

TAKEOVER PANORAMA

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LEGAL UPDATE

Informal Guidelines in the matter of the Kamdhenu Ispat Limited

Facts:

As on March 31, 2010, the promoters of Kamdhenu Ispat Limited (Target Company) hold 54.97% of the paid up capital of the Target Company. Now the promoters of the Target Company desires to increase their shareholding in the Target Company to 55% in terms of regulation 11(1) of SEBI (SAST) Regulations, 1997 and also wants to further consolidate their shareholding in terms of second proviso to regulation 11(2) of SEBI (SAST) Regulations, 1997. Therefore, they have filed the application seeking the informal guidance on the following issues:

An acquirer who is holding the shares in terms of regulation 11(1) can increase his shareholding to 55% and would also be eligible for onetime acquisition in terms of second proviso to regulation 11(2).

Issue:

1. Can the promoters acquire additional 0.03% shares during the financial year 2010-11 as per Regulation 11(1) so as to reach 55%?
2. Can the promoters further acquire 5% as per second proviso of regulation 11(2)?
3. Can the above acquisitions, as mentioned in (1) and (2) be done in the Financial Year 2010-11?

Decision:

1. The promoters can acquire 0.03% shares in the financial year 2010-11 so as to reach the level of 55% without making the public announcement.
2. Upon the aforesaid acquisitions, the promoters would reach the level of 55% and hence would be become eligible for onetime acquisition provided by second proviso to regulation 11(2) of SEBI (SAST) Regulations, 1997.
3. Both the above mentioned acquisitions can be made in the financial year 2010-11.

SEBI order in the matter of acquisition of shares of IAG Company Limited

Facts:

1. On examination of the draft letter of offer filed by Anjaniputra Ispat Limited (Acquirer/Noticee) for the acquisition of 20% of the issued and paid up capital of IAG Company Limited (Target Company) SEBI Observed that the Acquirer has acquired 26,89,592 equity shares representing 41.77% of the current paid up and voting capital of the Target Company over a period of 8 months during the financial years 2008-09 and 2009-10. The increase in the shareholding is made in the following manner:

Direction to disinvest the shares acquired in violation of regulation 10 read with regulation 11(1) of SEBI (SAST) Regulations, 1997 was issued to the Noticee.

- a. The Acquirer has acquired 17,19,692 shares (27.64% of the paid up capital) on November 19, 2008, thereby, increasing its shareholding from 4.71% to 32.35% of the paid up capital of the Target Company.
- b. The Acquirer further consolidated its holdings from 32.35% to 41.77% by purchasing 6,06,600 shares (9.42% of the paid up capital) i.e. 4.71% each on December 19, 2008 and April 3, 2009.

2. It was alleged that:

- a. The Acquirer has acquired more than 15% shares on November 19, 2008 without making Public Announcement, thereby, violating the provision of Regulation 10 of the SEBI (SAST) Regulations, 1997.
- b. As the previous acquisition of 27.64% stake was not in accordance with the law, therefore, the subsequent acquisition of 4.71% shares each on December 19, 2008 and April 3, 2009 were in violation of Regulation 11(1) of the SEBI (SAST) Regulations, 1997.
- c. The Acquirer has acquired control over the Target Company on November 2008 without making Public Announcement and thus also violated the provision of Regulation 12 of the SEBI (SAST) Regulations, 1997.
- d. It had also failed to comply with the disclosure requirements as mentioned in Regulation 7(1) of SEBI (SAST) Regulations, 1997.

3. Accordingly SEBI issued a notice to the Noticee to show cause as to why one or more or all actions in terms of regulation 44 read with regulation 45 (6) of SEBI (SAST) Regulations, 1997 including the directions to continue with the open offer and to disinvest 6,06,000

(9.42%) shares should not be taken against it to which the Noticee made the following submissions:

- i. It was not aware of the applicability of the provisions of the SEBI (SAST) Regulations, 1997 and was under the impression that the regulations are applicable to listed and traded companies.
- ii. Due to the non-compliance of various provisions of Listing Agreement, BSE had suspended the trading of the shares of Target Company from September 2006 to September 2009. The Acquirer has also taken steps to relist the shares of the Company.
- iii. The acquirer submitted that it had pumped Rs. 40 crore in the Target Company in the form of inter corporate deposits for its revival.
- iv. Further, by making the Public Announcement on July 11, 2009, it has cured the alleged violations of the provisions of the Takeover Regulations by taking November 19, 2008 as the relevant date for the calculation of offer price.

Issue:

Whether the Acquirer has violated the provisions of Regulation 7(1), 10, 11(1) and 12 of the SEBI (SAST) Regulations, 1997?

