CHAPTER

6

Takeover Strategies and Practices

CHAPTER STRUCTURE

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MEANING AND CONCEPT

In the previous Chapter, we have discussed the provisions of law relating to M&As. Although the said legal provisions include corporate takeovers, yet there are several other aspects with respect to takeovers which need to be examined separately. Thus, this chapter aims at exclusively dealing with laws, practices and procedures relating to takeovers and its illustrations through case studies.

Takeover implies acquisition of control of a company. This concept emerged in late nineteenth century in some countries like USA, UK etc, when the M&As started. However, it started in India in the twentieth century. According to M.A. Weinberg[i], "takeover is a transaction or series of transactions whereby a person or individual or group of individuals or company acquirers control over the assets of a company, either directly by becoming the owner of those assets or indirectly by obtaining control of the management of the company. In case of companies whose shares are closely held (by a small number of persons), a takeover will generally be affected by arrangement with the holders of the majority of the shares capital of the company which is being acquired. Where the shares are held by the public, the takeover may be affected (1) by agreement between the acquirer and the controllers of the acquired company; (2) by purchase of shares on the stock exchange; or (3) by means of a take-over bid.

Takeover implies acquisition of control of a company, which is already registered, through the purchase or exchange of shares. Takeover takes place usually by acquisition or purchase from the shareholders of a company, their shares at a specified price to the extent of at least controlling interest in order to gain control of that company. Takeover of management and control of a business enterprise could take place in different modes. The management of a company may be acquired by acquiring the majority stake in the share capital of a company. The acquisition could take place through different methods. A person may acquire the voting shares of a listed company through what is known as the takeover by complying with the regulations meant for such purposes. A company may acquire shares of an unlisted company through what is called the acquisition under sections 235 and 236 of the Companies Act, 2013. Where the shares of the company are closely held by a small number of persons, a takeover may be effected by agreement with the holders of those shares. However, where the shares of a company are widely held by the general public, it involves the process as set out in the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.[(ii) & (iii)]

Why Takeovers?

Berkovitch & Narayanan, (1993) gives a lucid explanation regarding pattern of gains related to takeovers as given in the following table.

TABLE 6.1: PATTERN OF GAINS RELATED TO TAKEOVER THEORIES

	Type	*1* *Total Value*	*2* *Gains to Target*	*3* *Gains to Acquirer*
1.	Efficiency or synergy	+	+	+
2.	Hubris (Winners curse overpay)	0	+	-
3.	Agency problems and mistakes	-	+	-

The first category is synergy or efficiency in which total value from the combination is greater than the sum of the values of the component entities operating independently. Hubris refers to acquiring firm managers commit errors of over estimating the merger gains (due to excessive pride, animal spirits, and the like) and end up paying too high a price for the takeover. It postulates that the value is unchanged. The third class of mergers and takeovers comprise those in which total value is decreased as a result of mistakes or managers who put their own preferences above the well being of the firm as column 2 indicates, gains to targets are always positive. The acquired firm is usually paid a premium for the acquisition, so there are plus signs under each type of takeover theory. Then, we consider gains to acquirer as shown in column 3. In the first category of synergy, total value can be increased sufficiently to provide gains to acquirers under the hubris postulation; total value is not increased, so acquirers lose. With mistakes or agency problems, total value is decreased so that the gains to targets imply severe loses in value for acquirers.

Types of Takeover Strategies

Corporate takeovers may be classified under three broad classes:

1. ***Friendly Takeover:*** Friendly takeover happens with the consent of Target Company. In friendly takeover, there is an agreement between the management of two companies through negotiations and the takeover *bid* may be with the consent of majority of all shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also known as negotiated takeover.
2. ***Hostile Takeover:*** When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management, such acts of acquirer are known as 'hostile takeover'. Such takeovers are hostile on the management and are thus called hostile takeovers.

BOX 6.1 : HOSTILE TAKEOVER : MECHANISM
Tender offer and proxy fight are the two primary methods of conducting a hostile takeover. A tender **offer** is a public bid for a large chunk of the target stock at a fixed price which is higher than the current market value of the stock. The offer has a time limit and it may have other provision that the target company must abide to if shareholders accept the offer. The bidding company must disclose their plans for the target company and file relevant document as required under SEBI Takeover regulations. In a **proxy fight**, the buyer does not attempt to buy shares of the target company. Instead, they try to convince the shareholders to vote out current management/board in favour of a team that will approve the takeover. Proxy refers to the shareholders' ability to let someone else make their note for them, that is the buyer notes for the new board by proxy.

BOX 6.2: SWARAJ PAUL'S HOSTILE BID FOR ESCORTS AND DCM
In 1980s, London-based NRI Swaraj Paul made a hostile bid to control the management of two Indian companies, Escorts Limited and DCM (Delhi Cloth Mills) Limited by picking up their shares from the stock market. This had created lot of ripples in the Indian corporate sector and widely reported in the media. But he had to face major obstacles from government-run financial institutions. The Life Insurance Corporation opposed this hostile bid and supported the two distressed companies. The two companies refused to register the transfer of shares in his name. Promoters of the two companies - the Nanda and Shri Ram families - also used their political links to defeat the hostile bid of Paul. Though Swaraj Paul failed to fulfil his dream of controlling Escorts and DCM, but was successful in highlighting how particular families were able to exercise managerial control over large corporate entities despite holding a minuscule proportion of the concerned company's shares

3. ***Bailout Takeover:*** Takeover of a financially sick company by a profit earning company to bail out the former from liquidation is known as bail out takeover. There are several advantages for a profit making company to take over a sick company. The price would be very attractive as creditors, mostly banks and financial institutions having a charge on the industrial assets, would like to recover to the extent possible. Banks and other lending financial institutions would evaluate various options and if there is no other way except to sell the property, they will invite bids. Such a sale could take place in the form by transfer of shares. While identifying a party (acquirer), lender do evaluate the overall financial position of the acquirer.

Thus, a bail out takeover takes place with the approval of the financial institutions and banks.

Companies Act Provisions

The law relating to takeovers is contained in both the Companies Act, 2013 and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI Takeover Code).

