BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI

Present: Shri. Ashok Kumar Tripathi
Member (Judicial)

Company Appeal No. 21 of 2014

Under Sections 58 and 59 of the Companies Act, 2013.

In the matter of:

M/s Transchem Ltd. ... **Appellant**

Versus

M/s Firstcorp International Ltd. & Ors. ... **Respondents**

Appellant:

M/s Transchem Ltd.

Respondents:

1. **Firstcorp International Limited. (R-1)**
2. **Earthtech Enterprises Limited. . (R-2)**
3. **Kamakhyaa Impex Pvt. Ltd. (R-3)**
4. **Firstcorp Holdings Pvt. Ltd. (R-4)**
5. **Bayswater Enterprises Pvt. Ltd. (R-5)**
6. **Upasana Distributors Pvt. Ltd. (R-6)**
7. **Bayswater Enterprises Ltd. (R-7)** ....**Respondents**

Counsels appeared on behalf of the Parties :-

1. Mr. Iqbal Chagla, Sr. Advocate, Mr. Riaz Chagla, Advocate, Mr. Zal Andhyarujina, Advocate, Mr. Hursh Meghani, Advocate, Mr. Neerav Merchant, Advocate, Mr. Bharat Merchant, Advocate, i/b M/s. Thakordas & Madgavkar, Advocates for the Appellant

2. Mr. Rafeeq Peermohideen, Advocate, i/b Ms. Sapana Rachure, Advocate for the Respondent Nos.1 to 7.

Judgment

(Reserved on March 11, 2015)
(Delivered on March 26, 2015)

1. The above captioned Company Appeal has been filed by the Appellant Company invoking the provisions contained in Section 59(4) of the Companies Act, 2013 (hereinafter referred to as "the Act" in short) praying

therein to pass an order thereby declaring that the equity shares acquired by the Respondents as illegal and liable to be forfeited being in violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Code" for the sake of brevity) The Appellant has further sought an order that consequent upon forfeiture of the said shares, the share capital of the Appellant Company may be modified and/or reduced on such terms and conditions as this Tribunal may deem fit and proper. It is further prayed that the Appellant Company may be permitted to remove the names of the Respondent Nos. 1 to 7, including their transferees, from its Register of Members and accordingly the Appellant Company may be permitted to carry out rectification of its Register of Members. The Appellant Company has also sought a permanent injunction order thereby restraining the Respondents from acquiring directly or indirectly equity in the Appellant Company.

2. The facts of the case leading to filing the present appeal may be summarized as under:-

2.1 The Appellant Company is a public limited company and was incorporated on 18/11/1976 under the provisions of the Companies Act, 1956. The Respondent No.1 Company is having a paid-up capital of Rs.6,62,59,120/- and the main business of the Appellant was growing mushrooms and manufacturing pharmaceutical products. However, the said manufacturing pharmaceutical products were sold in the year 2007 and the business of growing mushrooms has been shut as it being found not viable. The current issued paid-up and subscribed share capital of the Appellant is Rs.12,24,00,000/- divided into 1,22,40,000 equity shares of Rs.10/- each.

2.2 It is the case of the Appellant that the Respondent No.1 Company acquired 5,49,752 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.49% of the total shareholding of the Appellant Company.

2.3 It is further case of the Appellant Company that the Respondent No.1 Company had transferred its entire equity to Religare on 31/12/2006. However, on 31/12/2012 the said equity was re-transferred to the Respondent No.1 Company and since then its name is reflected in the books of the Appellant Company.

2.4 It is stated that the Respondent No.2 is an unlisted company, having a paid-up capital of Rs.10,00,00,000/- and it has acquired 5,70,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.65% of the total shareholding of the Appellant Company. It is stated that the Respondent No.2 Company acquired the said shares in 2005 and thereafter transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant as shareholders.

2.5 It is stated that the Respondent No.3 Company is having a paid-up capital of Rs.5,00,00,000/- and it has acquired 5,68,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.64% of the total shareholding of the Appellant Company. It is stated that the Respondent No.3 Company acquired the said shares in 2005 and thereafter transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant Company as shareholder.

2.6 The Respondent No.4 is having a paid-up capital of Rs.59,21,680/- and it has acquired 5,70,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.65% of the total shareholding of the Appellant Company. It is stated that the Respondent No.4 Company acquired the said shares in 2005 and transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant Company as shareholder.

2.7 The Respondent No.5 is having a paid-up capital of Rs.2,92,08,650/- and it has acquired 2,27,363 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 1.86% of the total shareholding of the Appellant Company.

2.8 The Respondent No.6 is having a paid-up capital of Rs.32,76,000/- and it has acquired 4,17,663 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 3.41% of the total shareholding of the Appellant Company.

2.9 The Respondent No.7 has acquired 2,92,108 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant

कम्पनी विधि बोर्ड Company Law Board MUMBAI BENCH

Company are representing 2.38% of the total shareholding of the Appellant Company.

2.10 It is stated that the Respondents herein had filed a Company Petition, being C.P. No.111 of 2013, under Sections 397 and 398 of the Companies Act, 1956 before this Board against the Appellant Company, the Respondent No.1 therein, and its Directors for the acts of oppression and mismanagement purportedly committed by them in the affairs of the Respondent No.1 Company. In the said Petition, the Petitioners, who are the Respondents herein, had referred to various proceedings pursuant to the complaint filed by National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), the details of which are set out in the said C.P.No.111/2013.

2.11 It is further stated by the Appellant that the Respondents, (the Petitioners in C.P. No.111 of 2013) had suppressed in the said Petition the various facts and particulars of the case and the orders passed by the CBI, which are material and relevant to the status of the Respondent Nos.2 to 4. It is further averred that the Respondents herein are wrongly holding themselves out as shareholders of the Appellant Company.

2.12 It is pleaded that the Respondents in their Company Petition No.111/2013 have *inter alia* stated that the Petitioner Nos.1 to 7 therein collectively hold 31,94,886 shares of Rs.10/- each in the Issued and Paid-up Capital of the Respondent No.1 Company, the Appellant Company herein, which represents 26.10% of the shareholding in the Respondent No.1 i.e. Appellant Company. In other words, on 13/9/2013, the Respondents herein claim to hold collectively 26.1% equity shares as on the date of filing of their C.P.No.111/2013. Thus, according to their own admission, even in 2013 the Respondents had equity beyond the threshold limit of 25% and hence, their holding is illegal. Further, in 2006 itself the Respondents held more than 15% equity and had the said equity in violation of Takeover Code applicable on the date of acquisition of the shares.

