



# TAKEOVER PANORAMA

*A monthly newsletter by Corporate Professionals*

*YEAR IV - Vol. VIII - August 2010*



# Insight

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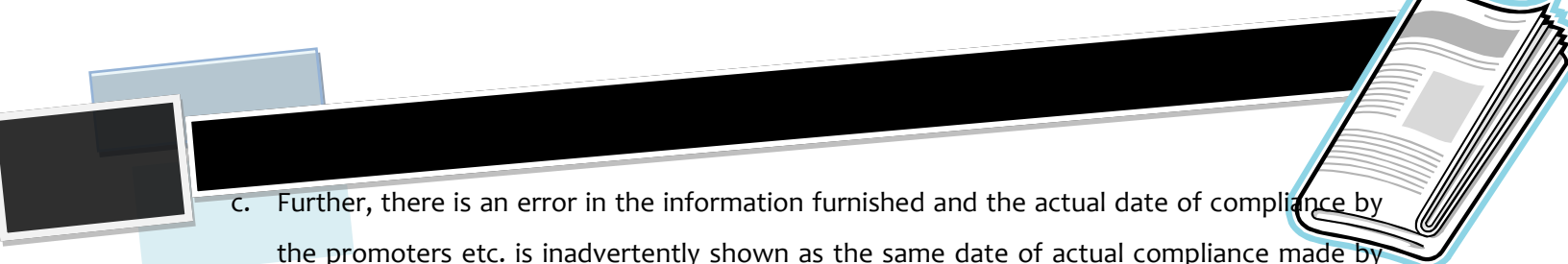
# Legal Update

## Adjudicating Officer Order in the matter of Maloo Polymers Ltd.

### Facts:

1. On January 27, 2009, SEBI received a draft letter of offer from Mr. Dipin Patwa and Mr. Manish Janani (Acquirers) for acquisition of equity shares of Maloo Polymers Ltd (Target Company).
2. While examining the draft letter of offer SEBI observed that the promoters of the Target Company, Mr. Ajay Maloo, Ms. Darshana Bavisi, Mr. Manoj Sharda, Mr. J P Maheshwari, Ms. Nilima Maloo, Ms. Rajni Sharda, Mr. Sanjay Maloo, Ms. Shalini Maloo (Noticees) and other promoters did not comply with the provisions of Regulation 6(1) and 6(3) and 8(1) and 8(2) for the years 1998-2002 and 2008 of the SEBI Takeover Regulations and therefore adjudicating proceedings were initiated against the Noticees.
3. Accordingly a show cause notice was issued to the promoters to which Noticees made the following submissions:
  - a. Maloo Polymers Ltd became a listed company during July 1997 and thus the provisions of Regulation 6(1) and 6(3) were not applicable on it.
  - b. For compliance of Regulation 8(1), none of the person was holding more than 15% shares or voting rights in the company during the relevant time and hence Regulation 8(1) is not applicable and no disclosure was required.

Adjudicating Officer disposes off the proceedings against the Noticees as they have complied with the requirements and disclosures of the SEBI (SAST) Regulations, 1997.

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- c. Further, there is an error in the information furnished and the actual date of compliance by the promoters etc. is inadvertently shown as the same date of actual compliance made by the company. The Noticees, therefore, submitted the exact status of compliance of Regulation 8(2) of SEBI Takeover Regulations to SEBI.
  - d. Further the company has also in its reply dated July 11, 2010 confirmed that the promoters had made the required disclosures under regulation 8(2) to the company, for the years 1998-2002 and 2008, within the stipulated time.

**Issue:**

Whether the Noticees have violated the provisions of Regulation 6(1) and 6(3) and 8(1) and 8(2) for the years 1998-2002 and 2008 of the SEBI Takeover Regulations? If yes, does the violation attract any monetary penalty?

**Decision:**

Adjudicating Officer held that:

1. When the transitional provision of 6(1) and 6(3) were notified i.e. on February 20, 1997, the company was not listed and accordingly the provisions of the regulation does not apply to the promoter of the company. Thus the submission made by the Noticees is acceptable.
2. The holding of the Noticees in the shares of the company never touched 10%/15% of the paid up capital of the Target Company, therefore, the provisions of Regulation 8(1) does not become applicable to the Noticees.
3. Moreover, the company vide its reply dated July 11, 2010 confirmed that the promoters has made the required disclosure under Regulation 8(2) for the years 1998-2002 and 2008 within the stipulated time. Therefore the allegation against the promoter does not stand establish.

Thus, considering the facts and circumstances of the case, the proceedings against the Noticees stand disposed off.

