



Takeover Panorama

A Monthly Newsletter by Corporate Professionals

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Insight

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Legal Update

SAT Order in the matter of Jayaram Chigurupati

Facts:

1. On October 5, 2007, “RLL” made a public announcement to the shareholders of “ZLL” and paid a price of Rs.160 per share to the shareholders under the open offer during the period January 15, 2008 to January 28, 2008.
2. On June 11, 2008, Daiichi (Acquirer) entered in to the Share purchase and share subscription agreement (SPSSA) with the promoters of “RLL” and “RLL” and made the open offer to the shareholders of “RLL”. On November 07, 2008 i.e. after the completion of acquisition, Daiichi holds in aggregate 63.92% of paid up capital of “RLL” and “RLL” becomes the subsidiary of Daiichi.
3. Ranbaxy holds 46.79% stake in “ZLL” as a result with the acquisition of Ranbaxy, Daiichi indirectly acquired 46.79% stake in the “ZLL” which resulted in to triggering Regulation 10 and 12 of SEBI (SAST) Regulations 1997 and therefore, on Jan 19, 2009 Daiichi made the public announcement to acquire 20% shares of the “ZLL” at a price of Rs. 113.62 per share.
4. After the issue of public announcement, Dr. Jayaram Chigurupati and others shareholders of ZLL made a complaint to SEBI against Daiichi alleging the violation of SEBI Takeover Regulations in relation to the determination of offer price to be paid to the shareholders of “ZLL”. It has been alleged in the complaint that Daiichi is required to make the public announcement at a price of Rs.160 per share being the price paid by the “RLL” to the shareholders of “ZLL” during the period

In case of Indirect Acquisition, the date on which public announcement was made to the shareholders of the Target Company, should be taken as the date for determining the relationship between the acquirer and parent company.



between January 15, 2008 to January 28, 2008 in terms of regulation 20(4)(ii) of SEBI (SAST) Regulations, 1997 as “RLL” was person acting in concert with Daiichi as on January 19, 2009. SEBI Vide its communication dated June 22, 2009, rejected the claim of the complainant. Present appeal is filed against the said SEBI Communication.

Issues:

1. What would be the date for determining the relationship between Daiichi and “RLL” i.e. whether the relationship is to be checked on the date when the public announcement was made for the Target Company (“ZLL”) or date of public announcement of Parent Company (“RLL”)?
2. Whether the price paid by the Parent Company (“RLL”) to the shareholders of Target Company (“ZLL”) is to be considered while determining the offer price to be paid under open offer by Daiichi to “ZLL”?
3. What would be the time period for making the public announcement in case of indirect acquisition of shares of Indian Listed Company? Whether the public announcement to the shareholders of Zenotech has been made in time by Daiichi?

Decision:

1. The date on which the public announcement was made to the shareholders of Target Company i.e. “ZLL” should be taken as the date for determining the relationship of “RLL” and Daiichi. Since On January 19, 2009, the date on which the public announcement was made to the shareholders of “ZLL”, RLL was a subsidiary of Daiichi, therefore, it will be deemed to be person acting in concert with Daiichi in terms of SEBI (SAST) Regulations, 1997.
2. Since RLL was person acting in concert with Daiichi, therefore, the price of Rs.160 paid by it during the preceding 6 months prior June 16, 2008 i.e. the date on which the public announcement was made to the shareholders of RLL is to be considered for determining the offer price for the shareholders of Zenotech. Further, SAT directed the Daiichi to modify the letter of offer and revise the offer price to Rs.160 per share.
3. A public announcement in case of indirect acquisition has to be made within 3 months of consummation of acquisition of parent company. As the acquisition of “RLL” which resulted



into indirect acquisition of “ZLL” was completed on October 20, 2008, therefore, the public announcement by Daiichi on January 19, 2009 was within time.

SEBI Order in the matter of Sound Craft Industries Limited and Others

Facts:

1. SEBI received a report from Serious Frauds Investigation Office (SFIO) in respect of manipulation of share prices of Soundcraft Industries Limited (“SIL”) through circular trading and misuse of funds lent by banks and financial institutions. Thereinafter, SEBI initiated full fledged investigation in to the scrip of SIL and found that on June 30, 2003, Raj Kumar Basantani (Noticee), Chairman of SIL was holding about 11.22% of the share capital of SIL and has fraudulently off loaded 25.69 lac shares representing 3.17% of the share capital of SIL between June 30, 2003 and March 15, 2004 without making the required disclosures.