2.13 It is further averred that in the absence of any open offer, earlier, when the threshold limit was 15%, the Respondents continued to hold the equity thereafter, and therefore, it is also illegal. Further, after 2011 acquisition of equity in the absence of Takeover open offer, is also illegal.

2.14 Based on the above grounds, the Appellant Company has submitted that the illegalities attached to the shares, render the same illegal and invalid and liable to be forfeited under the provisions of the Takeover Code and the Companies Act, 1956 then applicable. Further, such illegalities cannot be rectified, and the entire equity held by the Respondents is thus illegal being acquired in violation of the Takeover Code as applicable from time to time. It is submitted that the Appellant Company became aware of the holding of the Respondents only from the Petition No.111 of 2013, and therefore, the Appellant Company has now approached for the reliefs mentioned above by invoking the provisions contained in Section 59(4) of the Companies Act, 2013, and hence, this appeal.

3. Pursuant to the notice, the Respondents appeared and filed their Reply. In their reply, they have challenged the maintainability of the present Appeal on a preliminary ground contending that the Company Law Board is not a competent authority to adjudicate the questions raised in this appeal by the Appellant regarding the alleged violation of the provisions of the Takeover Code. It is further submitted that the Appellant has filed this Appeal with malafide and oblique motive in order to defeat a subsequent petition, being C.P. No. 29 of 2014, filed by the Respondents against the Appellant under Section 397/398 of the Companies Act, 1956 alleging various acts of oppression and mismanagement purportedly committed by the Appellant Company and its Directors. It is further stated by the Respondents that this Appeal has been filed for the alleged violation of the provisions of the SEBI Takeover Code only after the Respondents have pointed out the acts of oppression and mismanagement committed by the Appellant and its Directors and sought redressal of the grievances from this Board. It is lastly stated in the Reply that there is no violation of the provisions of the Takeover Code, and hence, the Appeal deserves to be dismissed.

4. In the Reply, the Respondents have further stated that this appeal is a counterblast to the previous petition filed by them, wherein the Consent Terms came to be entered into between the parties. It is further stated that the appellant herein did not enquire into whether or not the respondents are presently "the persons acting in concert" or their respective shareholding, and they having entered into the consent terms with the Respondents, now they have chosen to raise these disputes indirectly. The

Appellant is, therefore, stopped from disputing the shareholding of the Respondents now.

5. I have heard the Ld. Counsels appearing for the respective parties at length and perused the record.

6. In order to appreciate the controversies involved in the present case in a better manner, I would first like to cite the relevant provisions of the SEBI Takeover Code hereunder :-

DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

Rule 7 : Acquisition of 5 per cent and more shares or voting rights of a company

[(1) ***Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]***

[(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate share holding after such acquisition or sale.]

[Explanation:-For the purposes of sub-regulations (1) and (1A), the term -acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in sub-regulations (1) and (1A), shall be made within [two days] of, -

(a) the receipt of intimation of allotment of shares; or (b) the acquisition 01 shares or voting rights, as the case may be.

[(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.]

(3) Every company, whose shares are acquired in a manner referred to in [sub-regulations (1) and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each

of such persons referred above within seven days of receipt of information under[11] [sub-regulations (1) and (1A)].

SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS IN AND ACQUISITION OF CONTROL OVER A LISTED COMPANY

Rule 10 Acquisition of [fifteen] per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.
[....]

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Rule 3 Substantial acquisition of shares or voting rights

(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 alter for acquiring shares of such target company in accordance with these regulations.

(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 share holding, 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.

Explanation.- For purposes of determining the Quantum of acquisition of additional voting rights under this sub-regulation,-

(1) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(2) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any

given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

DISCLOSURES OF SHAREHOLDING AND CONTROL

Rule 29 Disclosure of acquisition and disposal

(1) Any acquirer who acquires 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 aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose ever acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to.

(a) every stock exchange were the shares of the target company are listed; and

(b) the target company at its registered office.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon released of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledges in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

7. For sake of clarity, I would like to extract the percentage of Shareholding/ Number of Shares of the parties concerned as on the date reflected in the respective Charts reproduced here as under referred to and relied upon by the Appellant Company. In addition to the above, I would like to extract the relations between the parties shown in the following chart referred to and relied upon by the Appellant Company in order to

demonstrate / prove that the Respondents are the parties acting in concert as defined in the provisions 2(q). Now, the definition of the persons acting in concert is provided in Section 2 (q) of the Takeover Code, which runs thus:-

2 (q) "persons acting in concert" means-

1. persons who, with a common objective of purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the garget company.

2. Without prejudice to the generality of the foregoing, the persons failing within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established.
(i) a company, its holding company, subsidiary company and company under the same management or control.
(ii) a company, its directors and any person entrusted with the management of the company.
(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors.
(iv) promoters and members of the promoter group.
(v) immediate relatives.

Chart-A

Particulars of Shares held by the Petitioners in the C.P. No.111/2013 and 29/2014.

No. of Petitioner	Holding as per petition	Holding as per Respondent No. 1 as on the date of Postal Ballot	Holding as per Respondent No. 1 as on 06.09.2013
Firstcorp International Ltd. (P-1)	549752	549752	549752
Earthtech Enterprises Ltd. (P-2)	570000	Nil	Nil
Karnakhyaa Impex Pvt. Ltd. (P-3)	568000	Nil	Nil
Firstcorp Holdings Pvt. Ltd. (P-4)	570000	Nil	Nil
Bayswater Enterprises Ltd. (P-5)	227363	232699	227363
Bayswater Enterprises Pvt. Ltd. (P-6)	417663	109832	467663
Upasna Distributers Pvt. Ltd. (P-7)	292108	292108	292108
Total	3194666	1184361	1536886
%	26.10%	9.67%	12.55%

Chart-B

Table of acquisitions by the Respondents in violation of SEBI Take Over Code:

Holding as on	Firstcorp International Limited (Petroleum)	Earthtech Enterprises Limited	Kamakhya Impex Private Limited	Firstcorp (Shilpa) Holdings Pvt. Ltd.	Bayswater Enterprises Pvt. Ltd.	Upasna Distributers Pvt. Ltd.	Bayswater Enterprises Limited	Religare Securities Percentage	Quantity of shares Percentage	Violation of which Regulation	Remarks
30.09.2005	438012	478100									
	(3.58)	(3.91)							= 7.49%		
										No Notice under Regulation 7 of 1997	All holding above 5% is in violation of Regulation 7/1997
30.06.2006	449078	570000	515000	570000							
	(3.67)	(4.66)	(4.21)	(4.66)					= 17.2%		
										No Notice under Regulation 10 of 1997	In view of the provision of Regulation 10 of 1997, Any Holding above 15% is subject to an embargo. No further acquisition can be made without giving an open offer. Hence all shares above 15% are illegal from the start Acquisition itself is wrongful and is ipso facto invalid and null and void. Hence all acquisition of shares by Respondent Nos. 5,6 and 7 are illegal right upto today as they have purchased after the Respondents holding has crossed 15% ill violation of Regulation 10 of 1997.
31.12.2006	0	0	0	0	0	0	281900	2310484			
							(2.3)	18.87			Respondent Nos. 1,2,3,and 4 transferred their entire holding to Religare
31.03.2012	549752				232699		292108	1708175			
	(4.49)				(1.90)		(2.39)	(13.96)		No Notice given undue Regulation 29 of 2011 by Respondent NO. 1 and by Religare (this is	Religare Transferred back the entire shareholding of Respondents NO. 1 – 549752 shares

										further to violation of Regulation 7 & 10 of 1997 by all the Respondents.	
31.12.2012	549752				227363	312663	292108	1708175		No Notice given under Regulation 29 of 2011 by Respondent No. 6, having acquired more than 2% shares. (This is further to violation of Regulation 7 & 10 of 1997 by all the Respondents.	
27.06.2014		1708000(13.85%)								Regulation 29(2) Notice given by Religare No Notice given by Respondents NO. 2, 3 and 4.	1708000 shares were transferred back to Respondents Nos. 2, 3 4 from Religare
31.12.2014	549752 (4.49%)	570000 (4.66%)	568000 (4.64%)	570000 (4.66%)	292108 (2.39%)	351764 (2.87%)	593826 (4.85%)			3495450 = (28.56%) Continuous violation of Regulation 3 and 29 and of Regulations 7 & 10 of 1997	
16.01.2015	549752	570000	568000	570000	292108		593826			Respondents continue to violate Regulation 29 & 3 of 2011 and Regulations 7 and 10 of 1997 and Respondent No. 5 in selling more than 2% thereby further violating Regulation 29 of 2011.	After the bulk sale of 350000 shares by Bayswater Enterprises Pvt. Ltd. the other Respondents still have 3143680 shares = 25.68%

Chart-C

Table reflecting the history of acquisition of shares by the Respondents:

Sr. No.	*Year*	*Date of Acquisition*	*Respondents*	*Relation between the Acquiring Respondents*	
				Common Shareholders	*Common Director*
1.	*2005*	*30.9.2005*	*1 & 2*	*Manish Kant Pet. 1, 2 & 3*	*Laxman Bhatt*
2.	*2005*	*31.12.2005*	*1,2,3 & 4*	*Laxman Bhatt (1,2 & 4) Mahavir Prasad (2 & 3) Anil shares*	*Laxman Bhatt*

3.	2006	31.3.2006	3	Do	Do
4.	2006	30.6.2006	1,2,3,4	Do	Do
5.	2006	30.9.2006	1 & 3	Do	Do
6.	2006	31.12.2006	Petitioners 1 to 4	Transferred	Equity Religare
7.	2006	31.12.2006	7	Mahavir Prasad FCP Kamakhyaa	Dinesh Bhatt 1 & 5
8.	2007	30.9.2007 to 31.3.2012	5 & 7	Do	Do
9.	2012	31.3.2012	Respondent not got equity re-transferred	Equity	Re-transferred
10.	2012	30.6.2012 to 30.9.2013	5, 6 & 7	Sanjay and Rajeev Sharma resumed to be related to Anil Sharma. No advice from Respondents.	

Chart-D

Certificate dated 5/1/2015 issued by the Company Secretary of the Appellant Company

I, Amita Saxena, Company Secretary in Practice, have examined all relevant record of M/s. Transchem Ltd. having its Registered Office at 304, Ganatra Estate, Pokhran Road No. 1, Khopat, Thane(w) – 400 601 and that of M/s. Adroit Corporate Services Pvt. Ltd. having their Registered Office at 19, Jaferbhoy Industrial Estate, 1st Floor, Makwana Road, Marol Naka, Andheri (East), Mumbai – 400 059 the Share Transfer Agent of the Company and based on the record hereby certify that the shareholding details of following Companies in the capital of Transchem Limited as at 31.12.2014 were as follows:

As at	Holding of M/s. Bayswater Enterprises Pvt. Ltd in the capital of Transchem Limited. (No. of equity shares of Rs. 10/- each)	Holding of M/s. Upasna Distributers Pvt. Ltd. in the capital of Transchem Limited. (No. of equity shares of Rs. 10/- each)
30.09.2013	227,363	479,663
31.12.2013	275,684	534,401
31.03.2014	275,684	578,401
30.06.2014	275,684	593,826
30.09.2014	331,329	593,826
31.12.2014	351,764	593,826

Chart-E

Certificate dated 30/1/2015 issued by the Company Secretary of the Appellant Company

I, Amita Saxena, Company Secretary in Practice, have examined all relevant books, registers, forms, documents and papers of M/s. Transchem Ltd. having its Registered Office at 304, Ganatra Estate, Pokhran Road No. 1, Khopat, Thane(w) – 400 601 and that of M/s. Adroit Corporate Services Pvt. Ltd. having their Registered Office at 19, Jaferbhoy Industrial Estate, 1st Floor, Makwana Road, Marol Naka, Andheri (East), Mumbai – 400 059 the Share Transfer Agent of the Company and based on the record hereby certify that the shareholding details of following Companies in the capital of Transchem Limited as at 31st December 2014 were as follows:

