

# Takeover panorama

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# Insight

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# Legal Updates

## ADJUDICATING OFFICER ORDER IN THE MATTER OF PANI KAWAR

### Facts:

Pani Kawar (Noticee) failed to comply with regulation 6(3) of the SEBI (SAST) Regulations, 1997 within the prescribed time. Accordingly on April 07, 2008, adjudication proceedings were initiated against the Noticee for the aforesaid failure and a show cause notice was issued. However, in reply of the same Madan Chand Darda intimated the adjudication officer that the Noticee was passed away on September 19, 2001.

*Non-disclosure of information under regulation 6 is a personal act and omission of the acquirer therefore, where the acquirer is dead at the time of adjudication, the proceedings are liable to be disposed off.*

### Issues:

Whether it is appropriate to put an end to the proceedings where the Noticee to whom the notice has been issued was dead at the time of issue of notice.

### Decision:

In view of the fact that adjudication proceedings were initiated against the personal acts or omission of a person and person against whom the proceedings were initiated is no more alive, adjudication officer disposes the proceedings against the Noticee.

This similar order has been passed in the matter of [Shri V. K. Padmanabhan](#).

## ADJUDICATING OFFICER ORDER IN THE MATTER OF ROOPSHRI FINVEST PRIVATE LIMITED

### Facts:

*Shares held by stock broker in the name of various clients have to be viewed individually and where the broker has not held more than 5% shares at any point of time during various sale and purchase, the disclosure requirement does not arise.*

Roopshri Finvest Private Limited had failed to make the necessary disclosure in terms of regulations 7(1) and 7 (2) of SEBI (SAST) Regulations, 1997 and regulations 13 (1), 13 (3) and 13 (5) of SEBI (PIT) Regulations, 1992.

The Noticee contended that the allegation against it has been made based on the trading details, whereas it ought to have been made based on the shares/voting rights held by it. In this regard, the Noticee submitted that it had not crossed the threshold limit of 5% shares/voting rights at any time during the investigation period. The Noticee had also submitted the following:

- The transactions between 01-01-01 to 05-10-01 were done in the capacity of a sub-broker for various clients.
- Trading was done on behalf of different clients and hence, if the same is calculated client wise, the percentage will not be as high as shown in the SCN.
- The shares were purchased for the clients. Whenever, the payments were not received from them on time, the shares had to be sold to meet the pay-in obligations and had to be repurchased when the clients actually made payment.
- In this process of selling and repurchasing, the holdings and turnovers are looking very high, which in reality were not.
- In order to verify the veracity of the claim of the Noticee the transaction/holding statement was pursued where it was found that the Noticee did not hold 5% of shares/voting rights of MSOL at any point of time during the said period.

### Issues:

- i. Whether the Noticee had violated regulations 7(1) and 7(2) of SAST and 13 (1), 13(3) and 13(5) of PIT?
- ii. Does the violation/s, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?
- iii. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

### Decision:

In view of the foregoing, the alleged violation of the provisions of regulations 7(1) and 7(2) of SAST and 13 (1), 13(3) and 13(5) of PIT by the Noticee, as specified in the SCN, does not stand established and the matter is, accordingly, disposed of.

## ADJUDICATING OFFICER ORDER IN THE MATTER OF HINDUSTAN TEA AND TRADING CO. LTD.

### Facts:

On examination of the draft Letter of Offer for the acquisition of 20% of the paid-up equity shares capital of Orion Paper and Industries Ltd SEBI alleged that the erstwhile promoters of Orion Paper and Industries Ltd. had not complied with regulations 6(1), 6(3), 8(1) and 8(2) of SEBI (SAST) Regulations for the for the financial years ended on March 31 of 1998, 1999, 2000, 2001, 2002 and 2003. Therefore, adjudication proceedings were started against the promoter group. Pending the adjudication proceedings, the promoters excluding Hindustan Tea and Trading Co. Ltd. filed consent application before SEBI.

