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M&A Lab Battle for Control of Religare

Decoding Burman Family's
Hostile Takeover of Religare

August 2024

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Contact

For any help or assistance please email us on conciierge@nishithdesai.com or visit us at www.nishithdesai.com.

Acknowledgements



Nishchal Joshipura
nishchal.joshipura@nishithdesai.com



Yogesh Nayak
yogesh.nayak@nishithdesai.com



Parina Muchhala
parina.muchhala@nishithdesai.com



Anurag Shah
anurag.shah@nishithdesai.com



Palomita Sharma
palomita.sharma@nishithdesai.com



Anirudh Srinivasan
anirudh.srinivasan@nishithdesai.com

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Prologue

Enter the arena of a rare boardroom clash for control of a non-promoter led listed financial services entity in India. Picture Religare Enterprises Limited (“**REL**”) caught in the vortex of a takeover saga instigated by the Burman Family. What commenced as a conventional acquisition under Regulation 3 of the Takeover Code, swiftly morphed into a high stakes battle for control through a hostile takeover involving regulatory bodies, shareholders, and corporate titans alike.

A hostile takeover is when an acquirer or a group of acquirers attempts to take over control of another company against the wishes of the target company’s board / management. Listed entities which do not have an identifiable promoter or are not closely held by promoter groups are prone to more hostile acquisition attempts, given that the acquirer could deliver added value to the shareholders (through their reputation, expertise or otherwise) and overrule the board of the company by keeping the shareholders on their side. Until 2018, REL was controlled by Malvinder and Shivinder Mohan Singh, who were ousted from their responsibilities in 2019. Post this, REL was managed professionally by its board, without any identifiable promoter or promoter group.

However, this did not hamper its financial performance. For example, during FY 2023–24, REL demonstrated stellar value for its shareholders — the consolidated net profit was INR 335,760,000 (Indian Rupees Three Hundred Thirty-Five Million Seven Hundred Sixty Thousand) for the third quarter of 2023. Further, it is expected that REL’s revenues shall grow at a CAGR of 28.2% to INR 12,635 crore by FY–27. Considering that REL is the holding company of a number of other profitable subsidiaries engaged in growing sectors in India (such as financial services and insurance), growth of this company and its operations is almost guaranteed.

An attempt to take over REL was made in 2023, when the promoter group of one of the largest FMCG company in India (Dabur), announced its intention to take control of REL, when they were nearing 25% shareholding in REL. Although this takeover was initially embraced by REL’s board considering the potential value being brought into the company’s operations and for the shareholders, it swiftly deteriorated into a fierce boardroom conflict and a hostile takeover, with multiple public allegations being made by the board and the potential acquirers alike.

It is likely that post completion of the takeover, the promoter group of Dabur shall utilize their sectoral expertise within the financial services domain to increase efficiency within REL. In the event that this hostile takeover materializes, it will serve as an important precedent for deal-making relating to listed financial services companies for the coming decade.

In this M&A Lab, we probe deeply into the intricate details relating to this deal and analyse its implications for the Acquirer and REL alike. As always, we seek to delve into the legal, regulatory, tax, financing and other relevant commercial dimensions relating thereto.

Glossary of Terms

Abbreviation	Meaning / Full Form
Acquirers	Collectively, M.B. Finmart Private Limited, Puran Associates Private Limited, VIC Enterprises Private Limited and Milky Investment & Trading Company
BSE	Bombay Stock Exchange
Burman Family	Promoter family of Dabur India Limited, consisting of Mohit Burman, Vivek Chand Burman, Monica Burman, Anand Chand Burman, AC Burman, Minnie Burman, and entities held and / or controlled by them
Care	Care Health Insurance Limited
CBDT	Central Board of Direct Tax
CCI	Competition Commission of India
Combination Regulations	CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011
DLOF	Draft Letter of Offer dated October 11, 2023, filed by the Acquirers with SEBI
ESOPs	Employee Stock Option Plans
FEMA	Foreign Exchange Management Act, 1999
FMCG	Fast Moving Consumer Goods
FPI	Foreign Portfolio Investor
FY	Financial Year
HUF	Hindu Undivided Family
IRDAI	Insurance and Regulatory Development Authority of India
INR	Indian Rupees
ITA	Income Tax Act, 1961
ITR	Income Tax Rules, 1962
JM Financial	JM Financial Limited (i.e. manager to the Open Offer)

Glossary of Terms

Abbreviation	Meaning / Full Form
LODR	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
M&A	Mergers and Acquisitions
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NSE	National Stock Exchange of India Limited
OI	Overseas investment regime in India, consisting of the following: (i) Foreign Exchange Management (Overseas Investment) Rules, 2022; (ii) Foreign Exchange Management (Overseas Investment) Regulations, 2022; (iii) Master Direction – Overseas Investment, 2024
Offer Price	INR 235 per equity share
Offer Size	INR 2,116 crore (Indian Rupees Two Thousand and One Hundred and Sixteen crore) (i.e. USD 255,030,000)
Open Offer	Open offer as set out under Regulation 3 of the Takeover Code
PAC	Persons Acting in Concert
PAN	Permanent Account Number
Public Shareholders	All the public shareholders of REL, who are eligible to tender their equity shares in the Open Offer (as per the Takeover Code), except the Acquirers and persons deemed to be acting in concert with the Acquirers
PIT Regulations	Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015
Proposed Transaction	A combination of Limb 1 and Limb 2 (as set out in the “Deal Details” section below)
RBI	Reserve Bank of India
REL	Religare Enterprises Limited
Scale Based Regulations	Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023
SEBI	Securities and Exchange Board of India
Takeover Code	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
USD	United States Dollars

Deal Details

Brief Snapshot

Acquirers	M.B. Finmart Private Limited Puran Associates Private Limited VIC Enterprises Private Limited Milky Investment & Trading Company
Proposed Transaction	<p>Limb 1:</p> <p>A set of open market purchases on recognized stock exchanges, for the cumulative acquisition of 5.27% shareholding in REL, in the following manner:</p> <ol style="list-style-type: none"> Acquirer 1 to acquire 5,771,958 equity shares (i.e., 1.76% shareholding in REL), Acquirer 2 to acquire 5,771,958 equity shares (i.e., 1.76% shareholding in REL); and Acquirer 3 to acquire 5,771,958 equity shares (i.e., 1.76% shareholding in REL). <p>These open market purchases have been consummated by Acquirer 1, 2 and 3 in January 2024 (upon receipt of approval of the CCI).</p> <p>Limb 2:</p> <p>Open Offer by the Acquirers under the Takeover Code to acquire up to 90,042,541 equity shares, representing 26% of the shareholding of REL.</p>
Offer Price	INR 235 per equity share
Total Consideration	Approximately INR 21,160,000,000 (Indian Rupees Twenty-One Billion One Hundred Sixty Million) (i.e. USD 255,030,000) (assuming full acceptance of the Open Offer)
Mode of Funding	Combination of cash deposit, bank guarantee and debt financing

Parties Involved in the Deal

Acquirers

M.B. Finmart Private Limited (“MFPL” or “Acquirer 1”)

Acquirer 1 is a private company limited by shares. It was incorporated on March 6, 1996, under the laws of India as ‘Dabur Investment Corporation Limited’. Pursuant to Acquirer 1 becoming a private limited company, the name was first changed to ‘Dabur Investment Corporation Private Limited’ and subsequently to ‘M.B. Finmart Private Limited’ on December 11, 2008. Acquirer 1 is a systemically important non-deposit taking non-banking finance company registered with the RBI on March 6, 2009. It is primarily engaged in the business of investment in capital markets and providing secured and unsecured loans and advances.

Deal Details

Mohit Burman, Vivek Chand Burman and Monica Burman are the equity shareholders of Acquirer 1. The beneficial interest in the shareholding of Mohit Burman and Vivek Chand Burman is held by M.B. Investment Partnership Firm. Additionally, CEE Enterprises (another Burman Family entity) also holds certain compulsorily convertible preference shares of Acquirer 1. Further, Mohit Burman, Vivek Chand Burman and Monica Burman are the promoters of Acquirer 1. Accordingly, Acquirer 1 is closely held by members of the Burman Family.

Puran Associates Private Limited (“PAPL” or “Acquirer 2”)

Acquirer 2 is a private company limited by shares. It was incorporated on March 3, 1979, under the laws of India and is registered as a systemically important non-deposit taking non-banking finance company registered with the RBI. Acquirer 2 is primarily engaged in the business of investment in capital markets and providing secured and unsecured loans and advances. Acquirer 2 is another entity that is closely held by members of the Burman Family. The promoters and shareholders of Acquirer 2 are Anand Chand Burman, Minnie Burman and AC Burman (HUF).

VIC Enterprises Private Limited (“VIC” or “Acquirer 3”)

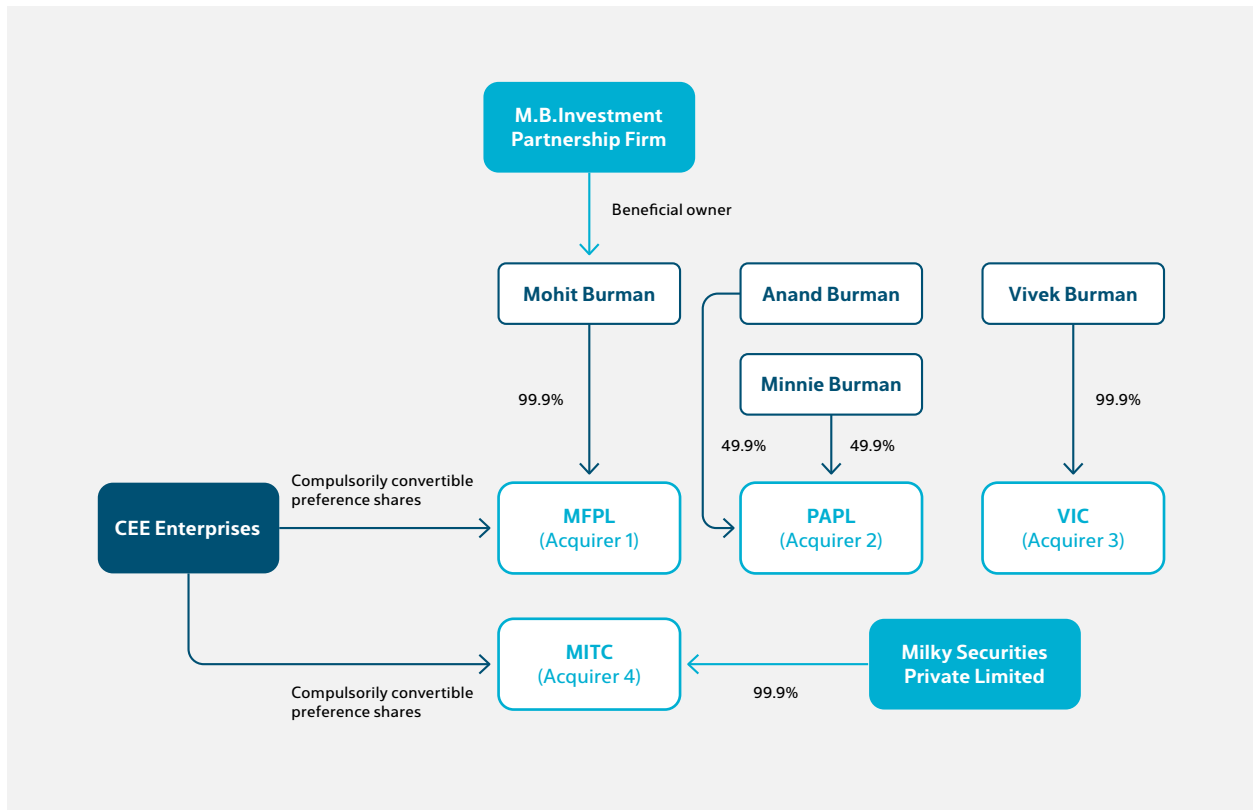
Acquirer 3 is a private company limited by shares. It was incorporated on March 3, 1979, under the laws of India. Acquirer 3 is a systemically important non-deposit taking non-banking finance company registered with the RBI on June 1, 2000. Acquirer 3 is primarily engaged in the business of investment in capital markets and providing secured and unsecured loans and advances. Vivek Chand Burman, Mohit Burman, and VC Burman (HUF) are the promoters and shareholders of Acquirer 3. Accordingly, Acquirer 3 is also closely held by members of the Burman Family.

Milky Investment & Trading Company (“MITC” or “Acquirer 4”)

Acquirer 4 is a private company with unlimited liability. It was incorporated on January 30, 1981, under the laws of India. Acquirer 4 is a systemically important non-deposit taking non-banking finance company registered with the RBI on April 7, 2008. It is also engaged in the business of investment in capital markets and providing secured and unsecured loans and advances. Milky Securities Private Limited (another Burman Family entity), along with its nominee shareholder (i.e., Mr. Abhay Kumar Agarwal), is the promoter and owns the entire equity share capital of Acquirer 4. Additionally, CEE Enterprises (which also holds compulsory convertible preference shares in Acquirer 1) holds CCPS of Acquirer 4 as well.

Deal Details

The structure chart of the Acquirers (which are entities that are held and controlled by members of the Burman Family) is as follows:



Target Company

Religare Enterprises Limited is a public limited company having its registered office at 1407, 14th Floor, Chiranjiv Tower, 43, Nehru Place, New Delhi- 110019.