Decision:

1. SEBI observed that it would be difficult to assume that the acquirer was not aware of the provisions of SEBI (SAST) Regulations, 1997 when it had initiated the steps towards the revival of the Target Company including the relisting of its shares at BSE after the rectification of its non compliance. Further, the fact that the acquirer has taken various steps in turning around the Target Company from its weak position would not absolve the Acquirer from not complying with the statutory mandates while acquiring substantial shares and control over the Target Company. The facts of the case would clearly indicate that the Acquirer was crystal clear in its intention of acquiring substantial shares and control over the Target Company, while improving the conditions of the Target Company. The Acquirer did everything except the compliance of SEBI (SAST) Regulations, 1997.
2. The acquirer has first triggered the SEBI (SAST) Regulations, 1997 on November 19, 2008 when it had acquired 27.64% shares in the Target Company. However, it has not complied with the provisions of regulation 10 read with regulation 14 of SEBI (SAST) Regulations, 1997 instead it continued to consolidate its shareholding in the Target Company. Further, the manner of acquisition of 4.71% each during two financial years would lead to an inference that the acquirer was well aware of the creeping acquisition limits as specified under regulation 11(1) as otherwise it would have acquired the entire stake in one trench.

In view of the above, SEBI direct that the Open Offer made by the acquirer is agreed to in terms of the provisions of SEBI (SAST) Regulations, 1997. Further, the acquirer shall appoint a merchant banker to disinvest 9.42% of the share capital within 30 day and transfer the profit, if any, to Investor Protection Fund of the concerned Stock Exchange.

SEBI also ordered that the Adjudicating proceedings should be initiated against the Acquirer under the provisions of SEBI Act, 1992 for the violation of Regulation 10, 11(1) and 12 of the SEBI (SAST) Regulations, 1997.

Whole Time Member and Adjudicating Officer Orders

Target Company	Noticee	Regulation of SEBI (SAST) Regulations, 1997	Penalty Imposed
India Polyspin Limited	Right Finstock Private Limited and Cavalier Securities Limited	Regulation 10 of SEBI (SAST) Regulations, 1997 and Regulation 3 (a),(b), (c), (d), 4 (1) and 4 (2) (a), (d), (e), (f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003	Target Company, the promoters, Chairman and its Managing Directors were restrained from accessing securities market and dealing in securities for a period of one month. Further, the Noticees were also prohibited from buying and selling in securities, as a client for a period of one month.
Exelon Infrastructure Limited	Gadde Butchi Tirupati Rao	Regulation 7(1) and 10 of SEBI (SAST) Regulations, 1997 and 13(4) of the SEBI (PIT) Regulations, 1992	Rs. 1,50,000

Exelon Infrastructure Limited	B.V Appa Rao	Regulation 7(1) and 10 of SEBI (SAST) Regulations, 1997 and 13(1) of the SEBI (PIT) Regulations, 1992	Rs. 75,000
Exelon Infrastructure Limited	Jyoti Shree Gadha	Regulation 7(1) and 10 of SEBI (SAST) Regulations, 1997 and 13(1) of the SEBI (PIT) Regulations, 1992	Rs. 75,000
Exelon Infrastructure Limited	Kalpana Gadda	Regulation 7(1) and 10 of SEBI (SAST) Regulations, 1997 and 13(1) of the SEBI (PIT) Regulations, 1992	Rs. 1,00,000
Gemstone Investment Limited	Premchand P. Shah, Sharman P Shah, Nihal P. Shah, Sharman Appliances Private Limited, Sushila P. Shah and Mradula V. Shah	7(1A) of SEBI (SAST) Regulations, 1997 and 13(3) & 13(4) SEBI (PIT) Regulations, 1992	Rs.5,00,000

Consent Order in the matter of Era Constructions (India) Limited (Rekha Bharana)

Adjudicating proceedings were initiated against Rekha Bharana (Noticee) for the alleged violations of regulation 7(1A) read with regulation 7(2) of SEBI (SAST) Regulations, 1997 in the matter of acquisition of 2,60,000 equity shares representing 5.98% of the paid up capital of Era Constructions (India) Ltd. Pending the adjudication proceedings, on March 17, 2010, the Noticee has filed the consent application and proposes to pay Rs.2,00,000 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 settle the above non compliance of the Noticee.

Consent Order in the matter of Era E-Zone (India) Limited

SEBI has initiated adjudicating proceedings against Era E-Zone (India) Limited (Noticee) for the violation of the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(3) read with Regulation 13(5) of the SEBI (PIT) Regulations, 1992 in respect of its dealing in the scrip of Era Constructions (India) Ltd. Pending the proceedings, on March 15, 2010, the Noticee has filed the consent application for the settlement of above violation and proposed to pay a sum of Rs 2,00,000 as settlement charges. The terms as proposed by the Noticee were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the Noticee.

