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### **SC: Share-sale post ‘creeping acquisition’ doesn’t dilute public announcement condition; Upholds SAT order**

SC dismisses acquirer’s appeal against SAT order that directed acquirer to make public announcement for its creeping acquisition; Rejects acquirer’s contention that exceeding limit of 5% (creeping acquisition under Regulation 11 of Takeover Code) at any one point of time was immaterial, unless at the end of financial year it was found that 5% ceiling was violated; Holds that if aggregate percentage of acquisitions “at any point of time during the financial year” exceeds 5 %, Regulation 11 mandating public announcement will trigger, and explains that, “even if such acquisition is followed by sale in the same financial year, the liability of making the public announcement would remain unaffected and shall attract action”; Further rejects appellant’s reliance on Regulation 14(2) of Takeover Code which stipulates that public announcement shall be made within 4 days on conversion of shares into voting rights or exercising option to acquire voting rights; Holds that Regulation 14(2) was inapplicable in instant case as it relates to other securities including GDRs/ADRs, while Regulation 14(1) was applicable in present case which mandates public announcement within 4 days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the specified percentage, which appellant failed to do: SC

[\[LSI-732-SC-2015-\(NDEL\)\]](#)

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### **SC: Post-dated cheque, though dishonoured, consummates transaction; Takeover code applicable, clarifies ‘acquisition’ definition**

SC upholds SAT order, wherein it was held that acquirer violated Takeover Code, 1997, by acquiring 28.09% from State Corporation in Target Co. and had also failed in disclosing buy-back transaction in public announcement; Peruses provisions relating to acquisition / exemption from public announcement, observes that the acquisition attracts Reg. 10 as the acquisition was in excess of 15%, and such acquisition was not protected by Reg. 3; Notes that appellant had issued post-dated cheques to State Corporation as guarantee / consideration for buyback, however the cheques were dishonoured, rejects appellant’s contention that cheque-dishonouring does not culminate into ‘acquisition’; SC opines “post-dated cheques amounted



to a promise to pay and that promise would be fulfilled on the date mentioned on the cheque.... At the time of making the public announcement the Appellant had bought back the shares of HSIDC (State Corporation) by making payment via the said post-dated cheques. Further, as the buy-back was in pursuance of an agreement, there was consensus ad idem. The Appellant has subsequently shirked his responsibility and has tried to slither away from honouring the agreement, which he cannot be allowed to gain”; Peruses definition of ‘acquisition’ in Takeover Code, states “acquisition takes place the moment the acquirer decides or agrees to acquire, irrespective of the time when the transfer stands completed in all respects. The definition explicates that actual transfer need not be contemporaneous with the intended transfer and can be in future”; SC peruses State Corporation’s letter to acquirer relating to cheque-dishonouring, observes that such letter was issued after making public announcement, holds “at the date of making public announcement, the Appellant was under the impression that acquisition has taken place”:SC

[\[LSI-847-SC-2015-\(NDEL\)\]](#)

### **SAT: Disclosure obligation under Takeover Code on 'promoter-group', not on every 'promoter' in group**

SAT sets aside SEBI order, wherein it was held that obligation to make yearly disclosure under Reg. 8(2) of Takeover Regulations, 1997 / Reg. 30(2) of Takeover Regulations, 2011, is on each and every promoter and not on 'promoter group' and in case of failure to make disclosure, each and every promoter is liable to pay penalty; Holds that if promoters are 'individual' promoters then obligation is on individual promoters and in case there is 'promoter group' then 'promoter group' is required to make yearly disclosure; States that if promoter group fails to disclose shares / voting rights held by promoters in the group as also their PAC's within stipulated time, then, penalty is imposable on 'promoter group' and would be recoverable jointly and severally; Notes that Reg. 8(2) of Takeover Regulations, 1997 provides for 'a promoter' to make yearly disclosure and Reg. 30(2) / 30(3) of Takeover Regulations, 2011 provides for 'the promoter' to make yearly disclosure, states that "obligation to be discharged by the promoter would also have to be discharged by the promoter group"; Rejects SEBI's reliance on General Clauses Act to interpret 'promoter' to include 'promoters' and accordingly obligation to make yearly disclosure would be on individual promoter including promoters included in promoter group; SAT holds "when Takeover Regulations expressly provide that expression 'promoter' shall include the 'promoter group', SEBI is not justified in contending that in view of the provisions contained in General Clauses Act, the obligation to make yearly disclosure is on every promoter in the promoter group and not on the promoter group"; States that if SEBI's argument that every promoter is obliged to make yearly disclosure is accepted, then it would mean that every person/member included within meaning of 'promoter' would be required to make disclosure, even if he does not hold any shares, terms SEBI's interpretation as 'absurd'; SAT opines "if it was intended that every promoter of listed co. must make yearly disclosure, then, Reg. 8(2) or Reg. 30(2) would have commenced with 'Each promoter' or with the words 'Every promoter'; States that as word 'every promoter' is not used in case of promoter and expression 'promoter' is defined to include 'promoter group', SAT opines "it becomes clear that obligation to make yearly disclosure is on promoter/promoter group and not on every promoter in promoter group"; Notes difference of language in Takeover Regulations, 1997 and 2011, however states that under both regulations, basic object is to ensure that, investors in Target co. are informed about no. and percentage of shares / voting rights held by promoter/promoter group and object is not to make it mandatory for every promoter in the promoter group to make individual yearly disclosure even if that promoter neither held nor holds any shares: SAT

[\[LSI-815-SAT-2015-\(MUM\)\]](#)

### **SEBI: Rejects belated knowledge defence of UB group for share pledge invocation disclosure delay**

SEBI imposes penalty of Rs. 15 lacs on United Breweries (Holdings) Ltd. ('UBHL') for failure to make disclosures relating to creation / invocation / release of pledged shares of United Spirits Ltd. (USL) within time prescribed under Takeover Regulations; Peruses stock exchange ('SE') communication, holds that consolidated disclosures made by UBHL to SEs are not correct as they related only to 'release' and 'creation' and not 'invocation'; Rejects UBHL's contention it came to know about pledge invocation on March 28, 2012 (which actually took place on March 24, and 26, 2012) when Depository Participant informed, peruses Reg. 31(3), holds "regulation clearly stipulates mandatory requirement of disclosures to be made from day of creation / invocation / release of pledge and does not leave any scope of "knowledge / intimation" as prior condition for the person who is required to make such disclosures"; States "had 'knowledge / intimation' been the intent of statute then, it would have been very well incorporated in the SAST Regulations itself"; States that while making / creating share pledge by borrower, certain condition and timeline of share-pledge invocation are pre-fixed, holds "if such timeline towards pledged shares are there, then, borrower is supposed to know the last day after which invocation of pledged share may



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take place by lender upon breach of payment”; Peruses Reg. 58 of Depositories and Participants, Regulations, states that it is Depository’s duty towards Participant and in turn Participants towards pledger / pledgee, to immediately inform about such invocation; SEBI interprets DP Regulations, states “intent of statute in respect of word “immediately” should be construed in its true sense meaning thereby that it should be informed immediately or within the same day itself” and opines that had statute’s intent was different, then, it would have been otherwise incorporated in DP Regulation; W.r.t. Kingfisher Finvest India Ltd.’s (KFIL) share-pledge innovation, SEBI notes 1-day delay relating to 10,000 shares, wherein intimation was made to Bangalore SE within prescribed time, also notes non-repetitive nature of irregularities, and accordingly does not impose any penalty on KFIL:SEBI

[\[LSI-833- SEBI-2015-\(MUM\)\]](#)

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### **SAT: Lifeline for DLF, ‘overregulation’ tongue-lashing for SEBI; Justice Devadhar’s scathing dissent**