SEBI restricted the Noticee from trading in securities and from associating in securities market in any manner for a period of 1 year where the Noticee was indulge in manipulation of share prices and was in violation of SEBI Takeover Regulations.

2. It was further observed that Noticee was the major trading member on NSE and has accounted for 23.98% of gross volumes in the scrip of SIL during the period from December, 2003 to March, 2004. Also, Noticee along with its PAC and SIL (collectively referred as Noticees) had altogether sold about 104 lac shares by providing false and misleading information regarding bonus issue without making the required disclosures and thus violated Regulation 7(1A) of SEBI (SAST) Regulations, 1997 and Regulation 13(4) of SEBI (PIT) Regulations, 1992. Accordingly several show cause notices (SCN) were issued to the Noticees but all were returned undelivered, thereafter, a newspaper advertisement about the SCN was issued in the national newspaper but Noticee did not replied to any, hence an ex parte order is passed.



Issue:

Whether, the Noticees have violated the provisions of Regulation 7(1A) of SEBI (SAST) Regulations, 1997 and Regulation 13(4) of SEBI (PIT) Regulations, 1992?

Decision:

On the basis of the above facts and circumstances of the case, SEBI restricted the Noticee from trading in securities and from associating in securities market in any manner for a period of 1 year from Oct 16, 2009.

Adjudicating Order in the matter of Multipurpose Trading and Agencies Limited

Facts:

On examination of letter of offer filed by Ajay Singh, Bhupendra Kansagra and Sanjay Malhotra (collectively referred as Acquirers) for the acquisition of 20% of Equity Shares of Multipurpose Trading and Agencies Limited (Target Company/Noticee), SEBI Observed that Noticee has failed to make the requisite disclosures under regulation 6(2) and 6(4) of SEBI(SAST) Regulations, 1997 within the stipulated time and has also failed to make the disclosures about the promoters shareholding to BSE under Regulation 8(3) of SEBI(SAST) Regulations, 1997 for the years 1998-99 to 2002-03, therefore, violated the said regulations. Consequently, Adjudicating Officer was appointed and a show cause notice was served to the Noticee.

Adjudicating officer imposed the monetary penalty of Rs.1,50,000 for the continued violation of regulation 6 and 8 of SEBI Takeover Regulations.

However, no reply was received from Noticee. Thereafter, the Noticee filed the application for consent against the said show cause notice and the adjudication proceedings were kept in abeyance.



However, the consent terms as proposed by the Noticee were not accepted and adjudication proceedings were recommenced.

Contention:

1. The Noticee contented that when the alleged violation was committed, the Target Company was under the control of the old management. The new management has taken over the control of the company by taking over 100% shares of promoters through the takeover process in the year 2006. The present management was not provided with the old accounting records of the company in year 2006, thus, was unable to find out whether the old management has made the disclosure under the SEBI (SAST) Regulations, 1997 or not;
2. It was further contented that the non compliance was unintentional and has not resulted in to any undue advantage to either the old or the new promoters of the company.

Issues:

1. Whether the Noticee has violated Regulation 6(2), 6(4) & 8(3) of SEBI (SAST) Regulations, 1997.
2. Whether non compliance of said regulations, attracts monetary penalty on the Noticee under section 15A(b) of SEBI Act, 1992

Decision:

After considering all the facts and circumstances, AO held that, it is difficult to pre judge the reaction of investors on becoming aware of the change in the shareholding of the promoter group, thus, the contention of noticee of not causing any monetary loss to the investors on account of default, cannot be accepted. Since Noticee failed to comply with the provisions of Regulations 6(3) & 6(4) for the year 1997 and Regulation 8(3) of SEBI (SAST) Regulations, 1997 for the years 1998-99 to 2002-03 which indicates the repetitive nature of default committed by the Noticee, hence, imposed the penalty of Rs. 1,50,000 on the Noticee.



