



TAKEOVERS



ACQUISITION

TAKEOVER PANORAMA

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PROMOTER'S
STAKE



CONSOLIDATION



Insight

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Recent Update

Brij Bhushan Singal and Neeraj Singal v SEBI

Regulation Applicability of Regulation

Title

Facts Brij Bhushan Singhal and Neeraj Singhal (“acquirers”) acquired 30.63% shares of BSIL (Target Company) on August 07, 2006 through the inter se transfer of shares amongst the qualifying promoters’ and therefore, sought the exemption from the applicability of regulation 10 of SAST Regulations under regulation 3(1)(e)(iii)(b) of SAST Regulations. As the individual as well as the collective acquisition of the acquirers exceeded 5% of the voting share capital of the company, they were required to notify the stock exchanges where the shares of the company are listed at least four working days in advance of the date of the proposed acquisition in terms of regulation 3(3) of SAST Regulations. However, the stock exchange denied of having received any intimation under regulation 3(3). In response to the notice issued by the adjudicating officer, the acquirer contended that they have dispatched the report on July 31, 2006 and submitted the proof of dispatch before AO. However, the acquirer failed to produce the proof of delivery.

Issues: 1. Whether the proof of dispatch is sufficient to ensure that the acquirer had informed the stock exchanges 4 working in advance of acquisition?
2. Whether imposition of penalty is justified for non-submission of report u/r 3(3) where no loss has been caused to any investor.

Decision: 1. No, the Regulations cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned therefore the failure to produce proof of delivery will lead to the conclusion that the report has not been submitted on or before the due



date.

2. No, where the parameters of Section 15J are not satisfied i.e. the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantifiable, the imposition of penalty is not justified in such case.

M Z Khan v Adjudicating Officer, Hindustan Oil and Exploration Company & others

<i>Regulation</i>	Obligation of the Target Company
<i>Title</i>	
<i>Facts</i>	Burren Energy India Limited (Burren) acquires the entire shareholding of Unocal Bharat Limited (UBL) which in turn holds 26.01 per cent in the Hindustan Oil and Exploration Company Limited (Target Company). Since Burren indirectly acquired 26.01 per cent of the equity share capital of the target company, therefore SEBI (SAST) Regulations, 1997 got triggered and Burren made a public announcement on February 15, 2005. However, one day before the public announcement i.e. on February 14, 2005, Burren appoint two directors on the board of the target company, the appointment of which is being challenged in this appeal. It is being alleged that the two directors are appointed in contravention of Regulation 23(3) of the takeover code.
<i>Contention</i>	The respondent contended that the Regulation 23(3) of the takeover code prohibits the Target Company from appointing an additional director or from filling in any casual vacancy on the board of directors by any person (s) representing or having interest in the acquirer once the public announcement has been made. However, the two directors whose appointment is sought to be challenged were appointed on the board of directors of the target company on February 14, 2005 i.e., one day prior to the public announcement.

<i>Issue</i>	Whether the appointment of the director on the board of directors of the target company was contrary to Regulation 23(3) of the takeover code where such appointment was made before the Public announcement.
<i>Decision</i>	No, Because Regulation 23(3) of the takeover code prohibits the Target Company from appointing director on the board of directors by any person (s) representing or having interest in the acquirer once the public announcement has been made. There is, thus, no violation of Regulation 23(3) when the directors were appointed as they had been appointed prior to the public announcement which is not barred. Therefore the appeal was dismissed.

DLF Limited

SEBI granted the exemption to the acquirer where the increase in the holding is pursuant to the buyback by the Target Company.

Facts	The acquirers belong to the promoter group and collectively hold 88.16% of the outstanding equity share capital of the target company. The target company has announced the buy-back of its shares. Pursuant to which the holding of acquirer is increased from 88.16% to 89.32% which has resulted into triggering the regulation11 (2) of SEBI (SAST) Regulations, 1997. Therefore, the acquirer has filed an application seeking the exemption on the following grounds:
Grounds on which exemption is sought	<ol style="list-style-type: none"> 1. Increase in voting rights is incidental to the buy-back proposal. 2. No change in number of shares held by the acquirer. 3. No change in control. 4. The acquirers do not propose to acquire a single share of the target company. 5. Minimum public shareholding will be maintained.
Decision	In view of the above facts, SEBI grant the exemption to the acquirer from complying with Regulation 11(2) accepting the recommendation of the panel.



