M&A LAB

THE BATTLE FOR FAME
PART - I

Inox Leisure v/s Reliance Mediaworks

Dissected by – *Team M&A*

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The memories of strife between the multiplex owners and the producers last year had just begun to fade, and the multiplexes have made it to the news once again, albeit for a different reason. Last year, there was a relentless standoff between the producers and multiplex owners over revenue sharing which resulted in a strike that crippled the film industry for almost two long months. And now, there is a fierce tussle between two prominent multiplex brands, *viz.* Inox Leisure Limited ("**Inox**") and Reliance Mediaworks Limited ("**RML**") to acquire a third one, Fame India Limited ("**Target Company**" / "**Fame**").

The battle for Fame, in less than two months has turned the multiplex industry into a battleground, packed with its fair share of controversies, mud-slinging, allegations, twists and oodles of competitive zeal. The idiosyncrasies of this deal, including - the promoters opting for a dramatically lesser price amongst the multiple offers on the table; a competitor making an open offer to acquire a company even after another competitor has acquired a controlling stake in it, etc.; make it a very interesting and fascinating case study.

Further, just when one thought consolidation was the trend in the multiplex business with last year's acquisition of DLF's DT Cinemas by PVR, it appears that in the midst of scramble for Fame, the DLF deal also seems to be facing hiccups, thereby rocking the screen rankings once again.

In this M&A Lab, we attempt to analyze the tug-of-war between Inox and RML over Fame, beginning from its origins and following the trail right upto the commencement of the open offers by the acquirers. In order to make sense of the chaos, we shall attempt to breakdown the deal into bite-size pieces on the basis of the publicly available information, and analyze its commercial, legal and regulatory implications. While this M&A Lab tracks the developments till date, we shall discuss and analyze the action that takes place after the offer opens and the issues that have been resolved over that period in the second part of this M&A Lab.

II. PARTIES INVOLVED IN THE TRANSACTION

1. Fame India Limited

Fame was incorporated on October 26, 1999, as Shringar Cinemas Private Limited. It was later converted into a public limited company on December 19, 2004, and its name was changed to Shringar Cinemas Limited on December 24, 2004. The name was further changed from Shringar Cinemas Limited to Fame India Limited on January 25, 2008. The company's principal activities are film exhibition and distribution, including programming of theatres and owning/managing multiplexes.[1] Currently, it operates 95 screens and 26,488 seats across 12 cities in India with a presence in states of Maharashtra, Gujarat, Haryana, West Bengal, Jharkhand and Karnataka.[2] As per the annual report for the year ended March 31, 2009, Fame has two subsidiaries in which it holds 100% shareholding namely, Shringar Films Limited, mainly into distribution of films, and Big Pictures Hospitality Services

[1] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_060210.pdf, last visited on March 23, 2010
[2] http://www.fame.co.in/FameIndia.html, last visited on March 23, 2010

Private Limited, which is in to food court business. Fame is listed on both the National Stock Exchange of India Limited ("**NSE**") and the Bombay Stock Exchange Limited ("**BSE**").

2. Inox Leisure Limited

Inox is the diversification venture of the Inox group into entertainment, and is a subsidiary of Gujarat Fluorochemicals Limited ("**GFL**"). Incorporated as a public limited company on November 9, 1999, Inox is a film exhibition company in the business of setting up, operating and managing a national chain of multiplexes under the brand name 'Inox'.[3] It currently operates 31 multiplexes and 115 screens in 21 cities making it a truly pan-Indian multiplex chain.[4] Inox is listed on BSE as well as NSE.

3. Reliance Mediaworks Limited

RML was incorporated on November 30, 1987 as Adlabs Films Private Limited. It was converted into a public limited company in the year 2000 and its name was changed to Adlabs Films Limited on June 19, 2000.[5] In 2005 Reliance Anil Dhirubhai Ambani Group ("**ADAG**") acquired a controlling stake in the company, consequent to which the company transformed into a fully integrated media and entertainment service provider.[6] To more adequately reflect its business, the company's name was changed to Reliance Mediaworks Limited on October 5, 2009.[7] The promoters of RML are Reliance Land Private Limited ("**RLPL**") and Reliance Capital Limited ("**RCL**") and its main activities are film and entertainment services. It operates the cinema chain BIG Cinemas with currently owns more than 500 screens spread across India, United States, Malaysia and the Netherlands.[8] Its film services include motion picture processing and digital intermediate processing, visual effects, film restoration and image enhancement, digital mastering studios and equipment rentals with facilities in India, United States and United Kingdom. RML also has majority interest in a television programming venture, BIG Synergy Media Limited.[9] It is listed on both BSE and NSE.

4. Gujarat Fluorochemicals Limited

GFL is a public limited company incorporated on February 4, 1987 under the name Gujarat Flourochemicals Limited. The name was changed to Gujarat Fluorochemicals Limited on January 9, 1990.[10] Promoted by Inox Leasing & Finance Limited, GFL is in the business of refrigerants, chemicals, carbon credits and renewable energy.[11] It is one of the largest manufacturers of refrigerant gases used in air conditioners, refrigerators and cooling plants.[12] GFL is listed on both BSE and NSE.

