

# *Takeover*

# *Panorama*

A Monthly Newsletter by Corporate Professionals

Year IV-Vol.III March 2010



## Insight

Content	Page No.
<b>Legal Update</b> <ul style="list-style-type: none"><li>- SAT order in the matter of Triumph International Finance India Limited</li><li>- Consent Order in the matter of Navneet Publication (India) Limited</li><li>- Consent Order in the matter of Hindon Mercantile Limited</li><li>- Consent Order in the matter of Exclusive Leasing and Finance Limited</li><li>- Consent Order in the matter of Dhanuka Agritech Limited</li><li>- Consent Order in the matter of Oswal Overseas Limited</li><li>- Consent Order in the matter of Ayoki Mercantile Limited</li></ul>	3
<b>Latest Open Offers</b>	7
<b>Hint of the Month</b>	11
<b>Regular Section</b> <ul style="list-style-type: none"><li>- An analysis of provisions relating to <u>“Disinvestment of a Public Sector Undertaking”</u></li></ul>	12
<b>Case Study</b> <ul style="list-style-type: none"><li>- An analysis of acquisition attempt by Reliance</li></ul>	17
<b>Market Update</b>	19
<b>Our Team</b>	20

## Legal Update

### SAT order in the matter of Triumph International Finance India Limited

#### Facts:

1. SEBI conducted an investigation into the dealing in the shares of Adani Exports Ltd. (Target Company). Investigations revealed that Ketan Parekh group which includes Classic Credit Limited, Classic Share & Stock Broking Services Limited, Panther Fincap & Management Services Limited, Panther Investrade Limited, Triumph International Finance India Limited (“The Appellant”) and Triumph Securities Limited (collectively referred to as acquirers) had acquired more than 5% shares or voting rights of the Target Company and did not make requisite disclosure under Regulation 7 of the SEBI (SAST) Regulations, 1997 during the period from November 1999 to January 2001.
2. Accordingly, a Show cause notice was issued to the acquirers to which only the appellant filed a reply denying the allegations made against it. However, Adjudicating Officer held that all the acquirers were acting in concert with Ketan Parekh and imposed a monetary penalty of Rs 5 lakh on the appellant.
3. To this order only the appellant filed an appeal to SAT while all the other acquirers has filed application for consent order and the proceedings qua them ended in the consent order. The fact that the Appellant had acquired the shares of the Target Company which together with other acquirers exceeded 5% of the paid up share capital of the Target Company was not disputed. Further, there was no dispute with regard to the fact that the total number of shares acquired only by the Appellant did not exceeded the limit of 5% of the paid up share capital of the Target Company.

Close business relations between persons / parties cannot by themselves lead to a conclusion that such parties were acting in concert with each other for the purpose of acquisition of shares under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

### Issue:

Whether the appellant was a “Person Acting in Concert” with the other acquirers for the acquisition of shares in the Target Company as alleged in the show cause notice?

### Decision:

As per Regulation 2(1)(e) of the SEBI (SAST) Regulations, 1997, Person Acting on Concert (PAC) “comprise of persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company”. Sub-section (2) of Regulation 2(1) (e) of the SEBI (SAST) Regulations, 1997, then gives a list of persons who shall be deemed to be acting in concert with each other unless the contrary is established. It is thus clear that before two persons or more can be said to be person acting in concert with each other, they must have a common objective to substantial acquire the shares or control over the Target Company. The contentions of SEBI and the findings of the SAT which reverses the observation made by SEBI are as follows:

1. **SEBI Contention:** The appellant acted as the broker of some of the companies owned/controlled by Ketan Parekh.

**SAT Findings:** Merely because the appellant acted as a broker of some of the companies owned/controlled by Ketan Parekh does not mean that the appellant was acting in concert with those companies. Close business association between two or more persons does not make them PAC.

2. **SEBI Contention:** Mrs. Mamta Parekh (wife of Ketan Parekh) and Mrs. Ami Parekh (wife of Kartik Parekh, who is cousin brother of Ketan Parekh from the paternal side) held 7.92% each (i.e. 15.84% in total), of the share capital of the Appellant company.