LATEST OPEN OFFERS

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Pro Fin Capital Services Limited Regd. Office New Delhi Paid up capital Rs. 436.69 lakhs Listed At BSE, CSE & DSE	Triyamb Securities Private Limited along with Anupam Narain Gupta, Abhay Narain Gupta, Narain Kumar Gupta and Rashi Gupta	Offer to acquire 8,73,380 (20%) Equity Shares at a price of Rs. 12 per share payable in cash.	Regulation 10 & 12 Acquisition of 6,71,100 (15.37%) equity shares through block deal at a price of Rs. 11.66 per share and 5,00,000 equity shares (11.45%) through off market deal at a price of Rs.10 each.	Merchant Banker Corporate Professionals Capital Private Limited Registrar to the Offer Beetel Financial & Computer Services Pvt. Ltd.

<p>Parasnath Textiles Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 73.63 Lacs</p> <p>Listed At CSE, UPSE & BSE</p>	<p>Luharuka Sales & Services Private Limited</p>	<p>Offer to acquire 1,47,260 (20%) Equity Shares at a price of Rs. 18 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 5,40,500 (73.41%) equity shares at a price of Rs.6.50 per share.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer Bigshare Services Private Limited</p>
<p>Associated Cereals Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 919.27 lakhs</p> <p>Listed At UPSE and GSE</p>	<p>Ultraplus Housing Estate Pvt. Ltd.</p>	<p>Offer to acquire 18,38,538 (20%) Equity Shares at a price of Rs. 12.26 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 53,32,370 (58.01%) equity shares at a price of Rs.4 per share.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer Niche Technologies Private Limited</p>
<p>Bell Ceramics Limited</p> <p>Regd. Office Gujarat</p> <p>Paid up capital Rs. 1217.38 Lacs</p> <p>Listed At BSE, NSE, ASE, VSE and DSE</p>	<p>Orient Ceramics and Industries Limited, Mahendra K. Daga, Sarla Daga, Freesla Investment and Trading Company Limited, Morning Glory Leasing and Finance Limited</p>	<p>Offer to acquire 24,34,762 (20%) Equity Shares at a price of Rs. 24.95 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 76,59,925 (62.92%) Equity Shares at a price of Rs. 20.69 per share.</p>	<p>Merchant Banker Centrum Capital Limited</p> <p>Registrar to the Offer Link Intime India Pvt. Ltd.</p>

<p>Farry Industries Limited</p> <p>Regd. Office Pune</p> <p>Paid up capital Rs. 3.01 Crore</p> <p>Listed At BSE, DSE and ASE</p>	<p>Obike Trading Private Limited and Tien Trading Private Limited</p>	<p>Offer to acquire 6,02,620 (20%) Equity Shares at a price of Rs. 24 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 18,89,080 (62.70%) Equity Shares at a price of Rs.12.90 per share.</p>	<p>Merchant Banker Aryaman Financial Services Ltd.</p> <p>Registrar to the Offer Sharex Dynamics (I) Pvt. Ltd.</p>
<p>Genus Prime Infra Limited</p> <p>Regd. Office Uttar Pradesh</p> <p>Paid up capital Rs. 281.47 Lacs</p> <p>Listed At BSE</p>	<p>Genus Paper Products Limited</p>	<p>Offer to acquire 28,14,700 (20%) Equity Shares at a price of Rs. 8 per share payable in cash.</p>	<p>Regulation 10 & 12 Acquisition of 80,22,826 (57.01%) equity shares from the open market through block deal.</p>	<p>Merchant Banker Mefcom Capital Markets Limited</p> <p>Registrar to the Offer Alankit Assignments Limited</p>
<p>Kale Consultants Limited</p> <p>Regd. Office Pune</p> <p>Paid up capital Rs. 14.95 crore</p> <p>Listed At BSE, NSE and PSE</p>	<p>Accelya Holding World S.L.</p>	<p>Offer to acquire 31,84,250 (20%) Equity Shares at a price of Rs. 172 per share payable in cash.</p>	<p>Regulation 10 & 12 SPA to acquire 56,69,478 (35.61%) equity shares at a price of Rs.172 per share payable in cash.</p>	<p>Merchant Banker Ambit Corporate Finance Private Limited</p> <p>Registrar to the Offer Karvy Computershare Pvt. Ltd.</p>