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[3] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_060210.pdf, last visited on March 23, 2010

[4] http://www.inoxmovies.com/inox/wcms/en/home/media/about-us/index.html;jsessionid=A56EDAC566E8E6A3CA1FE4C68A0FE09A, last visited on March 23, 2010

[5] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_230210.pdf, last visited on, March 23, 2010

[6] http://reliancemediaworks.com/downloads/Adlabs_Annual_Report_2008-09.pdf, last visited on March 23, 2010

[7] http://www.reliancemediaworks.com/downloads/Adlabs_Annual_Report_2008-09.pdf, last visited on March 23, 2010

[8] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_230210.pdf, last visited on March 23, 2010

[9] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_230210.pdf, last visited on March 23, 2010

[10] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_060210.pdf, last visited on March 23, 2010

[11] *Ibid*

[12] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_060210.pdf, last visited on March 23, 2010

5. M/s. Reliance Capital Partners

M/s. Reliance Capital Partners ("**RCP**"), a partnership firm registered under the Indian Partnership Act, 1932, was formed on April 19, 2006. A part of the ADAG, RCP is mainly into the business of investment, trading and financing. The partners of RCP are RCL, RLPL and Mr. Surendra Pipara. As on February 21, 2010, RCL holds 99.98% interest in RCP and the balance is held by RLPL (0.01%) and Mr. Surendra Pipara (0.01%).[13]

6. Reliance Capital Limited

RCL was incorporated on March 5, 1986 as Reliance Capital and Finance Trust Limited. Its name was changed to Reliance Capital Limited on January 5, 1995. RCL is a part of ADAG and has interests in asset management and mutual funds, life and general insurance, private equity and proprietary investments, stock broking, depository services, distribution of financial products, investment banking, wealth management services, consumer finance and other activities in financial services.[14]

III. BACKGROUND AND CHRONOLOGY OF KEY EVENTS

In the late 1990s, Mr. Shravan Shroff realizing that the exhibition business in India will soon shift from the traditional standalone poorly maintained theatres to high-quality multi-screen setups, given that Indians are avid movie-goers, forayed into film exhibition. For about a decade now, Fame has evidenced robust growth by creating its presence in 12 cities with a total of 95 screens. No wonder other multiplex owners are keen on acquiring Fame.

But, this acquisition of Fame is not the first takeover by Inox. Earlier in 2007, Inox had approved the scheme of amalgamation of Calcutta Cine Private Limited ("**CCPL**"), owner of '89 Cinemas', with itself, which gave Inox access to an additional 9 multiplexes in West Bengal and Assam. After the merger, '89 Cinemas' was rechristened as 'Inox Swabhumi'.[15] Though the merger was a significant one, but with the acquisition of Fame, Inox seems to have hit the jackpot. However, this story is not over yet. There are a lot of controversies which are yet to be untangled before Inox can truly lift the stake.

We will be discussing each of these issues and controversies later in this M&A Lab. However, to get a better understanding of the build-up of bidding war, a chronology of key events till the commencement of open offers is encapsulated in the table below:

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[13] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Fame_India_Ltd_230210.pdf, last visited on March 23, 2010

[14] http://www.reliancecapital.co.in/, last visited on March 23, 2010

[15] http://www.inoxmovies.com/inox/wcms/en/home/media/about-us/index.html;jsessionid=A56EDAC566E8E6A3CA1FE4C68A0FE09A, last visited on March 23, 2010

Date	Key Event
September 25, 2009	Shail Investments Private Limited ("**Shail**") acquired 6.88% of the equity share capital of Fame (equity share capital of Fame being hereinafter referred to as "**Fame Equity**"), thereby increasing its shareholding from 0.53% to 7.41% of the Fame Equity. Gulshan Investment Company Limited ("**Gulshan**") acquired 6.54% of the Fame Equity. Its shareholding in Fame prior to this acquisition was nil.
September 30, 2009	Shail disclosed to Fame that it has sold 1.44% of the Fame Equity subsequent to which its shareholding in Fame has reduced to 5.97% of the Fame Equity.
October 1, 2009	Shail disclosed to Fame that it has sold 0.71% of the Fame Equity pursuant to which its shareholding in Fame has reduced to 5.26% of the Fame Equity.
January 15, 2010	Fame clarified to the stock exchanges that with reference to news item appearing in leading financial daily titled "INOX to buy stake in Fame India", it is not aware of any proposal of Inox to acquire 43.7% stake in it as reported. It stated that the news appears to be reported on the basis of media speculation.
February 3, 2010	Inox along with GFL (together, the "**Inox Group**") acquired 43.28% of the Fame Equity from M/s South Yarra Holdings ("**South Yarra**") (as represented by Mr. Shravan Shroff, Mr. Shyam Shroff and Mr. Balkrishna Shroff) for Rs. 664.8 million. The deal values the Target Company at around Rs. 1.536 billion. Prior to this block deal on BSE, Inox Group had no shareholding in Fame, and after it, South Yarra was left with just nine shares.
February 4, 2010	RML CEO Mr. Anil Arjun wrote an email to Fame's promoter Mr. Shravan Shroff asking him to explain why he sold his family's 43.28% stake in Fame to Inox for Rs. 44 per share when Reliance had made a "firm offer" to buy it for Rs 80 per share.[16]
February 5, 2010	Inox Group acquired 7.20% of the Fame Equity by way of block deal on the BSE, thereby increasing their stake from the earlier 43.28% to 50.48%. The consideration paid for the transaction was Rs. 50.75 per share, or Rs. 127.6 million in aggregate. RCP acquired 1.37% of the Fame Equity, thereby increasing its stake from the earlier 4.65% to 6.02%.
February 6, 2010	Enam Securities Private Limited ("**Enam**"), manager to the offer by Inox Group, on behalf of the Inox Group (Inox being the acquirer, and GFL being the person acting in concert) issued a public announcement ("**Inox PA**") to the equity shareholders of Fame, pursuant to and in compliance with Regulations 10 and 12 and other

