

Takeover Panorama

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Adjudicating Order in the matter of Multipurpose Trading and Agencies Limited

Facts:

On examination of draft letter of offer filed by the acquirers for the acquisition of shares of Multipurpose Trading and Agencies Limited (Company), it was observed that Ms. Radha Garg and Ms. Ashima Bhatt (Noticees) who were promoters and directors of the company had acquired 52,000 Equity Shares on November 25, 2000 by way of preferential allotment, thereby, increasing their shareholding from Nil to 50.98%.

Intimation under regulation 3(3) and filing of report under regulation 3(4) does not exempt the acquirer from the disclosures requirement as specified under regulation 7 and accordingly adjudicating officer imposed the monetary penalty of Rs.25000 on the each of the Noticee.

As the acquisition of shares is by way of preferential allotment, therefore, it is exempt in terms of regulation 3(1)(C) of SEBI (SAST) Regulations, 1997 and the Noticees has also given the intimation under regulation 3(3) and filed the report with SEBI in terms of regulation 3(4) of the said regulations. Nevertheless the disclosure under regulation 7(1) is required to be made. However, they failed to disclose the aggregate shareholding/voting rights held by them as required under Regulation 7(1) within the time period specified in Regulation 7(2). Further, it was observed that the Noticees has further acquired 2400 (2.35%) shares on August 27, 2002, thereby, raising their shareholding to 53.33% requiring the disclosure under regulation 7(1A) of SEBI (SAST) Regulations, 1997. However, no such disclosure has been made.

Contentions:

1. With respect to the acquisition of 50.98% shares of the company on November 25, 2000, the same was informed to BSE under regulation 3(3) of SEBI (SAST) Regulations, 1997 and further to SEBI under Regulation 3(4) of SEBI (SAST) Regulations, 1997.

2. Purchase of 1600(1.568%) shares by Ms. Ashima Bhat and 800(0.78%) shares by Ms. Radha Garg was informed to BSE on October 23, 2002 and on May 7, 2003.
3. The case is of a very small company having paid up share capital of Rs. 10.20 lakh with hardly any active operations due to which there was no staff or employee in the company. There was no intention on part of the companies to withhold any information from the authorities.

Issues:

1. Whether the noticees have violated Regulation 7(1) of SEBI (SAST) Regulations, 1997 by not making disclosures regarding acquisition of 50.98% shares of MTAL on November 25, 2000.
2. Whether the noticees have violated regulation 7(1A) of SEBI (SAST) Regulations, 1997 by not making disclosures regarding acquisition of 2.35% shares on August 27, 2002.

Decision:

On consideration of above facts and circumstances of the case, Adjudicating officer held that in terms of provision of regulation 7(1A) as existed at the time when the Noticees acquired 2.35% shares, the regulation require the acquirer to disclose the acquisition as well as pre and post acquisition to the company on the acquisition of 5% and 10% voting rights. Thus, the violation of regulation 7(1A) is not established. As regards the non filing of disclosure under regulation 7(1) is concerned, a penalty of Rs.25000 was imposed on each of the Noticee.

Adjudicating Order in the matter of Right Finstock Private Limited

Facts:

SEBI conducted an investigation into the scrip of Innovision eCommerce Limited (Company) for the period starting from November 2003 to January 28, 2004. It was observed that Right Finstock Private Limited (Noticee) was indulge in act which created false or misleading appearance of trading in securities market and has dealt in securities in a manner to inflate the price. Therefore, it is alleged that Noticee has violated the provisions of Regulation 4(1), 4(2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade

Adjudicating officer imposed the penalty of total penalty of Rs. 10,00,000 for the violation done under SEBI (PFUTP) Regulations, 2003, SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992.

Practices Relating to Securities Market)
Regulations, 2003.

Moreover, on January 2, 2004, the Noticee had acquired 1,00,00,000 shares constituting 10.53% of the paid up capital of the company requiring the disclosure under regulation 7(1) of SEBI (SAST) Regulations, 1997 and under regulation 13(1) of SEBI Insider Trading Regulations. Further, the Noticee has sold 65,41,956 shares representing 3.64% of total paid up capital of Company requiring the disclosure under regulation 13(3) of SEBI Insider Trading Regulations. However, no such disclosure has been made.

