



An Overview of

New Takeover Regulations

Agenda

-  Need of SEBI Takeover Regulation
-  Highlights of SEBI Takeover Regulations, 2011
-  Key Definitions
-  Initial Threshold and Creeping Acquisition
-  Open Offer and its Related Concepts
-  Redecoration of Exemptions
-  New Disclosure Limits



Need of SEBI Takeover Regulation

Announcement of Policy of Globalisation

- Opportunity for Overseas Investors

Change in India Capital Market Scenario

- Need for some regulations to protect the interest of Investors

1994

- Enactment of SEBI (SAST) Regulations, 1994

1997

- Enactment of SEBI (SAST) Regulations, 1997

2011

- Enactment of SEBI (SAST) Regulations, 2011



Highlights of New Takeover Regulations

- Introduction of New Definitions.
- Increase in Initial Threshold Limit from 15% to 25%.
- Scope of Creeping Acquisition bracket widened from 15%-55% to 25%-75%:
- Open Offer Trigger Point based on Individual Holding.
- Increase in Offer Size from 20% to 26%.
- Non-compete fees or control premium to be added to the offer price.
- Detailed provisions for Voluntary Open Offer and Indirect Acquisition.
- Recommendation on the Open Offer by the Board of Target Company made mandatory.
- Redecoration of Exemptions
- Modification in Disclosure Limits



KEY DEFINITIONS



NEW DEFINITIONS INTRODUCED

- ⇒ Acquisition
- ⇒ Enterprise Value
- ⇒ Volume Weighted Average Price
- ⇒ Volume Weighted Average Market Price
- ⇒ Weighted Average Number Of Total Shares





ACQUISITION

means

Directly

OR

Indirectly

Acquiring

OR

Agreeing to
Acquire

Shares

OR

Voting Rights

OR

Control

Target Company



ENTERPRISE VALUE

means

value calculated
as

Market
Capitalization of
a Company



Debt + Minority Interest + Preferred shares



Total Cash + Cash Equivalents



VOLUME WEIGHTED AVERAGE MARKET PRICE

“Volume weighted average market price” means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange;

Number of shares traded on the Stock Exchange on a particular day: X
Market Price: Y

$$\text{Volume weighted Average Market Price} = \frac{X1*Y1+X2*Y2+X3*Y3.....}{X1+X2+X3.....}$$



VOLUME WEIGHTED AVERAGE PRICE

“Volume weighted average price” means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought;

Number of shares bought on a particular day: A
Market Price: B

$$\text{Volume weighted Average Price} = \frac{A1*B1+A2*B2+A3*B3.....}{A1+A2+A3.....}$$



WEIGHTED AVERAGE NUMBER OF TOTAL SHARES

*“**Weighted average number of total shares**” means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighting factor;*



