BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

In the matter of:

Appeal No. 79/2002

SMS Holdings Pvt. Ltd. **Appellant**

Vs.

1. **Securities and Exchange Board of India**
2. **Technip-Coflexip**
3. **ISIS**
4. **Institut Francais du Petrole (IFP)**
5. **The Takeover Department, The Securities & Exchange Board of India** **Respondents**

Appeal No. 80/2002

Pradeep Kumar Jain **Appellant**

Vs.

1. **Technip S.A.**
2. **ISIS**
3. **Institut Francais du Petrole (IFP)**

4. Coflexip SA

5. South East Asia Marine Engineering

& Construction Ltd.,

6. Securities & Exchange Board of India. Respondents

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<u>Appeal No. 85/2002</u>

Kishore Shah Appellant

Vs.

1. Technip S.A.

2. ISIS

3. Institut Francais du Petrole (IFP)

4. Coflexip SA

5. South East Asia Marine Engineering

& Construction Ltd.,

6. Securities & Exchange Board of India. Respondents

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<u>Appeal No. 91/2002</u>

Khandwala Securities Ltd. Appellant

Vs.

1. Technip S.A.

2. ISIS

3. Institut Francais du Petrole (IFP)

4. Coflexip SA

5. South East Asia Marine Engineering

& Construction Ltd.,

6. Securities & Exchange Board of India. Respondents

Appeal No. 104/2002

Millhill Investments Ltd. Appellant

Vs.

1. Technip S.A.

2. ISIS

3. Institut Francais du Petrole (IFP)

4. Coflexip SA

5. South East Asia Marine Engineering

& Construction Ltd.,

6. Securities & Exchange Board of India. Respondents

Appeal No. 105/2002

Empire International Holdings Ltd. Appellant

Vs.

1. Technip S.A.

2. ISIS

3. Institut Francais du Petrole (IFP)

4. Coflexip SA

5. South East Asia Marine Engineering

& Construction Ltd.,

6. Securities & Exchange Board of India. Respondents

Appeal No. 119/2002

Vikram Rathi **Appellant**

Vs.

1. Securities and Exchange Board of India

2. Technip-Coflexip

3. ISIS

4. Institut Francais du Petrole (IFP) **Respondents**

Appeal No. 01/2003

Umesh kumar G. Mehta **Appellant**

Vs.

1. Securities and Exchange Board of India

2. J. P. Morgan India Pvt. Ltd.,

3. Technip Coflexip

4. Coflexip Stena Offshore (Mauritius) Ltd., **Respondents**

Appearance :

Shri. S.P. Chinoy,

Sr.Advocate **for Appellant in appeal No.79/2002**

Shri. S.M. Mukherjee

Advocate

Shri M. P. Bharucha, **for Appellants**

Advocate **appeal No.80, 85, 91 & 104/2002**

Shri Chirag Balsara,

Advocate **For Appellant in**

appeal No.105/2002

Shri. U.K. Choudhary

Sr. Advocate

Ms. Ranjan Roy Gawai

Advocate **for Appellants in appeal No.119/2002**

Shri Shyam Diwan,

Advocate

Shri. Umesh kumar Mehta

Chartered Accountant **for Appellant in**

appeal No.01/2003

Shri. Kumar Desai

Advocate

Ms. Rita Shivalkar

Advocate **for Respondent SEBI**

Shri. A. M. Setalvad

Sr. Advocate

Shri. Garuav Joshi

Advocate **for Respondent Technip S.A.**

Shri D. Bhattacharya

Advocate

Shri. Shreyas Patel

Advocate **for Respondent IFP**

Shri Zal T. Andhyarujina

Advocate

Shri. Raghenth

Advocate **for Respondent J. P. Morgan India P. Ltd**

ORDER

South East Marine Engineering and Construction Ltd.,(SEAMEC) is a public limited company r the provisions of the Companies Act, 1956. It is engaged in the business of operating multi support ve providing underwater/sub sea construction, maintenance and other support services for oil and gas an shares are listed on the Calcutta Stock Exchange, Bombay Stock Exchange, Ahmedabad Stock Excl Stock Exchange of India. It was a subsidiary of Coflexip SA, France. As a result of acquisition o Technip Coflexip SA, by another French company viz. Technip Coflexip SA (Technip), SEAMEC bec said Technip Coflexip SA.

The present 8 appeals are from persons claiming to be the shareholders of SEAMEC. In challenged the order dated 9.9.2002 containing certain decisions arrived at, and directions given, Exchange Board of India (SEBI).

SEBI received certain complaints relating to the acquisition/control of SEAMEC. It had also from Technip, seeking exemption from compliance of the requirements relating to the acquisition of sh combined order dealing with the complaints received by it with reference to the acquisition of shares/c Technip and also the application made by the said Technip seeking exemption from compliance of

Chapter III of the Securities and Exchange Board of India (Substantial Acquisition of s Regulations, 1997 (the Takeover Regulations) in the context of substantial acquisition of shares/control result of the open offer made by it on 3.7.2001. With reference to the complaints alleging failure on comply with the requirements of Chapter III of the Takeover Regulations, it has been stated in the order

> "……..the Technip, ISIS and IFP were not acting in concert for the purpose of acquiring Coflexip when Technip acquired 29.68% shares of Coflexip from Stena on 12.4.2000 and hence violation of Regulation by Technip on 12.4.2000."

On the application seeking exemption from complying with the requirements of Chapter III of the Take been stated in the order held:

> "…..Technip has violated regulations 10 and 12 read with sub regulations (1) and (3) of regula through an open offer acquired shares of Coflexip increasing its holding to 98.36% shares in Co open offer Technip gained control over Coflexip and SEAMEC as Technip has acquired 58.24% s control in SEAMEC without making public announcement to acquire shares/voting rights or accordance with the said regulations."

