

# 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 Gemstone Investments Ltd.

#### **Facts:**

1. Premchand Shah, Sharman P Shah, Nihal P Shah, Sumaria Alliance Pvt. Ltd., Mraula V Shah, Sushila P Shah, Vijaykumar N Shah, Shreya V Shah, Bindi V Shah and Vanehnad N Vora (Appellants) acquired Gemstone Investments Ltd. (Company) in November 1998 from its erstwhile promoters after making Public Announcement under Regulation 11(1) of SEBI (SAST) Regulations, 1997. However they did not make the necessary disclosures as required under the SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulation, 1992. Therefore a penalty of Rs. 5,00,000 was imposed on the Appellants.
2. Further, a penalty of Rs.6 crore was also imposed by the adjudication officer on the appellants for the alleged violation of Regulation 3 and 4 of SEBI (PFUTP) Regulations, 2003 which is set aside during the present appeal.
3. As regards, the non filing of disclosure is concerned, It was submitted that the Appellants had complied with the disclosure requirements though the disclosures were not made in the prescribed format.

Where law prescribes a manner in which a thing is to be done, then it must be done only in that manner.

Accordingly, the disclosure of information in a format other than one prescribed under the law would not justified the purpose of disclosure of information.

#### **Issue:**

Whether the imposition of monetary penalty of Rs. 5,00,000 on the Appellants is justified for not making the disclosure under regulation 7(1A) of SEBI (SAST) Regulations, 1997 and regulation 13(3) and 13(4) of SEBI (PIT) Regulation, 1992 in the prescribed format?

### Decision:

SAT held that when law prescribes a manner in which a thing is to be done, then it must be done only in that manner. Both SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulation, 1992 prescribes format in which the disclosures are to be made and available in the public domain. Non disclosure of information in the prescribed manner deprived the investing public of the information which is required to take an informed decision while making investment. Therefore the appellants are found guilty for violation of provisions of SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulation, 1992 and the penalty imposed was upheld.

## Takeover Panel order in the matter of Advani Hotels & Resorts (India) Limited

### Facts:

1. Delta Hospitality and Leisure Private Limited, formerly PLL Delta Hotels Private Limited (Acquirer) proposes to acquire 16,127,706 equity shares representing 34.89% of the paid up capital and voting rights of Advani Hotels & Resorts (India) Limited (Target company) from Delta Corp Limited (Transferor) at a price of Rs. 39/- per share, which will result into triggering of Regulation 10 of SEBI (SAST) Regulations, 1997.

Exemption granted where the transferor was directly or indirectly holds 100% control of the Acquirer and there would be no change in the overall shareholding of the promoter group of Target Company.

2. The Acquirer is 97% subsidiary of the Transferor and the remaining 3% is held by Delta Cruises and Entertainment Private Limited, which in turn is a 100% subsidiary of the Transferor.
3. Therefore the acquirer has filed the present application under Regulation 4(2) read with Regulation 3(1)(l) of SEBI (SAST) Regulations, 1997 seeking exemption from Regulation 10 on the following grounds:

### Grounds of Exemption:

1. The Transferor indirectly holds 100% control over Acquirer.
2. The proposed transfer of 34.89% shareholding in the target company is a result of business restructuring.
3. No change in the shareholding of public and promoter group of the Target Company.

4. No adverse effect on the shareholders of the Target Company.
5. No change in control.

**Decision:**

Regulation 3(1)(e)(i) of the SEBI (SAST) Regulations, 1997 automatically exempts transfer of shares between group companies if they come within the definition of group as defined in the MRTP Act, 1969 and where persons constituting such group have been shown as group in the last published Annual Report of the Target Company. The Transferor and the Acquirer are not group companies of the Target Company. However, the Acquirer submitted that the Transferor acquired 100% of the share capital of acquirer on April 30, 2010 and subsequently transferred 3% of its holding in the acquirer to another of its wholly owned subsidiary on June 17, 2010, therefore the latest annual report of 2009-10 of the transferor does not reflect the same as investment. Further the Acquirer's name appears as the group and subsidiary company of the transferor in the Annual Report (2009-10) of the Transferor.

On the basis of above facts and circumstances of the case, SEBI granted the exemption to the acquirers from the requirement of making Open Offer under Regulation 10 of SEBI (SAST) Regulations, 1997 subject to the condition that the acquirer will comply with the other provisions of SEBI Takeover Regulations, Buy Back Regulations, Listing Agreement or any other law as may be applicable and complete the acquisition within 30 days from the date of this order.

