



RELIGARE – NEVER ENDING TWISTS AND A NON-EST COMPETING OFFER

THE TRIGGER

The Letter of Offer for the Open Offer to be made by the Burmans to the shareholders of the Religare Enterprises Limited ('REL' or 'the Company') was issued on 18th January, 2025 after a gap of around 15 months from the Public Announcement. [\(Link\)](#) First twist in the open Offer came when in accordance with SEBI SAST Regulations the Committee of Independent Directors ('COIDs') gave their recommendations on the Open Offer on 22nd January, 2025 [\(Link\)](#), where they fell a little short of advising shareholders not to tender.

Another twist came when the Company made an announcement on 24th January, 2025 regarding a competing offer made by Mr. Digvijay Laxmansinh Gaekwad, a US based entrepreneur, which can be again seen as an attempt to dissuade shareholders from tendering shares in Open Offer made by Burman's. [\(Link\)](#)

While SES is not at all interested in success or failure of any of the offer, yet SES has analysed the development based on highest governance principles.

BACKGROUND

Committee of Independent Directors ('COIDs') recommendations :

The Committee of Independent Directors ('COIDs'), in their recommendations have *inter alia* expressed:

- Lacunae in disclosure in LOO as a consolidation condition stipulated by RBI in its letter is not clearly described in the letter of offer (LOO).
- The Consolidation Plan and its impact on the Company are currently unknown.
- Concerns over Open Offer pricing: The Committee has highlighted that the Open Offer price is:
 - 15% lower than closing market price prior to the date of the Public Announcement
 - 7% lower than closing price on the date of the meeting of the COIDs
 - 16% discount to volume weighted average market price over a period of 60 days immediately preceding the date of recommendation.

SES has examined each of these point by point:

Disclosure of RBI letter:

SES would agree that the letter of offer certainly should have elaborated upon the RBI conditions clearly. The drafting may not meet the best transparency standards. However, given that information regarding the RBI conditions is available in the public domain and was put on Stock Exchanges website by the Target Company itself, SES does not observe any major concern in this regard.

Absence of consolidation plan and validity of the Open Offer:



With regard to consolidation plan, SES is of the view that a negative tone of recommendation by the Committee of IDs citing the impending consolidation plan is untenable when RBI itself has given the acquirers time to draft and implement the consolidation plan and the permitted time frame extends beyond the completion of the Open Offer period. While the Open Offer is not conditional to any RBI observation or stipulated conditions, the condition pertains to a post-event fulfilment (subsequent condition) rather than a pre-event requirement (a condition precedent). Hence, as per SES negative tone of COID's opinion appear to lack credibility and an attempt to derail the open offer process. The regulator will certainly take necessary actions in case the subsequent conditions are not met.

As per SES, there is nothing in the public domain which makes the Open Offer conditional and the validity of the Open Offer itself remains unaffected as per SES.

Open Offer Price: Who and What decides fairness?

With regards to pricing, SES is of the view that the law has established a pricing mechanism and price offered by acquirers meets legal scrutiny. While price is one of the determinants for a shareholder to tender or not tender his shares, the dominant factor is whether the shareholder is comfortable with change in management, hence price alone cannot be viewed as the sole determinant of a fair offer. In any given scenario, market prices will fluctuate following the announcement or even without any announcement and upon every movement in price investors do not exit.

However, SES believes that linking the offer price to selective dates (as has been done by COIDs), will always raise questions over any price that any acquirer will offer in any open offer.

SES as a matter of principle does not comment on the price of any share. Law has given duty to COIDs to give their opinion and they have done their job. Final decision is always in the hands of the shareholders, whether they want exit or wants to stay put. SAST provides for a fair and equal opportunity of exit but it is always voluntary.

