

**THE 8<sup>th</sup> ALL INDIA MOOT COURT COMPETITION 2010– PROBLEM**  
**IN THE HONOURABLE SUPRME COURT OF INDIA**

**Appeal No. 123 of 2010**

**IN THE MATTER OF:**

**XYLON STAINLESS STEEL LIMITED and others**

*... Appellant*

**Vs.**

**SECURITIES EXCHANGE BOARD OF INDIA (SEBI)**

*... Respondent*

1. Zimbra Steel Limited (“Zimbra”) is one of the largest steel Companies in India with a manufacturing capacity of 6.5 Million Tonnes (MT) per annum. Zimbra specializes in the manufacture of Hot Rolled Steel Sheets, Cold Rolled Steel Sheets, Galvanised Products including pre painted Galvanised Products and other products. The Promoter of the Zimbra owned 54.50% of the Equity Shares of the Company. The paid up capital of Zimbra is Rs. 1,000 Crores (face value Rs. 10/-). Zimbra’s Shares are listed both on the Bombay Stock Exchange as well as the National Stock Exchange.
2. During the down turn in the global markets post the Sub – Prime Crisis, Zimbra’s new orders were drying up and for the existing contracts, the customers were demanding a cut in prices. Zimbra did not agree with their customers for reduction in prices. Due this stand, Zimbra lost many contracts. After this shock, Zimbra had no choice but to re-negotiate the prices downwards.
3. Due to forced reduction in prices of Zimbra’s products, its bottom line eroded for the two sequential quarters of the financial year 2009-10. Zimbra’s share prices were steadily taking a beating due to the losses plummeting from an all time high in January 2009. Its market capitalization reduced from an all time high of Rs. 40,000 Crores to around Rs. 20,000/- Crores. Since the Promoters of Zimbra could not stem the losses, there were rumors that they want to sell their entire stake and exit the Company.
4. Xylon Stainless Steel Limited (“Xylon”) is an unlisted Company in India. Its annual capacity was 3.5 MT per annum. Recently Mr. Richard Castle (“Castle”), a citizen of United Kingdom had acquired 42% in Xylon in 20<sup>th</sup> August 2009 and had become the single largest shareholder of the company. Subsequently Mr. Castle was appointed as one of the promoter director of the Company. After the fresh infusion of funds from Mr. Castle, the Board of Directors on board meeting held on 15<sup>th</sup> September 2009 decided to increase its capacity inorganically rather than going in for a green field expansion.

5. Based on the rumors about Zimbra, the Board of Director of Xylon decided to purchase the Shares of Zimbra from the secondary markets. Xylon acquired 12.50% of Zimbra through various deals over a period of 10 days.
6. While on the one hand Zim bra's board was denying the market rumors that it is not for sale, on the other side the promoters of Zimbra received as many as 10 proposals. Xylon also submitted a proposal to the promoters of Zimbra to purchase their stake. After long deliberations, the Promoters of Zimbra decided to sell their stake to Xylon. On 1<sup>st</sup> October 2009, a share purchase agreement was entered into between the Promoters of Zimbra and Xylon for the transfer of the entire stake (54.5%) of the Promoters in Zimbra to Xylon at Rs. 250/- per share.
7. The Board of Xylon decided that they would obtain an ECB from Mr. Castle for funding the acquisition.
8. Xylon appointed Impress Securities Ltd ("Impress") as their merchant bankers for managing the open offer for the Shares of Zimbra. Impress on behalf of Xylon limited made a public announcement for the acquisition of additional 20% Shares of Zimbra at 250/- per share.
9. On 26<sup>th</sup> October 2010, Xylon through its merchant banker Impress filed the draft letter of offer with Securities Exchange Board of India (SEBI). After the submission of draft letter of offer to SEBI, one of the shareholder of Zimbra filed a complaint with SEBI alleging the following:
  - a. The Public Offer should have been made earlier because Mr. John, the son of one of the daughters of Mr. Castle (who is one of the Promoters of Xylon), held 3.50% of the shares of Zimbra, Mr. John had acquired the shares of Zimbra at Rs. 350/- per share;
  - b. After entering into the share purchase agreement Xylon had sold to Mr. Desai, one of the promoters of Zimbra, 500 acres of agricultural land in Punjab, for Rs. 300 Crores at the rate of Rs. 60 Lakhs per Acre, which was not disclosed in the public announcement. The Shareholder alleged violation of Foreign Exchange Management Act, 1996 as agricultural land was transferred to Mr. Desai, who is a Non Resident Indian. He also alleged that the market value of the land transferred is actually Rs. 1 Crore per acre and not 60 Lakhs as mentioned in the Sale Deed.
  - c. The Shareholder requested SEBI to investigate the matter and direct Zimbra for upward revision of open offer price.
10. Based on the above letter, SEBI ordered an investigation under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Regulations"). SEBI during its investigation also unearthed the following:

- a. that on 30<sup>th</sup> September 2009, Mrs. Desai purchased 50,000 shares from the secondary market @ of 200/- per share. Subsequent to the Public Announcement, she sold the shares @ an average of Rs. 265/- per share.
  - b. The ECB of Mr. Castle came into India in Rupees.
11. After the investigation, SEBI came to the conclusion that Xylon and others have violated various laws and issued the following orders / directions: (i) Xylon must withdraw the offer because of various violations of the Takeover Regulations including the consideration received for transfer of land which was not taken into consideration for fixing for the open offer price, (iii) forfeited the money deposited under the Escrow account.
12. After SEBI issued the directions / order, Xylon filed an appeal in Securities Appellate Tribunal (“SAT”) stating the following:
  - a. Mr. Castle nor Xylon were aware that Mr. John was holding shares of Zimbira, and never intended to jointly acquire shares of Zimbira;
  - b. SEBI cannot take cognizance of any violation under Foreign Exchange Management Act, 1996;
  - c. As Mr. John cannot be a Person Acting in concert as he had never to act in concert with Xylon, therefore the price for the open offer is correctly priced at Rs. 250/- per share
  - d. The transfer of land is independent of the acquisition of shares and therefore has no bearing to the price; and
  - e. The delay in filing the draft letter of offer with SEBI should be condoned.
13. SAT upheld the order of SEBI and thereafter Xylon filed an appeal with the Hon’ble Supreme Court of India.
14. Participants may frame / refute the issues raised by SEBI and any other they deem relevant.