### Informal guidelines in the matter of Cera Sanitaryware Limited

**Facts:**

As on September 30, 2010, the promoter group of Cera Sanitaryware Limited (CSL) holds 67,95,960 equity shares representing 53.70% of the total paid up capital of the CSL. Now the promoter intends to acquire further 1.30% (1,64,220 equity shares) to increase their shareholding to 55% of the share capital of the Company through creeping acquisition under Regulation 11(1) of SEBI (SAST) Regulations, 1997. Moreover, they are further desirous to increase their holding by 5% (6,32,744 shares) in terms of second

The acquisition under Regulation 11(1) and second proviso to 11(2) of SEBI (SAST) Regulations, 1997 are separate acquisitions and accordingly the same may be undertaken in the same financial year.

proviso to Regulation 11(2) of SEBI (SAST) Regulations, 1997.

**Issues:**

1. Can the promoter acquire 1.30% shares of the Company in the F.Y. 2010-2011 as per Regulation 11(1) so as to reach 55% share capital?
2. Can the promoter further acquire 5% shares as per second proviso of the Regulation 11(2) of SEBI (SAST) Regulations, 1997?
3. Can the acquisitions be done in F.Y. 2010-11 or in subsequent financial years?

**Decision:**

1. As the promoter present holding is 53.70%, therefore as per Regulation 11(1) they can acquire maximum of 1.30% during 2010-2011 so as to reach 55% without making Public Announcement.
2. Since the promoter would reach 55% thus they would be eligible for one time exemption under second proviso of the Regulation 11(2). Accordingly, they can acquire further 5% voting rights, provided the provisions of second proviso to Regulation 11(2) are complied with.
3. As both the transactions are governed by two separate regulations, therefore both the transactions may be undertaken in the same financial year.

**Adjudicating Officer Orders**

<b>Target Company</b>	<b>Noticee</b>	<b>Alleged Violation</b>	<b>Penalty Imposed/Decision Taken</b>
Krishna Engineering Works Limited	Mr. Sunil Kumar Sharma, Mr. Amit Ashok Khanna, Mr. Manoj Kumar Mahanga Ram	Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (PFUTP) Regulations, 2003, Regulation 7(1) and 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1), (3) and (5) of SEBI (PIT) Regulations, 1992	No violation established and accordingly, no penalty was imposed.

## Consent Order in the matter of Megh Mayur India Ltd.

SEBI had initiated the adjudication proceedings against Megh Mayur India Ltd. (Formerly known as Poddar Infrastructure Ltd) (Noticee) for the alleged violation of provisions of Regulation 6(2), 6(4) and 8(3) of SEBI (SAST) Regulations, 1997. It was alleged that the Noticee did not comply with regulation 6(2) and 6(4) of SEBI (SAST) Regulations, 1997 and there has been substantial delay in complying with the disclosure requirements for the year 1998 to 2006 as required under Regulation 8(3) of SEBI (SAST) Regulations, 1997. While the adjudication proceedings were in progress, the Noticee vide its letter dated September 27, 2010 has proposed to pay a sum of Rs. 4,75,000 on consent terms towards settlement charges for the aforesaid proceedings.

The terms as proposed by the Noticee 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 4,75,000.

### *Latest Open Offers*

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
Perfect Octave Media Projects Limited  <b>Regd. Office</b> Mumbai  <b>Paid up capital</b> Rs. 7.39 crore	Ratish Tagde and Raga Cafe Private Limited	Offer to acquire 14,78,000 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.	<b>Regulation 10 &amp; 12</b> Preferential allotment of 38,45,000 equity shares at a price of Rs. 10 per share thereby increasing the shareholding of Acquirers to	<b>Merchant Banker</b> Sobhagya Capital Options Limited  <b>Registrar to the Offer</b> Sharex Dynamic (India) Private Limited

