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Tweak in takeover tale
A month to go for new rules

OUR SPECIAL CORRESPONDENT

Mumbai, Sept. 23: The Securities and Exchange Board of India (Sebi) today formally notified the new takeover code that raises the trigger for an open offer to 25 per cent from 15 per cent at present.

It will also be mandatory for the acquirers of companies to come out with an open offer to buy an additional 26 per cent from minority shareholders at the same price as they pay the promoters of the target company.

Until now, the open offer size was capped at 20 per cent.

The board of the market regulator had adopted the new rules at its meeting on July 28 after substantially altering the recommendations of a technical advisory committee set up under the former chairman of the Securities Appellate Tribunal (SAT), C. Achuthan. The committee submitted its report in July last year.

The new regulations will come into effect after 30 days.

However, the final takeover regulations modified some of the decisions that were taken at the Sebi board meet in July. Back then, the regulator had said there would be no separate provision for the payment of non-compete fees and all shareholders would have to exit at the same price.

The new rules say that a non-compete fee or a control premium charge can be paid to a promoter selling his stake. But this will have to be factored into the calculations of the open offer price. This reverts to the recommendation made by the Achuthan committee.

The issue had turned into a major *cassus belli* in the Cairn India takeover when Sebi said that Indian regulations had no provision for the payment of a non-compete fee.

Cairn Plc of the UK, which was eyeing a Rs 50 non-compete fee, was hoping to get Rs 405 per share against the Rs 355 per share offered to the minority shareholders of Cairn India.

Cairn Plc had to eventually drop the extra Rs 50 per share in order to secure regulatory approvals for the stake sale to the Vedanta group.

The new rules will thus allow the payment of a non-compete fee but will force the buyer to offer the same price to the small shareholder.

Notifying the norms, the market regulator said if the acquirer, or persons acting in concert with him, acquired shares of the target company during the period of 26 weeks after the tendering period at a price higher than the open offer price, the acquirer and persons acting in concert would have to pay the difference between the highest acquisition price and the offer price to all the shareholders whose shares were accepted in the open offer within 60 days from the date of such acquisition.

The notification contained most of the decisions that were taken by the market regulator in July, including the requirement that the board of the target company should make a recommendation to the shareholders whether to accept or reject the open offer.

But the regulations seemed to have left out one of the major decisions that the Sebi board had taken in July. It had said then that in the case of competitive offers, the successful bidder “can acquire shares of other bidder(s) after the offer period without attracting open offer obligations”.

There was no explicit mention of this in the new rules.

With Sebi’s norms coming into effect after a period of 30 days, there could be interesting developments on the corporate front, particularly in the case of East India Hotels where ITC and Reliance Industries have the option of increasing their stake up to 24.99 per cent.