Sr. No.	Name of Shareholder Companies	Number of equity shares of Rs. 10/- each held as at 31.12.2014	% to total paid up capital of Transchem Limited
1	Firstcorp International Limited	549752	4.49
2	Earthtech Enterprises Limited	570000	4.66
3	Karnakhyaa Impex Private Limited	568000	4.64
4	Firstcorp Holdings Private Limited	570000	4.66
5	Bayswater Enterprises Limited	292108	2.39
6	Bayswater Enterprises Private Limited	351764	2.87
7	Upasna Distributers Private Limited	593826	4.85
	TOTAL	3495450	28.56

8. Now, I would like to reproduce the percentage of shareholdings of the Respondent Companies shown by the Respondents in their reply in the Appeal which is extracted below:-

Chart-F

Shareholding as on 2/02/2015			
Sr. No.	Name of the Companies	No. of Shares	%age
1.	Bayswater Enterprises Pvt. Ltd.	292108	2.39
2.	Kamakhyaa Impex Pvt. Ltd.	468000	3.82
3.	Earthtech Enterprises Ltd.	570000	4.66
4.	Firstcorp Holdings Pvt. Ltd.	570000	4.66

5.	*Firstcorp International Ltd.*	*549752*	*4.49*
6.	*Upasna Distributers Pvt. Ltd.*	*574801*	*4.73*
	Total Shares held in Transchem Ltd.	***3028261***	***24.74***

9. In the backdrop of the above, I proceed to consider the contentions advanced by the Ld. Counsels appearing for the respective parties. At the outset, I would like to deal with the preliminary objection raised on behalf of the Respondents as to the jurisdiction of the CLB to entertain the Petition.

10. In this connection, it is contended by the Ld. Counsel appearing for the Respondents that admittedly the percentage of acquisition of shares by each of the Respondent, as shown by the Appellant in Chart "E", is less than 5% and therefore, ex-facie there is no violation of any regulation of the Takeover Code. It is further submitted that the Respondents are group companies and if they have collectively filed a petition under Section 397/398 of the Act, through a common Power of Attorney holder, it cannot be a reason for holding that the Respondents, acting in concert, have acquired the shares. It is further submitted that merely having certain common shareholders and common Directors on the Board of Directors of the Respondent Company, it is not enough to hold that the parties are acting in concert as defined in Section 2(q) of the Act. Furthermore, the allegation made by the Appellant that the Respondents are the parties acting in concert, have been categorically denied by the Respondents. Lastly, it is submitted that, in any event, whether the Respondents are the parties acting in concert in terms of Section 2(q), is a question of fact and unless the said fact is established after due enquiry/ investigation, by a Competent Authority, the C.P. in its present form is not maintainable. For the said purpose, according to the Ld. Counsel, the only competent body under the statute is the SEBI and the CLB has no domain to determine this issue. It was, therefore, contended that the jurisdiction of the CLB is barred by the provisions contained in Section 15Y and 20A of the SEBI Act and the CLB has no jurisdiction to adjudicate upon the issues raised before it. The Appeal, therefore, deserves to be dismissed on this ground alone. To support his contentions, the Ld. Counsel appearing for the Respondents has relied upon the following decisions :-

a. ***Azzilfi Finlease And Investments vs. Ambalal Sarabhai Enterprises [2000] 100 CompCas 355 CLB,*** wherein, *inter alia* it is observed as under :-

"2. ..... The respondent-company, vide its letter dated October 14, 1997, conveyed the company's decision to refuse to register the transfers of the said shares alleging that the petitioners have violated the provisions of Chapters II and III of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, by acquiring more than the stipulated percentage of shares in concert with others. ..... It is further submitted that the respondent-company has not submitted any concrete evidence as to how the above-named petitioners have violated the SEBI Take Over Code. The respondent-company has not submitted the copy of the board resolution whereat the said shares were rejected for registration of transfers.

3. ..... any further acquisition of shares, if registered, would exceed the 10 per cent limit as is prescribed in regulation 10 of the said Take over Regulations. ....."

11. In the said case, after appreciation of rival contentions, the CLB further observed as under :-

"11. ..... Therefore, when a company refuses to register transfer, the Company Law Board has to examine whether such refusal is with sufficient cause or not and if it finds that the refusal is without sufficient cause, then the Company Law Board is bound to direct the company to register the transfer.

..... In case of post-registration, the register of members can be ordered to be rectified only on three grounds, i.e. if the transfer is in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter "the SEBI Act") or Regulations there-under, the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter 'the SICA') or any other law for the time being in force.

12. ..... The only ground available in this case and which has been invoked by the company is violation of the Regulations relating to SEBI Take Over Code. The company has alleged that these shares have been acquired in violation of the said Code. However, as discussed earlier, it is not possible for us to concur with the company's contention of the alleged violation of the SEBI's Take Over Code in view of the inadequate material on the basis of which registration of transfer of shares has been refused. Hence, there is no merit in the respondent-company's submission that there exists sufficient cause to refuse the registration of transfer of these shares.

13. The company has also taken the plea that we should not proceed in deciding these appeals as the SEBI is examining the matter. The matter is pending before the SEBI since the respondent-company made a reference somewhere in October, 1997, and the further information/clarification sought for by them have been provided by the respondent-company and the petitioners from time to time but so far no action has been initiated. In this case, after the hearing was concluded, M/s. Crawford Bayley and Company, Advocates and Solicitors, vide their letter dated May 8, 1999, forwarded a copy of the SEBI's letter dated May 5, 1999, wherein it is indicated that they are examining the matter. The SEBI is seized of the matter since October, 1997, and it is not known how much more time it will take. In our opinion, the investors should not be allowed to suffer when there are sufficient provisions under Section 111A(3) to rectify the situation. Further, if after

examination/investigation SEBI comes to the conclusion that the shares have been acquired in violation of the SEBI Take Over Code then under regulation 44 of the Code they are also empowered to give necessary directions to take remedial measures.:

b. ***Redwood Holdings Pvt. Ltd. vs. The Sandesh Pvt. Ltd., Order dated 21st August, 2002,*** wherein the Company Law Board, *inter alia*, observed as under :-

"12. In view of the provisions of SEBI Act and the Regulations, any breach of the Regulations can be looked into and appropriate order passed only by the SEBI and that the jurisdiction of the CLB, so far SEBI Regulations ate concerned, is barred.