<b>Listed At</b> BSE			42,45,000 (57.44%) Equity Shares.	
Starcom Information Technology Limited  <b>Regd. Office</b> Mumbai  <b>Paid up capital</b> Rs. 5 crore  <b>Listed At</b> BSE & ASE	Ziaulla Sheriff	Offer to acquire 10,00,120 (20%) Equity Shares at a price of Rs. 20.50 per share payable in cash.	<b>Regulation 10 &amp; 12</b> Acquisition of 35,60,280 (71.20%) equity shares through Block Deal and SPA to acquire management control of the Target Company.	<b>Merchant Banker</b>  Chartered Capital and Investment Limited  <b>Registrar to the Offer</b> Purva Sharegistry (India) Private Limited
Kavveri Telecom Products Limited  <b>Regd. Office</b> Bengaluru  <b>Paid up capital</b> Rs. 14.06 crore  <b>Listed At</b> NSE and BgSE (Trading on BSE - BSE IndoNext)	C. Shivakumar Reddy, R. H. Kasturi and C. Uma Reddy	Offer to acquire 28,13,796 (20%) Equity Shares at a price of Rs. 116.47 per share payable in cash.	<b>Regulation 10</b> Preferential allotment of 40,00,000 equity shares at a price of Rs. 113 per share increasing the shareholding of Acquirers from 14,69,968 (14.60%) Equity Shares to 54,69,968 (38.88%) Equity Shares.	<b>Merchant Banker</b>  Anand Rathi Advisors Limited  <b>Registrar to the Offer</b> Integrated Enterprises (India) Limited

<p>Madhusudan Securities Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 1.50 crore</p> <p><b>Listed At</b> BSE</p>	<p>Primus Retail Private Limited, Indusage Advisors Limited and Growsafe Securities Private Limited along with Salim Govani and Foresight Enterprises</p>	<p>Offer to acquire 6,89,700 (45.98% of the existing paid up capital and 9.02% of the emerging paid up capital) Equity Shares at a price of Rs. 70 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>Acquisition of 2,31,000 (30.80% of the existing paid up capital) equity shares and Business Transfer Agreement wherein Target Company agreed to issue 61,42,857 equity shares (80.37% of the post issue share capital)</p>	<p><b>Merchant Banker</b> Centrum Capital Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>
<p>Tak Machinery and Leasing Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 70.40 Lacs</p> <p><b>Listed At</b> BSE &amp; ASE</p>	<p>E-Ally Consulting (India) Private Limited and Shree Jaisal Electronics and Industries Limited along with Sandeep Maloo, Neeta Maloo, Labh Chand Maloo, Lata Maloo, Sandeep Maloo (HUF) and Labh Chand Maloo (HUF)</p>	<p>Offer to acquire 1,40,810 (20%) Equity Shares at a price of Rs. 234 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 3,62,520 (51.49%) fully paid up equity shares at a price of Rs. 234 per share payable in cash.</p>	<p><b>Merchant Banker</b> Aryaman Financial Services Limited</p> <p><b>Registrar to the Offer</b> Link Intime India Private Limited</p>

Croitre Industries Limited  <b>Regd. Office</b> Hyderabad  <b>Paid up capital</b> Rs. 6.30 crore  <b>Listed At</b> BSE, MSE, HSE & ASE	K Sudheer Rao, S S R K Mohan Babu and P Pavan Kumar	Offer to acquire 12,61,278 (20%) Equity Shares at a price of 0.25 paise per share payable in cash.	<b>Regulation 10 &amp; 12</b> SPA to acquire 44,14,500 (70%) equity shares at a price of 0.11 paise per share payable in cash.	<b>Merchant Banker</b> Birla Capital and Financial Services Limited  <b>Registrar to the Offer</b> Bigshare Services Private Limited
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### *Hint of the Month*

Regardless of the size of cash deposited in escrow account, no Acquirer or PACs with him shall be eligible for appointment on the Board of the Target Company during the pendency of competing offer except in the event of any casual vacancy arises due to death or incapacitation subject to the approval of the shareholders by way of Postal Ballot.

*{As substantiated from Regulation 24(3) of SEBI (SAST) Regulations, 2010-TRAC Report}*

# *Regular Section*

## Buy Back of Shares- A comparison of SEBI (SAST) Regulations, 1997 and TRAC

### **What is Buy Back**

Buy-Back is the process of repurchase of its outstanding shares by a Company in order to reduce the number of shares in the market. Companies buy back their shares either to increase the value of shares still available, or to eliminate any threats by shareholders who may be looking for a controlling stake. Section 77A of the Companies Act, 1956 grants the power to the Company to purchase its own securities subject to the compliance of the conditions prescribed in it.

