

# ***CONTEMPORARY ISSUES***

***Some Thoughts***

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# M&A / SHAREHOLDER DISPUTES

- Disputes over Shareholder Agreements
- Disputes over alleged breach of company law
- Disputes with interplay of Takeover Regulations
- Disputes with interplay of Delisting Regulations
- Disputes over Share Purchase Agreements
- Disputes on corporate family settlements
- Dispute with regulators
- Disputes over jurisdiction

# SHAREHOLDER AGREEMENTS

- Provisions entailing share transfer restrictions
  - *Right of first refusal*
  - *Right of last refusal*
  - *Tag-along rights*
  - *Drag-along rights*
  - *Contractual lock-in of shares*
  - *Covenants not to buy further shares*
- Provisions entailing governance rights
  - *Right to be on the board of directors*
  - *Affirmative rights - specified veto items*
  - *Funding obligations - dilution of shareholding*

# COMPANY LAW INTERPLAY

- SHA disputes often linked to company law
  - *Are shares freely transferable?*
  - *Can standards more exacting be prescribed?*
  - *Are voting rights transferable standalone?*
  - *Are differential quorum requirements OK?*
  - *Can voting power be varied by contract?*
- Whether repugnant to the scheme of law
- “Unless the Articles otherwise provide”

# INTERPLAY WITH REGULATIONS

- Disputes involving Takeover Regulations
  - *Timing of an open offer - price implications*
  - *Obligation to offer - mandatory or directory*
- Disputes involving Delisting Regulations
  - *Alleged rigging of book-building price discovery*
- Do governance rights constitute control?
- Restructuring ownership triggers an offer?
  - *Eligibility for exemptions, a ground for disputes*

# INTERPLAY WITH REGULATIONS

- Prohibition of Insider Trading Regulations
  - *Communication of UPSI prohibited*
  - *Trading during possession of UPSI prohibited*
- Prohibition of FUTP in transactions
  - *Purveying what is not believed to be true*
- Issue of Capital and Disclosure Requirements
  - *Disclosures at the time of securities offerings*
- Post-listing Disclosure Requirements
  - *Ongoing disclosures by listed companies*

# SHARE PURCHASE AGREEMENTS

- Is a purchase agreement enforceable?
  - *Are agreements forward contracts?*
  - *Are agreements options in securities?*
  - *Put / Call options embedded in SHAs*
    - Section 18A of SCRA
    - *Now embedded options expressly permitted*
- Disputes over computation of fair value
- Global takeovers alleged to be oppressive
- CLB fights end with one buying the other

# OTHER ISSUES

- Corporate family settlements
  - *Typically involves a change of heart*
  - *Company law quoted as being above family*
  - *Intervening government policy changes*
  - *Family members claiming to be unaware*
- Disputes with regulators
  - *SEBI Circular for pre-vetting Schemes*
  - *Observations of SEBI akin to remarks of RD*
- Derivative actions by shareholders
  - *Related party contracts in consolidated books*



# Q&A

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