The Companies Act, 2013 deals with the power of a company to acquire shares of another company, generally (section 186), and specifically, in relation to acquiring from persons who did not sell or have not agreed to sell shares held by them, notwithstanding approval of the scheme or contract for acquisition of the shares by shareholders owning 90% and over of the shares (sections 235 and 236). The company being acquired could be either a public quoted company or a private limited company.

TAKEOVER OF LISTED COMPANIES

Takeover of companies whose securities are listed on one or more recognized stock exchanges in India is regulated by the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. However, if the acquisition of an unlisted company leads to indirect change in the control of a listed company, the transactions would be covered by the Regulations. Further, the Takeover Regulations are triggered if an acquirer company acquires the foreign parent company of a listed company.

BOX 6.3: SECTION 235 OF THE COMPANIES ACT, 2013 & TAKEOVERS

This section is not frequently used in practice and hence one often forgets its unique provisions. A recent decision of the Delhi High Court helps one not only understand the rationale of this provision but also is educative on when it can be used and when the court will not permit its use [in the case of *AIG (Mauritius) LLC* v. *Tata Televentures (Holdings) Ltd.* (2003) 43 SCL 22 (Del.)].

The facts of the Case: A company C engaged in the cellular telephony business had two groups of shareholders - the T group holding about 92 per cent and the A group holding the rest. The T group formed a new company in which it held 99.99 per cent (company "O"). Thereafter, company O made an offer to buy out the shares of the company C. It relied on the provisions of section 235. Thus, it was stated in the offer that if offers were received for shares constituting 90 per cent or more of the capital of C, then the remaining shares would be acquired at the same price. There was another related issue of giving proper notice as required by section 235 which was also given due importance but there was an important substantive question. Can the provisions of section 235 apply in such a case? Essentially, the scheme can be summarised as follows. There can be an offer to takeover a company which offer would be addressed to its shareholders. It may so happen that 90 per cent or more of the shareholders have agreed to the offer but the rest of the shareholders do not agree to it. In such a case, of course, the offeror can acquire the 90 per cent plus shares offered and live with the remaining shareholders. However, what if he does not wish the remaining shareholders to continue? On the other hand, what if the offeror has offered to acquire only from a group holding 90 per cent or more shares and not offered to the remaining shareholders and in such a situation these 10 per cent or less shareholders want the offer to buy their shares also? It is provided under section 235 that if the offeror wishes, he can compulsorily acquire the shares of the remaining shareholders on the

same terms. In the other situation, the remaining shareholders can also require the offeror to acquire their shares. Now, in the first situation, the provision would appear to be drastic and involving expropriation. Also, it may be capable of misuse in the sense that it could be used to eliminate certain minority shareholders by acquiring their shares at a nominal value.

Acquisitions under section 235 did sound as acts of expropriation but there was a certain logic to it. If 90 per cent of the shareholders were in favour of a scheme, it would not be fair if the remaining small group held back its approval thus blocking it. The motives may be *mala fide*. As the Court observed, "In my opinion, it is not legally odious to expect to fall in line with the dictates of the overwhelming majority comprising ninety per cent of the group. Usually, there is wisdom in the strength of numbers. There is every possibility that where nine persons are willing to accept a particular offer, the remaining single person may be standing apart from the others for motives which are not mercantile or commercial". However, it was very important that for such an act to be allowed, it was a fair and *bona fide* one. The Court very importantly held that the same group that was in the majority could not use to remove the small majority under this provision. It was very essential that an independent person or group should be the offeror which was not so in the present case. In fact, the court held that "it was this very reason the section is deemed to be constitutional and if this was deviated from, it would amount to violation of fundamental rights and thus be struck down". The Court rejected the proposal.

Therefore, before planning a takeover of a listed company, any acquirer should understand the compliance requirements under the SEBI regulations and also the requirements under the listing Agreement and the Companies Act. There could also be some compliance requirements under the Foreign Exchange Management Act if an acquirer was a person resident outside India.

Takeover Bids

"Takeover bid" is an offer to the shareholders of a company, whose shares are not closely held, to buy their shares in the company at the offered price within the stipulated period of time. It is addressed to the shareholders with a view to acquiring sufficient number of shares to give the offerer company, voting control of the target company. A takeover bid is a technique, which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.

Types of Takeover Bids

Takeover bids may be a (*i*) mandatory (*ii*) voluntary (*iii*) competitive (*iv*) conditional.

Mandatory Bid

When an acquirer has agreed to acquire or acquired control over a target company or shares or voting rights in a target company which would be in excess of the threshold limits, then the acquirer is required to make an open offer to shareholders of the target company. Under SEBI New Takeover Code, 2011, Regulation 3(1), no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Under Regulation 3(2) no acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations: Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding. The New Takeover Code of 2011, now mandates an acquirer to place an offer for at least 26% of the 'total shares of the target company', as on the '10th working day from the closure of the tendering period'.

Voluntary Bid

A concept of voluntary Bid has been introduced in the Takeover Code of 2011, by which an acquirer who holds more than 25% but less than the maximum permissible limit, shall be entitled to voluntarily make a public announcement of an open offer for acquiring additional shares subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding. Such voluntary offer would be for acquisition of at least such number of shares as would entitle the acquirer to exercise an additional 10% of the total shares of the target company. This would facilitate the substantial shareholders and promoters to consolidate their shareholding in a company.

Competitive Bid

Competitive offer is an offer made by a person, other than the acquirer who has made the first public announcement. A competitive offer shall be made within 15 working days of the date of the Detailed Public Statement (DPS) made by the acquirer who has made the first PA. If there is a competitive offer, the acquirer who has made the original public announcement can revise the terms of his open offer provided the revised terms are favourable to the shareholders of the target company. Further, the bidders are entitled to make revision in the offer price up to three working days prior to the opening of the offer. The schedule of activities and the offer opening and closing of all competing offers shall be carried out with identical timelines.