[16] http://www.business-standard.com/india/news/adag-firm-puts-spanner-in-fame-inox-deal/384950/, last visited on March 23, 2010

	applicable provisions of the Takeover Code. Through the Inox PA, the Inox Group made an offer ("**Inox Open Offer**") to the shareholders of Fame to acquire up to 8,231,759 equity shares of Fame of face value of Rs. 10 each representing in aggregate 20% of the fully diluted voting equity share capital of Fame in terms of regulation 21(1) of the Takeover Code, at a price of Rs. 51 per fully paid up equity share ("**Inox Offer Price**") payable in cash. <u>Schedule of events for the Inox Open Offer</u> Specified Date - February 08, 2010 Date of Opening of the Offer - April 01, 2010 Date of Closing of the Offer - April 20, 2010
February 16, 2010	RML said in a letter to SEBI that "*There is non-disclosure of certain pre-existing financial arrangements between the two parties following which promoter shares in Fame had been transferred more than a year ago to a separate account where an Inox director was a joint holder.*"[17]
February 6-19, 2010	RCP through open market purchases acquired 6.12% of the Fame Equity, thereby increasing its existing stake of 6.02% to 12.14%.
February 21, 2010	ICICI Securities Ltd ("**ICICI**"), manager to the offer by Reliance Group (*defined below*), on behalf of RML (acquirer), along with RCP and RCL (persons acting in concert) (together, the "**Reliance Group**") had issued a public announcement ("**Reliance PA**") to the equity shareholders of Fame, pursuant to and in compliance with Regulations 10 and 12 and other applicable provisions of the Takeover Code. The offer ("**Reliance Open Offer**"), a voluntary one, was made by the Reliance Group to the equity shareholders of Fame as a competitive bid under Regulations 10, 12, 25(1) and 25(3) of the Takeover Code to acquire up to 21,600,000 fully paid up issued equity shares of face value Rs. 10 each from the equity shareholders of Fame (representing 62.08% of the fully paid up issued equity share capital of Fame and 52.48% of the fully diluted voting equity share capital of Fame), at a price of Rs. 83.40 for each fully paid up issued equity share of Fame ("**Reliance Offer Price**") payable in cash. The Reliance Offer Price was at 63.5% premium over Inox Offer Price. <u>Schedule of activities of the Reliance Open Offer:</u> Specified Date - March 19, 2010 Date of Opening of the Offer - April 01, 2010 Date of Closing of the Offer - April 20, 2010

[17] http://economictimes.indiatimes.com/markets/stocks/stocks-in-news/Inoxs-Fame-stake-buy-violates-takeover-norms-Reliance-Media/articleshow/5605242.cms, last visited on March 23, 2010

February 25, 2010	The Reliance Group purchased 1.71% of the Fame Equity at an average price of Rs 83.11 and a highest price of Rs 83.40 per equity share through open market purchases on the normal segment on the stock exchange. The total stake of Reliance Group in Fame after this acquisition increased to 13.53%. RCP disclosed to the BSE that the disclosure in the Reliance PA dated February 21, 2010 had stated that RCP held 4,224,435 equity shares constituting 12.14% of the Fame Equity as on the date of the Reliance PA. However due to short delivery of 1,10,942 equity shares because of close of auction by the stock exchange, the actual number of shares held by RCP was 41,13,493 equity shares constituting 11.82% of the Fame Equity.
February 26, 2010	The Reliance Group purchased 0.23% of the share capital of Fame at an average price of Rs 82.17 and a highest price of Rs 83.35 per equity share through open market purchases on the normal segment on the stock exchange. This acquisition increased the shareholding of Reliance Group in Fame to 13.76% of the Fame Equity.
February 28, 2010	The Board of Directors of Fame, *inter alia*, transacted the following: 1. Took note of the public announcement made by Inox Group and Reliance Group. 2. Took note of the resignation of Mr. Balkrishna Shroff from the Board of Directors of Fame. 3. Appointment of Mr. Kishore Biyani as an Independent Director on the Board of Fame. 4. Appointment of Mr. Pavan Jain and Mr. Deepak Asher as a Director on the Board of Fame. Post the above appointments and resignation, the strength of the Board of Directors of the Company is 9 Directors, out of which 5 are Independent Directors.
March 2, 2010	Reliance Group purchased 0.03% of the Fame Equity at an average price of Rs 82.10 and a highest price of Rs 82.32 per equity share through open market purchases on the normal segment on the stock exchange. This acquisition increased the shareholding of Reliance Group in Fame to 13.79% of the Fame Equity. Also, by a letter dated March 02, 2010, the Reliance Group made a reference before the SEBI in relation to the appointment of Mr. Kishore Biyani, Mr. Pavan Jain and Mr. Deepak Asher ("**Inox Directors**") on the board of Fame at the meeting held on February 28, 2010, on the grounds that: (i) the said appointment of the Inox Directors is in breach of the fiduciary duties of the directors of Fame who have not acted in the best interests of Fame or its shareholders given that a competitive bid has been made by the Reliance Group to the public shareholders of Fame on superior terms and at a significantly higher open offer price of Rs. 83.40 per equity share and (ii) the said appointments are against the inherent principles of equal treatment and opportunity that is afforded to competing

	acquirers under the Takeover Code. The Reliance Group has accordingly requested the SEBI to take appropriate action to protect the interests of the shareholders of Fame, the Reliance Group and the securities market in this regard.
March 5, 2010	ICICI, for and on behalf of Reliance Group issued a corrigendum to the Reliance PA ("**Corrigendum**") to the equity shareholders of Fame, pursuant to and in compliance with Regulations 10, 12, 25(1) & 25(3) and other applicable provisions of the Takeover Code. Since, there was a short delivery of 110,942 equity shares of Fame after the date of Reliance PA as mentioned in the event on February 25, 2010 above, in order to comply with Regulation 25(3) of the Takeover Code, the Reliance Group increased the offer size from 21,600,000 to 21,700,000 fully paid up equity shares of Fame, representing 62.36% of the fully paid up and issued equity share capital of Fame and 52.72% of the fully diluted voting equity share capital of Fame.
March 8, 2010	The Reliance Group purchased 0.01% of the Fame Equity at an average price of Rs 83.00 and a highest price of Rs. 83.00 per equity share through open market purchases on the normal segment on the stock exchange. This acquisition increased the shareholding of Reliance Group in Fame to 13.80% of the Fame Equity.
March 25, 2010	Religare Securities Limited ("**Religare**") acquired 5.12% of the Fame Equity, thereby increasing its shareholding in Fame from 0.70% to 5.82% of the Fame Equity. Religare being a broker, shares are held in the ordinary course of business towards margin / collateral on behalf of clients.