In view of the finding that Technip violated regulations 10 and 12, SEBI directed the Ac announcement as required under Chapter III of the Takeover Regulations in terms of regulations 10 and 1 order taking 3.7.2001 as the reference date for calculation of offer price. Further, Technip was also dir 15% per annum to the shareholders of SEAMEC from 1.11.2001 till the date of actual payment of consi be tendered and accepted in the offer to be made by Technip.

Technip decided to abide by the SEBI's order. They have not appealed against the order. In fa

public offer. But the Appellants claiming to be aggrieved by SEBI's decision that there was n Regulations on 12.4.2000 filed the present appeals. The Appellants' grievance is not on SEBI directi public offer. Their grievance is on SEBI choosing 3.7.2001 as the reference date for the purpose of cal for the shares in terms of the public offer directed to be made on the ground that Takeover Regulat 12.4.2000, but only on 3.7.2001. According to the Appellants the date for the purpose of calculati 12.4.2000, i.e. the date on which Technip Coflexip SA acquired 29.68% shares in Coflexip. The referer of calculating the offer price is crucial in this case. Because, if it is found that the correct date is 12.4.2 calculating the offer price, the price would be substantially higher compared to the price that woul 3.7.2001 as the relevant date. The Appellant in appeal No.1/2003 has taken the stand that the pri Announcement issued on 11.11.2002 by Technip should have been the higher of two prices taking 3.7.2 the reference date, and not the one only with reference to 3.7.2001.

It is felt that for proper appreciation of the issues involved in these appeals, a brief idea of characters involved in the transactions under reference at the relevant period is necessary. The in pleadings provide some input in this regard. As stated earlier SEAMEC is the target company. It is registered in India. It's immediate holding company is Coflexip Stena Offshore (Mauritius) Ltd., wh voting capital. Coflexip Stena Offshore (Mauritius) Ltd., is a wholly owned subsidiary of Stena O company incorporated in the Channel Islands. Stena Offshore (Jersey), in turn is a 100% subsidiary of C NV (Netherlands), which in turn is a 100% subsidiary of Coflexip SA, France. Thus, the ultimat SEAMEC at the relevant time was Coflexip SA, France. Coflexip SA, France is a company organized u Republic. It's two major shareholders at the relevant time were Stena International BV (Stena) and ISIS. stated to be a world leader in the provision of sub-sea development systems for the offshore oil and gas in

Institut Francais due Petrole (IFP) is an institution created by a decree of the French Government, for the research, imparting professional training and information for the oil and gas and automotive industries. commercial institution. It is stated to be a developmental institution in the petroleum sector.

ISIS (i.e. International de Services Industrials et Scientifiques) is a company organized under Republic It was promoted by IFP in the year 1975 as its wholly owned subsidiary. Over the years IFP down to 52.90%. Direct public holding in its capital was about 37%. ISIS was reportedly establi holdings of IFP in commercial companies. IFP retained majority control of ISIS at all times until Octob ISIS merged with Technip Coflexip.

Technip S.A. France (after October 2001 known as 'Technip Coflexip') (Technip) is also a co the laws of French Republic. It is stated to be engaged in the business of design and construc petrochemical facilities.

SEBI in its order has narrated the background of the order with reference to the complaints it had

"In the month of October 2001, SEBI received complaints, inter alia, stating that Technip has shares representing 29.68% of the paid up capital of Coflexip from Stena acting in concert with I 18.51% of shares of Coflexip) and has consequently acquired right to appoint majority of dir Coflexip. Consequently, by virtue of aforesaid acquisition of 29.68% shares of Coflexip, Techni SEAMEC and therefore triggered the provisions of regulation 12 of the SEBI (Substantial Ac Takeovers) Regulations, 1997. (hereinafter referred to as the "said Regulations'), since Technip 47.85% shares/voting rights and had majority of directors on the Board of Coflexip i.e. 6 12.04.2000 and 7 out of 12 directors on 30.05.2000.

Pursuant to the aforesaid complaint, SEBI called upon SEAMEC and Technip vide its letter date provide factual information regarding alleged violation. In response thereto, SEAMEC and T replies vide letters dated 12th November, 2001 and 14th November, 2001, respectively. The afor considered and were not found to be satisfactory and accordingly, a show cause notice dated 19 Technip, ISIS and IFP".

The show cause notice stated inter alia, that:

(i) On October 25, 1999, Coflexip acquired 49.85% shares from Peerless General Company Limited resulting in increase in its shareholding from 8.39% to 58.24% o SEAMEC.

(ii) Stena along with ISIS was holding collectively 47.85% in Coflexip as on 12.4.200 was held by Stena and 18.17% by ISIS. On April 12, 2000 Technip had purchased Stena (single largest shareholder of Coflexip) in Coflexip. After the said acquisitio Coflexip held by Stena, Technip along with person acting in concert i.e. ISIS enjoyed Coflexip and had 6 directors on the Board of Coflexip comprising 11 directors on 12 position to control Coflexip.

(iii) In view of the nature of cross holdings amongst Technip, ISIS, IFP, the compositio of Coflexip, Technip, ISIS and the control exercised by ISIS along with Total Fina over Technip decisions, prima facie, Technip and ISIS (Second largest Shareholder in acting in concert in terms of regulation 2(1)(e) of the Regulations. Further, Techni acting in concert with the common objective of acquiring control over Coflexip.

(iv) After the said acquisition of 29.68% shares of Coflexip held by Stena, Technip alon concert i.e. ISIS enjoyed 47.85% voting rights in Coflexip and had 6 directors on comprising 11 directors on 12.04.2000 and were in a position to control Coflexip.