<p>Maruti Infrastructure Limited</p> <p>Regd. Office Ahmedabad</p> <p>Paid up capital Rs. 812.85 lakhs</p> <p>Listed At BSE & ASE</p>	<p>Nimesh Patel</p>	<p>Offer to acquire 16,25,700 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 11(1) & 11(2) Preferential allotment of 30,00,000 equity shares thereby increasing the shareholding of acquirer from 14.97% to 46.35% and of the total promoter group from 47.56% to 66.91%</p>	<p>Merchant Banker Chartered Capital & Investment Limited</p> <p>Registrar to the Offer Link Intime (India) Pvt. Ltd.</p>
<p>Nahar Poly Films Limited</p> <p>Regd. Office Ludhiana</p> <p>Paid up capital Rs. 1257.77 Lacs</p> <p>Listed At BSE & NSE</p>	<p>Nahar Spinning Mills Limited</p>	<p>Offer to acquire 24,37,251 (9.91%) Equity Shares at a price of Rs. 40 per share payable in cash.</p>	<p>Regulation 11(2A) The Acquirer belongs to promoter group of the Target Company. For the purpose of consolidation of holding, the acquirer has given this open offer.</p>	<p>Merchant Banker Sobhagya Capital Options Limited</p> <p>Registrar to the Offer Alankit Assignments Limited</p>
<p>Pioneer Distilleries Limited</p> <p>Regd. Office Hyderabad</p>	<p>United Spirits Limited</p>	<p>Offer to acquire 26,77,640 (20%) Equity Shares at a price of Rs. 101 per share payable in</p>	<p>Regulation 10 & 12 SPA to acquire 73,22,380 (54.69%) Equity Shares at a price of Rs.101 per share.</p>	<p>Merchant Banker Ambit Corporate Finance Private Limited</p> <p>Registrar to the Offer</p>

<p>Paid up capital Rs. 1338.82Lacs</p> <p>Listed At BSE, NSE and PSE</p>		cash.		Bigshare Services Private Limited
<p>P.M.Strips Limited</p> <p>Regd. Office Secunderabad</p> <p>Paid up capital Rs. 156 lakhs</p> <p>Listed At BSE</p>	<p>Suresh Venkatachari, R.S.Romani and M.V.Bhaskar</p>	<p>Offer to acquire 11,10,833 (20%) Equity Shares at a price of Rs. 31 per share payable in cash.</p>	<p>Regulation 10 & 12 Preferential allotment of 39,94,161 equity shares representing 71.91% of the expanded capital of the Target Company at a price of Rs.31 per share.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer Adroit Corporate Services Private Limited</p>
<p>Polygenta Technologies Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 12265.58 Lacs</p> <p>Listed At BSE</p>	<p>AlphaPET Ltd. along with Aloe Environment Fund II FCPR and Green Investment Asia Sustainability Fund I (PAC)</p>	<p>Offer to acquire 2,47,31,153 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 10 & 12 Conversion of Compulsorily Convertible Preference Shares into 7,18,24,494 (58.08%) equity shares.</p>	<p>Merchant Banker Keynote Corporate Services Limited</p> <p>Registrar to the Offer Mondkar Computers Private Limited</p>
<p>Suave Hotels Limited</p>	<p>Kamal Poddar, Anil Patodia, Vinita Patodia, Hotel Relax</p>	<p>Offer to acquire 31,09,800 (20%) Equity</p>	<p>Regulation 10 & 12 Conversion of warrants into</p>	<p>Merchant Banker Fedex Securities Limited</p>

<p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 1254.89 lakhs</p> <p>Listed At BSE & MSE</p>	Private Limited	Shares at a price of Rs. 44 per share payable in cash.	30,00,000 equity shares and SPA to acquire 22,50,000 equity shares (17.93%) at a price of Rs.4 per share.	<p>Registrar to the Offer Sharex Dynamic (India) Pvt. Ltd.</p>
<p>Sharp Trading and Finance Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 24.50 lakhs</p> <p>Listed At BSE</p>	Babulal Mulchand Varma and other acquirers	Offer to acquire 49,000 (20%) Equity Shares at a price of Rs. 60 per share payable in cash.	<p>Regulation 10 & 12 SPA to acquire 1,31,000 (53.74%) equity shares of Target Company at a price of Rs.60 per share</p>	<p>Merchant Banker Birla Capital and Financial Services Limited</p> <p>Registrar to the Offer Adroit Corporate Services Private Limited</p>
<p>Shyam Star Gems Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 690.61 lakhs</p> <p>Listed At BSE</p>	Swarnsarita Jewellers Private Limited	Offer to acquire 13,89,080 (20%) Equity Shares at a price of Rs. 18 per share payable in cash.	<p>Regulation 10 & 12 SPA to acquire 14,70,509 (21.17%) Equity Shares of the Target Company at a price of Rs.14 per share</p>	<p>Merchant Banker Comfort Securities Private Limited</p> <p>Registrar to the Offer Sharex Dynamic (India) Private Limited</p>
<p>Thyrocare Laboratories Limited</p>	Sanjay N.Salunkhe	Offer to acquire 49,000 (20%) Equity Shares	<p>Regulation 10 & 12 SPA to acquire 1,76,450</p>	<p>Merchant Banker Systematix Corporate</p>