Shilp Gravures Limited

SEBI rejected the application where the increase in shareholding is pursuant to the conversion of warrants

Facts	The acquirers are promoters of the target company, holding 25.32% shares and together with other promoters, 52.44% equity shares in the target company. The target company proposes to make a preferential allotment of 12, 90,323 equity warrants (at a price of Rs. 62/- each), convertible into 12,90,323 equity shares to the acquirers. The proposed preferential allotment of equity warrants would increase (on conversion), the shareholding of the acquirers in the target company from 25.32% to 37.86% and that of the promoter group (including acquirers) from 52.44% to 60.04% resulting into triggering the Regulation 11 of SEBI (SAST) Regulation, 1997.
Grounds on which exemption is sought	<p>The acquirer has filed an application seeking the exemption on the following grounds.</p> <ol style="list-style-type: none">1. The funds are required for the expansion programme.2. Target Company has exhausted the entire credit limit.3. Acquirers are not interested in the further consolidation of their holdings.4. The issue is made to meet the condition prescribed by the ABN Amro bank granting the term loan.5. Right issue instead of preferential allotment would be very expensive and time consuming.6. No change in control.
Decision	In view of the above facts, SEBI rejected the application of the acquirers on the ground that the public shareholding is substantial (40%) and exempting the acquirers from making the public announcement would not be in the public interest.



Kings India Chemicals Corporation Limited


SEBI rejected the application where the acquisition is made to improve the net worth of the Seller

Facts	The acquirers belong to the promoter group of the Target Company & Collectively holds 27.25% in Target Company. The acquirers has filed an application seeking the exemption in respect of their proposed acquisition of 12,44,800 equity shares (14.30%) of the target company from Indian Bank Mutual Fund increasing the shareholding of the promoter group from 27.25% to 41.55% & that of the acquirer from 2.45% to 16.75%.
Grounds on which exemption is sought	<ol style="list-style-type: none">1. Target Company is sick company & the case is pending before BIFR.2. No change in control.3. Shares of the Company are not traded on the stock exchange.4. Public shareholding will be maintained.5. It will improve the net worth of the investors of Indian Bank Mutual Fund.6. Promoters are purchasing the shares out of their own resources.
Decision	In view of the above facts, SEBI rejected the application of the acquirers on the ground that it would not be in the interest of the other public shareholders. Further, if an open offer is made by the acquirers in respect of the proposed acquisition, it would benefit all the public shareholders of the target company as they would get an exit opportunity, especially when the shares of the target company are not traded on the stock exchanges.

Parenteral Drugs (India) Ltd.

SEBI granted the application where the acquisition is made to fulfill the commitment made to the Non-Promoters for investing the funds in the company required for the expansion of production capacity

Facts	Acquirer is closely held private company promoted by the promoters of Target Company & therefore, Acquirer is also a promoter of the Target Company in terms of Regulation 2 (h) of Takeover Regulations. The acquirer does not hold any shares in the Target Company; however, the promoter
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group holds 70.64% in the Target Company. The Target Company proposes to allot 24,00,000 warrants convertible into 24,00,000 equity shares to the acquirer which will be converted later on & 14,00,00 warrants & 2670000 equity shares to the other independent entities. Pursuant to the allotment of shares & conversion of warrants to the other independent entities, holding of promoter will reduce from 70.64% to 57.04%. On the other hand, on the conversion of warrants allotted to the acquirer, the holding of promoter group will increase from 57.04% to 58.35% which has resulted into triggering the Regulation 11 of SEBI (SAST) Regulation, 1997. Therefore, the acquirer has filed this application seeking the exemption on the following grounds.

Grounds on which exemption is sought	<ol style="list-style-type: none">1. Funds are required for the expansion of production capacity.2. Independent entities subscribed to the shares & warrants only after the commitments from the other promoters regarding investment of their portion.3. No change in control.
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Decision	On the basis of the above facts, SEBI granted the exemption to the acquirer from complying with the Regulation 11 of takeover code & direct the acquirer to file a report under in terms of Regulation 3(4) r/w 3(5) of takeover code.
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Carol Info Services Ltd.

SEBI granted the exemption to the acquirer where the increase in the holding is pursuant to the buyback by the Target Company.

Facts	The acquirers are the promoters of the target company and are presently holding 63.73% of the equity shares of the target company. Target Company has announced the buy-back of its shares. As a result of which the holding of the acquirer would increase from 63.73% to 74.94% resulting into triggering the regulation 11(2) of the SEBI (SAST) Regulations, 1997. Therefore, the acquirers have filed this application seeking the exemption.
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Grounds on which	<ol style="list-style-type: none">1. Public shareholding will be maintained.2. No change in the number of shares held by the acquirers
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exemption
is sought

3. No change in control.
4. The acquirers do not propose to acquire a single share of the target company.
5. Increase in voting rights is incidental to the buy-back proposal.