*Shares held by stock broker in the name of various clients have to be viewed individually and where the broker has not held more than 5% shares at any point of time during various sale and purchase, the disclosure requirement does not arise.*

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Accordingly, the proceedings against these entities were disposed of vide consent order dated May 11, 2009. From the Letter of offer dated February 09, 2004, it was found that the acquirer was a part of the promoter group at that point of time i.e. upto the year 2003 when the disclosures were not made.

**Issues:**

Whether the Hindustan Tea and Trading Co. Ltd. is liable for separate penalty where it has not joined the consent application for settlement of violation of regulation 6 & 8?

**Decision:**

In the basis of facts and circumstances of the case in totality, SEBI held that where the penalty has been imposed on the promoters except one for failure to disclose shareholding under regulation 6 & 8, there is no need to impose any separate penalty on the promoter who has not joined the application for consent.

**ADJUDICATING OFFICER ORDER IN THE MATTER OF VISION TECHNOLOGY INDIA LIMITED**

*Non-intimation of the Notification about the Transitional Provision by the stock exchange is not a valid contention*

**Facts:**

The shares of the appellant company are listed on BSE and BgSE. On January 10, 2005, a show cause notice was issued by BgSE to the appellant for the alleged non-compliance of Regulation 6(2) and 6(4) of SEBI (SAST) Regulations for the year 1997 and Regulation 8(3) of the said regulations for the years 1997 – 2004.

### **Contention:**

- i. The appellant contended that in response to the show cause notice, we had confirmed the compliance with regulation 6(2), 6(4) and 8(3) of the SEBI (SAST) Regulations and has again submitted the disclosures under regulation 6(2), 6(4) and 8(3) of the SEBI (SAST) Regulations in revised format filed with BSE from March 1998 to March 2004.
- ii. Further, there was unintentional delay in filing the disclosure with the Stock Exchange on account of non-receipt of the said notification from the BSE and the BgSE.

### **Issues:**

1. Whether the appellant has failed to comply with regulation 6(2), 6(4) and 8(3) of the SEBI (SAST) Regulations, 1997.
2. Whether the non compliance, if any, on the part of the appellant attracts the monetary penalty?

### **Decision:**

On the basis of above facts and circumstances of the case, Adjudicating officer impose the penalty of Rs. 2,50,000 on the appellant and held that contention of the appellant with regard to the non intimation of the Notification about the Transitional Provision by the stock exchange is not untenable.

Further, the letter sent to BSE and BgSE contains disclosure of the company related to Regulation 6(2) and 6(4) and Regulation 8(3) of SAST Regulations for the year ending March 2002 only and not for the whole period from 1997 to 2004 as alleged in the show cause notice.

## CONSENT ORDER IN THE MATTER OF SUMERU INDUSTRIES LIMITED

M/s Sumeru Industries Limited failed to make disclosures under Regulation 6(2), 6(4) and 8(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Accordingly, SEBI initiated adjudication proceedings against the company on December 18, 2007. pending the adjudication proceedings, the Noticee had filed the application for consent proceedings vide the Consent Application dated December 11, 2008 and proposed to pay Rs. 2,00,000/-towards settlement charges and Rs.

25,000/- towards administrative expenses which has been approved by the panel of Whole Time Members of SEBI. Accordingly, the adjudication proceedings against the acquirer were disposed off.

#### CONSENT ORDER IN THE MATTER OF INDIA CARBON LIMITED

India Carbon Limited (applicant) failed to make the disclosure under regulation 6(4) of the SEBI Takeovers Regulations for the year 1997 and regulation 8(3) of the said regulations for the years 1998, 2002, 2003 and 2004. Further, it has failed to make the disclosure under regulation 8(3) for the year 2007 within the prescribed time and thus violated the provision of regulation 6 and 8 of the SEBI Takeovers Regulations.

As a result of above violations, the applicant has filed this present application seeking the settlement of the enforcement action that may be initiated by the SEBI for the aforesaid failure and proposed to pay Rs.2,00,000 as settlement charges and Rs.25,000 as administrative charges towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is decided that SEBI shall not take any action against the applicant for the aforesaid failure.