### **Applicability of SEBI (SAST) Regulations, 1997**

A buyback leads to a passive increase in shareholding. At present, the increase in shareholding pursuant to buy back beyond the threshold provided in regulation 10 and 11 is not automatically exempted from the requirements of Open Offer. However, on an application being made to SEBI, the exemption may be granted on case to case basis subject to the fulfillment of certain conditions such as:

- ✓ Compliance of Section 77A of the Companies Act, 1956;
- ✓ Compliance of SEBI (Buy Back of Securities) Regulations, 1998;
- ✓ The Acquirers have not participated in the Buy Back Offer.
- ✓ No acquisition or sale of shares of the Target Company by the Acquirers;
- ✓ Maintenance of minimum public shareholding in the Target Company;
- ✓ Buy Back Price should be reasonable;
- ✓ No change in control over the Target Company; and
- ✓ Any other condition as the Panel may deem fit.

There have been various precedents in the past where SEBI has granted exemption from the requirements of Open Offer where the increase in shareholding is pursuant to buy back by the Target Company and there is no active acquisition of equity shares by the acquirers. For instance:

### **Hindustan Composites Limited**

Acquirer is the promoter of the Target Company and collectively holds 67.11% in the Target Company. Target Company has announced the buyback of its shares as a result of which the holding of the acquirer increased from 67.11% to 75%. However, the acquirer has not acquired even a single share. Exemption is granted.

### **Jindal Poly Films Limited**

Acquirer is the promoter of the Target Company and collectively holds 67.37% in the Target Company. Target Company has announced the buyback of its shares as a result of which the holding of the acquirer increased from 67.37% to 74.49%. However, the acquirer has not acquired even a single share. Exemption is granted.

**Further, there have been various instances where SEBI has rejected the exemption although the increase in shareholding is pursuant to buy back by the Target Company. Some of them are given below:**

### **AksharChem (India) Ltd.**

Acquirer belongs to the promoter group of the Target Company & collectively holds 54.99%. Target Company has announced buy-back of its shares as a result of which the holding of the acquirer increased from 54.99% to 63.47%. Acquirer has not acquired even a single share in the Target Company. However the Takeover Panel rejected the application as the buy-back price is Rs.40 which is very high as compared to the market price of Rs.16 per share. The panel held that such a high price might result in the artificial price rise and help in appreciating the value of promoters' shareholding.

### **Cybertech System & Software Limited**

Acquirer belongs to the promoter group of the Target Company & collectively holds 23.59%. Target Company has announced buy-back of its shares as a result of which the holding of the acquirer increased from 23.59% to 31.46%. Acquirer has not acquired even a single share in the Target Company. However the Takeover Panel rejected the application as the buy-back price is Rs.12 which is low as compared to the market price of the share prevalent during that period. The panel held that shareholders of the company have the options to tender the shares in open market at a higher price. However, later the Company had withdrawn the Buy-Back.

## Applicability of TRAC Report

As the increase in shareholding pursuant to buy back by the Target Company is not an active acquisition, accordingly considering this fact, the TRAC Report explicitly provides the provisions for increase in the shareholding as a result of buy back by the Company.

Regulation 10(3) of TRAC Report provides the exemption from the Open Offer where consequent to the buy back, the shareholding of the acquirer would increase beyond the threshold provided in regulation 3(1) of TRAC Report i.e. beyond 25% of the voting capital of Target Company. The provision of regulation 10(3) is reproduced below:

*“An increase in voting rights in a Target Company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3 pursuant to buy-back of shares shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date on which the voting rights so increase.”*

Regulation 10(3) of TRAC Report exempts the increase in shareholding beyond 25% where such increase is pursuant to the buy back by the Target Company. However, this exemption is available for a certain time period and the acquirer is again required to reduce its shareholding below the threshold provided in regulation 3(1) of TRAC Report.

***However, a question arises from the interpretation of regulation 10(3) i.e. whether the acquirer has to again come back to its previous shareholding as exist prior to the buy back or has to simply maintain its shareholding at any level below 25%.***

Regulation 10(4)(b) of TRAC Report provides the exemption from the Open Offer in case of buy back by the Target Company where the acquirer existing shareholding prior to the buy back by the Target Company is within the limit of 25%-75% and the increase in shareholding is more than 5%.

For availing the exemption under this sub regulation, the following conditions are required to be fulfilled by the Acquirer:

**i. Such shareholder has not voted in favour of the resolution authorizing the buy-back of securities under Section 77A of the Companies Act, 1956**

Section 77A (2)(b) of the Companies Act, 1956 provides that a Special Resolution has to be passed for authorising the buy-back for more than 10% of the paid up equity share capital and free reserves and upto 25% of the paid up share capital and free reserves . However, the first pre condition for obtaining the exemption under this sub regulation is that the Acquirer has not voted in favour of the resolution authorizing the buy-back of shares i.e. he is either against the resolution or has remained neutral.