**SAT Findings:** SAT held that simply because the Wives of Ketan Parekh and his brother collectively hold 15.84% shares in the appellant company does leads to the conclusion that Ketan Parekh had any controlling stake in the appellant company.

3. **SEBI Contention:** The appellant holds 49% shares in Triumph Securities Private Limited (TSL) which is a Ketan Parekh entity and has further entered into agreement to acquire 51% shares of Ketan Parekh.

**SAT Findings:** The reason for this agreement is that the appellant is a member of NSE whereas TSL is a member of BSE and with a view to expands its business so as to operate on both exchanges, the

appellant decided to takeover TSL. This fact also does not lead to the conclusion that Ketan Parekh was controlling the Appellant Company.

4. **SEBI Observation:** Ketan Parekh was a director in the Appellant Company from December 16, 2000 up to March 31, 2001.

**SAT Findings:** Although Ketan Parekh was a director in the Appellant Company, however, he has not attended any board meeting. Thus, merely being on the board of directors of a company does not lead to a conclusion that he is in control of that company.

5. **SEBI Observation:** The appellant and Triumph Securities Ltd. enjoyed an overdraft facility of Rs.50 crore each from Global Trust Bank Ltd. against a common security which was to be provided by either of them.

**SAT Findings:** SAT held that this cannot leads to the conclusion that they were acting in concert with each other for acquiring the shares of the Target Company. Such dealings indicate the close business relationship between the entities.

Accordingly, the appeal is allowed and the impugned order of Adjudicating officer is set aside.

#### Consent Order in the matter of Navneet Publication (India) Limited

Navneet Publication (India) Limited (Applicant) did not comply with the disclosure requirement under Regulation 6(2) & (4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the year 1998-2001 in respect of the disclosure to be made to the Stock Exchange. Therefore, vide letter dated September 16, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 2,00,000 towards the consent terms as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

#### Consent Order in the matter of Hindon Mercantile Limited

Hindon Mercantile Limited (Applicant) did not comply with the disclosure requirement under Regulation 6(2) & (4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the year 1998-2008. Therefore, vide letter dated September 16, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 3,00,000 towards the consent terms as settlement charges. The terms as proposed by the

applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

#### **Consent Order in the matter of Exclusive Leasing and Finance Limited**

Exclusive Leasing and Finance Limited (Applicant) did not comply with the disclosure requirement under Regulation 6(2) & (4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the year 1998-2008. Therefore, vide letter dated September 16, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 3,00,000 towards the consent terms as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

#### **Consent Order in the matter of Dhanuka Agritech Limited**

Dhanuka Agritech Limited (Applicant) has failed to comply with the disclosure requirement under Regulation 6(2) for the year 1997 and 8(3) of SEBI (SAST) Regulations, 1997 for the year 2007. Therefore, vide letter dated September 16, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 35,000 as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

#### **Consent Order in the matter of Oswal Overseas Limited**

Oswal Overseas Limited (Applicant) has failed to comply with the disclosure requirement under Regulation 6(2) and (4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the years 1998-2008 in respect of the disclosures to be made to the stock exchanges. Therefore, vide letter dated June 24, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 5,75,000 towards the consent terms as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

## Consent Order in the matter of Ayoki Mercantile Limited

Ayoki Mercantile Limited (Applicant) has failed to comply with the disclosure requirement under Regulation 6(2) and (4) of SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) for the years 1997-2009 in respect of the disclosures to be made to the stock exchanges. Therefore, vide letter dated November 11, 2009, the applicant have voluntary filed the consent application for the settlement of enforcement action that may be initiated by SEBI and proposed to pay a sum of Rs 3,00,000 towards the consent terms as settlement charges. The terms as proposed by the applicant were placed before High Power Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI settle the above non compliance of the applicant.

### Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
<p>Rajdhani Leasing and Industries Limited</p> <p><b>Regd. Office</b> New Delhi</p> <p><b>Paid up capital</b> Rs. 1.57 crore</p> <p><b>Listed At</b> BSE</p>	Sanjay Jain and Rajiv Jain	Offer to acquire 3,14,000 (20%) Equity Shares at a price of Rs. 11.65 per share payable in cash.	<p><b>Regulation 10 &amp; 12</b></p> <p>SPA to acquire 2,93,400 (18.69%) equity shares at a price of Rs 11 per share, thereby, increasing the shareholding to 33.46%.</p>	<p><b>Merchant Banker</b></p> <p>Corporate Professionals Capital Private Limited</p> <p><b>Registrar to the Offer</b></p> <p>Alankit Assignment Limited</p>
Asian Oilfield Services Limited	Samara Capital Partners Fund I Limited	Offer to acquire 30,64,889 (20%) Equity Shares at a price of Rs. 61.20	<p><b>Regulation 10 &amp; 12</b></p> <p>Issue of 40,50,000 equity shares to</p>	<p><b>Merchant Banker</b></p> <p>Meghraj Capital Advisors Private</p>

<p><b>Regd. Office</b> Vadodra</p> <p><b>Paid up capital</b> Rs. 15.32 crore</p> <p><b>Listed At</b> BSE</p>		per share payable in cash.	Acquirer on preferential basis at a price of Rs 61.20 per share increasing the shareholding to 36.22%.	Limited  <b>Registrar to the Offer</b> Cameo Corporate Services Limited
<p>Fame India Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 34.7 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	Inox Leisure Limited along with Gujarat Flourochemicals Limited	Offer to acquire 8,231,759 (20%) Equity Shares at a price of Rs. 51 per share payable in cash.	<b>Regulation 10 &amp; 12</b> Acquisition of 1,50,57,751 (43.28%) at a price of Rs.44 per share and 25,07,537 (7.21%) Equity Shares of Target Company at a price of Rs.50.75 per share.	<b>Merchant Banker</b> Enam Securities Private Limited  <b>Registrar to the Offer</b> Link Intime India Pvt. Ltd.
<p>Star leasing Limited</p> <p><b>Regd. Office</b> Hyderabad</p> <p><b>Paid up capital</b> Rs. 24 lacs</p> <p><b>Listed At</b> BSE</p>	M Srivas Reddy	Offer to acquire 48,000 (20%) Equity Shares at a price of Rs. 9 per share payable in cash.	<b>Regulation 10 &amp; 12</b> SPA to acquire 1,79,051 (74.60%) Equity Shares of Target Company at a price of Rs.9 per share	<b>Merchant Banker</b> Intensive Fiscal Services Private Limited  <b>Registrar to the Offer</b> Sharex Dynamic (India) Pvt. Ltd.
<p>H.K. Finechem Limited</p>	Utkarsh Bhikoobhai Shah, Raj B Shah and	Offer to acquire 19,00,000 (20%) Equity Shares at a	<b>Regulation 10 &amp; 12</b> SPA to acquire	<b>Merchant Banker</b> Ernst & Young Merchant Bankers

<p><b>Regd. Office</b> Ahmedabad</p> <p><b>Paid up capital</b> Rs. 9.50 crore</p> <p><b>Listed At</b> BSE &amp; ASE</p>	others	price of Rs. 25.20 per share payable in cash.	39,59,223 (41.68%) Equity Shares of Rs 10 each of the Target Company.	Services Private Limited  <b>Registrar to the Offer</b> Sharepro Services (India) Pvt. Ltd.
<p>Solvay Pharma India Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 3.04 crore</p> <p><b>Listed At</b> BSE</p>	Abbott Capital India Limited along with Abbott Laboratories	Offer to acquire 10,09,942 (20%) Equity Shares at a price of Rs. 3,054.73 per share payable in cash.	<b>Regulation 10 &amp; 12</b> Indirect acquisition of 68.85% equity share capital of the Target Company.	<b>Merchant Banker</b> DSP Merrill Lynch Limited  <b>Registrar to the Offer</b> Sharepro Services (India) Pvt. Ltd.
<p>Multifarious Trading and Agencies Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 15 Lakh</p> <p><b>Listed At</b> BSE</p>	Kernel Tech Networks Private Limited	Offer to acquire 30,000 (20%) Equity Shares at a price of Rs. 100 per share payable in cash.	<b>Regulation 10, 11(2) &amp; 12</b> Preferential allotment of 1,00,000 shares and SPA to acquire 10,000 Equity Shares , thereby, increasing the shareholding to 73.33% of the paid up capital of the Target Company.	<b>Merchant Banker</b> Sobhagya Capital Options Limited  <b>Registrar to the Offer</b> Mondkar computers Pvt. Ltd.
Nahar Capital and Financial Services	Oswal Woollen Mills Limited	Offer to acquire 20,41,813	<b>Regulation 11(2A)</b>	<b>Merchant Banker</b> Sobhagya Capital

