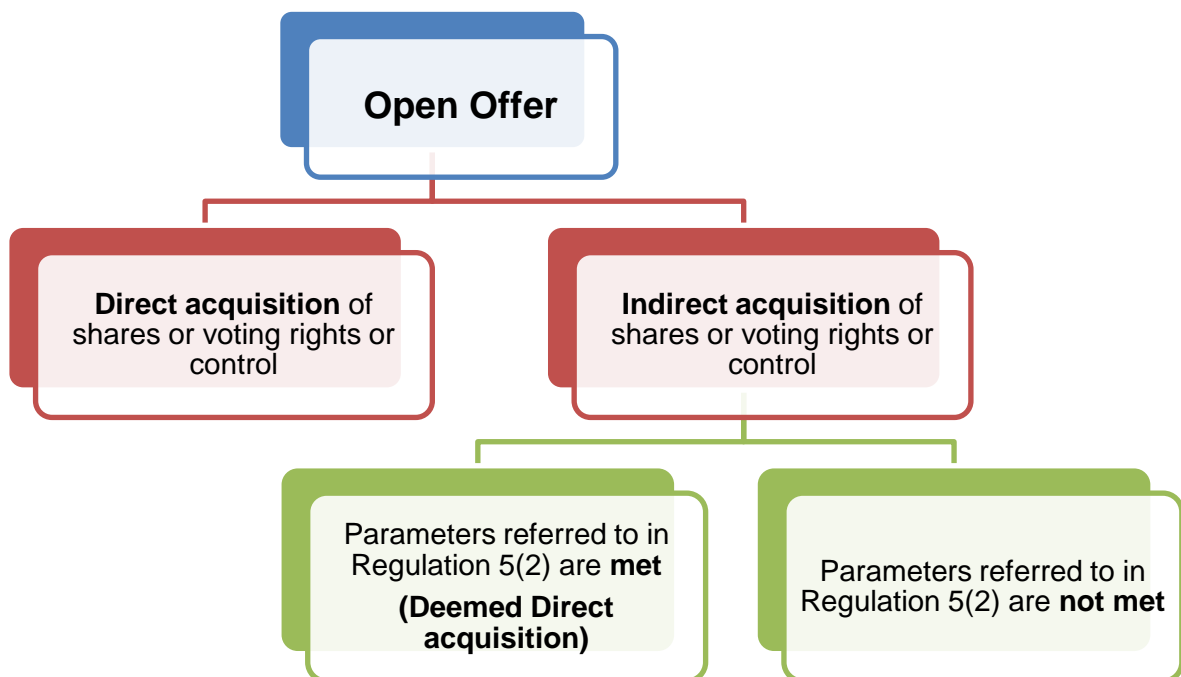


## Regular section

### OFFER PRICE – FOR DIRECT ACQUISITION

**Regulation 8** of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 contains the provisions regulating the pricing of an offer by listing out certain parameters which shall be considered for determining the fair price of an offer at which the exit opportunity is to be provided. The price arrived at as per these provisions is the minimum price specified and the acquirer cannot acquire the shares under offer below this price.

As per New SEBI Takeover Regulations, the offer can be triggered in the following manner:



This section deals with the calculation of offer price in case of Direct Acquisition of shares or voting rights in, or control over the Target Company.





## STEP I: DETERMINATION OF TRADING STATUS: FREQUENTLY OR INFREQUENTLY TRADED

Regulation 2(1)(j) of the SEBI (SAST) Regulations, 2011 provides the definition of Frequently Traded Shares. The definition is read as follows:

**“Frequently Traded Shares”** means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company:

Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares;

The frequently traded shares are those shares whose trading turnover during the 12 calendar months preceding the calendar month in which Public Announcement is made is atleast 10% of the total number of shares. Further if the total number of shares of the Target Company are not same throughout the 12 months time, then the trading turnover shall be calculated on the basis of weighted average number of total shares of such class of the Target Company.