#### CONSENT ORDER IN THE MATTER OF AVERY INDIA LIMITED

Upon examination of the report dated October 26, 2006 filed by Avery Weigh –Tronix International Limited under regulation 3(4) of the SEBI (SAST) Regulations, 1997 in respect of acquisition of 19,02,857 shares of Avery India Limited on August 25, 1998, it was observed by SEBI that the Company had not complied with regulations 3(3) and 3(4) of SAST Regulations. Therefore, adjudication proceedings were initiated against the Company. Pending the adjudication proceedings, the company made an application dated December 03, 2008 for Consent Order in respect of the aforesaid notice before SEBI. Subsequently, the Noticee proposed revised consent terms on January 17, 2009, without admitting or denying the guilt and subject to clauses of the undertakings and waivers, submitting that it was willing to pay a sum of Rs.50,000/- towards settlement charges and Rs.25,000/- towards administrative charges in the matter. The proposed terms of consent were accepted by HPAC. Accordingly, the matter was disposed of.

## CONSENT ORDER IN THE MATTER OF ADARSH PLANT PROTECT LIMITED

Upon examination of the offer document for acquisition of 20% of equity share capital of Adarsh Plant Protect Limited by Mr. Naishad N. Patel, Mr. Atish N. Patel and Mr. Kirti A. Patel, it was observed by SEBI that the Company had not complied with regulations 6(2) and 6(4) of SEBI (SAST) Regulations, 1997 for the year 1997 and regulation 8(3) of SAST Regulations for the financial years 1998, 1999, 2000, 2001, 2002, 2003 and 2004. Therefore, adjudication proceedings were initiated against the Company to inquire into and adjudge under section 15A(b) of Securities and Exchange Board of India Act, 1992 for the aforesaid alleged violations. Consequently, a Show Cause Notice dated May 05, 2008 was issued. While the Adjudication Proceedings were in progress, the company made an application dated June 26, 2008 for Consent Order in respect of the aforesaid notice before SEBI. Subsequently, the Noticee proposed revised consent terms on December 24, 2008, without admitting or denying the guilt and subject to clauses of the undertakings and waivers, submitting that it was willing to pay a sum of Rs.2,50,000/- (Rupees two lakh fifty thousand only) towards settlement charges in the matter. The terms of consent were accepted by HPAC and accordingly the proceedings against the noticee were disposed of.

## CONSENT ORDER IN THE MATTER OF ARCH PHARMALABS LIMITED

Arch Pharmalabs Limited (applicant) failed to make the disclosure under regulation 6(2) and 6(4) of the SEBI Takeover Regulations for the year 1997 and regulation 8(3) of the said regulations for the year 1998 to 2002. Thus, the applicant has violated the provision of the SEBI Takeover Regulations and becomes liable to the penal action in terms of the said regulations.

In view of the above, the applicant has filed this present application seeking the settlement of the enforcement action that may be initiated by the SEBI for the aforesaid failure and proposed to pay Rs.1,75,000 as settlement charges and Rs.25,000 as administrative charges towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is decided that SEBI shall not take any action against the applicant for the aforesaid non compliance

### CONSENT ORDER IN THE MATTER OF KUVAM INTERNATIONAL FASHIONS LIMITED

Kuvam International Fashions Limited (applicant) failed to make the disclosure under regulation 6(4) of the SEBI Takeover Regulations for the year 1997 and regulation 8(3) of the said Regulations for the years 1998 to 2008 within the prescribed time. Therefore, the applicant has filed this present application seeking the settlement of the enforcement action that may be initiated by the SEBI for the aforesaid failure and proposed to pay Rs.3,25,000 towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is ordered that SEBI shall not take any action against the applicant for the aforesaid failure.