(v) Therefore, after the acquisition of shares of Coflexip held by Stena on 12.4.200 person acting in concert i.e. ISIS acquired control over 100% subsidiary of Coflexip Offshore (Mauritius) Ltd. which owned 58.23% of voting capital in SEMEC. As a acquisition, Technip acquired 58.23% voting capital of SEAMEC and control over S the provisions of regulations 10 and 12 of the said Regulations.

(vi) As Technip along with persons acting in concert have acquired the said shares/voti

SEAMEC in the manner as stated above without making a public announcement as required by th
Regulations, Technip has, prima facie, violated the provisions of regulations 10 & 1
14(1) & 14(3) of the Regulations and therefore, Technip is liable for penal action und
Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Ac

(vii) In view of the aforesaid, Technip is called upon to show cause as to why one or mor
regulation 44 and regulation 45 of the Regulations and Section 11, 11B, 15H and 24 o
not be initiated against Technip, IFP and ISIS for violations specified above".

The noticees responded to the notice by filing written replies and also making oral submissions
Complainants are also stated to have been given opportunity (inadequacy of the same has been al
Appellants) to make their submissions. SEBI, thereafter passed the order on 9.9.2002

This Tribunal on 25.10.2002 taking into consideration the submissions made by the Appellants
and 91 of 2002 (-- remaining appeals were filed subsequently --) and the Respondents, passed an In
interim order is based on the submissions/suggestions made by the concerned parties, and has a bearing
present appeals it is felt necessary, for ready reference, to set out the portion relevant for the purpose. It

"3. Heard Counsel for the parties on the prayer for interim relief.

4. Shri S.N. Mukherjee, learned Counsel appearing for the Appellants in Appeal nos. 80
certain materials on record and submitted that the referral date for making public of
12.4.2000. He argued that the Appellants have a prima facie case and that the balance of conv
favour. He further submitted that if the order as it is, is allowed to operate the Appellants wou
injury. Learned Counsel suggested that if the Tribunal is not inclined to grant stay as soug

directed to proceed with the offer subject to the following conditions:

i) the offer price and the period for which interest is payable by the Acquirer shall be sub this Tribunal may direct by final order passed on the Appeals;

ii) the Acquirer shall pay to shareholder who have tendered shares pursuant to such ope amount, if any, between the offer price of Rs.[*] and the offer price and the period for w in terms of the final order passed by this Tribunal on the Appeals within such time as m final order;

iii) shares tendered pursuant to the open offer shall be held by the

Merchant Banker in respect of the open offer appointed by the Acquirer (the "**Me** segregated demat account (the "**Escrow Demat Account");**

iv) all accretions to the shares held by the Merchant banker in the Escrow Demat Account, of dividend in cash as may be declared by SEAMEC, shall also be credited to the Escr dividend in cash shall be deposited by SEAMEC in a segregated account (the "**Account"** bank (the "**Bank")** appointed by the Acquirer in respect of the open offer;

v) the Acquirer shall, within [*] days of the certified copy of the final order passed by this being available, deposit in the account the differential amount, if any, payable by the Ac order;

vi) on such deposit, the Merchant Banker shall distribute to the shareholders who have tend the public offer, the differential amount to the concerned shareholders as per their respe shall transfer to the Acquirer all shares and accretions deposited in the Escrow Demat Acc

vii) if, however, the Acquirer shall fail to deposit the differential amount, if any, in the Acc (v) above, the Merchant Banker shall immediately distribute the shares and the accretions

credit of the Escrow Demat Account AND the accretions deposited in the Account to the per shares pursuant to the open offer.

He submitted that the aforesaid conditions be incorporated in the public announcement an

5. Shri Rajendra Singhvi, learned Counsel appearing for the Appellant in appeal no.79 sufficient evidence to show that the correct referral date for the purpose of public offer is 12 certain material forming part of the appeal in support. He also supported the alternative prayer m

6. Shri Kumar Desai, learned Counsel appearing for Respondent SEBI submitted that this T consideration not only the interest of the four Appellants' before the Tribunal but the interest other share holders also. He did put forward certain suggestions which according to him would p concerned.

7.Shri A.M. Setalvad, learned Senior Counsel appearing for the acquirer referred to an affidavit by the acquirer wherein it has been stated that the present case is a fit case where no stay ough the said affidavit the balance of convenience is in favour of the acquirer and no loss or injustice caused to the Appellants if stay of the impugned order dated 9th September 2002 is refused b Appellants herein were to finally succeed in the matter, the Tribunal or the Court finally dec always direct that a higher offer price be paid to the share holders whose offer was accepted 9.9.2002. It was submitted that it would not be just or equitable to fasten a liability of Rs.1 acquirer for delay in making the public offer arising out of any interim order of stay.

8. I have carefully considered the submissions made by Counsel for the parties. The remed the interest of the Appellants and the acquirer during the pendency of the appeals, put forth l Mukherjee and the suggestions made by Shri Setalvad, have been taken

into consideration. On a careful consideration of all the aspects, it is felt that the best cours

protects the interests of all concerned including the shareholders at large. Accordingly it is orderec

(i) The acquirer will implement the impugned order dated 9.9.2002 by making a public ar shares of SEAMEC in accordance with SEBI(Substantial Acquisition of Shares and T 1997 on or before 15.11.2002 by taking 3.7.2001 as the reference date at a pr Regulations and make the payment within the time limit prescribed in the regulation for th

(ii) In the aforesaid public announcement and letter of offer, the acquirer shall make a that four appeals being Appeal No.79/2002 – M/s. SMS Holdings P. Ltd Vs. No.80/2002 – Pradeep Kumar Jain Vs. SEBI & Ors., Appeal No.85/2002- Kishore Shal Appeal No.91/2002 – M/s. Khandalwala Securities Ltd. Vs. SEBI & Ors. against SEBI are pending before the Securities Appellate Tribunal (SAT), Mumbai and that the acc same. It should also be clearly disclosed in the public announcement and letter of offer Appellants have urged to take 12.4.2000 as the reference date and the offer price payable p to the said date.