### FOR EXAMPLE:

#### Case I: Where the total numbers of shares of Target Company are identical throughout 12 calendar months

Month in which Public Announcement is to be given: May, 2012

Company Name	Total No. of Equity Shares of the Target Company (1)	Total No. of equity shares traded during preceding 12 months from the month of PA (May 2011 to April 2012) (2)	Trading Turnover (2/1*100)	Status
A	10,00,000 shares	76,500 shares	7.65%	Infrequently Traded



<b>B</b>	10,00,000 shares	2,23,500 shares	22.35%	<b>Frequently Traded</b>
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**Case II: Where the total numbers of shares of Target Company are not identical throughout 12 calendar months:**


**Month in which Public Announcement is to be given: May, 2012**

Period	Total No. of Equity Shares of the Target Company	Weighted average number of total shares	Total No. of equity shares traded (2)	Trading Turnover (2/1*100)
May 2011 to February (10 months)	10,00,000 shares	=10,00,000*10/12 =8,33,333.33 shares	1,47,000 Shares	14.23%
March 2012 to April 2012 (2 months)	12,00,000 shares	=12,00,000*2/12 =2,00,000 shares		
<b>Weighted average number of total shares (1)</b>		=8,33,333.33+2,00,000 =10,33,333		
				<b>Frequently Traded</b>



## STEP II - DETERMINATION OF MINIMUM OFFER PRICE IN CASE OF FREQUENTLY TRADED SHARES:

In terms of Regulation 8(2) of SEBI (SAST) Regulations, 2011, the minimum offer price for direct acquisition of shares or control over the Target Company in case of frequently traded shares shall be the highest of following:

-  The **Highest Negotiated Price Per Share** of the Target Company for any acquisition under the agreement attracting the obligation to make a Public Announcement of an Open Offer; **[Regulation 8(2)(a)]**

Where the shares have been acquired pursuant to an Agreement-whether Share Purchase Agreement or Share Subscription Agreement or pursuant to some other Agreement:

- then the Highest Negotiated Price per share paid under the Agreement.



- The **volume-weighted average price paid** or payable for **acquisitions**, whether by the **acquirer or by any person acting in concert** with him, during the **52 weeks immediately preceding the date of the public announcement**; [Regulation 8(2)(b)]

If the Acquirer or the person in concert in him has acquired any shares of the Target Company during the preceding 52 weeks from the date of Public Announcement:

- then the volume weighted average price paid for such acquisitions.

**For example: Where Acquirer or the person in concert with him have made the following acquisitions preceding 52 weeks from the date of Public Announcement, then the volume-weighted average price shall be:**

Date	Price (1)	No. of shares (2)	Consideration (3=1*2)
10.06.2011	26.04	500	13020
22.08.2011	15.63	200	3126
06.01.2012	14.58	100	1458
05.02.2012	24.62	400	9848
16.03.2012	16.96	200	3392
<b>Total</b>		<b>1400</b>	<b>30844</b>
<b>Volume-Weighted Average Price (Total of 3/Total of 2)</b>		<b>22.03</b>	


- The **highest price paid** or payable for any **acquisition**, whether by the acquirer or by any person acting in concert with him, during the **twenty-six weeks immediately preceding the date of the public announcement**; [Regulation 8(2)(c)]

**For example: Where the Acquirer or the person in concert with him has acquired any shares of the Target Company during the preceding 26 weeks from the date of Public Announcement, then the highest price paid for such acquisitions shall be one of the criteria for determining the minimum offer price.**

Date	Price	No. of shares
11.11.2011	16.98	200
20.12.2011	15.60	100



14.02.2012	20.00	400
19.03.2012	24.92	200
<b>Highest Price Paid</b>	<b>24.92</b>	

-  The **volume-weighted average market price** of such shares for a period of **sixty trading days immediately preceding the date of the public announcement** as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded; **[Regulation 8(2)(d)]**

**For example:** If the trading turnover of shares of Target Company on BSE is 17.52% and on NSE is 15.75%, then the volume-weighted average market price will be calculated as per BSE.

Date	WAP
-	-
-	-
-	-
-	-
04.06.2012	20.12
05.06.2012	22.68
06.06.2012	21.11
07.06.2012	22.00
<b>Total of WAP</b>	<b>1230</b>
<b>Volume-weighted average market price (WAP/60)</b>	<b>20.5</b>

The minimum offer price shall be the highest of price determined under the above given criterion from i to iv. It may be noted that such highest price shall be minimum price for the offer; the acquirer can pay even a higher price to the shareholders.



### STEP III – DETERMINATION OF MINIMUM OFFER PRICE IN CASE OF INFREQUENTLY TRADED SHARES:

In case the shares of the Target Company are infrequently traded, the minimum offer price shall be the highest of the following:



- i. Criteria as mentioned in Para i, ii and iii under Step II will remain same.
- ii. Where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies **[Regulation 8(2)(e)]**

In case of infrequently traded shares, the following parameters shall be considered for determining the minimum offer price:

- a. Book value of the shares of the target company,
- b. Earning per share,
- c. Price earning multiple vis-à-vis the industry average
- d. Other parameters

The reason behind this is that in case of infrequently traded; the stock exchange price does not reflect the true picture of the state of affairs of the company. Therefore the above parameters shall be taken into consideration for determining the minimum offer price as they will evaluate the true state of affairs of the company.