Issues:

1. Whether the Noticee violated provisions of Regulation 4(1), 4(2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.
2. Whether the Noticee violated regulation 7(1) and 7(2) of SEBI (SAST), Regulations, 2003 and 13(1), (3) and (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.
3. Does the violation, if any, on part of Noticee attracts monetary penalty under section 15HA and 15 A (b) of SEBI Act, 1992?

Decision:

On consideration of above facts and circumstances of the case, Adjudicating officer imposed penalty of Rs. 2,00,000 for the violation under SEBI (PFUTP) Regulations, 2003 and Rs.8,00,000 for the violations done under SEBI Takeover Regulations and SEBI Insider Trading Regulations.

Adjudicating Order in the matter of Drishti Securities Private Limited

Facts:

1. On examination conducted by SEBI into the shares of Suryadeep Salt Refinery and Chemicals Works Limited (SSRCWL) it was observed that price of share increased from Rs. 4.6 to Rs. 57.25 by hitting upper circuit limit on some days and during another investigation it was found that price of shares

Adjudicating officer imposed the penalty of total penalty of Rs. 5,00,000 for the violation done under SEBI (PFUTP) Regulations, 2003 and SEBI (SAST) Regulations, 1997.

declined from Rs. 41.15 to Rs. 3.85 by hitting lower circuit limit on almost all days.

2. This finding led to an allegation that Narendra Shah and Drishti Securities Private Limited (DSPL) (Collectively referred as Noticees) have violated Reg. 4(1), 4(2)(a)(b)(g)(n) of SEBI (Prohibition of fraudulent and unfair trade practices relating to securities market) Regulation, 2003 (PFUTP Regulation) and Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997.
3. With respect to the rotation of shares of the company, Narendra shah contended that Action Financial Services (India) Limited (AFSL) rotated the shares of SSRWCWL using their client code, as they have not made any payment to brokers, which would have been made if they would have purchased.
4. With respect to disclosure under reg. 7(1) and 7(2) of SEBI (SAST), Regulation 1997, Narendra Shah denied of having acquisition of more than 5% at any point of time.
5. In order to examine veracity of allegations made by Narendra shah, SEBI served notice to AFSL requiring it to submit details of trading done in shares of SSRWCWL on behalf of Noticee.
6. AFSL in its submission contended that, they have not done any transaction using code of Noticees. Further, AFSL also informed that transactions were done by DSPL and not by Narendra shah during Investigation Period.
7. On observation of Demat statement of Noticee, it has been found that Noticees have exceeded limit of 5% on two occasions without making disclosure on any occasions.

Issues:

1. Whether the Noticees have violated Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 by not making disclosures regarding acquisition of more than 5%?
2. Whether the Noticees have violated Regulation 4(1), 4(2)(a)(b)(g)(n) of SEBI (Prohibition of fraudulent and unfair trade practices relating to securities market) Regulation, 2003 by rotating the shares of SSRWCWL.

Decision:

On consideration of above facts and circumstances of the case, Adjudicating officer imposed the monetary penalty of Rs. 5,00,000 on the Noticees.

Adjudicating Order in the matter of Jaihind Synthetics Limited

Facts:

On examination of trading in shares of Jaihind Synthetics Limited (JSL) during the investigation period, SEBI observed that Mr. Manoj kumar Sharda (Noticee) erstwhile promoter of JSL had sold 37,000 shares in an off- market deal on 3rd March, 2005. However, the Noticee did not informed about his changed shareholding to JSL within 21 days from the end of financial year ending March 31, 2005 as prescribed under regulation 8(2) of SEBI Takeover Regulations. Accordingly, a show cause notice was served to the Noticee and the adjudicating officer was appointed.

Adjudicating Officer held that disclosure under regulation 8(2) forms the basis of disclosure under regulation 8(3) and have a bearing on the investment or disinvestment of investing public. Accordingly, imposed the penalty of Rs. 20,000 on the promoter for non-disclosure under regulation 8(2).

