



Takeover Panorama

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Legal Update

SAT Order in the matter of Deepak Mehra

Facts:

Bharti Airtel Limited (BAL) envisaged a transaction with MTN Group Limited whereby BAL proposed to acquire 49% shares of MTN from MTN and its existing shareholders in exchange for issuance of GDRs carrying underlying equity shares of BAL, constituting 25% to MTN and 11% to the existing shareholders. Vide letter dated 18 Jun, 2009, BAL sought the informal guidance from SEBI regarding the applicability of SEBI (SAST) Regulations, 1997 on the proposed acquisition of GDRs by MTN. SEBI clarified that regulation 3(2) requires the acquirer of GDRs to make an open offer only upon conversion of the GDRs into equity shares with voting rights and not on the issuance of GDRs.

The interpretative letter/Informal Guidance issued by SEBI does not constitute order under section 15T of the SEBI ACT, 1992 and therefore, does not entitle any one to file the appeal against it.

Further, regulation 3(2) of SEBI (SAST) Regulations, 1997 gives exemption from requirement of open offer only. The disclosures under Chapter II are nevertheless required to be made. Similarly, the disclosures under Insider Trading Regulations are also required to be made by MTN and its shareholders. A shareholder Deepak Mehra (Appellant) holding 100 shares of BAL appealed against the said SEBI Informal Guidance letter contending that the said communication is in contravention with SEBI (SAST) Regulations, 1997 and is not in the interest of shareholders affecting their right of exit opportunity.

Issues:

Whether the appeal made by the appellant against the interpretive letter issued by the SEBI is maintainable?

Decision:

In view of the above facts and circumstances, SAT held that the impugned communication is only an informal guidance given by the SEBI and should not be construed as the final decision. The informal

guidance given by the SEBI does not constitute an order under section 15T of the SEBI ACT, 1992 which could adversely affect the rights of the shareholder and therefore, does not entitle any one to file an appeal. Further, the proposal for which the informal guidance has been sought is yet to be implemented. Hence viewing the appeal as premature the same is dismissed.

SAT Order in the matter of Hamlet Holdings II ApS and Others

Facts:

As on the date of public announcement for the Target Company i.e. December 17, 2008, the acquirer holds 100% shares of DISA II A/S which has been acquired from Procuritas Group vide Share Sale and Purchase Agreement dated March 09, 2008. However, it does not hold directly any shares in the Target Company. DISA II A/S holds 100% shares of DISA A/S which in turn holds 100% shares of DISA AG. DISA A/S owns 3,02,749 Equity Shares and DISA AG holds 8,18,902 Equity Shares in the Target Company constituting 20.05% and 54.22% of the paid up capital of the Target Company.

Where no public announcement has been made for the acquisition of shares of the parent company, the date when the share purchase agreement was entered into for the acquisition of shares of parent company cannot be taken as the date of its PA for the purpose of regulation 20(12) of the SEBI Takeover Code.

Thus, pursuant to the acquisition in DISA II A/S, the acquirer has indirectly acquired 74.27% stake in the Target Company which has resulted into triggering SEBI (SAST) Regulations, 1997 requiring the open offer be made to the shareholders of the Target Company.

Consequent to the above acquisition, on December 17, 2008, the acquirer has made the open offer to acquire 3,02,041 Shares representing 20% of the paid-up and voting equity share capital of the Target Company, at a price of Rs. 1,657/- per Share payable in cash. Further, in accordance with regulation 18 of the SEBI (SAST) Regulations, 1997, on December 31, 2008, the acquirer submitted the detailed letter of offer with the SEBI on which the SEBI issued its observation vide its letter dated February 06, 2009 which is stated as follows:

“The offer price may be calculated in terms of regulation 20(4) read with 20(12) and the date of PA for the parent company may be treated as the date of Share Sale and Purchase Agreement i.e. March 09, 2008. Accordingly the consequent changes may be made in the revised offer document.”

Against this order of SEBI, the present appeal is filed.

Issues:

Whether, where no public announcement has been made for the acquisition of shares of parent company, the date when the Share Sale and Purchase Agreement has been entered into for the acquisition of shares of parent company can be taken as the date of PA for the parent company in terms of regulation 20(12) of the SEBI (SAST) Regulations, 1997.

Decision:

Regulation 20(12) pre-supposes that when the parent company get acquired, the takeover code get triggered and a public announcement is made. However, in the instant case no public announcement was made for the acquisition of parent company as the acquisition was made outside India. Since no public announcement was made when the parent company was acquired by the acquirer, therefore, the date on which share and stock Purchase Agreement was executed i.e. March 09, 2008, cannot be taken as the public announcement of the Parent Company and the order of the Board was set aside.