IV. COMMERCIAL CONSIDERATIONS

1. What makes Fame such a prized possession and why are Inox and RML fighting for Fame?

Fame with its 95 screens and presence in 12 cities is definitely a star attraction for any film exhibition business. It will add to their negotiating power, not only in the supply chain but rentals as well. It will increase their pricing influence vis-à-vis the patrons.[18] Further, such acquisitions can also help exhibition companies control distribution territories and cut costs by achieving scale.[19]

For Inox, the deal is important, because the 95 screens that Fame owns will increase its total screen tally to 210, bringing it closer to the arch rival RML which currently is at the top position with 242 screens.[20] The deal will also dodder the screen rankings, raising Inox to the second spot and pushing PVR Cinemas, till now the second largest, to third position with 142 screens (PVR:116[21] and DT

[18] http://www.financialexpress.com/news/we-hope-fame-is-not-the-last-deal-we-have-signed/580528/, last visited on March 23, 2010

[19] http://www.livemint.com/2010/02/24235109/In-the-quest-for-Fame-FCCBs-m.html, last visited on March 23, 2010

[20] http://www.financialexpress.com/news/fame-hits-1year-high-on-reliance-offer/583554/, last visited on March 23, 2010

[21] http://www.pvrcinemas.com/page?page=about, last visited on March 23, 2010

Cinemas:26[22]). In addition, it will strengthen its position in Maharashtra, where Fame has 46 screens and Inox has just 16, including Gujarat (Fame 19, Inox 7), West Bengal (Fame 30, Inox 10), Karnataka (Fame 9, Inox 8) and Jharkhand (Fame 4, Inox Nil).[23]

For, RML, which is already a leading player in the movie exhibition business in India with the largest number of operational movie screens across the country, this acquisition will consolidate its top position in the industry by scaling its total to a formidable 337, leaving PVR in second position, at 142, lagging far behind.

Earlier attempts to acquire Fame: This does not seem to be the first time ADAG has attempted to acquire Fame. The media had reports on October 12, 2006 that the ADAG and the Reliance Industries Group are in separate discussions with the promoters of Fame (then Shringar Cinemas Limited) to buy a substantial stake in the company. NSE, in order to verify the accuracy or otherwise of the information reported in the media and to inform the market place so that the interest of the investors is safeguarded, had written to the officials of the company. Fame had *vide* its letter inter-alia stated, "*The news item reported by the media are purely market rumours and the Company has no comments to offer on the same*." Similarly, in September, 2008, when there were media reports stating that ADAG may pick up the promoters stake in the company, Fame denied any such development.

The total screen tally pursuant to the acquisition of Inox will be as follows:

Rank	Individual Tally	Tally if Inox acquires Fame	Tally if RML acquires Fame
I.	RML - 242	RML - 242	RML - 337
II.	PVR - 142	Inox - 210	PVR - 142
III.	Inox - 115	PVR - 142	Inox - 115
IV.	Fame - 95	Fame - NIL	Fame - NIL

Apart from the rankings and consolidation, there is another crucial aspect to the acquisition of Fame. The acquisition doesn't just involve film exhibition business of Fame, but it brings along Fame's film distribution subsidiary, Shringar Films Limited, and food courts and restaurant management subsidiary, Big Pictures Hospitality Services Private Limited. Add to that, with 50% stake of Fame in Headstrong Films Private Limited (a film production firm) and Swanston Multiplex Cinemas Private Limited (primarily engaged in managing a multiplex), this acquisition is a complete package.[24]

[22] http://www.dt-cinemas.com/aboutus.asp, last visited on March 23, 2010
[23] http://www.business-standard.com/india/news/inox-buys-4328-stake-in-fame/384599/, last visited on March 23, 2010
[24] http://www.fame.co.in/Includes/downloads/Annualreport2009.pdf, last visited on March 23, 2010

2. Why did the promoters of Fame choose a lesser price, when RML was willing to offer much more?

This is the question which still remains unanswered. The decision of Mr. Shravan Shroff, Mr. Shyam Shroff and Mr. Balkrishna Shroff (on behalf of South Yarra) to sell their 43.28% stake in Fame to Inox for Rs. 44 when RML had made a 'firm offer' of Rs. 80 per share[25] has perplexed everyone. Though, Fame's managing director, Mr. Shravan Shroff, has denied RML making any written offer to him on a higher price,[26] the Reliance Open Offer for 62.36% stake in Fame at a whopping price of Rs. 83.40 per share seems to suggest otherwise.

Why were the promoters in such haste to sell off their stake, when they could have easily negotiated further? Why didn't the promoters ask for a premium which is fairly common in a deal involving sale of controlling stake and settle for just Rs. 44 per share i.e. the prevailing market price at that time? Also, for a fee of Rs. 10 million, the Shroffs agreed not to compete with Inox in business of setting up and/or operating multiplex or cinema exhibition for a period of two years commencing from the date of completion of the Inox Open Offer formalities. These are some of the issues which render the decision questionable.

Control Premium: If we look at the average prices of Fame shares in the past, it may be argued that the aspect of control premium was factored in. This is so because, the average price of shares of Fame on BSE for the 12 months, 6 months and 3 months ending December 2009 was Rs. 20.76, Rs. 26.50 and Rs. 31.34 respectively, which means, the acquisition cost of Rs. 44 per share represents a premium of 112%, 66% and 40% over the 12 months, 6 months and 3 months average respectively. *[http://www.dnaindia.com/money/report_inox-fame-deal-valuation-seen-fair_1352194, last visited on March 30, 2010].* However, considering the recession in the past few years and the misfortune of specifically the multiplex business in the last year, these valuations were bound to be low. Hence, can a price of Rs. 44 be considered to include control premium?