### CONSENT ORDER IN THE MATTER OF ORION PAPER AND INDUSTRIES LIMITED

On examination of the draft letter of offer filed for the acquisition of shares of Orion Paper and Industries Limited (Target Company), SEBI observed that promoters (Noticee) of the Target Company failed to comply with regulation 6(1) and 6(3) of the SEBI Takeover Regulations for the year 1997 and regulation 8(1) and 8(2) of the said regulations for the years 1998, 1999, 2000, 2001, 2002 and 2003 and accordingly, adjudication proceedings were initiated against the Noticee for the aforesaid failure. Pending the adjudication proceedings, the Noticee has filed this present application and proposed to pay Rs.2,00,000 as settlement charges and Rs.25,000 as administrative expenses towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI disposes of the said proceedings against the Noticee.

### CONSENT ORDER IN THE MATTER OF SJ CORPORATION LIMITED

SJ Corporation Limited (applicant) failed to make the disclosure under regulation 6(2) and 6(4) of the SEBI Takeover Regulations for the year 1997 and regulation 8(3) of the said regulations for the years 1998 and 1999 within the prescribed time and has thus violated the provision of regulation 6 and 8 of the SEBI Takeover Regulations.

Therefore, the applicant has filed this present consent application seeking the settlement of the enforcement action that may be initiated by the SEBI and proposed to pay Rs.75,000 towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is decided that SEBI shall take not any action against the applicant for the aforesaid failure.

#### CONSENT ORDER IN THE MATTER OF LUMINAIRE TECHNOLOGIES LIMITED

Adjudication proceedings were initiated against Jagbhusan Dixit and other co acquirers (Noticees) for the violation of 3(3), 3(4) & 3(5) of the SEBI Takeover Code in the matter of acquisition of 6,15,900 (25.66%) shares of M/s Luminaire Technologies Limited on 15/9/2003 through interse transfer. Pending the adjudication proceedings, the Noticee proposed to pay Rs.75,000 as settlement terms & Rs. 25,000 as administrative expenses towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI disposes of the said proceedings against the Noticees.

#### CONSENT ORDER IN THE MATTER OF GLORY SECURITIES LIMITED

Glory Securities Limited (Applicant) acquired the shares of Manu Finlease Limited in excess of 5% and further acquired the shares in excess of 10% of paid up capital of the company. However, at both the event, the applicant failed to disclose its shareholding to the company and stock exchange which has resulted into triggering regulation 6 and 10 of the SEBI (SAST) Regulations, 1994. Accordingly adjudication proceedings were initiated the applicant and a penalty of Rs. 5,00,000 is imposed by the Adjudicating Officer. However, the applicant failed to pay the same within the time prescribed by the adjudicating officer.

Thereafter, while the further proceedings are going on, the applicant proposed to pay a sum of Rs.6,00,000 towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI disposes of the said adjudication proceedings against the applicant.

### CONSENT ORDER IN THE MATTER OF GOODWILL INVESTMENTS

Goodwill Investments (Applicant) acquired the shares of Manu Finlease Limited in excess of 5% and further acquired the shares in excess of 10% of paid up capital of the company. However, at both the event, the applicant failed to disclose its shareholding to the company and stock exchange which has resulted into triggering regulation 6 and 10 of the SEBI (SAST) Regulations, 1994. Accordingly adjudication proceedings were initiated the applicant and a penalty of Rs. 5,00,000 is imposed by the Adjudicating Officer. However, the applicant failed to pay the same within the time prescribed by the adjudicating officer. Thereafter, while the further proceedings are going on, the applicant proposed to pay a sum of Rs.6,00,000 towards the consent terms. The terms as proposed by the applicant were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, SEBI disposes of the said adjudication proceedings against the applicant.