Adjudicating Order in the matter of Hatsun Agro Product Limited

Facts:

On examination of letter of offer filed by R.G. Chandramogan (Acquirer) along with its PAC for the acquisition of Equity Shares of Hatsun Agro Product Limited (Target Company/Noticee), SEBI observed that Noticee has failed to make the requisite disclosures under Regulation 7(3) of SEBI (SAST) Regulations, 1997 for the years 1997, 1999, 2000, 2001 and 2002 and has filed the annual disclosure under regulation 8(3) of SEBI (SAST) Regulations, 1997 for the year 1999 with considerable delay, thus, violated Regulation 7(3) & 8(3) of SEBI (SAST) Regulations, 1997. Accordingly, a show cause notice was served to the Noticee and the adjudicating officer was appointed.

Adjudicating officer imposed the monetary penalty of Rs.15000 on the Noticee for the delay in filing the disclosure under regulation 8(3) of SEBI Takeover Regulations.

Contention:

1. Noticee contented that as the holding of acquirer along with PAC was much in excess of 5 % during the period 20.02.1997 to 06.04.2002, thus, Regulation 7(1) of SEBI (SAST) Regulations, 1997 requiring the disclosure of shareholding by an acquirer who has acquired more than 5% shares was not applicable.
2. As per Regulation 7(1A) as existed for the period 24.10.2001 to 06.04.2002, any acquirer who has acquired shares or voting rights of a company, under sub regulation (1) of regulation 11, shall make disclosure of such acquisition as well as aggregate of his pre and post acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights. As the Acquirer had not acquired any shares under Regulation



11(1) in excess of 5% and 10% of voting rights and hence, there is no requirement for disclosure under Regulation 7(1A). As there is no disclosure requirement for the Acquirer under Regulation 7(1) and 7(1A), there is no question of any disclosure by the Noticee under Regulation 7(3) of SEBI (SAST) Regulations, 1997.

3. Further the Noticee has not received any disclosure under Regulation 7(1)& 7(1A) of SEBI(SAST) Regulations, 1997 during the period 20.02.1997 to 06.04.2002, therefore, there is no requirement of any reporting under Regulation 7(3) by the Noticee;
4. Noticee further contented that there was a marginal delay of 18 days in filing the disclosure under Regulation 8(3) of SEBI (SAST) Regulations, 1997, which was unintentional and no loss was caused to any investor.

Issue:

Whether Noticee has violated Regulation 7(3) & 8(3) of SEBI (SAST) Regulations, 1997? Whether such violation requires any monetary penalty to be imposed on the Noticee?

Decision:

After considering all facts and circumstances, Adjudicating officer held that Noticee has not violated Regulation 7(3) of SEBI SAST Regulations. However, the delay in filing necessary disclosures under Regulation 8(3) makes the Noticee liable for penalty under Section 15A (b) of the SEBI Act, 1992 and ,thus, imposed the penalty of Rs 15,000 on the Noticee for violation of Regulation 8(3) of SEBI (SAST) Regulations, 1997.



Adjudicating Order in the matter of indiaSTAR (Mauritius) Limited

Facts:

On examination of draft letter of offer filed by indiaSTAR (Mauritius) Limited (Noticee) for the acquisition of 20% stake in Garware Offshore services Limited (Target Company), SEBI observed that on Jun 01, 2006 Target Company had allotted 25,00,000 unsecured optionally converted debentures(OCDs) to Noticee on the basis of preferential allotment. As on date of allotment of OCDs, Noticee holds 25,90,000 (12.02%) Equity Shares in the Target Company. On Nov 06, 2007 target company converted 25,00,000 OCDs in to 22,72, 727 (9.54%) Equity Shares in pursuant to which the aggregate shareholding of Noticee increased from 12.02% to 21.56% of the paid up capital of Target Company, thereby, resulting in to triggering Regulation 10 read with Regulation 14(2) of SEBI (SAST) Regulations, 1997, requiring the Public Announcement (PA) be made to the shareholders of the Target company.

Since the conversion of the OCDs into equity shares has taken place on Nov 06, 2007, therefore Public Announcement should have been made not later than October 31, 2007, i.e. not later than 4 working days. However, Noticee made the PA on November 07, 2007 with a delay of 7 days and, thus, violated the provision of regulation 10 of SEBI (SAST) Regulations, 1997. Accordingly, adjudicating officer was appointed and a show cause notice was served to the Noticee. Several notices and opportunity of personal hearings were granted but noticee failed to reply and appear for any, hence an ex parte order is passed against the Noticee.

Adjudicating Officer imposed the penalty of Rs.2,00,000 when there has been a delay of 7 days in making public announcement to the shareholders of Target Company.