Conditional Bid

A bid in which the acquirer has stipulated a minimum level of acceptance is known as a 'conditional bid'. 'Minimum level of acceptance' implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer. In a conditional offer, if the minimum level of acceptance is not reached, the acquirer shall not acquire any shares in the target company under the open offer or the Share Purchase Agreement which has triggered the open offer.

Important Provisions and Implications of SEBI New Code, 2011

1. Initial Threshold Limit for Triggering of an Open Offer

Under the Takeover Code of 1997, an acquirer was mandated to make an open offer if he, alone or through persons acting in concert, were acquiring 15% or more of voting right in the target company. This threshold of 15% has been increased to 25% under the New Takeover Code of 2011. Therefore, now the strategic investors, including private equity funds and minority foreign investors, will be able to increase their shareholding in listed companies up to 24.99% and will have greater say in the management of the company. An acquirer holding 24.99% shares will have a better chance to block any decision of the company which requires a special resolution to be passed. The promoters of listed companies with low shareholding will undoubtedly be concerned about any acquirer misutilising it.

However, at the same time, this will help the listed companies to get more investments without triggering the open offer requirement as early as 15%, therefore making the process more attractive and cost effective.

2. Creeping Acquisition

The Takeover Code of 1997 recognised creeping acquisition at two levels from 15% to 55% and from 55% to the maximum permissible limit of 75%. Acquirers holding from 15% to 55% shares were allowed to purchase additional shares or voting rights of up to 5% per financial year without making a public announcement of an open offer. Acquirers holding from 55% to 75% shares were required to make such public announcement for any additional purchase of shares. However, in the latter case, up to 5% additional shares could be purchased without making a public announcement if the acquisition was made through open market purchase on stock exchanges or due to buyback of shares by the listed company.

BOX 6.4 : OPEN OFFER PROCESS	
Step 1	Appoint a merchant banker [Reg. 12(1)]
Step 2	Before making a public announcement, open an Escrow a/c for the following amount: **1.** On the first ₹ 500 crore (₹ 100 crore in the old takeover code) of the consideration payable under the open offer = 25% of the consideration **2.** On the balance consideration = Additional 10% of the balance consideration [Reg. 17(1)]
Step 3	**1.** Send public announcement to concerned stock exchange, SEBI, Target Company **2.** Publication of announcement in English daily, Hindi daily, Regional newspaper of the target company, Regional newspaper of the concerned stock exchange [Reg. 14]
Step 4	Within five days (14 days in the old takeover code) from the date of public announcement, file a draft Letter of offer with SEBI along with non-refundable fee (calculated on the basis of consideration payable under the offer)

Step 5	**1.** SEBI can give its comments on the draft letter of offer up to after 15 days (21 days in the old takeover code) of the receipt of the draft letter of offer.
	2. If SEBI specifies any changes, then carry out such changes in the letter of offer before dispatch to shareholders.
	3. If no comments are issued by SEBI, then it shall be deemed that SEBI does not have any comments to offer. [Reg. 16(4)]
Step 6	Within seven days from the receipt of the comments from SEBI or where no comments are Offered by SEBI, within seven days from the expiry of the period stipulated in Reg. 16(4), dispatch the letter of offer to the shareholders [Reg. 18(2)]

The Takeover Code of 2011 makes the position simpler. Now, any acquirer, holding more 25% or more but less than the maximum permissible limit can purchase additional shares or voting rights of up to 5% every financial year, without requiring making a public announcement for open offer. The Takeover Code of 2011, also lays down the manner of determination of the quantum of acquisition of such additional voting rights.

This would be beneficial for the investors as well as the promoters, and more so for the latter, who can increase their shareholding in the company without necessarily purchasing shares from the stock market.

3. Indirect Acquisition

The Takeover Code of 2011, clearly lays down a structure to deal with indirect acquisition, an issue which was not adequately dealt with in the earlier version of the Takeover Code. Simplistically put, it states that any acquisition of share or control over a company that would enable a person and persons acting in concert with him to exercise such percentage of voting rights or control over the company which would have otherwise necessitated a public announcement for open offer, shall be considered an indirect acquisition of voting rights or control of the company.

It also states that wherever,

(*a*) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;

(*b*) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or

(*c*) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is more than 80% on the basis of the latest audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company and all the obligations relating to timing, pricing and other compliance requirements for the open offer would be same as that of a direct acquisition.

4. Voluntary Offer

A concept of voluntary offer has been introduced in the Takeover Code of 2011, by which an acquirer who holds more than 25% but less than the maximum permissible limit, shall be entitled to voluntarily make a public announcement of an open offer for acquiring

additional shares subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding. Such voluntary offer would be for acquisition of at least such number of shares as would entitle the acquirer to exercise an additional 10% of the total shares of the target company.

This would facilitate the substantial shareholders and promoters to consolidate their shareholding in a company.

5. Size of the Open Offer

The Takeover Code of 1997, required an acquirer, obligated to make an open offer, to offer for a minimum of 20% of the 'voting capital of the target company' as on 'expiration of 15 days after the closure of the public offer'. The Takeover Code of 2011, now mandates an acquirer to place an offer for at least 26% of the 'total shares of the target company', as on the '10th working day from the closure of the tendering period'.

The increase in the size of the open offer from 20% to 26%, along with increase in the initial threshold from 15% to 25%, creates a unique situation under the Takeover Code of 2011. An acquirer with 15% shareholding and increasing it by another 20% through an open offer would have only got a 35% shareholding in the target company under the Takeover Code of 1997. However, now an acquirer with a 25% shareholding and increasing it by another 26% through the open offer under the Takeover Code of 2011, can accrue 51% shareholding and thereby attain simple majority in the target company.

These well thought out figures clearly shows the intention of the regulator to incentivize investors acquiring stakes in a company by giving them an opportunity of attaining simple majority in a company.

6. Important exemptions from the requirement of open offer

Inter-se transfer - The Takeover Code of 1997 used to recognize *inter se* transfer of shares amongst the following groups -

(*a*) group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969

(*b*) relatives within the meaning of section 2(77) of the Companies Act, 2013

(*c*) Qualifying Indian promoters and foreign collaborators who are shareholders, etc.