## **O**THER PARAMETERS:

### ■ **Outstanding convertible instruments convertible into shares [Regulation 8(6)]**

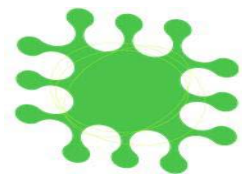
If the acquirer or any PAC with him has any outstanding convertible instruments convertible into shares of the Target Company at a specific price, then the price at which such instruments are to be converted into shares, shall also be considered as a parameter for calculating minimum offer price.

### ■ **Control premium or non-compete fees [Regulation 8(7)]**

Any amount paid as non-compete fees or control premium or otherwise to the sellers shall be added in the Offer Price to be paid to the shareholders of the Company. There is no prohibition in the payment of non-compete fees or control premium to the sellers.

### ■ **Offer price for partly paid up shares [Regulation 8(13)]**

The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears including calls remaining unpaid with interest, if any, thereon.



■ **Revision of Offer Price [Regulation 8(8)]**

If during the offer period, the acquirer or PAC with him acquire or agrees to acquire shares of the Target Company at a price higher than the offer price, then the acquirer shall revise the offer price to the highest price paid or payable for such acquisition.

## DIRECT ACQUISITION OF SHARES OR VOTING RIGHTS OR CONTROL OVER THE TARGET COMPANY

Parameters	Direct acquisition	
	Frequently Traded Shares	Infrequently Traded Shares
The highest negotiated price per share of the Target Company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;	√	√
The volume-weighted average price paid or payable for acquisition whether by the Acquirer or by any person acting in concert with him, during 52 weeks immediately preceding the date of the public announcement	√	√
The highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during 26 weeks immediately preceding the date of the public announcement	√	√
The volume-weighted average market price of such shares for a period of sixty trading days immediately the date of the public announcement	√	x
<b>Other Financial Parameters</b> a. Book value of the shares of the target company, b. Earning per share, c. Price earning multiple vis-à-vis the industry average d. Other parameters	x	√
Outstanding convertible instruments convertible into shares	√	√
Control premium or non-compete fees	√	√



# Case Studies

## SEBI Order in the matter of Golden Tobacco Limited: Matter Disposed off.

### ABOUT GOLDEN TOBACCO LIMITED (TARGET COMPANY):

Established in the year 1930 by late Shri. Narsee Monjee, Golden Tobacco is the first wholly owned indigenous company in the country, taken over by Dalmia Group in the year 1979. The group is headed by Mr. Sanjay Dalmia as Chairman & Mr. Anurag Dalmia as Vice Chairman. The Target Company is engaged in the manufacturing and marketing of cigarettes and processed tobacco. The Equity Shares of the Target Company are listed at BSE and NSE.

### BACKGROUND OF THE CASE:

On November 12, 2009, Mr. Pramod Jain and Pranidhi Holdings Private Limited (Acquires) along with the J.P. Financial Services Private Limited (PAC) made an Voluntary Public Announcement (PA) under Regulation 10 and 12 of SEBI (SAST) Regulations, 1997 to acquire 44,02,201 (25%) Equity Shares of Golden Tobacco Limited (Target Company) at a price of Rs.101 per shares. As on the date of PA, the Acquirers and PAC were collectively holding 6.47% equity shares in the Target Company. In furtherance of the PA, on November 26, 2009, the Acquirers and PAC filed the Draft Letter of Offer (DLO) with SEBI.



During the examination of DLO, SEBI received certain complaints against the Acquirer and PAC as well as Target Company and its promoters. On October 11, 2011, the Acquirer along with the PAC through VC Corporate Advisors Private Limited (Manager to the offer) requested SEBI for the permission to withdraw the open offer under Regulation 27(1) (d) and to grant an opportunity of personal hearing in the matter. The authorised representative of the Merchant Banker, Acquirers and PAC appeared and made various oral and written submissions which are detailed below:



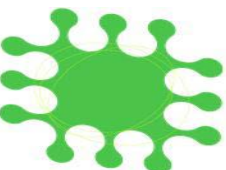
## SUBMISSION:

### 1. Delay in Issuing Observations:

The open offer is delayed for no default of acquirer since all the information required by SEBI was furnished on time. SEBI has given importance only to frivolous complaints made with intention to delay the open offer and has not considered the complaints made by acquirers against the Target Company and its management.