Issue:

Whether Noticee has violated Regulation 10 read with Regulation 14(2) of SEBI (SAST) Regulations, 1997?

Decision:

After considering all facts and circumstances, Adjudicating officer imposed the penalty of Rs 2,00,000 on the Noticee for the delay in making the public announcement in terms of SEBI (SAST) Regulations, 1997.

Adjudicating Order in the matter of India Newbridge Investments Limited and others

Facts:

1. India Newbridge Investments Limited, India Newbridge coinvestments Limited, India Newbridge partners FDI Limited and Maxwell Mauritius Pte Limited (“Noticees”) have acquired 20.46% shares of the Target Company and made the public announcement in terms of regulation 10 of the SEBI Takeover Regulations.
2. Assuming the full acceptance to the offer, the shareholding of the Noticees after the completion of offer would have been 40.46% which is more than the shareholding of the promoters of the Target Company.
3. Thereafter, M.P Laboratories (mauritius) Limited and Mylan Laboratories Limited acquired 51.5% shares from the promoters of the Target Company and filed the letter of offer with SEBI.
4. It was observed from the letter of offer that the name of the Noticees was shown under the promoter category.

Merely because the names of the Noticees were shown in the shareholding pattern under the promoter category, it cannot be presumed that they are actually in control over the company.



5. Further, in the shareholding pattern for the quarter ended December 31, 2004, the names of the Noticees were shown under the promoter group categories who were having controlling or strategic holdings.
6. However, the public announcement have been made by the Noticees in terms of regulation 10 and not in terms of regulation 12 which shows the Noticee does not intend to acquire the control over the Target Company. Thus, it was alleged that the Noticees acquired the control; over the Target Company. But fails to make the public announcement in terms of regulation 12 of the SEBI Takeover Regulations.

Contention:

1. The Noticees contended that BSE had advised the Target Company to show the name of the Noticees under foreign promoter category for computation of free float.
2. Merely because the names of the Noticees have been shown under the promoter category, it cannot be presumed that they exercise the control over the company. To prove this fact, it to be established whether they exercise the control over the Target Company in the manner as stated in regulation 2(1)(c).

Issue:

Whether, where the name of the Noticees have been shown under the promoter category who were having the controlling holdings merely on the advised of the BSE and in actual condition, they were not exercising the control over the Target Company, it can be stated that they have violated Regulation 12 of SEBI Takeover Regulations? Whether disclosure given under regulation 8(2) shall be treated as acquisition of control in terms of regulation 12 of SEBI (SAST) Regulations, 1997?

Decision:

After considering all the facts and circumstances, AO held that, declaration made by Noticees under regulation 8 (2) of SEBI (SAST) Regulation, 1997 does not indicate that Noticees have acquired control over the Target company as there is nothing in records to support disclosures such as



increase number of directors or change in management in favour of Noticee, change in shareholding, etc. Further, even if it is presumed that the Noticee have acquired the control over the company, they had made the public announcement immediately on the execution of the agreement. Therefore, the violation of regulation 12 read with 14(3) of SEBI (SAST) Regulations, 1997 has not been established and accordingly the matter is disposed off.

Adjudicating Order in the matter of Advani Hotels and Resorts (India) Limited

Facts:

On examination of letter of offer filed by Delta Hospitality Pvt. Ltd. and Arrow Webtex Ltd. (Acquirer) for the acquisition of 20% Equity Shares of Advani Hotels and Resorts (India) Ltd. (Noticee), SEBI observed that Noticee has failed to make the requisite disclosures under regulation 8(3) of SEBI (SAST) Regulations, 1997 within the stipulated time in the month of April, 2005. Accordingly, a show cause notice was served to the Noticee and the adjudicating officer was appointed.

Adjudicating officer imposed the penalty of Rs.15000 on the Noticee for the delay in making the disclosure under regulation 8(3) of SEBI Takeover Regulations.

Contentions:

1. Noticee contented that it had not failed to make the requisite disclosures under regulation 8(3) of SEBI (SAST) Regulations, 1997 but the correct position was that there was a delay of 4 months in making the said disclosures. The noticee enclosed copy of form which had been filed with BSE with proof of acknowledgement.
2. The noticee further submitted that during the said period of disclosure i.e. from April 1, 2004 to 31 March, 2005, there was no change in the shareholding of the promoters or the person acting in concert and thus no interest of the investors were affected and as such no profits accrued to the promoters nor was any loss caused to the investors.