### CONSENT ORDER IN THE MATTER OF FAST TRACK ENTERTAINMENT LIMITED

Sandhya S Shah (Noticee) had violated regulation 7(1) read with 7(2) of the SEBI Takeover Code and regulation 13(1) and 13(3) read with 13(5) of SEBI Insider Trading Regulations in the matter of Fast Track Entertainment Limited. Therefore, adjudication proceedings were initiated against her for the aforesaid violations. Pending the adjudication proceedings, the Noticee proposed to pay Rs.1,50,000 as settlement charges and Rs. 25,000 as administrative expenses towards the consent terms. The terms as proposed by the Noticee were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, the SEBI disposes of the said adjudication proceedings against the Noticee.

### CONSENT ORDER IN THE MATTER OF COTTANAD PLANTATIONS LIMITED

On August 24, 2007, M. P. Cherian (applicant) has acquired shares in the right issue pursuant to which the shareholding of the applicant has increased from 32,119(53.53%) Equity Shares to 1,75,640 (73.18%)Equity Shares. As the acquisition was made in terms of regulation 3(1)(b) of the SEBI(SAST) Regulations, 1997, therefore, the applicant was required to submit the report under regulation 3(4) read with 3(5) of the said regulations within 21 days of the acquisition. However, the report was filed on May 06, 2008 with the considerable delay. Therefore, the acquirer has filed this present application seeking

the settlement of enforcement action that may be initiated by SEBI for the aforesaid failure and propose to pay Rs.90,000 as settlement charges and Rs.10,000 as administrative charges towards the consent terms. The terms as proposed by the SEBI were placed before the High Powered Advisory Committee (HPAC) and on the recommendation of the HPAC, it is hereby ordered that SEBI shall not any action against the applicant.

## *Latest Open Offers*

<b>Name of the Target Company</b>	<b>Name of the Acquirer and PAC</b>	<b>Details of the offer</b>	<b>Reason of the offer</b>	<b>Concerned Parties</b>
<p>Woo Yang Electronics (India) Limited</p> <p><b>Regd. Office</b></p> <p>New Delhi</p> <p><b>Paid up capital</b></p> <p>Rs. 133 Lacs</p> <p><b>Listed At</b></p> <p>BSE, DSE and UPSE.</p>	<p>Picture Thoughts Private Limited</p>	<p>Open offer to acquire 2,66,000 (20%) Equity Shares at a price of Rs.9 per share payable in cash.</p>	<p><b>Regulation 10 and 12</b></p> <p>Share Purchase Agreement on May 25, 2009 to acquire an aggregate of 2,60,050 (19.55%) Equity Shares of the Target Company from its promoters at a price of Rs.6 per share increasing the shareholding of the acquirer from 14.55% to 34.1% of the paid up capital of the Target Company.</p>	<p><b>Merchant Banker</b></p> <p>Arihant Capital Markets Limited</p> <p><b>Registrar to the Offer</b></p> <p>RCCM Share Registry Private Limited</p>

Lalit Polymers and Electronics Private Limited  <b>Regd. Office</b>  Pune  <b>Paid up capital</b>  Rs.6 crore  <b>Listed At</b>  BSE and ASE	B S Traders Private Limited	Open offer to acquire 12,00,000 (20%) Equity Shares at a price of Rs. 7 per share.	<b>Regulation</b>  10 and 12  Share Purchase Agreement on 15.05.2009 to acquire 30,29,696 (50.49%) Equity shares of the Target Company from its promoters at a price of Rs. 7 per share.	<b>Merchant Banker</b>  R R Financial Consultants Limited  <b>Registrar to the Offer</b>  Beetal Financial & Computer Services Private Limited
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## *Hint of the Month*

*During the offer period the Target Company shall not issue or allot any authorized but unissued securities carrying voting rights without obtaining the approval of the shareholders after the date of public announcement. However, where the issue or allotment has been made pursuant to the conversion of debentures already issued or upon exercise of option against warrants, as per pre-determined terms of conversion exercise of option, then such allotment may be made. Further, where issue or allotment of shares is pursuant to public or rights issue in respect of which the offer document has already been filed with the Registrar of Companies or Stock Exchanges, as the case may be, then also the above regulation shall not be applicable.*

***{As Substantiated from regulation 23(1) of the SEBI Takeover Code}***

# *Regular Section*

## AN ANALYSIS AND COMPARISON OF TERM "PROMOTER" UNDER SEBI (SAST) REGULATIONS, 1997

The term promoter and promoter group has been specifically defined under SEBI (SAST) Regulations, 1997. However, there is not one definition of promoter or promoters. The term has been defined at three places which have their application in different circumstances. Through this section, we have endeavored to analyze and explain the scope of each definition and its application.