Contentions:-

1. The Noticee through its representative contented that there is no lapse of any nature with regard to requisite disclosure of percentage of shares and voting rights by him.
2. He further submitted that all his sale transactions and holding were on record with a company and he was under bonafide impression that JSL would take a cognizance of change of his shareholding in its records and accordingly submit report under regulation 8(3) of SEBI Takeover Regulations.
3. The non compliance was unintentional and technical in nature.

Issues:

Whether Noticee has violated Regulation 8(2) 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:

Adjudicating officer held that disclosure under Reg. 8(2) of SEBI (SAST) Regulation, 1997 forms basis of disclosure for Company under Reg. 8(3) of SEBI (SAST) Regulation, 1997. Such disclosures are important and have a bearing on investment or disinvestment of investing public. Considering above facts and circumstances, Adjudicating officer levied penalty of Rs. 20,000.

Takeover Panel Exemption in the matter of Bright Brothers Limited

Facts:

The acquirers belongs to the Promoter group of the Bright Brothers Limited (Target Company) and holds in aggregate 27,75,861 equity shares representing 46.45% of the paid up capital of the Company. The Board of Directors of the Target Company in their meeting held on June 26, 2009, has decided to buy back the shares from the Shareholders of the Target Company.

Exemption was granted from the open offer obligations where the increase in shareholding is pursuant to Buy Back by the Target Company.

Pursuant to above buy back, assuming the full response to the buyback offer, the shareholding of the acquirers will increase from 46.45% to 54.69% resulting into triggering regulation 11(1) of the SEBI Takeover Regulations requiring the open offer be made to the shareholders of the Target Company. Therefore, the acquirer has filed this present application seeking the exemption from the requirement of making the open offer on the following grounds:

Grounds of Exemption:

1. No change in control
2. No direct acquisition of Equity Shares.
3. Minimum Public shareholding will be maintained.
4. Increase in Earning Per Share.
5. The acquirers will not participate in the buy back offer.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirers from the requirement of making the open offer subject to the acquirers complying with the other provisions of the SEBI Takeover Regulations, Listing Agreement and any other law as may be applicable.

Takeover Panel Exemption in the matter of Nova Iron & Steel Limited:

Facts:

Mr. R.K. Gambhir and Mr. G. K. Gambhir are the promoters of Nova Iron & Steel Limited (Target Company) holding 2,91,00,000 Equity Shares constituting 29.79% of the total capital of the Target Company. Ambey Steel & Power Private Limited (acquirer) currently holds 12,70,000 Equity Shares constituting 1.30% shares of total Capital of Target Company.

Exemption was granted from the open offer obligations where sole purpose of investment is to revive the Target Company and to benefit its shareholders.

Now the acquirer proposed to acquire 5,73,00,000 Equity Shares by way of preferential allotment increasing his shareholding from 1.30% to 26.78% and wants an association with the promoters of the Target Company resulting into triggering regulation 11(1) of SEBI (SAST) Regulations, 1997. Therefore, the acquirer has filed this application seeking the exemption from the applicability of regulation 11(1) of SEBI (SAST) Regulations, 1997.

Grounds of Exemption:

1. The Sole purpose of Investment made by acquirers was to revive the Target Company and to benefit its Shareholders.
2. Since the trading in shares of the Target Company was suspended, there would be no scope for exit for the shareholders, if proposal was not accepted.
3. Since Net worth of Company is negative, the financial assistance of acquirers will provide a route for making it positive.
4. No change in Control.
5. The existing promoters of the Target Company are also contributing to the extent of Rs.17 crore.

6. The financial assistance provided by the acquirer is to be deployed towards the payment of lender banks and financial institutions under the OTS.
7. If the acquirers were obligated to make public announcement, they would be exposed to unaffordable costs and funds which were being arranged for paying the settlement money for rehabilitating the target company would have to be actually used for making open offer.