### 2. Malafide intention of Management of the Target Company:

- 2.1. During the delay in the open offer, the management of the Target Company had availed huge high cost borrowing from the Banks and Financial Institutions against the mortgage of property of Target Company and pledging of 18.7% shares of the Target Company, which includes 26.57% of promoter's shareholding. These borrowing are not in any manner benefiting the Target Company and are now subject matter of Arbitration.
- 2.2. The promoters further resorted to settle their personal borrowings by sale of prime properties of Target Company as evident from FIR dated July 25, 2009 lodged by Indiabulls Financial Services Limited.
- 2.3. A Memorandum of Understanding (MOU) was executed between Sheth Developers Private Limited & Suraksha realty Limited and Target Company for development of the property and advanced amount of Rs. 125 Crore was already received but the same was not disclosed to the shareholders of the Target Company and to the Stock Exchange. The shareholders approval for the said agreement was not obtained in the following AGM and was obtained through postal ballot under section 293(1)(c) of the companies act on February 12, 2011. Later on, by Board Resolution, the Target Company decided not to proceed with the MOU but the Target Company did not return the advanced amount resulting which the original title deeds of the Property are still in possession of Developers.
- 2.4. Siphoning of the funds- The Target Company has advanced a sum of Rs. 172 crores to its Subsidiary Company for the creation of Development rights; however the Subsidiary company has no operation income.
- 2.5. The Siphoning of funds was carried out by way of fictitious loans and advances which are now stated to be not recoverable, whereas there were no irrecoverable amounts before making of the public announcement.



### 3. Deteriorating financial health of the Target Company

3.1. The Acquirers have taken into account the Book Value and EPS of the Target Company before fixing the price of Rs. 101. The EPS has now substantially reduced to Rs. (19.27) due to huge losses in last one and half year. Moreover, the Target Company has made an application for extension of the BIFR scheme.

### 4. Grounds for withdrawal of Open Offer:

- a) The voluntary offer made by Acquirer does not give any vested rights to the shareholders as in case of triggered offer. Therefore withdrawal of offer should be granted by giving the reference of SC decision on the case of **Deena v/s Union of India** where it was decided that decision has to be looked at in the light of facts before the court deciding the matter.
- b) The inability of the Acquirers and PAC to go ahead with the Open Offer has defeated the primary objective of taking over the management and control over the asset-rich Target Company and whose performance has been deteriorated due to poor management. The drastic changes in the key financial parameters have made the offer difficult.
- c) Judgment of Hon'ble SAT in the case of **Nirma's Industries Limited** should not be applied in the above case because in Nirma case it was a triggered offer and by conducting proper due diligence the acquirer could have discovered the alleged fraud.
- d) In the matter of **BP Amco Plc and Castrol Limited vs SEBI**, Hon'ble SAT held that if for any reason the acquisition did not materialize, the Acquirer is entitled to withdraw offer under Regulation 27.
- e) Changes in the book value, EPS, current assets and liabilities, loans and advances extended, having regard to the significant time gap since the date of making Public Announcement have made the basis of arriving at offer price unrealistic and infructuous



### ISSUE:

Whether the Acquirers together with PAC should be allowed to withdraw the Public Announcement under Regulation 27(1)(d) of SEBI (SAST) Regulations, 1997 where during the pendency of the Open Offer the financial health of the Target Company has deteriorated due to poor management of the Target Company?



## DECISION:

On the submission made by the Acquirers against the promoters regarding creation of third party interest on properties of Target Company and violation of Regulation 23(1) of SEBI (SAST) Regulations, 1997, SEBI noted that it has no scope to interfere in this matter and that the Acquirer has already filled the petition before Company Law Board which has already been settled between the Acquirer and Target Company and petition has been withdrawn. It is clarified that after going through with the various complaints, replies from the different parties, SEBI was about to issue directions on the offer, but PAC through its letter dated August 2, 2011 requested SEBI to permit the withdrawal the public offer under Regulation 27(1)(d) of SEBI (SAST) Regulations, 1997. However it was again requested that until all the issues are addressed, the Open Offer should be kept in abeyance. From the above it is clarified that SEBI has been corresponding with the manager to the offer/ Acquirer/ PACs from time to time in the subject matter and therefore allegation that there was delay on the part of SEBI is incorrect.

Further upon the issue of withdrawal of offer, SEBI considered that while determining the merit of the case under Regulation 27(1)(d), the interest of shareholders should be kept in mind to ensure the fair and equal treatment. In this matter, SEBI held that Regulation 27(1)(d) are exceptional to the general rule of the withdrawal and does not provide the automatically approval of withdrawal instead require the SEBI approval. Further it was considered that Regulation 27(1) equally applicable on all type of offers whether it is voluntary offer or mandatory offer. Therefore contention of Acquirer as to give the different treatment to them in relation to the Voluntary offer being made is not sustainable.