It is registered as a core investment company with the RBI and is an investment and financial services holding company that provides a comprehensive range of financial services through itself, its subsidiaries and operating entities. These services include loans for small and medium-sized enterprises, affordable housing finance, health insurance, and retail broking.¹

As a group, Religare caters to diverse customer segments having different income and spending capacities — ranging from mass retail to affluent classes, and SMEs to mid-size corporates. Further, its subsidiaries service over 1.1 million clients from over 1,275 locations, collectively having presence in more than 400 cities.² Currently, the employee count across the group is approximately 11,000 people.³

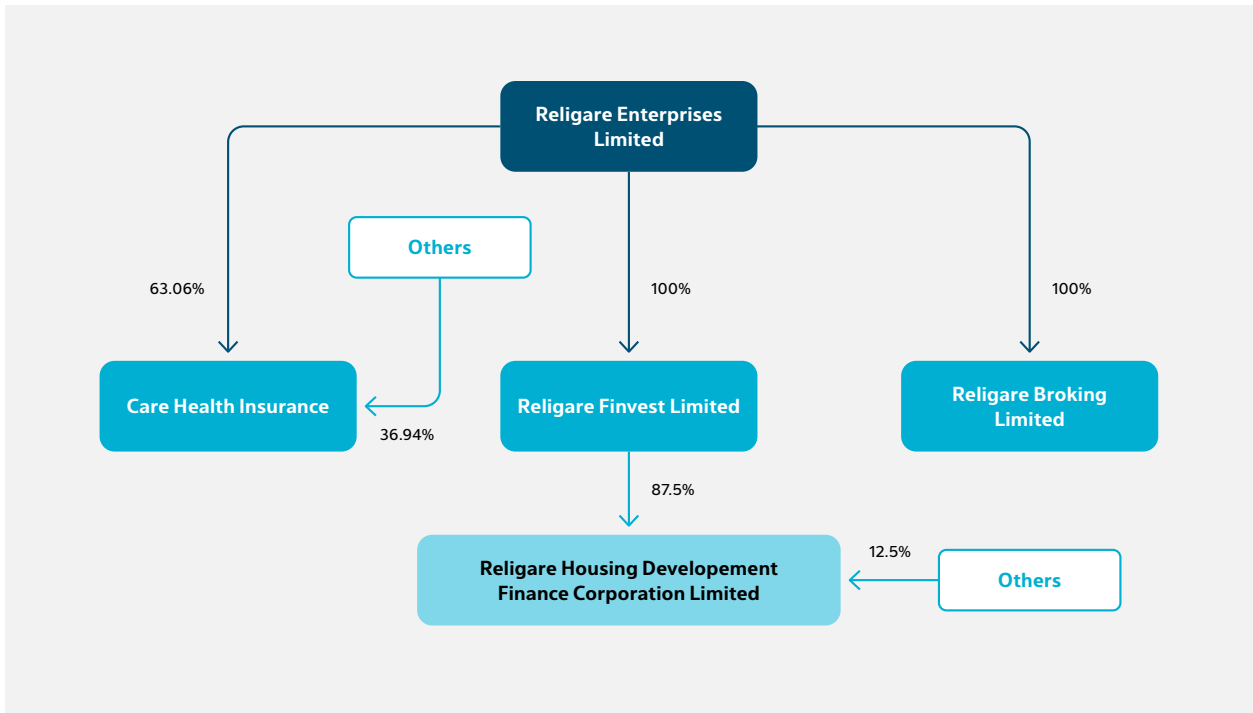
1 <https://religare.com/about-religare>.

2 <https://in.linkedin.com/company/religare>.

3 <https://religare.com/about-religare>.

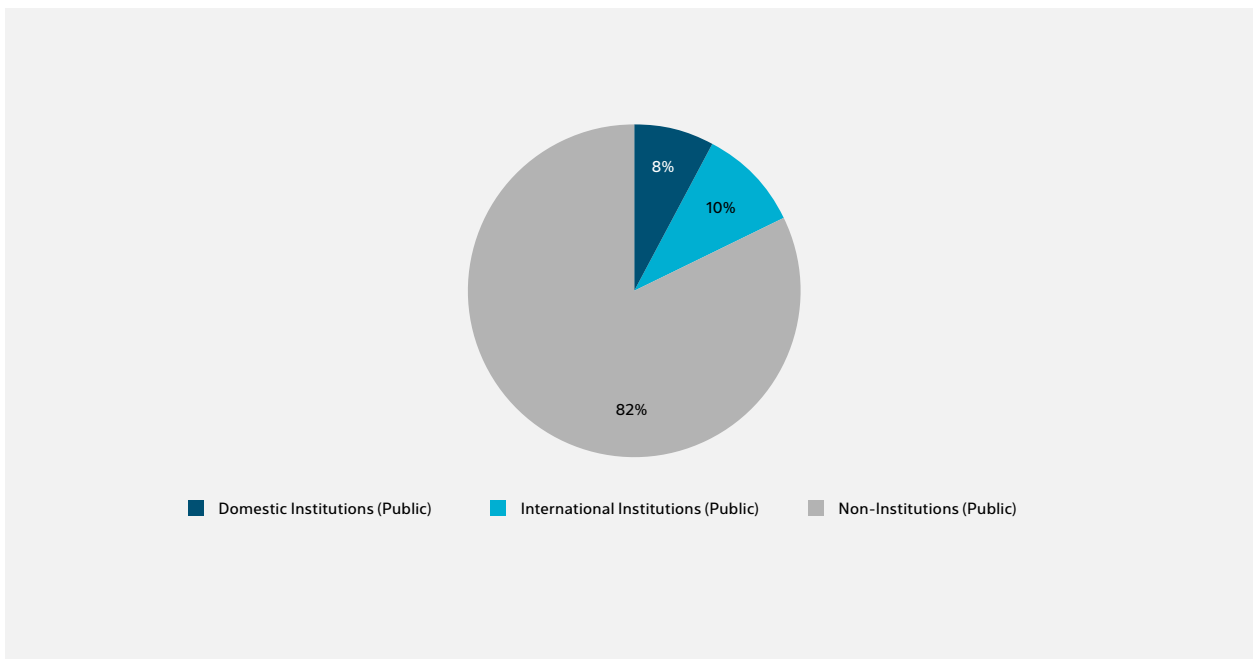
Deal Details

The structure chart of REL and its material subsidiaries (as on March 31, 2024) is as follows:



The current shareholding of REL (as per quarter ended March 31, 2024) is as follows:

Religare Enterprises Limited Shareholding



Chronology of Acquirers' Entry into REL

The Acquirers, all of which are Burman Family entities, had started investing in REL from as early as 2018, which resulted in the Acquirers accumulating enough shareholding for them to be able to initiate an Open Offer.

The share capital history of the Acquirers in REL, leading to the above situation, is as follows:

Date	Event	Equity shares held by the Acquirers prior to the Event	Warrants held by the Acquirers prior to the Event	Equity shares held by the Acquirers post the Event	Warrants held by the Acquirers post the Event	Shareholding Percentage (approx.)
April 19, 2018	Issue of warrants to Acquirers 1, 2 and 4	Acquirer 1: 20,000	Acquirer 1: 0	No change in the equity shares held	Acquirer 1: 57,36,136	Acquirer 1: 0%
		Acquirer 2: 0	Acquirer 2: 0		Acquirer 2: 1,81,64,432	Acquirer 2: 0%
		Acquirer 3: 0	Acquirer 3: 0		Acquirer 3: 0	Acquirer 3: 0%
		Acquirer 4: 0	Acquirer 4: 0		Acquirer 4: 47,80,112	Acquirer 4: 0%
May 30, 2018	Conversion of warrants held by Acquirer 1 and 4	Acquirer 1: 20,000	Acquirer 1: 57,36,136	Acquirer 1: 7,84,818	Acquirer 1: 49,71,318	Acquirer 1: 0.43%
		Acquirer 2: 0	Acquirer 2: 1,81,64,432	Acquirer 2: 0	Acquirer 2: 1,81,64,432	Acquirer 2: 0%
		Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0%
		Acquirer 4: 0	Acquirer 4: 47,80,112	Acquirer 4: 30,59,273	Acquirer 4: 17,20,839	Acquirer 4: 1.67%
July 26, 2018	Conversion of warrants held by Acquirer 1, 2 and 4	Acquirer 1: 7,84,818	Acquirer 1: 49,71,318	Acquirer 1: 33,34,214	Acquirer 1: 24,21,922	Acquirer 1: 1.71%
		Acquirer 2: 0	Acquirer 2: 1,81,64,432	Acquirer 2: 84,76,739	Acquirer 2: 96,87,693	Acquirer 2: 4.34%
		Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0%
		Acquirer 4: 30,59,273	Acquirer 4: 17,20,839	Acquirer 4: 47,80,112	Acquirer 4: 0	Acquirer 4: 2.45%
October 14, 2019	Conversion of warrants held by Acquirer 1 and 2	Acquirer 1: 33,34,214	Acquirer 1: 24,21,922	Acquirer 1: 57,56,136	All warrants converted	Acquirer 1: 2.50%
		Acquirer 2: 84,76,739	Acquirer 2: 96,87,693	Acquirer 2: 1,81,64,432		Acquirer 2: 7.90 %
		Acquirer 3: 0	Acquirer 3: 0	Acquirer 3: 0		Acquirer 3: 0%
		Acquirer 4: 47,80,112	Acquirer 4: 0	Acquirer 4: 47,80,112		Acquirer 4: 2.08%

Chronology of Acquirers' Entry into REL

Date	Event	Equity shares held by the Acquirers prior to the Event	Warrants held by the Acquirers prior to the Event	Equity shares held by the Acquirers post the Event	Warrants held by the Acquirers post the Event	Shareholding Percentage (approx.)
July 14, 2021	Preferential Allotment of Equity Shares to Acquirer 3 and Acquirer 4	Acquirer 1: 57,56,136 Acquirer 2: 1,81,64,432 Acquirer 3: 0 Acquirer 4: 47,80,112	—	Acquirer 1: 55,36,136 ¹ Acquirer 2: 1,81,64,432 Acquirer 3: 1,18,76,484 Acquirer 4: 95,30,705	—	Acquirer 1: 1.77% Acquirer 2: 5.79% Acquirer 3: 3.79% Acquirer 4: 2.95%
August 16, 2023	Bulk deals by Acquirers	Acquirer 1: 55,36,136 Acquirer 2: 1,81,64,432 Acquirer 3: 1,20,39,521 ² Acquirer 4: 95,30,705	—	Acquirer 1: 1,37,02,636 Acquirer 2: 2,63,31,432 Acquirer 3: 2,02,06,021 Acquirer 4: 95,30,705	—	Acquirer 1: 3.96% Acquirer 2: 7.60% Acquirer 3: 5.83% Acquirer 4: 2.75%

Post the acquisitions undertaken in August 2023, the Acquirers collectively sought the approval of the CCI to undertake the Proposed Transaction prior to consummation of Limb 1.

Pursuant to receipt of CCI's approval for the Proposed Transaction (details of which have been set out within the section titled "Antitrust Considerations"), Acquirers 1, 2 and 3 consummated Limb 1 in January 2024, which further increased the shareholding of the Acquirers respectively as follows:

- Acquirer 1: 5.49%;
- Acquirer 2: 9.33%;
- Acquirer 3: 7.47%;
- Acquirer 4: 2.90%.

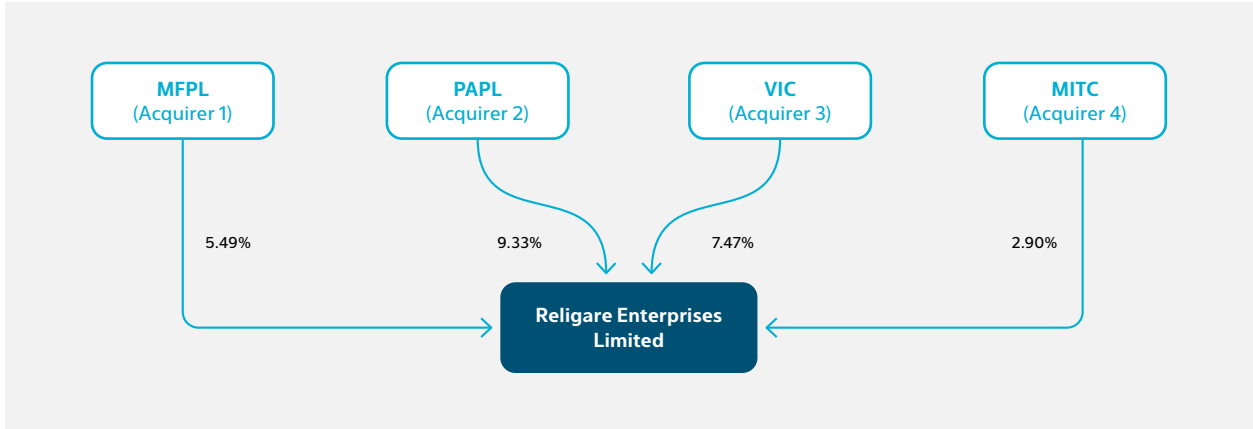
This acquisition has now raised the total shareholding of the Acquirers to approximately 25.19%, which has triggered the requirement to make an Open Offer. However, the Open Offer has not yet been launched by the Acquirers as on date.

¹ As per the publicly available information on the BSE (shareholding pattern of REL as of June 14, 2021), there is a decrease of 2,20,000 shares held by Acquirer 1.