3. The noticee also submitted that it had made all the required disclosures as per SEBI regulations within the stipulated time period and this is the first instance of any delay.
4. Company secretary appeared on behalf of the noticee and accepted the delay in making the said disclosures. He submitted that the delay took place because the noticee did not have a Permanent company Secretary at the relevant point of time.

Issue:

Whether noticee has violated Regulation 8(3) of SEBI (SAST) Regulations, 1997? Whether such violation requires any monetary penalty to be imposed on the Noticee as suggested under Section 15A (b) of the SEBI Act?

Decision:

In the matter of Milan Mahendra Securities Private Limited, it was held that “the object of the Regulations is to give equal treatment and opportunity to all shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required.”

Thus, considering all facts and circumstances, Adjudicating officer held that Noticee has delayed in filing necessary disclosures under Regulation 8(3) within the stipulated time in the month of April, 2005, which makes the Noticee liable for penalty under Section 15A (b) of the SEBI Act, 1992 and thus imposed a penalty of Rs 15,000 on the Noticee for violation of Regulation 8(3) of SEBI (SAST) Regulations, 1997.



Adjudicating Order in the matter of Fast Track Entertainment Limited

Facts:

1. SEBI has conducted an investigation in respect of buying, selling and dealing in the scrip of M/s Fast Track Entertainment Limited (FTEL) for the period from January 01, 2004 to June 30, 2004.
2. It was observed that Shri Prashant Narvekar (Noticee) held 8 % of the total shareholding of Fast Track Entertainment Limited on May 15, 2004 and crossed the stipulated limit of 5 % for disclosure as per the Regulation 7(1) read with 7(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(1) and Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulation, 1992. However, the Noticee failed to make any disclosure with regard to the same.
3. Further, from the Demat Statement of the Noticee, it was observed that his shareholding had been changed/alterd by way of sale or acquisition of shares of FTEL. These changes were more than 2 % and as per the regulation 13(3) of the SEBI (Prohibition of Insider Trading) Regulation, 1992, the same need to be disclosed which has not been done by him.
4. Based on the above allegations, SEBI has issued notice to the Shri Prashant Narvekar and the noticee has not disputed any of the above-mentioned facts.

The purpose of the disclosure is to bring about transparency in the transaction and accordingly, adjudicating officer imposed the penalty of Rs.1,00,000 on the Noticee for failure to Disclose his shareholding under SEBI Takeover Regulations and SEBI (PIT) Regulations, 1992

Issue:

Whether the Noticees have failed to comply with Regulation 7(1), 7(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13(3), 13(5) of SEBI (Prohibition of Insider Trading)



Regulations, 1992. Whether the non compliance, if any, on the part of the noticee attracts the monetary penalty.

Decision:

Relying upon the findings of the Hon'ble SAT in the matter of Milan Mahendra Securities Private Limited, wherein SAT observed that the purpose of these disclosure is to bring about transparency in the transaction and assist the Regulator to effectively monitor the transactions in the market, Adjudicating officer impose the penalty of Rs. 1,00,000 on the Noticee for the violation of Regulation 7(1), 7(2) of the SEBI (SAST) Regulations, 1997 and Regulation 13(1), 13(3), 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

Consent Order in the matter of Cochin Malabar Estate and Industries Limited

Adjudication Proceedings were initiated by SEBI against Jimmy Gazdar for the violation of regulation 9(2) and 10(2) of SEBI (SAST) Regulations, 1994 in respect of acquisition of 8.60% shares of Cochin Malabar Estate and Industries Limited. Pending the adjudication proceedings, the Noticee vide letter dated August 03, 2009, filed the application for consent for the settlement of the violations done under SEBI (SAST) Regulations, 1997 and proposed to pay Rs.5,50,000 as settlement charges 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 the HPAC, SEBI settled the above violations done by the Noticee.