Adjudicating Order in the matter of Rupi V Chinoy

Facts:

While conducting the investigation in to the scrip of M/s Fast Track Entertainment Limited (FTEL/Target Company) during the period from Jan 01, 2004 to Jan 30, 2004, SEBI observed that Ms. Rupi V Chinoy (Noticee) acquired 5,10,000 Equity Shares representing 6.59% of share capital of FTEL on March 04, 2004 without making the necessary disclosures as required under Regulation 7(1) read with 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) of the SEBI (PIT) Regulations, 1992.

Adjudicating officer rejected the contentions of the Noticee that the non compliance with SEBI Takeover Code and SEBI Insider Trading Regulations was without an intention to takeover the company and imposed the monetary penalty of Rs. 1, 00, 000 on the Noticee.

Further it was also observed from the Demat statement of the Noticee that there had been a change of more than 2% in her shareholding after the above acquisition of shares on March 04, 2004 regarding which no disclosures under 13(3) read with 13(5) of the SEBI (PIT) Regulations, 1992 had been filed. Accordingly, Adjudicating proceedings were initiated against the Noticee.

Contention:

1. Noticee contended that aforesaid acquisition of shares was not done with an intention of takeover of Company.
2. It was further contended that the violation was technical in nature.

Issues:

1. Whether the contentions of the Noticee that the above violation of regulation 7(1) of the SEBI (SAST) Regulations, 1997 and regulation 13(1) and 13(3) of the Insider Trading Regulations was technical in nature and was not done for the purpose of takeover of company can be accepted.
2. Whether the non compliance, if any, on the part of the appellant attracts the monetary penalty?

Decision:

On considering the above facts, Adjudicating officer held that the basic purpose of disclosure is to bring about the transparency and to assist the regulators in effective monitoring of transactions in the market. Therefore, the above contentions of the Noticee cannot be accepted and thus imposed the penalty of Rs. 1,00,000 on the Noticee.

Similar judgment was also passed in the matter of “Milan Mahindra Securities Pvt. Ltd. Vs SEBI”

Adjudicating Order in the matter of Sheo Ratan Agarwal

Facts:

While examining the letter of offer filed by Shri Sheo Ratan Agarwal and Punrasar Holdings Private Limited (Acquirers), SEBI found that Shri Sheo Ratan Agarwal along with the representative from Punrasar Holdings Private Limited (Noticees) were appointed as a Director on the Board of Winsome International Limited (Target company) on April 19, 2006 i.e. on the same day on which Share Purchase Agreement(SPA) was signed by the acquirers for acquiring 7,00,000 shares representing 40.70% of the share capital of

Adjudicating officer imposed the monetary penalty of Rs.300000 on each of the Noticee for being appointed their representatives on the Board of the Target Company during the offer period in violation of regulation 22(7) of the SEBI Takeover Code.

target company which is in violation of regulation 22(7) of the Takeover code.

In terms of regulation 22 (7) of the SEBI Takeover Code, the acquirers or person in acting concert with him are prohibited from being appointed on the board of the Target Company during the offer Period.

Contentions:

1. Noticee contented that the appointment was made in a Board Meeting prior to the Board Meeting done for entering in to the SPA ;
2. It was further contented that the appointment of the acquirers as director on the board of target company on the same day on which the SPA was entered into is a mere coincidence and without any malafide intention.

Issues:

Whether in view of the facts stated above, the appointment of acquirer as director on the Board of Target Company on the same day on which the SPA was entered into was in violation of Regulation 22(7) of Takeover Code?

Decision:

On the basis of aforesaid facts and circumstances, Adjudicating Officer observed that as per section 264 of Companies Act, 1956 Noticee must have filed his consent to act as director to Target Company and to the ROC before his appointment. Also it was presumed that before entering into the SPA for the acquisition value of nearly 81 lakhs, there must be some proper negotiations and discussions which depict the intention of the Noticee of entering in to SPA and willfully accepted the post of the director of Target Company, hence violated Regulation 22(7) of Takeover Code. Therefore, Adjudicating officer imposed the monetary penalty of Rs.3,00,000 on the each of the Noticee for specifically acting against the law.

Facts:

Mrs. Anita Tibrewal (acquirer) is the promoter of the Gangotri Textiles Limited (Target Company) and holds 16.04% shares of the Target Company. The acquirer has earlier advanced an unsecured loan of Rs. 7,20,00,000 from her personal resources to meet the margin requirement for the completion of the project undertaken by the Target Company. Now, pursuant to the CDR scheme, it is proposed to convert the unsecured loan of Rs. 7,20,00,000 into 97,69,335 Equity Shares, thereby, increasing the shareholding of the acquirer from 16.04% to 30.51% and that of the promoter group from 24.47% to 36.01% which has resulted into triggering regulation 11(1) of the SEBI(SAST)Regulations,1997. Therefore, the acquirer has filed this present application seeking the exemption from the applicability of SEBI (SAST) Regulations, 1997 on the following submission:

SEBI Granted the exemption to the acquirer where increase in the shareholding in pursuant to the conversion of loan advanced by the acquirer to the Target Company into equity shares as mandated under the CDR scheme.