**Facts:**

1. SEBI issued a showcause notice to Mr. G. R. Surana, Mr. Shantilal Surana, Mr. Vijayraj Surana, Mr. Dineshchand Surana, Mrs. Chandanbala Surana, Mrs. Saraladevi Surana, Mrs. Alka Surana and Mrs. Vasantha Surana (Acquirers) who belongs to the Promoter group of Surana Industries Limited (Target Company).
2. It was observed that the acquirers were collectively allotted 70,00,000 shares (8,75,000 shares each) of the Target Company on February 8, 2010 against the conversion of warrants allotted on August 29, 2008.
3. Pursuant to the said conversion, the shareholding of the Acquirers had increased from 64.85% to 71.28% of the total equity capital of the Target Company thereby requiring the open offer to be made to the shareholders of the Target Company. However, SEBI observed that no such public announcement has been made.
4. Further SEBI also noted that there was a delay in the Public Announcement of the offer made (on March 29, 2009) by the same acquirers in respect of the acquisition of 30,00,000 equity shares of the Target Company on September 1, 2008 by way of conversion of 30,00,000 warrants.
5. Accordingly a show cause notice was issued to the acquirers, to which Mr. Dineshchand Surana replied vide letter dated May 10, 2010 and contended that:
  - The acquirers had already made a Public Announcement in respect of the acquisition of 70,00,000 shares of the Target Company on June 16, 2010. However, there was a delay in making the said public announcement as the open offer formalities in respect of the previous acquisition of 30,00,000 equity shares were completed on February 11, 2010.

Direction for the initiation of adjudicating proceedings against the Acquirers was issued for not making the Public Announcement within the stipulated time.

**Issue:**

Whether the adjudicating proceedings should be initiated against the acquirers for delay in making the Public Announcement?



### Decision:

According to Dr. K.M. Abraham, Whole Time Member of SEBI, the acquirers were required to make the Public Announcement on February 23, 2010, but it was actually made on June 16, 2010. As there was a delay in making the Public Announcement, the acquirers have to pay interest along with the consideration to the shareholders whose shares have been accepted in the offer. Further, the requirement of making the Public Announcement is a statutory duty which cannot be ignored whatever be the ostensible reason. Thus, considering the facts and circumstance of the case, Dr. K.M. Abraham directed the initiation of adjudicating proceedings against the acquirers for not making the Public Announcement within the stipulated time, and also directed to comply with the instructions issued by SEBI in respect of the P.A. dated June 16, 2010.

## Takeover Panel Order in the matter of Consolidated Securities Limited


### Facts:

1. Mundra Credit and Investment Private Limited (Acquirer) is the sole promoter of Consolidated Securities Limited (Target Company) and currently holds 53.28% of the paid up capital of the company.
2. Now the Target Company proposes to buy back maximum of 6,25,000 equity shares from open market through stock exchanges at a price not exceeding Rs 133 per share. The buy back would result in increase in the shareholding of promoter from 53.28% to 63.14% i.e. an increase of 9.86%, thereby triggering Regulation 11(1) and 11(2) of the SEBI Takeover Regulations.
3. Accordingly, they have filed the present application seeking exemption from the applicability of regulation 11(1) and 11(2) of SEBI (SAST) Regulations, 1997.

Exemption from the applicability of regulation 11(2) was granted where the increase in shareholding is pursuant to the Buy Back.

### Grounds of Exemption:

1. No change in control
2. The Acquirer will not buy any additional share in the Target company

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3. Minimum public shareholding would be maintained
  4. Acquirers will not participate in buyback offer
  5. The Buy Back will contribute to the overall enhancement of the shareholder value, resulting in increase in the return on equity of the Target Company.
  6. The proposed buy back will lead to reduction of outstanding share, which might lead to increase in earning per share.

**Decision:**

On the basis that the facts and statements the Acquirers are exempted from complying with the open offer requirements given in:

1. The provision of regulation 11(1) in respect of the proposed increase of 1.72% till the Acquirer reaches 55%,
2. The provision of Regulation 11(2) in respect of the proposed increase of 3.14% over and above the limit of 5% as per second proviso of Regulation 11(2)

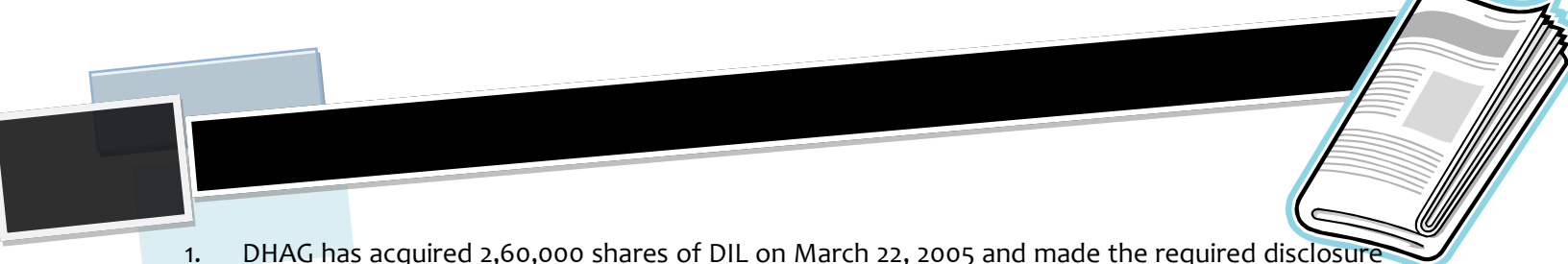
Further, the acquirers will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable.