The catagorisation of such groups have been amended in the Takeover Code of 2011 and transfer between the following qualifying persons has been termed as *inter se* transfer:

(*a*) Immediate relatives

(*b*) Promoters, as evidenced by the shareholding pattern filed by the target company not less than three years prior to the proposed acquisition

(*c*) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than 50% of the equity shares of such company, etc.

(*d*) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement.

To avail exemption from the requirements of open offer under the Takeover Code of 2011, the following conditions will have to be fulfilled with respect to an *inter se* transfer:

If the shares of the target company are frequently traded - the acquisition price per share shall not be higher by more than 25% of the volume-weighted average market price for a period of 60 trading days preceding the date of issuance of notice for such *inter se* transfer.

If the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than 25% of the price determined by taking into account valuation parameters including, book value, comparable trading multiples, etc.

Rights issue - The Takeover Code of 2011, continues to provide exemption from the requirement of open offer to increase in shareholding due to rights issue, but subject to fulfilment of two conditions:

(*a*) The acquirer cannot renounce its entitlements under such rights issue; and

(*b*) The price at which rights issue is made cannot be higher than the price of the target company prior to such rights issue.

Scheme of arrangement - The Takeover Code of 1997 had a blanket exemption on the requirement of making an open offer during acquisition of shares or control through a scheme of arrangement or reconstruction. However, the Takeover Code of 2011, makes a distinction between where the target company itself is a transferor or a transferee company in such a scheme and where the target company itself is not a party to the scheme but is getting affected nevertheless due to involvement of the parent shareholders of the target company. In the latter case, exemption from the requirement of making an open offer would only be provided if—

(*a*) The cash component is 25% or less of the total consideration paid under the scheme, and

(*b*) Post restructuring, the persons holding the entire voting rights before the scheme will have to continue to hold 33% or more voting rights of the combined entity.

Buyback of shares - The Takeover Code of 1997 did not provide for any exemption for increase in voting rights of a shareholder due to buybacks. The Takeover Code of 2011 however provides for exemption for such increase.

In a situation where the acquirer's initial shareholding was less than 25% and exceeded the 25% threshold, thereby necessitating an open offer, as a consequence of the buyback, The Takeover Code of 2011 provides a period of 90 days during which the acquirer may dilute his stake below 25% without requiring an open offer.

Whereas, an acquirer's initial shareholding was more than 25% and the increase in shareholding due to buyback is beyond the permissible creeping acquisition limit of 5% per financial year, the acquirer can still get an exemption from making an open offer, subject to the following:

(*a*) such acquirer had not voted in favour of the resolution authorising the buyback of securities under section 68 of the Companies Act, 2013;

(*b*) in the case of a shareholder resolution, voting was by way of postal ballot;

(*c*) the increase in voting rights did not result in an acquisition of control by such acquirer over the target company

In case the above conditions are not fulfilled, the acquirer may, within 90 days from the date of increase, dilute his stake so that his voting rights fall below the threshold which would require an open offer.

7. Other Important Changes

Following are few other important amendments that have been brought about in the Takeover Code of 2011:

Definition of 'share' - The Takeover Code of 1997 excluded 'preference shares' from the definition of 'shares' *vide* an amendment of 2002. However, this exclusion has been removed in the Takeover Code of 2011 and therefore now 'shares' would include, without any restriction, any security which entitles the holder to voting rights.

Non-compete fees - As per the Takeover Code of 1997, any payment made to the promoters of a target company up to a maximum limit of 25% of the offer price was exempted from being taken into account while calculating the offer price. However, as per the Takeover Code of 2011, price paid for shares of a company shall include any price for the shares/ voting rights/control over the company, whether stated in the agreement or any incidental agreement, and includes 'control premium', 'non-compete fees', etc.

Responsibility of the board of directors and independent directors - The general obligations of the board of directors of a target company under the Takeover Code of 1997 had given a discretionary option to the board to send their recommendations on the open offer to the shareholders and for the purpose the board could seek the opinion of an independent merchant banker or a committee of independent directors.

The Takeover Code of 2011, however, makes it mandatory for the board of directors of the target company to constitute a committee of independent directors (who are entitled to seek external professional advice on the same) to provide written reasoned recommendations on such open offer, which the target company is required to publish.

FINANCIAL AND ACCOUNTING ASPECTS OF TAKEOVER

Financial and Accounting aspects are important in planning a takeover. In a takeover, if the acquirer is an individual, he has to write in his personal books of account the amount invested in the shares of the company, whose majority shares or control has been taken over by him. This investment in the shares of the target company shall be reflected in his personal Return of Income at the end of the financial year.

Where the acquirer is a company, on the registration of the acquired shares in the register of members of the target company, the acquirer company will become the holding company and the target company will become its subsidiary company by virtue of its holding more than half in nominal value of its equity share capital, as per provisions of Section 2(26) and 2(87) of the Companies Act, 2013. The financial and accounting aspects have been dealt separately in subsequent chapters.

STAMP DUTY ON TAKEOVER DOCUMENTS

In a takeover, the dutiable document is the Instruments of Transfer executed by and between the transferors of the shares and the transferee of the shares in the form prescribed in the Companies (Central Government's) General Rules and Forms, 1956.

The duty on the Instruments of Transfer is paid in the form of Share Transfer Stamps. These are affixed and cancelled on each transfer instrument at the rate of 0.50 Paise per one hundred rupees or a fraction thereof of the shares sale value. No stamp duty is payable in case of transfer of shares through Depository.

PAYMENT OF CONSIDERATION

Under Regulation 21(1) for the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (*b*) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.