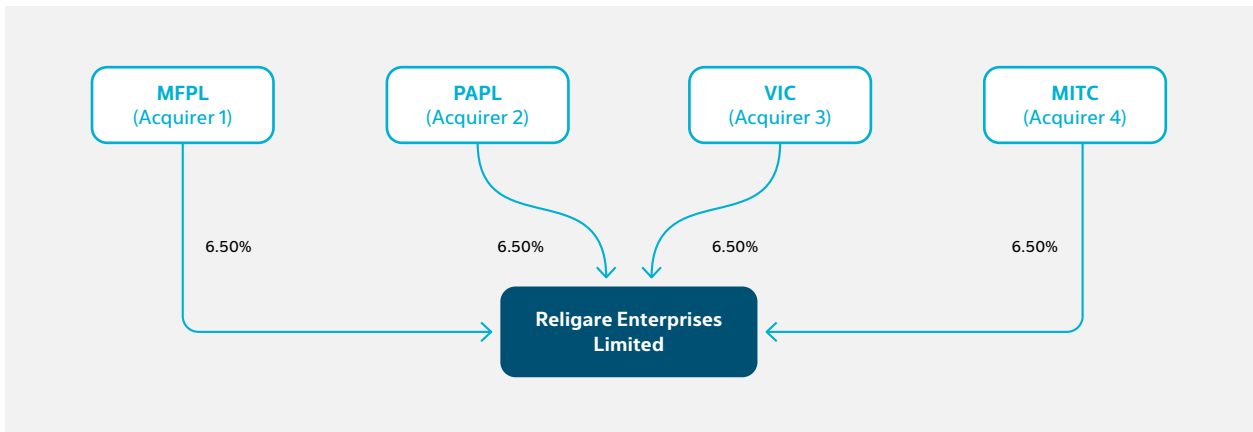
² As per the shareholding pattern in the annual report as on March 31, 2023, and March 31, 2022, the Acquirer 3 held 1,20,39,521 shares corresponding to 3.72% shareholding.

Deal Structure

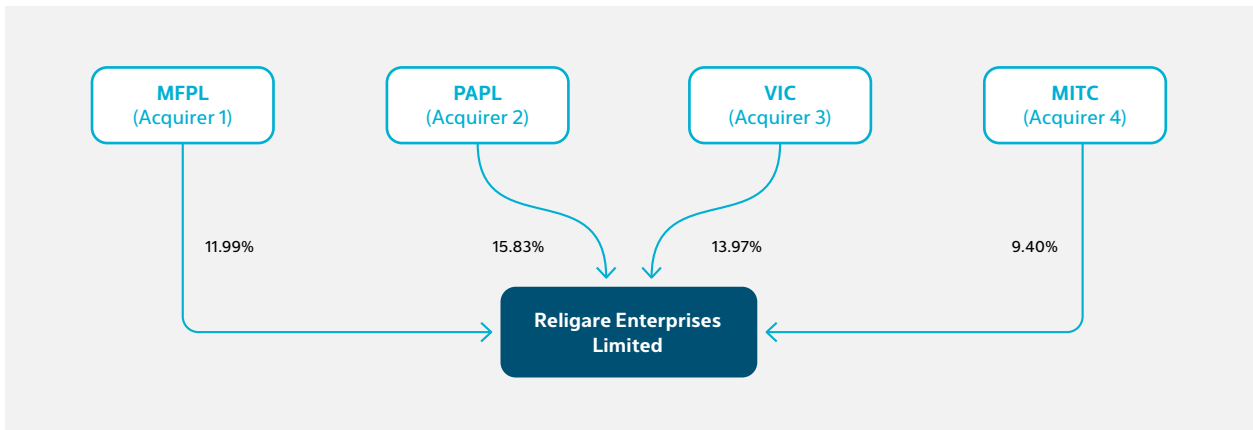
Shareholding of the Acquirer in REL Prior to the Open Offer



Shares to be Acquired by the Acquirers in the Open Offer (Assuming Full Acceptance)



Shareholding of the Acquirers in REL Post the Completion of Open Offer (Assuming Full Acceptance)



Commercial and Financial Considerations

I. Why are the Acquirers interested in REL?

The Acquirers are entities that belong to the Burman Family, which is responsible for the growth and operations of Dabur (India's largest FMCG company as on date). Additionally, the Burman Family has a strong track record in insurance and financial services for over 25 years.¹ However, their presence until now in these sectors has mostly been in the form of joint ventures, through partnership with banks and insurance companies — starting with ABN Securities and followed by Aviva Life Insurance, Universal Sampo General Insurance, Fidelity Mutual, Espirito Santo and DMI Finance.² They do not have standalone presence within the market as a market leader in these industries.

Accordingly, the likely underlying reason for the interest of the Acquirers in REL is diversification of portfolio. The Burman Family has, time and again, reiterated their vision of expanding their operations within the financial services sector through utilization of their expertise. Further, while the Burman Family has a presence within the life and general insurance sectors, they are not present in the health insurance industry. It appears that the interest of the Acquirers in REL specifically is not newfound, rather a series of factors that may have finally led to them consolidating their shareholding in REL (in the manner set out in the *“Chronology of Acquirer’s Entry into REL”* set out above).

Therefore, to make a strong hold in the financial services sector, REL is an attractive target for the Acquirers, given that through control over REL they also get access to the four key businesses i.e., small and medium enterprises financing through Religare Finvest Limited, health insurance business through Care Health Insurance, retail broking business through Religare Broking Limited and housing finance through Religare Housing Finance Corporation, along with their respective market reputations.³

Acquisition of REL through the Acquirers allows the Burman Family to also enter into multiple verticals through its subsidiaries. It is a fairly proven principle that in case of family businesses, the approach is to diversify enough to hedge against sectoral fluctuations and not put all the eggs in a single basket.⁴ Therefore, the Burman Family through this acquisition will be able to tap into a very important sector in a growing economy — financial services sector. Moreover, REL's absence of a designated promoter group and its professional management by the board render it an attractive prospect for acquirers seeking to leverage their expertise in revitalizing enterprises. Initially, the Acquirers positioned their investment in REL as purely financial, devoid of any additional motives. However, as the Open Offer announcement drew nearer, the Burman Family publicly articulated their expansion strategy, emphasizing diversification through REL's growth.⁵

1 <https://www.thehindubusinessline.com/economy/burman-family-vows-to-boost-religares-shareholder-value/article67349495.ece>.

2 <https://www.zeebiz.com/companies/news-dabur-promoter-burman-family-announces-rs-2116-crore-open-offer-for-26-stake-in-religare-256027>.

3 <https://thehindubusinessline.com/economy/burman-family-buys-additional-4-in-religare-consolidates-at-251/article67797413.ece#:~:text=Burman%20family%20had%20initially%20acquired,shareholding%20to%2021.18%20per%20cent.>

4 <https://hbr.org/2022/09/crafting-an-enterprise-strategy-for-your-family-business>.

5 <https://www.forbesindia.com/article/take-one-big-story-of-the-day/we-will-not-be-silent-spectators-of-this-value-destruction-at-religare-mohit-burman/90231/1>.

II. Why is REL a promoter-less listed company as on date?

According to the summary of the statement holding of specified securities uploaded by REL on the BSE website for the quarter ending on March 31, 2024, REL has 0% promoter shareholding. 100% of the shares are held by the public.⁶

Prior to February 2018, REL had a promoter group consisting of Malvinder Mohan Singh and Shivinder Mohan Singh (hereinafter referred to as the “**Singh Brothers**”), Aditi Shivinder Singh and Japna Malvinder Singh along with RHC Finance Pvt. Ltd., RHC Holding Private Limited, and Malvinder Mohan Singh & Shivinder Mohan Singh on behalf of PS Trust.⁷ The Singh Brothers (in their capacity as the then—promoters of REL) held the majority shares in the promoter and promoter group of REL. The Singh Brothers were also the erstwhile promoters of Fortis and Ranbaxy.⁸

However, in 2019, the Singh Brothers were arrested by the Economic Offences Wing of the Delhi Police due to alleged default of payment of the dues of (and amounting to a wrongful loss of approximately INR 23,970,000,000 (Indian Rupees Twenty-Three Billion Nine Hundred Seventy Million to) Religare Finvest Limited.⁹ Along with this, top erstwhile executives Sunil Godhwani, Kavi Arora and Anil Saxena were also arrested for their involvement in the case with respect to the allegations concerning REL and its group companies.¹⁰ It was alleged within a chargesheet filed by the Enforcement Directorate that the Singh Brothers “*incorporated and used multiple conduit companies for the purpose of siphoning off public funds from RFL by way of sanctioning and disbursement of loans under Corporate Loan Book (CLB)*” and therefore defrauded Religare Finvest Limited.¹¹

On February 14, 2018, REL informed the stock exchanges that the Singh Brothers have stepped down from the board of the Company.¹² Post their exits, the board of REL was re-constituted with professionals (led by Rashmi Saluja) unconnected to any of the identified promoters. Separately, the financial creditors (such as banks) started invoking the pledge over the shares held by Singh Brothers in REL,¹³ thereby gradually reducing the promoter shareholding from 13.79% in January 2018 to 0.88% in December 2019.

6 Shareholding Pattern of REL as on March 31, 2024, available at: <https://bseindia.com/stock-share-price/religare-enterprises-ltd/religare/532915/shareholding-pattern/>.

7 Shareholding Pattern of REL on December, 2017: <https://www.bseindia.com/corporates/shpPromoterNGroup.aspx?scripcd=532915&qtrid=96.00&QtrName=December%202017>.

8 <https://www.thehindubusinessline.com/companies/how-singh-brothers-led-to-religares-doom/article29690067.ece>.

9 <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/billionaire-singh-brothers-accused-in-lawsuit-of-siphoning-money/articleshow/62688940.cms?from=mdr>.

10 <https://timesofindia.indiatimes.com/business/india-business/singh-brothers-ex-promoters-of-ranbaxy-fortis-held-for-fraud/articleshow/71531484.cms>.

11 <https://economictimes.indiatimes.com/news/india/religare-finvest-funds-diverted-to-uk-tax-haven-jersey-says-enforcement-directorate/articleshow/106847216.cms?from=mdr>.

12 Change in the composition of Board of Directors of the Company: <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2018/2/6e7660ee-bd2e-4ea9-a1c1-323d77b259d9.pdf>.

13 <https://economictimes.indiatimes.com/industry/banking/finance/from-singh-brothers-to-burman-brothers-religares-promoter-blues-continue/articleshow/105266662.cms?from=mdr>.

In compliance with Regulation 31A of the LODR, the board of REL on August 7, 2018, passed a resolution to reclassify its promoters and promoter group as “Public Shareholders.”¹⁴ The same was approved by the shareholders of REL on October 18, 2018.¹⁵ The company applied to the stock exchanges to make changes in the shareholding pattern on January 16, 2019,¹⁶ which were accepted.

Pursuant to this, the promoter and promoter group of REL was reclassified and no further applications were made to classify any other shareholder as promoter thereafter.

III. Does REL stand to benefit from the Proposed Transaction?

Potential reasons why the Proposed Transaction may be beneficial for REL are as follows:

i. Adequate Shareholder Representation through Promoter Group

While REL has been a professionally managed company, the lack of a strong promoter group has led to a gap in between the representations and requirements of the shareholders and the board of REL. With the acquisitions undertaken by the Acquirers to make them the highest single shareholder of REL, there is now a prospect for a strong shareholder to be able to represent the shareholders on the board. Through a strong promoter group, REL would be able to receive strategic direction in its operations. The presence of a promoter representative on the board would also help in increasing stakeholder value at REL. As a promoter, the Burman Family has a strong track record in managing different businesses, including insurance and financial services, in addition to leading a high performing FMCG entity.¹⁷ The Burman Family also brings legacy and network connections for REL and its growth plans which will be particularly beneficial to all public shareholders.

Prior to the escalation of tensions between the REL board and the Burman Family, even the REL board was in sync with the value that the Burman Family brought to the table. As categorically stated by the board, they were confident that the entry of the Burman Family in the management of REL would act as a catalyst for strengthening the position of REL in the market.¹⁸ They viewed the acquisition of control by the Burman Family as a reflection of the strong business platform on which REL stood.¹⁹

In addition to this, the Burman Family has been a part of REL since as early as August 2018, when they first invested in REL through a preferential offer of INR 1,760,000,000 (Indian Rupees One Billion Seven Hundred Sixty Million). This was followed by further investments in 2021 and 2023. Given that the relationship between REL and the Burman Family goes back six years, the integration between REL and the Burman Family would be organic.²⁰

14 Reclassification of Promoters/Promoter Group:
<https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2018/8/ec139688-be32-4678-a780-7244bb1f7a79.pdf>.

15 Reclassification of Promoters/Promoter Group approved by the shareholders:
<https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2018/10/3768b866-dac5-47c9-96c6-ae4d36e0827c.pdf>.

16 <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2019/1/d3521933-5ef2-405f-99d2-b6f5287086af.pdf>.

17 Ibid.

18 https://www.business-standard.com/companies/news/burman-family-makes-open-offer-to-acquire-26-stake-in-religare-enterprises-123092500740_1.html.

19 Ibid.

20 Please refer to the ‘Deal Snapshot’ above.

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ii. Access to Capital Pool

The nature of sectors where REL is involved has both regulatory and commercial requirements of a deep pool of capital to undertake growth plans. Having a strong promoter like the Burman Family would also give access to a deep pool of capital (either through their entities or external sources) and also meet regulatory and commercial requirements of capital. The shareholders of REL are also receiving a premium as compared to the current share price of REL. The Offer Price of the Burman Family is INR 235 (Indian Rupees Two Hundred and Thirty Five), which is higher than the determined share price based on the pricing requirements as per the Takeover Code (i.e., INR 221 (Indian Rupees Two Hundred and Twenty One) per share).²¹

IV. What are the claims made by the REL board and Burman Family against one another?

While we have not seen many hostile acquisitions in India, the ones that took place have involved mudslinging between the acquirers and the management of the target, be it the L&T—Mindtree hostile takeover or the NDTV hostile takeover. The acquisition of REL by the Burman Family (while initially supported by the board of REL), eventually took a similar path and became a war of words between the board of REL and the Burman Family.