<p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 24.50 lacs</p> <p>Listed At BSE and CSE</p>		<p>at a price of Rs. 35 per share payable in cash.</p>	<p>(72.02%) Equity Shares at a price of Rs.32 per share.</p>	<p>Services Limited</p> <p>Registrar to the Offer Adroit Corporate Services Pvt. Ltd</p>
<p>Vimal Oil & Foods Limited</p> <p>Regd. Office Ahmedabad</p> <p>Paid up capital Rs. 1,055 lakhs</p> <p>Listed At BSE</p>	<p>Chandubhai I. Patel, Pradip C. Patel, Kantaben C. Patel, Sonal J. Patel, Jayesh C. Patel and Jigishaben P. Patel</p>	<p>Offer to acquire 21,10,000 (20%) Equity Shares at a price of Rs. 51 per share payable in cash.</p>	<p>Regulation 11(1) & 11(2) Preferential allotment of 70,00,000 equity shares thereby increasing the shareholding of promoter group from 19.28% to 65.19%</p>	<p>Merchant Banker Chartered Capital & Investment Limited</p> <p>Registrar to the Offer Link Intime (India) Pvt. Ltd.</p>
<p>White Diamond Industries Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 653.26 lakhs</p> <p>Listed At BSE, ASE, MSE & DSE</p>	<p>Sapna Infratech Private Limited and PACs</p>	<p>Offer to acquire 17,00,000 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Regulation 10 & 12 Preferential allotment of 19,67,400 equity shares thereby increasing the shareholding of acquirer along with PACs to 24.28% of the post issue share capital of the Target Company.</p>	<p>Merchant Banker Arihant Capital Markets Limited</p> <p>Registrar to the Offer Sharex Dynamic (India) Pvt. Ltd.</p>

<p>Voltaire Leasing & Finance Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 40 lakhs</p> <p>Listed At BSE</p>	<p>Madhuri Damani</p>	<p>Offer to acquire 80,000 (20%) Equity Shares at a price of Rs. 14 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>SPA to acquire 2,43,450 (60.86%) equity shares at a price of Rs.14 per share.</p>	<p>Merchant Banker Arihant Capital Markets Limited</p> <p>Registrar to the Offer Purva Sharegistry India Private Limited</p>
<p>Jord Engineers India Limited</p> <p>Regd. Office Baroda</p> <p>Paid up capital Rs. 2752.96 Lacs</p> <p>Listed At BSE, ASE & DSE</p>	<p>3A Capital Services Limited</p>	<p>Offer to acquire 55,14,911 (20%) Equity Shares at a price of Rs. 1.90 per share payable in cash.</p>	<p>Regulation 10 & 12</p> <p>Acquisition of 71,67,406 (26%) Equity Shares in tranches.</p>	<p>Merchant Banker Intensive Fiscal Services Private Limited</p> <p>Registrar to the Offer Cameo Corporate Services Limited</p>

HINT OF THE MONTH

Acquisition of shares of the Target Company not involving a change in control over such Target Company is exempt from the Open Offer obligations where such acquisition is made pursuant to a scheme of Corporate Debt Restructuring and such scheme has been authorized by shareholders by way of a special resolution passed by postal ballot.

{As substantiated from Regulation 10(2)(a) of SEBI (SAST) Regulations, 2010-TRAC Report}

REGULAR SECTION

Offer Size and Delisting Options

Whenever an acquirer acquires the shares beyond the threshold as prescribed under regulation 10 or 11 of SEBI (SAST) Regulations, 1997 or there is a change in control of the Company, the acquirer is required to make an Open Offer to the shareholders of the Company to acquire certain minimum number of shares. Regulation 21 of the SEBI (SAST) Regulations, 1997 specifies the minimum number of shares for which the Open Offer shall be made by the acquirer. It is to be noted that there is no difference in SEBI (SAST) Regulations, 1997 with respect to the minimum number of shares for which the Open Offer shall be made by the acquirer whether the acquirer has given a mandatory Open Offer or voluntary Open Offer.

However, in the proposed SEBI Takeover Regulations as prescribed in the TRAC Report, different limits relating to the minimum numbers of shares to be acquired has been prescribed in respect of mandatory and voluntary Open Offer.

A comparison of SEBI (SAST) Regulations, 1997 with the proposed SEBI Takeover Regulations as prescribed in the TRAC Report with respect to the minimum number of shares for which the Open Offer shall be made by acquirer is detailed below:

Mandatory Open Offer

In terms of SEBI (SAST) Regulations, 1997

Where the Open Offer has been made in terms of regulation 10 or regulation 11(1) or regulation 11(2) of SEBI (SAST) Regulations, 1997, the Offer shall be made to acquire a minimum of 20% of the voting capital of the Company. *{Regulation 21(1) of SEBI (SAST) Regulations, 1997}*

However, where the Open Offer has been made under regulation 11(2A), the Offer size shall be lesser of the following:

- a. Twenty percent of the voting capital of the Target Company; or
- b. Such other voting capital, assuming full acceptance, which enables the Target Company to maintain the minimum public shareholding as prescribed under the Listing Agreement. *{Regulation 21(3) of SEBI (SAST) Regulations, 1997}*

For Example: The total promoter shareholding in the Company is 60% of the voting capital of the Company. Now the promoters of the Company desires to further consolidate their shareholding in the Company and for this purpose are making the Open Offer to the shareholders of the Company in terms of regulation 11(2A) of SEBI (SAST) Regulations, 1997. In such a case, as the total promoter shareholding is already 60% of the voting capital of the Company, therefore, the Offer size would be restricted to 15% of the voting capital of the Company in accordance with regulation 21(3) of SEBI (SAST) Regulations, 1997.