Further, under regulation 21(2), subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

This sub-regulation, (3) state about unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

SUMMARY

Now-a-days, takeovers or acquisitions have become very popular and extensively reported in different media, after the implementation of first SEBI (Substantial Acquisition of Shares and Takeover) Regulations 1994, there has been a tremendous increase in the takeover activity in India. Generally, companies embark on acquisition of controlling stake in another company and then take steps to merge or amalgamate with the acquired company. Takeovers are classified as friendly, hostile and bail out takeover. Further, takeover could be of a private company or a public company or a public quoted company or a private quoted company owning or controlling another public listed company. The statutory mandate relating to takeover is contained in both the Companies Act, 2013 and the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. The Companies Act deals with the power of a company to acquire shares of another company generally and specifically in relation to acquiring shares from persons who did not sell or have not agreed to sell their shares, notwithstanding approval of the scheme or contract for acquisition of the shares, by shareholders owning 90% and over of the shares (Sections 235 and 236). The company being acquired could be either a public listed company or a private limited company. The SEBI Takeover code deals with the law relating to substantial acquisition of shares or control of a public listed company or an unlisted public company or a private limited company including a foreign registered company which owns or controls a listed company. The Takeover Code of 2011, is a timely and progressive regulation that would facilitate investments and attract investors. Even though SEBI has not implemented all the suggestions of the Achuthan Committee, it has still taken into consideration some of the major issues that had been plaguing the industry till now. It has tried to maintain a balance between the concerns of the investors as well as that of the promoters

Notes :

(*i*) M.A. Weinberg is one of the pioneers in treatising the law and practice relating to takeovers.

(*ii*) In the backdrop of the economic reforms since 1991, the need for some law to regulate takeovers was strongly felt. Moreover to achieve its objective as stated in SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 in exercise of powers conferred under section 30 of the act which laid down a procedure to be followed by an acquirer for acquiring majority shares or controlling stake in company, so that, process of takeover is carried out in a transparent manner. In 1997, the SEBI Takeover code has been rechristened by enacting SEBI (Substantial Acquisition of Shares and Takeover) 1997, substituting SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994. With the changing times, there was increasing need for changes in the SEBI Takeover Code, 1997. Hence, the Takeover Code 1997 underwent several amendments. The amended regulations were:-

(*a*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Amendment Regulations, 1998: The first amendment is contained in the notification S.O. No. 930(E), dated 28th October, 1998 and became effective as of that date. The modifications *inter alia* related to the increase in creeping acquisitions level from 2% to 5%. Consequently, the trigger point for mandatory offer was also increased from 10% to 15%. This was based on the recommendations of the review committee.

(*b*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Amendment Regulations, 2000;

The second amendment is contained in the notification S.O. No. 1178(E), dated 30th December, 2000. The modification related to exemption in respect of transfer of shares from venture capital funds or foreign venture capital investors registered with the board to promoters of a venture capital undertaking or venture capital undertaking pursuant to an agreement between them.

(*c*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Amendment Regulations, 2001; The third amendment is contained in Notification S.O. No. 79(E) dated 17 August, 2001 and primarily deals with matters relating to disinvestment of Government holdings in public sector undertakings.

(*d*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001; The fourth amendment is contained in Notification S.O. No. 875(E), dated 12th September, 2001 and it is also related to matters connected with disinvestment of Government holdings in public sector undertakings.

(*e*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001; The fifth amendment is contained in Notification S.O. No. 1058(E), dated 24th October, 2001 and related to the obligation on the part of acquirer to make disclosures to the Company of creeping acquisition made pursuant to Regulation 11(1).

(*f*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001 and the sixth amendment is contained in Notification S.O. No. 127(E), dated 29th January, 2002 and is again related to public sector undertakings.

(*g*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2002. The seventh amendment is contained in Notification No. S.O. 954(E), dated 9th September, 2002, and related to amendments as per the Review Committee's recommendations.

(*h*) Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers (Amendment) Regulations, 2004. The eighth amendment is contained in Notification No. SO 982 (E), dated the 30th August, 2004. This is related to an addition to the exemption clause, changes in time limits for certain actions and certain obligations of a merchant banker.

(*i*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2004. The ninth amendment is contained in the Notification No. SO. 5(E), dated the 30th December, 2004 IF. No. SEBI/LAD/29278/2004 published in the Official Gazette of India on 3-1-2005 and related to amendments of definition of terms "public shareholding" and promoter, minimum size of open offer to ensure public shareholding as per Listing Agreement, the need to follow SEBI delisting regulations and restricting the creeping acquisition beyond 55%.

The changes made by the above ninth amendment are as under:

1. Regulation 2(1)(h) - definition of the term "promoter";
2. Regulation 2(1)(j) - definition of the term "public shareholding";
3. Regulation 3(1)(e) - addition of an Explanation clause defining "promoter" — exemption in case of inter se transfers;
4. Regulation 3(1)(ka) - insertion of a new category of B exemption relating to acquisition under regulations for delisting of securities.
5. Regulation 3(1A) - insertion of a new sub-regulation making it mandatory to comply with 1U2(A), before claiming exemption;
6. Regulation 7(1) - providing for disclosure requirements upon acquisition of shares more than 54% and 74%;
7. Regulation 10 mandatory public offer must be made in case of acquiring shares consequent to a special resolution under Section 81 of CA or preferential allotment where such acquisition would result in the acquirer acquiring 55 of the shares or voting rights of the target company; and making it compulsory to disinvest in case of acquisition of over 55% of shares or voting rights.
8. Regulation 11 - making it mandatory for any person and acting in concert together holding 55% and more and less than 75% of shares and/or voting rights of a target company to make a public offer.
9. Regulation 11 - acquisition of shares, resulting in reduction of public shareholding below the minimum as prescribed under the Listing Agreement for continuous listing will be permitted only by adhering to delisting requirements.
10. Regulations 20 and 21 - mandatory offer for acquiring of shares cannot reduce the public shareholding as per Listing Agreement and to this extent it could be for less than 20% of the shares or voting rights.
11. Regulation 21 - consequent to exemption provided under Regulation 11(2A) in case of global arrangement, the acquirer is required to adhere to the minimum level of public shareholding as per Listing Agreement.
12. Regulating 45 - powers of the SEBI Board enhanced.

(*j*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006. The tenth amendment was published in the Official Gazette of India on 26th May and is related to definition of qualifying promoter.

(*k*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations 2006. This amendment was published in the Official Gazette of India on 21st August 2007. This relates to the revision in fees.