Decision:

On consideration of above facts and circumstances, SEBI granted exemption to acquirers from requirement of making Public Announcement subject to the acquirer complying with the disclosures and undertakings made in their application and subsequent correspondence to SEBI. Further, the Target Company, its promoters including the acquirer would ensure that the trading in shares shall resume within 6 months from the date of this order to provide liquidity to shareholders and shall file the compliance report for same.

Takeover Panel Exemption in the matter of Geodesic Limited

Facts:

1. The acquirers belong to the promoter group of Geodesic Limited (Target Company) and holds in aggregate 2,10,30,965 Equity Shares representing 22.81% of voting rights of Target Company.
2. In the meeting held on January 30, 2009, the BODs of the Target Company has passed a resolution to Buy Back the shares from the shareholders of the Target Company.
3. Pursuant to Buy Back, assuming the 100% response to Buy Back offer, the shareholding of the acquirers will increase from 22.81% to 30.41% resulting into triggering regulation 11(1) of the SEBI Takeover Regulations requiring the open offer be made to the shareholders of Target Company.
4. Therefore, the acquirers has filed the present application seeking exemption from the requirement of making the open offer on the following grounds:

Exemption was granted from the open offer obligations where the increase in shareholding is pursuant to Buy Back by the Target Company.

Grounds of Exemption:

1. Increase in the shareholding is incidental to Buy Back.

2. No change in control over Target Company.
3. The acquirers will not participate in Buy Back offer.
4. Minimum public shareholding would be maintained.
5. Increase in return on Equity of the Target Company.
6. Maximum offer price of proposed Buy Back is Rs 75 per share which is higher than the book value of Rs 46.10 of the company as on March 31, 2008.
7. Approval of shareholders by way of special resolution passed through postal ballot has already been obtained.

Decision:

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirer from the requirement of making open offer on the basis that the facts and statements given by the acquirer are true and 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.

Consent order in the matter of Shirpur Gold Refinery Limited

SEBI found that Shirpur Gold Refinery Limited (applicant) had not complied with regulation 6(2), 6(4), 7(3) and 8(3) of SEBI (SAST) Regulations, 1997 relating to the disclosures to be made in respect of preferential allotment of 75 lakh and 50 lakh on 22nd march, 2000 and 28th November, 2000 respectively. Vide letter dated June 30, 2009, the applicant has filed the application for consent for the settlement of proposed enforcement action that may be initiated by SEBI for the aforesaid non compliance and proposed to pay Rs.4,25,000 as settlement charges towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI settled the above violations done by the applicant.

Consent Order in the matter of Kar mobiles Limited

Adjudicating Proceedings were initiated against Mr S.K.Bhargava, Mr C. Prabhakar, Mr R. Jagannath, Mr Ashok Malhotra, Mr L. Lakshman, Mr Axel Linke and Mr L. Ganesh (Noticees) directors of Rane Engine Valves Limited for the violation of Regulation 16(xix) and 22(19) of SEBI (SAST) Regulations, 1997 in respect of open offer made to the shareholders of Kar Mobiles Limited. Pending the adjudication proceedings, on October 20, 2008, the notices have filed the

consent application for the settlement of above violation and proposed to pay a sum of Rs 5,00,000 as settlement charges. The terms as proposed by the notices were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes of said proceedings against the Noticees.

Consent Order in the matter of Suraj Products Limited

On examination of report under regulation 3(4) of SEBI (SAST) Regulations, 1997 in respect of acquisition of 15,00,000 (25.42%) shares of Suraj Products Limited (SPL) filed by Y.K. Dalmia alongwith PAC's (applicant), SEBI observed that the conditions for availing the exemption under Reg. 3(1)(c) of SEBI (SAST) Regulation, 1997 were not complied with resulting in contravention of 11(1) of SEBI (SAST) Regulation, 1997 and accordingly, issue the show cause to the applicant. However, applicant on behalf of himself and other PAC's applied for settlement of proposed adjudication proceedings and proposed to offer Rs.6,00,000 as settlement charges and Rs. 25,000 as administrative expense. The terms as proposed by applicant were placed before High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI dispose of the direction to initiate the adjudication proceedings against the applicant and PACs.

Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Golden Tobacco Limited Regd. Office Mumbai Paid up capital Rs. 17.59 crore Listed At BSE & NSE	Pramod Jain and Pranidhi Holdings Private Limited ("acquirers") along with J.P. Financial Services Private Limited ("PAC")	Offer to acquire 44,02,201 (25%) Equity Shares at a price of Rs.101 per share payable in cash.	Regulation 10 & 12 Hostile bid to acquire substantial shares and control of Target Company. As on the date of PA, the acquirers along with PAC holds 6.47% of paid up capital of Target Company.	Merchant Banker VC Corporate Advisors Private Limited Registrar to the Offer Niche Technologies Private Limited

Hint of the Month

Where the acquisition has been made in terms of second proviso to regulation 11(2) of SEBI Takeover Regulations, the acquirer is required to file the disclosure under regulation 7(1A) on the acquisition of shares constituting 2% or more of the paid up capital of the Target Company.

{As substantiated from regulation 7(1A) of SEBI Takeover Regulations}

Regular Section

An Analysis of the Amendment dated November 06, 2009 in SEBI (SAST) Regulations, 1997

Introduction:

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 is a small Code with far wider implications. These regulations play a major role in driving the acquisition and restructuring exercises of every Company in India. However, the provisions of these regulations have always been subject to multi-interpretations since its enactment. These multi-interpretations of provisions and absence of single decided point of view has outshined the constructive spirit of these regulations to excel the corporate sector without prejudicing the interest of any investor.

The consequences are being faced in the form of resistance to adherence to Takeover approach considering this code as a major hindrance and massive failures in legal compliances leading to onerous penalties.

Thus, a need arises to realign the regulations so as to remove the hidden ambiguities involved in the regulations which have been one of the major causes of defiance with the Regulations. Accordingly, SEBI has constituted a committee for the review of SEBI Takeover Regulations and invited the suggestions from the public.

Now, vide notification dated November 06, 2009, a number of amendments have taken place in the SEBI Takeover Regulations. An analysis of the same is tabulated below:

Regulation Number	Before amendment dated November 06, 2009	After amendment dated November 06, 2009	Analysis of amendment
3(2)	<p>Legal Text:</p> <p>Nothing contained in Chapter III of the regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts so long as they are not converted into shares carrying voting rights.</p>	<p>Legal Text:</p> <p>Nothing contained in regulation 10, regulation 11 and regulation 12 of these regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts unless the holders thereof, -</p> <p>(a) become entitled to exercise voting rights, in any manner whatsoever, on the underlying shares; or</p> <p>(b) exchange such Depository Receipts with the underlying shares carrying voting rights.</p>	<p>Before the amendment, regulation 3(2) of SEBI Takeover Regulations provides the exemption from the applicability of chapter III of the said regulations on the acquisition of ADRs or GDRs <u>except where such GDRs or ADRs are converted into shares carrying voting rights.</u></p> <p>However, after the notification dated November 06, 2009, in addition to the exception mentioned above, one more exception from the availability of exemption under regulation 3(2) has been included which provides that the no exemption from the applicability of regulation 10, 11 and 12 of SEBI Takeover Regulations would be available on the acquisition of ADRs or GDRs where the holder is entitled to exercise voting rights on the underlying shares.</p>
7(1A)	<p>Legal Text:</p>	<p>Legal Text:</p>	<p>Prior to the notification, the disclosure under regulation</p>