Role of COIDs:

Law while creating the institution of IDs, had the intent that IDs will be independent of owners and management and apply their mind/ wisdom and skills in arriving at an independent judgment. SES is of the opinion that in this case, IDs have not lived up to the expected role as in last year investors have seen a series of actions and inactions of the Board of Target company to derail open offer through numerous litigations against the Acquirer, Regulatory authorities and challenging the orders of regulators. All this indicates that there is something dysfunctional at the Target Company Board and the first question goes to IDs as to how do they justify their decision to go with the decision to challenge the authority of Regulators and how could they decide that the Acquirer is not a fit and proper person?

It is amply clear that the Board of the Target Company is hostile to the acquirer. While SES cannot sit on judgement as to whether they are right or wrong or why (as it is for them to explain), SES is clear that COIDs has made another attempt to mislead the investors by their opinion. SES is asking a simple question as to whether COIDs have understood conditions imposed by RBI? Whether these conditions are conditions precedent or subsequent. RBI's



condition on restructuring and consolidation of multiple NBFCs is absolutely independent and RBI has not linked it to Open Offer. Further restructuring has to be approved by the Boards of each NBFC. Has the Board of the Target company given approval to restructuring? With all the hostilities, can the Acquirer get the Board of the Target Company to approve consolidation? Even if the Board of the Target Company was willing and was not hostile, how can any resolution of consolidation be passed as the Target Company has not yet become part of the same group? COIDs without debating on these issues have given a negative tone to Open Offer. In the opinion of SES, restructuring is a condition subsequent to Open Offer and post change of control.

Competing Open Offer: Non-Est?

The Company made an announcement on 24th January, 2025 regarding a letter written to Chairperson SEBI for seeking permission to make a competing open offer made by Mr. Digvijay Laxmansinh Gaekwad. ([Link](#)) While a Competing Offer tends to provide investors with a better exit opportunity, SES has identified multiple concerns with the proposed permission for Competing Offer.

Why wait until the last minute?

In accordance with SEBI SAST Regulations, the Public Announcement of Competing Offer is required to be made within 15 working days of the detailed public statement (DPS).

Legal Provision: Regulation 20 of SEBI SAST Regulations states:

- (1) *Upon a public announcement of an open offer for acquiring shares of a target company being made, **any person, other than the acquirer** who has made such public announcement, **shall be entitled to make a public announcement of an open offer within fifteen working days of the date of the detailed public statement made by the acquirer** who has made the first public announcement.*
- (5) *No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, **after the period of fifteen working days** referred to in sub-regulation (1) and until the expiry of the offer period for such open offer.*
- (9) *Upon the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company:*
- Provided that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to one working day prior to the commencement of the tendering period.*



The DPS, in the present case, is dated 4th October, 2023. The intention to make a Competing Offer is disclosed only on 24th January, 2025 (the last working day before the open offer opening date). The intent is not simply delayed, rather, arrives on the verge of the commencement of the primary Open Offer.

The letter seeks exemption from strict enforcement of Competing Offer conditions. However, even if the delay is kept aside, the reasoning for the delay is also not convincing. More so, even if one accepts all logic, and takes the final approval date of SEBI (20th December, 2024) as the relevant date, still why wait till 24th January, 2025 when one was watching it since October 2023? SES is of the opinion that there is no provision in SAST Regulations to condone this delay.

Reason for delay:

The letter states, “*there was no occasion for us to submit a competing offer in view of pending litigation against the Burmans' Open Offer and lack of clarity on whether statutory approvals for the Burmans' Open Offer would be forthcoming. As such, there was a doubt that the Burmans' Open Offer could be a non-starter and may be rejected by the regulators. We understand that the SEBI has now given its approval to the Burmans' Open Offer on December 20, 2024 following the issuance RBI approval on December 9, 2024. We now believe that there is a genuine opportunity for us to make a competing offer that offers a better deal to public shareholders of REL.”*

SES is unable to understand as to what would stop Mr. Digvijay from making an announcement of his intention to the general shareholders. Even if the Open Offer of Burmans would have been rejected by the regulators, the Competing Offer could have continued to prevail independently provided it ensured compliance with the requirements of SAST Regulations.