**ADJUDICATING OFFICER ORDER-IMPOSITION OF PENALTY**

Target Company	Noticee	Regulation No.	Penalty imposed
Kakatiya Textiles Limited	Hyderabad Bottling Company Limited	11 (1) read with 14 (1)	Rs. 5, 00,000
Inca Finlease Limited	Rashel Agrotech Limited	7(1)	Rs. 50,000

**Consent order in the matter of DISA India Limited**

DISA Holding AG (DHAG) and DISA India Limited (DIL) (Applicants) have suo moto filed the applications dated June 8, 2010 and June 3, 2009 for the settlement of enforcement action that may be initiated by SEBI for the following alleged violations:

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1. DHAG has acquired 2,60,000 shares of DIL on March 22, 2005 and made the required disclosure under Regulation 7(1A) of SEBI Takeover Regulations with a delay of 51 days.
  2. DHAG did not make the disclosure under Regulation 3(3) of SEBI Takeover Regulations for the acquisition of shares of DIL on October 20, 2004 which is a condition precedent to get exemption from the open offer obligations.
  3. Further, DHAG failed to submit the Report to SEBI within a period of 21 days as required under Regulation 3(4) of the said regulations.
  4. DHAG did not comply with the disclosure requirement under Regulation 13(3) of the SEBI (PIT) Regulations, 1992.
  5. DIL failed to report to the Stock Exchange the transfer made to DHAG as required under Regulation 7(3) of the SEBI Takeover Regulations and Regulation 13(6) of the SEBI (PIT) Regulations, 1992.

The terms as proposed by the applicants were placed before the High Powered Advisory Committee (HPAC). The High Powered Advisory Committee constituted by SEBI after considering the facts and circumstances of the case, recommended the matter for settlement on the payment of Rs 1,00,000 in the matter of DISA India Limited and Rs 7,00,000 in the matter of DISA Holding AG.

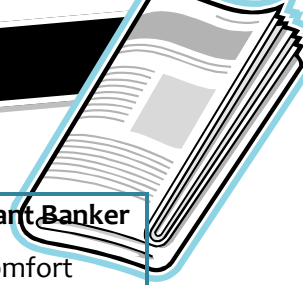
#### **Consent order in the matter of Intellivate Capital Ventures Ltd.**

Intellivate Capital Ventures Ltd. (Applicant) failed to make the statutory disclosure of shareholding under Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997. Therefore, vide letter dated March 8, 2010, the applicant has filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 3,50,000 towards the consent terms as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

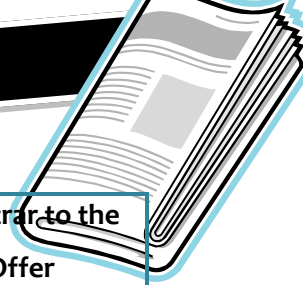
# Latest Open Offers



Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
<p>Shree Sponge Steel &amp; Forging Ltd.</p> <p><b>Regd. Office</b> Vadodra</p> <p><b>Paid up capital</b> Rs. 385 lacs</p> <p><b>Listed At</b> VSE, ASE &amp; JSE</p>	<p>Vijaykumar Purshottamdas Parikh</p>	<p>Offer to acquire 13,02,100 (33.82%) Equity Shares at a price of Rs. 20 per share payable in cash.</p>	<p><b>Regulation 11(1)</b></p> <p>The acquirer belongs to promoter group and holds 36.74% of the share capital of Target Company. For the purpose of consolidation of holding, the acquirer has given this Open Offer.</p>	<p><b>Merchant Banker</b> Asit C. Mehta Investment Intermediaries Ltd.</p> <p><b>Registrar to the Offer</b> Bigshare Services Pvt. Ltd.</p>
<p>Sulabh Engineers and Services Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 24.75 lakhs</p> <p><b>Listed At</b> BSE &amp; UPSE</p>	<p>Manoj Kumar Agarwal and Deepa Mittal</p>	<p>Offer to acquire 49,500 (20%) Equity Shares at a price of Rs. 32 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 1,09,650 (44.30%) Equity Shares at a price of Rs.32 per share.</p>	<p><b>Merchant Banker</b> Chartered Capital and Investment Limited</p> <p><b>Registrar to the Offer</b> Skyline Financial Services Pvt. Ltd.</p>



<p>Syncom Formulations (India) Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> 1.73 Crore</p> <p><b>Listed At</b> BSE</p>	<p>Kedarmal Bankda and Vijay Bankda along with PAC</p>	<p>Offer to acquire 34,66,870 (20%) Equity Shares at a price of Rs. 34 per share payable in cash.</p>	<p><b>Regulation 11(2)</b></p> <p>Allotment of 49,24,000 equity shares to the Promoter Group, thereby increasing their shareholding from 68.69% to 77.58%</p>	<p><b>Merchant Banker</b> Comfort Securities Private Limited</p> <p><b>Registrar to the Offer</b> Ankit Consultancy Private Limited</p>
<p>Interlink Petroleum Limited</p> <p><b>Regd. Office</b> Vadodra</p> <p><b>Paid up capital</b> Rs. 2492 lakhs</p> <p><b>Listed At</b> BSE</p>	<p>Sim Siang Choon Ltd.</p>	<p>Offer to acquire 49,84,240 (20%) Equity Shares at a price of Rs. 67.65 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA for indirect acquisition of 1,03,10,000 (41.37%) equity shares and control and 16,24,000 (6.52%) shares of the Target Company.</p>	<p><b>Merchant Banker</b> Collins Stewart Inga Private Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Pvt. Ltd.</p>
<p>Everonn Education Limited</p> <p><b>Regd. Office</b> Chennai</p>	<p>SKIL Infrastructure Limited along with SKIL Knowledge Cities Private Limited</p>	<p>Offer to acquire 39,44,080 (20%) Equity Shares at a price of Rs. 536.16 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>Investment Agreement to subscribe to 40,00,000 optionally convertible debentures (OCD) on</p>	<p><b>Merchant Banker</b> Edelweiss Capital Limited</p>