(*iii*) Despite the above amendments, there was a demand to bring in a new takeover code. In this connection, SEBI, constituted Takeover Regulatory Advisory Committee (TRAC) under the chairmanship of Sh. C. Achuthan to review the SEBI Takeover Code, 1997. The recommendations of Achuthan committee formed the basis of the New Takeover Code 2011, which came into effect from 22nd October, 2011.

(*iv*) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2011. The amendment is contained in the Circular No. SEBI/CFD/DCR/SAST/3/2011/11/22 dated the 22nd November, 2011. Status of compliance with the applicable provisions of the SEBI (SAST) Regulations with respect to details of the acquisitions, if any, made by the Acquirer and PAC in the TC during the financial year in which the Public Announcement has been made and for a period of eight financial years preceding the financial year in which the Public Announcement for instant open offer has been made. In case where an open offer has already been made in respect of the TC during the past eight financial years by any person, the aforesaid information shall be provided from the date of expiry of offer period of such previous open offer.

STERLITE INDUSTRIES LIMITED'S OFFER FOR INDIAN ALUMINUM COMPANY

Background of Acquirer

The Company was originally incorporated as Rainbow Investments Ltd. in 1975. The Company manufactures and deals in electrical wires and cables of all kinds. In 1976, the name was changed to Sterlite Cables and the Company undertook the manufacture of cables, conductors and enamelled copper wires at its factories in Mumbai and Pune. In 1986, the name of the Company was changed to Sterlite Industries (SIL).

Background of Target

The Company was incorporated at Calcutta in 1934. The Company manufactures aluminum and its semi-fabricated products. The Company acts as distributors for Alcan Asia Ltd. Some of the products manufactured are alloys, architectural sections, barns, chequered plates, circles, coils sheets, foils, stock silos, ingots, irrigation tubing, paste for plant and pigments, powder, plates, prefabricated house and sheds, rods, slugs, strips, structural sections and chemicals such as alumina calcined, alumina hydrated, carbon electrode paste, etc. The Company used the trade name 'INDAL' for its products.

Brief Fact Sheet

In 1998, Sterlite Industries made a conditional open offer for 10 per cent (note that at that time 10% was the trigger point) shares of Indian Aluminum Company (Indal) at a price of ₹ 90 per share, that was 36 per cent higher than prevailing market price. Sterlite's major intention behind this acquisition was to develop a long-term relationship, but it was obvious that Sterlite was more willing to take controlling stake in Indal. But this exercise was turned out as a hostile bidding game, when Canadian major Alcan Aluminum entered in the game. In the due course and subsequent revising of the offer prices reached as high as ₹ 221 per share by Sterlite (₹ 131 in cash and ₹ 90 by way of convertible preferential shares) and ₹ 175 by Alcan. However, just on the day of closure of offer period, the FIs struck a deal with Alcan for ₹ 200 a share instead of ₹ 175. Although in this case Sterlite ultimately suffered defeat at the hands of Alcan, yet several issues as regards the fairness and effectiveness of the takeover code arose out of the above episode.

Takeover Code Related Issues

(*i*) If through a negotiated offer, Alcan could make market purchases at ₹ 200 and there by hike its offer price to ₹ 200 on the very last day of the offer, what was the sanctity of the last date for upward revision of offer to be seven days prior to the date of the closure of the offer as required by Regulation 26 of the Takeover Code, 1997?

(*ii*) Could the stated objective of the offer made by Sterlite change repeatedly after it has been filed and approved by SEBI? The objective changed progressively from a "strategic alliance" with acquisition of 10 percent stake to reach 20 per cent (at the instance of SEBI) to grabbing a majority chunk of no less than 52.03 per cent of Indal.

(*iii*) Can the acquirer change the mode of payment during the offer period, as Sterlite did, offering both cash and its own shares?

Investor Protection Issues

This particular case generated lot of heat due to the following issues and questions raised by several quarters.

(*i*) Only the initial offers by both SIL and Alcan were formally communicated to Indal's shareholders by way of letters of offer. When both the bidders increased their offers, this was communicated only through the media and no intimation was made to the investors.

(*ii*) By allowing Alcan to revise its offer price to ₹ 200 on the last day of the offer did the SEBI expect investors to watch the Indal's price movement on the screen up to the last moment? This seemed to give out the impression that the SEBI whose objective is to protect small investors, was actually protecting interests of the large investors. The financial institutions, which struck deal at ₹ 200, had the knowledge of the enhanced price and tendered their 36 per cent holding, accordingly.

(*iii*) Did the investors who were unaware of the ₹ 200 price for Alcan's offer have a legitimate case for grievance?

UNDERSTANDING STRATEGIC STAKE TRANSFER

Tech Mahindra Limited

Background: Tech Mahindra is a global systems integrator and business transformation consulting firm focused on the communications industry. With its core strength in providing Telecom Solutions, Tech Mahindra provides a wide variety of services ranging from IT Strategy and Consulting to Systems Integration, Application Development & Maintenance, BPO, Infrastructure Management, Security Consulting, Network Transformation Solutions & Services, Value Added Services and Product Engineering.

Tech Mahindra is BS25999 certified which is a British Standards Institution (BSI) standard in the field of Business Continuity Management (BCM). Tech Mahindra is also ISO 9001:2008 certified and is assessed at SEI-CMMI Level 5. Tech Mahindra has also been awarded the ISO 20000-1 (IT Service Management Standard) and ISO 27001 (Security Management Standard) certification for its development centers across India and UK. Tech Mahindra is certified at PCMM Level 5 for its people-care practices and is the third company in the world to have been appraised for SSE-CMM Level 3.

After the Satyam scandal of 2008-09, Tech Mahindra had put its bid for Satyam Computer Services, and emerged as a top bidder with an offer of ₹ 59 a share for a 31 per cent stake in the company, beating a strong rival Larsen & Toubro. Following the results of Satyam Bid in favour of Tech Mahindra on June 21, 2009 Satyam Computer Services Limited, unveiled its new brand identity, “Mahindra Satyam.” This strategic move paves the way for the emergence of a robust brand, which draws from the core values of the Mahindra Group and the inherent strength of the Satyam brand.

AT&T Inc.