13. Under the SEBI Regulations, SEBI has right to enquire and investigate suo motu, or upon complaint received for breach of regulations and for this purpose, it may appoint an investigating authority and thereafter call upon the person concerned and offer his comments on investigation report. Regulation 39 authorises the SEBI to give certain directions. It is, therefore, obvious that if any provision or regulation is breached and it appears to SEBI that the matter needs to be investigated, it may appoint an investigating authority and investigate the matter and thereafter pass an appropriate direction/order in accordance with the regulations as the Respondent Company already filed compliant with the SEBI.

14. .....
to
19 .....

c. ***Kesha Appliances P. Ltd. And Ors. vs Royal Holdings Services Ltd. And Ors. [2006] 130 CompCas 227 Bom.,*** wherein the Hon'ble High Court of Bombay has observed as under :-

"..... Thus reading of the provisions of Section 15Y and 20A alongwith the provisions of Takeover Regulation I have no doubt in my mind that there is an express bar as to the jurisdiction of this court for rectification of the register when it solely based on the contention that the allotment and/or transfer of shares is contrary to takeover Regulations. .....
42. .....

43. I am of the opinion that on plain and simple reading of section 15Y and 20A of the Act all the cases arising out of the breach and Take Over Regulation must fall within the exclusive domain of SEBI and cannot be complained in the court of Law by virtue of express bar contained under section v of the SEBI Act. I am also of the further opinion that there is no doubt that there is a common law right in a share holder to apply for rectification of the share register even though it is not his own share in respect of which he is seeking rectification but still the said right if it flows from the provisions of Take Over Regulations then undoubtedly it would fall within the exclusive Jurisdiction of SEBI and not within the Jurisdiction of this court in view of the express bar contained under the aforesaid statute. .....

44. I am also of the opinion that once the remedy is provided under the Rule itself then to read down the provision of section 15Y and 20A in such a narrow

manner so as to exclude the case of the plaintiffs from within the purview of the said section is not permissible even on strict construction principle. I am of the opinion that provision of section 15Y and 20A bars the suit which has been filed by the plaintiffs in the present court and the remedy of the plaintiffs is only before the SEBI.

45. .....

46. I am therefore of the further opinion that the entire suit is based on the sole ground of violation and/or breach of the Take Over Regulation and no other ground has been invoked for rectification of the Share Register. The take over regulation has been enacted under the SEBI Act 1922 and the board is empowered to take cognizance of the breach thereof and therefore the right of the plaintiffs is to complain to the SEBI of such breach and seek necessary remedy. The contention of the learned counsel for the plaintiffs that to merely file complaint with the SEBI is not equivalent to the right of the plaintiffs to file a suit for substantial relief cannot be accepted because the nature of the right conferred by the Takeover Regulation provides for substantial nature of remedy thereunder. The plaintiffs must therefore seek relief as per the provision of law and cannot independently invoke any common law right of rectification of the share and file a suit independent to the provision of section 15Y and 20A of the SEBI Act. I am therefore of the opinion that the present suit as framed is not maintainable in this court and this court has no Jurisdiction in view of the express bar conferred under the provision of section 15Y and 20A of the SEBI Act to entertain and try the present suit. I therefore, answer the preliminary issue of Jurisdiction in Negative and I hold that this court has no Jurisdiction to entertain and try the present suit under section 15Y and 20A of the SEBI Act.

47. In the light of the aforesaid view I have taken I hold that the suit is liable to be dismissed for want of Jurisdiction and therefore dismiss the suit accordingly. In view of the dismissal of the suit, both the motions being Notice of Motion No.2260 of 2005 and 2486 of 2005 does not survive and both the motions are dismissed as infructuous."

12. Further, in the case of ***Rasoi Ltd. vs. Jaideep Halwasiya, Order dated 18/02/2008 in C.P.No.94 of 2007,*** a question arose before the CLB as to whether in respect of listed companies, investigation sought on a complaint of violation of Takeover Regulations should rest with SEBI? The CLB answered the question in affirmative. The CLB, (Kolkata) , in the said order *inter alia* observed as under :-

"In view of above, the instant petition could be dismissed. However, it was also examined whether in respect of a listed company a petition under section 247/250 could be filed to find out whether by acting in concert shares had been acquired in violation of the provisions of the Takeover Regulations, more so when a petition under section 111A was pending on the same allegation. The concept of acting in concert and substantial acquisition of shares/takeover came in with the coming into force of the Takeover Regulations which are self contained and can be termed as a Code by itself. Under regulation 38, the SEBI has been vested with the power to investigate into the complaints of any substantial acquisition of shares or takeover and in terms of regulation 44, it can give varied directions if the violation is established. Power to restrain further transfer of shares is expressly available to the SEBI as per regulation 44(d). Therefore, in respect of listed companies, an

investigation sought on a complaint of violation of Takeover Regulations should rest with the SEBI only and the provisions of section 247/250 could not be invoked, especially when a petition under section 111A was pending."

13. Based on the above, it was argued on behalf of the Respondents, that the instant petition is not maintainable due to lack of jurisdiction.

14. Responding to the above contentions, Mr. Iqbal Chagla, Ld. Sr. Advocate, has taken me through the Chart-C referred to above, to show the *interse* relation between the parties and submitted that the Respondent companies have many common shareholders and common directors. In order to establish the fact that the Respondents are the parties acting in concert, Mr. Chagla, Ld. Sr. Advocate, has further invited my attention to the share transaction pattern highlighted therein, the names of the common shareholders and the directors of the different companies. The Ld. Sr. Advocate then took me through the reply filed on behalf of the Respondents herein and submitted that the Respondents have not disputed the fact that the Respondent Nos.1 to 4 on 30/9/2006 had transferred all the shares to the Religare, who thereafter on 27/6/2014, had transferred 1,17,8000 shares back to the Respondent No.3, which fact is also evident from perusal of the chart referred to above. Moreover, according to him, the Respondent Nos.1 to 4 failed to give the beneficial notice as required in regulation of the Takeover Code. It is submitted by the Ld. Sr. Advocate for the Appellant that, on overall analysis of these facts and the shareholding pattern of the Respondents, it is well established that the Respondents had 26% shareholding at the time of filing of the previous petition and as on 31/12/2014 the shareholding of the Respondents is 28.6%. It was also argued that the Respondents have acted in concert with a view to gain control of the Appellant Company since the Appellant is an asset based and cash rich company. He further added that the Respondents are the persons who intentionally to take over control of the company have acquired the shares-in-question and in contravention of the provisions of the Takeover Code and hence, the acquisition of shares-in-question by them is void in law. Mr. Chagla, therefore, contended that the impugned shares deserve to be forfeited and also an order for rectification in the Register of Members is required to be made in terms of the provisions contained in Section 59(4) of the Act, for which the CLB is the only competent authority. To support his view, the Ld. Sr. Advocate appearing for the Appellant Company, relied upon the following decisions in the cases of :-

a. ***Bombay Dyeing and Mfg. Co. Ltd. v/s. Arun Kumar Bajoria (2001) 1 Comp LJ 115 (CLB)*** wherein it has been held as under :