<p><b>Paid up capital</b> Rs. 1512 lacs</p> <p><b>Listed At</b> BSE &amp; NSE</p>			<p>a preferential allotment basis representing 20.28% of the Emerging voting equity capital of the Target Company and to become the co promoter.</p>	<p><b>Registrar to the Offer</b> Karvy Computershare Pvt. Ltd.</p>
<p>Monotype India Limited</p> <p><b>Regd. Office</b> Kolkata</p> <p><b>Paid up capital</b> Rs. 414.85 lacs</p> <p><b>Listed At</b> BSE &amp; CSE</p>	<p>Prism Impex Private Limited and Sushil Kumar Khaitan</p>	<p>Offer to acquire 3,29,700 (20%) Equity Shares at a price of Rs. 3.65 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b> SPA to acquire 12,23,231 (74.20%) equity shares of the Target Company at a price of Rs.3.65 per share.</p>	<p><b>Merchant Banker</b> Microsec Capital Limited</p> <p><b>Registrar to the Offer</b> Niche Technologies Pvt. Ltd.</p>
<p>Ontrack Systems Limited</p> <p><b>Regd. Office</b> Chennai</p> <p><b>Paid up capital</b> Rs. 1934.20 lakhs</p> <p><b>Listed At</b> BSE, CSE &amp; MSE</p>	<p>R. P. Infosystems Private Limited and B. Hari</p>	<p>Offer to acquire 38,68,401 (20%) Equity Shares at a price of Rs. 17 per share payable in cash.</p>	<p><b>Regulation 10, 11(1) &amp; 12</b> Preferential allotment of 1,02,00,000 equity shares of the Target Company at a price of Rs. 12 per share, thereby, increasing the shareholding of the acquirers from 21.43% to 62.86%.</p>	<p><b>Merchant Banker</b> V C Corporate Advisors Private Limited</p> <p><b>Registrar to the Offer</b> Cameo Corporate Services Limited</p>

<p>Premier Capital Services Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 71.46 lakhs</p> <p><b>Listed At</b> BSE</p>	<p>Manoj Kasliwal, Sharda M Kasliwal and Dalip Kumar</p>	<p>Offer to acquire 1,42,920 (20%) Equity Shares at a price of Rs. 85 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 5,06,970 (70.94%) equity shares of the Target Company at a price of Rs.80 per share.</p>	<p><b>Merchant Banker</b> Intensive Fiscal Services Private Limited</p> <p><b>Registrar to the Offer</b> Purva Sharegistry (India) Pvt. Ltd.</p>
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## *Hint of the Month*

Any payment made to the persons other than the target company in respect of non- compete agreement in excess of twenty-five per cent of the offer price arrived at under regulation 20(4), (5) and (6) shall be added to the offer price.

*(As substantiated from regulation 20(8) of SEBI Takeover Regulations)*

# Regular Section

## Comparison of major changes suggested in TRAC Report with the Existing SEBI Takeover Regulations

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, known as the Takeover Code in India is all set to become unrestricted and move more in line with the international practices, if the market regulator SEBI accepts the suggestions made by **Takeover Regulations Advisory Committee (TRAC)**. The Committee has re write the entire regulations. On July 19, 2010, TRAC released its Committee Report on the draft Takeover Regulations for the public comments which constitutes the following heads:

- **Preface**
- **Part I: Salient Features of the proposed Takeover Regulations**
- **Part II: Key Recommendations; Deliberations and Rationale**
- **Part III: Draft text of the Proposed Takeover Regulations**

A comparison of major changes suggested in the TRAC report is tabulated below:

Heading	Existing Provisions	Proposed	Comments
<b>Threshold Limit</b>	<b>Regulation 10:</b> No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise <b><u>fifteen per cent or more of the voting rights in a company</u></b> , unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.	<b>Regulation 3(1):</b> No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise <b><u>twenty-five per cent or more of the voting rights in such target company</u></b> unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.	The existing SEBI Takeover Regulations necessitates the acquirer to give an open offer to the shareholders of Target Company on the acquisition of shares/ voting rights entitling to exercise 15% or more voting rights in the Target Company. Prior to October 28, 1998, the threshold limit for Open Offer was fixed at 10%. In the Report, the committee has recommended to increase the threshold limit for Open Offer to 25%.