	<p>Any acquirer who has acquired shares or voting rights of a company under <u>sub-regulation (1) of regulation 11</u>, 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 within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.</p>	<p>Any acquirer who has acquired shares or voting rights of a company <u>under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11</u> 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 within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.</p>	<p>7(1A) is necessitated by the acquirer who is holding the shares in terms of regulation 11(1) i.e. equal to or more than 15% but less than 55% shares.</p> <p>After notification, besides the disclosure mentioned above, an acquirer who has acquired the shares in terms of the newly inserted proviso to regulation 11(2) allowing the further acquisition of 5% is also required to give the disclosure under regulation 7(1A) of SEBI Takeover Regulations.</p>
11(1)	<p><u>Legal Text:</u></p> <p>No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him,</p>	<p><u>Legal Text:</u></p> <p>No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional</p>	<p>Prior to the notification, it is not clear whether an acquirer, who is holding the shares under regulation 11(1), can increase his shareholding to 55% or more in terms of the creeping acquisition allowed under regulation 11(1).</p> <p>After Notification:</p> <p>Now, it has been specifically provided that an acquirer, who is holding the shares in terms of</p>

	<p>additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.</p>	<p>shares or voting rights entitling him to exercise more than 5% of the voting rights, <u>with post acquisition shareholding or voting rights not exceeding fifty five per cent.</u>, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.</p>	<p>regulation 11(1), can acquire further 5% shares as creeping acquisition in any financial year increasing his shareholding to 55%. In other words, under regulation 11(1), the acquirer is allowed to increase his shareholding to the level of 55% and not beyond it.</p>
<p>Second proviso to Regulation 11(2)</p>	<p><u>Legal Text:</u></p> <p>Provided further that such acquirer may, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent.(5%) voting rights in the target company subject to the following:- (i) the acquisition is made through open market purchase in normal segment on the stock</p>	<p><u>Legal Text:</u></p> <p>Provided further that such acquirer may, <u>notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,</u> without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:- (i) the acquisition is made</p>	<p>In terms of the Notification, the creeping acquisition allowed under second proviso to regulation 11(2) would be available to the acquirer irrespective of the acquisition made by him under regulation 10 or 11(1).</p> <p>For instance:</p> <ol style="list-style-type: none"> i. On April 01, 2009, Mr. A is holding 50% shares in the Target Company. ii. During the period April – October 2009, the acquirer has acquired further 5% shares increasing his shareholding to 55%. iii. Now, in terms of notification, the acquirer

	<p>exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;</p> <p>(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).</p>	<p>through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;</p> <p>(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).</p>	<p>can further acquire 5% shares in the same financial year i.e. 2009-10 in terms of second proviso to regulation 11(2).</p>
14(2)	<p><u>Legal Text:</u></p> <p>In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation</p>	<p><u>Legal Text:</u></p> <p>In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation 11, the public</p>	<p>Now the holder of ADRs or GDRs are not only required to give the public announcement on the conversion of ADRs or GDRs into shares carrying voting rights but also on the acquisition of such ADRs or GDRs where holder thereof is entitle to exercise the voting rights on the underlying shares in excess of percentage specified in regulation 10 or regulation 11 and such public announcement is required to be made within four working days of acquisition</p>

	<p>11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.</p>	<p>announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.</p> <p>Provided that in case of American Depository Receipts or Global Depository Receipts entitling the holder thereof to exercise voting rights in excess of percentage specified in regulation 10 or regulation 11, on the shares underlying such depository receipts, public announcement shall be made within four working days of acquisition of such depository receipts.</p>	<p>of such depository receipts.</p>
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Question 1:

Whether the exemption under regulation 3(2) of SEBI Takeover Regulations from the applicability of regulation 10, 11 and 12 would be available to the holder of ADRs or GDRs who is entitle to exercise the voting rights on the underlying shares in excess of the limit specified under regulation 10 or 11 of said regulations?

Answer:

No. In terms of Notification dated November 06, 2009, the holder of ADRs or GDRs would not be entitle to any exemption under regulation 3 would be required to give the public announcement where he is entitle to exercise the voting rights on the underlying shares in excess of the limit specified under regulation 10 or 11 of said regulations.

Question 2:

Whether an acquirer who is holding 50% shares in the Target Company can acquire further 5% shares as creeping acquisition in terms of regulation 11(1) of SEBI Takeovers Regulations increasing his shareholding to 55%?

Answer:

Yes. In terms of notification dated November 06, 2009, an acquirer who is holding shares in terms of regulation 11(1) is allowed to acquire further 5% shares as creeping acquisition provided that his post acquisition shareholding does not go beyond 55% of the paid up capital of Target Company.