The saga of claims unfolded in the following manner:²²

Approximate date on which such allegation / event was publicly reported	Allegation / Event
September 20, 2023	The Burman Family, which is already a shareholder of REL announces its intention to acquire control over REL. ²³ REL, which is now a board-run company given the exit of the Singh Brothers, is a lucrative target for the Burman Family due to its synergies and loosely held shareholding.
September 25, 2023	The Burman Family officially announces the Open Offer and the board of REL welcomes Burman Family into the management of the company. ²⁴
October 11, 2023	The tussle between the Burman Family and the board of REL starts with the board commissioning an independent valuation report for the shares of REL. ²⁵ In the opinion of the board, the value of REL was higher than that being quoted by the Burman Family.
October 26, 2023	The Acquirers wrote to the board of REL asking for an investigation into the sale of shares by Rashmi Saluja after announcement of the Open Offer, and in violation of the Takeover Code. ²⁶

21 <https://www.forbesindia.com/article/take-one-big-story-of-the-day/we-will-not-be-silent-spectators-of-this-value-destruction-at-religare-mohit-burman/90231/1>.

22 <https://www.cnbctv18.com/business/companies/religare-share-price-burman-family-vs-management-dabur-rashmi-saluja-open-offer-stake-feud-timeline-18328291.htm>.

23 <https://www.livemint.com/companies/news/religare-to-be-run-by-independent-board-mohit-burman-11695735160257.html>.

24 https://www.business-standard.com/companies/news/burman-family-makes-open-offer-to-acquire-26-stake-in-religare-enterprises-123092500740_1.html.

25 <https://www.livemint.com/companies/news/miffed-by-low-offer-religare-orders-valuation-report-11696957894698.html>.

26 <https://economictimes.indiatimes.com/news/company/corporate-trends/nclat-dismisses-religares-appeal-against-cci-nod/articleshow/109864516.cms?from=mdr>.

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Approximate date on which such allegation / event was publicly reported	Allegation / Event
November 9, 2023	<p>After the Burman Family's attempt to navigate through the tussle, the independent directors of REL wrote letters to SEBI, RBI and IRDAI²⁷ alleging the below:</p> <ol style="list-style-type: none"> i. The Burman Family was colluding with the erstwhile Singh Brothers; ii. The Burman Family is not "fit and proper" to assume control of REL, given there is a pending case of fraud against the chairman of Dabur India and a member of the Burman Family (i.e. Mr. Mohit Burman); iii. The source of funds for the Open Offer were questionable, given that JM Financial is a manager to the Open Offer as well as a lender in respect of the funds being provided towards the Open Offer; iv. The Burman Family was manipulating the market in its favour so as to prevent unlocking of the actual value of REL, and; v. The Burman Family was involved in various frauds and financial improprieties.
November 9, 2023	<p>The Burman Family responds to the allegations made by the board of REL by unequivocally denying them. As per the Burman Family, the allegations were "baseless" and "devoid of any merit".²⁸ With respect to the allegations concerning market manipulation, the Burman Family responded stating that the acquisitions made by them were on open markets and could not thus be manipulated.²⁹ The manager to the Open Offer, JM Financial also came on record to deny all allegations made in relation to the source of funding and conflict of interest by the independent directors of REL.³⁰</p> <p>Amidst this, the Burman Family maintained their position that they see value in REL and will move ahead with the Open Offer made as the shareholders see value in the Open Offer.</p> <p>The Burman Family further struck back at the board of REL by putting on record that the push back from the board against the Open Offer was because certain shareholders had raised concerns regarding the corporate governance at REL and specifically against the remuneration of the chairman of the Board (i.e. Rashmi Saluja), which they believed to be somewhere around INR 1,500,000,000 (Indian Rupees One Billion Five Hundred Million).³¹</p> <p>In a letter addressed to the board of REL on October 26, 2023, the Burman Family also asserted that Rashmi Saluja had sold approximately 1.29 million shares of REL, following the Open Offer announcement, in violation of the PIT Regulations. They subsequently urged SEBI to investigate this matter. Furthermore, within the same correspondence, they expressed apprehensions regarding the absence of a shareholder representative on the REL board. They noted that the board comprised solely of one executive and five independent directors, lacking any nominee or director representing the shareholders' interests.³²</p>

27 <https://www.businesstoday.in/latest/corporate/story/religare-independent-directors-move-against-burmans-takeover-plan-write-to-sebi-rbi-irdai-405184-2023-11-09>.

28 https://www.business-standard.com/companies/news/burmans-write-to-sebi-seeking-probe-into-religare-share-sale-by-chairperson-123111000229_1.html.

29 <https://economictimes.indiatimes.com/news/company/corporate-trends/independent-directors-of-religare-rebel-against-burmans-takeover-plan/articleshow/105080902.cms?from=mdr>.

30 Ibid.

31 <https://www.businesstoday.in/markets/company-stock/story/religare-enterprises-shares-in-focus-amid-report-of-fraud-allegations-against-burmans-405148-2023-11-09>.

32 https://www.business-standard.com/companies/news/burmans-write-to-sebi-seeking-probe-into-religare-share-sale-by-chairperson-123111000229_1.html.

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Approximate date on which such allegation / event was publicly reported	Allegation / Event
November 14, 2023	<p>After the last blow from the Burman Family, the board of REL retaliated by providing clarifications on the allegations made by the Burman Family. As per the representatives of the board, the shares sold by Rashmi Saluja were part of her ESOPs and had therefore been pre-cleared under the PIT Regulations. Additionally, they further clarified that the remuneration of Rashmi Saluja was approximately INR 420,000,000 (Indian Rupees Four Hundred Twenty Million), as approved by a special resolution of the shareholders of REL.³³</p> <p>Parallely, the Mumbai police filed an FIR against Dabur Group in relation to the Mahadev Betting App Scam, in which Gaurav Burman was named as an accused. Burman Family called this FIR a mischievous act with malicious intent and an arm-twisting move by certain people.³⁴</p>
November 21, 2023	<p>InGovern, a research firm and a proxy advisor, released a report on the red flags at REL,³⁵ specifically identifying the following issues:</p> <ol style="list-style-type: none"> i. Issuance of ESOPs of Care (a subsidiary of REL) to Rashmi Saluja was undertaken even after IRDAI's written rejection of the same; ii. No shareholder approval was sought from the shareholders of REL prior to the issuance of ESOPs of Care to Rashmi Saluja; and iii. The issuance of ESOPs of Care was not specified within the annual report of REL. <p>The broad context behind these issues was that while being a non-executive director on the board of Care, Rashmi Saluja has been issued ESOPs worth INR 2,300,000,000 (Indian Rupees Two Billion Three Hundred Million) without shareholder approval.</p>
January 3, 2024	<p>The allotment of approximately 21,400,000 shares, constituting approximately 8% of Religare Finvest Limited (a subsidiary of REL) to Rashmi Saluja through ESOPs was challenged by the Burman Family to be conducted without approval and requisite disclosure to REL shareholders. Further, the Burman Family asked REL to publicly clarify the number of such past allotments that have occurred and create a conflict of interest.³⁶</p> <p>REL subsequently rebutted these allegations stating that no such ESOPs of Religare Finvest Limited have been issued to Rashmi Saluja.³⁷</p>
March 12, 2024	<p>The Burman Family wrote a letter to the board of Care, asking for cancellation of the ESOPs granted to Rashmi Saluja, since "illegally 'gifting' these options to Rashmi Saluja has caused the acquirers a material loss". They have also asked for restricting any further exercise of the Care stock options by her.³⁸</p>

33 <https://www.cnbctv18.com/market/religare-share-price-chairman-salary-esop-value-dabur-share-price-burman-family-net-worth-sebi-complaint-18320881.htm>.

34 <https://www.businesstoday.in/latest/corporate/story/mahadev-betting-app-case-dabur-group-chairman-mohit-burman-director-gaurav-burman-named-among-accused-in-fir-405614-2023-11-14>.

35 <https://www.ingovern.com/post/cg-alert-religare-enterprises>.

36 <https://economictimes.indiatimes.com/industry/banking/finance/rashmi-salujas-acquisition-in-rel-via-esops-requires-investigation-burman-family/articleshow/106520311.cms?from=mdr>.

37 Ibid.

38 <https://economictimes.indiatimes.com/markets/stocks/news/burmans-ask-care-health-to-claw-back-rs-350-crore-esops-given-to-religares-saluja/articleshow/108661338.cms?from=mdr>.

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Approximate date on which such allegation / event was publicly reported	Allegation / Event
<p>March 19, 2024</p>	<p>REL's proposed appointment of Rakesh Asthana (on November 7, 2023) to the board was contested by the Burman Family as a "violation of listing rules". It was stated that the approval of the shareholders was not sought for this appointment, which breaches the listing regulations of SEBI – requiring shareholder approval for board appointments to be in place within three months from the date of appointment.³⁹</p> <p>REL has responded back by stating that it is required to approach the shareholders for such appointment only after the prior approval for the change in management of REL is received from the RBI.⁴⁰</p>
<p>March 21, 2024</p>	<p>The board of REL wrote a letter to the Acquirers that they noticed major concerns against the Acquirers and the Burman Family, which leads them to doubt whether they can meet the "fit and proper" criteria of various Indian regulators. Accordingly, the board refused to approach regulators on behalf of the Acquirers.⁴¹</p>
<p>May 12, 2024</p>	<p>Rashmi Saluja made a public statement that the value unlocking (i.e. the correct price movement for the publicly traded REL shares) had been stalled due to the delay of the Open Offer. She also indicated that the board of REL was never in sync with the Burman Family's intent to takeover REL.⁴²</p>
<p>May 17, 2024</p>	<p>REL approached the Delhi High Court against SEBI, requesting relief considering inaction by SEBI on its previous complaints. REL has also requested the court to direct SEBI to conduct a forensic audit with respect to its complaints and grievances against the Burman Family.⁴³</p>
<p>May 23, 2024</p>	<p>Burman Family wrote another letter to SEBI sometime in April 2024, alleging that between March 26, 2024, and March 28, 2024, Rashmi Saluja has sold 2,710,000 shares worth INR 430,000,000 (Indian Rupees Four Hundred Thirty Million) whilst being in possession of unpublished price sensitive information, which amounts to another breach of the PIT Regulations. The letter further stated that circulation of the aforesaid letter to the Acquirers on March 21, 2024, amounts to "material information" for the purposes of the PIT Regulations.⁴⁴</p> <p>Considering the impact on the publicly traded share price, and the possibility that Rashmi Saluja has made undue profits from this sale, the Acquirers urged SEBI to conduct an examination into this sale.</p>

39 <https://www.livemint.com/companies/news/a-former-delhi-top-cop-is-named-religare-director-burmans-say-rules-broken-11710663188177.html>.

40 Ibid.

41 <https://www.thehindubusinessline.com/markets/burman-family-controlled-entities-make-insider-trading-complaint-against-religare-chief-saluja/article68208274.ece>.

42 https://www.business-standard.com/companies/news/religare-s-value-unlocking-is-key-to-future-growth-says-rashmi-saluja-124051200481_1.html.

43 <https://economictimes.indiatimes.com/markets/stocks/news/religare-moves-hc-over-sebi-inaction/articleshow/110190968.cms?from=mdr>.

44 Ibid.

V. How do the Acquirers propose to fund the Open Offer?

As per the DLOF, the total size of the Open Offer is proposed to be approximately INR 21,160,000,000 (i.e., Indian Rupees Twenty-One Billion One Hundred Sixty Million, approximately USD 255,030,000). We understand from the DLOF that the Acquirers are funding the Open Offer through its own assets and additional financing provided by JM Financial Products Limited (the lending arm of JM Financial) through debt funding of up to INR 7,000,000,000 (Indian Rupees Seven Billion). The total assets (which include the liquid investments, investments through portfolio management schemes and cash / bank balances) of the Acquirers is approximately INR 289,890,000,000 (Indian Rupees Two Hundred Eighty-Nine Billion Eight Hundred Ninety Million). Additionally, Acquirer 3 has also procured an unconditional, irrevocable and on-demand bank guarantee from an Indian bank as per the requirements of the Takeover Code in favor of the manager of the Open Offer.⁴⁵

However, as with the other aspects of this hostile takeover, there have also been allegations raised around the funding of the Open Offer. The independent directors of REL have written to SEBI alleging charges of collusion between the Acquirers and the manager of the Open Offer, i.e., JM Financial. Based on these allegations, SEBI has requested evidence from REL and JM Financial to inquire into the said allegations. The allegation stems primarily from the fact that JM Financial is donning multiple hats for the purpose of the Proposed Transaction, which includes not only that of a professional advisor in the form of manager to the Open Offer, but also as a lender to the Acquirers through its group entity.⁴⁶ As per Regulation 12 of the Takeover Code, a manager of an open offer shall not be an associate of the acquirers.⁴⁷

The public responses of JM Financial have categorically denied any form of collusion with the Acquirer and have indicated that the funds for the Open Offer primarily come from the debt financing extended to the Acquirers by a separate group entity.⁴⁸ Thus, they maintain that there is no conflict of interest in the structure as these roles are professional roles being undertaken by different managements.