<p>Limited</p> <p><b>Regd. Office</b> Ludhiana</p> <p><b>Paid up capital</b> Rs. 8.37 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>		<p>(12.19%) Equity Shares at a price of Rs. 75 per share payable in cash.</p>	<p>As on the date of PA, the promoters are holding 62.81% of the paid up capital of Target Company. For the purpose of Consolidation of holdings, the present offer has been made.</p>	<p>Options Limited</p> <p><b>Registrar to the Offer</b> Alankit Assignments Limited</p>
<p>Fame India Limited (Competitive Bid)</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 34.7 crore</p> <p><b>Listed At</b> BSE &amp; NSE</p>	<p>Reliance MediaWorks along with Reliance Capital Market and Reliance Capital Limited</p>	<p>Offer to acquire 2,17,00,000 (62.36%) Equity Shares at a price of Rs. 83.40 per share payable in cash.</p>	<p><b>Regulation 10, 12, 25(1) and 25(3)</b> Competitive Bid against the offer of Inox Leisure Limited and Gujarat Flourochemicals Limited.</p>	<p><b>Merchant Banker</b> ICICI Securities Limited</p> <p><b>Registrar to the Offer</b> Karvy Computershare Pvt. Ltd.</p>
<p>Vallabh Poly-Plast International Limited</p> <p><b>Regd. Office</b> Mumbai</p> <p><b>Paid up capital</b> Rs. 4.19 crore</p> <p><b>Listed At</b> BSE &amp; ASE</p>	<p>Dheeraj Wadhwan along with Kapil Wadhwan and Aruna Rajeshkumar Wadhwan</p>	<p>Offer to acquire 24,00,000 (20%) Equity Shares at a price of Rs. 10 per share payable in cash.</p>	<p><b>Regulation 10 &amp; 12</b> SP and SSA to acquire 15,36,100 (36.61%) Equity Shares from the promoters and 50,00,000 equity shares through subscription to preferential issue.</p>	<p><b>Merchant Banker</b> Karvy Investors Services Limited</p> <p><b>Registrar to the Offer</b> Karvy Computershare Pvt. Ltd.</p>

California Software Company Limited	Singfuel Investment Pte. Ltd.	Offer to acquire 24,73,002 (20%) Equity Shares at a price of Rs. 45.03 per share payable in cash.	<b>Regulation 10 &amp; 12</b> Indirect acquisition of 66.04% of the equity share capital of the Target Company	<b>Merchant Banker</b> SBI Capital Markets Limited  <b>Registrar to the Offer</b> Link Intime India Private Limited
<b>Regd. Office</b> Chennai				
<b>Paid up capital</b> Rs. 12.36 crore				
<b>Listed At</b> BSE & NSE				

## Hint of the Month

An acquirer who has made a public offer and seeks to acquire further shares as creeping acquisition in terms of regulation 11(1) of SEBI Takeover Regulations shall not acquire such shares during the period of six months from the date of closure of offer at a price higher than the offer price except where the acquisition is made through stock exchanges.

**{As substantiated from regulation 20A of SEBI Takeover Regulations}**

## Regular Section

### Provisions Relating to Disinvestment of Public Sector Undertaking under SEBI Takeover Regulations

---

#### Meaning of Disinvestment

The term Disinvestment has been defined under regulation 2(1) (cc) of SEBI (SAST) Regulations, 1997 which provides that “**disinvestment**” means the sale by the Central Government or by the State Government of its shares or voting rights and/or control, in a listed Public Sector Undertaking.

#### The term disinvestment can be divided as follows:

i. **Sale by Central Government or by State Government**

A sale is said to be disinvestment only when it has been made by the Central Government or by the State Government. In other words, all the disinvestments are sale but all the sales are not disinvestment unless made by the Central Government or by the State Government.

ii. **Shares or Voting Rights and/or Control**

The disinvestment could be of Shares or Voting Rights held by or Control exercised by the Central Government or State Government in the Public Sector Undertaking.