Grounds of Exemption:

1. No change in control;
2. The sum of Rs. 7,20,00,000 has been brought to finance the projects undertaken by the Target Company;
3. The aforesaid conversion has been done under the scheme of Corporate Debt Restructuring which mandates the conversion of Rs. 75 crores bank loans and the aforesaid unsecured loan of Rs. 7,20,00,000 into Equity Shares;
4. The special resolution under section 81(1A) of the Companies Act, 1956 has already been passed.

Decision:

Since the proposed allotment of 97,69,335 Equity Shares to the acquirer is mandated under CDR scheme which is in the interest of the shareholders of the Target Company and further there will be

no change in control, therefore, SEBI granted the exemption to the acquirer from the applicability of regulation 11(1) of the SEBI (SAST) Regulations, 1997.

Informal Guidance in the matter of Gulf Oil corporation Limited

Facts:

1. Gulf Oil International (Mauritius) Inc. (GOIMI/Acquirer) is the promoter of Gulf Oil Corporation Limited (Target Company) and holds 45.73% shares in the Target Company.
2. Helvetia Mauritius Ltd. and Swallow Enterprises Mauritius Ltd. are OCBs based in Mauritius and holds 2.67% and 0.63% shares in the Target Company respectively.
3. On May 13, 2008, GOIMI, Helvetia Mauritius Ltd. and Swallow Enterprises Mauritius Ltd. had approved the proposal for the amalgamation which is duly approved by the Registrar of Companies, Republic of Mauritius on April 23, 2009.
4. As a result of the above transaction, GOIMI has acquired 3.3% shares in the Target Company which were earlier held by the OCBs, thereby, increasing its shareholding from 45.73% to 49.03% and the said proposal gets approved by the ROC and Republic Of Mauritius on April 23, 2009.
5. The Target Company has sought the Informal Guidance on the following issues:

Where the increase in the shareholding of the acquirer is pursuant to the scheme of merger which is exempted under regulation 3(1)(j)(ii) of SEBI Takeover Code, then, the acquirer can further acquire 5% shares as creeping acquisition in the same financial year in terms of regulation 11(1).

Issues:

1. Whether the increase in shareholding of GOIMI on account of merger with OCBs is exempt under Regulations 3 of SEBI (SAST) Regulations, 1997.
2. Whether the scheme of amalgamation will come in to effect from the retrospective date or from the date of approval (April 23, 2009) by the Registrar of Companies, Republic of Mauritius?
3. Whether the GOIMI can acquire further 5% Shares in the Target Company by way of open market purchase or preferential allotment pursuant to Regulation 11 in 2009-10.

Decision:

1. The exemption under regulation 3 is available from the compliance of regulation 10, 11 and 12 of the SEBI (SAST) Regulations, 1997. Where the increase in the shareholding is within the limit as specified under regulation 10 or 11, then, regulation 3 is not applicable and the questions of availing the exemption does not arise. Thus, as the increase in the shareholding of GOIMI is only 3.3% which is within the limit of 5% as specified under regulation 11(1), therefore, the obligation of open offer as specified under regulation 11(1) does not attracted and there is no need of availing the exemption under regulation 3.
2. As the certificate of amalgamation issued by the Registrar of Companies, Republic of Mauritius specifies April 23, 2009 as the date with effect from which the amalgamation will be effective, therefore, the increase of 3.3% in the shareholding of GOIMI will also be effective from April 23, 2009 and not from May 2008 unless Registrar of Companies, Republic of Mauritius specifies otherwise.
3. Further, as GOIMI has acquired 3.3% through a scheme of merger or amalgamation as mentioned in regulation 3(1)(j) (ii) of the SEBI (SAST) Regulations, 1997, therefore, it can further acquire 5% shares during 2009-10 in terms of regulation 11(1) of the said regulations.

Consent Order in the matter of Gallons Holdings Private Limited

SEBI, vide order dated January 03, 2007, initiated adjudication proceedings against Gallon Holdings Private Limited (Noticee) for the violation of regulation 3(3), 3(4), 3(5) and 7(1) of SEBI (SAST) Regulations, 1997 in respect of acquisition of shares on March 15, 2002 of Woolite Mercantile Company Ltd (Target Company). Pending the adjudication proceedings, the Noticee made an application on March 14, 2009 and proposed to pay Rs. 85,000 towards consent terms in the matter. The terms proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI disposed off the said adjudication proceedings against the Noticee.