Thus, the acquirer who holds 50% shares in the Target Company can acquire further 5% shares increasing his shareholding to 55% of the paid up capital of the Target Company in terms of regulation 11(1) as amended vide notification dated November 06, 2009.

Question 3:

Whether an acquirer who is holding 52% shares in the Target Company can acquire further 5% shares as creeping acquisition in terms of regulation 11(1) of SEBI Takeovers Regulations increasing his shareholding to 57%?

Answer:

No. In accordance with regulation 11(1) as amended vide notification dated November 06, 2009, the acquirer is allowed to increase his shareholding to the maximum of 55% of the paid up capital of the Target Company.

Therefore, the acquirer who is holding 52% shares cannot acquire further 5% shares in one go as creeping acquisition without making the public announcement as his shareholding after the acquisition would go beyond the level of 55% as provided in the said regulations.

Question 4:

Whether the holder of ADRs or GDRs would be required to give the public announcement on the acquisition of such depository receipts? If yes, within how much time period the public announcement is to be made?

Answer:

Yes. The holder of ADRs or GDRs would be required to give the public announcement on the acquisition of such depository receipts where the holder thereof is entitled to exercise the voting rights on the underlying shares in excess of percentage specified in regulation 10 or regulation 11 and such public announcement is required to be made within four working days of acquisition of such depository receipts.

Question 5:

Whether an acquirer who is holding 52% shares on April 01, 2009 has acquired 3% shares during the period April to October, 2009 increasing his shareholding to 55% can acquire further shares in terms of the second proviso to regulation 11(2) in the same financial year i.e. 2009-10?

Answer:


Regulation 11(2) as amended vide notification dated November 06, 2009 provides that notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, an acquirer can acquire the shares in terms of second proviso to regulation 11(2) provided that the acquisition is made through stock mechanism in normal segment and not through bulk deal/block deal/preferential allotment or where the increase in shareholding is pursuant to buyback by the Target Company provided that shareholding of the acquirer does not go beyond 75% of the paid up capital of the Target Company.

Case Study

Hostile Takeover Bid for Golden Tobacco Limited

About Golden Tobacco Limited ("Target Company")

Established in the year 1930 by the late Shri Narsee Monjee, Golden Tobacco Limited is a professionally managed organization in the field of tobacco and tobacco related products. Golden Tobacco is the first wholly owned indigenous company in the country, taken over by



Dalmia Group in the year 1979. The group is headed by Mr. Sanjay Dalmia as Chairman & Mr. Anurag Dalmia as Vice Chairman.

The company's offerings are grouped under the Brand families of Panama, Chancellor, Golden's and Steel. To keep the pace with its strategy of providing quality cigarettes to its national and international customers, Golden Tobacco, Vadodara has recently implemented ISO 9001:2000 and has been certified by world's one of the most reputed accreditation agency RWTUV.

About Pramod Jain and Pranidhi Holdings Private Limited (“Acquirers”) and J.P. Financial Services Private Limited (“PAC”/ “JPFSP”)

Pranidhi Holdings Private Limited (“PHPL”) has been promoted by **Mr. Pramod Jain** and is presently engaged in the activities of investment in shares and securities and real estate projects. **J.P. Financial Services Private Limited (“JPFSP”)** is registered with Reserve Bank of India as Non-Banking Financial Company and is presently engaged in the activities of Investments in shares & securities and providing Loans & Advances. PHPL and JPFSP are Business Associates.

Scene behind the battle

The Dalmias, who hold 27.19 per cent of the tobacco maker's equity, have been pledging shares to borrow money to tide themselves over a difficult period for producers of non-filter cigarettes after former finance minister P. Chidambaram whacked them with a heavy excise duty in February 2008.