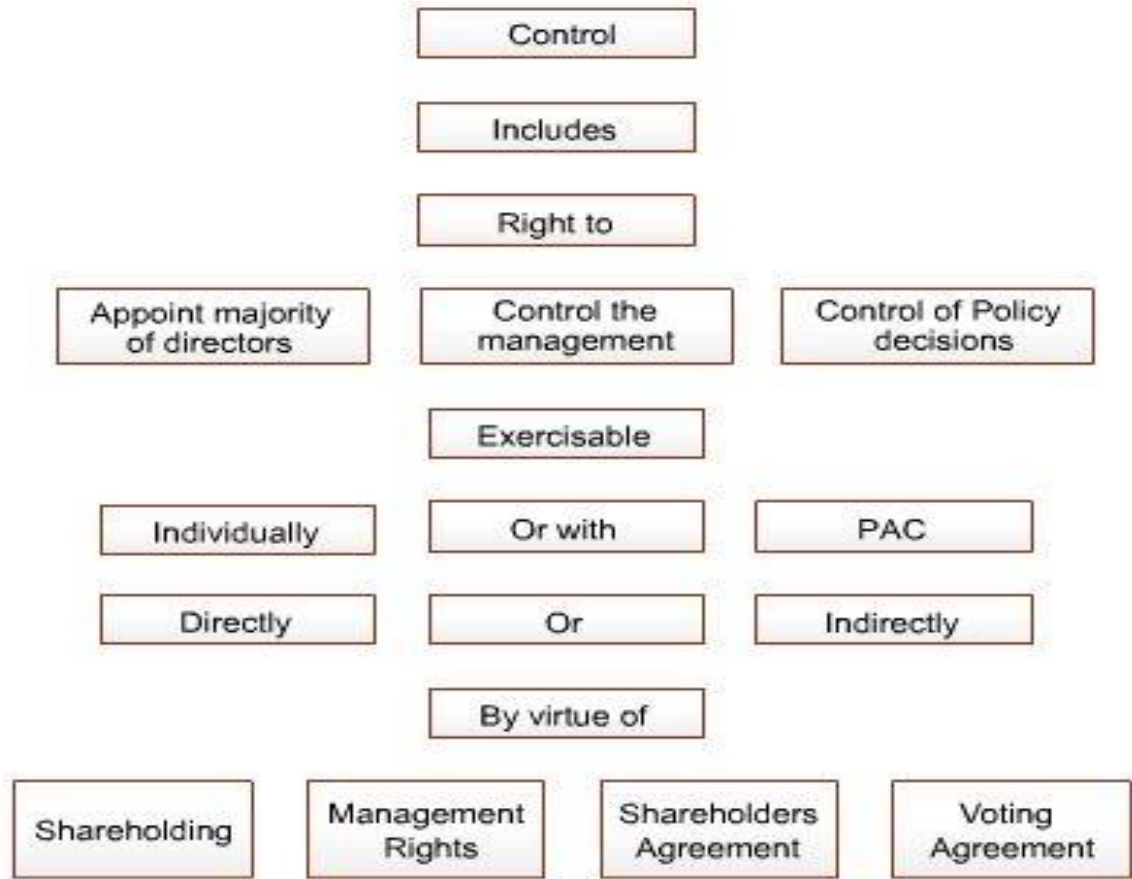
DEFINITIONS MODIFIED

- ⇒ Control
- ⇒ Frequently Traded Shares
- ⇒ Identified Date
- ⇒ Shares





CONTROL



Director or officer of target company shall not be considered to be in control over target company merely by virtue of holding such position

QUERIES



1. Rationale for deleting the word “Ability “ from the definitions of Control as given in TRAC Report?
2. Meaning of Term Negative Control and the applicability of SEBI Takeover Regulations on the same?

{Daikaffil Chemicals India Limited- (Takeover Panel Exemption -14.02.2007)}



FREQUENTLY TRADED SHARES

- Trading Turnover of 5%

1997
Regulations

- 2011
Regulations
- Trading Turnover of 10%



IDENTIFIED DATE



SPECIFIED DATE

Not later than
30th day
from PA.



IDENTIFIED DATE

Falling on
10th working day
prior to the tendering
period.



SHARES



 The scope of definition has been Broadened.

 **Inclusion of Depository Receipts** within the ambit of term shares.

 **Holder of the depository receipts** is treated **at par** with the one who acquired the **Equity Shares carrying voting rights**.



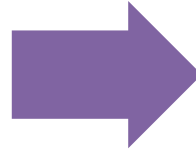


INITIAL THRESHOLD AND CREEPING ACQUISITION

INITIAL THRESHOLD

SEBI Takeover
Regulations, 1997

- 15%



SEBI Takeover
Regulations, 2011

- 25%





QUERY

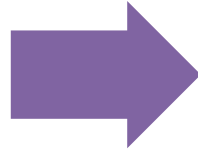
Why there is no transitional provision for the person holding $\geq 15\%$ but $< 25\%$ shares in the Target Company?