Decision

In view of the above facts, SEBI granted the exemption to the acquirers accepting the recommendation of the panel

Surya Pharmaceuticals Ltd.

SEBI rejected the application where the shares were acquired from the market to fulfill bank stipulation on the ground that the acquirer could have use other options like preferential Allotment, Right Issue etc.

Facts

The acquirer is a part of the promoter group of the target company and collectively holds 35.15% of the paid up capital of the target company. The acquirer has proposed to acquire control of two companies, viz; Mangal Kamna Buildwell Pvt. Ltd. and Dynamic Finvest Services Pvt. Ltd. which are collectively holding 14.30% shares in the target company and to directly acquire 10.41% shares of the target company from another body corporate viz; M/s Creative Capital Services Ltd. by way of an off-market deal which has resulted into triggering the regulation 11 of SEBI(SAST) Regulations, 1997. Therefore, the acquirer has filed this application seeking the exemption.

Grounds on
which
exemption
is sought

1. The acquisition is made to comply with the stipulation imposed by the IDBI Bank sanctioning the loan.
2. No change in control.
3. Public shareholding will be maintained.
4. The conditions of the stock market are not congenial to make public offering at this time due to volatility.
5. Right issue will not increase the promoter shareholding.
6. Preferential allotment of shares to the promoters is not exempted from the takeover regulation & such allotment will again necessitate



exemption from SEBI besides affecting capital structure.

Decision SEBI rejected the application of the acquirer on the ground that the target company had more than one option for increasing promoters' stake. Further the contention of the acquirer that market is not congenial or the time is too short to increase the shareholding by some other mode is not acceptable.

Consent order in the matter of TPL Plastech Limited

SEBI, vide order dated January 24, 2008, initiated adjudication proceedings against Shobha Tainwala & Shyam Sunder Chokhani (noticees) for the alleged violation of Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(3) of SEBI (Prohibition of Insider Trading), Regulations, 1992 in the matter of acquisition of 2,00,000 (2.56%) & 10,00,000 (12.82%) shares/voting rights of TPL Plastech Limited respectively. Pending the adjudication proceeding, Noticees proposed to pay a consolidated amount of Rs. 50,000/- & Rs.1, 00,000/- respectively towards consent terms. The consent terms were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes off the said adjudication proceeding.

Consent order in the matter of Synpac Pharmaceuticals Limited

SEBI, vide order dated March 12, 2007, initiated adjudication proceedings against M/s Synpac Pharmaceuticals Limited.(noticee) for the alleged violation of Regulations 3(3) and 3(4) of SEBI (SAST) Regulations, 1997 in the matter of acquisition of 13,04,025 (7.78%) shares/voting rights of M/s KDL Biotech Limited on through inter-se transfer among group companies. Pending the adjudication proceedings, the noticee proposed to pay a consolidated amount of Rs. 1, 00,000/-towards consent terms. The consent terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes off the said proceeding.



Consent order in the matter of Surana Industries Limited

SEBI, vide order dated March 12, 2006, initiated adjudication proceedings against promoters of Surana Industries Limited for the alleged non-compliance with the provisions of Regulations 11(1) read with 14(1) of SEBI (SAST), Regulations, 1997 in the matter of acquisition of 50, 00,000 shares/voting rights through preferential allotment representing 47.62% shares/voting rights of the post preferential share capital of the company. Pending the adjudicating proceeding, the noticees proposed to pay a consolidated amount of Rs.6, 00,000/- towards consent terms. The consent terms as proposed by the noticees were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposes off the said adjudicating proceeding against the noticees.

Consent order in the matter of Lanxess ABS Limited

The acquirer along with the person acting in concert filed the draft letter of offer for the acquisition of shares of Lanxess ABS Limited (applicant). However, on the examining the offer document, SEBI observed that the Applicant made disclosures under Regulation 8(3) of the Takeover Regulations for the years 2000, 2001 and 2002 with considerable delay. Therefore, the applicant has filed this application for the settlement of the enforcement action that may be initiated by the SEBI on the consent terms. The applicant has proposed to pay a sum of Rs.2,00,000/- as settlement charges. The terms proposed by the Applicant were placed before the HPAC and on the recommendation of the Committee; it is ordered that SEBI shall not take any enforcement action against the applicant for its failure to comply with the aforesaid Regulations.