JPFSP had also advanced a sum of Rs. 850 lacs in the form of Inter Corporate Deposits (“ICDs”) to Dalmia's against pledge of various securities including 8,90,000 Equity Shares of the Target Company. However, Dalmia's fails to fulfil their obligations towards JPFSP. Due to default in repayment obligations by the borrower parties, JPFSP invoked the pledge and in the process acquired 8,90,000 Equity Shares of the Target Company. Prior to the above invocation and acquisition of shares, JPFSP already holds 2,00,000 equity shares of the Target Company. Thus, the total holding of JPFSP in the Target Company is 10,90,000 equity shares.

The Acquirers namely Mr. Pramod Jain & Pranidhi Holdings Private Limited are presently holding 1000 & 48002 equity shares of the Target Company respectively. Cumulatively, the shareholding of the Acquirers along with the PAC is 11,39,002 equity shares representing 6.47% of the issued equity share capital of the Target Company.

Hostile Bid

Pramod Jain, an investor from Delhi has joined hands with the financier from Howrah i.e. JPF SPL to launch a hostile bid for Golden Tobacco Limited, a promoted by Delhi-based industrialist Sanjay Dalmia. The open offer has been made to acquire 44,02,201 (25 %) equity shares at a price of Rs. 101/- per share payable in cash.

Rationale for the Hostile Bid

- As the Target Company is an asset rich company, therefore, as a shareholder, Pramod Jain does not want that the assets of the Target Company be encumbered to set off against the loan advanced to the Dalmia's. The hostile bid would ensure that the company's assets are not transferred to any of the bankers who lent funds to the Dalmia's.
- The Target Company has a land bank worth Rs 600 crore at Vile Parle in Mumbai. The current market capitalisation of the company, however, is slightly over Rs 200 crore. Thus, Pramod Jain would get a leverage of over Rs 400 crore. Moreover, Target Company has a tobacco licence, which is also a valuable asset.

Legal Battle against Dalmia's

- Dalmias are fighting a legal battle with Indiabulls, which had lent Rs 225 crore to seven Dalmia group companies and they defaulted. Indiabulls has filed the case for alleged fraud by the borrowers which were the promoters companies of Dalmia's, for the reason that they have provided bogus additional security for the loans advanced to them. The land worth Rs. 70 crore was provided as security to Indiabulls against the loan extended to them. However, the land was not owned by the borrowers.
- Dalmias are also fighting a legal battle in the Bombay High Court against **L&T Finance** which sold Dalmia's pledged shares in the open market after the promoters failed to meet the margin calls.

Future Prospects

Now, it has to be seen whether Hostile Bid by Pramod Jain turns into a successful acquisition or not and whether he would be able to protect the asset of Target Company.

Market Update

■ GVK increases its stake in BIAL

GVK Airport Developers Private limited has acquired additional 17% stake in Bengaluru International Airport Limited (“BIAL”) from L&T Infrastructures Development Projects Ltd at a price of Rs. 105 per share, thereby, increasing its stake from 12% to 29% in BIAL.

■ A new turn in the battle for Great Offshore Limited (GOL)

The Takeover battle between ABG and BSL for GOL has taken a new turn as ABG has exit from the race and sold approx.8.2% stake through a stock market sale. This twist has faded the expectation of shareholders of GOL who are hoping a further increase in the offer price. This has also impacted the market price of GOL which lost about 6% to Rs.512.90 per share (BSE) on December 02, 2009 after announcement of sale by ABG.

■ HDFC acquires stake in Credila

HDFC has acquired stake of 41% in Credila Financial Services from Merill Lynch, which was an initial investor in company promoted by Anil Bohora and Ajay Bohora for Rs. 10 Crore.

■ PVR acquire DT Cinema

Multiplex chain PVR has acquired DLF Groups DT Cinemas for Rs. 60 Crore. The consideration will be paid by way of cash-cum-equity swap deal which includes Rs.20.2 crore in cash and 25.57 lakh shares worth Rs.40 crore.

■ Deal between DLF owners and DE Shaw

K P Singh and family have reached a deal with DE Shaw to buy out the hedge fund investment in DLF Asset (DAL). In consideration, DE Shaw will get an approx. amount of \$ 500 million and DAL will most likely become a majority – owned subsidiary of listed property developer DLF.

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