CREEPING ACQUISITION ZONE REDEFINED

SEBI Takeover
Regulations, 1997

- 15%-55%



SEBI Takeover
Regulations, 2011

- 25%-75%



**Creeping
Acquisition
5% in each FY**

KEY POINTS

No Netting off Allowed*

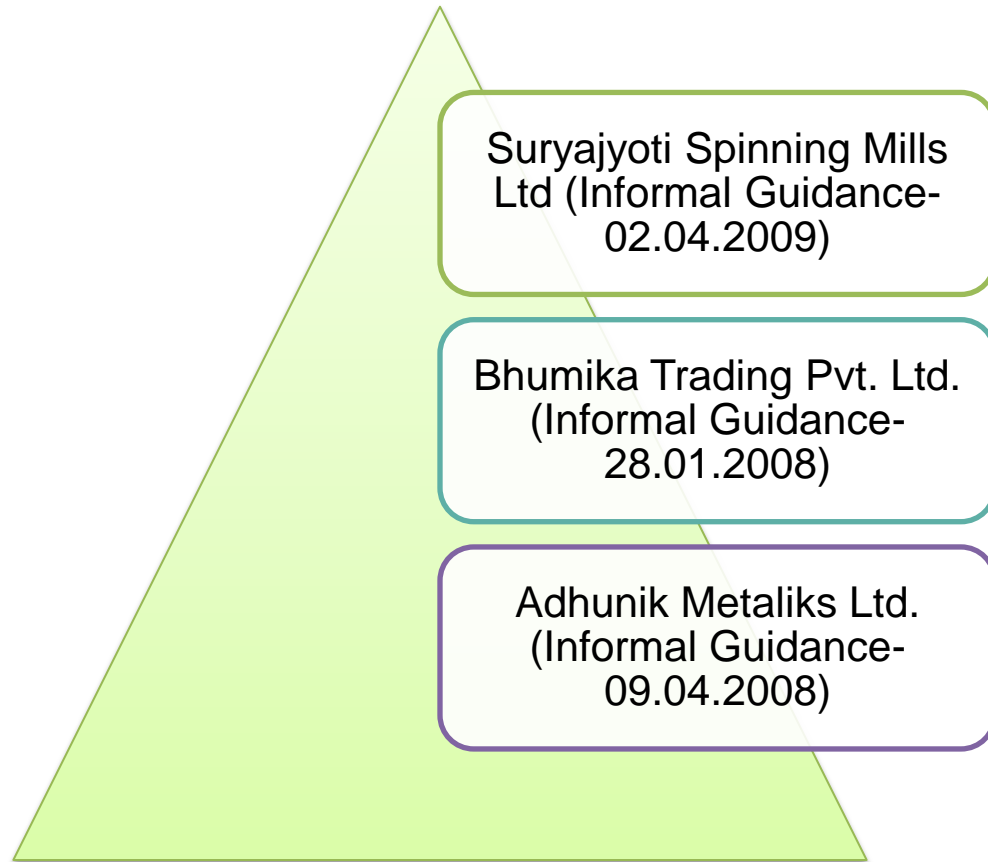
Individual shareholding to be considered for Open Offer



*This is also provided in SEBI clarification dated August 6, 2009

KEY POINTS

Incremental voting rights in case of fresh issue to be considered



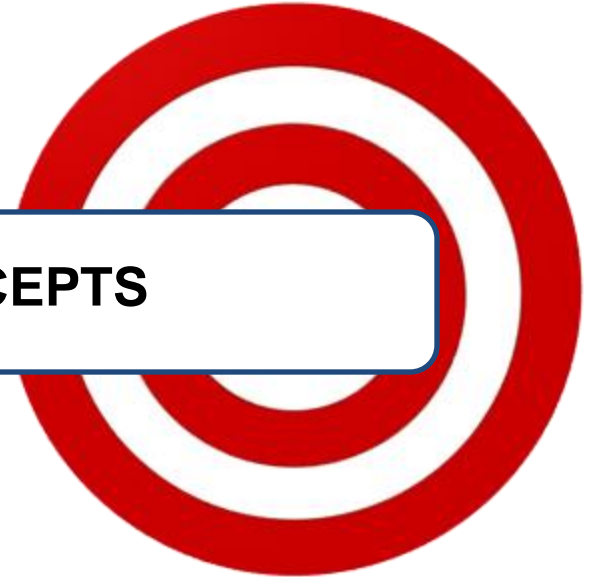


QUERY

What is the rationale for considering the Individual shareholding of the Acquirer for the Open Offer Obligations?



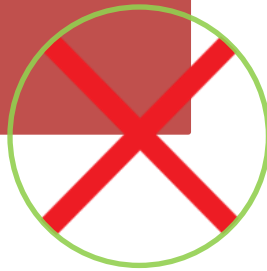
OPEN OFFER AND ITS RELATED CONCEPTS



CHANGE IN CONTROL

- Through Shareholder Approval

SEBI (SAST) Regulations,
2011



- Through Shareholder Approval

SEBI (SAST) Regulations,
1997



QUERY



What is the impact of withdrawal of alternative for the change in control by shareholder approval?