Heading	Existing Provisions	Proposed	Comments
			<p>The committee has recommended to increase the current threshold limit taking into consideration the average promoters shareholding prevalent in the Listed Company and the international practices.</p>
<p><b>Offer Size</b></p>	<p><b>Regulation 21(1):</b> The public offer made by the acquirer to the shareholders of the target company shall be for a <b><u>minimum twenty per cent of the voting capital of the company.</u></b></p>	<p><b>Regulation 7(1):</b> The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 <b><u>shall be for acquisition of all the shares held by all the other shareholders of the target company as of the last day of the tendering period.</u></b> Provided that where the target company has issued depository receipts entitling the holder thereof to exercise voting rights in the target company, the open offer shall be for acquisition of the underlying shares against which the depository receipts have been issued.</p>	<p>The existing regulations provide that the Offer under the regulations shall be made for the acquisition of at least 20% of the paid up capital of the Target Company.</p> <p>However, in the report, the committee has recommended that the offer shall be made for the acquisition of all the shares held by all the shareholders as of the last day of triggering period.</p> <p>The above recommendation has been made taking into consideration the interest of the shareholders so that an opportunity to exit from the Target Company can be provided to all the shareholders who desires to exit from the company where the change in management is taking place.</p>



Heading	Existing Provisions	Proposed	Comments
<p><b>Change in control</b></p>	<p><b>Regulation 12</b> Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations: Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a special resolution passed by the shareholders in a general meeting. Provided further that for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 shall also be provided.</p>	<p><b>Regulation 4</b> Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.</p>	<p>In the report submitted by the committee, one of the route for change in control i.e. change in control effected through the approval of shareholders obtained by way of special resolution passed through postal ballot has been withdrawn. The only route now available for change in control is by providing an exit opportunity to the shareholders through the Open Offer.</p>
<p><b>Automatic Exemptions- Increase in shareholding pursuant to buy back by the Target Company</b></p>	<p>The existing regulations do not provide the automatic exemption in case of increase in shareholding beyond the threshold limit pursuant to the buy back by the Target Company and the acquirer is required to apply for the exemption to Takeover Panel.</p>	<p><b>Regulation 10 (4)(b)</b> provides that increase in shareholding pursuant to the buy back by the Target Company is exempt from the Open Offer obligation subject to the compliance of the conditions as provided therein.</p>	<p>As there is no active acquisition of shares by the promoters of the Target Company in case of buy back and the increase in shareholding is pursuant to the corporate action taken by the Target Company, therefore, the Committee has</p>

Heading	Existing Provisions	Proposed	Comments
<p><b>Automatic Exemptions- Increase in shareholding in accordance with CDR Scheme.</b></p>	<p>The existing regulations do not provide the automatic exemption in case of increase in shareholding beyond the threshold limit in accordance with CDR Scheme and the acquirer is required to apply for the exemption to Takeover Panel.</p>	<p><b>Regulation 10 (2)(a)</b> provides that the acquisition of shares of target company not involving a change of control over the Target Company pursuant to the scheme of Corporate Debt Restructuring is exempt from the Open Offer provided that approval of shareholders has been obtained by special resolution by postal ballot.</p>	<p>recommended that such increase in shareholding should be exempt from Open Offer obligation.</p> <p>As CDR cell approves the scheme keeping in view the interest of the shareholders, therefore, it would not be justified if after the approval of scheme requiring the allotment of equity shares, the acquirer would again be required to obtain the exemption from the Takeover Panel. Accordingly, in the report submitted by the committee, it is recommended that the acquisition of shares pursuant to the CDR approved scheme is exempt from Open Offer provided that the <b>approval of shareholders has been obtained by way of postal ballot.</b></p>
<p><b>Meaning of frequently/ infrequently traded shares</b></p>	<p><b>Explanation to Regulation 20(5)</b> For the purpose of sub-regulation (5), shares shall be deemed to be infrequently traded if on the stock exchange, the annualised trading turnover in that share during the preceding six calendar months prior to the month in which the public announcement is made is less than five per cent (by</p>	<p><b>Regulation 2(1)(k)</b> <b>Frequently traded shares</b> 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</p>	<p>The existing regulation provides the definition of infrequently traded shares and states that for the purpose of checking the status of trading, the trading turnover in that share during the 6 months preceding the month in which PA is made has to be annualized. Whereas in the report, the committee</p>

Heading	Existing Provisions	Proposed	Comments
	<p>number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the said six months period may be taken</p>	<p>shares of such class of such target company: Provided that where the total share capital of the target company is not identical throughout such period, the weighted average number of total shares of the target company shall represent the total number of shares.</p>	<p>has recommended that trading turnover during the 12 months preceding the month in which the PA is made is to be considered. Further, the existing regulation provides a trading turnover of 5% to consider the shares as frequently traded whereas the committee has recommend a level of 10%.</p>
<p><b>Specified date/ Identified date</b></p>	<p><b>Regulation 19</b> provides that the <b>Specified Date</b> for the purpose of determining the names of the shareholders to whom the letter of offer should be sent shall not be later than 30<sup>th</sup> day from the date of PA.</p>	<p><b>Regulation 2(1)(I)</b> provides that the identified date means the date falling on the tenth business day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent;</p>	<p>As the purpose of specified date is to determine the names of the shareholders to whom the letter of offer would be sent and an exit opportunity will be provided, therefore, it is not justified to determine the same much before the approval of Letter of offer and initiation of offer period for tendering the shares. Accordingly, the recommendation of the committee seems to be more logical as it provides that the shareholders list will be finalized on a date falling on 10<sup>th</sup> business day prior to the commencement of the tendering period.</p>