The statements given so far by Fame have also not been helpful in terms of dispelling the doubts surrounding the rationale behind the transaction. Though, there is no legal requirement that a person must choose a higher offer between the ones placed before it, but in the absence of any special circumstances or reasons, this decision seems beyond prudent commercial understanding. Maybe, as the story unfolds further, we will be able to see the clearer picture.

A question also arises, whether the promoter director who, as per RML's allegations, received a verbal offer from RML for Rs. 80 per share, had a fiduciary duty to ask for a written offer from RML, given that RML's offer price of Rs. 80 was at 63.5% premium over Inox Offer Price, which would have been more beneficial for the public shareholders of Fame?

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[25] http://economictimes.indiatimes.com/News/News-By-Industry/Media/Entertainment-/Entertainment/Inox-got-premature-veto-in-Fame-RMW/articleshow/5665162.cms?curpg=1, last visited on March 23, 2010

[26] http://www.business-standard.com/india/news/reliance-never-made-uswritten-offer-says-fame/385109/, last visited on March 23, 2010

RML, however, has not kept silent in this regard. It has said that the issues involved in the deal are nowhere as simple as acceptance of a higher or lower price by the sellers, but far more complex and involve serious matters such as suppression of material facts, violations of the Takeover Code and Securities and Exchange Board of India (Prevention of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"), unsatisfactory discharge of the fiduciary duties of the promoters, and protection of the interests of minority shareholders.[27]

It has also hinted darkly that one of the directors on the board of Inox, being an authorised signatory of South Yarra, may have had a key role to play in this deal. But things not being clear and concrete at this stage, it is a mere guess at present. It will be interesting, though, to see how SEBI responds to the allegations raised by RML.

3. Is the battle for Fame, a lost one for RML, or does it still have a chance to score on account of the FCCB issue?

The answer to this lies in the books of accounts of Fame. What may seem like a done deal *prima facie*, may not be that obvious if we look at it holistically. In April 2006, Fame had issued two series of Foreign Currency Convertible Bonds ("**FCCBs**") (12,000 Series A Bonds and 8,000 Series B Bonds, of face value of USD 1,000 each) aggregating to USD 20 million. The FCCBs are convertible at any time upto April 12, 2011 at the option of the holders into '*newly issued'* ordinary equity shares bearing a face value of Rs. 10 per share at an initial conversion price of (i) Rs. 90 per share for Series A Bonds; and (ii) Rs. 107 per share for Series B Bonds.[28]

Out of the USD 20 million FCCBs issued in April 2006, USD 7 million worth of FCCBs (3,000 Series A Bonds and 4,000 Series B Bonds) have already been converted into equity in 2007-08. However FCCBs worth USD 13 million are still outstanding and are due for redemption in 2011, '*unless converted'* or cancelled.

But these FCCBs get converted into newly issued equity shares only when the stock prices are higher than the conversion price. Assuming that the market price of the Fame shares rises above Rs. 90 and Rs. 117 respectively (which is not very improbable considering that the shares of Fame are already hovering near the Rs. 90 mark), and these FCCBs get converted into equity, then the fully diluted voting share capital of Fame will be as follows:

PARTICULARS	NO. OF EQUITY SHARES
Issued and paid up equity shares (A)	34,795,262
Add: Equity shares underlying possible conversion of FCCBs (B)	6,202,850
Add: Total outstanding vested ESOPs for which equity shares may be issued (C)	160,680
Fully Diluted Voting Equity Share Capital (A + B + C)	**41,158,792**

[27] http://www.livemint.com/2010/02/21232841/Relianceoffers-to-buy-621-i.html, last visited on March 23, 2010
[28] http://www.fame.co.in/Includes/downloads/Annualreport2009.pdf, last visited on March 23, 2010

This conversion will reduce the shareholding of Inox in Fame to 42.67% of the fully diluted share capital, in which lies the turning point for RML. Since, there is a likelihood that the shareholding of Inox in Fame may fall below 50% of its fully diluted share capital, it means the battle is not over yet for either side.

Further, the FCCB holders which may hold about 15.07% of the fully diluted stake in Fame upon conversion, and Shail and Gulshan, the two inconspicuous parties who together hold roughly 9.97% of the fully diluted share capital, will play a crucial role in determining the fate of the acquirers. In addition, the recent acquisition of 5.12% of Fame Equity by Religare, who together with its earlier holding, now holds 5.82% stake in Fame, could tilt the balance in either party's favour.