Consent Order in the matter of Automotive Stamping and Assemblies Limited

Automotive Stamping and Assemblies Limited (Noticee) failed to make the requisite disclosures under regulation 6(2), 6(4) of SEBI (SAST) Regulations, 1997 for the year 1997 and under regulations 8(3) of the said regulations for the years 1999 and 2001 and thus violated the provisions of SEBI (SAST) Regulations, 1997. Consequently Adjudicating proceedings were initiated against the Noticee

for the aforesaid failure. Pending the adjudicating proceedings, the Noticee made an application dated April 16, 2009 and proposed to pay Rs.1,10,000 towards the consent terms. The terms proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of HPAC, SEBI dispose of the said adjudicating proceedings against the Noticee.

Latest Open Offers

Name of the Target Company	Name of the Acquirer and PAC	Details of the offer	Reason of the offer	Concerned Parties
<p>Blue Circle Services Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs 74.70 Lacs</p> <p>Listed At BSE and ASE</p>	<p>Prime Capital Market Limited</p>	<p>Offer to acquire 1,49,400 (20%) Equity Shares at a price of Rs.14 per share payable in cash.</p>	<p>Regulations 10 and 12</p> <p>SPA to acquire 1,00,000 (13.39%) Equity Shares at a price of Rs.10 per share, thereby, increasing the shareholding of the acquirer from 7% to 20.39%.</p>	<p>Merchant Banker V C Corporate Advisors Private Limited</p> <p>Registrar to the Offer Purva Sharegistry (India) Private Limited</p>
<p>Kapil Cotex Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 60 Lacs</p> <p>Listed At BSE</p>	<p>Prakash Chandra Rathi and Mrs. Poonam P. Rathi.</p>	<p>Offer to acquire 1,20,000 (20%) Equity Shares at a price of Rs.13.50/- per share payable in cash.</p>	<p>Regulations 10 and 12</p> <p>Preferential Allotment of 3,60,000 Equity Shares at a price of Rs. 13.50 each and SSPA to acquire 68,500 (11.42%) Equity Shares at a price of Rs. 7.50/-</p>	<p>Merchant Banker Aryaman Financial Services Limited</p> <p>Registrar to the Offer Satellite Corporate Services Pvt. Limited</p>

			per share, thereby, increasing the shareholding of the acquirer from 0.67% to 72.08% of the expanded capital.	
<p>Blue Chip Stockspin Limited</p> <p>Regd. Office Ahmedabad</p> <p>Paid up capital Rs. 501.49 lacs</p> <p>Listed At BSE, ASE and VSE</p>	<p>Jignesh Hiralal Shah</p>	<p>Offer to acquire up to 10,10,100 (20%) Equity Shares at a price of Rs.2.75 per share payable in cash.</p>	<p>Regulations</p> <p>10 and 12</p> <p>SPA to acquire 7,95,000 (15.74%) Equity Shares at a price of Re. 1 per share payable in cash.</p>	<p>Merchant Banker Chartered Capital and Investment Limited</p> <p>Registrar to the Offer Chartered Capital and Investment Limited</p>
<p>Vishal Cotspin Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital Rs. 3.24 crore</p> <p>Listed At BSE</p>	<p>Deepak Dungarshi Chheda, Rohit Keshavji Dedhia, Harish Damji Nisar and Shailesh Damji Shah</p>	<p>Offer to acquire 6,49,580 (20%) Equity Shares at a price of Rs.3/- per share payable in cash.</p>	<p>Regulations</p> <p>10 and 12</p> <p>SPA to acquire 17,82,685 (54.89%) Equity Shares at a price of Rs. 3 per share payable in cash.</p>	<p>Merchant Banker VIVRO Financial Services Private Limited</p> <p>Registrar to the Offer Cameo Corporate Services Limited</p>
<p>Ratnabali Capital Markets Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs.520.30 lacs</p>	<p>Vikash Somani, Suresh Somani, Jaishree Somani and PACs</p>	<p>Offer to acquire up to 10,40,600 (20%) Equity Shares at a price of Rs.123.40/- per share payable in cash.</p>	<p>Regulation</p> <p>11(2)</p> <p>Open offer pursuant to the SEBI clarification dated August 06, 2009 on second proviso to</p>	<p>Merchant Banker Dalmia Securities Private Limited</p> <p>Registrar to the Offer</p>