Consent Order in the matter of Adani Properties Private Limited

On examination of letter of offer filed by Aegis Logistics Limited to the shareholders of M/s. Sealord containers Limited (Target company) , it was observed that the Target Company had issue 1,20,000 12% optionally Convertible Redeemable Preference Shares of Rs. 100/- each on December 12, 1996 to Adani Properties Private Limited (Noticee). However, due to the nonpayment of dividend, voting rights were accrued on those Preference Shares in the meeting held on September 7, 1999. On such acquisition of shares, the Noticee voting rights increased from 50% to 95.28%. Thus, the Noticee was required to make Public Announcement but failed to do the same resulting into violation of



Regulation 11(1) read with Regulation 14(1) of SEBI (SAST) Regulations, 1997. Accordingly, Adjudication Proceeding was initiated and show cause notice was issued. Pending the adjudication proceedings, the Noticee vide letter dated November 25, 2008, filed the application for consent for the settlement of the violations done under SEBI (SAST) Regulations, 1997 and proposed to pay Rs.3,00,000 as settlement 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 the HPAC, SEBI settled the above violations done by 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
<p>Balashri Commercial Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 503.75 lacs</p> <p>Listed At CSE</p>	Jewel Shelters Private Limited	Offer to acquire 10,07,498 (20%) Equity Shares at a price of Rs.26 per share payable in cash.	<p>Regulation 10 & 12</p> <p>SPA to acquire 25,59,750 (49.26%) Equity Shares at a price of Rs.11 per share.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer Adroit Corporate Services Private Limited</p>
<p>Jalgaon Re- Rolling Industries Limited</p> <p>Regd. Office Jalgaon</p>	Shankarro A Borkar, Sunanda S Borkar and Amol S Borkar	Offer to acquire 90,000 (20%) Equity Shares at a price of Rs.40 per share payable in cash.	<p>Regulation 10 & 12</p> <p>3 separate SPAs to acquire 3,30,750 (73.50%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p>Merchant Banker Fedex Securities Limited</p> <p>Registrar to the Offer Purva Share Registry</p>



<p>Paid up capital Rs. 45 lacs</p> <p>Listed At BSE</p>				(India) Pvt. Ltd
<p>Vulcan Engineers Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 484 lacs</p> <p>Listed At BSE</p>	Terruzzi Fercalx SPA	Offer to acquire 16,38,000 (20%) Equity Shares at a price of Rs.15 per share payable in cash.	<p>Regulation 10 & 12</p> <p>SPAs to acquire 21,18,160 (25.86%) Equity Shares and preferential allotment of 33,50,000 Equity Shares representing 40.90% of the expanded share capital of the Target Company</p>	<p>Merchant Banker Almondz Global Securities Limited</p> <p>Registrar to the Offer Karvy Computershare Private. Limited</p>
<p>Wires and Fabriks (S.A.) Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 305.62 lacs</p> <p>Listed At BSE and CSE</p>	BKM Mercantile Private Limited	Offer to acquire 3,48,673 (11.41%) Equity Shares at a price of Rs. 71/- per share payable in cash.	<p>Regulations 11(2A)</p> <p>Acquisition of 4.88% Equity Shares, thereby, increasing the shareholding of the promoter group from 58.72% to 63.59%.</p>	<p>Merchant Banker VC Corporate Advisors Private Limited</p> <p>Registrar to the Offer ABS Consultant Private Limited</p>



Hint of the Month

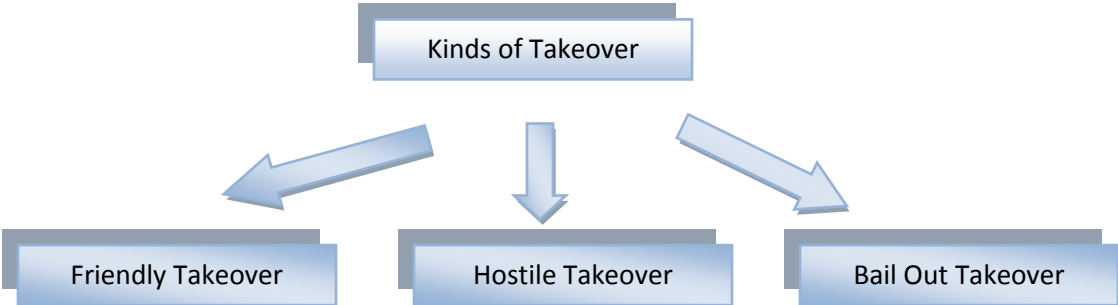
Irrespective of the level of minimum public shareholding to be maintained in terms of clause 40A of the listing agreement, the total shareholding of the acquirer along with the PACs consequent to the creeping acquisition as allowed under second proviso to sub-regulation (2) of regulation 11 should not increased beyond 75%.