For the purpose of computing the Offer Size, the voting rights as at the expiration of 15 days after the closure of the public offer shall be considered.

In terms of proposed SEBI Takeover Regulations as prescribed in TRAC Report

The Open Offer shall be made by the acquirer for the acquisition of all the shares held by all the other shareholders of the Company as of the last day of the tendering period.

For the purpose of computing the Offer Size, the underlying shares against which the depository receipts have been issued shall also be considered.

Voluntary Open Offer

In terms of SEBI (SAST) Regulations, 1997

The provisions as prescribed above in respect of the mandatory Open Offer would become applicable in case of voluntary Open Offer being made in terms of SEBI (SAST) Regulations, 1997.

In terms of proposed SEBI Takeover Regulations as prescribed in TRAC Report

The voluntary Open Offer under proposed SEBI Takeover Regulations shall be made for the acquisition of at least ten per cent of the voting rights in the Company and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible non-public shareholding applicable to such Company.

However, where the competing offer is made, the acquirer who has voluntarily made a public announcement of an Open Offer shall be entitled to increase the Offer Size within a period of fifteen business days from the public announcement of a competing offer to such number of shares as if the mandatory Open Offer has been made by the acquirer.

DELISTING OPTIONS

In terms of SEBI (SAST) Regulations, 1997

If pursuant to the Public Offer, the public shareholding falls to 10% or below of voting capital of Company, then the acquirer will either make an Offer to buy out the remaining outstanding equity Shares remaining with the shareholders in accordance with the Delisting Regulations or will increase the Public Shareholding in the Company to the level specified for continuous listing as specified in the listing agreement entered with the stock exchange within the time period and manner specified thereon in consultation with Stock Exchange.

In terms of proposed SEBI Takeover Regulations as prescribed in TRAC Report

Where the intention to delist is stated upfront at the time of detailed public announcement

- Where pursuant to the completion of Open Offer, the shareholding of the acquirer along with the PACs other than an acquirer who has given an Open Offer under regulation 3(2)* of proposed SEBI Takeover Regulations goes **beyond the delisting threshold**, the Company shall stand delisted provided that the acquirer has stated his intention to do so in the detailed public announcement; or
- In the event the acceptances tendered in response to the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer would entitle them to exercise **more than the maximum permissible non-public shareholding applicable to but less than the delisting threshold**, the acquirer shall be required to either—
 - a. Reduce his shareholding to bring the non public shareholding in the specified limit, within the time prescribed in the Listing Agreement, or
 - b. Proportionately reduce both his acquisitions under the agreement that triggered the open offer other than the shares acquired by way of allotment by the Company and the acquisitions under the open offer.

Where the intention to delist is not stated upfront at the time of detailed public announcement

Where the Acquirer has not disclosed his intention to delist the shares of the Company at the time of detailed public announcement then the acquirer shall be required to either—

- a. Reduce his shareholding to bring the non public shareholding in the specified limit, within the time prescribed in the Listing Agreement, or
- b. Proportionately reduce both his acquisitions under the agreement that triggered the open offer other than the shares acquired by way of allotment by the Company and the acquisitions under the open offer.

Where the Open Offer has been made under regulation 3(2)* of proposed SEBI Takeover Regulations, the acquirer shall be required to either—

- a. Reduce his shareholding to bring the non public shareholding in the specified limit, within the time prescribed in the Listing Agreement, or
- b. Proportionately reduce both his acquisitions under the agreement that triggered the open offer other than the shares acquired by way of allotment by the Company and the acquisitions under the open offer.

And shall be required to state his intention upfront at the time of detailed public announcement.

**3(2) of proposed SEBI Takeover Regulations- No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, subject to their aggregate post-acquisition shareholding not exceeding the maximum permissible non-public shareholding, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:*

CASE STUDY

An analysis of Taro acquisition by Sun Pharma

Sun Pharmaceuticals Industries Limited (Acquirer/Sun Pharma)

Sun Pharmaceuticals Industries Limited is an international pharmaceutical company located in Mumbai. It came into existence in 1983 with just 5 products to treat psychiatry ailments. It makes many generic and brand name drugs that are distributed in the United States,

Europe, Asia and worldwide. In India, the company is a leader in niche therapy areas of psychiatry, neurology, cardiology, diabetology, gastroenterology, and orthopedics. The company has strong skills in product development, process chemistry, and manufacturing of complex API, as well as dosage forms.