Heading	Existing Provisions	Proposed	Comments
<p><b>Completion of transaction of acquisition of shares under an agreement</b></p>	<p><b>Regulation 23(6)</b> provides that upon fulfillment of all obligations by the acquirers under the regulations as certified by the merchant banker, the board of directors of the target company shall transfer the securities acquired by the acquirer, whether under the agreement or from open market purchases, in the name of the acquirer and/or allow such changes in the board of directors as would give the acquirer representation on the board or control over the company.</p>	<p><b>Regulation 22(2)</b> Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one business days from the date of the public announcement, act upon the agreement and complete the acquisition of shares or voting rights in, or control over the target company as contemplated in such agreement: Provided that nothing contained in this sub-regulation shall apply to a competing offer not being an open offer attracted by a preferential allotment of shares of the target company.</p>	<p>The existing regulations provides for the execution of agreement for the acquisition of shares after the completion of offer formalities. However, in the report the committee has suggested that the agreement for the acquisition of shares, voting rights or control over the Target Company can be executed by the parties to the agreement after 21 days from the date of PA provided that 100% consideration payable under the open offer assuming the full acceptance has been deposited in the escrow account.</p>
<p><b>Disclosure of shareholding on the acquisition of shares</b></p>	<p><b>Regulation 7(1)</b> Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than <b><u>five per cent or ten per</u></b></p>	<p><b>Regulation 28(1)</b> Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by</p>	<p>The existing regulations requires the disclosure of shareholding on the acquisition of more than 5%, 10%, 14%, 54% and 74% shares in the target</p>



Heading	Existing Provisions	Proposed	Comments
	<p><b><u>cent or fourteen per cent or fifty four per cent or seventy four per cent]</u></b> shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.</p>	<p>persons acting in concert with him in such target company, entitle them to exercise five per cent or more of the voting rights in such target company shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.</p>	<p>company whereas the committee has suggested the disclosure of shareholding on the acquisition of shares entitling them to exercise 5% or more shares or voting rights of the Target Company. Further, it is to be noted that the obligations to give the disclosure is only on the acquirer and not on the Target Company which is different from the existing regulations which requires the Target Company to give the disclosure to the stock exchange on the receipt of disclosure from the acquirer in respect of acquisition of shares as disclosed therein.</p>
<p><b>Disclosure of shareholding on the acquisition of shares</b></p>	<p><b><u>Regulation 7(1A)</u></b> Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed.</p>	<p><b><u>Regulation 28(2)</u></b> Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to exercise five per cent or more of the voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent</p>	<p>The committee has made requirement of disclosure more frequent and stringent and requires the disclosure of shareholding by a person already holding more than 5% shares in the Target Company whenever there has been a change in his shareholding constituting 2% or more of the voting capital of the target</p>



Heading	Existing Provisions	Proposed	Comments
	<p>within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.</p>	<p>or more of the voting rights in such target company along with their aggregate shareholding and voting rights in such form as may be specified.</p>	<p>company. Whereas the existing regulations require such disclosure by a person who already holds 15% or more shares but less than 55% shares in the Target Company. Further in this case also, the committee requires the disclosure only by the acquirer and not by the Target Company.</p>
<p><b>Continual Disclosure</b></p>	<p><b>Regulation 8 (1)</b> Every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.</p>	<p><b>Regulation 29(1)</b> Every person, who together with persons acting in concert with him, holds shares or voting rights entitling them to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.</p>	<p>The existing regulations provides the continual disclosure by a person who already holds more than 15% shares in the Target Company with 21 days from the financial year ended March 31. The Limit has been change in report to 25%. Further, the time limit for filing the disclosure has also been reduced to 15 business days instead of 21 days.</p>
<p><b>Continual Disclosure</b></p>	<p><b>Regulation 8(2)</b> A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.</p>	<p><b>Regulation 29 (2)</b> The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.</p>	<p>The existing regulations requires the continual disclosure by promoters at two event i.e. one within 21 days from the financial year ended March 31 and other within 21 days from the record. However, in the report the committee has suggested the disclosure at once i.e. within 15 business days from the end of each FY.</p>

Heading	Existing Provisions	Proposed	Comments
<b>Shares</b>	<p><b>Regulation 2 (k)</b>  <b>“Shares”</b> means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights but shall not include preference shares;</p>	<p><b>Regulation 2 (w)</b>  <b>“Shares”</b> means shares in the equity share capital of a target company carrying voting rights, and include any security which entitles the holder thereof to exercise voting rights.</p> <p>Provided that all the depository receipts entitling the holder thereof to exercise voting rights in the target company shall be regarded as shares.</p>	<p>At present, the depository receipts entitling the holder thereof to exercise voting rights in the target company are not included in the definition of Share. However the committee in its report has recommended that the depository receipts entitling the holder thereof to exercise voting rights in the target company shall be regarded as shares.</p>
<b>Tax Regime</b>	<p>At present, the open offer transaction i.e. tendering of shares in the open offer made by the acquirer is treated at par with the off market deal for the purpose of taxation.</p>	<p>In the report, the committee has recommended that such open offer transaction should be treated at par with those selling the shares in the Open Market.</p>	<p>The rationale behind this recommendation is that as the Open Offer transaction is highly regulated and all the parties involved in the process are required to follow the provisions as laid down in the Takeover Regulations, therefore, it would not be justified to club such a regulated and investor friendly activity in the same bracket as an off market deal which is a private transaction between the parties.</p>

To give your views on the TRAC Report, log on to [www.takeovercode.com](http://www.takeovercode.com).