26. The next argument of the learned counsel for the respondents is that in terms of regulation 7, only an acquirer has to disclose and not those acting in concert. According to him, the word, 'acquirer' has been used in singular and there is no mention of 'those acting in consent' in regulation 7 unlike regulations 10 and 11. This argument, we feel is an after-thought. If it is the understanding of the respondents, then, here was no need for the 6th respondent to state in its alleged letter dated 16.03.2000 that its holding in the company with its associates has exceeded 5% (emphasis by us)2. The 1st respondent himself has admitted in his letter dated 19.10.2000. (page 31 of the reply), to the SEBI that all the respondent were acting in concert to acquire the shares in the company. The term 'acquirer' had been defined in the regulations in regulation2(b) as –

"acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company or acquires or agrees to acquire control over the target company, or acquires or agrees to acquire control over the target company, whether by himself or with any person acting in concert." From the last line of the above, it is clear that the term 'acquirer' is an inclusive term covering the persons acting in concert also. Therefore, the use of the term in singular or the absence of the words 'acting in concert' in regulation 7 does not mean that an acquirer need not include the shares of those acting in concert in computing the 5% limit. The acceptance of the contention of Shri Mookerjee would mean that each person acting in concert could acquire 4,99% shares without disclosure and continue to do so upto 14,99% without attracting the provisions of regulation 10 relating to public offer. Such an interpretation would defeat the very purpose of the regulations framed in the interest of the shareholders at large, in Azzilfi Finlease and Investments (P) Ltd. v Ambalal Sarabhai Enterprises Ltd, (2000) 1 Camp LJ 118 (CLB) relied on by the learned counsel, the complaint was that persons acting in concert had acquired shares beyond 10% without making open offer as required under the regulation in force, This plea was not accepted by the Company Law Board as the company did not establish that the acquirers were acting in concert. Therefore, if persons act in concert to acquire the shares of a company, all the shares acquired by them will have to be clubbed together for the purposes of regulation 7. In this case, since on the admission of the 1st respondent himself that all the respondents were acting in concert, the aggregate holding of all the respondents will have to be considered in terms of regulation 7.

b. **Shrish Finance & Invest. (P) Ltd. Vs. M. Sreenivasulu Reddy & Ors. (2002) 2 Comp LJ 386 (Bom)** wherein it has been held as under :

131. We are satisfied that the circumstances established on record prima facie do lead to the inference that defendants Nos. 1 and 11, acting in concert with defendants Nos. 2 to 10, acquired the shares of Herbertsons Ltd., over a period of time. Since they were acting in concert, the acquisition by each one of them must be considered to be the acquisition of the others as well. The funds for the acquisition of the shares, whether through defendants Nos. 2 and 6 to 10 or through defendants Nos. 3 to 5, originated from the companies controlled either by defendant No.1 or defendant No. 11. Advancing of funds to defendants Nos. 3, 4 and 5 cannot be said to be by way of investment because the facts disclose that the amounts were advanced free of interest and without any security, and for acquiring the shares of Herbertsons Ltd. Defendants Nos. 3, 4 and 5 were also managed by

persons known to defendants Nos. 1 and 11 and associated with them in their various companies. It is not necessary that persons acting in concert must be related to each other within the meaning of section 6 of the Companies Act. Even two strangers can act in concert, provided they act pursuant to a common plan and to achieve a common objective. Even if we assume that defendant No. 1 had acquired shares of Herbertsons Ltd., to the extent of about 27 per cent., before the coming into force of the regulations of 1994, the moment it is found that he was acting in concert with defendant No. 11, it must be held that the concerted action was of an acquirer holding more than 10 per cent. shares in the capital of the target company. Mr. Nariman is, therefore, right in submitting that, in the facts of this case, regulation 10(2) was attracted. The course adopted by defendants Nos. 1 and 11 leaves no room for doubt that they were acting in concert, and through unlisted companies, who hardly had a share capital base, and which Were managed by persons related or known to them. They provided funds to those companies to acquire the shares of Herbertsons Ltd., and in all three cases, the companies were unable to repay the loans and, therefore, defendant No. 11 took over those companies. The identical nature of transactions and the events that followed, prima facie establish that defendants Nos. 1 and 11 along with defendants Nos. 3, 4 and 5 were acting pursuant to a plan and that the similarity of events was not accidental. Funds were advanced to all the three companies for the purchase of shares of Herbertsons Ltd., and all the three companies failed to repay with the result that they were taken over by defendant No. 11. In all the three cases, there is hardly anything to suggest that apart from major investments in the shares of Herbertsons Ltd., those companies invested any sizable amount in shares of other companies, except in one case, where some shares of one other company were purchased. It, therefore, appears that these three companies which purported to be investment companies, invested only in the shares of Herbertsons Ltd., and that too, with the aid of funds provided by defendants Nos. 1 and 11 through their concerns/ companies.

15. In addition to the above the following cases were also referred to and relied upon by the Petitioners' Counsel.

a. ***Aksa Investments Pvt. Ltd. Vs. The Grob Tea Co. Ltd. & Ors. (2004) 2 Comp. LJ 392 (CLB) (Cal).***

b. ***Karamsad Securities (P) Ltd. vs. Nile Ltd. [2000] 5 Comp LJ 340 (CLB).***

16. I have considered the rival submissions carefully and examined the decisions cited above. I find enough force in the submissions advanced by the Ld. Counsel appearing for the Respondents that the CLB, in exercise of its rights and powers conferred upon it by virtue of the provisions contained in Section 59(4) of the Act, is not empowered to make investigation/enquiry into the allegation that the Respondents acting in concert have acquired shares in violation of the Takeover Code, and hence, the shares are liable to be forfeited and the Register of Members requires to be rectified under the said provisions by deleting the name of the Respondents therefrom. In my

considered view, it is only the SEBI who has domain to enquire/investigate into as to whether the parties against whom the allegations have been made, acting in concert, have acquired the shares more than threshold limit prescribed under the provisions of the Takeover Code. In my view, the decisions relied upon by the Respondents' Counsel are squarely applicable to the facts of the case in hand.