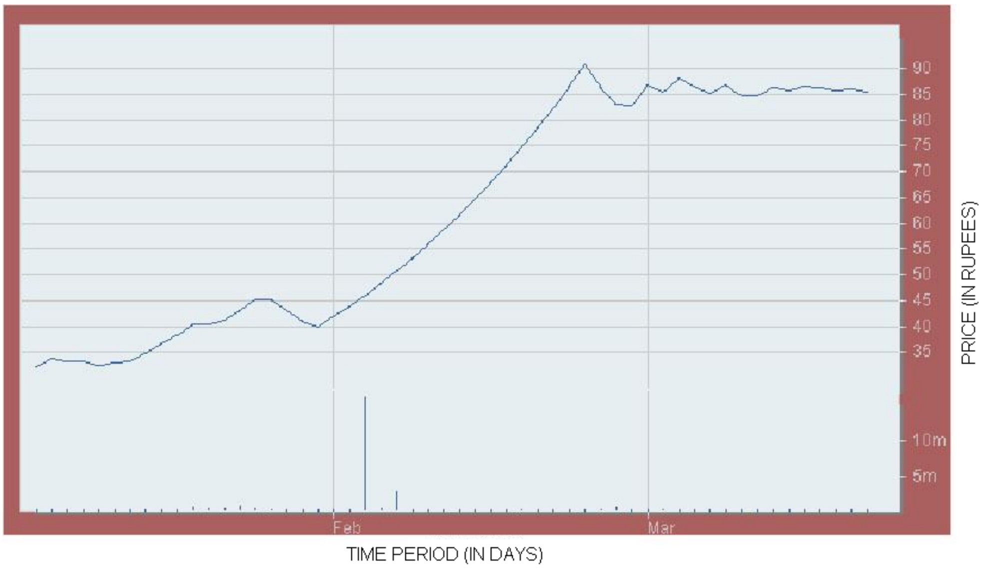
Though it is interesting to see, as RML is continuing its shopping spree acquiring Fame shares through open market purchases (from 4.65% before February 5, 2010 to 13.80% on March 8, 2010), Inox, which has already acquired 42.67% of the fully diluted stake in Fame and needs even less than 8% of the fully diluted stake in Fame to consolidate its position, seems to be holding at the moment. One reason for it could be Regulation 20(7) of the Takeover Code, which says that where the acquirer has acquired shares in the open market or through negotiation or otherwise, after the date of public announcement at a price higher than the offer price stated in the letter of offer, then, the highest price paid for such acquisition shall be payable for all acceptances received under the offer. With Fame share prices now touching Rs. 90 and above, acquisition of even a single share of Fame will considerably hike the Inox Offer Price. Another possible reason for this hold back could be that Inox does not want to enter into the aggressive bidding process so early in the race and may like to defer it further and bring in the late surprise.

Great Offshore Limited ("GOL") takeover could repeat again: In the takeover battle for GOL, ABG Shipyard Limited, realizing that its offer could not be a success, sold its stake in GOL just one day prior to the day open offer began and made huge profits. Similarly, Inox could also sell off its stake in Fame and reap hefty profits from the difference in prices.

4. What impact does the bidding war have on the public shareholders of Fame?

Even before Reliance announced its competitive bid, owing to the widespread speculations in the market that Reliance would stake its counter-claim, the price of the shares of Fame has been sky-rocketing. From mid-January, 2010 when rumours of Inox acquiring Fame were up in the air, till the date the public announcement for counter-offer was made, the share prices of Fame have more than doubled from Rs. 38.40 per share to around Rs. 86.45 per share. On February 22, 2010, the day after Reliance Group announced its offer countering a bid by Inox, shares in Fame opened up 4.98% to Rs 86.45, hitting its upper circuit.[29] Following is a chart showing the trend as to how the price of Fame shares has escalated in the past couple of weeks:[30]

[29] http://www.moneycontrol.com/news/buzzingstocks/fame-shares-jump-after-reliance-media-counter-bid_442968.html, last visited on March 23, 2010
[30] Graph prepared using the charting software on http://www.bseindia.com, on March 22, 2010



From below Rs. 35 in the beginning of January, 2010 to around Rs. 85 in mid of March, 2010 and crossing the Rs. 90 barrier on its way, the shareholders of Fame seem to be merrymaking, while the acquirers are engaged in a strong tussle to acquire Fame. Like the earlier competitive deals, this one too is a definite windfall for the public shareholders.

V. Legal and Regulatory Considerations

1. Under what provisions of the Takeover Code did Reliance Group make the competitive bid?

A competitive bid, as the name suggests, is a counter offer made by a person, other than the acquirer who has made the first open offer. Regulation 25 of the Takeover Code allows a person, other than the acquirer who has made the first public announcement, to make a public announcement of his offer for acquisition of the shares of the same target company within 21 days of the public announcement of the first offer. The objective here is twofold: first, to give the other acquirers, who are desirous of making any offer, an option by which they can acquire the shares of the target company; and second, to provide the shareholders of the target company, the best exit option from the lot.

In the present case, Inox Group made the public announcement of its offer on February 6, 2010. Being the acquirer which made the first public announcement, the last date for making a public announcement for competitive bid was February 27, 2010. Reliance Group availed the provision of Regulation 25 of the Takeover Code and made the public announcement of its counter-offer on February 21, 2010, which is well within the stipulated time.

2. Why was the Reliance Open Offer initially for 62.08% and later revised to 62.36% stake in Fame?

To answer this question, it is pertinent to note the shareholding of Inox Group in Fame at the time of making the acquisition and their offer size. The reason being, as per Regulation 25(3) of the Takeover Code, any competitive offer by an acquirer has to be for such number of shares which, when taken together with shares held by him along with persons acting in concert with him, will be at least equal to the holding of the first bidder (Inox Group, in the present case) including the number of shares for which the offer by the first bidder has been made.

The shareholding of Inox Group in Fame at the time of making the public announcement consisted of 17,565,288 shares and their open offer was for 8,231,759 shares, the total being 25,797,047 shares (74.14% of the fully paid up issued equity share capital of Fame). Now, Reliance Group at the time of making the public announcement had acquired 4,224,435 shares of Fame. Doing the math, it meant that they had to make an open offer for atleast 21,572,612 shares of Fame, which it seems, they rounded off to 21,600,000 shares (62.08% of the fully paid up issued equity share capital of Fame and 52.48% of the fully diluted voting equity share capital of Fame).

But then, why did the Reliance Group through a Corrigendum on March 5, 2010 revise its offer size to 62.36% of the issued equity share capital of Fame?

