

## Disputed Sebi advice grey area in takeover rule

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The Securities and Exchange Board of India (Sebi) might have to amend takeover norms to avoid future disputes after its informal guidance allowed an acquirer to increase his stake in a target company beyond the 25 per cent limit through secondary market purchases, after making an open offer announcement.

In an informal guidance to R Systems last month, Sebi had clarified that acquirer Bhavook Tripathi could increase his shareholding in the company beyond 25 per cent through open market purchases, after making a mandatory 26 per cent open offer to minority shareholders.

Tripathy owned 23.82 per cent stake in R Systems and wanted to increase it beyond 25 per cent. Prior to placing an order with a stock broker, he issued a public announcement on December 15, 2011, to comply with the requirements of the Takeover Code. After the announcement, he succeeded in buying another 7.18 per cent stake in R Systems from the open market, before issuing a detailed public statement as required under the Takeover Code.

Tripathy then issued the public statement on December 22, 2011, stating he was holding 31 per cent stake in R Systems post the open market purchases.

R Systems contested this move by Tripathi with Sebi and said it was in violation of the takeover norms and the acquirer should not be allowed to increase stake in the company from the secondary market until the expiry of the open offer period.

According to legal experts, Sebi's informal guidance in this matter was in consonance with the takeover regulations advisory committee's recommendations with respect to the scope of takeover norms, though this is not properly reflected in the Takeover Code.

"From a practical standpoint, Sebi's view on this issue seems tenable, since typically in the case of market purchase, an acquirer purchases shares from the open market from other shareholders of the target company, without entering into any private arrangement with any shareholder," said Vishwanath Kolhar and Nishchal Joshipura of Nishith Desai Associates. "While the intention of Sebi is clear from this informal guidance that only purchases pursuant to an agreement are covered by Regulation 22(1), it would be prudent for Sebi to amend the Takeover Code to avoid any possible interpretation issues and disputes over the same cause of action in future," the note added.

In its informal guidance, Sebi had clarified that Regulation 22(1) of Takeover Code related to an acquisition of shares pursuant to an agreement and was not applicable in cases of transactions involving market purchases.