<p>Listed At BSE</p>			<p>regulation 11(2) elucidating that creeping acquisition limit of 5% as prescribed under the said proviso is allowed once during the entire life time of the Target Company and can be made in one or more trenches without any restriction on the time frame.</p>	<p>ABS Consultant Private Limited</p>
<p>Sarla Gems Limited</p> <p>Regd. Office Kolkata</p> <p>Paid up capital Rs. 226.85 lacs</p> <p>Listed At BSE, CSE and DSE</p>	<p>Tara Holdings Private Limited (THPL) & Kalpena Industries Limited (KIL)</p>	<p>Offer to acquire 11,05,707 (20%) Equity Shares at a price of Rs.10/- per share payable in cash.</p>	<p>Regulations 10, 11(1) and 12</p> <p>Preferential Allotment of 12,60,375 (22.79%) to THPL and 20,00,000 (36.18%) Equity Shares to KIL at a price of Rs. 10 each, thereby, increasing their collective holding from 32.62% to 72.36 % of the expanded capital.</p>	<p>Merchant Banker V C Corporate Advisors Private Limited</p> <p>Registrar to the Offer ABS Consultant Private Limited</p>
<p>Prism Informatics Limited</p> <p>Regd. Office Mumbai</p> <p>Paid up capital</p>	<p>Idhasoft Limited</p>	<p>Offer to acquire 1,26,000 (20%) Equity Shares at a price of Rs.65 per share payable in cash.</p>	<p>Regulations 10 & 12</p> <p>SPA to acquire 4,66,432 (74.04%) Equity Shares at a price of Rs. 65</p>	<p>Merchant Banker Saffron Capital Advisors Private Limited</p> <p>Registrar to the</p>

Rs.63 lacs Listed At BSE			per share payable in cash	Offer Sharex Dynamic (India) Private Limited
Finaventure Capital Limited Regd. Office Mumbai Paid up capital Rs.356.55 lacs Listed At BSE, DSE and UPSE	Kannan Vishwanath	Offer to acquire up to 21,13,098 (20%) Equity Shares at a price of Rs. 40/- per share payable in cash.	Regulations 10 & 12 Proposed allotment of 47,33,131 (44.80%) Equity Shares of the Target Company to the acquirer in consideration of the shares held in Aanjaneya Biotech Private Limited and MOU to acquire 7,50,000 (7.10%) Equity Shares at Rs.40 per share.	Merchant Banker Saffron Capital Advisors Private Limited Registrar to the Offer Link Intime India Private limited
Tilaknagar Industries Limited Regd. Office Ahmednagar Paid up capital Rs.1394.94 lacs Listed At BSE	Amit Dahanukar and Shivani Amit Dahanukar	Offer to acquire up to 20,19,014(20%) Equity Shares at a price of Rs. 94/- per share payable in cash.	Regulation 11(1) Conversion of 4,170,000 Warrants and 200,000 Compulsorily Convertible Cumulative Preference Shares in to Equity Share, thereby, increasing the shareholding of the	Merchant Banker D & A Financial Services Private Limited Registrar to the Offer Bigshare Services Pvt. Ltd.

			promoter group from 54.60% to 74.25%.	
<p>SQL Star International Limited.</p> <p>Regd. Office Andhra Pradesh</p> <p>Paid up capital Rs.21.80 crore</p> <p>Listed At BSE, DSE and HSE</p>	<p>Superstar Exports Private Limited and PAC's</p>	<p>Offer to acquire 74,30,000 (20%) Equity Shares at a price of Rs. 10.50 per share payable in cash.</p>	<p>Regulations 10, 11(1) and 12</p> <p>Proposed Preferential Allotment of 68,25,000 Equity Shares and 48,25,000 Warrants to the acquirer and PACs at a price of Rs. 10.50 each, thereby, increasing the shareholding of the promoter group to 50.45% of post issue and allotment of Equity Shares and conversion of warrants</p>	<p>Merchant Banker IndBank Merchant Banking Services Limited</p> <p>Registrar to the Offer Karvy Computershare Private Limited</p>
<p>CCAP Limited</p> <p>Regd. Office Hyderabad</p> <p>Paid up capital Rs.3.56 crore</p> <p>Listed At BSE, CSE and ASE</p>	<p>Ramayana Promoters Private Limited.</p>	<p>Offer to acquire 7,14,033 Equity Shares representing 20% of the subscribed equity share capital and 20.07% of the voting share capital at a price of Rs.80/- per share payable in cash</p>	<p>Regulations 10 and 12</p> <p>SPA to acquire 12,67,410 (33.50%) Equity Shares at a price of Rs.80 per share payable in cash</p>	<p>Merchant Banker Sumedha Fiscal Services Limited</p> <p>Registrar to the Offer MCS Limited</p>

Hint of the Month

For the purpose of Disclosure requirement as specified under regulation 7(1) and 7(1A) of the SEBI (SAST) Regulations, 1997, the term acquirer shall include a pledgee other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(As substantiated from Explanation to regulation 7(1A) of the SEBI Takeover Code)

Regular Section

Regulation 3(1) (e) of the SEBI Takeover Code: Inter se transfer of shares

Regulation 3(1) (e) of the SEBI (SAST) Regulations, 1997 provides the automatic exemption from the provisions of regulation 10, 11 and 12 where the acquisition of shares has been made through inter se transfer that is to say acquisition through inter se transfer is not subject to open offer if it complies with the conditions specified in the said sub regulation.