Taro Pharmaceuticals Industries Limited (Target Company/Taro)

Established in 1950, Taro Pharmaceutical Industries Ltd. is a research-based international specialty pharmaceutical company that develops, manufactures and markets prescription and over-the-counter pharmaceutical products. Taro's research programs and niche strategy have enabled the Company to achieve gross margins that are among the highest in the specialty pharmaceutical sector.

Background of the acquisition:

On May 18, 2007, Taro and Sun Pharma's subsidiaries entered into a Merger agreement whereby Sun Pharma's subsidiary agreed to acquire Taro to which Taro Board of Directors unanimously approved. At that time, Taro was facing dismal financial crisis and Sun Pharma agreed to invest nearly USD 60 million in cash to save Taro from bankruptcy. As per the agreement, if the merger was not consummated, Taro's controlling shareholders led by Taro's Chairman, Barrie Levitt, granted an option to Sun Pharma to acquire all their shares, including all of the Founders' Shares of Taro. Thereafter on May 21, 2007, Sun Pharma together with its subsidiaries had signed the agreement to acquire Taro in USD 454 million in all cash deal subject to the approval of Taro shareholders and requisite regulatory clearances.

Termination of the Merger Agreement and exercise of Option under the Agreement

On May 28, 2008, Taro purported to terminate the Merger Agreement. Pursuant to the Option Agreement, Sun Pharma may exercise its Options within 30 days after termination of the Merger Agreement. In connection with the exercise of Option, Sun Pharma was required to commence the tender offer for all the Ordinary Shares at USD 7.75 per share. Sun Pharma stated that the exercise of option by it under the agreement shall not in any way be construed to be an acceptance or recognition of the purported termination of the Merger Agreement.

Consequent to the termination of the Merger Agreement, Sun Pharma filed an action in the Supreme Court of the State of New York against Taro and its full Board of Directors asserting fraud claims against them and asks the Court to order the controlling shareholders

to honor their promises under the Option Agreement. In addition, Sun Pharma also seeks for an order declaring that the Merger Agreement was not properly terminated.

Tender offer of Sun Pharma

On June 30, 2008, Sun Pharma through its subsidiary Alkaloida Chemical Company Exclusive Group Ltd. (Alkaloida) commenced a tender offer for all outstanding ordinary shares of Taro for USD 7.75 per share in cash. The tender offer is not conditioned on the availability of financing or the approval of the Board of Directors of Taro and is scheduled to expire on July 28, 2008.

Extension of Tender Offer

Thereafter, on July 14, 2008, Sun Pharma announced that Alkaloida has extended the Expiration Date of the Tender Offer to September 2, 2008 pursuant to the recommendation made by the Honorable Judge Dr. Michal Agmon-Gonen J. of the Tel-Aviv District Court in order to allow the court to rule on the merits of the litigation commenced against Alkaloida and its affiliates by Taro and certain of its directors regarding the applicability of the special tender offer rules under the Israeli Companies Law to the Offer.

Early Termination of the Antitrust Waiting Period under the Hart-Scott-Rodino Act (HSR)

The Act provides that before certain mergers, tender offers or other acquisition transactions can close, both parties must file a "Notification and Report Form" with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. The filing describes the proposed transaction and the parties to it. Upon the filing, a 30-day waiting period (15-days for all-cash tender offers) then ensues during which time those regulatory agencies may request further information in order to help them assess whether the proposed transaction violates the antitrust laws of the United States. It is unlawful to close the transaction during the waiting period. Although the waiting period is generally 30 days (again, 15 days if the transaction is an all cash tender offer), the regulators may request additional time to review additional information and the filing parties may request that the waiting period for a particular transaction be terminated early ("early termination"). Early terminations are made public in the Federal Register and posted on the Federal Trade Commission website. Additionally, some types of transactions are afforded the special treatment of shorter waiting periods.

The filing requirement is triggered only if the value of the transaction and, in some cases, the size of the parties, exceeds certain dollar thresholds, which are adjusted over time.

Accordingly, Sun Pharma has also filed an application with the U.S. Federal Trade Commission under HSR Act and on August 13, 2008, the U.S. Federal Trade Commission (FTC) granted early termination of the antitrust waiting period under the Hart-Scott-Rodino Act (HSR) for the previously announced Tender Offer by Alkaloida Chemical Company Exclusive Group Ltd., for all outstanding Ordinary Shares of Taro Pharmaceutical Industries Ltd. (Taro).

Tel-Aviv court ruled in favor of Sun Pharma

On August 26, 2008, Tel-Aviv court ruled in favor of Sun Pharma and rejected the Taro's contention that Sun Pharma should have conducted a "special tender offer" under Israeli Law. As a result, Sun Pharma was in the position to complete the previously announced Tender Offer. Following the closing of the Tender Offer, all conditions to Sun Pharma's Option Agreement to acquire all the shares held by the controlling shareholders of Taro will be satisfied and the controlling shareholders will have to deliver their shares.