Securities Appellate Tribunal (‘SAT’), by a 2-1 majority ruling, quashes and sets aside SEBI order that restrained DLF Ltd., 6 directors along with CFO from accessing securities market and prohibiting them from dealing in securities for 3 years, terms SEBI order as ‘troubled sea whose waters only cast up mire and dust’; Majority order rejects SEBI’s observation that transfer of entire shareholding of three ‘related companies’ (Felicite, Sudipti & Shalika) was ‘controlled’ by DLF’s wholly owned subsidiaries, also dismisses SEBI’s contention that share transfer to 3 spouses of DLF’s employees was made with an intention to camouflage that DLF had no ‘control’ over the related entities; SAT observes that SEBI referred to numerous provisions (eg. Cos. Act, Takeover Code, DIP Guidelines, Accounting Standards, Prohibition of Fraudulent Trade Practices Regulations, etc.), holds that jumbling up of such rules & regulations operating in different fields leads to ‘grave miscarriage of justice’, making it a case of ‘over-regulation’; Refers to Takeover Code, observes that there is no reference of ‘unlisted cos. which propose to undertake an IPO’ and holds that SEBI’s reference to ‘control’ definition in the Takeover Code, reflects complete non-application of mind and that SEBI has shopped for clauses and provisions in different statutes; SAT refers to Sec. 4 of Cos. Act, 1956, observes that SEBI failed to conclusively demonstrate that DLF had unbridled discretion for appointing / removing director on the Board of Shalika, Sudipti and Felicite, holds that “SEBI order is full of incorrect inferences based on surmises, conjectures and some faint corroboration to support faulty and forced conclusions”; SAT quashes SEBI’s observation relating to disclosure of RPTs with Shalika, Sudipti and Felicite by DLF Ltd, holds that stated disclosures in offer document are adequate and true for the purpose of DIP Guidelines, states that ‘materiality’ envisaged in DIP Guidelines relates to ‘adequacy’ and not ‘arithmetic accuracy’ of material facts; SAT finds no legal infirmity in purchasing equity stakes by 3 women entrepreneurs by utilizing funds from joint a/cs, observes that it’s a settled law that joint a/c holders have equal rights to money, and 3 spouses cannot be condemned for utilizing money accounts just by virtue of being ‘housewives’; Holds SEBI’s Order as ‘unusual punishment’ & ‘counter-productive’ that manifestly causes more harm than benefit to members of society and such ‘punishment’ impairs one’s business & affects millions of investors; Holds that “keeping a person out of market for few years after long lapse of time when things seem to have settled down in the market, particularly when the company’s scrip is showing a definite and positive upward movement, is definitely unjust, unfair and detrimental to the investors’ interest.”; SAT Presiding Officer Justice Devadhar dissents, holds divestment of shares to spouses of employees, as a “sham transaction executed with a view to avoid disclosing material information relating to those three companies in the offer documents...”; Holds Board of Directors & CFO who signed prospectus, individually as well as directly liable for material breach since they were running day to day affairs of company and had adopted modus operandi of divesting of shares to camouflage DLF’s association with the three companies; Further holds Directors & CFO guilty of violating Insider Trading norms, observes that ‘intention to deceive’ is not essential requirement for constituting ‘fraud’ under Regulation 2(c) of the said regulations; SEBI Prayer for staying the order of SAT rejected once again by 2-1 majority: SAT

[\[LSI-369-SAT-2015-\(MUM\)\]](#)

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### **SAT: PACs responsible for share-acquisition disclosures; Interprets Takeover Code, relieves acquirers from penalty**

SAT disposes appeals, holds that listed co.'s promoters (acquirer, referred to as 'appellants') are under obligation to make disclosures under Takeover Code, 1997 to stock exchange and target co. for share acquisition beyond prescribed threshold, however relieves appellants from paying penalty as disclosure is not contemplated for 'sale' of shares / voting rights beyond limit; Notes that appellants had acquired



shares, disclosed transactions to target co. but failed to make disclosures to stock exchanges; Rejects appellant's contention that disclosure obligation under Reg. 7(1A) arises only when purchase / sale of shares / voting rights effected by 'any individual acquirer' exceeds prescribed limits and such disclosure is not required when acquisition is made by Persons Acting in Concert ('PAC'); Peruses definition of 'acquirer', states that wherever expression 'acquirer' is mentioned in Code, it shall be referred to a person who

acquires shares / voting rights either by himself / along with any PAC; Peruses Reg. 7(1), 7(1A), 7(2), observes that disclosure under Reg. 7(2) relates only to 'acquisition' and not to 'sale of shares / voting rights'; Further notes that disclosure obligation specified under Reg. 7(1A) has to be discharged in accordance with Reg. 7(2), however observes that such Regulation does not provide for any disclosure, holds "SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated Reg. 7(1A) read with Reg. 7(2) and accordingly not justified in imposing penalty":SAT

[\[LSI-878-SAT-2015-\(MUM\)\]](#)

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### **SAT: Takeover Code annual disclosures a 'continual' not 'conditional' obligation, upholds SEBI order**

SAT upholds SEBI order that penalized listed co. for failing to make annual disclosures under Reg. 8(3) under Takeover Code, 1997, holds that such disclosure obligation is a 'continual' obligation and not conditional obligation; Peruses Reg. 8(3), notes there are two occasions requiring disclosure by listed co. to stock exchange, which includes: (i) Annual disclosure to be made within 30 days of each FY ended on March 31 and, (ii) Disclosure to be made at each record date fixed for purposes of dividend; States "very fact that multiple disclosures are required to be made especially by dividend paying listed companies under Reg. 8(3), clearly shows that obligation to make disclosure under Reg. 8(3) is not dependent on yearly disclosures to be made by shareholders/promoters under Reg. 8(1) and 8(2) to co."; SEBI peruses the content of the form for making such disclosures, holds that the co. is required to make annual disclosures to the stock exchanges by disclosing existing shareholding, even if there is no change in shareholding of persons/promoters referred to in Reg. 8(1) and 8(2); Interprets Reg. 8(3), notes the use of words 'the changes, if any' relating to annual disclosures by cos. to stock exchange and states "this obviously means that not merely shareholding as on last day of current FY but also difference between shareholding as on last day of previous FY and as on last day of current FY has to be disclosed to stock exchanges, so that investors are made aware about change in co. shareholding":SAT

[\[LSI-917-SAT-2015-\(MUM\)\]](#)

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### **SEBI: No open offer for internal re-organisation pursuant to RBI directions, exempts Premji**

SEBI exempts Hasham Investment and Trading Co. Pvt Ltd ('Acquirer co.' controlled by Azim Premji, formed by merging 3 NBFC promoters of Wipro Ltd (target co.), who also held 35% of profits of 3 partnership firm-promoters of target co.) from making open offer under Takeover Regulations; Observes that as per RBI's direction, no NBFC could contribute to capital of partnership firm or become partner, thus the NBFC promoters had to withdraw as partners from promoter-firms of target co.; Notes that a scheme of arrangement was sanctioned by Karnataka HC (which resulted in consolidating all NBFC

businesses of promoter group into one legal entity i.e., Acquirer and reconstitution of 3 partnership firms to hold 51.71% equity share capital of target co.) which ultimately led to change in control of partnership firms in target co. attracting open offer requirement; However, SEBI observes that the proposed scheme and transaction was for complying with the RBI direction and was “only an internal re-organization of the promoter and promoter group and among entities that are directly or indirectly wholly controlled by Mr. Azim H Premji and members of his family”, and grants exemption from open offer; However, clarifies that such exemption shall not exempt acquirer from disclosure requirements under Takeover Regulations, compliance with Insider Trading Regulations, Listing Agreement & other applicable laws:SEBI

[\[LSI-988- SEBI-2016-\(MUM\)\]](#)