At the outset, the term promoter and promoter group has been defined under regulation 2 (h). As per this regulation, the term promoter means any person-

**a. any person who is in control of the target company;**

Any person, who is in control over the Target Company, is considered as the promoter of the Company. Now, the term control has been defined under regulation 2 (1) (c) of the regulations, which says that "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. The factors constituting control has been further defined in the matter of *Ashwin K Doshi*, which states that the expression 'control' in regulation 12 mean effective control, in other words control must be taken to mean de facto control also and not de jure control alone. Therefore, merely holding of shares cannot be the sole criteria to determine control. A person may be in control of the company even if he does not hold any shares.

**b. any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;**

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This regulation seeks to include those persons in the category of the promoters who are shown by the companies as the promoter in the document filed by the company itself. The relevant documents for defining the promoters are offer document and shareholding pattern, whichever is later. Prior the amendment dated 02.01.2005, this clause had covered only offer document to define the promoters.

**c. and includes any person belonging to the promoter group as mentioned in Explanation I:**

Further, the definition also treats the person falling under the promoter group as promoters. Thus, it can be said that there is no differentiation between the promoters and promoters group.

***Provided that a director or officer of the target company or any other person shall not be a Promoter, if he is acting as such merely in his professional capacity.***

The definition specifically excludes professional directors e.g. those appointed by Banks/FIs from its scope.

**Explanation I: For the purpose of this clause, 'promoter group' shall include:**

- a) in case promoter is a body corporate –
  - i. a subsidiary or holding company of that body corporate;
  - ii. any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter;
  - iii. any company in which a group of individuals or companies or combinations thereof who holds 20% or more of the equity capital in that company also holds 20% or more of the equity capital of the target company; and
- b) in case the promoter is an individual –
  - i. the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;

- ii. any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;
- iii. any company in which a company specified in (i) above, holds 10% or more, of the share capital; and
- iv. any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10% of the total.

Explanation II: Financial Institutions, Scheduled Banks, Foreign Institutional Investors (FIIs) and Mutual Funds shall not be deemed to be a promoter or promoter group merely by virtue of their shareholding. Provided that the Financial Institutions, Scheduled Banks and Foreign Institutional Investors (FIIs) shall be treated as promoters or promoter group for the subsidiaries or companies promoted by them or mutual funds sponsored by them.”

This is the general definition of promoter and promoter group, which is applicable on all provisions of SEBI (SAST) Regulations, 1997 unless specifically defined otherwise. Further, under regulation 3 (1) (e) (iii) which deals with inter-se transfer amongst promoters, the term qualifying promoters has been used and it has been defined specifically therein. Therefore, for the purpose of regulation 3 (1) (e) (iii), this definition shall be resorted to.

Furthermore, as per the newly inserted regulation 8A vide amendment dated 28.01.2009, which deals with disclosure of pledge shares, for the purpose of regulation 8A, the term promoters and promoter group shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement. Clause 40A of Listing Agreement further refers to clause 6.8.3.2 of SEBI (DIP) Guidelines, 2000 for determination of promoter and promoter group.