Consent order in the matter of BOC India Limited

BOC Group Plc and M/s. BOC Holdings fails to comply with Regulation 3, 6 & 8 of SEBI(SAST) Regulations, 1997 & therefore have jointly filed this consent application and proposed to pay Rs.400000 & Rs.100000 for the settlement of enforcement actions that may be initiated by SEBI for their failure to comply with Regulation 6 ,8 & Regulation 3 respectively. The terms as proposed by the applicant were placed before the HPAC & on the recommendation of HPAC; it is hereby ordered that the SEBI will not take any action against the applicant.



Consent order in the matter of TPL Plastech Limited

SEBI, vide order dated January 24, 2008, initiated adjudication proceedings against Mr. Mahendra Kumar Singhania (noticee) for the alleged violation of Section 2(i) of Securities Contracts (Regulation) Act, 1956, Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(3) of SEBI (Prohibition of Insider Trading), Regulations, 1992 in the matter of acquisition of 10,00,000 (12.82%) shares/voting rights of TPL Plastech Limited on 21.07.2004 through off market transaction. Pending the adjudication proceeding, the noticee proposed to pay a consolidated amount of Rs. 2,00,000/- towards consent terms. On the basis of recommendation of High Powered Advisory Committee, SEBI disposed off the said adjudication proceedings on consent terms.

Consent order in the matter of TPL Plastech Limited

SEBI, vide order dated January 24, 2008, initiated adjudication proceedings against Periwinkle Fashions Private Limited (noticee) for the alleged violation of Section 2(i) of Securities Contracts (Regulation), Act, 1956, Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(3) of SEBI (Prohibition of Insider Trading), Regulations, 1992 in the matter of acquisition of 4,00,000 (5.13%) shares/voting rights of TPL Plastech Limited. Pending the adjudication proceeding the noticee proposed to pay a sum of Rs.1,00,000/- towards the consent terms. The terms as proposed by the noticee are placed before the HPAC & on the recommendation of the HPAC; SEBI disposes of the said adjudication proceedings.

Consent order in the matter of Arshiya International Ltd.

The applicant failed to make disclosures in compliance with Regulation 6(4) of the SEBI (SAST) Regulations, 1997 for the year 1997 and Regulation 8(3) of the said Regulations for the years 1998, 1999 and 2006 & therefore has filed this consent application seeking settlement of the enforcement actions that may be initiated by SEBI. The High Powered Advisory Committee appointed by SEBI considered the settlement terms proposed by the applicant and recommended the case for settlement. Accordingly, the applicant shall pay Rs.2,50,000/- as settlement charges.

Consent order in the matter of Satia Papers Mills Limited

The applicant failed to make disclosures in compliance with Regulation 6(2) and 6(4) of SEBI (SAST) Regulations, 1997 for the year 1997, Regulation 7(3) of the said regulations for the years 1997 and 2006 and Regulation 8(3) of the said regulations for the years 1998-2007 and therefore has filed this consent application seeking settlement of the enforcement actions that may be initiated by SEBI. The High Powered Advisory Committee appointed by SEBI considered the settlement terms proposed by the applicant and recommended the case for settlement. Accordingly, the applicant shall pay Rs.3, 75,000/- as settlement charges. In view of the above, it is hereby ordered that SEBI shall not take any enforcement action against the applicant for its failure to comply with the aforesaid Regulations.

Latest Open Offers

<i>Name of the Target Company</i>	<i>Name of the Acquirer</i>	<i>Details of the offer</i>	<i>Reason of the Offer</i>	<i>Concerned Parties</i>
Jaisal Securities Limited	Srikanth Ramanathan & Shripathee Investments Private	Offer to acquire 17, 36,000 (20%) shares of Rs. 10/- each, at a price of Rs. 50/- per share payable in cash.	Regulation 10 & 12	Merchant Banker Ashika Capital Ltd.
Regd. Office Chennai			Preferential allotment of 56,80,000 shares of Rs. 10 each to the acquirer and to the strategic investors not connected with acquirer and PACs & SPA to acquire 2,45,800 (20%) shares of Rs. 10/- each at a price of Rs. 50/- per share payable in cash.	Registrar to the offer Cameo Corporate Services Limited
Paid up capital Rs. 300.00 Lacs				
Listed At BSE MSE				