### **SEBI: Orders adjudication proceedings for Takeover Code non-compliance, rejects no change in control defense**

SEBI orders adjudication proceedings against listed co.’s promoters for acquiring 2.19% shares in target co. by share warrant conversion, observes non-compliance of Takeover Code, 1997; Notes that the promoters’ shareholding increased from 53.85% to 56.04% (i.e. an increase of 2.19%), however promoters failed to make public announcement and make requisite disclosures to target co. and stock exchanges (under Reg. 7(1)) and public announcement (under Reg. 11(1) read with Reg. 14(1)); Rejects promoters contention relating to the benefit allowed under second proviso to Reg. 11(2) (as brought out by amendment, which allows acquirer to acquire additional shares or voting rights up to 5% without making public announcement), observes that creeping acquisition up to 5% is allowed subject to conditions, i.e. acquisition: (i) via open market purchases or (ii) result was by buy-back, holds that none of the conditions are satisfied and therefore Reg. 11(2) is not applicable; Rejects promoters’ contention that there is no change in control due to acquisition, holds “requirement of open offer under Reg. 11(1) is also to ensure that any purchase of shares by a person in control holding beyond 55% should be in a transparent manner through public offer”, states that Reg. 11(1) is triggered on exceeding threshold limit of 55% irrespective of change of control; Rejects promoters’ contention that Reg. 7(1A) is triggered only when an individual acquirer acquires more than 2% shares, peruses the definition of ‘acquirer’ and notes that acquirer includes ‘persons acting in concert’, holds that acquisition by promoter group entities amounts to ‘acting in concert’: SEBI



which allows acquirer to acquire additional shares or voting rights up to 5% without making public announcement), observes that creeping acquisition up to 5% is allowed subject to conditions, i.e. acquisition: (i) via open market purchases or (ii) result was by buy-back, holds that none of the conditions are satisfied and therefore Reg. 11(2) is not applicable; Rejects promoters’ contention that there is no change in control due to acquisition, holds “requirement of open offer under Reg. 11(1) is also to ensure that any purchase of shares by a person in control holding beyond 55% should be in a transparent manner through public offer”, states that Reg. 11(1) is triggered on exceeding threshold limit of 55% irrespective of change of control; Rejects promoters’ contention that Reg. 7(1A) is triggered only when an individual acquirer acquires more than 2% shares, peruses the definition of ‘acquirer’ and notes that acquirer includes ‘persons acting in concert’, holds that acquisition by promoter group entities amounts to ‘acting in concert’: SEBI

[\[LSI-861- SEBI-2015-\(MUM\)\]](#)

### **SAT: Bogus corporate announcements intended to manipulate share-price, facilitate promoters exit, upholds restrain order**

SAT upholds SEBI’s order of restraining Sumeet Industries Ltd. (Appellant, ‘SIL’) from accessing the securities market for 2 years for failing to comply SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations; Observes that SIL funded an individual, who traded in its shares, created artificial buying pressure by manipulating the order book, generated synchronized trades with promoter group entities and assisted such entities to offload substantial stake at inflated prices; Observes that SIL’s corporate announcements relating to fund raising through preferential allotment to promoters were not bonafide, as BSE observed repeated non-compliance of prescribed conditions; Holds that SIL was not serious in implementing allotment proposal as it became aware of Takeover Code compliance after receiving BSE’s letter and then made an application to SEBI for exemption, however such proposal was unilaterally abandoned by SIL based on negative recommendations of SEBI’s Takeover Code Panel; Observes that SIL’s corporate announcements relating



to acquisition of 200 acres of land was not bonafide, as there was no record of any feasibility/availability of such land and SIL's discussion with land owners, holds "making such announcements would obviously mean that it was merely a wishful thinking intended to lure investors"; Notes that corporate announcements relating to company amalgamation were made in 2007 and no steps were taken till 2013 and such proposal was withdrawn after SEBI's show cause notice, holds that such announcements were also not

bonafide:SAT

[\[LSI-1161-SAT-2016-\(MUM\)\]](#)

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### **SEBI: Takeover Code contemplates mandatory open-offer requirement on breaching threshold, acquirer's intention immaterial**

SEBI directs KGPL Industries & Finvest Pvt. Ltd. (promoter of target co., 'Acquirer') to make public announcement and pay consideration (along with interest) for failure to make open offer and comply with Takeover Code in acquiring shares of Soma Textiles and Industries Ltd. ('Target Co.', listed on BSE/NSE); Observes that acquirer acquired 16,20,000 shares (4.9% of share capital) in target co. that increased its shareholding from 20.22% to 25.12% thereby breaching the threshold of 25% (as stipulated in Reg. 3(1) of Takeover Code, 2011); Notes that due to the Acquirer's acquisition, the collective shareholding of promoter group in Target Co. increased from 44.37% to 49.28% which was within permissible limit of 5% as contemplated by Reg. 3(2); Rejects Acquirer's submission that increase in shareholding was inadvertent and without any mala fide intent, opines "intention and motive behind an acquisition are not relevant for the purposes of application of Reg. 3(1). The language of Reg. 3(1) envisages mandatory obligation to make public announcement of an open offer in case of acquisition of shares beyond 25% in a target co."; States that the object of Takeover Code is to provide equality of treatment of all shareholders, to provide an exit opportunity to shareholders in the case of a substantial acquisition of shares/takeover and to ensure that persons in control of a target company do not consolidate their shareholding in target co. in a clandestine manner and to detriment of other shareholders; Relies on SAT ruling in Nirvana Holdings Private Limited Vs SEBI:SEBI

[\[LSI-1154- SEBI-2016-\(MUM\)\]](#)

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### **SAT: Co. disclosures not substitute for disclosures under Insider Trading & Takeover Regulations**

SAT dismisses appeal, upholds SEBI Adjudicating Officer's Order imposing Rs. 5 lac penalty on promoter for failure to disclose sale of shares under Reg. 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 & Reg. 29(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011; Observes that though sale is reported on BSE's website in "bulk deal data" or company has made disclosures under Listing Agreement to Stock Exchange, it will not absolve appellant from making disclosures under said Regulations; Failure to disclose though unintentional or technical or inadvertent, cannot escape penal liability; Observes that appellant being person dealing in securities ought to know his rights and obligations w. r. t. disclosures under Regulations.:SAT

[\[LSI-41-SAT-2014-\(MUM\)\]](#)

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### **SAT: Dismisses appeal, clarifies effective date of Takeover Code trigger**

Securities Appellate Tribunal ('SAT') dismisses appeal, clarifies effective date of trigger of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and liability to pay interest when Acquirer fails to pay consideration to shareholders; States that language of Reg. 10 is abundantly clear that Takeover Regulations get triggered only when acquisition of shares entitles such acquirer to exercise 15% or more of voting rights; Date of pledging of shares, which does not entitle voting rights,

cannot be considered as date of trigger of Takeover Regulation but when shares are transferred and acquirer becomes entitled to exercise voting rights, Takeover Regulation gets triggered; Clarifies that liability to pay interest under Reg. 22(12) arises only when acquirer fails to pay consideration to shareholders within 15 days from date of closure of offer and since in present case, consideration is offered and paid to appellant within specified time, question of paying interest does not arise; Rejects appellant's contention that SC ruling in Clariant International Ltd is not applicable in present case as SC has considered issue only from shareholder's perspective and not from capital market's perspective; States that once SC decision is rendered, it is not open to any person / authority to contend that ratio laid down cannot be applied on ground that SC failed to consider matter from any particular angle: SAT [\[LSI-44-SAT-2014-\(MUM\)\]](#)