**ii. In the case of a shareholder resolution, voting shall be by way of postal ballot;**

**iii. Where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956**

Section 77A (2) of the Companies Act, 1956 provides that if the buy-back is or less than 10% of the total paid-up equity capital and free reserves of the company and such buy-back has been authorised by the Board by means of a resolution passed at its meeting, then the shareholders approval by way of Special Resolution is not required by the Target Company.

Accordingly, in order to get the exemption where the buy back is pursuant to the resolution passed by the Board of Directors, it is required that the Acquirer in his capacity as director or any other interested director has not voted in favour of the resolution authorizing the buyback.

**iv. The increase in voting rights does not result in an acquisition of control by such shareholder over the target company.**

**Important Note:**

Where the conditions specified in Regulation 10(4)(b) are not met by the Acquirer and pursuant to Buy-Back his shareholding increases beyond the threshold limit as specified in Regulation 3(2) of the TRAC Report then such Acquirer shall also be exempted from the obligation of making Open Offer provided that such shareholder has reduced his shareholding below the

level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3 within ninety days from the date on which the voting rights so increase.

#### **Compliances Required for availing the exemption under regulation 10(4)(b):**

- ✓ The acquirer is required to file a report within 4 business days of the date of acquisition to the stock exchange giving all details in respect of acquisitions and the stock exchange shall disseminate the information to public. **[Regulation 10(6)]**
- ✓ The acquirer is further required to file a report within 21 business days from the date of acquisition to SEBI giving all details in respect of acquisitions with supporting documents along with non refundable fees by way of banker's cheque or demand draft in favor of Securities & Exchange Board of India. **[Regulation 10(7)]**

## *Case Study*

### **An analysis of Takeover Open Offer for Mudra Lifestyle Limited**

#### **About Mudra Lifestyle Limited (Target Company/Mudra)**

Mudra Lifestyle Limited is a Mumbai based integrated textile company. The Company is engaged in the textile business having facilities for woven fabrics for suiting and shirting and garments manufacturing, weaving, processing, design development and sampling excluding home furnishing and denims. The Company manufactures fabrics and garments for both domestic use and for export. The shares of the Company are listed at Bombay Stock Exchange (BSE) and National Stock Exchange (NSE).

#### **About E-Land Fashion China Holdings Limited (Acquirer/E-Land)**

Incorporated under the laws of Cayman Islands, E-Land Fashion China Holdings Limited is an investment holding company. It is 80% owned by E-Land World Limited and 20% owned by E-Land Asia Holdings Pte. Ltd. The Acquirer is an investment holding company. Its subsidiaries are engaged in the design and sale of women's apparel products in the People's Republic of China having a portfolio of women's apparel brands, which includes the design, raw materials procurement, outsourced manufacturing and distribution of their products. Their core brands are

“E-Land”, “Scofield” and “Teenie Weenie”, and their other brands are “Roem”, “Prich”, “Scat” and “Teresia”.

### **Triggering Event**

The Acquirer proposes to acquire a minimum of 51% and a maximum of 67% of the Emerging Voting Capital of the Target Company. For this purpose, the acquirer will enter into following agreements:

- Share Subscription Agreement (“**SSA**”)
- Share Purchase Agreement (“**SPA**”)
- Shareholders Agreement (“**SHA**”).

In addition to the above, the acquirer will also make an Open Offer under SEBI (SAST) Regulations, 1997 to the shareholders of the Target Company.

### **Highlights of the Agreements**

#### **I.Share Subscription Agreement (“SSA”)**

SSA dated October 15, 2010 to subscribe to 1,20,00,000 Equity Shares (“**Investor Shares**”) constituting 25.005% of the paid up capital of the Target Company at a price of Rs. 60 per share.

- **Deployment of Consideration received**

The consideration received towards the Investor Shares shall be not be deployed without prior written approval of the Acquirer and shall be used towards working capital and not for payment of any extraordinary expense.

- **Appointment of Acquirer Nominee on the Board**

The Acquirer has deposited more than 100% of the Consideration payable under the Open Offer in the Escrow Account. Accordingly, it has been agreed between the parties that pending the appointment of acquirer nominees on the board of Target Company on Share

Sale closing date, the Acquirer has the right to nominate 1 additional director and 1 person to attend the all meetings of the Board and each committee of the Board as an observer.

