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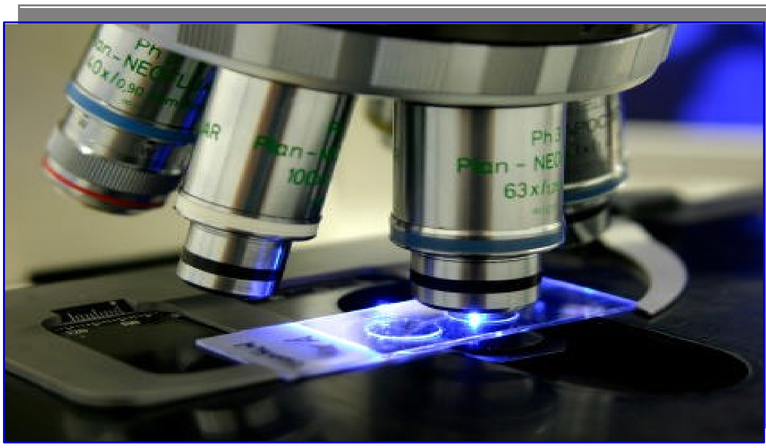

Ranbaxy - Daiichi Deal Dissected

Dissected by –
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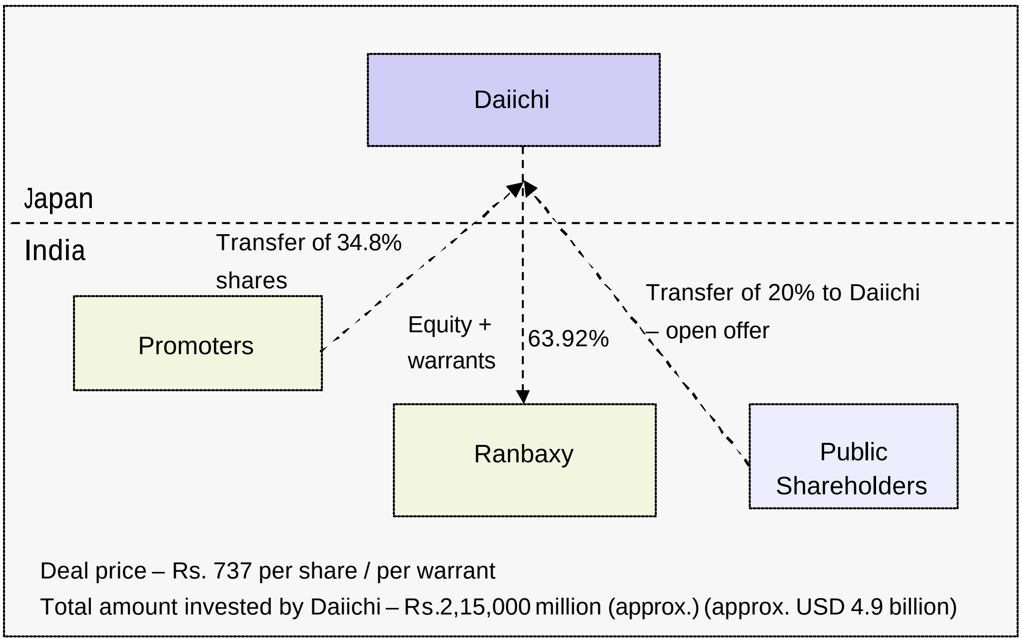
BACKGROUND

In the month of June, 2008, Daiichi entered into a share purchase and share subscription agreement ("**Agreement**") with Ranbaxy and the Singh family, the controlling shareholders ("**Promoters**"), to acquire controlling stake in Ranbaxy.

Summary of Structure



KEY IMPLICATIONS AND ANALYSIS UNDER INDIAN LAWS

SECURITIES LAW ISSUES

Takeover Code

As per Regulations 10 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**Takeover Code**"), acquisition of shares / voting rights in a listed company, which will, in aggregate, give the acquirer 15% or more of the voting rights in the company or acquisition of control over a listed company, would immediately trigger an open offer requirement.

Pursuant to the Agreement entered into by Daiichi to acquire controlling stake, an open offer to acquire upto 20% of the paid up capital of Ranbaxy was made by Daiichi to the shareholders of Ranbaxy. The open offer was made at a price of Rs.737 per share to all those who were shareholders of the Company as on June 27, 2008.