### **SAT: Dismisses SICOM appeal; Banks not exempted from Takeover Regulations on pledge invocation**

Securities Appellate Tribunal (SAT) dismisses appeals, upholds SEBI's order that Scheduled Commercial Banks ('SCBs') / Public Financial Institutions ('PFIs') are not exempted under proviso to Reg. 29(4) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 when shares are acquired by invocation of pledge; Observes that expression "any acquirer" in Reg. 29(1)/29(2) read with Reg. 2(1)(a) is wide enough to cover SCBs / PFIs and are required to make requisite disclosures when they acquire shares/voting rights of Target Company on invocation of pledge in excess of prescribed limits; States that Reg. 29(4) creates deeming fiction and for purposes of Reg. 29(1)/29(2) 'taking shares' by way of encumbrance shall be treated as 'acquisition' and giving back shares upon 'release of encumbrance' shall be treated as 'disposal' and both requires prescribed disclosures;

Pledgee is also required to make disclosures under Reg. 29(4) in view of deeming fiction introduced under Reg. 29(4); Interprets proviso to Reg. 29(4) and states that proviso makes it clear that exemption set out therein is relatable to deemed acquisitions specified under Reg. 29(4) as proviso cannot travel beyond provision to which it is a proviso; Rejects Appellant's contention that since Reg. 10(1)(b)(viii) exempts SCBs / PFI's from making open offer when shares are acquired on invocation of pledge, proviso to regulation 29(4) must also be construed for such exemption of making disclosures; States that exemption under Reg. 10(1)(b)(viii) is a general exemption with reference to open offer obligation whereas, exemption under proviso to Reg. 29(4) is specific exemption; Rejects appellant's reliance on SC's judgment in Renusagar Power Co. Ltd. Vs General Electric Company & Another relating to interpretation of expression "in connection with a pledge of shares" under proviso to Reg. 29(4); Also rejects Appellant's contention that non-disclosure of pledged shares in audited accounts as 'investments' will not have any bearing in construing scope of proviso to Regulation 29(4) and states that proviso's ambit is to be construed on basis of language used in said proviso and not on basis of treatment given to shares acquired by invocation of pledge; Holds that SEBI is justified in stating that acquisition of shares by invocation of pledge, requires necessary disclosures under Reg. 13(1) of Insider Trading Regulations as it includes phrase "any person" which is wide enough to cover SCB / PFIs.: SAT

[\[LSI-47-SAT-2014-\(MUM\)\]](#)

### **SEBI: Orders post facto open offer after 16 years, rejects 'passage of time' contention**

SEBI orders noticees to make public announcement of its purchase of target company's shares, acquired in 1998 pursuant to preferential allotment, rejecting 'passage of time' & 'change in circumstances' contentions; Holds since 'passage of time' had occurred on account of noticees preferring appeals to HC, it "cannot and should not be a ground for deviating from the normal rule of directing an open offer.. such grounds if allowed would only enable acquirers to wriggle out of their liability"; Orders company to

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implement open offer as an equitable remedy, not coercive action, for economic benefit of shareholders as well as to provide exit opportunity, which is their valuable right; Also rejects noticees' excuse of negative net-worth and lack of resources for acquiring target company's shares in an open offer, states *"such grounds cannot be a valid defence"*; On noticees' argument that they had ceased to be shareholders of target company and thus, fastening any obligation on them to acquire shares thereafter was devoid of logic, holds, *"once a liability is incurred to make an open offer, such liability is not discharged till the open offer is made. The liability shall remain irrespective of whether that entity continues or ceases to be the shareholder"*; Also rules out noticees' contention that SEBI's power to direct open offer was introduced only in 2002 and so it can make such directions in instant case, holds even earlier to 2002, SEBI was empowered to pass any directions in interest of securities market; Relies on SC ruling in Clariant International Limited and another vs. SEBI and also directs 10% interest payment for violation of Takeover Code.: SEBI

[\[LSI-212- SEBI-2014-\(MUM\)\]](#)

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### **SEBI: Pardons 'technical/minor' breach of Takeover Code; Regulations' strict enforcement not warranted**

SEBI reprimands promoters, abstains from giving directions for the technical/minor breach of Takeover Regulations relating to inter se transfer of shares of target co.; Observes that the acquirer falls within the definition of "promoter group" in accordance with Takeover Regulations read with ICDR Regulations as relative of promoters of Target Co. held 66% in the acquirer; States that classification of acquirer as 'promoter group' was not disclosed to stock exchanges ('SE') under listing agreement and holds that *"had acquirer been disclosed by target company in its 'promoter group' for 3 years prior to acquisition, then such acquisitions would have been automatically exempt under Reg. 10(1)(a)(ii) from applicability of Reg. 3(2) of Takeover Regulations on account of being inter se transfer of shares amongst promoters"*; Observes that in accordance with Takeover Regulations, promoters & members of promoter group are deemed to be 'person acting in concert' ('PAC'), unless contrary is established and rules that it's obvious that burden of establishing contrary lies on persons claiming it; Rejects Noticee's contention that they were not acting in concert with each other for purpose of acquisition as there has been no change in shareholding of acquirer & target company; Relies on Bombay HC's judgment in SEBI Vs. Cabot International Capital Corporation which laid down principle that where breach of the regulation is unintentional, not deliberate, technical, minor and based on a bona fide belief, strict enforcement of the regulations may not be warranted.: SEBI

[\[LSI-199- SEBI-2014-\(MUM\)\]](#)

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### **SEBI: Annual Takeover Code disclosures mandatory, irrespective of Stock Exchange's 'functional status'**

SEBI's Adjudicating Officer imposes penalty on Pal & Paul Builders Ltd. ('Noticee Co.') for failing to make annual disclosures for 14 years under Takeover Regulations to non-functional Delhi Stock Exchange ('DSE'); States the *"fact that DSE was non-functional does not absolve Noticee company from making disclosures under Takeover Regulations"*; Rejects Noticee Co.'s contention that DSE does not have dissemination module in place & no loss has occurred by delayed disclosures; Notes yearly disclosures made by other companies and remarks that as *"DSE was fully functional till 2003, Noticee should have complied with disclosure provisions at least till 2003"*; Relies on SC's Ruling in SEBI v. Shri Ram Mutual Fund that once contravention of SEBI regulations is established, intention of parties committing such violation becomes totally irrelevant and penalty ought to follow: SEBI

[\[LSI-283- SEBI-2014-\(MUM\)\]](#)

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### **SEBI: Public Announcement mandatory for creeping acquisition post-2009 SEBI clarification**

SEBI directs promoter group of target co. (noticees) to make public announcement of share acquisition, as they collectively acquired more than 5% shareholding (creeping acquisition) under Regulation 11(2) of Takeover Regulations; Rejects noticees' contention that applicability of Regulation 11(2) was doubtful post 2008 amendment, holds that since SEBI had clarified the regulation on August 6, 2009, "they cannot feign ignorance about applicability of regulation 11(2) as clarified by circular dated August 06, 2009 and cannot be given benefit of doubt with regard to these acquisitions"; Also rejects noticees' submission that since their individual shareholding did not acquire more than 5% shareholding, public announcement could not be directed, holds "since the noticees were collectively holding more than the threshold of 55% stipulated in regulation 11(2) as on August 6, 2009 (i.e. (69.97% ), an acquisition of even a single share would have triggered the open offer requirement under regulation 11(2)"; However, gives benefit of doubt to noticees for share acquisition before August 6, 2009 (i.e., when the clarification was issued); Also directs notices to pay 10% interest as public announcement now would provide delayed exit opportunity to shareholders of target company :SEBI



[\[LSI-250- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Relaxes open offer rigours for inadvertent breach of Takeover Code; Orders divestment**

SEBI lets off noticee co. with a rap for breach of Takeover Code; Preferential allotment of 10,000 shares to acquirer, led to an increase in promoters collective shareholding in target co. (from 66.81% to 72.04%, increase of 5.23%) beyond 5% creeping acquisition limit; Even though compliance requirements relating to preferential allotment were complete, holds that compliance of Takeover Regulation is independent & ought to have been complied with; Rejects noticee's contention that acquisition was unintentional & minimal increase, however considers 'peculiar facts' of case, non-clandestine acquisition of shares, no price advantage to promoters nor any detriment caused to non-promoter shareholders; Directs noticee to sell excess 146 shares (0.23%) on stock exchange and transfer the proceeds to Investor Education and Protection Fund, terms it as commensurate consequence to breach .: SEBI [\[LSI-221- SEBI-2015-\(MUM\)\]](#)