# Case Study

## An analysis of Open Offer for Maytas Infra Limited

### About Maytas Infra Limited (Target Company)

Maytas Infra Limited (MIL) promoted by Mr. B Teja Raju, SNR Investments Private Limited and Veeyes Investments Private Limited was incorporated on May 6, 1988 with the name Satyam Constructions Private Limited. It is one of the leading Infrastructure Development, Construction and Project Management Companies in India with more than two decades of rich and varied experience in execution of landmark projects across India. MIL is an ISO 9001-2000 certified company, committed to highest standards of quality. The equity shares of the company are listed on National Stock Exchange (NSE) and Bombay Stock Exchange (BSE).

### 1ST OPEN OFFER

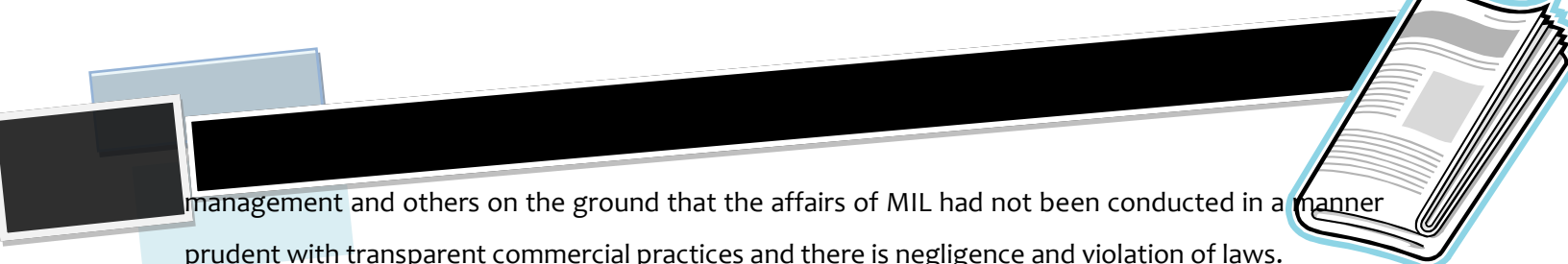
**Acquirer:** Infrastructure Leasing & Financial Services Limited (IL&FS) and IL&FS Financial Services Limited (IFIN)

### First step towards the acquisition of shares in MIL

IFIN(PAC) has extended a loan amount of Rs.2450 million to Harangi Agro Farms Private Limited and Narayanadri Greenfields Private Limited (Borrowers) in consideration whereof the borrowers has created a pledge over 2,17,78,500 shares of MIL in favour of IL&FS Financial Services Limited (IFIN), IL&FS Trust Company Limited and Investsmart Financial Services Limited. However, due to the nonpayment of loan amount, IFIN invoked the part of the pledge and acquired 14.5% shares of MIL on March 26, 2009.

### Impact of Satyam Scandal on MIL and rejuvenation by IL&FS

- I. On or about January 2009, due to certain extraneous facts and circumstances relating to Satyam Computer Services Limited (Satyam), MIL suffered great loss of confidence of various stakeholders as the promoter directors of MIL and Satyam are from the same family. Owing to such extraordinary circumstances, the Union of India filed a petition before Company Law Board (CLB) against MIL, its



management and others on the ground that the affairs of MIL had not been conducted in a manner prudent with transparent commercial practices and there is negligence and violation of laws.

- II. CLB passed an interim order on March 5, 2009 for appointment of 4 nominees of the CLB on the board of directors of MIL who were to be appointed by the Union of India. Further, the Government Directors also had the preliminary meeting with the major stakeholders and lenders including IL&FS for analyzing the situation of MIL and for its future plans.
- III. Vide letter dated August 27, 2009, IL&FS made an offer to acquire management control of MIL for the approval of CLB which was accepted by CLB vide its order dated August 31, 2009.

**The salient aspects of the order are:**

- IL&FS shall be the new promoter of MIL with immediate effect.
- IL&FS which holds 14.50% equity shares (currently held by IFIN (PAC)) shall foreclose its rights on 22.51% shares and thus shall hold 37.01% shares of MIL.
- IL&FS shall appoint four of its nominees including the Chairman on Board of Directors of MIL and will be in management control of MIL.
- Two of the four CLB nominees appointed by the Central Government on March 5, 2009 shall continue as directors for a period of two years with the same immunity granted as per the order.
- IL&FS shall bring in up to Rs. 55 crore as liquidity support to MIL within 3 months.
- IL&FS shall hold minimum of 26% shares in MIL for a minimum period of two years and shall keep management control of the company during that period.

Accordingly, in terms of the CLB order, IL&FS has made an offer to IFIN to acquire 1,32,45,126 Equity Shares representing 22.51% at a price of Rs.112.80 per share, which was duly accepted by IFIN and accordingly on August 31, 2009, IFIN exercised its power of sale/invoked its pledge over the balance shares.