A detailed comparison of all the three definitions is being given hereinunder:

**Comparison of the term Promoter as used u/r 2(1)(h) and 3(1)(e)**

<p style="text-align: center;"><b>Promoter as defined in regulation 2(1)(h)</b></p>	<p style="text-align: center;"><b>Promoter as defined in regulation 3(1)(e)</b></p>	<p style="text-align: center;"><b>Promoter as referred under regulation 8A</b></p>
<p>It simply provides that any person who is in control over the company shall be considered as promoter of the company. It does not specify whether the term control would include only the direct exercise of control over the company or the indirect control as well.</p>	<p>It provides that any person who is directly or indirectly in the control over the company shall be deemed to be the promoter of the company. Thus, it specifically provides that the control shall include the direct as well as indirect exercise of control.</p>	<p>Same as provided in the definition of Promoter as defined under regulation 2(1)(h).</p> <p>Further, it also includes in its gamut, the person or persons who are instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public and all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group".</p>
<p>It provides that any person named as promoter in <b><u>any offer document</u></b> of the target company or <b><u>any shareholding pattern</u></b> filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later shall be considered as promoter of the company.</p>	<p>Same as provided in the definition of Promoter as defined under regulation 2(1)(h).</p>	<p>It provides that the person or persons named in the <b><u>prospectus</u></b> as promoter(s) or the person or persons named as promoter(s) <b><u>in the filings with the stock exchanges</u></b>, whichever is later shall be considered as promoter of the company.</p>

<p>It provides that where the promoter is an Individual, then the spouse of that person, or any parent, brother, sister or child of that person or of his spouse shall also fall under category of promoter.</p>	<p>However, it provides that where the qualifying promoter is an Individual, then the relative of qualifying promoter as defined under section 6 of the Companies Act, 1956 shall also considered as promoter of the company. Thus, its scope is much wider than what is contemplated under regulation 2(1) (h).</p>	<p>Same as provided in the definition of Promoter as defined under regulation 2(1) (h).</p>
<p>It provides that <b>where the promoter is an individual</b>, then any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter or any HUF or firm in which the aggregate share of the promoter and in his immediate relatives is equal to or more than 10%, would fall under the category of promoter. Thus, it provides a minimum holding of 10% in the company/HUF/ Firm in order to constitute that company as promoter.</p>	<p>The provision contained in this regulation does not specify any minimum shareholding criteria except in one case and provides that where the qualifying <b>promoter is an individual</b>, any firm or company, directly or indirectly, controlled by the qualifying promoter or a relative of the qualifying promoter or a firm or HUF in which the qualifying promoter or his relative is a partner or a coparcener or a combination thereof, shall also considered as promoter of the company.</p> <p>Provided that, in case of a partnership firm, the share of the qualifying promoter or his relative, as the case may be, in such firm should not be less than 50%.</p>	<p>Same as provided in the definition of Promoter as defined under regulation 2(1) (h).</p>

<p>It provides that <b>where the promoter is Body Corporate</b> then any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter would be considered as promoter of the company.</p> <p>Further, any company in which 20% or more of the equity capital is held by the group of individuals or companies or combinations thereof who also holds 20% or more equity capital in the promoter, then such company would be considered as promoter of the company.</p>	<p>It provides that <b>where the promoter is Body Corporate</b>, then any firm or company, directly or indirectly, controlled by the qualifying promoter of that body corporate or by his relative or a firm or HUF in which the qualifying promoter or his relative is a partner or coparcener or a combination thereof, shall fall under the category of promoter.</p> <p>Provided that, in case of a partnership firm, the share of such qualifying promoter or his relative, as the case may be, in such firm should not be less than 50%.</p>	<p>Same as provided in the definition of Promoter as defined under regulation 2(1) (h).</p>
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## *Case Study*

### TAKEOVER OFFER OF NOVARTIS INDIA LIMITED

**TARGET COMPANY**

**Novartis India Limited (Target Company)** came into existence in the Year 1997 consequent to the amalgamation of Sandoz (India) Limited and the life sciences businesses of Hindustan Ciba-Geigy Limited following the global merger of their ultimate respective holding companies, Sandoz AG and Ciba-Geigy AG. The Target Company is engaged into the business of pharmaceuticals, generic, OTC and animal health products. The shares of the Target Company are listed at BSE and the CSE. The ruling market price of the Target Company is Rs.442.80 per share as on June 04, 2009.