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### **SAT: Upholds SEBI order penalizing blind person for disclosure lapses under Regulations**

SAT dismisses appeal, upholds SEBI order penalising appellant for failure to make required disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 & SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011; Rejects appellant's contention that he had not accrued any gain/ disclosure failure was unintentional and that requisite details of shares transacted were already available on stock exchange website; Further rejects appellant's contention that he being blind person, SEBI ought to have given a sympathetic consideration, holds that "when a person dealing in shares in stock market violates any of regulatory provisions, then that person whether blind or not, cannot escape penal liability"; Also observes that appellant is not novice in stock market and has been regularly dealing in shares of various cos. for several years: SAT

[\[LSI-316-SAT-2014-\(MUM\)\]](#)

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### **SEBI: Imposes penalty for delayed Public Announcement; Rejects listing agreement compliance defense**

SEBI imposes penalty on Acquirer & Person Acting in Concert (collectively, 'Noticees') for violations of Regulation 13(2)(e) of Takeover Regulations, 2011 in failing to make public announcement within

stipulated time; Holds that due to execution of merger agreement and indirect share acquisition in target co., Noticees ought to have made public announcement within prescribed time; Rejects Noticees' contention that requisite disclosure was made by Target Co. to stock exchanges under Cl. 36(7) of Listing Agreement and such disclosure though not in prescribed format, was made with 'intention and spirit' of disclosing information to shareholders; Holds that disclosure by target co. to stock exchange under Cl. 36(7) cannot serve objective of Acquirer's public announcement under Takeover Regulations; States that "Takeover Regulations in first place has put onus of public announcement on Acquirer, and not on target company, and rightly so, as public announcement does not merely involve intimation of acquisition to public shareholders, but, an announcement of open offer by acquirer for acquiring shares disclosing the size of offer, offer price...."; Rejects Noticees' contention of being unaware of Regulations, quotes Latin maxim 'Ignorantia legis neminem excusat' and states that ignorance of law is not an excuse & will not exclude any person from penalty for breach; Holds that failure to make public announcement to acquire shares at minimum price is 'serious matter', that cannot be considered mere 'technical' lapse, as investors are deprived of an exit opportunity: SEBI

[\[LSI-303- SEBI-2015-\(MUM\)\]](#)

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**SEBI: Erroneous share-transfer an 'acquisition', to be disclosed; No investor impact argument, irrelevant**



SEBI levies penalty on promoters (noticees) for not disclosing inter se off-market share transfer above the threshold limit, though the shares were erroneously transferred and status-quo ante was restored; Rules that when shares were transferred from demat account of one promoter to another, it was an 'acquisition' within the meaning of Takeover Code and "*SAST Regulation gets triggered the moment definition of acquirer is satisfied and liability to make disclosure arises once the shareholding of a person exceeds the limits prescribed under SAST Regulations irrespective of the mode and the manner of acquiring those shares.*"; Also observes that disclosure of such off market share transfer ought to have been made under Prohibition of Insider Trading Regulations (PIT) as well; Rejects promoters' contention that aforesaid transfers did not provide them with any disproportionate gain / unfair advantage or did not have any adverse impact on the investors and the market, holds "*once it is established that noticees had an obligation to make disclosures under SAST Regulations as well as PIT Regulations, noticees cannot escape penal liability prescribed under the provisions of SEBI Act*"; Further rejects promoters' argument that violations were unintentional and technical in nature, relied on SC ruling in SEBI Vs. Shriram Mutual Fund to hold that intention of parties becomes irrelevant when statutory obligations are contravened:SEBI

[\[LSI-287- SEBI-2015-\(MUM\)\]](#)

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**SEBI: Penalises acquirers & PACs for non-submission of report under Takeover Regulations to SEBI**

SEBI's Adjudicating Officer (AO) imposes penalty on promoters (i.e. acquirer & persons acting in concert, 'PACs') for failure in submitting report to SEBI under Reg. 3(4) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations') within prescribed time; Observes though promoters are not required to make public announcement for increase in their shareholding (from 48.64% to 63.26%) by acquiring unsubscribed portion of rights issue as requisite disclosures are made in offer document, they ought to have submitted post-acquisition report to SEBI within 21 days from date of acquisition, which Noticees have failed to submit it; Rejects noticees contention that lapse was technical and unintentional, relies on P. N. Bhagwati Committee report on 1997 regulations which recommends that "*in order to ensure transparency...all exempted transactions should be subject to reporting requirements to the concerned stock exchange...and to SEBI*";Relies on SAT observations in

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Rajesh Toshniwal v. SEBI, Milan Mahendra Securities Pvt. Ltd Vs. SEBI, Cabot International Capital Corporation v. AO, SEBI and SC ruling in SEBI Vs. Shri Ram Mutual Fund: SEBI

[\[LSI-329- SEBI-2014-\(MUM\)\]](#)

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### **SEBI: Trading suspension in shares no justification for non-disclosure of off-market transaction**

SEBI directs disinvestment of shares acquired by noticees without making public announcement under Reg. 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('Takeover Regulations, 1997'), also orders transfer of entire sale proceeds to Investor Protection & Education Fund; Observes that acquiring shares through off-market transactions which breaches prescribed threshold, violates Takeover Regulations and holds that wrong disclosure to stock exchange of a person not being 'promoter' is irrelevant as Takeover Regulations compliance is independent of stock exchange compliance; Rejects Noticees' contention that shares were held under Employees Welfare Trust which does not carry any 'voting rights', refers Press Note issued by Dept. of Company Law Administration u/s 153 of Companies Act, 1956 and holds that voting rights remain with Noticees and cannot be excluded from 'promoters shareholding'; Rejects noticees' preliminary objection that Takeover Regulations would not apply since trading in target company's shares was suspended at the time when acquisition was made, states in terms of Reg. 2(1)(o) of Takeover Regulations, 1997 'target company' means a 'listed company' and it is irrelevant that shares acquired in listed co. are traded or not; Further rejecting noticees' contention, states that proceedings initiated by show cause notice could not be vitiated merely because it refers to wrong provision of 2011 takeover Regulations, holds that "mentioning of a wrong provision...will not invalidate the order if the source of such power can be traced to a different provision": SEBI



compliance is independent of stock exchange compliance; Rejects Noticees' contention that shares were held under Employees Welfare Trust which does not carry any 'voting rights', refers Press Note issued by Dept. of Company Law Administration u/s 153 of Companies Act, 1956 and holds that voting rights remain with Noticees and cannot be excluded from 'promoters shareholding'; Rejects noticees' preliminary objection that Takeover Regulations would not apply since trading in target company's shares was suspended at the time when acquisition was made, states in terms of Reg. 2(1)(o) of Takeover Regulations, 1997 'target company' means a 'listed company' and it is irrelevant that shares acquired in listed co. are traded or not; Further rejecting noticees' contention, states that proceedings initiated by show cause notice could not be vitiated merely because it refers to wrong provision of 2011 takeover Regulations, holds that "mentioning of a wrong provision...will not invalidate the order if the source of such power can be traced to a different provision": SEBI

[\[LSI-361- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Immediate rectification bringing promoter-group below 'open offer' threshold still violates Takeover regulations**