The reason being, after the date of the Reliance PA there was a short delivery of 110,942 equity shares of Fame due to close out of position by the stock exchanges. As a result of which, the actual number of equity shares of Fame held by the Reliance Group as on the date of the Reliance PA was 4,113,493 (11.82% of the fully paid up and issued equity share capital) and not 42,24,435. Therefore, in order to comply with the provision of Regulation 25(3) of the Takeover Code, it had to make an open offer for atleast 21,683,554 equity shares of Fame, which they fulfilled by revising their offer size from 21,600,000 to 21,700,000 shares of Fame (62.36% of the fully paid up issued equity share capital).

3. Did Fame violate any provisions of the Takeover Code by appointing three new directors on its Board?

By a letter dated March 2, 2010, the Reliance Group made a reference before SEBI in relation to the appointment of Inox Directors on the board of Fame at the meeting held on February 28, 2010, claiming it to be *inter alia* against the inherent principles of equal treatment and opportunity that is afforded to competing acquirers under the Takeover Code.

Though, we haven't come across any specific violation claimed by Reliance Group, but a look at Regulations 22(7), 23(3) and 23(6) of the Takeover Code, will help us better understand their contentions. Regulation 22(7) of the Takeover Code bars an acquirer or persons acting in concert with him ("**Acquirers**") from being appointed on the board of directors of the target company during the offer period[31]. But this bar is not absolute. The Acquirers can be appointed on the board of director provided they fulfill the following two conditions:

[31] "Offer period" has been defined in Regulation 2(1)(f) of the Takeover Code to mean the period between the date of entering into Memorandum of Understanding or the public announcement, as the case may be and the date of completion of offer formalities relating to the offer made under the Takeover Code.

a. After assuming full acceptance, they have deposited in the escrow account 100% of the consideration payable in cash / securities to the public shareholders of the target company; and

b. The appointment on the board of directors of the target company will be after a period of twenty-one days from the date of public announcement.

The above obligations are from the perspective of the Acquirer, which Inox Group has fulfilled in the present case.

Now, moving on to Regulation 23(3) of the Takeover Code, it talks about the obligation of the target company. It says, once the public announcement has been made, the board of directors of the target company shall not appoint as additional director or fill in any casual vacancy on the board of directors, by any person(s) representing or having interest in the Acquirer, till the date of certification by the merchant banker as provided under Regulation 23(6). The proviso to this Regulation states that upon closure of the offer and the full amount of consideration payable to the shareholders being deposited in the special account, changes as would give the Acquirer representation on the board on control over the company can be made by the target company.

> The spirit of Takeover Code seems to be to prevent conflict of interest. In a situation involving competitive bids, an appointment of representatives of one bidder without equal representation from the other bidder, could go against the principles of neutrality and equal opportunity. Further, it may also lead to unfair competition as the bidder, whose representative is there on the board, would have access to information privy to the company, which the other bidder may be unaware of.

Mr. Kishore Biyani, being an independent director, neither represents nor has any interest in the Acquirer. Hence, Regulation 23(3) is not attracted by his appointment. However, Mr. Pavan Jain and Mr. Deepak Asher being on the board of directors of Inox, definitely either represent or have interest in the Acquirer. Further, since the offer is yet to open, the proviso to Regulation 23(3) will also not be applicable. Therefore, for the purpose of appointment of the additional directors, a certificate by a merchant banker as provided under Regulation 23(6) will be imperative. And as per Regulation 23(6), this certificate can only be provided upon the fulfillment of all the obligations by the Acquirer under the Takeover Code. Since the additional directors (representing or having interest in the Inox Group) have already been appointed on the board of Fame after the public announcement and the open offer formalities have not yet completed, it remains to be seen whether there has been any violation of Regulation 23(3) of the Takeover Code by directors of Fame.

4. What would be the consequences if the Reliance Open Offer results in the public shareholding in Fame falling below 25%?

In the event, the counter-offer made by Reliance Group receives full acceptance in the open offer, its stake may exceed 75% in Fame, which would mean the public shareholding in Fame will fall below the limit specified in Clause 40A of the extant listing agreement with the stock exchanges, which is 25% of the total issued and subscribed equity share capital. In such a scenario, Regulation 21(2) of the Takeover Code will get triggered and Reliance Group will have to take necessary steps to facilitate compliance of Fame with the relevant provisions of the extant listing agreement, within the time period as mentioned therein.

It is interesting to note though that prior to 2006, Regulation 21(2) of the Takeover Code required an acquirer:

(i) who had acquired more than 55% shares or voting rights in the target company through an agreement or memorandum of understanding; and

(ii) whose public offer made under Regulation 10 or Regulation 11(1) to acquire minimum percentage of voting capital as specified in Regulation 21(1) would have resulted in public shareholding being reduced to a level below the limit specified in the listing agreement with the stock exchange;

to acquire only such number of shares under the agreement or the memorandum of understanding so as to maintain the minimum specified public shareholding in the target company.

However, this was substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006 to the position as it stands now as mentioned above.

5. What would be consequences if the contention raised by Reliance Group regarding certain pre-existing financial arrangement between Inox Group and Fame promoters is true?

RML has written to SEBI, stating that in 2008 when Mr. Shravan Shroff sold his 43% shareholding in Fame to South Yarra and the shares were transferred to a separate account, a director of Inox was made a joint holder of that account and an authorized signatory with respect to those shares along with the promoter shareholders, thereby giving them the 'veto power' on a sizeable chunk of Fame shares. As per RML, since a director of Inox acquired the 'veto power', Inox should have made a public announcement in the year 2008 itself.[32] Upon going through the shareholding pattern as appearing on BSE's website[33] for the duration of calendar years 2007 to 2009, it is clear that the aspect of the director of Inox jointly holding shares in Fame along with other entities stands uncorroborated since the shareholding pattern does not make any such mention.

Now coming to the aspect of the allegation of making of a public announcement of offer under the Takeover Code, we need to first understand the meaning of "veto power" in this context.