Background: In 1984, through an agreement between the former AT&T and the U.S. Department of Justice, AT&T agreed to divest itself of its local telephone operations but retain its long distance, R&D and manufacturing arms. From this arrangement, SBC Communications Inc. (formerly known as Southwestern Bell Corp.) was born. In 2005, SBC Communications Inc. acquired AT&T Corp., creating the new AT&T, with the merger of AT&T and Bell South in 2006 and the consolidated ownership of Cingular Wireless and YP.COM, AT&T is positioned to lead industry in one of its most significant transformations since the invention of the telephone more than 130 years ago.

Deal Between Tech Mahindra and AT&T

In May 2005, Tech Mahindra and AT&T have signed an agreement which gave the option to AT&T to purchase the shares of Tech Mahindra if it met certain revenue targets. This transaction has been disclosed by Tech Mahindra in its IPO. Had AT&T chosen not to exercise the options, they would have expired in July 2010.

On March 22, 2010, AT&T has acquired about 98.7 lakhs shares representing 8.07% stake in Tech Mahindra from its promoters in return for giving the company a certain amount of business over a period. The company has purchased the shares in an off market transaction valuing Tech Mahindra at more than ₹ 10,000 crore. However, it will not get a representation on Tech Mahindra Board.

Tech Mahindra has followed the practice of giving cash or equity stake in return for large contracts, especially with its largest client, British Telecom. There is no fresh issue of capital and therefore, no equity dilution. The shares were held by Mahindra BT Mauritius and AT&T had options against these shares.

Sale to LIC

Out of 98.7 lakhs purchased by Tech Mahindra in the Month of March itself, the company has sold 13 lakhs shares earlier in April. On April 28, 2010, AT&T exited Tech Mahindra by divesting its remaining 7.03% stake in Tech Mahindra, thereby, realizing $154 million (₹ 656 crore) from the sale. India's largest life Insurance firm, Life Insurance Corporation of India comes out to be the major buyer of the sale. There were 2 block deals of 4.3 Million shares on each exchange. After the acquisition, LIC stake in Tech M has increased to 12.75%. LIC also holds 4.43% stake in Mahindra Satyam. As per the experts the sale deal will not have any material impact on business relationship between the two players.

KINGFISHER'S ACQUISITION OF THE LOW COST CARRIER AIR DECCAN

Background of the Acquirer

Kingfisher Airlines, a premium full-service carrier, is a private airline based in Bangalore, India and owned by Vijay Mallya of United Beverages Group. Kingfisher Airlines started its operations on May 9, 2005, with a fleet of 4 brand new Airbus - A320. The airline currently operates on domestic as well as international routes, covering a number of major cities, both in and outside India.

Background of the Target

Air Deccan started operation way back in 2003 founded by first generation entrepreneur Capt. Gopinath. Its business got an impetus mainly because of the growth of the Indian economy which is growing at the rate of 8 per cent. Also there was considerable increase in the population of middle class who desired to travel by air. The company positioned itself as a low cost carrier (LCC) to fulfil the needs of this class. The growth and success of Air Deccan's business mobilised other players to enter the low cost air travel business and soon there were many others like Kingfisher Airlines, Spice Jet, Indigo and GoAir who emerged on the scene.

Brief Fact Sheet

When it started its operations, Deccan was known popularly as the common man's airlines. Air Deccan triggered price wars in the Indian skies which forced other players to match Air Deccan's prices. The consumers benefitted while carriers lost. Air Deccan gained market share but at the cost of profitability. This has raised questions about its sustainable business model. The mounting losses in Air Deccan continued to persist as it expanded its network across the country. Experts felt that Deccan was expanding its operations out of Capt Gopinath's passion to see every Indian fly and less out of any reason or logic. Experts point out that, having two types air craft (Air Bus and Boeing) parked at all six metros, it failed to exploit the economies of scale. Deccan's complex hopping flight schedules meant that a problem at one stop became every subsequent stop's problem. Further, the localization of inventory and spares at Bangalore put additional pressure on the airline. It had severe dent in its finances and with much difficulty raised $40 million through ICICI Venture and US based Capital International. Deccan operated through a hybrid LCC model. It offers low fares but operates on four types of Aircraft and flies to 55 destinations. When trouble brewed and conflict of ideas came, two top management members, Warwick Brady and Mohan Kumar left the company in February 2007.

Structuring the Offer

In May 2007, Kingfisher Airlines acquired a 26% equity stake in Air Deccan for ₹ 550 crores and became the largest single shareholder. It was agreed that Kingfisher would continue to serve the corporate and business travel while Air Deccan would focus on serving the low fare segment but with improved financial prospects for both carriers. Further, under the agreement, Vijay Mallya would bring a new CEO, three Directors to Air Deccan. The investments would come through UB Holdings (parent company). Mr. Mallya did no due diligence before making the offer and he had to deposit ₹ 150 Crores into an Escrow account as per the direction of the Air Deccan before finalization of the deal. It was reported in the media that Anil Ambani of ADAG group was carrying out a due diligence and the expected deal between Air Deccan and ADAG was on the cards. However, Kingfisher quickly sealed the deal. Kingfisher later increased its stake to 46%, and took control of the management of Air Deccan, upgrading it to a value-based airline with higher

airfare and repositioned it as 'Simplify Deccan'. Air Deccan airlines merged with Kingfisher Airlines and decided to operate as a single entity from April, 2008. Following the merger of Deccan with Kingfisher, in August 2008, Kingfisher renamed Deccan as Kingfisher Red. After the merger, the company has a combined fleet of 71 aircrafts, connects 70 destinations and operates 550 flights in a day. The combined entity has a market share of 33%.

Strategic Fit

Air Deccan seemed to be a logical partner from Kingfisher's point of view as it stands to gain from synergies and cost reduction. Both airlines can bring down costs individually by using same ladders, reducing duplication on routes, reduced spare costs and synergies in operations. Further, the combined entity of the two would command a market share of 33 per cent only after Jet Sahara. Hence, the manpower can be optimally utilized, insurance costs and lease rentals can be renegotiated and ground handling and facilities can be shared. This would definitely help in reducing costs by about 4-5% (₹ 300 crores). The combined strength will have 537 flights per day connecting 69 destinations. Under the regulations, if an airline wants to operate overseas it must have a domestic status of having operated for 5 years and therefore in case of Kingfisher wants to operate overseas; it becomes easier for the ambitious airlines.