SEBI's Adjudicating Officer ('AO') imposes penalty on Acquirer & Person Acting in Concert ('PAC') for failing to make public announcement in accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('Takeover Regulations, 1997') due to increase in shareholding of promoters group from 54.99% to 55.01%; Notes that the Acquirer who was acting in concert with other promoters breached the 55% threshold limit due to the acquisition of 1,000 shares and observes that "*it is the basic principle of corporate law that the promoter group is a homogeneous class and it is normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer*"; SEBI, AO rejects promoters' contention that violation was immediately rectified by reducing shareholding of promoter-group back to 54.99% (by selling shares in the market), states that "*Takeover Regulations does not provide for any rectification mechanism... once open offer is triggered*"; Observes that purpose of making public announcement is not mere intimation of acquisition to general public but providing an exit opportunity and rules that "*failure to make public announcement to acquire shares at a minimum price is a serious matter and cannot be considered a mere 'technical' lapse, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of an exit opportunity at the relevant point of time*"; Refers to Reg. 44 (g) (provision under which SEBI can direct disinvestment of excess shares), states that such relaxation is not available for violation of Reg. 11 and relies on SAT observations in Rajesh Toshniwal Vs SEBI, Akriti Global Traders Ltd. Vs. SEBI: SEBI

[\[LSI-434- SEBI-2015-\(MUM\)\]](#)

### SEBI: 'Profit refund' inappropriate remedy for Takeover Code violation, directs public announcement

SEBI directs promoter group ('Noticees') to make public announcement and consideration payment at 10% p.a. for non-compliance of Takeover Regulations, 1997 for acquiring shares in Target Co. (PH Trading Ltd) and breaching prescribed threshold; Observes that between Aug.-Nov.2009, acquirers acquired 9.11% [exceeding 5% creeping limit under Reg. 11(2) of the Regulations] shares of target co. through off-market transactions, for which noticees failed to make prescribed public announcement; Notes that share were acquired by the Noticees at very low price (Rs. 3.71 per share), but if public

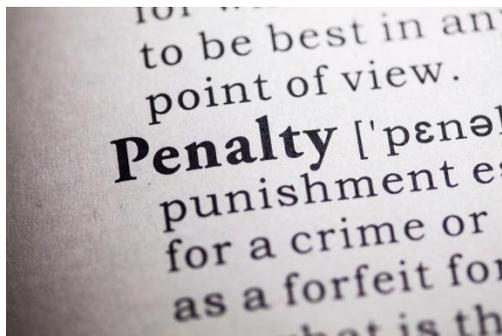


announcement was made, the open offer price as per Takeover Regulations would be have been higher (and double) at Rs. 7.83 per share, accordingly SEBI concludes that shareholders were deprived of exit opportunity at best offer price; With respect to sale of acquired shares at profit, SEBI rejects Noticees' proposal to return the profits gained to buyers of shares, observes sale was through off-market transactions at negotiated price & not in transparent manner wherein the identity of buyers was undisclosed; SEBI relies on SAT observations in Rajesh Toshniwal v. SEBI and Nirvana Holdings Pvt. Ltd. v SEBI:SEBI

[\[LSI-495- SEBI-2015-\(MUM\)\]](#)

### SEBI: Penalizes promoters for 'repetitive' non-disclosures under Takeover Code & Insider Trading Regulations

SEBI's Adjudicating Officer ('AO') imposes penalty of Rs. 35 lakhs on promoter group ('noticees') of Austral Coke and Projects Ltd. for non-disclosure of change in shareholding under Takeover Code (at 15 instances) & Insider Trading Regulations (2 instances), for the violation being 'repetitive' nature; SEBI AO observes that Noticees' share holding was 65.29%, and majority stake was off-loaded during Nov. 2009 to Jan. 2010, for which Noticees failed to disclose under Reg. 7(1A) of Takeover Code, also observes that one of Noticee's shareholdings (22.78% shares) was pledged with SICOM which was invoked, and



Noticee failed to make disclosure under Insider Trading Regulations; Interprets Reg. 7(1A) of Takeover Regulations, states that provisions are triggered, on satisfaction of two conditions (i) if acquirer has acquired shares / voting rights either under Reg. 11(1) or second provisions to Reg. 11(2) & (ii) such purchase / sale aggregates 2% or more of target company's share capital; SEBI refers stock exchanges website, observes that Noticees had acquired shares only after Oct. 2008 (before amendment in Takeover Regulations), accordingly concludes that acquisition of shares falls under second proviso to Reg. 11(2) and

ultimately falls under Reg. 7(1A) of the Takeover Regulations; With reference to pledge invocation by SICOM, SEBI rejects Noticee's contention that invocation was made without informing Noticee, holds that "pledge is invoked when conditions of agreement entering into pledge are violated by pledgor" and that the Noticee at the time of offering shares was fully aware of the outcome of violation the agreement; Gives concluding remarks that by non-disclosures of such information, Noticee has deprived investors of important information at relevant time, states that India's entire securities market stands on disclosure based regime, where 'accurate' & 'timely' disclosures are fundamental in maintaining securities market's integrity:SEBI

[\[LSI-483- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Penalises target co. for annual shareholding disclosures, ‘belated’ disclosure doesn’t serve purpose**

SEBI penalises Madhusudan Securities Ltd. (‘noticee’) for failure to make annual shareholding disclosures to stock exchange (‘SEs’) under Regulation 8(3) of 1997 Takeover Regulations within prescribed time; Rules that co. related disclosures are made public only through SEs and the basic purpose of requiring timely disclosures to SEs under takeover regulations is to ensure that investing public is not deprived of vital information, thus dissemination of complete information is required and delayed/ belated disclosure would serve no purpose at all; However, with regard to the alleged violation of Takeover Regulation by noticee as acquirer did not making public announcement for authorization of transfer of noticee’s 48% shares, observes that such transfer was inter se transfer among members of same group; Thus, holds that acquirer was exempt from making public announcement, and noticee did not violate Takeover Regulations for not confirming with such public announcement: SEBI

[\[LSI-508- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Directs promoters to make public announcement for clandestine acquisitions & takeover regulations breach**

SEBI directs target company’s promoter group (‘Noticees’) to make public announcement for acquiring shares of target company in accordance with 1997 Takeover Regulations, also directs consideration payment @ 10% p.a. interest; Observes that noticees substantially consolidated their shareholding in target company by acquiring shares when benefit of creeping acquisition was not available to them and when it was available they breached 5% limit and further consolidated their shareholding despite clarification issued by SEBI circular; Holds such subsequent acquisitions as clear proof of noticees little regard for process of law and/ or any intent to comply with the requirements of regulation 11(2) of Takeover Regulations, 1997, states that by failing to make requisite public announcement at the time of acquisition “noticees have deprived the shareholders the exit opportunity at the best offer price”; Also holds that noticees made impugned acquisitions clandestinely since they did not make requisite disclosures to stock exchange under regulation 7(1A) of Takeover Regulations; Relies on SAT observations in Nirvana Holdings Private Limited vs. SEBI: SEBI

[\[LSI-567- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Penalises co. for disclosures delay under Takeover-Regulations; Rejects ‘previous management’s responsibility’ defence**



SEBI imposes penalty of Rs.7 lakhs on Mipco Seamless Rings (Gujarat) Ltd. [‘Noticee’] for delay in making annual disclosures for 4 financial years, thereby violating Regulation 8(3) SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997; Rejects noticee’s submission that such delays were done under previous management, states that adjudication proceeding are against the Noticee and not against erstwhile / present management; Observes that “SAST Regulations unequivocally states that the

*disclosure has to made by the company*”; Also points out that “noticee is a separate and distinct legal entity from the management of the company with a perpetual succession”: SEBI

[\[LSI-548- SEBI-2015-\(MUM\)\]](#)

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### **SAT: HUF, though not director, deemed “person-acting-in-concert”, liable for Takeover Code compliance**