(iii) In the event this Tribunal comes to a findings that the reference date sha and not 3.7.2001 as directed by SEBI in its order, the price payable for the shar be with reference 12.4.2000 and the acquirer will pay the difference between th as per SEBI's order and the price payable taking 12.4.2000 as the reference dat will also pay interest at such rate as may be fixed by the Tribunal on the differe from such date as the Tribunal decides till the date on which payment is made t share holder of SEAMEC pursuant to the open offer, with in 30 days from the order by the Tribunal in the appeals. Contents of this para also will be disclose announcement and in the letter of offer.

(iv) The acquirer will strictly comply with the directions in paras (i) (ii) and (iii) above."

The appeals on completion of pleadings were heard in two batches, i.e. Appeal nos. 79, 80, 85, 91, 104 a batch and Appeal nos.119 of 2002 and 01 of 2003 in another batch.

Shri Aspi Chinoy learned Senior Counsel for the Appellant in appeal no.79/2002 referred the role of each of the parties involved in the acquisition. He submitted that Coflexip SA is the n controlled SEAMEC through its intermediary subsidiaries. Shri Chinoy submitted that there was no ch interest in SEAMEC till April 2000, that with the acquisition of 29.68% shares of Coflexip from 19.4.2000., the situation changed. In this context learned Senior Counsel referred to the chronology stated that Technip was incorporated in 1958 by IFP to develop expertise in engineering & construct involved in the design & construction of petroleum & petrochemical facilities. He referred to the s Technip prior to April 2000 and stated that the public shareholding in Technip was 65.00%(52.7% v holding 11.80% (17.9% voting rights) Gaz de France holding 10.90% (16.8% voting rights) Total Fina voting rights) Employees & Ors holding 5.90% (2.7% voting rights). The reason for variance in the sh rights was attributed to shares issued with disproportionate voting rights. He submitted that ISIS shareholder in Technip as it was holding 17.9% voting rights. He also submitted that the Board o comprised of 11 Directors consisting of 2 nominees of ISIS, and 2 nominees of Gaz de France and Tota

Shri Chinoy stated that Coflexip was founded in the year 1971 also by IFP. It was engaged in development systems for the offshore oil & gas industry. Coflexip acquired / held 58.24% of the voting October 1999 through Coflexip Stena Offshore (Mauritius) Ltd. In this context he explained the s Coflexip (prior to April 2000) that the holding by Public was 48.6%, Stena 25.1%, JPM/S 4.5%, ISIS Employee/ Co .7%

He submitted that on 22.9.94 Sogerap, Gaz de France, Total & ISIS (shareholders of Technip) providing for preemptive rights, representation on the Board of Directors, nomination of the Chairman of

Learned Senior Counsel stated that on 2.11.94 Shareholders Agreement between Atochem, Sc and Stena Intl BV was executed providing for preemption in the event of sale, representation on t nomination/ appointment of CEO/Chairman of Board of Directors & Managing Director, that . Claus recites that the parties agree that they are acting in concert with respect to their equity interests in C further submitted that it is to be noted that by letter / order dt 4.11.94 the French Market Authority a Noting that it "reflects the intention of the Parties to Jointly & equitably control the company i particular through proportional representation on the Board of Directors" and in the SEBI order thi to as a formal agreement to control Coflexip.

On 17.12.1999 Valentine/ CEO of Coflexip made a proposal to Valot/ CEO of Technip to consider Technip & Coflexip. The Board of Directors of Technip authorised Valot to approach Coflexip for the possible combination between Coflexip & Technip as it was of the view that "integration of Technip Company's (i.e. Coflexip's) dimension would considerably increase Technips capabilities & credibility Stena which held 29.7% of Coflexip shares stated that it would not support a combination of Coflexi was not part of Stena's strategy to hold equity in an engineering & construction company. Stena ho stake to Technip. On 7.4.2000 Technip's Board of Directors approved the purchase of Stena's hold Agreement was executed between Stena & Technip for the acquisitions of Stena's holding in Coflex agreement provide that the acquisition was conditional on the waiver of preemptive rights. This wai over the preemptive rights it had.

Vide letter dated 11.4.2000 Technip wrote to Mr. Valentin (CEO),Coflexip that it intende acquisition of Stena's shareholding in Coflexip. The letter stipulated that the acquisition would take pl May Technip had received notification of waiver or non exercise of their rights from the shareholder right. Technip stated that it was not acting in concert with anybody; that it had no intention to incre months. Coflexip & Technip issued letters dt 11.4.2000 not to acquire interests in competing compa consent. Investment was for strategic reason, not a mere stock market investment. Waiver was req

parties in terms of the 2nd November, 1994 agreement. However, what stand ISIS took has no Respondents and in that context it can be safely inferred that it agreed to the acquisition in view of exercise its pre emptive right.