The Securities Appellate Tribunal ("**SAT**") in its recent order in the matter of *Shubhkam Ventures (I) Private Limited* vs. *SEBI*[34] ("**SAT Order**") has held that control is a positive power and not a negative power. It is a power by which an acquirer can command the target company to do what it wants. Power by which an acquirer can only prevent a company from doing what the latter wants to do is by itself not control. Since, in the present case, the Inox director, being the authorised signatory of the account, can hardly command Fame to do what he wants; neither can he appoint majority of the directors, nor control the management or policy decisions, it is difficult to conclude, he is in control. The mere right to block transfer or pledge of shares, being negative power may not constitute control, as said earlier.

Let's assume that the Inox director had triggered the open offer requirement under the Takeover Code. In that scenario, to bring Inox under the scanner, it would be important to see whether at that

[32] http://economictimes.indiatimes.com/news/news-by-industry/media/entertainment-/media/Reliance-Media-challenges-sale-of-majority-shares-of-Fame-to-Inox/articleshow/5609429.cms, last visited on March 23, 2010
[33] http://www.bseindia.com/shareholding/searchresult.asp?scripcd=532631, last visited on March 30, 2010
[34] Appeal No. 8 of 2009 decided on January 15, 2009; http://www.sebi.gov.in/satorders/subhkamventures.pdf

time he acted in his individual professional capacity or as a representative of Inox, or rather, whether they were persons acting in concert ("**PAC**") or not. Regulation 2(1)(e)(*2*) deems certain persons to be PAC unless the contrary is established. One of them is a company with any of its directors or any person entrusted with the management of the funds of the company.

So, if Inox is unable to negate the presumption as mentioned in Regulation 2(1)(e)(*2*), then Inox and the Inox director can be considered PAC, which would mean that Inox should have complied with the obligations of the Takeover Code pertaining to the open offer at such time itself. But, this however, is on the presumption that the Inox director had himself triggered the open offer requirements.

Further, RML also claimed that South Yarra was not a part of the promoter group of Fame when the transfer took place in 2008, and hence, it should have come out with an open offer then itself.[35]

To understand the merits of this argument, there are a quite a few Regulations of the Takeover Code that need to be looked into. First, if we see Regulation 2(1)(h), which defines the term 'promoter', it includes any person belonging to the 'promoter group' as mentioned in Explanation I. Now Explanation I(b) of Regulation 2(1)(h) states that, for the purpose of that clause, 'promoter group' will include, in case the promoter is an individual, any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10% of the total.

Assuming, the promoters of Fame had satisfied the clause mentioned above, South Yarra would have automatically become a part of the 'promoter group'. But, does it mean inter se transfer amongst themselves would have been excluded from the open offer requirements of the Takeover Code? Regulation 3(1)(e) exempts inter se transfer of shares amongst 'qualifying promoters' from the obligations triggered through Regulations, 10, 11 and 12. From the interpretation of the term "qualifying promoter", in the event Fame promoters were either directly or indirectly in control of South Yarra, then South Yarra would be included in the definition of 'qualifying promoter' and would be eligible for exemptions, provided, it fulfills, the following conditions, namely:

(i) the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition;
(ii) the *inter se* transfer of shares should be at a price which is not exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of Regulation 20 (which speak about minimum offer price); and
(iii) the transferor(s) and transferee(s) should have complied with Regulations 6, 7 and 8 of the Takeover Code (which talk about disclosures of shareholding and control in a listed company).

However, if Fame promoters were not in direct or indirect control of South Yarra, or if even a single condition mentioned above is left to be satisfied, it would not be possible to claim the exemption as mentioned above, and not making of public announcement could have lead to a possible violation of the Takeover Code.

[35] http://economictimes.indiatimes.com/News/News-By-Industry/Media/Entertainment-/Entertainment/Inox-got-premature-veto-in-Fame-RMW/articleshow/5665162.cms?curpg=2, last visited on March 23, 2010

VI. EPILOGUE

What began in 2005 with the acquisition of Adlabs by Reliance Group, and amalgamation of CCPL with Inox in 2006, seemed to have slowed down during the economic downturn. But, with the recession fading out gradually and markets picking up, mergers and acquisitions are gaining momentum once again. Last year in November, DLF, owner of DT Cinemas, agreed to sell their 29 screens to PVR Cinemas (the acquisition is yet to be completed) and early this year, we get to see a fierce battle between Inox and RML for the acquisition of Fame.

Though, Inox has already acquired more than 50% stake in Fame, but RML doesn't seem to be losing hope. From open market purchases and a 'Big' open offer with a 'Big' price, to allegations claiming violation of hosts of laws, the Reliance Group is trying every tactic under the roof to frustrate the acquisition of Fame by Inox. Even, if it is not be able to acquire Fame, by getting hands on 26% shares in Fame, it will gather the power to block special resolutions, making life tougher for Inox.

With the bouquet of benefits that Fame brings along with it in connection of its acquisition by Inox, and the growth plans of both Inox and Fame being tied up, Inox too doesn't seem to let go of Fame that easy. It has denied all the allegations and insinuations made by RML in its public announcement as untrue, baseless and misleading.[36] Amidst this scuffle, the debt of over Rs. 1000 million on the books of account of Fame, seems to have taken a backseat.

In light of the cutthroat competitive zest which both the parties bear, it is difficult to be clairvoyant on way the battle is going to evolve. But one thing is for sure, with both the parties trying to become market leaders in this business, the battle is bound to get fiercer and murkier in the time to come. Only time will be able to tell which party will trounce the other and enter the "**Hall of Fame**".

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36 http://www.inoxmovies.com/inox/wcms/en/home/media/corporate-releases/INOX-Leisure-Ltd-Media-Stat-100223.html;jsessionid=5C4D996404AF1FBD15B8AF74C63932E8, last visited on March 23, 2010