### Open Offer to the shareholders of MIL

Pursuant to the acquisition of above shares and CLB order, IL&FS (Acquirer) along with IFIN (PAC) had made the open offer to acquire 11,782,620 Equity Shares representing 20% of the Emerging voting capital of the MIL at a price of Rs.112.80 per Equity Share aggregating to Rs.1,329 mn payable in cash.

As on June 2010, IL&FS and IFIN holds 37.01% shares in the MIL.

### IIND OPEN OFFER

**Acquirer:** SBG Projects Investments Limited along with Skylight Investments (Mauritius) Limited, Infrastructure Leasing & Financial Services Limited and IL&FS Financial Services Limited

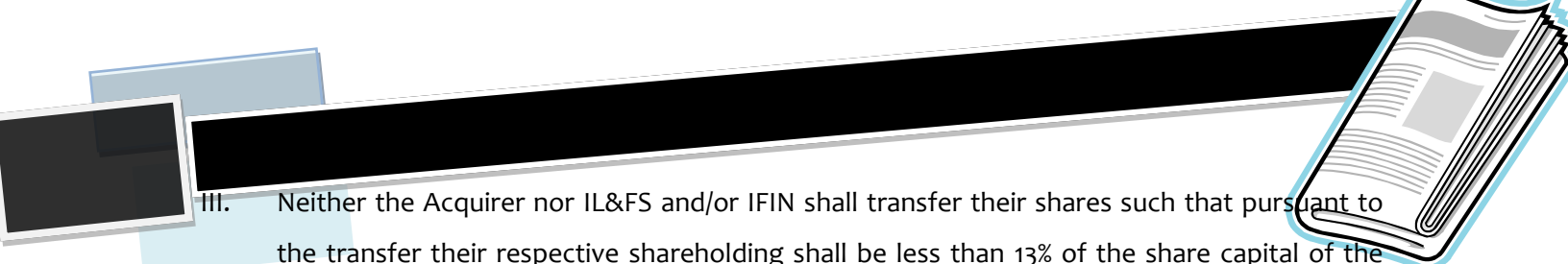
### Background of the acquisition

On June 19, 2010, the Acquirers, the Target Company, IL & FS and IFIN have entered into a SSA whereby 1,54,59,133 equity shares of the Target Company representing 20.80% of the share capital (after considering preferential allotment) of the Target Company will be issued through preferential allotment to SBG Projects Investments Limited (Acquirer) at a price of Rs 195.30 per share. Further they have also entered into a shareholders agreement which provides that certain management rights have been conferred to the Acquirer.

As on the date of PA, the Acquirer and Skylight Investments (Mauritius) Limited (“Skylight”) do not hold any equity shares in the Target Company. IL&FS and IFIN holds 13,245,250 representing 22.51% and 85,33,374 shares representing 14.5% respectively of the present equity share capital of MIL.

### Salient Aspects of SSA:

- I. The Acquirer, IL&FS and IFIN have agreed to be co-promoters and shall have joint management control of the Target Company with the right to appoint equal number of directors.
- II. IL&FS and/or IFIN shall not, for a period up to 29 September 2011 transfer any shares held by them such that pursuant to such transfer the aggregate equity shares held by them is less than 26% of the share capital. (This is in accordance with CLB order dated August 31, 2009 as detailed above).



III. Neither the Acquirer nor IL&FS and/or IFIN shall transfer their shares such that pursuant to the transfer their respective shareholding shall be less than 13% of the share capital of the Target Company for a period of five years.

### Open Offer to the shareholders of MIL

Pursuant to the above acquisition, the Acquirers are making this open offer to the shareholders of the Target Company to acquire 1,54,23,236 equity shares representing 20% Emerging voting capital of the company at a price of Rs. 195.72 per share payable in cash.

### Restructuring of the company

The Target Company proposes to use the proceeds of the Preferential Issue to (i) fund ongoing expansion projects of the Target Company; and (ii) repay existing debt of the Company. Moreover, it is in the process of restructuring its debt obligation and has also received provisional letter of approval on June 16, 2010 from Corporate Debt Restructuring (CDR) Empowered group. As a part of the scheme it is possible that 27,31,128 equity shares could be issued to the lenders.



## *Market Update*

### SC ruled in favour of Daiichi over Zenotech Offer Price

Supreme Court of India has settled a long standing dispute between pharma major Daiichi Sankyo (“Acquirer”) and the minority shareholders of Zenotech Laboratories over the Open Offer Price to paid to the shareholders of Zenotech Laboratories Limited (“ZLL”) and ruled that the Offer Price of Rs.113.62 per share offered by the Acquirer i.e. Daiichi was lawful and fair.

### Fortis Healthcare solds its Parkway stake to Khazanah

Fortis Healthcare has exited out of the battle with the Malaysian fund Khazanah to acquire control over Parkway Holdings by selling its 24% stake in Parkway to Khazanah for S\$3.95 per share. Fortis will make S\$116.7 Mn profit on its 4 month old investment. Fortis had bought 24% stake in Parkway from buyout firm TPG in March for S\$960 Mn (S\$3.56 per share).

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