The open offer, concluded in the month of October, 2008, gave Daiichi an additional 20% equity stake in Ranbaxy for an aggregate consideration of Rs.68,000 million (approx.) (~ USD 1.5 billion[1]). Further, due to delay in receipt of statutory approvals, there was a delay in payment in consideration to the shareholders and hence an interest @ 10% p.a. for 25 days was paid by Daiichi to the shareholders.[2]

Insider Trading

Just a week after the deal was announced, Ranbaxy further hit the news with its settlement of long pending litigation with Pfizer over Lipitor drug. The short timing of these two announcements raised doubts on whether the deal was influenced by this unpublished price sensitive information[3] ("**UPSI**") and if yes, would it amount to violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992 ("**Insider Trading Regulations**"). However, as per our understanding, such discussions were more in the trade circles and no such possession of UPSI was proved nor did SEBI instigate any investigation till date.

Dealing in shares[4] may not trigger Insider Trading Regulations, if such acquisition was as per the Takeover Code. However, today the language in the law is bit unclear on what is exempted; the shares which have been acquired under open offer or even those shares, the acquisition of which actually triggered the open offer.

Further, the price paid to the Promoters for transfer by Daiichi was same as the price paid to other shareholders of Ranbaxy under open offer. Hence, did the Promoters derive any unfair economic benefit out of the whole deal, is something that should be kept in mind before coming to a conclusion on the insider trading speculations.

EXCHANGE CONTROL ISSUES

The investment by Daiichi was subject to the following key approvals:

1. **RBI Approval for transfer of shares**

   As per RBI/2004-05/207 A.P. (DIR Series) Circular No. 16 dated 4th October, 2004, transfer of shares from Indian resident to non Indian resident, which attracts the provisions of the Takeover Code would require prior approval of the Reserve Bank of India ("**RBI**"). Accordingly, we understand, RBI approval was obtained by Daiichi in the month of October, 2008.

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[1] For the purpose of this analysis 1 USD = 44 INR (approx.)

[2] As per Regulation 22(12) of the Takeover Code, the consideration should be paid by the acquirer within a period of 15 days from the date of closure of open offer.

[3] "Unpublished" means information which is not published by the company or its agents and is not specific in nature. – Regulation 2(k) of the Insider Trading Regulations

[4] "Dealing in securities" means an act of subscribing, buying, selling or agreeing to subscribe to buy, sell or deal in any securities by any person either as principal or agent - Regulation 2(d) of Insider Trading Regulations

2. Approval of Foreign Investment Promotion Board ("FIPB")

(i) Approval under Press Note No. 1 (2005)

Press Note 1 (2005) issued by the Department of Economic Affairs, Ministry of Finance, mandates prior approval of FIPB, if the foreign investor is already having an existing joint venture or technology transfer / trademark agreement in the 'same' field[5], as on January 12, 2005. Since Daiichi was already holding equity stake in Uni-Sankyo Limited, a company engaged in 'same' business as Ranbaxy, prior approval of FIPB was obtained.

(ii) Issuance of warrants

Warrants are essentially options that give a right to the investors to obtain equity shares at a later date. Under the current exchange control regulations, subject to sectoral caps, if any, a company can issue equity shares and compulsorily convertible preference shares / debentures under automatic route. The current exchange control regulations though do not expressly mandate an approval, we understand, FIPB has been insisting for a prior approval before issuance of warrants to non residents, as warrants have not been expressly included in the definition of capital[6].

There is still ambiguity on whether such FIPB approvals would be required by a listed company since issuance of such warrants would be made as per the SEBI guidelines. However, clarity on this is still awaited from FIPB and companies have been making an application seeking such prior approval on a conservative basis.[7]

3. Approval of Cabinet Committee on Economic Affairs ("CCEA")

Any foreign investment in excess of Rs.6000 million (~ USD 136 million[8]) would also require prior approval of CCEA. Accordingly, final clearance was received from CCEA by Daiichi in the month of October, 2008.

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[5] For the purposes of Press Note 1 (2005 Series), the definition of 'same' field would be 4 digit NIC 1987 Code.

[6] Regulation 2(ii) of Foreign Exchange Management (Transfer or issue of Security by a person resident outside India) Regulations, 2000.

[7] In view of lack of clarity on the subject, we understand that the Ministry of Finance was supposed to write to FIPB on whether issuance of warrants would mandate prior approval. However, response from the Government in this regard is still awaited.

[8] For the purpose of this analysis 1 USD = 44 INR (approx.)