On 14.4.2000, 3 nominees of Technip were co opted as Directors on Coflexips Board of Directors: CEO), Daniel Burlin, Michel Leveque & Rolf Rolfsen. It is to be noted that these appointments we acquisition of an interest in the Company & pursuant to an understanding with the Company". Shri ch words "pursuant to an understanding" are very important and this 'understanding' indicates that it

On 19.4.2000 Technip acquired 29.68% shares of Coflexip from Stena (including shares held by 657 million in cash and on 28.4.2000, Technip notified its acquisition of 29% shares of Coflexip & Intent" binding for 11 months. Technip stated that its acquisition was friendly acquisition and it was no it would have four directors on Coflexip's Board; that it had no intent to take control & that it shareholding for 12 months, that on 4.5.2000 the Statement /Declaration was filed by Technip w Authorities & the same was accepted by them by issuance of a Public Notice. On 30.5.2000 one more appointed as a Director of Coflexip at a General Meeting of Coflexip thereby increasing its nominee dire

Learned Senior Counsel submitted that the fact that at the General Meeting of Coflexip in May 2(5,518,195 votes out of a total of 10,258,024 – i.e. more than 50% of the votes polled and in the Gener held on 29.5.2001 Technip cast 5,518,195 votes out of a total of 9,720,114 votes. This shows that th rights with them in the general meetings.

On 1.9.2000 a 'Mission Statement' was issued regarding an upstream alliance of Coflexip / Techn

the major skills of Technip & those of Coflexip Stena Offshore to provide cost effective field devel offshore Industry. Thereafter Technips nominee directors & ISIS nominee directors were appointed to t of Coflexip, that the Strategic Committee is like a working committee and a key controlling factor. O acquired Deepwater Division of Aker Maritime USA with Technip's concurrence. Coflexip and Technip 11.4.2000 not to acquire interests in competing companies without others consent. On 3rd July 2001 tw were proposed by Technip for the acquisition of shares of (i) Coflexip & (ii) ISIS.

On 6th July 2001 the Board of Directors of Coflexip formed special committee of directors not asso ISIS, to review Technips offer. Four Technip directors voted against the constitution of the Committee (I CEO), Daniel Burlin, Michel Leveque & Rolf Rolfsen). ISIS and one of its nominee directors also vote the formation of the Committee. One of the nominee director's of ISIS voted for the Committee. The by the Chairman's casting vote. Learned Senior Counsel submitted that it is very relevant to note that m voted with Technip. The Committee required Technip to improve its offer and on 25.7.2001 Technip inc Euro 199 per share of Coflexip. On the same day Technip's CEO Daniel Valot wrote a letter to Co stating that after completion of the Public Offer, Technip's Byelaws would be altered to provide for a tw twelve member supervisory Board & five member Management Board and that Valentin would be ap the Supervisory Board. He further stated that Valot & Valentin would together nominate 9 members of I learned Senior Counsel this was really a formalisation of the existing control.

On 31.8.2001 CEO/Chairman of Coflexip addressed a letter to all shareholders of Coflexip exchange of 9 Technip shares for 8 Coflexip shares for Euro 199 per share. It was stated therein that French Offer will be followed by the creation of a combined Group between Coflexip & Technip – i.e integration of Technip & Coflexip". The Board of Directors had unanimously approved & recommend acquired 98.36% of Coflexip. In July 2001 Technip made an open offer for ISIS shares. The basis of th shares for 10 ISIS shares, that on 1.7.2001 Board of Directors of IFP approved the ISIS exchange offer a of Directors of ISIS also approved the exchange offer In that context IFP tendered its shares in ISIS to

Technip acquired 99.04% of ISIS.

Shri Chinoy submitted that in the factual position stated above, the question as to when did Tec SEAMEC has to be decided. Whether it was in April 2000 or July 2001 is the main issue.

Shri Chinoy referring to SEBI's observation in the impugned order (para 3.2.3) that though ISIS companies i.e. Coflexip and Technip and had nominated directors in both the said companies, it was control of either of the two companies, submitted that the said observation of SEBI is contrary to the the Shareholders Agreement dated 2.11.1994. In this context he specifically referred to clause 7 Agreement that "the parties agree that they are hereby acting in concert (action de concert) with respect in the company and ……..." He submitted that while dealing with 'intent of the parties', the cr important and SEBI has ignored this aspect while arriving at the conclusion. Learned Senior Counse relevant point of time IFP was holding 52.76% of the shares of ISIS, that it is also to be noted that so Technip acquired the entire shares held by Stena representing 29.68% of the capital of Coflexip. In thi the requirement of the French Company law and the compliance thereunder by Technip as stated in Section 355-I of the French Companies Act provides that a company holds control over another(the T cases – (i)the company holds directly or indirectly, title to a number of shares granting to such holder a m in the general meetings of shareholders of the Target (ii) the company holds the majority of voting righ to an agreement with a third party (iii) the company in effect determines, through the votes it holds th general meetings of shareholders of the Target [what is known as defacto control]. Learned Senior Cou not the case that Technip acquired numerically majority of the shares or voting rights in Coflexip in Apri 'defacto control' which is relevant to the instant case, and that defacto control is required to be deci entirely on legality, that SEBI has failed to realise the reality of gaining defacto control over Coflexip by though the attendant factors already demonstrated so. He submitted that once the control of Coflexip i control over its subsidiary companies is automatic for the purpose of triggering the Takeover Reg submitted that SEBI has blindly accepted the version of Technip that on 3.7.2001, it had made a publi

shares of Coflexip inter alia, at a cost price of Euro 193, that on 25.7.2001 the said cost price was incre resulted in Technip making an extra payment of Euro 30 million equivalent to approximately Rs.125 cr referred to the statement by Respondent Technip that "on 6.7.2001, the board of directors of Coflex announced offers to acquire Coflexip. At that meeting it was proposed by certain directors that a sp directors unaffiliated with Technip or ISIS be formed to review the offers to acquire Coflexip. Sig Coflexip decided by a majority decision to form a special committee though all the nominees of Tec formation. This itself indicates that Technip was not in control of Coflexip even in July 2001". Shri SEBI, in this context has not taken note of the fact that three nominees of ISIS voted with Technip, and is indicative of their togetherness. He further submitted that the Technip's contention that merel shareholding of 11.8% in Technip and a shareholding of 18.17% in Coflexip did not mean that eith control or management of Technip or Coflexip, is not correct, that it is an admitted fact that at the re subsidiary of IFP, that IFP's share holding in ISIS was to the extent of 52.8%of the paid up capit submitted that ISIS had also made submissions on the same lines as advanced by IFP before SEBI, th control or management of Technip or Coflexip.