The provision of regulation 3(1) (e) of the SEBI (SAST) Regulations, 1997 are interpreted below:

- i. **Group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;**

The exemption is available by complying with the following formalities:

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of the SEBI (SAST) Regulations, 1997

- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI (SAST) Regulations, 1997]

Example: The companies M/s XYZ Ltd & M/s ABC Ltd are coming in the definition of group as defined in MRTP Act, 1969. The present paid up equity capital of a Company is 1,00,000 shares. M/s XYZ & M/s ABC Ltd both presently holds 25000 shares each amounting to 25% of the voting capital. M/s ABC intends to acquire further 15000 shares from M/s XYZ Ltd. Here the proposed transaction comes under the category of inter se transfer between groups. The shareholding of M/s ABC Ltd will increased from 25% to 40% i.e. (25000 shares to 40000 shares). This transaction requires the compliance of Regulation 3(3) as it is beyond the prescribed limit under the regulation. The acquirer has to give intimation to the stock exchange where the shares of the target company are listed at least 4 days before the proposed acquisition.

- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions. Though the regulation specifies a limit of 15% or more of the voting rights in a company but the limit is of no use as the exemption under the said regulation 3 is sought by the persons who have already crossed the limit of 15%. Further the compliance under regulation 3(4) is not a one-time compliance. The acquirer has to file a report within 21 days of the date of acquisition every time he claims exemption under this regulation. [Regulation 3(4) of SEBI (SAST) Regulations, 1997]
- The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India. [Regulation 3(5) of SEBI (SAST) Regulations, 1997]
- In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the

date of conversion of warrants/ any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).

- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.

ii. **Inter se transfer of shares amongst relatives within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);**

The inter se transfer between relatives as mentioned in Schedule IA provided in the companies Act is also exempted from giving Takeover offer. However, the acquirers have to comply with the following:

The exemption is available by complying with the following formalities:

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 **of SEBI (SAST) Regulations, 1997**.
- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI (SAST) Regulations, 1997]
- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions where the shareholding of the acquirer taken together with shares or voting rights, if any, held by him or by persons acting in concert with him would entitle such person to exercise 15% or more of the voting rights in a company. **[Regulation 3(4) of SEBI (SAST) Regulations, 1997]**

- The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India, **[Regulation 3(5) of SEBI (SAST) Regulations, 1997]**
- In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the date of conversion of warrants/ any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).
- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.

iii. **Inter se transfer of shares amongst**

- a) Qualifying Indian promoters and foreign collaborators who are shareholders
- b) Qualifying Promoters

The exemption is available by complying with the following formalities:

- The transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition. It would be sufficient that parties to the transactions are holding shares as shareholders and not as promoters.

Further, in the interpretative letter issued by the SEBI in the matter of acquisition of shares of Pudumjee Agro Industries Limited, it has been substantiated that the prior three years holding criteria shall be checked collectively and not individually. Therefore, if the transferors collectively as well as the acquirers collectively holds the shares in the target company for 3 years or more prior to the proposed acquisition, the transfer of shares from the transferors to the acquirers would be eligible for exemption under regulation 3(1) (e) (iii)(b) irrespective of the fact that some of the acquirer does not hold any shares in the target company.

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8.
- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI (SAST) Regulations, 1997]
- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions where the shareholding of the acquirer taken together with shares or voting rights, if any, held by him or by persons acting in concert with him would entitle such person to exercise 15% or more of the voting rights in a company. [Regulation 3(4) of SEBI (SAST) Regulations, 1997]
- The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India. [Regulation 3(5) of SEBI (SAST) Regulations, 1997]
- In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the date of conversion of warrants/ any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).
- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.
- The additional condition for the purpose of inter se transfer between promoters is that the price for executing transaction is not exceeding 25% of the price determined under Regulation 20(4) & (5). The exemption will not be available if the price at which the inter –se transfer has been executed, is greater than 25% of the price as determined u/r regulation 20(4) and (5) of the SEBI Takeover Code.

iv. **The acquirer and persons acting in concert with him, where such transfer of shares takes place three years after the date of closure of the public offer made by them under these regulations.**

- This exemption is from inter se transfer between the acquirer and persons acting in concert, but this exemption are available only after three years of the date of closure of public offer made by them. However, if there had been no public offer then the acquirer & persons acting in concert cannot transfer the shares between them.