HIKE IN OFFER SIZE

SEBI (SAST)
Regulations, 1997

20%



SEBI (SAST)
Regulations, 2011

26%



OFFER PRICE

Separate Criteria's in case of Direct and Indirect Acquisition

Volume-weighted average market price instead of the simple average

60 trading days average instead of 26 weeks or 2 weeks



VOLUNTARY OPEN OFFER

Eligibility

- Prior holding of at least **25% or more** shares;
- No acquisition during the **preceding 52 weeks** without attracting the obligation to make a public announcement.

Condition

- The Aggregate shareholding not to exceed the maximum permissible non-public shareholding.

Restriction

- No further acquisition of shares for a period of six months after completion of the open offer except by way of another voluntary open offer or competing offer.



QUERIES



1. **What is the rationale of keeping the prior holding of 25% for Voluntary Open Offer?**
2. **Whether the prior holding criteria for Voluntary Open Offer would have negative impact on the Hostile Takeover Attempt?**



PUBLIC ANNOUNCEMENT (PA)

Short PA

- On the same day or as specified under the regulations

Detailed PA

- Within 5 working days from Short PA



NON COMPETE FEES

SEBI (SAST) Regulations,
1997

Upto 25% of the offer
Price
(Not to be included in the
Offer Price)

SEBI (SAST) Regulations, 2011

To be included in the
Offer Price



RECOMMENDATION ON THE OFFER BY BOARD

SEBI (SAST)
Regulations,
1997

- Optional

SEBI (SAST)
Regulations,
2011

- Mandatory



COMPLETION OF ACQUISITION UNDER THE AGREEMENT

SEBI (SAST) Regulations, 1997

- Not Allowed (Until the Completion of Offer formalities)

SEBI (SAST) Regulations, 2011

- Allowed
 - After a period of 21 working days from PA
 - Deposit of 100% consideration in the Escrow Account



INCREASE IN SHAREHOLDING BEYOND MAXIMUM PERMISSIBLE NON PUBLIC SHAREHOLDING AFTER THE OPEN OFFER

Obligation to bring down the shareholding

Ineligibility to make voluntary delisting offer for a period of 12 months from the completion of Offer Period





QUERY

In case the Acquirer intends to voluntarily delist the Target Company, then whether he can keep the Target Company in violation of clause 40A for a period of 12 Months?



ACQUISITION AFTER THE TENDERING PERIOD




REDECORATION OF EXEMPTIONS






ACQUISITION-CORPORATE DEBT RESTRUCTURING

Conditions

 No change in control

 Shareholders' Approval by way of Special Resolution passed by Postal Ballot.



ACQUISITION-BUY BACK

Pre Holding
<25%

Exemption
(Subject to Acquirer
Reducing Its
Shareholding Below
the threshold within a
period of Ninety Days
from the date of such
increase)

Pre Holding
between 25-75%

Shareholders Resolution/Board
Resolution, as the case may be.

Acquirer not voted in favor of
resolution

No change in control.