{Substantiated from proviso to regulation 11(2) read with circular dated August 06, 2009}

Regular Section

Bail Out Takeover

In legal context, takeover is of three types:





“Friendly Takeover” means takeover of one company by change in its management & control through negotiations between the existing promoters and prospective investor in a friendly manner.

“Hostile Takeover” is a takeover where one company unilaterally pursues the acquisition of shares of another company without being into the knowledge of that other company.

Out of these types of takeover, **Bail Out Takeover** is a different aspect from friendly and hostile takeover and is specifically related for rehabilitation of financially weak company. A takeover of a financially sick Company by a profit making Company in order to bail out the former is known as the bailout takeover. Such takeover normally takes place in pursuance to the scheme of rehabilitation approved by the financial institution or the scheduled commercial who have lent money to the sick Company. The lead financial institution appraise the financially weak Company taking into account the financial viability and assess the requirements of the funds and draw up the rehabilitation package for the revival of the sick Company and for the protection of the minority shareholders. After that the lead financial institution invites the bids & evaluates them in respect of the purchase price or exchange of shares, track record of the acquirer and his financial position. The takeover is with the approval of the financial institution and banks.

“Financially Weak Company” means a company which has at the end of previous financial year accumulated losses, which has resulted in the erosion of more than 50% but less than 100% of its net worth as at the beginning of the previous financial year that is to say a sum total of paid-up capital and free reserves.



A procedure for the bailout takeover is given below:

The provisions of Bail out Takeover shall apply in case of listed financially weak company (not being a sick industrial company) in which Public Financial Institution and scheduled bank (herein after referred as “Lead institution”) is a member.

Lead Institution shall appraise such company and draw a scheme for revival and rehabilitation of such company.

Lead Institution shall invite the bids from at least three parties to purchase the share of such company and to acquire the control.

Thereafter, Lead institution shall choose a best bidder taking into consideration managerial competence, financial resources and technical capability of the person acquiring the shares.

Further negotiation for better price

On the successful completion of negotiation, acquirer shall make a Public Announcement in newspaper for acquiring the shares of other members.

Acquirer shall send letter of offer to the shareholders of Target Company.

Absolute prohibition on Competitive Bid.

If as a result of acquisition, market float falls to 10% or below:-

Either within 3 months acquirer shall acquire balance shares and delist company.

OR

Within 6 months disinvest some of the shares, so as to comply with Listing requirement.

Acquirer shall simultaneously file the application to SEBI for exempting such transaction from the provisions of Chapter III of SEBI (SAST) Regulations, 1997.



Case Study

An Analysis of Takeover Offer of GG Automotive Gears Limited

GG AUTOMOTIVES Gears LIMITED (“TARGET COMPANY”)

G.G Automotive Gears Limited (GGAG) was established in February 1974 for manufacturing of gearbox housings for automobile load carriers. In September 1995, India’s diesel-electric locomotive manufacturer Chittaranjan Locomotive Works (CLW) recognised and certified GGAG as a quality loco gear manufacturer and honoured it with its valued order and today GGAG is the only major supplier catering to its 90% requirement for all kinds of gears and pinions.

TRIGGERING POINT

On November 16, 2001, the Board of Directors of the Target Company forfeited 17,16,100 Equity Shares which were allotted in public issue. Thereafter, on June 13, 2002, the Board of Directors of the Target Company passed a resolution for the reissue of those forfeited shares on preferential basis to Hakeem Auto Limited (“Acquirer”). Accordingly, 9,00,000 Equity Shares constituting 22.31% were allotted on August 25, 2002, thereby, increasing the holding of the acquirer from Nil to 22.31% and 7,15,900 Equity Shares constituting 11.71% were allotted on October 29, 2002, taking the shareholding of the acquirer to 34.02%.

Since the preferential allotment of shares is exempt from the provisions of regulation 10, 11 and 12 of SEBI (SAST) Regulations, 1997 subject to the acquirer complying with the regulation 3(1)(c), therefore, the acquirer filed the report on September 12, 2002 under regulation 3(4) in respect of the acquisition made on August 25, 2002 and another report on November 18, 2002 in respect of the acquisition made on October 29, 2002.



One of the condition for claiming the exemption in terms of regulation 3(1)(c) is that the copy of the board resolution authorizing the preferential allotment of shares is sent to all the stock exchanges where the shares of the Target Company are listed.

