



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

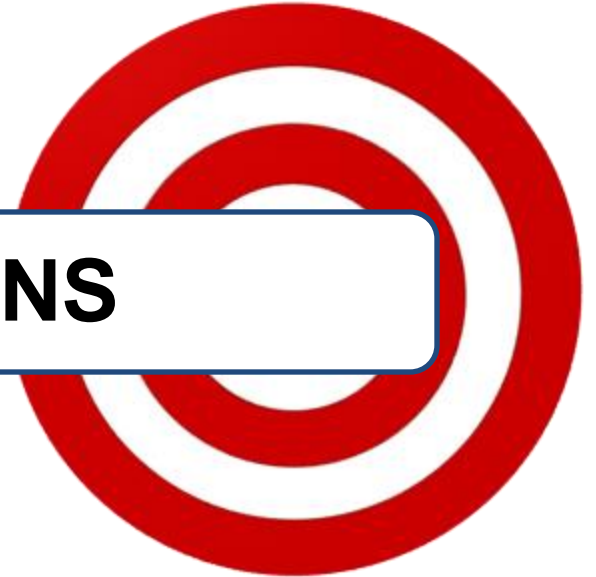


# Highlights of New Takeover Regulations

- 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**

$$\text{Volume weighted Average Market Price} = \frac{X_1*Y_1+X_2*Y_2+X_3*Y_3\dots\dots\dots}{X_1+X_2+X_3\dots\dots\dots}$$



# 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

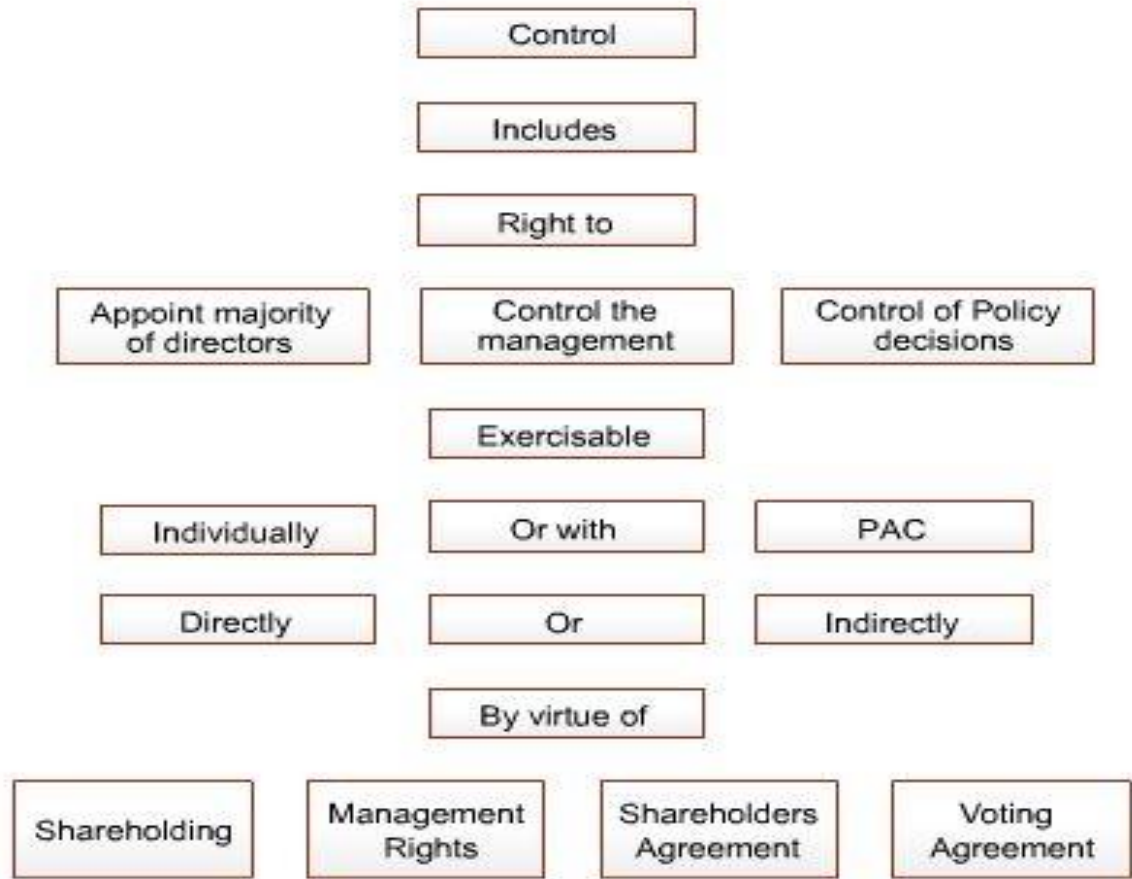
⇒ Identified Date

⇒ 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**.