ACQUISITION-PREFERENCE SHARES CARRYING VOTING RIGHTS

Acquisition of
Voting Rights



Preference
shares carrying
voting rights

**In terms of Section 87(2) of
the Companies Act, 1956**





NO AMBIGUITY IN REPORTING THE DETAILS OF EXEMPTION

{As given in Regulation 3(4) of SEBI (SAST)
Regulations, 1997}





NEW DISCLOSURES LIMITS

DISCLOSURE LIMITS

Event Based Disclosure

Acquisition of $\geq 5\%$

Change of $\geq 2\%$ after the 5%



Continual Disclosures

Persons holding $\geq 25\%$

Every Promoter



Encumbered Shares

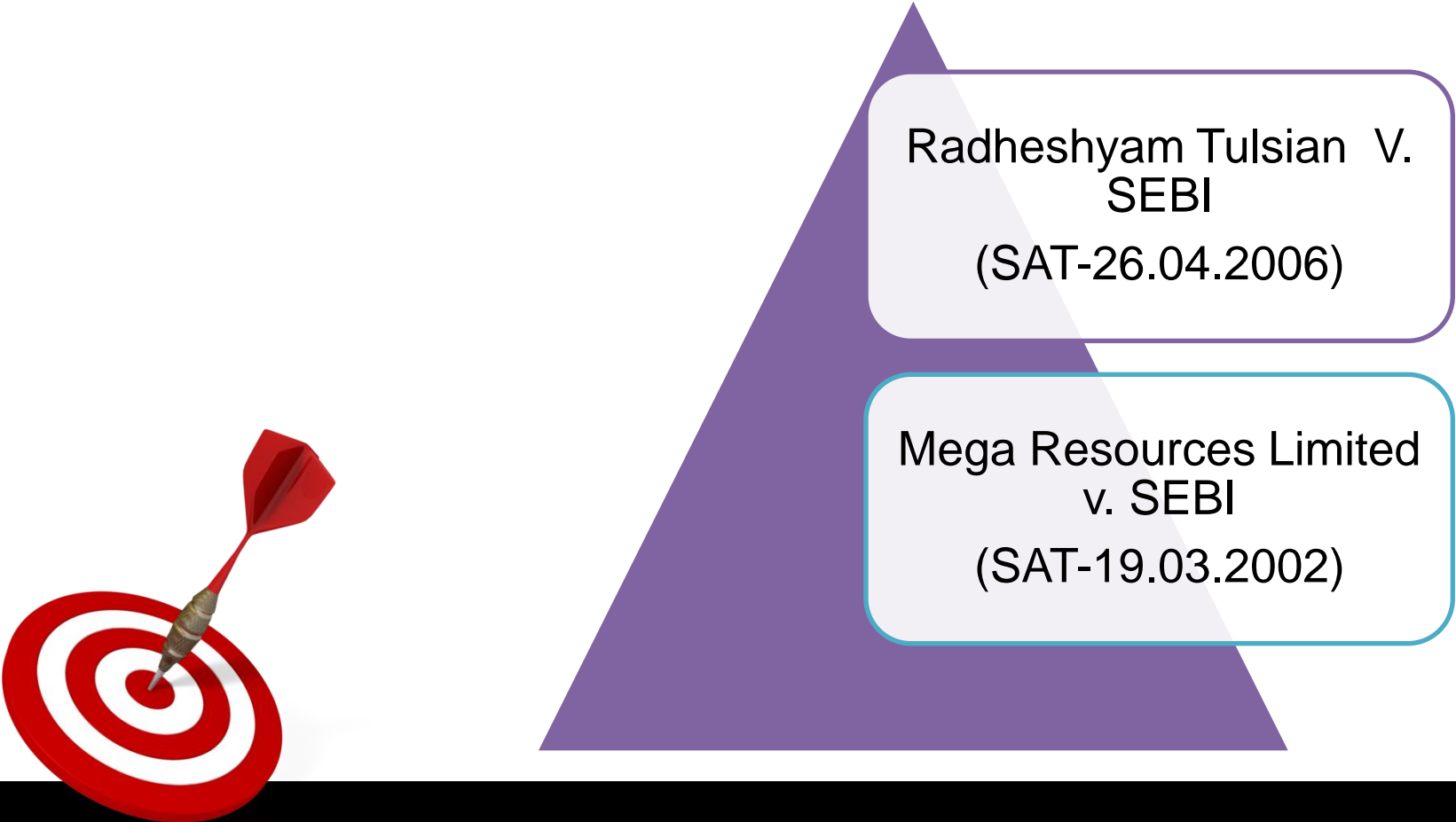
On the encumbrance, Invocation or release of encumbrance



No obligation on the Target Company to give the disclosure to Stock Exchange.

KEY POINT

Aggregate shareholding of Acquirer and PACs to be considered for making the disclosure.



Radheshyam Tulsian V.
SEBI
(SAT-26.04.2006)

Mega Resources Limited
v. SEBI
(SAT-19.03.2002)

KEY POINT



Acquisition and Holding of any **convertible security** shall also be regarded as **shares** and **disclosures** of such acquisitions and holdings shall be made accordingly.





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