## **II.Share Purchase Agreement (“SPA”)**

SPA dated October 15, 2010 for:

- (i) 1,00,00,000 equity shares; or
- (ii) Sale Shares which together with the Investor Shares and the equity shares acquired under the Open Offer constitutes 51% of the Emerging Voting Capital of the Target Company as on the Share Sale Closing Date, whichever is higher.

***Share Sale Closing Date shall be the date of completion of the sale and purchase of the Sale Shares.***

The maximum Sale Shares that can be acquired under the SPA from the Promoters on pro rata basis to their shareholding shall not exceed 1,24,75,139 equity shares.

- **Non-compete Fees**

The Sale Shares price is Rs. 75/- per share which is inclusive of a non-compete fee of Rs. 15/- per share.

The promoters have undertaken that either they or their any related person or entity shall not inter alia, for a period which is the later of (a) 3 years from the Share Sale Closing Date, and (b) 2 years from the date upon which the aggregate shareholding of the Promoters reduce below 5% of the total equity share capital of the Target Company as on the Share Sale Closing Date engage in the business of Target Company.

- **Non-occurrence of Share Sale Closing Date:**

If the Share Sale Closing date do not occur due to (i) any legal restrictions; or (ii) a material breach, default or non-compliance of the terms of the SPA by the Acquirer, which is not cured within 30 days of the receipt of notice of the same by the Acquirer from the Promoters; or (iii) the SPA Conditions Precedent are not satisfied by April 30, 2011, then the Promoters have the right to sell the Sale Shares to a third party. Further, in the situation as mentioned in Pt. (ii) and (iii), the Promoters have a right to purchase the Investor Shares and the shares acquired

under the Open Offer from the Acquirer at a price at which these shares were acquired in such circumstances.

### **III.Shareholders Agreement (“SHA”)**

SHA dated October 15, 2010 to provide the inter-se rights and obligations of the parties in the management of the Target Company

- **Composition of the Board**

From the Sale Share Closing Date and thereafter, the Board of the Target Company shall consist of 12 directors. The composition of the Board shall constitute the directors appointed by the existing Promoters of the Target Company and the Acquirer.

- **Appointment of Joint Managing Director**

Each of the Acquirer and Promoters can appoint one Joint Managing Director of the Target Company. The JMD nominated by the Promoters cannot enter into any agreement without the prior consent of the Acquirer or JMD nominated by the Acquirer.

- **Free transfer of shares**

Subject to satisfaction of certain conditions, the Promoters and Acquirer can freely transfer their shares to their affiliates. For other transfers, the Acquirer has first right of refusal in case of sale of shares by the Promoters and vice-versa.

- **Put Option by Promoters**

The Promoters have a put option on the Acquirer for a period of 6 months after the 3 years of the Completion Date where they may require the Acquirer to acquire all the shares held by them in the Target Company.

- **Call option by Acquirer**

The Acquirer has a call option on the Promoters for a period of 6 months following the 4 years of the Share Sale Closing Date whereby it may purchase all the shares held by the Promoters.

### **Takeover Open Offer**

On October 21, 2010, the Acquirer has made a Public Announcement to the shareholders of Mudra Lifestyle Limited to acquire up to 9,598,094 fully paid up Equity Shares representing 20% of the Emerging Voting Capital of the Target Company at a price of Rs. 60 per share payable in cash.

The completion of the transaction is subject to the approval of RBI under the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder.

## *Market Update*

### **Kirloskar Oil Engines Ltd sells its bearings business division to Pierburg India Pvt. Ltd**

Kirloskar Oil Engines Ltd has sold its bearings business division to Pierburg India Pvt Ltd. for Rs.87 Cr. Pierburg is the auto component subsidiary of German group Rheinmetall. The arrangement involves sale of assets, excluding land and building on which the division is situated, as a going concern on a slump sale basis and on a cash free and debt free basis.

### **Hero Motors Sells its 17.6% stake in Munjal Kiri**

Hero Motors Limited has sold its 17.6% stake in the JV Munjal Kiri Industries Private Limited (MKI) to JV partner Kiri Corporation of Japan, thereby, reducing its shareholding from 66.66% to 49% in the Company. Through this sale, Hero Motors becomes the minority shareholder, while Kiri holds the balance 51% stake.

### **Marico Acquires 85% Stake in ICP**

Marico Ltd has acquired 85% stake in International Consumer Products Corporation (ICP), a Vietnamese FMCG company. Through this acquisition Marico enters Vietnam's FMCG market. Mekong Enterprises Fund II Ltd and BankInvest - both PE funds and other individual shareholders of ICP have divested their shareholding to Marico.

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