17. On the contrary, the proposition laid down in the decisions cited by the Ld. Counsel appearing for the Appellant Company, in my opinion, do not apply having regard to the facts of the present case. I may mention the facts of the case of ***Arun Kumar Bajoria (supra)*** referred to by the Ld. Sr. Counsel for the Appellant. Although, I respectfully agree with this proposition laid down in this case that the term `acquirer', as defined in regulation 2(b) of the SEBI (substantial Acquisition of Shares and Take-over) Regulations, 1997, is an inclusive term covering the person acting in concert also. Therefore, the use of the term in singular or the absence of the words `acting in concert' in Regulation 7 of the above regulations does not mean that an acquirer need not include the shares of those acting in concert in computing the 5% limit. The facts further reveal that the Respondents had acquired shares, with others acting in concert, over and above the thresnold limit and applied for rectification of registration of shares, which was rejected by the Company contending that since the shares have been acquired beyond the threshold limit under the Takeover Code, the same cannot be registered. However, on perusal of para No.26 of this case, it may be noted that the Respondent in the said case had admitted that shareholding the Respondents were acting in concert, therefore, it was held that holding of all the Respondents will have to be considered in terms of Regulation 7 of the Takeover Code. In the present case, the Respondents have categorically denied that they have acted in concert. Therefore, the facts are different.

18. In so far as the case of ***Shirish Finance and Investments Ltd. (supra)*** is concerned, the facts of this case are also different. On perusal of the facts of the said case, it is apparent that the acquisition of shares was under challenge before the SEBI and certain proceedings were also pending before the CLB. In the present case, no proceedings for alleged violation of the provisions of Takeover Code, are pending before the SEBI. In view of this decision also does not assist the Appellant.

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19. In the case of ***Aksa Investments Pvt. Ltd. (Supra)***, it has been categorically held that the CLB has no power to forfeit the shares acquired in violation of the provisions of the SEBI Act or Regulations made thereunder. On the contrary, in the present case, on a perusal of the prayer clauses, it may be noted that the Appellant has also sought forfeiture of the impugned shares.

20. In the case of ***Karam Prasad Securities (Supra),*** the facts are that subsidiary companies of a Company acting in concert had purchased the shares-in-question. In this case, the Companies are group companies and not the subsidiary company(ies) of a Company. In view of the above, the decisions referred to by the Appellant to my mind do not apply having regard to the facts of the case in hand.

21. In my considered view, on a careful analysis of the relevant provisions contained in the Takeover Code and Section 59(4) of the Act and upon a close scrutiny of the decisions cited above by the rival parties in support of their respective contentions, the legal position that emerges, in my opinion, is as follows :-

(i) where any acquirer(s) acquired impugned shares, which, ex-facie, are in violation of the Takeover Code, such acquisition shall be void and in that case no finding is required from the Competent Authority i.e. SEBI and in such case, the CLB by virtue of the powers conferred upon it under Section 59(4) of the Act, is empowered to pass an order for rectification of Register of Members of a Company.

(ii) However, where the acquirer is more than one and there is allegation that the acquirers together, acting in concert, have acquired the shares in violation of the relevant provisions of the Takeover Code and the acquirers deny/rebut such allegation, then the question as to whether such acquirers have acquired the impugned shares, acting in concert is required to be investigated/ enquired into by the SEBI and in case the Competent Authority/ Adjudicator of the SEBI comes to the conclusion that the acquirers acting in concert, have acquired the shares, in that case, the company may refuse the registration of shares if such acquirers have sought for registration of the impugned shares, and if their names are already entered in the Register of Members of the Company, they may

approach the CLB for rectification of its Register of Members by deleting the names of such shareholders/members in respect of the impugned shares.

22. In the present case, ex-facie there is no violation of the Takeover Code in view of the fact that each acquirer has acquired shares below 5% which is within the prescribed limit under the provisions of the Takeover Code. Further the Respondents have denied the fact that they acting in concert have acquired the impugned shares as alleged by the Respondents. Therefore, in my opinion, the Appellant is required to approach the Competent Authority of the SEBI first, by way of filing a complaint in accordance with law. If such Competent Authority of the SEBI renders a finding to the effect that the Respondents, acting in concert, have acquired the shares-in-question, thereafter the Petitioner is entitled to approach the CLB seeking rectification of Register of Members of the Company. In my opinion, the CLB has no domain to entertain this Appeal in the present form for want of jurisdiction. The Appeal, therefore, deserves to be dismissed being pre-mature. In this regard, at the cost of repetition, I would like to rely upon the finding in para No.46 of the judgment in the case of ***Kesha Appliances (Supra)*** :

"46. I am, therefore, of the further opinion that the entire suit is based on the sole ground of violation and/or breach of the Take Over Regulation and no other ground has been invoked for rectification of the Share Register. The take over regulation has been enacted under the SEBI Act 1922 and the board is empowered to take cognizance of the breach thereof and therefore the right of the plaintiffs is to complain to the SEBI of such breach and seek necessary remedy. The contention of the learned counsel for the plaintiffs that to merely file complaint with the SEBI is not equivalent to the right of the plaintiffs to file a suit for substantial relief cannot be accepted because the nature of the right conferred by the Takeover Regulation provides for substantial nature of remedy thereunder. The plaintiffs must therefore seek relief as per the provision of law and cannot independently invoke any common law right of rectification of the share and file a suit independent to the provision of section 15Y and 20A of the SEBI Act. I am therefore of the opinion that the present suit as framed is not maintainable in this court and this court has no Jurisdiction in view of the express bar conferred under the provision of section 15Y and 20A of the SEBI Act to entertain and try the present suit. I therefore, answer the preliminary issue of Jurisdiction in Negative and I hold that this court has no Jurisdiction to entertain and try the present suit under section 15Y and 20A of the SEBI Act":

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23. In view of the foregoing discussions, I hold that the petition is barred by the provisions of Section 15Y and 20A of the SEBI Act. It deserves to be dismissed accordingly.