Additionally, the debt funding facility is an additional financing facility which the Acquirers may avail at their discretion, as an alternate means of funding the Open Offer (in addition to the other funding sources mentioned in the DLOF).⁴⁹

⁴⁵ Section 5.2 of the DLOF.

⁴⁶ <https://economictimes.indiatimes.com/news/company/corporate-trends/independent-directors-of-religare-rebel-against-burmans-takeover-plan/articleshow/105080902.cms?from=mdr>.

⁴⁷ Regulation 12, Takeover Code.

⁴⁸ <https://www.businesstoday.in/latest/corporate/story/religare-independent-directors-move-against-burmans-takeover-plan-write-to-sebi-rbi-irdai-405184-2023-11-09>.

⁴⁹ Ibid.

Legal and Regulatory Considerations

A. Public M&A and Foreign Exchange Considerations

I. Why did the Open Offer get triggered in the Proposed Transaction?

According to Regulation 3(1) of the Takeover Code, an acquirer and its PACs cannot acquire shares or voting rights in a target public company of over 25%, without making a prior public announcement of an open offer to purchase at least 26% shareholding of such company from the existing public shareholders.

An open offer under the Takeover Code refers to the process whereby a potential acquirer makes an offer to the shareholders of a target public company to sell their shares at a pre-determined price, so as to obtain “control” over such target public company as a result of this purchase of shares. The pre-determined price is arrived at based on a calculation methodology that is set out within the Takeover Code with the intent to provide a favorable exit to the public shareholders of the target public company.¹ Further, according to Regulation 4 of the Takeover Code, a person cannot acquire control over a target company without making an open offer in accordance with the requirements prescribed in the Takeover Code.

In the present case, the Acquirers have consummated Limb 1 (i.e. purchased 5.27% shareholding of REL through purchase orders placed with its stockbroker to purchase shares on the open market) upon receipt of approval from the CCI.² Given that the current shareholding of the Acquirers cumulatively is around 25%,³ the consummation of Limb 1 has led to the subsequent trigger of a mandatory open offer as mandated under Regulations 3 (1) and Regulation 4 of the Takeover Code, with the intention to control REL (as set out in the DLOF).

It is also important to note: (i) that the letter of offer has not yet been filed by the Burman Family; and (ii) Limb 2 of the Proposed Transaction is pending consummation, as of June 30, 2024. However, upon consummation of Limb 1 of the Proposed Transaction, Acquirers 1, 2 and 3 have made a filing under Regulation 18 (6) of the Takeover Code disclosing the same. As per Regulation 18 (6), proposed acquirers are required to disclose every acquisition made by them during the offer period to each stock exchange on which the target company’s shares are listed, within 24 hours of such acquisition. Further, the following two conditions prescribed by Regulation 22 (2A) are also to be met: (i) the shares acquired during such period are to be kept in escrow; and (ii) the acquirer is not entitled to exercise any voting rights over these shares held in escrow. A declaration to this effect has also been made by the Acquirers in their filing.

¹ See generally, Regulation 8(2), Takeover Code.

² Para 2.1.1, DLOF.

³ <https://www.bseindia.com/corporates/shpPublicShareholder.aspx?scripcd=532915&qtrid=120.00&QtrName=December%202023>.

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We understand from public sources that SEBI had sought the following details and documents to *inter alia* aid with its assessment of the Open Offer: (i) the consolidated timeline of events from the occurrence of preliminary discussions about the open offer up until the stock exchange announcement on September 25, 2023; (ii) the shareholding of the Acquirers from January 1, 2018 till date; (iii) information of all board meetings and their agenda; and (iv) all trading activities conducted by REL's employees, directors and others in stock, including employee stock options.⁴

II. How was the Offer Price determined and justified? Is the Offer Price in compliance with the Takeover Code?

The offer price for the equity shares of REL (which are traded publicly on BSE and NSE) is to be determined in accordance with Regulation 8 of the Takeover Code. Regulation 8 (1) specifically prescribes that the offer price must not be lower than the price that is determined in accordance with Regulation 8 (2).

In respect of the calculation in accordance with Regulation 8 (2), the traded turnover in REL's equity shares within the 12 months preceding the public announcement (i.e. from September 1, 2022, to August 31, 2023) was as follows:

Stock Exchange	Total No. of Equity Shares traded during the twelve calendar months prior to the month of the PA ("A")	Weighted average number of issued equity shares during the twelve calendar months prior to the month of PA ("B")	Traded turnover % (A / B)
BSE	48,606,404	322,759,005	15.06%
NSE	286,823,910	322,759,005	88.87%

Based on the aforesaid, the equity shares of REL can be held to be "*frequently traded*" shares on the stock exchange as per the definition set out within Regulation 2 (1)(j) of the Takeover Code.

⁴ <https://www.businesstoday.in/latest/corporate/story/sebi-seeks-details-about-burmans-religare-open-offer-information-about-all-board-meetings-report-410454-2023-12-22>.

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Accordingly, as per Regulation 8 (2) of the Takeover Code, the offer price is to be the highest of the below:

SN	Particulars	Price per equity share (INR)
1	Highest negotiated price per equity share, for any acquisition under an agreement attracting the obligation to make a public announcement of an open offer i.e., the price per share under the purchase order.	235
2	Volume weighted average price paid or payable per equity share for acquisitions by the Acquirers during the 52 weeks immediately preceding the date of the public announcement.	217.95
3	Highest price per equity share paid or payable for any acquisition by the Acquirers during the 26 weeks immediately preceding the date of the public announcement	217.95
4	Volume weighted average market price of such equity shares for a period of 60 trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the equity shares has been recorded during such period (i.e. NSE).	221.90
5	Where the equity shares are not frequently traded, the price determined by the Acquirers and the manager taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.	Not applicable
6	The per equity share value computed under regulation 8(5) of the SEBI Takeover Regulations, if applicable.	Not applicable

The Offer Price of INR 235 (Indian Rupees Two Hundred and Thirty Five) per equity share is the highest offer price and is therefore in compliance with the provisions of the Takeover Code. Regulation 8(5) of the Takeover Code was not applicable to the Proposed Transaction because this acquisition is not in the nature of an indirect acquisition.

Pursuant to the announcement of the Offer Price vide the DLOF, an independent director of REL has indicated that the commercial terms and intent of the Open Offer is not in line with the current ethos of REL and the timing of the Open Offer is “fishy”.⁵ Additionally, the independent director and the board of REL (which was originally in support of the Open Offer) have now rejected this Open Offer because in their view, the Offer Price calculation does not accurately reflect the true value of the scrips of REL that it would have traded at, if not for certain circumstances that may have inorganically impacted the price movement in the months leading to the Open Offer.⁶ On the other hand, the Acquirers have indicated that since this price is at a premium of the highest identified price as per the Takeover Code, it is “fair” in nature⁷ and will not be raised further.⁸

5 <https://www.livemint.com/companies/news/burman-family-open-offer-timing-is-fishy-says-religare-board-member-hamid-ahmed-11701236143762.html>.

6 Ibid.

7 <https://economictimes.indiatimes.com/industry/banking/finance/daburs-open-offer-price-for-religare-is-fair-mohit-burman/articleshow/105242963.cms?from=mdr>.

8 <https://www.thehindubusinessline.com/markets/takeover-tussle-religare-cant-be-personal-fiefdom-of-a-few-says-mohit-burman/>

III. Are there any foreign exchange implications in the hands of the Acquirers for the Proposed Transaction?

Based on the details publicly available and noting specifically that: (i) the Acquirer, REL and all its subsidiaries are incorporated in India; and (ii) as mentioned in the response to “*How do the Acquirers propose to fund the Open Offer?*” above, the funding for the Proposed Transaction has been entirely sourced domestically, the foreign exchange regulations will not be applicable to the Proposed Transaction, and no concerns are likely to arise under the FEMA or OI regime.

B. Sectoral Regulatory Considerations

I. Why was prior approval of SEBI required under multiple regulations?

According to the DLOF, prior written approval of SEBI was required in accordance with the following regulations:

- i. Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (“**Depositories Regulations**”);
- ii. Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (“**Stock Brokers Regulations**”);
- iii. Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (“**Registrars Regulations**”); and
- iv. SEBI (Research Analysts) Regulations, 2014 (“**Research Analysts Regulations**”).

REL has a wholly owned subsidiary called Religare Broking Ltd.⁹ (“**RBL**”), which is a depository participant offering multiple services relating to equity, currency and commodities. Accordingly, RBL is a SEBI regulated entity registered as a depository participant under the Depositories Regulations,¹⁰ a stock broker under the Stock Brokers Regulations,¹¹ registrar to an issue and share transfer agent under the Registrars Regulations,¹² and a research analyst under the Research Analysts Regulations.¹³

Given the shareholding of RBL, in the event that the Proposed Transaction is consummated, it will trigger a change in the controlling interest of RBL and constitute a “change in control” under each of these regulations (which is subject to the prior written consent of SEBI).¹⁴ In lieu of the aforesaid, applications have been made by the Acquirers with SEBI, seeking their prior approval.¹⁵

[article67543143.ece.](#)

⁹ <https://www.religareonline.com/about-us>.

¹⁰ Depository Participant: Religare Broking Limited (RBL) – NSDL: DP ID: IN 301774; SEBI Registration. No.: IN-DP-385-2018; CDSL DP ID: 30200; SEBI Registration. No.: IN-DP-385-2018, Available at: <https://www.religareonline.com/>.

¹¹ SEBI Registration No.: INB/INF/010653732; NSE – SEBI Registration Number – INB/INF/INE 230653732.

¹² SEBI Registration No.: INR000004361, Available at: <https://www.religareonline.com/>.

¹³ Research Analyst SEBI Registration No.: INH100006977, Available at: <https://www.religareonline.com/>.

¹⁴ Regulation 2 (e) read with Regulation 36 (2) (d) of the Depositories Regulations; Regulation 2 (1) (ac) read with Regulation 26 (xvii) of the Stock Brokers Regulations; Regulation 2 (bc) read with Regulation 9A (a) of the Registrars Regulations; and Regulation 2(1) (f) read with Regulation 24(3) of the Research Analyst Regulations.

¹⁵ <https://www.livemint.com/companies/news/burman-family-open-offer-timing-is-fishy-says-religare-board-member-hamid-ahmed-11701236143762.html>.

However, subsequently, SEBI had not entertained the aforesaid applications filed by the Acquirer since the applications were to be filed by RBL under the aforesaid regulations.¹⁶

II. Why was prior approval of the RBI required under multiple regulations?

As per the DLOF,¹⁷ the Proposed Transaction requires the prior approval of the RBI under the following regulations / master directions:

- a. Master Direction — Non-Banking Financial Company – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (“**Systemically Important Directions**”)*;
- b. Master Direction — Core Investment Companies (Reserve Bank) Directions, 2016¹⁸ (“**CIC Directions**”); and
- c. Master Direction — Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021¹⁹ (“**HFC Directions**”).

(*It is pertinent to note that while the DLOF mentions a requirement for prior approval pursuant to the Systemically Important Directions, it is our understanding that the approval for the Proposed Transaction is alternatively required under the Scale Based Regulations,²⁰ considering that the Systemically Important Directions have been repealed by the Scale Based Regulations in October 2023.)

The Scale Based Regulations,²¹ the HFC Directions²² as well as the CIC Directions²³ broadly require an application to be made to the RBI for: (i) a takeover or acquisition of control of the NBFC, that may or may not result in change in management; (ii) a change in shareholding (including progressive increases over time) which would result in acquisition / transfer of shareholding of 26% or more; and / or for (iii) change in control or management, through a change in more than 30% of the directors (excluding independent directors).

In the Proposed Transaction, the entities which shall require the prior written approval of RBI are as follows:

- a. REL is a CIC involved in the business of providing financial services including loans for small and medium-sized enterprises, affordable housing finance, health insurance, and retail broking, undertaken by its subsidiary entities.²⁴

16 Para 10, Interim Order cum Show Cause Notice (SEBI), WTM/ASB/CFD/CFD-RAC-DCR-1/30516/2024-25 (“Interim Order”).

17 Para 6C, DLOF.

18 https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10564.

19 <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD10007CE48ADE2FB4BF981444FE1349E3B71.PDF>.

20 <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/106MDNBFC51910202343073E3EF57A4916AA5042911CD8D562.PDF>.

21 Direction 42, Scale Based Regulations 2023.

22 Direction 45, HFC Directions 2021.

23 Direction 27, CIC Directions 2016.

24 [https://www.religarehomeloans.com/cms/showpage/page/about-the-religare-group#:~:text=Religare%20Enterprises%20Limited%20\(REL\)%20is,Health%20Insurance%20and%20Retail%20Broking](https://www.religarehomeloans.com/cms/showpage/page/about-the-religare-group#:~:text=Religare%20Enterprises%20Limited%20(REL)%20is,Health%20Insurance%20and%20Retail%20Broking).

Legal and Regulatory Considerations

The material subsidiaries of REL include four key businesses:

- Religare Finvest Limited — a lender to small businesses;
- Care — a health insurance provider;
- Religare Housing Development Finance Corporation — offers home loans; and
- Religare Broking — a retail stock brokerage.

Accordingly, REL shall be required to obtain the prior written approval of RBI under the CIC Directions for change in control (which we understand continues to remain applicable to existing CICs as per Direction 4.3 of the Scale Based Regulations). However, as per the Rejection Mail (*highlighted below*), the RBI has requested that the application for change in control is to be filed by REL under the Scale Based Regulations.