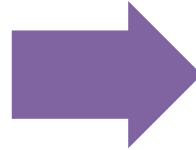
## **INITIAL THRESHOLD AND CREEPING ACQUISITION**



# INITIAL THRESHOLD

SEBI Takeover  
Regulations, 1997

- 15%



SEBI Takeover  
Regulations, 2011

- 25%





## QUERY

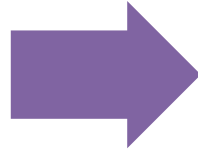
**Why there is no transitional provision for the person holding  $\geq 15\%$  but  $< 25\%$  shares in the Target Company?**



# 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**



Suryajyoti Spinning Mills  
Ltd (Informal Guidance-  
02.04.2009)

Bhumika Trading Pvt. Ltd.  
(Informal Guidance-  
28.01.2008)

Adhunik Metaliks Ltd.  
(Informal Guidance-  
09.04.2008)



## 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

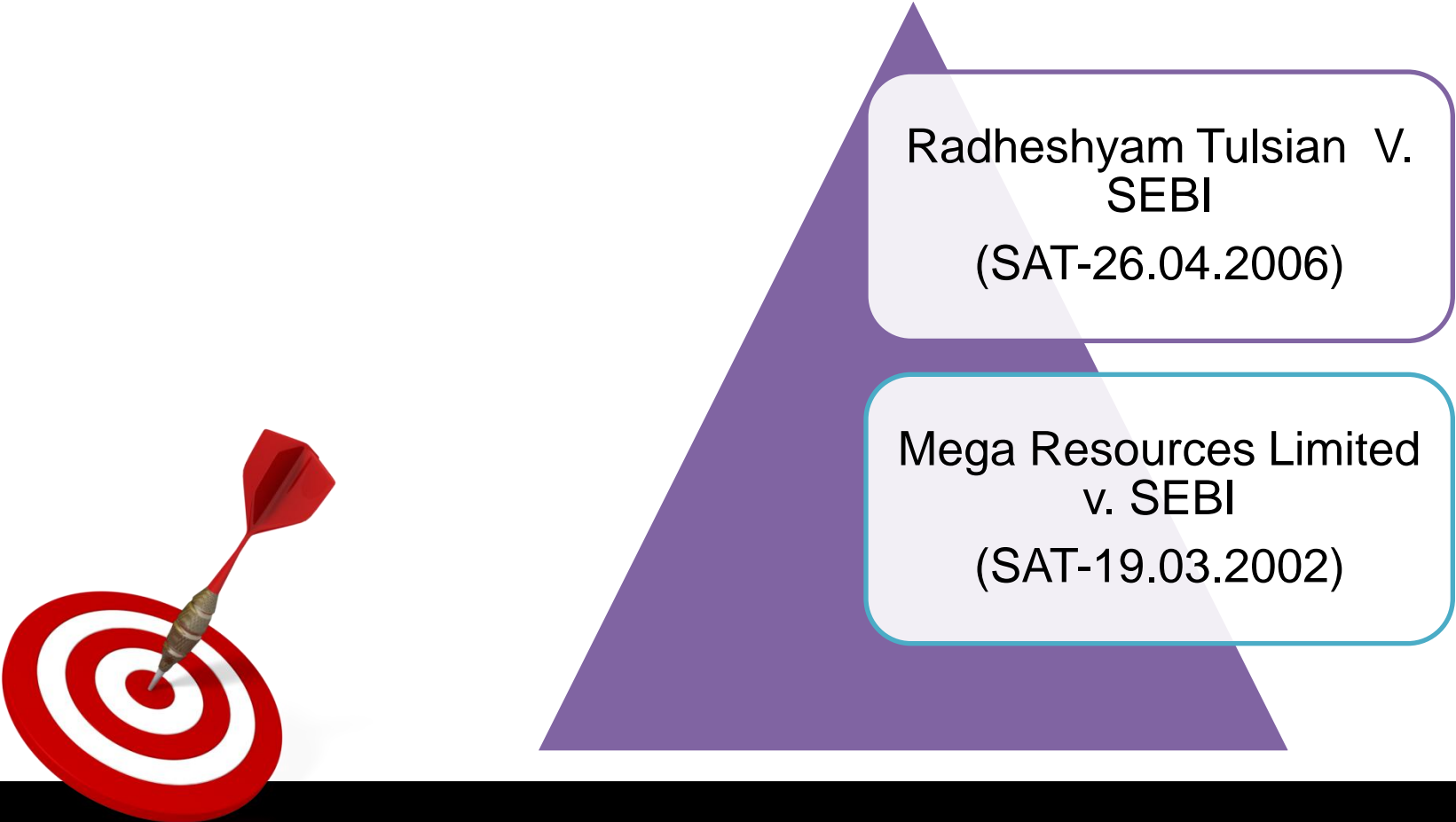
On the encumbrance, Invocation or release of encumbrance



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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