The exemption is available by complying with the following formalities:

- The benefit of exemption will be available subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8 of SEBI (SAST) Regulations, 1997.
- In case the proposed transaction exceeds 5% of the voting share capital of the company, the acquirers have to, for the intimation of public, notify the details of the proposed transaction at least 4 working days in advance of the date of the proposed transaction to the stock exchanges where the shares of the Company are listed. [Regulation 3(3) of SEBI (SAST) Regulations, 1997]
- The acquirer is further required to file a report within 21 days of the date of acquisition to the Securities & Exchange Board of India (SEBI) giving all details in respect of acquisitions where the shareholding of the acquirer taken together with shares or voting rights, if any, held by him or by persons acting in concert with him would entitle such person to exercise 15% or more of the voting rights in a company. [Regulation 3(4) of SEBI (SAST) Regulations, 1997]
- The acquirer has to along with the report under regulation 3(4) deposit fees of Rs 25,000/- to the Board either by a bankers cheque or demand draft in favour of Securities & Exchange Board of India.[Regulation 3(5) of SEBI (SAST) Regulations, 1997]
- Further, the price for executing transaction is not exceeding 25% of the price determined under Regulation 20(4) & (5). The exemption will not be available if the price at which the

inter –se transfer has been executed, is greater than 25% of the price as determined u/r regulation 20(4) and (5) of the SEBI Takeover Code.

- In case of warrants or any other security convertible into equity shares at a later date, Regulation 3(3) and 3(4) of SEBI (SAST) Regulations, 1997 has to be complied with reference to the date of actual conversion into shares. In other words, the acquirer has to at least 4 working days in advance of the date of conversion of warrants/ any other security convertible into equity shares, notify the details to the stock exchanges as required under regulation 3(3).
- The acquirer and seller have to comply with Regulation 7 & 8 as the regulation does not relieve the acquirer from complying with disclosure requirements.

Particulars	Inter se transfer among MRTP group	Inter se transfer among relatives	Inter se transfer among Qualifying promoters	Inter se transfer between Acquirer and PACs
Compliance with the regulation 6, 7 and 8	√	√	√	√
Advance Intimation under regulation 3(3)	√	√	√	√
Report to SEBI under regulation 3(4)	√	√	√	√
Pricing Norms i.e. Inter se transfer cannot be at a price exceeding 25% of the price determined under regulation 20(4) or 20(5).	X	X	√	√
Prior holding of three years	X	X	√	X

Case Study

An Analysis of Bharti –MTN Prospective Deal

About Bharti Airtel Limited

Bharti Airtel Limited, a flagship company of Bharti Enterprises, is the largest integrated and the first private telecom services provider in India with a footprint in all the 23 telecom circles. Bharti Airtel since its inception has been at the forefront of technology and has steered the course of the telecom sector in the country with its world class products and services. The businesses at Bharti Airtel have been structured into three individual strategic business units (SBU's) - Mobile Services, Airtel Telemedia Services & Enterprise Services.

About MTN

MTN Nigeria is part of the MTN Group, Africa's leading cellular telecommunications company. On May 16, 2001, MTN became the first GSM network to make a call following the globally lauded Nigerian GSM auction conducted by the Nigerian Communications Commission earlier in the year.

The Biggest M&A Activity in Indian History-Bharti MTN Deal

Bharti-MTN deal, if finalized, would be the largest M&A activity in India and would constitute more than seven times the amount India invested directly in the whole of Africa from 1995 to 2004. No Indian company has ever contemplated something as bold as the potential bid by Bharti Airtel for South Africa's MTN. Prior to this largest deal by an Indian company, there has been Tata Steel's takeover of European steel major Corus for \$12.2 billion followed by British telecom giant Vodafone's purchase of controlling stake in Indian mobile service provider Hutch Essar for about \$10 billion.

The Deal

After almost a year, Bharti Airtel Limited has renewed its effort for a significant partnership with South African telecom giant MTN Group Limited with a view to create an emerging market telecom powerhouse. The deal would give Bharti substantial participatory and governance rights in MTN enabling it to fully consolidate the accounts of MTN. Likewise, MTN's economic interest in Bharti is also said to be equity accounted and would have appropriate representation on the Bharti Board.

In a deal, Bharti proposed to acquire 49% shares of MTN from MTN and its existing shareholders in exchange for issuance of GDRs carrying underlying equity shares of Bharti, constituting 25% to MTN and 11% to the existing shareholders.

Hindrance in the Deal

- While the matter is still at its proposal stage, On June 18, 2009, Bharti sought the interpretive letter from SEBI with respect to the aforesaid transaction on the issue whether MTN is required to give open offer on acquisition of GDRs carrying underlying equity shares constituting 25% of the total of capital of Bharti wherein it was clarified by the SEBI that regulation 3(2) of the SEBI (SAST) Regulations, 1997 requires the acquirer of GDRs to make the open offer only upon conversion of the GDRs into equity shares with voting rights. It is noteworthy to mention here is that regulation 3(2) of the SEBI (SAST) Regulations, 1997 gives exemption from requirement of open offer only and the disclosures under Chapter II are nevertheless required to be made.
- Subsequently, a shareholder, Deepak Mehra who holds 100 shares of Bharti, felt aggrieved by the SEBI interpretive letter and filed an appeal against the said SEBI Informal Guidance contending that the said communication is in contravention with SEBI (SAST) Regulations, 1997 and is not in the interest of shareholders affecting their right of exit opportunity.