Learned Senior Counsel submitted that SEBI in its order had raised three issues for considerati was that whether ISIS and/or IFP can be viewed as persons acting in concert with Technip when Te shares/voting rights in Coflexip on 12.4.2000. The other two issues i.e. whether Technip indirect SEAMEC and whether Technip was under an obligation to make public announcement according depending on the answer to the first issue. Learned Senior Counsel submitted that SEBI wrongly dec decided that it was not necessary therefore to consider the remaining two issues. Learned Senior Couns had noted that Technip had 3 directors on the Board of Coflexip on 12.4.2000 and 4 directors on the 30.5.2000, that Technip along with representatives of ISIS had majority of directors on the Board of Cof of total number of 12 directors on 30.5.2000 and jointly Technip and ISIS were holding 47.85% Coflexip. Shri Chinoy submitted that SEBI in the light of the facts of the case has noted in its order tha major share holders of Coflexip had a formal agreement dated 2.11.1994 to control Coflexip. It is evi said shareholders were acting in concert and controlling Coflexip, Technip came in place of Stena, witl

and therefore it goes without saying that Technip also joined the control team, in place of Stena reality that no controlling group would willingly allow a person who does not stand with it to acquire parties comprising the controlling group. Learned Senior Counsel submitted that by virtue of the legal acting in concert in terms of regulation 2(1)(e)(2), unless the contrary is established by one of the pa position they are persons deemed to be acting in concert, that Technip and ISIS in terms of regula persons acting in concert, and to not to consider so they have to establish that they are not persons acting to rebut the assumption that they were otherwise acting in concert, that they have not rebutted the said p they have to be considered as persons acting in concert for the purpose.

Shri Chinoy submitted that SEBI has heavily relied on the French Company Law compliance by statement sent by Technip to Coflexip on 11.4.2000 stating inter alia that Technip was not acting in co respect to Coflexip and that it had no plan relating to any such concerted action, and Technip has no i interest they will take in Coflexip before April 19, 2001. He further submitted that Technip is s notification in terms of the French Company Law on 28.4.2000 for Crossing Legal Threshold by Coflexip's equity capital. This is a statutory obligation under French Company Law, binding for 12 m declared that (i)acquisition of shares from Stena was a friendly acquisition of shares which should resul strategic alliance (ii) it was acting alone (iii) it did not intend to increase its shareholding (iv) it will Coflexip board of directors by four members out of a total of 12 members (v) it does not intend to take for a period of six months it will not reassign its shareholding, except for a maximum of one third to without prior consultation with Coflexip. SEBI has noted that such a statement under law is binding on that the said document was filed with the French Market Authority and with Stock Exchange Commiss Market Authority thereafter had issued a public notice on 4.5.2000 recording and accepting the staten Learned Senior Counsel submitted that SEBI's conclusion that Technip and ISIS or IFP were not acting on the basis of the material before it but exclusively based on the so called compliance of the Frenc made thereof. In this context he referred to the following portion in the impugned order:

"5.3.12. From the various declarations filed by Technip before French authoriti acting in concert with anybody else for the purpose of acquiring shares/voting over Coflexip and in view of the Technip's letter dated 4/5/2000 vide which it declaration of threshold crossing and Statement of Intent with French authoriti Financial Markets) declaring the objectives it intends to pursue vis-a-vis Coflex coming months as stated hereinbefore, and specifically that --

- Technip is acting alone
- That it does not intend to increase its equity interest in Coflexip
- That it shall be represented on the Board of Directors by four directors out of a total
- That it does not intend to acquire control over Coflexip

It would be difficult to hold that Technip was acting in concert with ISIS or IFP for the purpose o Coflexip, when it acquired 29.68% shares from Stena on 12.4.00"

Shri Chinoy submitted that SEBI has drawn the conclusion going by the declaration stated Technip before the French Authorities under the French Company law, little bothering to go by the grou as emerged from the factual position before it. In this context he referred to the letter dated 11.4. Coflexip/Valentin that it intended to proceed with the acquisition of Stena's shareholding in Cofle stipulated that the acquisition would take place provided that by 4th May Technip had received notific exercise of their rights from the shareholders having a pre emptive right. He further stated that Technip i dated 28.4.2000 had stated that acquisition of 29% shares in Coflexip was a friendly acquisition and accepted by the French authority. Since the French authorities had accepted the version, SEBI held that that the parties acted in concert, that as if SEBI is bound to go by the decision of French authorities with the facts of the case and the relevant Indian Regulations. He submitted that SEBI did not on its ov position, but relied simply on a statement made by the Technip before the French authorities, that statem factual position showing acquisition of control over Coflexip by Technip.