- b. Religare Finvest Limited is a subsidiary of REL and a Small and Medium Enterprise (“SME”) financing focused NBFC, which shall also trigger the requirement of a prior written RBI approval under the Scale Based Regulations as a middle layer NBFC, for an indirect change in control.
- c. Religare Housing Development Finance Corporation Limited is another subsidiary of REL and is an HFC registered with the National Housing Bank, which shall trigger the requirement of a prior written RBI approval under the HFC Directions, for an indirect change of control (considering that the HFC Directions also continue to remain applicable to existing HFCs as per Direction 4.3 of the Scale Based Regulations).

(The DLOF for the Proposed Transaction does not account for or mention the HFC. However, we understand that there will be a direct change of control of REL, along with an indirect change of control in the HFC, which should usually trigger prior approval from the RBI.)

In furtherance of the aforesaid requirements for approval, the Acquirers filed an application on November 30, 2023, with the RBI to seek prior approval.²⁵

On February 5, 2024, similar to the SEBI, the application for approval was rejected by RBI on the below mentioned grounds (“**Rejection Mail**”):²⁶

- a. The application was made by the Acquirers and not REL: The Rejection Mail states that the requirement to make the application for seeking prior written approval is to be made by the target company i.e., REL and its subsidiaries, and not the Acquirers.
- b. The application was made under the Master Direction—Non-Banking Financial Company—Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016: Considering that these have been repealed by the Scale Based Regulations, the application under the erstwhile regulations could not have been accepted.

Further, there is a requirement for an application for change in control / shareholding / management to be made separately for each target company (under each of the applicable respective regulations) to the RBI. However, it is unclear from the public disclosures of REL whether an application has been made for all the NBFC subsidiaries requiring prior approval of the RBI under the respective regulations. Accordingly, this may also have accounted for one of the reasons for the RBI’s rejection.

²⁵ https://nsearchives.nseindia.com/corporate/RELIGARE_10022024160123_RELUPDATE10022024.pdf.

²⁶ Ibid.

Based on the grounds for rejection noted in Rejection Mail and the stance taken by SEBI, it is clear that there are hurdles and gaps which exist in the process of the hostile takeover of such regulated entities. For instance, in case of a hostile takeover, it becomes excessively difficult for the acquiring entity / acquirers to ensure that the acquiree company itself files the application for the RBI approval for a hostile takeover. Across the tenure of the Proposed Transaction, there have been several public statements issued by the Acquirers stating that there is visible non-cooperation on the part of REL and its management and therefore, the RBI approval application cannot be filed by REL. Accordingly, the Acquirers have written to the RBI seeking relief from the requirement for the acquiree company to file the approval application. The response to this application is currently awaited.²⁷

III. Will the Acquirers pass the ‘Fit and Proper’ criteria of the RBI?

As mentioned above, the independent directors of REL have publicly alleged that the Acquirers have been involved in fraud, market manipulation and other breaches and have also reported these allegations to several regulators (including the RBI). These allegations have been related to the history of REL, dating back to the involvement of the Singh brothers and stating that the Acquirers, being the single largest shareholder, are colluding with the Singh brothers in a case of fraud. Further, it has been stated that the Acquirers are in a material breach of regulatory obligations.²⁸

The Scale Based Regulations,²⁹ the HFC Directions³⁰ and the CIC Directions³¹ prescribe that the directors appointed to the board of NBFCs must be “fit and proper”. NBFCs are required to undertake due diligence of its directors on the metrics of qualification, expertise, track record, integrity etc. The requirement is an ongoing measure to be taken to ensure that the management of the NBFC stays intact with directors who are fit to take decisions and run the business.

The Acquirers have specifically been involved in the NBFC business and have held positions in the management for several years,³² which is indicative of the fact that they may pass the “fit and proper” criteria prescribed by the RBI. Further, as per the SEBI, neither of the Acquirers have been categorized as “wilful defaulter”, “fugitive economic offender, or have been banned from dealing in securities by the SEBI.³³ Separately, the Burman Family has been credited with the reputation of building Dabur, which may likely add to their creditworthiness, reputation and ability to seek capital / manage the company. On the flip side, however, the Acquirers have also faced litigations and have been accused of fraudulent measures in their conduct,³⁴ which is being used by REL to make a case against the fitness of the incoming promoter group.

27 <https://economictimes.indiatimes.com/news/company/corporate-trends/burmans-write-to-rbi-asks-central-bank-to-intervene-on-open-offer-as-religare-takeover-tussle-intensifies/articleshow/107642394.cms?from=mdr>.

28 <https://www.ndtvprofit.com/business/burman-family-religare-fiasco-another-corporate-battle-in-the-making>.

29 Annex XXIII, Scale Based Regulations.

30 Annex VII, HFC Directions.

31 Annex VI, CIC Directions.

32 <https://economictimes.indiatimes.com/news/company/corporate-trends/burman-family-acquires-strategic-stake-in-dmi-finance/articleshow/17973257.cms?from=mdr>.

33 Paras 3.1.9, 3.1.10, 3.2.9, 3.2.10, 3.3.9, 3.3.10, 3.4.9, 3.4.10, DLOF.

34 See, for example:

<https://economictimes.indiatimes.com/industry/cons-products/fmcg/140-year-old-dabur-family-hits-trouble-as-it-reinvents-its-business/articleshow/105238348.cms?from=mdr>.

In light of the ambiguity with respect to the eligibility of the Acquirers under the “fit and proper” criteria, coupled with the regulatory discretion available to RBI, it is pertinent to note that the RBI will assess compliance with the “fit and proper” test as one of the factors for grant of its approval for change in control of the aforementioned entities.

IV. Why was prior approval of the IRDAI required?

The Proposed Transaction, as per the DLOF, requires the prior approval of the IRDAI in accordance with Section 6A of the Insurance Act, 1938³⁵ read with the Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies) Regulations, 2022 (“**Registration Regulations**”). The requirement for prior approval arises with regard to REL’s subsidiary Care, owing to an indirect change in control arising from the Open Offer.

According to Section 6A, prior approval is to be taken from IRDAI in the case of a transfer of shares, where after the transfer, the holding of the transferee entity exceeds or is likely to exceed 5% of the paid-up capital of the entity.

Upon closing of the Proposed Transaction, the Acquirers will be indirectly holding 63.06% in the capital structure of Care and would also be controlling Care through the parent entity REL. The acquisition of REL therefore triggers an indirect change in the capital structure of Care, which triggers the requirement of seeking prior approval from IRDAI. While the language under the Insurance Act, 1938 only envisages a direct acquisition of shares of an insurance company, it has been a general practice to seek prior approval of IRDAI regarding change in ultimate parent control given the sensitivity and the peculiar requirements of the insurance sector.

Considering the SEBI Order (*details of which have been provided below*), we understand that REL will now have to file the application for indirect change in control under the Insurance Act, 1938 read with the IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024 (which has recently repealed the Registration Regulations).

V. Will the Acquirers pass the ‘Fit and Proper’ criteria of the IRDAI?

In order to ensure that the promoter or investor of an insurance company is an adequate entity for the proper functioning of an insurance company, the Registration Regulations prescribe for a test of the “fit and proper” criteria³⁶ under Regulation 12(2)(x) and Regulation 6(2), by setting out the various factors which need to be taken into consideration by IRDAI while undertaking its due diligence. Some of these factors include the financial strength of the promoter or investor, the ability to infuse capital to meet business, solvency and regulatory requirements, ensuring compliance with applicable laws in India including FEMA and taxation law, business record and experience, and the ability to access capital or financial markets for additional capital infusions.

35 <https://iddashboard.legislative.gov.in/actsofparliamentfromtheyear/insurance-act-1938>.

36 Schedule 1, Fit and Proper Criteria, Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies) Regulations, 2022.

The same criteria are also found within the newly released Regulation 9 read with Schedule 1 of the IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024.

It is also to be borne in mind that the insurance sector in India is a social benefit undertaking business wherein the end goal is not only to generate profits but also to keep the stakeholders insured. This is done to ensure that the insurance company has access to capital through the promoter.

The IRDAI in case of the Proposed Transaction will look into the financial condition of the Acquirers to ascertain if they are “fit and proper” to receive the approval to undertake the transaction in the first place. As mentioned above, the IRDAI is also likely to consider the Burman Family’s reputation and role in Indian markets while assessing their adherence to these criteria. The decision of IRDAI in this regard is currently awaited.

VI. Why did SEBI pass an order requiring REL to obtain the sectoral regulatory approvals?

Despite the public announcement under the Takeover Code being made by the Acquirers on September 25, 2023, the Open Offer has not been consummated due to non-receipt of the above sectoral regulatory approvals required to consummate the Open Offer. While the Acquirer filed for approvals with each of SEBI, RBI, IRDAI and CCI, only the approval of the CCI has been received as on June 30, 2024. RBI had rejected the approval considering that it has not been applied for by the target company (as per the text of the Scale Based Regulations).

During the processing of the DLOF, SEBI obtained inputs from regulatory bodies and subsequently issued a letter to REL on May 31, 2024, disposing all of the representations previously made by them to SEBI. SEBI advised REL to make applications for approval with the IRDAI, RBI and SEBI within 15 days of receipt of the letter, so that the public shareholders can make an informed decision with respect to the Open Offer. However, REL and its independent directors did not comply with the letter and wrote back to SEBI with the following points:

- SEBI did not have the jurisdiction to direct REL to make an application with other regulators under statutory frameworks outside the control of SEBI;
- Considering that the Acquirers, in the view of REL, are not “fit and proper”, SEBI does not have the jurisdiction to comment on this, and this should be left to each regulator’s respective discretion;
- The Rejection Mail could not be interpreted as putting an obligation on REL to file for approval;
- Regulations 18 (11) and 26 of the Takeover Code cannot be interpreted in a manner so as to obligate REL to comply with the Acquirers;
- REL should be provided with the freedom to independently assess SEBI’s advice without fear of legal consequences.

Accordingly, on June 19, 2024, SEBI passed an interim order (“**SEBI Order**”)³⁷ that requires REL and the board to furnish an undertaking that they would file for approvals within 7 days from the date of its release. Additionally, they were also directed to ensure compliance with the Takeover Code and constitute a committee of Independent Directors as per its provisions. Separately, the SEBI Order is intended to operate as a show-cause notice against REL and the board as to why additional action may not be taken against them under Section 11 of the SEBI Act, 1992.

REL was held liable for a contravention of Regulation 26 of the Takeover Code, and Regulations 4(2) (a) and (d) of LODR. The board of REL was also held liable for the contraventions of REL under Section 27 of the SEBI Act (offences committed by companies), along with a violation of Regulation 4 (2) (f) of the LODR.

This is based on numerous interpretations of the existing provisions of LODR and Takeover Code, which are *inter alia* as below:

- i. The right of shareholders to tender their shares in an open offer is sacrosanct and not subject to interference. Accordingly, the rights of shareholders cannot be held hostage in a conflict of interest between an acquirer and the management of the target company;
- ii. The Takeover Code must be interpreted harmoniously with the above intent, in order to ensure that the target company and its board ensure compliance with its objects and provisions;
- iii. Regulation 18 (11) obligates an acquirer to obtain statutory approvals for consummation of an open offer. However, in circumstances where sectoral regulations mandate that applications for approval are to be sought only from target companies, the absence of any provision similarly obligating target companies to seek approvals during an open offer should not override the intent of the law;
- iv. Regulation 4 (2) (a), 4(2) (d) and 4 (2) (f) of the LODR generally requires target companies and their managements to take care of and act in the best interest of its shareholders. Further, Regulation 26 of the Takeover Code requires target companies to constitute a committee of independent directors to provide recommendations to shareholders on open offers. Therefore, REL’s actions impeding the Acquirer’s ability to consummate the Open Offer run afoul of the spirit of the law;
- v. SEBI has overarching powers under Section 11 of the SEBI Act, 1992 to act in the interests of investors in the securities market, and thus does not lack the jurisdiction with respect to the matters alleged in the SEBI Order. SEBI has indicated that it is simply directing REL to file applications for approval and is not binding the sectoral regulators to provide their approvals for the Open Offer;
- vi. There is no “fit and proper” criteria under the Takeover Code. The Acquirers have indicated in the DLOF that they are not willful defaulters or fugitive economic offenders, to which REL has not provided contrary proof; and
- vii. The Open Offer could be provided with a “logical conclusion” only once the statutory approvals are granted.

We understand from public sources that further to the passage of the SEBI Order, the price of the shares of REL rose by 5%.³⁸

37 Interim Order cum Show Cause Notice (SEBI), WTM/ASB/CFD/CFD-RAC-DCR-1/30516/2024-25 (“Interim Order”).

38 <https://www.cnbctv18.com/market/religare-enterprises-share-price-sebi-asks-board-to-proceed-with-open-offer-formalities-19430980.htm>.

C. Antitrust Considerations

I. Why was prior approval of the CCI required?

The Competition Act, 2002 casts an obligation on the acquirers of certain transactions to notify the CCI subsequent to the execution of any definitive agreement for an acquisition of shares / voting rights (and prior to the consummation of any transactions pursuant to such definitive agreements) in circumstances where any of the Extant Section 5 thresholds (as defined below) have been breached, as such transaction shall amount to a “combination”.

The thresholds to determine the existence of a notifiable “combination” are to be calculated based on the assets / turnover of the acquirer and the target company jointly. The thresholds under Section 5 of the Competition Act, 2002 were recently revised on March 7, 2024.³⁹ (“**Revised Section 5 Thresholds**”). However, given that the applications made by the Acquirers were prior to the revisions, they were made with reference to and basis the previous thresholds (“**Extant Section 5 Thresholds**”).