However, the appeal was dismissed by the SAT. SAT held that the impugned communication is only an informal guidance given by the SEBI and should not be construed as the final decision. The informal guidance given by the SEBI does not constitute an order under section 15T of the SEBI ACT, 1992 which could adversely affect the rights of the shareholder and therefore, does not entitle any one to file an appeal. Further, the proposal for which the informal guidance has been sought is yet to be implemented.

- Bharti Airtel is also in talks with the Government Officials regarding the listing of Bharti-MTN combined equity in India as well as South Africa in case the deal is finalized. However, the existing provision does not permit the listing of equity shares of the Indian Companies outside the country. The Indian companies are only allowed to list the Global Depository Receipts or American Depository Receipts.

There is also a concern in the regulatory authority that sanctioning of dual listing could lead to the convertibility of the Indian Rupee through the backdoor and will provide Indian Residents

an opportunity to move Indian wealth out of the country by buying shares in India and selling the shares overseas for US Dollars.

Finalisation of the Deal

The negotiations which were started in May 2009 are still to be finalized and the time line for discussions for reaching the final agreement are continuously extending from May to July, then to August and now to September 30, 2009.

The prospective deal between Bharti and MTN has caught the eyes of the Telecom Industry. Now, it has to be seen whether the deal is finalized by the end of the Month or negotiations are further extended.

PROSPECTIVE OVERSEAS OPPORTUNITIES:

There are upcoming overseas opportunities arriving for Indian Companies such as MTNL and BSNL to go beyond Delhi and Mumbai by betting big on the foreign telecom forays in order to overcome dipping profits of PSUs over the past few years. But the window of opportunity is closing fast. Most of the emerging markets in the African continent are already controlled by European players such as Vodafone and France Telecom. The Bharti-MTN deal would create a most formidable rival there. Other Indian operators looking for a similar deal still have the following options:

1. Kuwaiti-based Zain, which is in 24 markets across Africa and West Asia and may be a bid target.
2. The Egypt-based Orascom, which has operations in 11 countries, could be another possible partner.
3. There are regional players such as Telekom SA, which may be open to a possible alliance.

Market Update

🚩 Zenotech plea seeking cancellation of approval by FIPB gets rejected

Foreign Investment Promotion Board (FIPB) rejected the Zenotech Plea against the Japanese firm Daiichi asking FIPB to cancel its approval to Daiichi for acquiring 20% stake in Zenotech. Zenotech claimed that the said approval was made without verifying the facts and

in the absence of No Objection letter from the Indian entity which is mandatory for a foreign company before setting up a new business in the same field. However Government said that Daiichi does not needs an approval from Indian Entity as it doesn't have a partnership here, and FIPB had given its approval to Daiichi after due deliberation, hence there was no need for a hearing on the matter.

Axis IT&T acquired Majority stake in Cades

Axis IT&T has acquired 51% holding in Cades Digitech, an engineering product development firm based in Bangalore for \$ 15 million. The said acquisition was finalized and approved by the Acquirer at its Board Meeting on Sep 3, 2009. Further, Axis IT&T has an option to buy the remaining shares of Cades who is looking for an exit.

Blackstone Proposes to acquire 63% in Gharda Chemicals

Blackstone, one of the largest private equity firm based in New York is planning to buy 63% stake in Gharda Chemicals, a Mumbai based agro- chemicals firm. Blackstone is in talks with the founder promoter Dr. Keki Hormusji Gharda for acquiring his entire stake in the Gharda Chemicals at an indicative price of Rs. 630 crore valuing the company at Rs. 1000 crore as whole.

CESC Ltd. acquisition in Dhariwal Infrastructure Ltd.

CESC Ltd. acquires 51% stake in Dhariwal Infrastructure Ltd., a company from Manikchand Group, for Rs. 200 Crores and is further planning to acquire remaining 49% of it so as to make it a wholly owned subsidiary. The whole acquisition will cost about Rs. 300 crore to CESC Ltd.

Co- promotion agreement between Arcelor Mittal Netherlands B.V. and Uttam Galva Steels Limited

On September 04, 2009, Arcelor Mittal Netherlands B.V. (Acquirer), a company incorporated and registered in Netherlands has entered in to Co Promotion Agreement with the Indian Promoters of the Uttam Galva Steels Limited (Target Company) to induct the acquirer as the foreign promoter of the Target Company and to sell the shares of the Target Company. Further, on September 07, 2009, the acquirer has given an open offer under regulation 10 and 12 of the SEBI (SAST) Regulations, 1997 to acquire 3,52,26,233 Equity Shares of Rs.10/- each representing 25.76% of the Emerging Voting Capital and 29.39% of the existing voting capital of Target Company at a price of Rs.120 per share payable in cash.

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