#### Shares [Regulation 2(1)(k)]:

“**Shares**” means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights but shall not include preference shares.

**Voting rights:** The term voting rights have not been defined anywhere in the SEBI (SAST) Regulations, 1997, however, it can be construed as the right to vote in the decision making powers of the company.

#### Control [Regulation 2(1)(c)]:

“**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

**iii. Public Sector Undertaking**

The Term PSU has been defined under regulation 2(1)(ii) which provides that “Public Sector Undertaking” means a company in which the Central Government or a State Government holds **50% or more of its equity capital or is in control of the company.**

**The Important provisions with respect to the disinvestment of PSU and relaxation available in case of disinvestment in the SEBI (SAST) Regulations, 1997 are detailed below:**

**❑ Timing of Public Announcement [Proviso to Regulation 14(1)]**

In case of disinvestments of a Public Sector Undertaking, the public announcement as required under the SEBI (SAST) Regulations, 1997 is to be given within 4 working days of

- a. Execution of share purchase agreement or shareholders agreement with the Central government or
- b. Execution of share purchase agreement or shareholders agreement with the State Government, as the case may be.

**❑ Determination of Offer Price [Regulation 20]**

Heading	In case of sale of shares of any Listed Company other than PSU	In case of Disinvestment of PSU
<b>Meaning of Infrequently Traded Shares</b>	Shares shall be deemed to be infrequently traded where the annualized trading turnover of the shares of target company during the preceding six months prior to the month in which the public announcement is made is less than five per cent of the listed shares (in number). It is further clarified that the weighted number of shares listed during the said six months period can be taken.	Shares shall be deemed to be infrequently traded where the annualized trading turnover during the preceding six calendar months prior to the month in which the central government or the state government as the case may be opens the financial bid, is less than 5% of the listed shares.

<p>Calculation of offer price in case of <u>frequently traded shares</u></p>	<p>1. <b>Negotiated price</b> paid by the acquirer under regulation 14(1).</p> <p>2.The <b>highest price</b> paid by the acquirer or persons acting in concert in consideration of shares of target company acquired <b>during 26 weeks</b> prior to public announcement. The acquisition here can be by any mode including the preferential issue, right issue &amp; public issue.</p> <p>3. Average of the weekly high &amp; low of the <b>closing price</b> of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the <b><u>preceding 26 weeks of the date of public announcement.</u></b></p> <p>4. Average of the weekly high &amp; low of <b>price of shares</b> of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the <b><u>preceding 2 weeks of the date of public announcement</u></b></p>	<p>1. <b>Negotiated price</b> paid by the acquirer under regulation 14(1).</p> <p>2.The <b>highest price</b> paid by the acquirer or persons acting in concert in consideration of shares of target company acquired <b>during 26 weeks</b> prior to public announcement. The acquisition here can be by any mode including the preferential issue, right issue &amp; public issue.</p> <p>3. Average of the weekly high &amp; low of the <b>closing price</b> of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the <b><u>preceding 26 weeks of the date of when the Central Government or the State Government opens the financial bid.</u></b></p> <p>4. Not Applicable</p>
<p>Calculation of offer price in case of <u>infrequently traded shares</u></p>	<p>1. <b>Negotiated price</b> paid by the acquirer under regulation 14(1).</p> <p>2.The <b>highest price</b> paid by the acquirer or persons acting in concert in consideration of</p>	<p>The minimum offer price shall be the price paid by the successful bidder to the Central Government or State Government.</p>

	<p>shares of target company acquired <b>during 26 weeks</b> prior to public announcement. The acquisition here can be by any mode including the preferential issue, right issue &amp; public issue.</p> <p>3. Other parameters including return on networth, book value of the shares of the target company, earning per share, price earning multiple vis-a-vis the industry average.</p>	
<b>Relevant Date</b>	<p>Relevant date for the calculation of the average of the weekly prices of the shares, as quoted on the stock exchange where its shares are most frequently traded, shall be the date preceding the date of public announcement.</p>	<p>Relevant date for the calculation of the average of the weekly prices of the shares of the Public Sector Undertaking, as quoted on the stock exchange where its shares are most frequently traded, shall be the date preceding the date when the Central Government or the State Government opens the financial bid.</p>

#### **Relaxation Available in case of disinvestment of PSU**

##### **❑ No subsequent Public Announcement [Regulation 11(3)]**

In case of disinvestment of a PSU, an acquirer who along with PAC, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking if the following conditions are satisfied:—

- i. both the acquirer and the seller are the same at all the stages of acquisition, and
- ii. disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of regulation 18 and in the first public announcement.