As, the shares of the Target Company are listed on Madhya Pradesh Stock Exchange (MPSE) and Bombay stock exchange (BSE), therefore, SEBI asks for confirmation from both the stock exchanges regarding the receipt of above mentioned resolution for preferential allotment of shares to the acquirer. However, BSE denied of receiving any resolution in respect of the above preferential allotment of shares to the acquirer.

Accordingly a show cause notice was issued to the acquirer.

FIRST ISSUE:

Whether the Preferential Allotment of 9,00,000 (22.31%) Equity shares to the acquirer is exempt in terms of regulation 3(1)(c) of SEBI (SAST) Regulations, 1997?

SEBI observed that notice for the preferential allotment of 16,15,900 Equity Shares was duly issued to the shareholders of the Target Company and in the resolution the identity of the acquirer as well as the purpose of allotment has been specifically stated. Further, the report under regulation 3(4) in respect of the above preferential allotment of 9,00,000 shares have been duly filed. Further, the Board resolution has been received by the MPSE. However, there was non-compliance of Regulation 3(1)(c)(i) so far as the requirement of sending the board resolution in respect of the proposed preferential allotment to the Stock Exchange , Mumbai, is concerned. Thus, the exemption will be available to the acquirer.



SECOND ISSUE:

Whether the Acquirer is eligible for exemption under Regulation 3(1)(c) for acquisition of 11.71% shares of the Target company on October 29, 2002 by way of preferential allotment thereby increasing the shareholding of the Acquirer from 22.31% shares to 34.02% shares. ?

It is noteworthy to mention here is that with effect from September 09, 2002, Regulation 3(1)(c) providing the exemption from the applicability of regulation 10, 11 and 12 has been omitted. Thus, it is to be analyzed whether the allotment made October 29, 2002 i.e. after the notification dated 09.09.2002 would be exempt in terms of regulation 3(1)(c).

In respect of the above issue, the acquirer contended that although the allotment has been made subsequent to the amendment dated 09.09.2002, the shareholders had approved the aforesaid issue of shares on July 31, 2002 i.e. much before the amendment and therefore it presumed that the aforesaid issue of shares under preferential allotment would fall under exemption category and would not attract the provisions of the Regulations.

However, SEBI rejected the above contention of the acquirer and considering the Judgment of Hon'ble Securities Appellate Tribunal (SAT) in the matter of **M/s. Cabot International Capital Corporation** wherein SAT held that, "**..... As the reference is to "the allotment made in pursuance of a resolution passed", there is hardly any scope to view that the allotment of shares is complete by passing the resolution itself. Allotment is a distinct event post the resolution referred in section 81 (1A). It is ultimately that date on which the board of directors validly allotted the shares, which in the present case is after the notification dated 09.09.2002. Further, Compliance of the provisions of regulation 3 (4) is a post acquisition requirement**", SEBI held that the above preferential allotment of 11.71% would not be eligible for exemption and directed the acquirer to make the public announcement to the shareholders of the Target Company taking November 04, 2002 i.e. 4 working days after the date on which the above allotment of 11.71% was made as the reference date for the public announcement and June 13, 2002, the date on which Board of Directors authorize the preferential allotment as reference date for the determination of offer price.



Further, SEBI observe that had the public announcement been made on November 04, 2002, the entire process would have been completed latest by March 04, 2003. However, as no public announcement has been made, therefore, the interest of the shareholders have been adversely affected and accordingly, the acquirer was directed to pay the interest to the shareholders of the Target Company @ 10% for the period commencing from March 05, 2003 till the date of actual payment of consideration to the shareholders whose shares have been accepted in the offer.

Market Update

➤ **Sing Tel may increase its stake in Bharti Airtel**

Singapore Telecommunications may increase its effective stake in Bharti Airtel from the present 30.43% to 31.95%. SingTel has entered into a conditional agreement with Bharti Group to purchase an additional 730,000 shares in Bharti Telecom which is the sponsor of the listed entity Bharti Airtel.

➤ **Bharti Airtel may bid for Millicom's Lankaops**

Bharti Airtel is now looking to acquire 100% stake in Luxembourg based telecom firm Millicom's Lankaops. Nasdaq listed Millicom has its operations in Srilanka and provides pre paid telecom services in Latin America, Africa and Asia. Apart from Sri Lanka, Millicom has assets in Laos and Cambodia ready for sale.

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