SAT upholds SEBI order imposing Rs 8 lakhs penalty on persons-acting-in-concert (‘PAC’) for not making disclosures about acquisition of shares of target co. above the threshold limit; Rejects appellant’s

contention that since it was an HUF, it wasn't a director of the acquirer co., thus, it could not be held as PAC, and no penalty could be levied on it; Holds that since the director (who was the karta of HUF) in his individual capacity decided to acquire shares of target co. in the name of HUF and in his capacity as a director decided along with other directors.. *"it is evident that there was a common intention between the parties to acquire the shares of the target company..."*, thus, it was a deemed PAC; Referring to Regulation 2(1)(q)(2) of SAST Regulations, 2011, holds that where shares of target co. are acquired by company, its directors and person associated with their director, they would squarely fall within category of 'deemed persons acting in concert', thus HUF was deemed PAC; Rejects appellant's contention that no penalty was imposable as no unfair advantage had accrued to it and no loss was caused to investors on account of non- disclosure, holds that, *"liability to pay penalty for failure to make disclosure is not dependent on the question as to whether or not unfair advantage has accrued or loss is caused to the investors or not."*:SAT

[\[LSI-579-SAT-2015-\(MUM\)\]](#)

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### **SEBI: Directs public announcement for share acquisition, rejects Regional Director approval defence**

SEBI directs promoters of target co., Vision Cinemas Ltd., to make public announcement of share acquisition (by way of preferential allotment), as it resulted in increase in individual & collective shareholding beyond the threshold limit, and pay 10% interest alongwith consideration for delayed announcement; Rejects noticees' contention that since alleged share allotment was approved by Regional Director, MCA, it was exempt under Takeover Regulations from open offer requirement; Observes that Regional Director's approval was not sought pursuant to a scheme of arrangement, as required under Regulations, but was an approval of a contract which could be entered into only with prior approval of Regional Director as required under Companies Act, 1956; Further rejects noticees' contention that preferential allotment was made without receiving in-principle approval from BSE and shares allotted to them were not yet credited to their demat accounts, thus, since shares were technically not allotted to them, no public announcement open offer could be made, holds that, *"if a person agrees to acquire shares / voting rights or control over the target company, he becomes an acquirer to make public announcement"*; On noticees' submission that they had not yet exercised their voting rights, observes *"It is the entitlement to exercise voting rights which triggers the obligation under those regulations and not the actual exercise of voting rights or availing of other rights such as dividend, etc"*; Relies on Bombay HC ruling in B. P. Amoco Plc. Vs. SEBI & SAT ruling in Shri Sharad Doshi vs. The Adjudicating officer and others: SEBI

[\[LSI-573- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Directs public announcement for share-acquisition, interprets 'connected companies'; Rejects 'price stabilization' defense**

SEBI directs promoters of target co. and persons acting in concert ('PAC', collectively termed as 'Noticees') to make public announcement for acquiring target co.'s shares within prescribed time along with interest, observes that such acquisition was made in clandestine manner and in violation in Reg. 11(2) of Takeover Regulations, 1997; Notes the fact that consequent to share warrant conversion into equity shares, the combined shareholding of certain private cos. (i.e. 'PAC') which were controlled by the promoter, increased from 74.90% to 85.18%; Rejects Noticees' contention that such private cos. are neither PAC nor 'connected' with each other or from promoters group, peruses relevant definitions in Takeover Code, holds that PACs must be involved in common objective of share acquisition / voting rights / in



gaining control over target co. and the same is determined on factual situations; SEBI observes that the private cos. (PACs) have common directorship, phone number, address, email address which 'buttresses the conclusion' that these entities are connected to each other, takes into account transactions w.r.t. share warrant conversion, holds "connected cos. have demonstrated meeting of minds and common objective of substantial acquisition, whereby the whole scheme was devised by promoters to acquire substantial shares of target co. acting in league with the connected entities"; Also rejects noticees' contention that promoters traded in target co.'s shares with an intention to stabilize scrip price and prevent further price erosion, holds that "if promoters were trying to increase / stabilize scrip price in falling market, this would be illegal as the promoters were hampering the price discovery mechanism of the stock exchange and this act would be akin to market manipulation"; Relies on SC ruling in Technip SA & Daiichi Sankyo Company Ltd. Vs. JayaramChigurupati&Ors., Bombay HC ruling in K. K. Modi Vs. SAT, and SAT ruling in Nirvana Holdings Private Limited vs. SEBI:SEBI

[\[LSI-652- SEBI-2015-\(MUM\)\]](#)

### **SEBI: Takeover Code contemplates independent disclosures from co. & promoters, Rejects 'double jeopardy' defense**

SEBI, Adjudicating officer penalizes Tumus Electric Corporation Ltd. ('Noticee Co.') for continuous delay of 15 years in making disclosures under Reg. 8(3) of Takeover Code (relating to 'disclosure by listed company within prescribed time from end of FY and record date'); Rejects Noticee co.'s contention that disclosures under Reg. 8(3) were dependent on disclosures submission under Reg. 8 (1) & 8 (2), observes that such disclosures are independent as disclosures under Reg. 8(3) are on yearly basis irrespective of change in shareholding of person / promoters; Rejects Noticee co.'s submission that co. promoter have already been penalized under adjudication proceeding and any penalty on Noticee Co. would be double jeopardy, holds that "two separate requirement of disclosures viz. one from promoter and another from company, has been mandated under Takeover Code which are independent of each other"; Relies on SAT rulings in Hybrid Financial Services Ltd. wherein it was held that persons holding 15% and more shares are obligated to make disclosure even when there is no change in the shareholding:SEBI

[\[LSI-688- SEBI-2015-\(MUM\)\]](#)

### **SEBI: Penalizes promoters/connected-persons for non-compliance of multiple SEBI-Regulations; Rejects non-residents shareholders' exit**

SEBI imposes penalty on promoters and 'connected persons' ('Noticees') for non-compliance of Insider Trading Regulations, Takeover Code and Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market, Regulations ('PFUTP Regulations'), for trading in the scrip based on 'price sensitive information'; Observes that the co. had secured work orders of Rs 464.17 crore from three Electricity Boards and prior to making such corporate announcement to the stock exchanges, certain entities (relating to promoters / Chairman and Managing, 'CMD') traded in scrip when the CMD was one of the participants in such discussions/meetings; Rejects Noticees' contention that work order are 'normal routine business' orders for any engineering process company, pursues the co. financials and observes these orders are for more than half of previous year's orders and accounted for nearly half the current year's increase, opines that orders are not just 'routine' and are likely to materially affect scrip price (i.e. price sensitive information); Also notes that CMD through 'connected' cos. funded the share purchase, and after share-sale, the proceeds were transferred to promoters, observes that these entities acted as conduit in routing and transferring the funds; Rejects Noticees contention that motive of purchasing shares was to provide an exit route for non-resident shareholders and the bulk deal was carried out for preventing sudden fall of scrip price, observes "CMD is trying to artificially maintain scrip price as he



feared that if he purchased the shares directly from NR, the market would get an impression that he was increasing his shareholding in the co.”; Concludes that CMD’s wife and other connected persons/entities are ‘related’ CMD, who have gained out of Insider Trading, and have violated PFUTP Regulations:SEBI [\[LSI-783- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Penalizes promoters for Takeover Code violations, relies on Merchant Banker’s certified Offer-Letter**