Shri Chinoy referred to the SEBI's observation in para 5.3.15 in the order that "it is also obse agreement between Technip and a third party or ISIS or IFP giving Technip a majority of voting r submitted that SEBI has failed to understand that it is not a question of majority shareholding, that t Technip was in a position to exercise control over Coflexip SEBI has made a quantum leap only aforesaid it is clear that Technip was acting alone and had no commonality of objective or community IFP for the purpose of acquiring shares/voting rights/control over Coflexip" (Para 5.3.15). He submi made any effort in this regard to find out as to whether there was really any commonality of objective or among Technip, ISIS and IFP and jumped to the conclusion. Learned Senior Counsel submitted that th particular the shareholding pattern, management involvement etc. of these entities certainly demo contention. Shri Chinoy submitted that K. K. Modi case(2002) 35 SCL 230 (Bom) referred and relied in no application to the present case, as in the said case two sets of promoters were fighting with each wanted to exit from the company by selling its shares, that it is not so in the instant case as IFP/ISI acquisition of shares of Coflexip by Technip in the best manner they could, that the community of in ISIS, if it wanted could have stopped acquiring shares by Technip in Coflexip, but actually in Te facilitated the acquisition. Shri Chinoy submitted that when one is dealing with the defacto control, one such declarations and notifications ignoring the stark realities. Shri Chinoy submitted that SEBI has no realities and the order was passed without application of mind.

Shri Chinoy submitted that SEBI, in its order has devoted considerable the status of IFP, its activities etc. to show that it is a non commercial non prof organisation fully devoted to promotion of oil, gas and automotives. But SEBI to deal in a reasonable way the status and activities of ISIS which facilitated T acquisition of 29% shares of Coflexip. SEBI has ignored the concerted actior regard. Shri Chinoy submitted that SEBI has not taken into consideration the r which it has recited in the order and it has come to a conclusion which is contr facts. He submitted that in the light of the terms of the Agreement (pre emptio to nominate directors etc.) Technip could not have successfully acquired 29% s in April 2000 without the co-operation of ISIS. SEBI has totally overlooked th

before the acquisition of shares, Technip's 3 to 4 directors' co-option to the Co not possible without ISIS's concurrence. The acquisition of shares and nomin to the Board etc. are not mere coincidences, but part of a design evolved by ISI Shri Chinoy submitted that these three companies had controlling block of 47% company, seven out of 12 directors with them and the strategic committee, cor nominees and 2 Technip nominees. With reference to two separate offers by T July, 2001, he submitted that no such exclusion was necessary unless they were concert –that the exclusion was necessary due to conflict of interest with Tech submitted that the fact that on 6.7.2001, ISIS and its nominee directors voted w against the formation of the committee for revising the offer price, has to be no the fact that by revising the offer price, as a shareholder ISIS could have been b they decided to forego the benefit and stood with Technip, for obvious reasons submitted that the fact that in two general meetings of Coflexip in May 2000 ar Technip voted substantial percentage of votes – exceeding 50% of the total vot show that really Technip had more than 50% voting power at its command and control over the company.

Shri Chinoy in his attempt to show concerted action by the parties, refe dated 14.10.2001, from the Chairman of Technip to the company's shareholder

> "For over a year now, we have been working on this merger, passing through a number o acquisition of 30% of Coflexip in April 2000, the setting up in the summer of 2000 of a strategic the teams from the two companies to start working together on a few joint projects as well proposals. This period of acclimatisation was invaluable: it demonstrated that our cultures were teams knew how to work together in harmony. Thus we have done everything possible, I believ merger to take place in a climate of mutual confidence.
>
> The Institut Francais due Petrole (IFP) which was at the origin of the creation of the two cor remained through ISIS a major shareholder of both of them, acted as a catalyzer in their union. its majority stake in ISIS to Technip, it greatly facilitated the merger between Technip and Cofle the operations now underway, IFP will be, in accordance with its historical mission one of t Technip Coflexip, along side of Gaz de France and Total Fina Elf, both of which also gave their

of the new entity."

Shri Chinoy stated that this is a statement from the Chairman of Technip which can not be ignc that he has clearly stated the factual position. It is also to be noted that ISIS, having played its role in t with Technip. Shri Chinoy submitted that the fact that ISIS and Technip acted in concert is thus evident association. They held 47% of the shares in Coflexip, they had seven out of 12 directors and they had e strategic committee with two directors from each side. Shri Chinoy submitted that SEBI has not dealt w and it has also not examined the relevance of the said factual position. It has simply gone by the declaration filed before the authorities and on the concept of person acting in concert as provided in reg wrongly that there was no commonality of purpose among Technip, ISIS and IFP. He submitted that SI own should have examined all the relevant facts instead of following the short cut method to decide th over Regulations. He submitted that the failure of SEBI in this regard has adversely affected the interes of the Target company in India.

Shri Chinoy in support of his submission on the need for taking into consideration the effective decision of this Tribunal in Ashwin K. Doshi V SEBI (2002) 40 SCL 545) and submitted that SI consideration the observation made by the Tribunal in the said case, for the purpose of deciding as to w acquired control over Coflexip in April 2000, and consequently in the Target Company.