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## **THE ACQUIRER**

**Novartis AG (Acquirer)** is incorporated in the year 1996 under the laws of Switzerland pursuant to the merger of Sandoz AG and Ciba-Geigy AG. The acquirer belongs to the promoter group of the Target Company and is engaged in the research, development, manufacture and marketing of healthcare products. The Target Company is a part of group companies of the acquirer.

## **THE OFFER DETAILS**

As on the date of Public Announcement, the acquirer holds 16,277,437 Equity Shares representing 50.93% of the paid-up equity share capital of the Target Company. For the purpose of consolidation of holdings, on March 27, 2009, the acquirer came out with the voluntary open offer to acquire 12,464,710 equity shares of Rs. 5/- each representing 39% of the equity share capital of the Target Company at a price of Rs.351 each.

## **RATIONALE BEHIND THE CONSOLIDATION**

The rationale behind the acquisition is mainly to provide more flexibility to the Novartis Group as whole in organizing its commercial and financial activities in India.

## **REVISION IN OFFER PRICE**

Further vide corrigendum dated May 27, 2009, the acquirer has revised the offer price from Rs.351 per share to Rs.450 per share. The reason behind such upward revision in the offer price can be analyzed from the increasing trend in the market price of the securities on the BSE Portal. As on 04<sup>th</sup> June 2009, the shares of the Target Company are trading at a price of Rs.442.80 per share which is more than the offer price that was earlier offered by the acquirer vide public announcement dated March 27, 2009. If the acquirer does not revise the offer price, then the response to the open offer may not be fully satisfactory as the shareholders may not prefer to tender their shares in the offer and would instead like to hold their investment and increase its value because the market price is continuously increasing. The offer for the tendering the shares in the open offer is closed on June 08, 2009.

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# Market Update

## ☀ Times Private Treaties acquisition in Gini & Jony Freedom Fashions

Times Private Treaties (TPT), a part of the Bennet and Coleman Co Ltd., has acquired approx. 12% stake in the wholly owned subsidiary of Gini and Jony Limited i.e. Gini & Jony Freedom Fashions (GLFFL), a lifestyle store, in an ads-for-equity deal. A Major stake of Gini and Jony Limited constituting approx.65% is held by the promoters of the company i.e Lakhani Brothers and around 22% stake is held by Reliance Capital. The company has received the SEBI approval and is planning to go for an IPO.

## ☀ Sahara group has acquired a 11.7% stake in S Tel

Sahara Group through its group company Sahara India Investment Corp. has picked up a stake of 11.7% in a Chennai-based company "S Tel" having unified access services licences (UASL) and spectrum to operate in six Indian states. In the beginning of the year, S Tel sold a 49% stake to Gulf-based Bahrain Telecom and Millennium Private Equity combine for \$225 million.

## ☀ DBS Bank exit from HDFC Bank

Singapore's DBS Bank which holds approx.2.7% stake in the HDFC Bank has sold its entire stake for Rs.1291 crore in the open market. The buyers among the others include the Deutsche Securities which has acquired approx. 1% stake. Bennett Coleman & Co Ltd. which holds around 2% stake in HDFC has sold 0.8% stake between the period October - December 2008. Further, it seems that Bennett Coleman & Co Ltd. has again sold its stake as its name is not shown in the category of person holding 1% or more shares in the latest available shareholding of HDFC Bank.

## ☀ DLF promoters continue in selling the stake

DLF promoters which holds around 88.5% shares in the company has sold 9.9% stake in the open market on May 13, 2009 reducing their shareholding from 88.5% to 78.6%. Now, they are again planning to sell another 5.5% stake to raise around Rs.2000 crore. If the above sale takes place then their shareholding would come down to 73.1%.

☀ **Upward revision in the offer made to Novartis India Limited**

Vide corrigendum dated May 27, 2009, the Novartis AG (acquirer), who has earlier made the offer at an offer price of Rs.351 per shares, has revised the offer price from Rs.351 to Rs.450 per fully paid up share.

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