TAXATION ISSUES

As per the current Income Tax Act, 1961 ("**ITA**"), Long-term capital[9] gains arising on transfer of listed equity shares on a recognized stock exchange in India will be exempt from capital gains tax in India provided securities transaction tax of 0.125% is paid on the consideration[10]. Such sale, if executed off the floor of the stock exchange, would, however, be subject to a long term capital gains tax of 11.33%[11] as per the ITA and the transfer of shares from the Promoters to Daiichi, off the stock exchange, would have a capital gains tax implication of Rs.10,000 million (approx.) (~ USD 227 million[12]).

Hence a way to do a capital gains tax free transfer could be to execute the transfer on the stock exchange, through a block deal window. Introduced in the year 2005[13], block deal window facilitates negotiated deals on the floor of the stock exchange. However, such negotiated deals should be done at a price not exceeding ±1% from the ruling market price / previous day closing price, as applicable.[14]

With the slump in the financial markets, the prices of Ranbaxy dropped to around Rs.265 (approx.), which was far less than the negotiated price of Rs.737. Accordingly, the Promoters sought Security and Exchange Board of India's ("**SEBI**") approval to waive the ±1% ceiling for this block deal. However, since there was a huge difference between the deal price and the then existing market price, such permission was not granted by SEBI and an off market deal was executed after paying the capital gains tax.

CORPORATE LAW ISSUE

Nomination of Independent Director

As per the Agreement, post completion, the board of directors of Ranbaxy would consist of 10 directors, of which a combination of 4 independent and non-independent directors will be nominated by the Promoters and 6 independent and non-independent directors will be nominated by Daiichi. Such nomination of independent directors raised doubts on whether such practice would affect the independence of the directors.

As the corporate governance code[15] stands today, mere nomination / proposing a name of independent director by the Promoters / person in control should not have an impact on their independence unless accompanied by a material pecuniary interest in some form. However, corporate governance code merely sets boundaries and the onus is on the companies to go beyond the formal code and evaluate whether

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9 Shares of a company, listed on a recognized Indian stock exchange, if held for more than 12 months are treated as long-term capital assets.

10 Over and above, if the seller of shares are companies owned by the Promoters, then a Minimum Alternate Tax @ 11.33% would be payable on the book profits.

11 Rates without indexation and inclusive of a surcharge of 10% on tax + an education cess of 3% on tax and surcharge

12 For the purpose of this analysis 1 USD = 44 INR (approx.)

13 SEBI circular no. MRD/DoP/SE/Cir- 19 /05 dated September 2, 2005

14 One other alternative could be a bulk deal sale. Though the price band of ±1% does not apply to a bulk deal segment, they would be governed by the normal trading circuit of ±20%.

15 Clause 49 of the Listing Agreement executed by the listed company with the stock exchanges

such practice would create some kind of a dependence on the Promoters / Daiichi and adversely affect the independence of the independent directors.

CHRONOLOGY OF KEY EVENTS

To conclude, the chronology of key events is summarized as under:

Date	Event
June 11, 2008	Signing of Agreement by Daiichi with Ranbaxy and its Promoters.
June 14, 2008	Public announcement by Daiichi to the shareholders of Ranbaxy to acquire additional 20% equity shares at Rs.737 per share under the Takeover Code.
June 18, 2008	Ranbaxy announces its settlement with Pfizer over Lipitor litigation worldwide.
June 27, 2008	Submission of draft letter of offer by Daiichi to SEBI for its observations.
July 15, 2008	Approval of preferential allotment of equity shares and warrants to Daiichi by the shareholders of Ranbaxy.
August 4, 2008	Daiichi receives SEBI's observation on the draft letter of offer
August 6, 2008	FIPB approves the proposed investment, subject to approval of CCEA
August 11, 2008	Daiichi issues revised schedule of activities due to delayed receipt of SEBI observation
August 16, 2008	Opening of open offer
September 4, 2008	Closing of open offer
October 3, 2008	Receipt of approval from CCEA for foreign investment
October 15, 2008	Acquisition of 20% equity stake by Daiichi pursuant to open offer
October 16, 2008	SEBI rejects Promoter's application to sell their equity stake through a block deal on the stock market
October 20, 2008	Ranbaxy becomes subsidiary of Daiichi upon increase in Daiichi's stake to 52.5% (including preferential allotment and transfer of 1st tranche shares from Promoters)
November 7, 2008	Daiichi acquires balance 11.42% shares from the Promoters off the stock market and the deal is concluded. Daiichi's equity stake in Ranbaxy up to 63.92%

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