Natraj Commercial Enterprises Limited	Balaji Bullions & Commodities (India) Private Limited & others	Offer to acquire 9,00,000 (20%) shares of Rs.10 each at a price of Rs.41 each.	Regulation 10 & 12	Merchant Banker Chartered Capital & Investment Ltd.
Regd. Office Mumbai			SPA to acquire 1910700 (42.46%) shares at a price of Rs.25 each amounting to Rs.4, 77, 67,500.	Registrar to the offer Intime Spectrum Registry Ltd.
Paid up capital Rs.450.00 lacs				
Listed At BSE				
Shriram City Union Finance Limited	Shriram Retail Holdings Private Limited (SRHPL)	Offer to acquire up to 10,785,500 Shares (20%) at a price of Rs. 400 per Share.	Regulation 10	Merchant Banker DSP Merrill Lynch Ltd.
Regd. Office Chennai			Indirect acquisition of shares of the Target Company through the acquisition of shares in the Shriram Retail Holdings Private Limited.	Registrar to the offer Karvy Computershare Private Limited (karvy Consul Ltd)
Paid up capital Rs.458.50 million				
Listed At NSE, BSE and MSE				
Indusvista Ventures Limited	Finaventure Advisory Services (India) Private Limited	Offer to acquire 7,13,098 equity shares (20%) at a price of Rs. 25.50 per Share.	Regulation 10 & 12	Merchant Banker Saffron Capital Advisors Pvt. Ltd
Regd. Office Mumbai			SPA to acquire 24,38,134 Equity shares (68.38%) of Rs. 10/-each at a price of Rs. 25.35 per share.	Registrar to the offer Intime Spectrum Registry Ltd.
Paid up capital Rs. 356.55 lacs				
Listed At BSE, UPSE				





DSE Pushkar Baniyya Limited Regd. Office Kolkata Paid up capital Rs.497.90 lacs	Pawankumar Chandak and others PACs	Offer to acquire 995800 shares (20%) of Rs.10 each at a price of Rs.84/- per share.	Regulation 10 & 12 SPA to acquire 675000 equity shares (13.56%) of Rs.10 each at a price of Rs.11 each.	Merchant Banker Ashika Capital Ltd. Registrar to the offer Niche Technologies Private Limited
Listed At CSE & UPSE Tribhuvan Housing Limited Regd. Office Indore Paid up capital Rs.500.67 Lacs	C R Rajesh Nair & Sigrun Realties Limited	Offer to acquire 20,02,680 equity shares (20%) of Rs.5/- each at a price of Rs.28.75 per equity share payable in cash.	Regulation 10 & 12 SPA to acquire an aggregate of 16,21,000 shares (16.19%) of Rs. 5/- each at a price of Rs.5/- per share payable in cash amounting to Rs. 81,05,000/-.	Merchant Banker Collins Stewart Inga Pvt. Ltd. (formerly Inga Advisors Pvt. Ltd.) Registrar to the offer Mondkar Computers Pvt. Ltd.
Listed At BSE, DSE, ASE, Saurashtra Kutch Stock Exchange Limited and MPSE Asian Sky Shop Limited Regd. Office New Delhi Paid up capital	J.B. TV Shopping Private Limited	Offer to acquire 80,000 shares (20%) of Rs.10 each at a price of Rs. 10 per Fully paid up Share payable in cash.	Regulation 10 & 12 SPA to acquire 1,46,050 shares (36.51%)	Merchant Banker Saffron Capital Advisors Pvt. Ltd. Registrar to the offer Intime Spectrum





Rs. 40 lacs		of Rs. 10 each at a price of Rs.10 per share payable in cash.		Registry Ltd.
Listed At DSE		Regulation 10 & 12		Merchant Banker
Avery India Limited	ITW Global Investments Inc.	Offer to acquire up to 19,66,461 shares (20%) of the face value of Rs. 10 each at a price of Rs. 62.5 per fully paid-up equity share payable in cash.	Indirect acquisition of shares of the Target Company through the acquisition of shares in the Avery Weigh-Tronix International Ltd (formerly Avery Berkel Holdings Limited) and AV Co 3.	ICICI Securities Ltd. (ICICI Securities & Fin. Co Ltd)
Regd. Office Kolkata		Regulation 10 & 12		Registrar to the offer
Paid up capital Rs. 9.83 crore		Regulation 10 & 12		Intime Spectrum Registry Ltd
Listed At BSE CSE	Ashok Bhanwarlal Chhajer & Sangeeta	Offer to acquire 49,800 equity shares (20%) of Rs.10 each at a price of Rs.12 per share payable in cash.	SPA to acquire 1,30,000 (52.21%) shares at a price of Rs.10 each.	Merchant Banker Fedex Securities Ltd.
Shaktiman Constructions Limited	Ashok Chhajer	Regulation 10 & 12		Registrar to the offer
Regd. Office Mumbai		Regulation 10 & 12		Adroit Corporate Services Pvt. Ltd.
Paid up capital Rs.24.90 Lacs		Regulation 10 & 12		
Listed At BSE		Regulation 10 & 12		