SEBI penalizes listed co.’s promoters (‘Noticees’) for non-compliance of Reg. 8(1) and Reg. 8(2) of Takeover Regulations, 1997 for several years, relies on Offer Letter (certified by Merchant Banker) filed by acquirer for issuing show cause notice; Rejects Noticees’ contention that allegations are merely on suspicions and conjecture based on details given in Letter of Offer and there has been no independent application of mind by SEBI, holds that “if such argument is to be accepted, then the basis of regulatory requirement of appointing SEBI-registered Merchant Banker for conducting due diligence in an open offer would become redundant and would also naturally raise the basic question on the *raison d’être* of Merchant Banker”; Peruses SEBI (Merchant Banking) Regulations, observes that Merchant Banker is responsible for verification of contents of the Letter of Offer and is required to submit a due diligence certificate prior to opening of the issue, holds that Noticees have failed to appreciate the same while concluding on the non-compliance of Takeover Regulations; Rejects Noticees’ contention that the violations are nearly 19 years old, and it is wholly unreasonable to level an allegation two decades later and expect innocence should be proven, holds that there is no limitation on initiation of adjudication proceedings for violation of various provisions of SEBI Act and SEBI Regulations, relies on SAT ruling in RadheyshyamChiranjilalGoenka Vs. SEBI, Adjudicating Officer, SEBI; Holds that Noticees cannot absolve themselves by making disclosures under Listing Agreement in lieu of making necessary disclosures under Takeover Regulations as purpose and intent of both the laws are different, relies on SAT ruling in Premchand Shah and Others V. SEBI and Bindal Synthetics Private Limited Vs. SEBI:SEBI [\[LSI-780- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Shareholding increase beyond threshold post-merger requires disclosures under Takeover Code/Insider Trading Regulations**

SEBI penalizes co. promoter (‘noticee’) for failing to make timely disclosures under Takeover Code and Insider Trading Regulations pertaining to his acquisition/sale of shares in co.; Notes that noticee was allotted 73,10,780 shares pursuant to merger scheme, resulting in shareholding increase to 9.81 % stake, which required disclosures under the said Regulations; Observes that such disclosure under the Regulations was made with a delay of more than 7 months; SEBI observes that Noticee being co. promoter, timely disclosures by him under relevant Regulations were of significant importance from shareholders’ perspective, states “purpose of these disclosures is to bring about transparency in transactions and assist Regulator to effectively monitor the transactions in the securities market”:SEBI [\[LSI-966- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Ignorance of Indian laws can’t absolve foreign investors, directs public-announcement of share-acquisition**

SEBI directs two foreign investors (Baader Bank Aktiengesellschaft and Gulf Investment Services Holding Co. ‘Noticees’) to make separate public announcements for acquiring shares in Indian co. (‘target co’) under Takeover Regulations; Observes that shareholding of foreign investors went beyond 15% of share capital of target co., after preferential allotment, which triggered the requirement of making public announcement of the open offer; Rejects Noticee’s contention that they had not deliberately violated Takeover Regulations but promoters of target co. made



misrepresentations and they, being foreign investors were not accustomed to Indian requirements and therefore, relied upon promoter's representations in good faith; Holds that "noticees making such huge investments, as in this case, in an Indian listed co. were expected exercise due diligence and follow all applicable laws. Ignorance of applicable laws or misunderstanding, if any, with regard to mandatory public offer obligation cannot absolve them."; Notes that since public announcement now would provide a delayed exit opportunity to shareholders of target co., noticees should pay also pay interest on consideration amount:SEBI

[\[LSI-1007- SEBI-2016-\(MUM\)\]](#)

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### **SEBI: Penalizes PAC for acquisition through bulk deals without public-announcement; Explains 'bulk transaction'**

SEBI penalizes Persons Acting in Concert ('PACs'), promoter group entities of listed co., for acquiring 22,25,000 shares (constituting 3.30% of equity capital) through bulk deal and without complying with Takeover Code, 1997; Peruses provisions of the Code, notes that any acquirer along with PACs, holding 55% but less than 75% of shares / voting rights, acquires (through open market purchase but not bulk deal /block deal/negotiated deal/ preferential allotment) any additional shares / voting rights together with PACs in that co., has to make a public announcement; Rejects Noticees' contention that they are exempt from making public announcement under second proviso to Reg. 11(2) (which states that acquirer along with PACs can acquire up to 5% additional shares / voting rights subject to the condition that said acquisition is made through open market purchase in normal segment on the stock exchange but, not through bulk deal /block deal/negotiated deal/ preferential allotment); Holds that instant case is of 'bulk deal' which is not exempted from 'public announcement' as contended by noticees; Peruses SEBI Circular that defines 'bulk deal' as all transactions in a scrip where total quantity of shares bought/sold is more than 0.5% of no. of listed equity shares; Observes that PACs were holding 66.61% shares and 3.30% were acquired through bulk deals, states that acquisition of 3.30 % exceeds quantitative limit of 0.5%, resulting in 'bulk transaction'; Relies on SC ruling in Swedish Match AB Vs SEBI, wherein it was held "indisputably, the purport and object of which a regulation is made must be duly fulfilled. Public announcement is at the base of Reg. 10, 11 and 12. Except in a situation which would bring the case within one or the other 'exception clause', the requirement of complying with the mandatory requirements to make public announcement cannot be dispensed with":SEBI

[\[LSI-1096- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Grants exemption from open-offer compliance in share-acquisition by Family Trust for streamlining family succession**

SEBI grants exemption from compliance of Reg. 3 and Reg. 4 (relating to 'substantial acquisition of shares/voting rights' and 'acquisition of control', respectively) under Takeover Code, 2011 from making



open offer for proposed acquisition of 22.28% (15.39% from one promoter and 6.89% from another promoter) by Family Trust in Target Co.; Notes that such acquisition is not being done to third parties but to private family trust, observes that by such transfer, the beneficiaries continue to be family members; SEBI also notes that such acquisition is only a private family arrangement to streamline family succession and welfare, observes that there would be no effective change in exercise of voting power or in control/ management of Target Co.; Clarifies that the exemption granted shall not be construed as exemption from disclosure

requirements under Companies Act, Takeover Code, Insider Trading Regulations and Listing Regulations: SEBI

[\[LSI-1087- SEBI-2015-\(MUM\)\]](#)

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### **SEBI: Exempts Govt. from making open-offer for capital infusion under Basel norms in Allahabad Bank**

SEBI grants exemption to the proposed Acquirer, Government of India, from complying with provisions of Reg. 3(2) of Takeover Code, 2011 (relating to making of open offer) for proposed acquisition of 10,92,29,064 equity shares of Allahabad Bank by way of preferential allotment; Notes that after acquisition, Govt.'s shareholding would increase by 5.83% from 61.38% to 67.21%; Notes Govt.'s justification that it desires that all public sector banks should be adequately capitalized to keep safe buffer over and above minimum norms of Basel III, also notes that RBI has permitted the Bank to treat capital infusion fund as a part of Common Equity Tier-1 (CET 1) Capital under Basel III norms as on March 31, 2016; Clarifies that the exemption granted shall not be construed as exemption from disclosure requirements and compliance under Banking Companies (Acquisition and Transfer of Undertakings) Act, Companies Act, Takeover Code, Insider Trading Regulations and Listing Regulations: SEBI

[\[LSI-1086- SEBI-2016-\(MUM\)\]](#)

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### **SEBI: Refrains from ordering acquired shares' divestment on delayed open-offer, weighs investors' interest**

SEBI directs acquirer ('Noticee') of Calcutta Stock Exchange listed entity ('target co.') to pay interest on consideration amount to the shareholders who tender their shares in open offer, on account of delayed public announcement for his acquisition beyond the threshold limits; Notes that noticee had acquired 15.88% of share capital of Target co. (more than 15% threshold under Regulation 10 of Takeover Regulations, 1997) on August 01, 2011 and further 13.97% (more than 5% creeping acquisition threshold under Regulation 11) on August 05, 2011, and public announcement was made only on January 25, 2016; However, observes that noticee had offered exit price to shareholders at a much higher price than price calculated under Takeover Regulations and prevailing market price of shares, thus, accepts noticee's contention that open offer would best serve investors' interests than divesting of shares, relies on Nirvana Holdings Private Limited vs. SEBI; Also observes that Regulations 10 and 11 that mandated public announcement in different situations were mutually exclusive regulations, however, clarifies that there might be cases where, to some extent, regulations might overlap with each other, in which event it would be open to acquirer to issue a combined public announcement fulfilling the requirement of all or two regulations: SEBI

[\[LSI-1079- SEBI-2016-\(MUM\)\]](#)

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