❑ **No Competitive Bid [Regulation 25(2A)]**

Where the acquirer has made a public announcement under proviso of regulation 14(1) pursuant to entering into a Share Purchase or Shareholders' Agreement with the Central or State Government for acquisition of shares or voting rights or control of a Public Sector Undertaking, then no public announcement for competitive bid is allowed in respect of the acquisition of shares or voting rights or control of that Public Sector Undertaking.

❑ **No restriction with respect to the appoint of representative of acquirer on the Board of PSU during the offer Period [Regulation 23(8)(a)]**

In case of acquisition of shares or voting rights or control of a PSU pursuant to a public announcement made under proviso to regulation 14(1), the acquirer or person acting in concert with him shall be entitled to be appointed on the Board of the Target Company provided that the agreement to sell contains a clause to the effect that in case of non-compliance of any of the provisions of the regulations by the acquirer, transfer of shares or the change of management or control of the Public Sector Undertaking shall vest back with the Central Government or the State Government and the acquirer shall be liable to such penalty as may be imposed by the Central Government or the State Government.

❑ **No restriction on the board of directors of the Target Company with respect to the appoint of the acquirer representative as additional director or otherwise[Regulation 23(8)(c)]**

Where the public announcement for the acquisition of shares of PSU is made, then the board of directors of the target company are permitted to appoint as additional director or fill in any casual vacancy on the board of directors, by any person(s) representing or having interest in the acquirer provided that the agreement to sell contains a clause to the effect that in case of non-compliance of any of the provisions of the regulations by the acquirer, transfer of shares or the change of management or control of the Public Sector Undertaking shall vest back with the Central Government or the State Government and the acquirer shall be liable to such penalty as may be imposed by the Central Government or the State Government.

❑ **Not Applicability of regulation 23(6)**

In case where the public announcement is made for the acquisition of shares of PSU, then regulation 23(6) is not applicable and accordingly, the board of directors of the Target Company

can transfer the securities acquired by the acquirer, whether under the agreement or from open market purchases, in the name of the acquirer and/or allow such changes in the board of directors as would give the acquirer representation on the board or control over the company even before the fulfillment of obligations by the acquirers relating to the open offer made in terms of regulation of SEBI (SAST) Regulations, 1997.

### **No exemption under regulation 3**

In general, the acquisition of shares by the Government companies as defined under Section 617 of the Companies Act, 1956 is exempt from the applicability of regulation 10, 11 and 12 of SEBI (SAST) Regulations, 1997 in terms of regulation 3(1)(h) of the said regulations.

However, the above mentioned exemption is not available where the Government Company acquires shares or voting rights or control of a listed Public Sector Undertaking through the competitive bidding process of the Central Government or the State Government as the case may be, for the purpose of disinvestment.

## Case Study

### An analysis of Acquisition Attempts by Reliance

The Reliance Group, founded by Dhirubhai H. Ambani, is India's largest private sector enterprise, with businesses in the energy and materials value chain. Reliance enjoys global leadership in its businesses, being the largest polyester yarn and fibre producer in the world and among the top five to ten producers in the world in major petrochemical products.

#### **Acquisition attempt by Reliance Media Works for Fame India**

On February 21, 2010, Reliance MediaWorks has given a counter open offer to acquire 62.08% stake in Fame India Limited, which was further revised to 62.36% vide corrigendum dated March 04, 2010, at a price of Rs 83.40 per share against the INOX offer for 82.31 lakh shares at a price of Rs 51 per share. The counter offer has been made with the Fame India promoters accepting the price of Rs. 44 per share offered by the Inox instead of the price of Rs.80 per share offered by the Reliance for the acquisition of their stake in the Fame India.