Further Extension of tender offer

The Tender Offer was further extended to October 3, 2008, to comply with a continuing order issued by the Supreme Court of Israel temporarily prohibiting the closing of the Offer until the Supreme Court issues a decision on the appeal of the litigation commenced against Alkaloida and its affiliates by Taro and certain of its directors regarding the applicability of the special tender offer rules under the Israeli Companies Law to the Offer. Thereafter, the offer was extended many times till the order of the Supreme Court of Israel.

US District Court Rules in favor of Sun Pharma

In the month of July 2010, United States District Court for the southern district of New York also dismissed the entire complaint filed by Taro seeking to block the tender offer made by Sun Pharma subsidiary. The Court rejected Taro's claims based on allegations that Sun and Alkaloida had failed to make adequate disclosures concerning the Offer. The Court also rejected Taro's request for discovery, remarking that Taro had not explained any purpose that discovery would serve.

The Court also dismissed Taro's other claims, including breach of contract and misappropriation of trade secrets, for lack of subject matter jurisdiction. The Court gave Taro two weeks time to file an amended complaint to fix its defects in the complaint.

Supreme Court of Israel rules in favor of Sun Pharma

Finally, after a long battle of two years, on September 7, 2010, the three judge bench Supreme Court of Israel unanimously dismissed the appeal by Taro holding that the Special Tender Offer rules do not apply to the tender offer made by Sun's subsidiary Alkaloida. Sun Pharma, which owns 36% in Taro, can now acquire 12% shares from the promoter Levitt family to ramp up its holding to 48%. Subsequently, after the completion of the open offer, its voting shares will increase to 65%, giving it complete control of the company.

Closure of offer

Following the decision of the Supreme Court, the Offer was finally scheduled to expire on September 14, 2010.

However, as the clearance earlier obtained under the Hart-Scott-Rodino (HSR) Act waiting period was scheduled to expire on September 11, 2010, therefore, Sun intends to re-file its HSR application to restart the HSR Act waiting period. The re-filing of application is dependent on the shareholding of Sun. If, as of the expiration date, the number of Ordinary Shares tendered and not withdrawn from the Offer, together with the Ordinary Shares already beneficially owned by Sun, would result in Sun owning less than 50% of the voting power of Taro, there will be no applicable waiting period under the HSR Act and Alkaloida expects to close the Offer and promptly purchase such tendered Ordinary Shares. If, as on such expiration date, the conditions to the Offer have not been satisfied or, to the extent permitted by applicable law, waived by Alkaloida, Alkaloida reserves the right to further extend the Offer.

On September 15, 2010, Alkaloida commenced a subsequent offering period for all remaining Ordinary Shares that have not yet been tendered at the same price of \$7.75 per Ordinary Share. Ordinary Shares tendered during the subsequent offering period may not be withdrawn. The subsequent offering period was scheduled to expire on September 28, 2010.

Completion of Acquisition

Finally, after the closure of offer, Sun Pharma has completed its acquisition of controlling stake in Taro thereby increasing its economic interest in Taro to 48.7% and their voting rights to 65.8%. In connection with the closing of the Option Agreement, Sun Pharma and the members of the current Board of Directors of Taro, including members of the Levitt and Moros families, have settled all outstanding litigation among themselves.

MARKET UPDATE

Clearwater Capital acquisition in Oricon Enterprises

Singapore based, Clearwater Capital Partners Singapore Fund III (P), a majority-owned unit of Clearwater Capital Partners has acquired 9.99% stake in Oricon Enterprises Limited for Rs.33.80 crore from Beaumaris Investments through open market on BSE.

Cipla may acquire 25% stake in Cipla Medpro's

Cipla may acquire 25% stake in Cipla-Medpro Pty Limited, its South Africa based manufacturing division. Currently Cipla does not have any stake in the company. Both of them have been partners for 18 years. If the deal goes through, it would be Cipla's first ever overseas pure play pharma acquisition. This acquisition could help Cipla to take a proper control over its African operations and prevent any future takeover bids.

Aditya Birla PE and Bajaj Holdings together buy 10% In CARE

Aditya Birla Private Equity and Bajaj Holdings & Investment Ltd (BHIL) have together acquired around 10% stake in Credit Analysis & Research (CARE) for around Rs.150 Cr from its two existing investors ING Vysya Bank and Kotak Bank. The deal values CARE at Rs.1,500 Cr. making it the second-most valued financial ratings firm in the country behind Crisil.

Japanese Mitsui buys 5% in Arch Pharmalabs

Mitsui & Co Limited, a Japanese firm has purchased 5% stake in Indian active pharmaceutical ingredient (API) manufacturer, Arch Pharmalabs Limited for around Rs.65 Cr. The investment values Arch Pharmalabs at Rs.1,300 Cr. The investment will be made in fresh equity issued by the company.

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