Extant and Revised Section 5 Thresholds

Extant

Enterprise Level		
Particulars	India	Worldwide with India Leg
Asset	INR 2,000 crores	USD 1 Billion with at least INR 1,000 crores in India
Turnover	INR 6,000 crores	USD 3 Billion with at least INR 3,000 crores in India

Group Level

Particulars	India	Worldwide with India Leg
Asset	INR 8,000 crores	USD 4 Billion with at least INR 1,000 crore in India
Turnover	INR 24,000 crores	USD 12 Billion with at least INR 3,000 crores in India

³⁹ Notification S.O. 1130 (E) No. 1073 dated March 7, 2024 (“Section 5 Revision Circular”).

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Revised

Enterprise Level		
Particulars	India	Worldwide with India Leg
Asset	INR 2,500 crores	USD 1.25 Billion with at least INR 1,250 crores in India
Turnover	INR 7,500 crores	USD 3.75 Billion with at least INR 3,750 crores in India

Group Level		
Particulars	India	Worldwide with India Leg
Asset	INR 10,000 crores	USD 5 Billion with at least INR 1,250 crores in India
Turnover	INR 30,000 crores	USD 15 Billion with at least INR 3,750 crores in India

In order to facilitate ease of deal making for the merger control regime in India, CCI released a notification dated March 27, 2017 which exempts acquirers from notifying the CCI in circumstances where: (i) the assets of the target company in India are below INR 3,500,000,000 (Indian Rupees Three Billion Five Hundred Million); or (ii) the turnover of the target in India is below INR 10,000,000,000 (Indian Rupees Ten Billion) (“**Extant De Minimis Thresholds**”). The Extant De Minimis Thresholds were also revised on March 07, 2024 to (i) assets of less than INR 4,500,000,000 (Indian Rupees Four Billion Five Hundred Million); or (ii) turnover of less than INR 12,500,000,000 (Indian Rupees Twelve Billion Five Hundred Million) (“**Revised De Minimis Thresholds**”).

However, similar to the above, the applications by the Acquirers were made at the time when the Extant De Minimis Thresholds were applicable.

A perusal of the consolidated financial statements of REL for the FY 2022–23⁴⁰ indicates that the total assets of REL are valued at INR 80,938,939,000 (Indian Rupees Eighty Billion Nine Hundred Thirty Eight Million Nine Hundred Thirty Nine Thousand) and the total turnover is INR 48,632,298,000 (Indian Rupees Forty Eight Billion Six Hundred Thirty Two Million Two Hundred Ninety Eight Thousand).

Accordingly, REL does not fall below the Extant De Minimis Thresholds and the exemption would not be available to the Acquirer in the Proposed Transaction and approval of CCI was required as the Extant Section 5 Thresholds were being breached.

40 <https://www.bseindia.com/xml-data/corpfiling/AttachHis//a46e92fa-b7a0-4618-87a5-add7e21470d7.pdf>.

Limbs of the Proposed Transaction Warranting Prior Approval of the CCI

In terms of the structure of the Proposed Transaction for which the prior approval of CCI was procured, it is to be noted that the following events were to occur:

- i. The Acquirers, through a series of tranching open market purchases on recognized stock exchanges, planned to consummate Limb 1.⁴¹
- ii. Pursuant to the consummation of Limb 1, the combined shareholding and voting rights of the Acquirers in REL shall exceed 25% shareholding and triggers Limb 2 (i.e. an Open Offer under the Takeover Code for an acquisition of up to 90,042,541 equity shares (i.e., an additional 26% shareholding of REL), leading to the consolidated shareholding and voting rights of the Acquirers in REL pursuant to successful completion of the Open Offer to be approximately 51%).

Given that Limb 1 leads to the trigger of Limb 2, the two transactions are likely to have been deemed as “interconnected” under the framework of the Competition Act, 2002 by the Acquirers, leading to these being collectively notified to the CCI.

According to Regulation 9(4) of the Combination Regulations, a transaction is interconnected where the *ultimate intended* effect of a business transaction is achieved through certain steps (either in a series or otherwise), which when collectively viewed amount to a notifiable “combination” under the Competition Act, 2002. In the event that a transaction is “interconnected”, approval is to be sought prior to the consummation of any interconnected step of such transaction.

Past jurisprudence of the CCI indicates that some of the following factors are assessed when the interconnectedness of transactions is to be verified: (i) simultaneity in negotiation;⁴² (ii) conditionality of transactions (i.e. linkage through completion dates, one step being a condition precedent to the completion of another step, common objectives);⁴³ (iii) consummation of transactions pursuant to common transaction documents;⁴⁴ (iv) authorisation of transaction documents at a common board / IC meeting.⁴⁵ Specifically in the context of interconnected transactions involving an open market purchase of shares of listed companies, the CCI has held that approval must be taken prior to the purchase of the securities on the open market.⁴⁶

In the Proposed Transaction, Limb 1 and Limb 2 are being consummated by a common acquirer and in furtherance of a common ultimate intended effect (i.e., for the Acquirers to gain control of the affairs and management of REL). Further, the aggregated transaction does not qualify for any exemptions available under Schedule I of the Combination Regulations as the proposed shareholding of the Acquirers in REL (assuming full acceptance of the Open Offer) will be approximately 51%.

Therefore, the Acquirers applied to the CCI for combined approval in respect of Limb 1 and Limb 2, prior to the purchase of shares on the open market under Limb 1.

⁴¹ CCI summary – Para 3 (a).

⁴² CCI v. Thomas Cook (2018) 6 SCC 549.

⁴³ CPPIB/ ReNew Power.

⁴⁴ AXA India Holdings and Société Beaujon dated March 8, 2016.

⁴⁵ CPPIB/ ReNew Power.

⁴⁶ SCM Soilfert Limited / Mangalore Fertilizers and Chemicals Limited; SABIC International Holdings B.V case.

Relevant Market

Given that the Acquirers are all systemically important NBFCs and REL is a systemically important non-deposit taking NBFC, both with subsidiaries across multiple sectors, the relevant market was delineated by the Acquirers in their summary of the proposed combination, whilst taking into consideration multiple such potential horizontal and vertical overlaps.

Horizontal Overlaps

The following relevant markets were identified by the Acquirers, on the basis of horizontal overlaps, in the submission made to the CCI:

- i. Broad market for provision of general insurance products in India, and the narrower market for provision of health insurance products in India, personal accident insurance products in India, and travel insurance products in India; and
- ii. Broad market for provision of loans in India, and the narrower market for provision of loans to MSMEs in India.⁴⁷

Vertical Overlaps and Complementary Relationships

The following relevant markets were identified by the Acquirers, on the basis of vertical overlaps, in the submission made to the CCI:

- i. The upstream markets for provision of: (a) general insurance services in India, and (b) life insurance services in India, and the downstream market of distribution of insurance services in India;
- ii. A potential complementary relationship has also been identified through presence of the Acquirer and REL in the market for travel related services in India and the market for provision of travel insurance services in India.⁴⁸

Approval of the CCI

Pursuant to a press release of the CCI, we understand that approval has been obtained by the Acquirers for Limbs 1 and 2 on January 23, 2024 (without prejudice to any proceedings that may be initiated under sections 43A, 44 and 45 of the Competition Act, 2002).⁴⁹ The order of the CCI under Section 31 (1) of the Competition Act, 2002, granting approval to the Proposed Transaction, was passed on January 23, 2024.⁵⁰

We had understood from public sources that during the process of CCI's scrutiny for approval, CCI reached out to REL to seek the following information: (i) whether the Acquirers sought a merger of REL or previously indicated any interest to be involved in the affairs of REL's management through board representation; and (ii) all correspondences between the Acquirers and REL from October 13, 2017, to September 25, 2023.

⁴⁷ Para 7, Summary of the Proposed Combination.

⁴⁸ Ibid.

⁴⁹ <https://www.cci.gov.in/images/pressrelease/en/press-release1706021963.pdf>.

⁵⁰ Order under Section 31(1) of the Competition Act, 2002, Combination Registration No. C-2023/10/1068, available at: <https://cci.gov.in/images/caseorders/en/order1710387386.pdf> ("Order").

In furtherance of the same, REL provided a response to the CCI indicating that there was no communication with the Acquirer with respect to any mergers. However, the response noted that the actions of the Acquirer always appeared to indicate an intention to gain “control”.⁵¹ Additionally, REL stated that the previous open market purchase of 7.56% shareholding in REL by the Acquirers in August 2023⁵² was “an artificially segregated step of a single composite transaction culminating in the notified transactions”, and that “such violation may be considered to be more egregious given that the acquirers have interests in businesses that overlap with Religare’s activities, especially the insurance business (through Universal Sompo General Insurance and Aviva Life Insurance) and non-banking financial business (through various NBFCs including DMI Finance).”⁵³

While the order does not expressly specify the nature of details sought, it specifies that: (i) parties were required to remove a defect from the original notice filed with the CCI seeking its approval; and (ii) certain additional correspondences / requests were made for “the purpose of assessment of the proposed combination”. Interestingly, the order notes that REL (within one of its submissions) refers to Section 6A of the Competition (Amendment) Act, 2023. Section 6A specifies the manner in which securities acquired pursuant to open market purchases are to be acquired and utilized, pending the receipt of approval of the CCI.⁵⁴

The order then proceeds to highlight the following overlaps:

- i. Horizontal overlap in the segments of health, personal accident and travel insurance between Universal Sompo General Insurance (portfolio company of Burman Family) and Care (subsidiary of REL);
- ii. Horizontal overlap in the lending segment (and MSME lending sub-segment) between DMI Finance (portfolio company of Burman Family), Religare Finvest Limited and Religare Housing Development Finance Corporation Limited (subsidiaries of REL);
- iii. Vertical overlap between Aviva Life Insurance Company India Ltd. (portfolio company of Burman Family), RBL and MIC Insurance Web Aggregators Private Limited (subsidiaries of REL), in the distribution of insurance products in India;
- iv. Complementarity between Jet Airways Pvt. Ltd (portfolio company of Burman Family) and Care (subsidiary of REL), as the former provides travel services while the latter provides travel insurance;
- v. Complementarity between Healthcare at Home India Pvt. Ltd. (portfolio company of Burman Family) and Care (subsidiary of REL), as the former provides healthcare services while the latter provides health insurance.⁵⁵

However, upon consideration of the market share for each of the above overlaps, the CCI noted that these overlaps were not likely to raise any competition concerns and therefore approved the Proposed Transaction. It did not delineate the relevant market.

Further to receipt of this approval, the Acquirers on January 30, 2024, have consummated Limb 1 for a total consideration of approximately INR 3,090,000,000 (Indian Rupees Three Billion Ninety Million, leading approximately to a total of 25.19% aggregate shareholding of the Acquirers in REL as on June 30, 2024.⁵⁶

51 <https://economictimes.indiatimes.com/markets/stocks/news/cci-seeks-details-from-religare-on-burmans-merger-role-plans/articleshow/106166837.cms?from=mdr>.

52 <https://www.ndtvprofit.com/law-and-policy/cci-approval-for-stake-buy-does-not-give-burmans-clean-chit-says-religare>.

53 <https://economictimes.indiatimes.com/markets/stocks/news/cci-seeks-details-from-religare-on-burmans-merger-role-plans/articleshow/106166837.cms?from=mdr>.

54 Para 6, Order.

55 Paras 11, 14, 15, Order.

56 <https://www.livemint.com/market/stock-market-news/burman-family-raises-stake-in-religare-to-25-buys-3-6-additional-stake-for-rs-277-crore-via-bulk-deal-11706710776977.html>.

We further note that once the news of this approval was released in the public domain, the NSE sought clarifications from REL relating to non-reporting of such information within the timelines set out under Regulation 30 of the LODR. REL provided a reply noting that it was in compliance with its obligations to disclose, as it was not aware of the receipt of approval till it was reported within the news.⁵⁷ However, once the shares part of Limb 1 was acquired via open market purchases, REL made the filing under Regulation 18 (6) of the Takeover Code with the stock exchanges.⁵⁸

II. Why did the Acquirers not approach the CCI for the historic acquisitions prior to Limb 1?

As per the table provided under the section titled “*Chronology of Acquirer’s entry into REL*” above, the Acquirers began their acquisition of shareholding in REL by subscribing to convertible warrants of REL on and from April 19, 2018. However, it is unclear from public sources whether the Acquirers sought prior approval of the CCI at the time of subscription to / conversion of these warrants. Pursuant to the subscriptions ranging from 2018, the Acquirers in multiple tranches converted these warrants into equity shares. However, the delta increases in the total shareholding of the Acquirers in REL (at each step involving the subscription to / conversion of share warrants) did not cross 10% individual shareholding or 25% aggregate shareholding in REL.

In light of the same, it can be assumed that the position taken by the Acquirers was that *each round of the subscription to / conversion of the warrants (when viewed individually) was exempted from a notification to the CCI under Item I of Schedule I of the Combination Regulations*. Item I of Schedule I of the Combination Regulation exempts any acquisition of shares or voting rights which is solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by such acquirer (directly or indirectly) does not cross 25% of the total shares or voting rights of the target. For the purposes of this exemption, acquisition of 10% of the total shares or voting rights of the target shall be considered solely as an investment. However, a proviso to this exemption clarifies that in addition to the acquisition meeting the aforesaid shareholding, the following two criteria must also be met:

- i. the acquirers shall only have such rights which entitle them to exercise the rights exercisable by an ordinary shareholder of the target; and
- ii. the acquirer must not be a member of the board of the target or must not have a right or intention to nominate a director on the board of the target.