Regular Section

Regulation 4 - Exemption from Takeover Panel

Coverage:

This regulation covers the cases where the Takeover Panel provides the exemption to the acquirer from complying with regulation 10, 11 & 12 of the SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997. However, the acquirer is not exempted from making other compliances under regulation 6, 7 & 8 of the SEBI (Substantial Acquisition of Shares & Takeover) Regulations) 1997 and any other condition as may be imposed in the exemption order itself.

For getting the exemption, the acquirer is required to file an application supported by a duly sworn affidavit giving the details of the proposed acquisition and the grounds on which the exemption is sought along with the fees of Rs. 50,000 to the takeover panel. The panel after considering the facts & circumstances of the case & the submissions made by the acquirer may grant the exemption to the acquirer.

Regulation 3 & 4 - Differentiated

Both, regulation 3 & regulation 4 provides the exemption to acquirer from making the open offer in terms of Regulation 10, 11 & 12. However the procedure of getting the exemption under both the regulation is different. Regulation 3 provides the automatic exemption to the acquirer i.e. the acquirer is not required to make an application to the takeover panel. He has to comply with the certain condition as prescribed under regulation 3. On the other hand; cases which do not fall under regulation 3 are governed by regulation 4 for which the acquirer is required to make an application to the takeover panel. Further, the acquirer is required to make an application before the actual acquisition of shares.

<i>Regulation 3</i>	<i>Regulation 4</i>
No application to the takeover panel	Application to the takeover panel
Automatic exemption	Exemption subject to the discretion of the takeover panel
Compliance with the condition as may be prescribed under regulation 3.	Compliance with the condition as provided under the exemption order.
Post acquisition compliance to be made	Exemption to be sought before acquisition.

Types of cases filed under Regulation 4


There are various cases under which the acquirer has filed an application to the takeover panel seeking the exemption from making an open offer in terms of Regulation 10, 11 & 12 where the increase in the shareholding is pursuant to the buyback by the target company and not because of the actual acquisition or where the acquisition is made to comply with the condition imposed by the Financial institution or any other lending institution or pursuant to the Corporate Debt Restructuring scheme. In some cases the panel has granted the exemption whereas in some cases panel has given the negative decision.

Some of cases where exemption has been granted are illustrated below:

Abbott India Ltd.

Acquirer is the promoter of the target company and collectively holds 65.14% 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 65.14% to 68.94%. However, the acquirer has not acquired even a single share. Exemption is granted.

Samtel Color Limited



Acquirer belongs to the promoter group & holds 11.18% in Target Company. To comply with the condition as prescribed under CDR Scheme, the acquirer made the acquisition in the target company which increases the shareholding of the acquirer from 11.18% to 22.75%. Exemption is granted.

Jain Studios Ltd.

Acquirer belongs to the promoter group & holds 54.79% in the target company along with the other promoter. As a part of the settlement with the Industrial Development Bank of India (IDBI) through “Stressed Assets Stabilization Fund” (SASF), the acquirer proposes to acquire 1,15,94,203 equity shares by way of preferential allotment. Takeover panel granted the exemption.

Some of cases where exemption has been rejected are illustrated below:

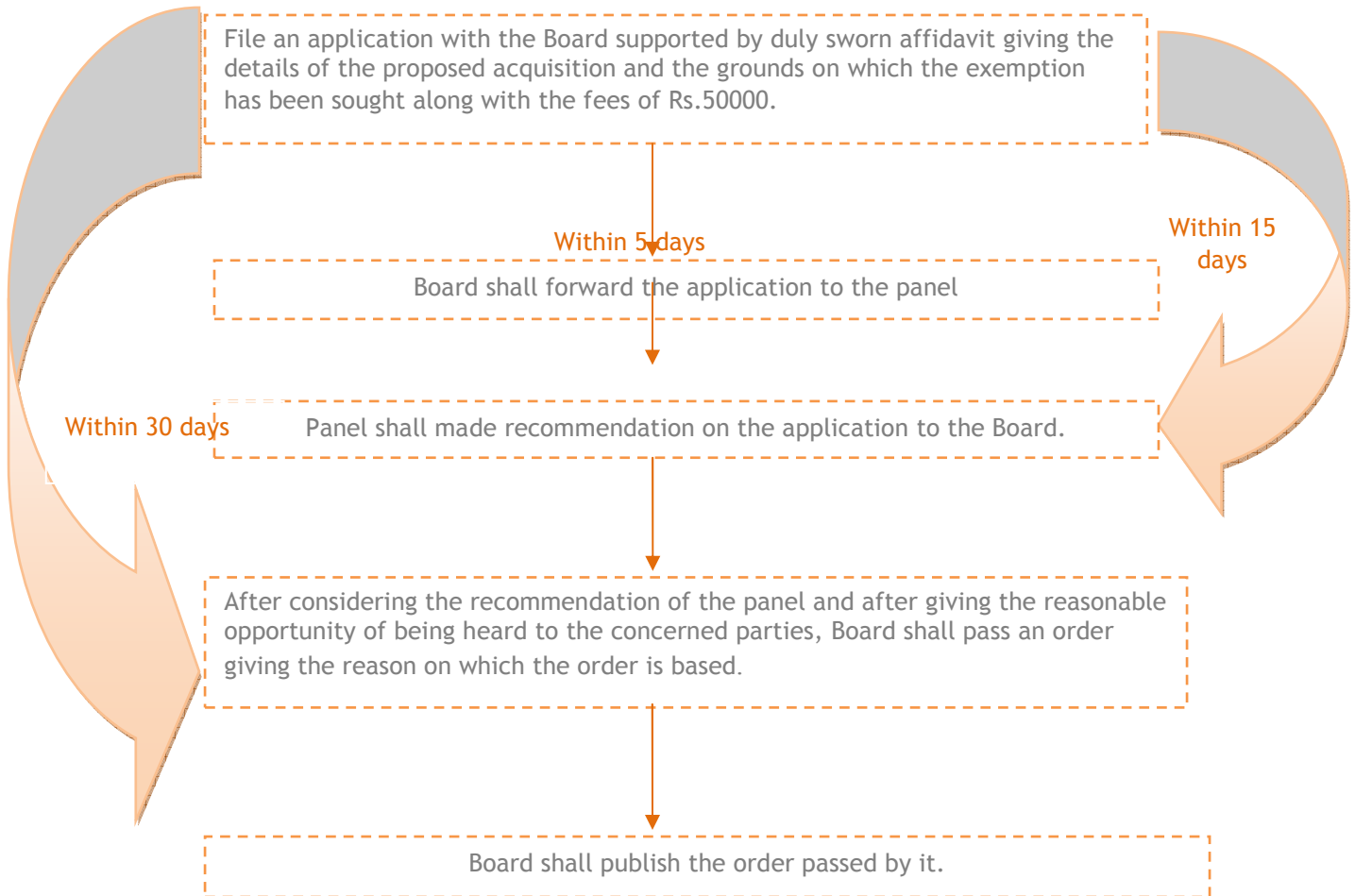
AksharChem (India) Ltd.

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.

Ganesh Polytex Ltd.

Acquirer belongs to the promoter group & holds 22.95% (individually) & 35.23% (Collectively) in the Target Company. To meet the condition stipulated by term loan provider bank, Target Company proposes to allot 34 lakh equity shares to the acquirer as result of which the holding of the acquirer increases from 22.95% to 43.47%.Takeover panel rejected the application because the statement made by the acquirer regarding the dismal performance of Target Company cannot be accepted as the company is profit making as per the audited accounts.

Takeover Panel Procedure



Case Study

Battle between Infosys & HCL for Axon

Axon provides consultancy services to multinational organizations that have chosen SAP as their strategic enterprise platform and has about 2000 employees. Axon's consultants bring in-depth industry expertise alongside best practice functional knowledge to address the strategic, operational, information management and organization effectiveness challenges faced by organizations today.


On August 25, 2008, Infosys has given an open offer to the shareholders of the Target Company to acquire the shares at a price of Rs. 600 pence per share. The Deal values Axon at 407.1 million pounds.

However, on September 26, 2008, HCL Technologies has given a counter bid to Infosys offer to acquire the shares of Axon. HCL Technologies has offered a price of Rs.650 pence per share as against the Infosys offer of Rs.600 pence per share. As per the UK Takeover code, there will now be a 45-day period during which Infosys can make a bid. If the Axon shareholders accept the HCL offer, then Infosys will be paid 1% of the deal amount as inducement.