24. Before parting with the Judgment, I would like to add here that in the course of submissions, it was revealed that a company petition, being C.P. No. 111 of 2013, was filed by the Respondents herein, who were Petitioners therein, against the Appellant Company herein and its directors impleading them as the Respondents therein under section 397/398 of the Act alleging various acts of oppression and mismanagement in the conduct of affairs of the company and based on such complaints the Petitioners therein sought various reliefs praying to pass appropriate orders to bring an end to the complaints and to do substantial justice to the parties. In the said case, both the parties entered into consent terms. I, therefore, raised a query to the Ld. Sr. Advocate for the Appellant herein as to why this issue was not raised in the said petition at that point of time or at any time prior to that, since 2005. I further requested him to clarify on the question formulated by me as to whether despite knowledge, by not raising this issue at the first available opportunity and having obtained a consent order, why the CLB should not presume that the Appellant Company has abandoned its right and therefore, this petition is barred by the principles of waiver, acquiescence / abandonment? I may like to add here that as per settled law, a party who has obtained a benefit under an order, cannot claim that it was valid for one purpose and invalid for another. It is further established proposition that a party cannot approbate and re-approbate and in equity a party drawing benefit from an order, is not permitted to escape from the disadvantage, if any, flowing from it.

25. Answering to the clarifications sought by this Board, the Ld. Sr. Advocate appearing for the Appellant contended that the SEBI Regulations, 1997 and 2011 of the Take Over Code impose notice based obligation on a shareholder i.e. it is the shareholder who is obliged to give Notice of his having reached or crossed the threshold limits specified under Regulations 7 and 10 of 1997 Regulations and under Regulations 3 and 29 of 2011 Regulations. He further contended that in the transaction of Demat dealings on the Stock Exchange there is no contemporaneous knowledge to the Company of such transactions including names of persons or party to the transactions. Hence, the obligation is cast on the Shareholder to give

Notice. Further, it is an admitted fact that no Notice has been given by the Respondents under any of the Regulations since the acquisition of the shares until the intimation is received from Religare on 27/06/2014. Hence, the Company had no basis to doubt the intention of the Respondents in the absence of any notice received from them and therefore, the Company was entitled to at that time i.e. at the time of filing of the 1st petition treat the Respondents as bonafide co-shareholders and had no justification to nurture any apprehension of any takeover bid, which became apparent subsequently. In addition to the above, it is contended that on a perusal of the Consent Terms, it may be noted that it operate as a concession from the Appellant in favour of the Respondents without the Respondents offering anything in return. Furthermore, the Appellant has abided by the terms and conditions of the Consent Terms since 2/1/2014 and appointed, the Nominee Director as an Additional Director and later confirmed him in the General Meeting, as per the Undertaking in the Consent Terms, and the said Nominee Director has attended 5 meetings of the Board of Directors so far.

26. Apart from the above, giving the genesis of the execution of the consent terms, it was submitted on behalf of the Appellant that post filing of the Petition No.111 of 2013 and before filing Petition No.29 of 2014, the Respondents did not disclose the acquisition of shares during this period. In this regard, it is submitted by the Ld. Sr. Advocate appearing for the Appellant that the Appellant in their Reply dated 30/5/2014 to C.P.No.29 of 2014, has pointed out the discrepancy in the disclosure of the shareholding of the Respondents in the Company, as stated by them in the said Petition, especially the acquisition of shares during the period 13/09/2013 to 31/03/2014. This shows that the Respondent No.6 to the appeal has acquired 1,60,000 shares approximately during this period. The Ld. Sr. Advocate further submitted that this alerted the position of the Appellant Company herein that during this period the total traded volume by the Appellant was approximately 2,00,000 shares, whereas the quantity acquired by the Respondents was almost 80% of the traded equity. According to the Ld. Sr. Advocate, this kind of aggressive buying reveals an intention of the Respondents to take over control of the Company.

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27. Thereafter, the Ld. Counsel appearing for the Appellant attracted my attention to Clause 1 of the Consent Terms filed on 2/1/2014 in C.P.No.111 of 2013, which reads as under :-

"The Petitioners and the Respondents have amicably resolved the subject matter of the Petition and based on the mutual understanding as reached between them, the Petitioners have agreed to withdraw this Petition."

28. It was, therefore, contended that the doctrine of estoppel, waiver, acquiescence and abandonment would not apply having regard to the facts of the case in hand. Lastly, it was argued that the said doctrine does not apply against the law. According to him, keeping in view the transactions are void, being contrary to the provisions of the Takeover Code, this plea does not arise.

29. I have considered the submissions advanced on behalf of the Respondents. I respectfully agree with the contention of Mr. Chagla, Ld. Sr. Advocate that there can be no plea as to estoppel, waiver or acquiescence/ abandonment against the statutory provisions. However, I am not impressed with the submission advanced on behalf of the Appellant Company that the principles of waiver, acquiescence, estoppel and abandonment would not be attracted in the present case. In the present case, admittedly, the impugned shares were acquired from time to time by the Respondents since 2005 onwards within the knowledge of the company and its officers on the Board as shown by the Appellant in Chart- "C". The Company kept silent throughout during this period. It failed to assert its right at the proper opportunity and allowed the Respondents, shareholders to alter their positions from time to time. As indicated above, the Appellant Company did not raise this issue prior to filing of this petition, not even at the time of filing of the first Company Petition, being C.P. No.111/2013, wherein the parties have jointly filed Consent Terms. It is a settled proposition of law that question "parties acting in concert" is a mixed question of fact and law. It is not a pure question of law. I have held here that the Competent Authority has to decide such question after due enquiry/investigation under the SEBI Act and Rules made there under to whom admittedly the Appellant Company did not approach till date. In these circumstances, it is difficult for me to accept the contention that doctrine of abandonment, waiver and acquiescence is not attracted in this

case. However, having principally held that the petition itself is not maintainable due to lack of jurisdiction, I dismiss this petition accordingly. Order is as follows :-

Order

1. C.P. is dismissed being not maintainable.

2. Ad-interim order, if any, stands vacated. C.A. if any, stands disposed off.

3. No order as to costs.

4. Copy of the order be issued to the parties concerned as per rule.

Sd/-

A.K.Tripathi
Member (Judicial)

Dated this March 26, 2015.

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CERTIFIED TO BE TRUE COPY

S. P. SAWANT, ICLS
Bench Officer
Company Law Board
Mumbai Bench
Dated: 27/03/2015