Based on the above, it is possible that the Acquirers relied on the exemption provided in Item 1 of Schedule I of the Combination Regulations given that: (i) their acquisitions were in tranches of less than 10%; (ii) cumulatively, the Acquirers had not crossed 25% shareholding in REL; (iii) they were not acquiring any additional rights as a result of the subscription to / conversion of the warrants, which were not available with ordinary shareholders; and (iv) they did not receive any board nomination rights as a result of these acquisitions. Finally, as mentioned above, the Acquirers applied and procured approval from the CCI for Limb 1 as this leg led to them acquiring over 25% of REL when interconnected with Limb 2.

57 https://nsearchives.nseindia.com/corporate/RELIGARE_24012024165122_RELReply24012024.pdf.

58 https://nsearchives.nseindia.com/corporate/RELIGARE_31012024215430_RELIGARE.pdf.

REL has time and again raised concerns with respect to the non-procurement of CCI approval for the previous tranche (specifically, the bulk deal dated August 16, 2023). REL also filed an appeal in the NCLAT against the approval granted by CCI for the Proposed Transaction (*a potential argument for which has been discussed below*).

III. Why was the approval of the CCI challenged by REL before the NCLAT?

Pursuant to receipt of approval of the CCI, REL filed a petition with the NCLAT requesting for: (i) a stay on CCI's approval for the Proposed Transaction; and (ii) maintenance of status quo in the shareholding of REL as of August 15, 2023.⁵⁹ CCI and the Acquirers were made respondents to these proceedings.

REL alleged that while prior approval of the CCI was sought for Limb 1 of the Proposed Transaction (i.e. orders that were placed by the Acquirers on September 25, 2023), no similar approval was sought for the previous open market purchases conducted by the Acquirers on August 16, 2023, making the approval of the CCI “illegal”.

On the other hand, it is the position of the Acquirers that in any case, considering that CCI has already approved the Proposed Transaction, the non-issuance of a notification for the open market purchase on August 16, 2023 can only trigger a penalty under Section 43A of the Competition Act, 2002 (and no other consequences). Further, they have argued that prior approval would have been required for the previous acquisition in August 2023 only if the overall acquisition had reached 25% or more.⁶⁰ It is possible that the Acquirers utilized the line of argument with respect to the “solely as an investment” exemption as set out above.

The NCLAT in its order dated May 1, 2024 (passed by Justice Yogesh Khanna and Ajai Das Mehrotra) noted that it found no reasons for interference with the order of the CCI at the current stage and required the respondents to file their replies within the next four weeks, followed by the rejoinder within the subsequent four weeks. The next date of the appeal is July 26, 2024.⁶¹

As mentioned above, while there is a possible assumption that the Acquirers would have claimed an exemption under Item I of Schedule I of the Combination Regulations, one key argument in favor of REL (that may have led to the challenge of the CCI's approval before the NCLAT) is the “interconnected” nature of all the acquisitions undertaken by the Acquirers. Regulation 9(4) of the Combination Regulations provide that:

“Where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are inter-connected, one or more of which may amount to a combination, a single notice, covering all these transactions, shall be filed by the parties to the combination”.

59 <https://economictimes.indiatimes.com/news/company/corporate-trends/nclat-dismisses-religares-appeal-against-cci-nod/articleshow/109864516.cms?from=mdr>.

60 Para 6, Competition Appeal (AT) NO.04/2024 (NCLAT Principal Bench, New Delhi).

61 See generally, Competition Appeal (AT) NO.04/2024 (NCLAT Principal Bench, New Delhi).

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As described previously, this provision makes it mandatory for parties to the combination to give one notice covering all inter-connected steps of their proposed combination, so long as one or more of such steps results in a notifiable transaction.

Given that all transactions (since April 19, 2018) have arguably led to a situation where the Acquirers have obtained control of REL, it may be analyzed whether all these transactions were interconnected since 2018, and accordingly, were supposed to be notified prior to undertaking the first acquisition (or the first round of conversion of the warrants into equity on April 19, 2018).

Alternatively, as specified by REL's counsel during the proceedings before NCLAT, it is open to possibly be argued that the open market purchase made by the Acquirers on August 16, 2023, should have been the trigger point for notification to the CCI under Section 6(2) of the Competition Act, 2002. Two possible reasons why this argument may have been made include: (i) the Burman Family publicly announced their intention to obtain control of REL around September 20, 2023 (right before filing of the DLOF), before which the Burman Family had categorized their investment as a "financial investment",⁶² which would mean that the bulk deal immediately prior to such announcement (i.e. August 16, 2023) was likely connected with this intention; and (ii) the CCI has, in the *Piramal / Shriram* order, indicated that transactions occurring between the same persons / undertakings within the past 2 years can be interconnected (similar to the European Union).⁶³ Accordingly, the previous transactions of the Burman Family (before August 16, 2023's open market purchase) should not fall within such look back period.

62 <https://www.livemint.com/companies/news/religare-to-be-run-by-independent-board-mohit-burman-11695735160257.html>.

63 Para 7 e, Combination Registration No. C-2015/02/249 (Order dated May 2, 2016).

Tax Considerations

I. What is the taxability in the hands of the Public Shareholders under the ITA?

The Proposed Transaction involves open market purchases and an Open Offer. Pursuant to the Open Offer, the Acquirers will be purchasing shares from Public Shareholders (which may be resident or non-resident) that shall be tendering their shares through this mechanism.

Gains arising in the hands of the Public Shareholders from the transfer of shares as part of the Proposed Transaction could be treated either as “capital gains” or “business income”. This characterisation would depend on whether these shares are held as a capital asset or stock-in-trade.

Gains arising from the sale of shares held as capital asset are chargeable to tax under the head of “capital gains” under the ITA. The rate of tax applicable to the gains would depend on factors such: (i) as the nature of the shares or securities; (ii) the period for which it is held; (iii) the residential status of the Public Shareholder for the purpose of ITA; and (iv) the manner of transaction that has been undertaken. Sale of listed shares held for a period of over 12 months is taxable as long-term capital gain (“LTCG”). The sale of shares held for a period of less than 12 months is taxed as short-term capital gain (“STCG”).

The tax rates would be as follows:¹

Type of sale	STCG	STCG (as amended by the Union Budget 2024)	LTCG	LTCG (as amended by the Union Budget 2024)
Sale of listed equity shares on which securities transaction tax (“STT”) has been paid	15% ² FPIs: 15% ³	Residents and FPIs: 20%	10% ⁴ FPIs: 10% ⁵	Resident and FPIs: 12.5%

As the tendering of shares pursuant to the Proposed Transaction is undertaken on a stock exchange, STT would be payable at the rate of 0.1% on the value of the securities sold in the Proposed Transaction. The STT collected is payable to the credit of the government by the relevant stock exchange.

¹ The tax rates (as amended by the Union Budget 2024 and effective from July 23, 2024) have been set out above as these shall be applicable to the Open Offer. Our analysis of the Union Budget 2024 is available at: <https://nishithdesai.com/NewsDetails/15054>.

² Section 111A of the ITA.

³ Proviso to Section 115AD (1) (ii) of the ITA.

⁴ Section 112A of the ITA.

⁵ Proviso to Section 115AD(1) (iii) of the ITA.

Tax Considerations

Gains arising from sale of shares held as a stock-in-trade are taxed as “profits or gains from business or profession” under the ITA. The business income would be subject to the applicable tax rates to the Public Shareholders. Any STT paid by the shareholders would be deductible from the business income of the Public Shareholders.

A non-resident shareholder may take recourse the applicable Double Taxation Avoidance Agreement of their resident countries with India (“**Tax Treaty**”). Section 90 (2) of the ITA provides that the provisions of the Tax Treaty shall apply to the extent they are more beneficial than the provisions of the ITA. This is subject to the non-resident qualifying the requirements to avail the benefits of the Tax Treaty. Accordingly, the taxability of the gains may be restricted by the application of a Tax Treaty.

II. Does the Proposed Transaction have any withholding tax implications?

As noted above, the payments in the Proposed Transaction are made by resident entities. Payments made by resident acquirers to resident shareholders may be subject to withholding tax under Section 194Q of the ITA. The provision imposes an obligation on the buyer of “goods” (if the value of such goods exceeds INR 5,000,000 i.e. Indian Rupees Five Million) to withhold tax at the rate of 0.1%. It is pertinent to note that the term “goods” has not been defined under the ITA for this purpose of Section 194Q. Recourse may be taken from the definition of “goods” under the Sale of Goods Act, 1930, which includes within its definition, *inter-alia*, stock and shares. Further, the explanation to Section 194Q(1) of the ITA defines the term “buyer”.

It states as follows:

‘Buyer’ means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

It follows from the above that the Proposed Transaction should be subject to withholding tax under Section 194Q of the ITA. At this juncture, it is pertinent to note that the CBDT has issued certain guidelines for the application of Section 194Q of the ITA (“**CBDT Circular**”). The CBDT Circular provides that Section 194Q shall not apply to “*transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation...*”. The CBDT Circular considers the practical difficulties that may arise in transactions which do not have a one-to-one contract between the buyer and the seller. As it would be difficult to withhold tax in such a scenario, the CBDT Circular allows for transactions through a recognised stock exchange to be exempt from the obligation to withhold. Therefore, as the Proposed Transaction is for the sale of shares of an entity listed on a recognised stock exchange, there should be no withholding obligation on the Proposed Transaction.

Further, if the payment is made to a shareholder which is a Foreign Institutional Investors / FPI, Section 196D of the ITA specifically exempts any obligation to withhold tax for capital gains payable to an FPI.

Tax Considerations

Payments made by the Acquirers to a non-resident shareholder would be subject to a withholding tax under Section 195 of the ITA at the applicable rates in force. It is relevant to note that the obligation to withhold tax under Section 195 is attracted only on payments that are chargeable to tax under the ITA. Depending on the applicable Tax Treaty, certain scenarios may arise where the gains derived by a non-resident shareholder may be exempt from tax in India owing to the shares being grandfathered under the applicable Tax Treaty (for instance, under the India Mauritius Tax Treaty). Therefore, if the gains derived by a non-resident shareholder is exempt, no obligation to withhold may arise for the Acquirer.

While there may be no withholding tax applicable for payments made to a resident shareholder, Section 206C (1H) provides for an obligation on the seller, who receives any consideration for sale of goods exceeding INR 5,000,000 (Indian Rupees Five Million), to collect tax from the buyer at the rate of 0.1% of the sale consideration. As noted above, the sale of 'goods' includes shares sold. Akin to the qualification of a 'buyer' under Section 194Q, seller has been defined for the purposes of Section 206C (1H) of the ITA.

“Seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Therefore, the obligation to collect tax would only arise on the shareholders qualifying the requirements in the above definition. This obligation only arises when the buyer (i.e. the resident acquirer) does not have the liability to withhold tax under the ITA on the purchase of goods, as is the case in the Proposed Transaction. However, the CBDT has provided a similar clarification for exemption from application of this section in relation to transactions in securities traded on a recognised stock exchange. Therefore, an obligation under Section 206C (1H) should not be triggered in the Proposed Transaction.

Epilogue

While the boardroom skirmish for control over REL rages on, it is evident that neither the Burman Family nor the Rashmi Saluja-led board intends to yield ground. Amidst the fray, the Burman Family remains steadfast in their commitment to pressing forward with the acquisition, citing their potential to enhance shareholder value and foster synergies that catalyze REL's growth.

Amidst the tangled web of this hostile takeover, replete with mutual accusations between REL's board and the Burman Family, and considering REL's predominant involvement in the financial sector, it is evident that regulators, particularly SEBI, will play a pivotal role in safeguarding the interests of all stakeholders involved. The outcome of this monumental boardroom clash remains uncertain, leaving observers poised to witness the eventual victor.

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Nishchal Joshipura

nishchal.joshipura@nishithdesai.com

Yogesh Nayak

yogesh.nayak@nishithdesai.com

Parina Muchhala

parina.muchhala@nishithdesai.com

Anurag Shah

anurag.shah@nishithdesai.com

Palomita Sharma

palomita.sharma@nishithdesai.com

Anirudh Srinivasan

anirudh.srinivasan@nishithdesai.com

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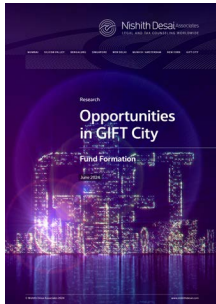
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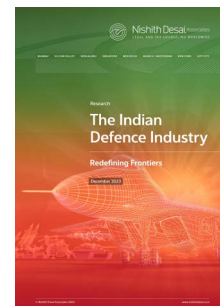
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Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India
Tel +91 22 6669 5000

SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA
Tel +1 650 325 7100

BENGALURU

Prestige Loka, G01, 7/1 Brunton Rd
Bengaluru 560 025, India
Tel +91 80 6693 5000

SINGAPORE

Level 24, CapitaGreen
138 Market St
Singapore 048 946
Tel +65 6550 9855

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra-Kurla Complex
Mumbai 400 051, India
Tel +91 22 6159 5000

NEW DELHI

13-H, Hansalaya Building, 15
Barakhamba Road, Connaught Place
New Delhi 110 001, India
Tel +91 11 4906 5000

NEW YORK

1185 6th Avenue, Suite 326
New York, NY 10036, USA
Tel +1 212 464 7050

GIFT CITY

408, 4th Floor, Pragya Towers
GIFT City, Gandhinagar
Gujarat 382 355, India

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