It is expected that Infosys will revise the offer. However Infosys top management declines to revise its offer of 600 pence per shares for Axon shares. The Top management of Infosys said that the 600 pence per share is the right price for the Axon shares and there is no reason to offer a price higher than the 650 pence per share as offered by the HCL.

As per the UK Takeovercode, if the Axon shareholders accept the HCL offer then Axon shall 1% of the deal amount as inducement fees to the Infosys. On the other hand, if the Axon shareholders accept the Infosys offer then, HCL will be paid 1% of the deal amount as inducement fees.

As per Rule 21.2 of the UK Takeovercode, An inducement fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company



pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail (e.g. the recommendation by the offeree company board of a higher competing offer).

Axon has recommended its shareholders to accept the HCL offer of 650 pence per share. However, Still Infosys can make a counter bid because UK Takeovercode provides a period of 45 days from the first counter bid for making the revision in the offer.

The story will continue in our next edition throwing light on developments.....



Hint of the Month

For seeking exemption under Regulation 3 of (Substantial Acquisition of Shares and Takeover) Regulations, 1997, it is required that provisions of Regulation 10, 11 & 12 should be triggered. If they are not being triggered, then there is no requirement of seeking exemption and doing the requisite compliance.




Market Update

Idea may have to pay more for spice

The government has set up a committee to prescribe the spectrum transfer charges in case of merger. Since the Idea-Spice has been announced before the committee was set up, therefore, Idea may also have to pay such charges. Further, the new norms also state that the new licenses cannot merge with the existing licenses for a period of three years; accordingly Idea will also have surrendered its licenses for Punjab & Karnataka.

Revision in FDI norms



The Government is planning to rework FDI Guidelines pursuant to which Companies with the foreign investment will have to seek approval from the FIPB within 90 days for making the investment in the downstream companies like subsidiaries. The approval from the Board will be required even if the company in which the stake is being picked is from the sector where 100% FDI is allowed under the automatic route.

Valuation in M&As

For protecting the interest of the investors during the mergers, SEBI has asked the companies to obtain the certification from the Merchant Banker on the merger valuation.

British Telecom offloading its stake in Tech Mahindra

British Telecom (BT) is offloading a 21% stake in the Tech Mahindra. Many private equities firm are interesting in acquiring this stake from the BT. However, BT is not looking at a total exit from the Tech Mahindra.

Premji acquires 10% stake in Subhiksha

Wipro chairman Azim Premji has acquired a 10% stake in Subhiksha Trading for Rs.230 crore. Subhiksha Trading has an equity capital of Rs.32 crore and 10% of equity capital comes to Rs.3.2 crore only whereas the deal is for Rs.230 crore ,giving a premium of Rs.226.8 crore to Subhiksha.

Revision in the offer price for Zandu's shares

Emami has revised the offer price from Rs.7315 to Rs.15000 per shares for acquiring a 20% stake in Zandu.

Telecom Italia Acquisition in Unitech

Telecom Italia has acquired a 49% stake in Unitech's Telecom Arm for Rs.\$2 billion. The remaining 51% stake will be held by Unitech. The funds will be used for laying down the network, rolling out operations as well as bidding for 3G spectrum. Unitech has recently raised Rs.1200 crore from a syndicate of public sector banks for its telecom venture.

Morgan Stanley selling shares of one of its unit

Morgan Stanley Mauritius Company, one of the unit of Morgan Stanley has sold Rs.1314 crore worth of shares. Most of these shares are acquired by Deutsche Securities, a division of Deutsche Bank. The sale is mere a shifting of P-Notes position by the Morgan Stanley clients to other P-Note issuers like Deutsche bank P Morgan and others. Deutsche is the only one bank that has remained intact and untouched by the crisis. Therefore, lots of P-Notes holders are shifting to Deutsche Bank.

Lupin acquired stake in S African generic co

Lupin has acquired 60% stake in the S African generic co for an unknown amount. After this acquisition, Lupin is looking at expanding its sales to the other African nations at a later stage. Lupin aims at achieving sales of \$1 billion by the end of this year.

Daiichi has to pay interest to the Ranbaxy shareholders

On account of delay in receiving statutory approvals including those from the Cabinet Committee of Economic Affairs and the Reserve Bank of India, there has been a delay in making the payment to the Ranbaxy's shareholders, for which Daiichi will have to pay the interest to the shareholders for these procedural delays.

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