Open Offer size at par with the primary acquirers?

SAST Regulations require the Competing Offer to be for such number of shares which, when taken together with shares held by such acquirer along with persons acting in concert with him, to be at least equal to the holding of the primary acquirer, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the Open Offer is made.

The letter mentions, “*My proposed competing open offer will be for 26% of the outstanding share capital of REL. In accordance with Regulation 20(8) of the SAST Regulations, assuming full acceptance of our proposed competing open offer, our shareholding in REL (**along with persons acting in concert with us**) will be (88523932)% of the issued and outstanding equity share capital of REL, which is [equal to] [greater than] the proposed post-offer shareholding of the Burman Family Acquirer Entities (53.94% of the issued and outstanding equity share capital of REL) as specified in their public announcement dated September 25, 2023.”*

The letter mentions “number of shares” where “percentage” is required to be mentioned. Setting aside drafting errors, it is stated that the competing offer is for 26% and their shareholding when combined with the holding of PACs



will be greater than overall holding of Burmans, viz., 53.94%. However, in the very next statement, when disclosing details regarding “Persons acting in concert”, the letter mentions “NA”

Then, how would the 26% competing offer exceed the shareholding of Burmans? The contradiction raised questions over the entire validity of the competing offer. Subsequently, via announcement dated 26th January, 2025, the Offer Size has been changed to 55%. However, the contradiction with regard to “Persons Acting in Concert” continues to prevail.

Is there time available to regulator to consider the request?

The tendering period was scheduled to commence on 27th January, 2025, Monday. The letter requests SEBI to keep the tendering period of the Open Offer to be made by the Burmans to be kept at abeyance. The letter was given to SEBI on 24th January, 2025, a Friday (time not known) although at Stock Exchange it shows time to be late night after 10 PM. With the tendering period commencing on the next working day, which is 27th January, 2025, how will the regulator even give consideration to this request for competing offer, even if request was valid?

Who is the Merchant Banker? Refurbished?

Against details of Merchant Banker, the letter says, “*Can be refurbished upon request.*” Why would a primary detail be disclosed only upon request? This approach undermines transparency and leaves room for ambiguity. Further, it is unclear as to what the acquirer intends to mean when he says that the details will be refurbished. The phrasing lacks clarity and raises concerns about the accuracy of the drafting, failing to meet even basic standards of precision.

SES Opinion on Letter of Mr. Gaekwad.

SES is of the opinion that the letter written by Mr. Digvijay Laxmansinh Gaekwad, to SEBI Chairperson does not meet the requirement of SEBI SAST Regulations, it lacks basic ingredients required for an open offer. A Competing Open Offer has to necessarily consist all the information required for Open Offer. Therefore, the so called Competing Offer is “Non-Est”. In addition, even if all details were presented, still the Competing Open Offer would not have been possible as it was not made in accordance with time limits prescribed in Regulations. Any request for exonerating delay first has to meet eligibility criteria and reasons for delay must be convincing. The letter fails to satisfy meet any of the ingredients required. Further in opinion of SES, SEBI Chairperson simply cannot act on a mere letter and stop an ongoing Open Offer, which was cleared by the Regulator itself, unless a fraud has been established.

Law makes way for Competing Offers to offer better exit opportunities to investors. However, an intention which is delayed significantly, contains vague and contradictory statements and doesn’t even convey who their Merchant Banker is, stands to be “Non-Est” as per SES.

Regulator’s Response:



On 28th January 2025, the Target Company has disclosed a letter received from SEBI. Which has returned the letter to Mr. Gaekwad stating that letter “*is not an exemption application in terms of Regulation 11 of SEBI (SAST) Regulations, 2011*”

This effectively puts a final closure to all attempts to derail open offer.



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