TAKEOVER OFFER FOR SCENARIO MEDIA LIMITED

Scenario Media Limited (Target Company)

Background: Incorporated on February 17, 1982, the Target Company is engaged in the business of production, projection, exhibition and representation of cinematograph films, TV, motion picture, publishing magazines, newspapers, processing, marketing, advertising through media or any other mode of communication. The shares of the Target Company are listed on Bombay Stock Exchange (BSE).

Scenario Communication Limited (Acquirer)

Background: Scenario Communication Limited (formerly known as Jai Baba Communication Services Private Limited) is presently engaged in the business of providing financial consultancy services. The company has sold its film production business to Scenario Media Limited.

First Public Announcement

On May 28, 2005, Scenario Communication Ltd. (Acquirer) made a Public Announcement under Regulations 10 & 12 of the SEBI (SAST) Regulations, 1997 to acquire 2,40,000 fully paid up equity shares representing 10.71% of the post preferential voting capital of Scenario Media Limited (Target Company) pursuant to the preferential allotment of 20,00,000 equity shares representing 89.29% of the fully paid up capital of the Target Company. The draft letter of offer in respect of the Public Announcement was filed on June 10, 2005.

SEBI Observation on the First Public Announcement

While vetting the draft letter of offer, SEBI found that the voting capital of Target Company has increased from 2,40,000 to 22,40,000 equity shares and the shareholding of acquirer increased from NIL to 89.29% of the enhanced capital of the Target Company. Further, the shareholding of the then existing promoter group of the Target Company decreased from 19.73% to 2.11% and of the public shareholders from 80.27% to 8.60%. Accordingly, SEBI sought the details from the Merchant Banker *i.e.* M/s Aryaman Financial Services Limited on the following points:

- Applicability of clause 40A of the Listing Agreement on the above preferential allotment;
- Whether the equity shares allotted by said preferential allotment are eligible for listing; and
- Observation made by the BSE with respect to above mentioned preferential allotment without obtaining the In-principle approval from the BSE.

Reply Submitted by the Merchant Banker

The Merchant Banker submitted that the Acquirer undertakes to disinvest through an offer for sale or by fresh issue of the share capital to the public which shall open within a period of 6 months from the date of closure of the offer, such number of shares, so as to satisfy the listing requirement. Further, the Target Company is also waiting for the "in-principle" approval from BSE for the listing of said equity shares issued on preferential basis.

However, after the exchange of various communications, SEBI issued a show cause notice to the acquirer, asking as to:

(1) Why the acquirer should not be directed to withdraw the public offer made by Public Announcement dated 28.05.05 in terms of the regulation 27(1)(d) of the SEBI (SAST) Regulations, 1997

(2) Why the acquirer should not be directed under regulation 44 and regulation 45 of the SEBI (SAST) Regulations, 1997 and sections 11 and 11B of the SEBI Act, 1992:

The company agrees that the following shall also be the condition for continued listing,

(*a*) to disinvest shares acquired by the acquirer in excess of limit of 75%;

(*b*) to transfer the proceeds of such disinvestment or any unjust enrichment on account of above acquisition to the Investor Protection and Education Fund of SEBI; and

(*c*) not to exercise voting rights attached to the shares acquired in violation of provisions of listing agreement and SEBI (SAST) Regulations, 1997, till completion of the process of disinvestment in accordance with regulation 44(a) of SEBI (SAST) Regulations, 1997.

Reply to the Show Cause Notice

In reply to the show cause notice, the acquirer submitted that the target company has undertaken corrective actions to ensure the compliance with clause 40A of Listing Agreement.

In the meantime, on the request of the acquirer, Keynote Corporate Services Limited agreed to provide the merchant banking services to the acquirer.

Corrective Measure

In order to comply with the minimum public shareholding requirement, the Target Company, *vide* its letter dated December 26, 2007 to BSE, undertook following corrective measures:

I. Reclassify the present authorized capital of 50,00,000 equity shares of ₹ 10 each into two kinds:

(*i*) 35,00,000 equity shares of ₹ 10 each, and

(*ii*) 15,00,000 redeemable preference shares of ₹ 10 each

II. Reclassify the 14,75,000 shares out of 20,00,000 equity shares allotted on preferential basis into 14,75,000 redeemable preference shares of ₹ 10 each and the remaining into 5,25,000 equity shares of ₹ 10 each.

The target company has received the approval from BSE, *vide* their letter dated 17.03.08, to bring down the equity holding of the acquirer to 68.63%. Consequent to the said corrective steps, the obligation of the acquirer to make public offer under SEBI (SAST) Regulations, 1997 will continue. Since the public offer would be in the interests of the public shareholders, the withdrawal of Public Announcement need not be insisted upon.

Further, since consequent to the said corrective steps, there will be no requirement of disinvestment, and therefore, with no divestment, there has been no unjust enrichment and hence, any situation for transfer of any proceeds of such disinvestment to the Investor Protection and Education Fund of SEBI may not arise.

SEBI Directions

In view of the submissions made by the acquirer from time to time, SEBI, *vide* its order dated January 14, 2009 directed the acquirer to make the revised public announcement to the shareholders of the Target Company within 2 weeks from the date of the listing granted by the BSE. The acquirer shall determine the price under regulation 20 of the SEBI (SAST) Regulations, 1997 and for the said purpose; it would factor in the two weeks traded price prior to taking the date of revised Public Announcement. Further, the acquirer was also directed to pay the interest @ 10% for the delay in making the payment to the shareholders from March 26, 2005 till the date of actual payment of consideration.

The Second Offer

Accordingly, on January 29, 2010, the acquirer has made the public announcement to the shareholders of Target Company to acquire 1,53,000 Equity Shares representing 20% of the equity share capital at a price of ₹ 140.80 per share (including interest of ₹ 4.84 per share) payable in cash.