## **Acquisition attempt by Reliance Industries Limited for LyondellBasell**

### **About LyondellBasell:**

LyondellBasell Industries (LBI) is a privately held multinational company based in Rotterdam, Netherlands. It is one of the world's largest polymers, petrochemicals and fuels companies.

### **Reliance Offer for LyondellBasell**

In November 2009, Reliance Industries Ltd. has made an offer of \$12 billion to buy controlling stake in LyondellBasell which was further increased to \$13.5 billion in January 2010 and later on to \$14.5 billion. The deal, if goes through, would facilitate growth of RIL's core business as LyondellBasell has large Petrochem capacities, good tech portfolio and Joint Ventures in the Middle East, while, RIL's Petrochem business is mostly India centric. The deal would create one of the biggest energy and chemicals groups in the world.

Further, as in January 2009, LyondellBasell has filed the application for bankruptcy, therefore, the cash offer by Reliance could ease the way for the company to exit bankruptcy.

### **Rejection of offer by LyondellBasell**

Inspite of the revision in the offer price by Reliance twice a time, **LyondellBasell** has rejected the offer made by Reliance. Now the bankrupt chemical maker LyondellBasell is working out on its own restructuring plan to exit bankruptcy. According to LyondellBasell, this offer from Reliance Industries was not sufficiently valuable to the company to abandon its reorganisation plan.

The management of LyondellBasell has also presented a restructuring plan before Judge Gerber of the US bankruptcy court in the southern district of New York and claims it to be better than the \$14.5-billion offer that RIL had made for the ailing of the company. As part of its reorganisation plan, Lyondell plans to sell 263.9 million Class B shares, most of which will be sold in a rights offering backstopped by private equity firms Apollo Management, Ares Management and Access. Apollo can invest up to US\$1.52 billion, Ares can invest up to US\$475.7 million and Access can invest up to US\$805.9 million. This has reduced the chance of RIL to acquire LyondellBasell.

Now, Reliance Industries is looking for the other global acquisition after being snubbed by Rotterdam-based takeover target LyondellBasell.

## Market Update

### ✓ **ATC to acquire Essar for \$450 million**

American Tower Corp (ATC), a Boston based independent tower company, has agreed to acquire Essar Telecom Infrastructure at a price of \$ 450 million in all cash. While \$ 300 million will be in form of equity, for rest \$150 million ATC will repay debt of ATC. The deal is subject to FIPB approval.

### ✓ **Religare acquires 65% in Northgate**

Religare Enterprises has acquired 65% stake in private equity and VC investment manager, Northgate. The deal will cost the company approximately \$ 200 million. Post acquisition, the members of Northgate will continue to run the workings of the company and own considerable equity interests in the company.

### ✓ **Air Works Acquires 85% in British aircraft**

Air Works India Engineering, an aviation service company has acquired 85% stake in Air Livery, a British aircraft refinishing company for \$ 20 million in cash. This deal will further help the company to become a complete solution provider with aircraft maintenance, parts and paint capability and also find entry to international customers and technology.

### ✓ **Hindujas acquired Swiss Bank**

The holding company of Hinduja Bank (Switzerland) Ltd, Hinduja Swiss Holding Ltd has acquired Banca Commerciale Lugano (BCL), an independent Swiss Bank. BCL will afterward merge with HBS and will provide services like wealth management, trade finance, investment solutions and corporate finance to its clients.

## Our Team

Neha Pruthi

Assistant Manager

neha@indiacp.com

Ruchi Hans

Associate

ruchi@indiacp.com

Priyanka Gupta

Analyst

Priyanka@indiacp.com

Visit us at



A Venture of



D- 28, South Extn. Part I New Delhi – 110049

T: 40622200 F: 91.40622201

E: info@takeovercode.com

### OUR GAMUT OF SERVICES:-

Investment Banking; Corporate Restructuring-M & A; FEMA Advisory; Securities Laws Advisory; Corporate Finance & Taxation; India Entry Services; Capital Market & Intermediaries Services; Corporate Compliances & Due Diligence.

#### Disclaimer:

This paper is a copyright of Corporate Professionals (India) Pvt. Ltd. The entire contents of this paper have been developed on the basis of latest prevailing SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 in India. The author and the company expressly disclaim all and any liability to any person who has read this paper, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this paper.