Moreover SEBI stated that Judgment of the SAT in the Nirma's case is not a fact specific and has given ruling on the interpretation and scope of law enumerated in Regulation 27(1). In this case SAT given more stress on the word 'such circumstances' mentioned in clause (d) explaining the impossibility of the acquirer to go through with the public offer. Therefore the Judgment of the case is relevant in this case.

*In this case, Hon'ble SAT held that the word "such circumstance" referred to in clause (d) of Regulation 27(1) have to be limited to the kind of circumstances mentioned in the preceding clauses (b) and (c) which would make it impossible for the acquirer to go through with the public offer.....*



SEBI further held that the acquirers and PAC holds significant stake (6.47%) in the Target Company, therefore they should have exercised due diligence before making Public Announcement and only after most careful considerations, they must have ensured that they are able to implement the offer. It was noted that, Acquirers together with the PAC have sought the withdrawal of offer due to the deteriorated financial position of the Target Company and also considering the fact that the current market price of the share have fell down than the price stated in the offer.

Therefore after considering all the facts and circumstances, submission made by the Acquirer SBEI held that the fall in market price or devaluation of EPS etc cannot be reasons to permit withdrawal of Open Offer under Regulation 27(1)(d) of SEBI (SAST) Regulations, 1997. Accordingly, SEBI do not permit the withdrawal and further held that the SEBI shall investigate to find out violations of Takeover Regulations, Listing Agreement and SCRA by the Target Company as alleged in the matter.



# NEWS

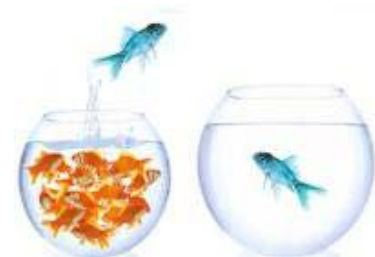
Latest news

## ACQUISITION OF MAJORITY STAKE BY CENTRE FOR SIGHT IN NEW VISION LASER CENTRE

Delhi based Eye-care chain hospital **Centre for Sight** has acquired a majority stake in Vadodara-based New Vision Laser Centre for \$ 10 Million. With the acquisition, Centre for sight has increased its facilities from 22 centres to 35 centres across the country. The Company further plans to expand in Tier II and Tier III cities through new ventures, mergers and setting up specialty departments in the leading hospitals in the no-metro cities.

## JINDAL STEEL & POWER LIMITED ACQUIRES 9% STAKE IN GUJARAT NRE'S AUSTRALIAN ARM

Jindal Steel & Power Limited through its Mauritian subsidiary – Jindal Steel and Power (Mauritius) Limited has acquired 9% stake in Australia based Gujarat NRE Coking Coal Limited, subsidiary of Gujarat NRE Coke for \$25 Million. As per the agreement, JSPL is required to pay \$0.25 per share for 10 crore shares of Gujarat NRE Coking Coal Limited.



## IFC PLANS TO INVEST IN UJJIVAN FINANCIAL SERVICES

To assist Ujjivan Financial Services Limited for its expansion and to carry out strategic changes to meet the changed regulatory & business environment and meet its regulatory capital adequacy requirements, IFC is planning to make an investment of Rs. 50 crores in the Company for its minority stake. Ujjivan was incorporated as NBFC and provides loans to the urban and semi-urban poor, and targets salaried and self-employed women.



# 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

**What is the timing of making public announcement in case where the Open Offer has been triggered pursuant to preferential allotment of Equity Shares?**

- A. Date of approval of preferential allotment by BODs
- B. Date of Special Resolution
- C. Date of Allotment of Equity Shares
- D. Date of Receipt of In-principal approval

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

## Question: 2

**What is the time prescribed for completion of acquisition contracted under any agreement attracting the obligation to make an open offer?**

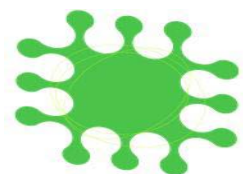
- A. Within 10 working days from the completion of offer
- B. Within 15 weeks from the completion of offer
- C. Within 15 working days from the expiry of the offer period
- D. Not later than 26 weeks from the expiry of the offer period

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

## Winners of Quiz – May 2012-edition

**1. Amit Kumar**

**2. Brijesh Thakkar**



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