Shri Chinoy in his reply to the submission made by the Respondents submitted that concerted established by positive evidence and not by inaction. He submitted that regulation 2(1)(e) explains as to acting in concert, that the persons mentioned in sub clause (2) therein are persons deemed to be actin persons in the same category, unless the contrary is established. It is for the persons deemed to be acting their position vide clause (2) to rebut the presumption so as to take them out of the purview of the said

the persons deemed to be acting in concert to bring proof to establish the contrary, that they have to p acting in concert. He submitted that in the instant case ISIS and IFP though deemed to be persons actir their relationship with Technip have not brought on record any evidence rebutting the presumption an that they were not acting in concert can not be accepted. In this connection Shri Chinoy stated that on t on record shows that ISIS was acting in concert with Technip. In support he referred to its conduct of in pre emptive rights in the context of Technip acquiring 29% shares from Stena and facilitating the co-op the Technip to the Board of Coflexip. In this context he submitted that from the conduct of the parties it were acting in concert. Shri Chinoy refuted the Respondent's contention that if as alleged Technip had a over Coflexip by acquiring 29% shares on 12.4.2000, there was no need for Technip to spend huge amo further shares of Coflexip (upto 99%). Shri Chinoy submitted that further acquisition of shares b strengthen their position is not uncommon and Technip's further acquisition of shares after 12.4.2000 had not acquired control on 12.4.2000. He submitted that it is evident from the subsequent developme Technip's holding to 99% shares of Coflexip and merger of ISIS with Technip etc. that these are all part

With reference to the concept of control referred to in regulation 12 Shri Chinoy submitted that been defined in regulation 2 (1)(c)and that it is measured not only in terms of the right to appoint direc exercised in any other manner also "exercising control in any other manner" is to be considered on th circumstances of each case, that in the instant case from the facts on record it is clear that Technip along about 48% shares in Coflexip and in the Coflexip's Board they had majority of directors with 7 direct members on the Board. He submitted that it goes without saying that anybody acquiring control ove acquires control of its subsidiary also, that indirect acquisition of control also attracts regulation 12 acquisition of control over Coflexip by Technip, it acquired control over SEAMEC also as its ultimate Coflexip SA. Shri Chinoy submitted that the votes cast by Technip in the AGM has to be seen in Company law and not with reference to French law, as SEBI is administering the Takeover Regulati Company law. He submitted that French law does not supplant Indian law and SEBI can not take a de law overlooking the provisions of the Indian law on the subject, that conclusions arrived at by French a law are not to be blindly adopted by SEBI, as has been done in the instant case. He submitted that fro

on the voting right exercised by Technip in the Annual General meeting it is clear that Techr rights with it.

Shri Chinoy submitted that in para 3.2.3 of the impugned order it has been stated that ISIS was control of either Technip or Coflexip. In this context Shri Chinoy pointed out that Technip had com Coflexip. The French Stock Exchange Council in its letter dated 4.11.1994 Noted that Coflexip was con i.e. Stena group and the Group of ELF, ISIS an SCOR. Therefore, the finding that "ISIS was not in ma Technip or Coflexip" is incorrect. In fact SEBI has accepted this correct factual position in another recording that "I have noted that Stena, ISIS and other major shareholders of Coflexip had a formal agre 2, 1994 to control Coflexip."

Shri Chinoy submitted that the above facts have not been disputed by th the inference is from those undisputed facts. The facts establish that Technip a acted in concert and they were effectively in control of Coflexip with majority with a combined voting strength of 49% shares in Coflexip, where the majority shareholders were widely dispersed and not in a position to attack enblock the said two companies.

Learned Senior counsel submitted that with Technip on acquiring 29.68% shares of Cofle 12.4.2000, the change in control over Coflexip took place and consequently control over SEAMEC also Takeover Regulations.

Shri S. M. Mukherjee, learned Counsel appearing for the Appellants in appeal Nos.80/2002, 104/2002 submitted that he is adopting the submissions made by Shri Chinoy in appeal no.79/2(supplement the same.

Learned Counsel submitted that according to SEBI, with the acquisition of 29% shares in Cof Stena, there was no change in control over Coflexip and ISIS was not acting in concert with Technip. He view of SEBI is entirely based on a declaration made by Technip in France under the reporting requ Company law. It was for SEBI to enquire on its own and then in the light of the relevant facts an Takeover Regulations come to the conclusion as to whether there was any change in control over acquiring shares on 12.4.2000 and whether ISIS had acted in concert with Technip.

Shri Mukherjee submitted that the relationship of the parties involved a that of ISIS and Technip is a factor which was required to be taken into consid arriving at the conclusion referred to above, by SEBI. He submitted that prior ISIS had 11.8% shareholding in Technip which entitled it to exercise 18% of th At that time ISIS was also in charge of the management of Technip. In this co to the shareholders' Agreement dated 22.9.1994 enabling the parties to the agr appoint specific number of directors with reference to their shareholding, that stage appointed 2 directors – one in corporate capacity and another as an indivi that they were also directors in the target company as nominees of ISIS. He su 17.12.1999 the Board of Directors of Technip decided to approach Coflexip fo discussing a possible combination between Coflexip and Technip. At that time directors on the board of Technip, and the said two directors did not object to t mooted by the Technip's Board on 17.12.1999. Learned Counsel submitted t three committees and in two such committees ISIS was represented. He also s Technip and ISIS were in joint venture in another company viz. Ipdex SNC wi owning 46% interest and ISIS owning the remaining 54% interest. Shri Mukh that SEBI has not even noticed the close relationship that existed between Tech

With reference to the relationship between ISIS and Coflexip, Shri Mukherjee stated that ISIS Coflexip and it had the right to appoint 25% (i.e. 3 out of the total of 12 directors) – of the directors on that it is also to be noted that ISIS represented in 2 out of 3 management committees of Coflexip. In thi the shareholders agreement dated 2.11.1994 and the right of pre emption available to each of them includ

Shri Mukherjee also explained the relationship between IFP and ISIS and the role of both the sai that the objective of IFP and ISIS are not the same and ISIS is a more commercial minded organisation.

Learned Counsel submitted that in the light of the inter relationship of the players involved, their In this context he again referred to the Board meeting of Technip held on 17.12.1999 referred to earlier the Board meeting of Technip held on 7.4.2000 and cited the following paragraphs from the minutes o under the heading "Strategic Options" –

> "Mr. Valot reported on a plan to acquire all of Stena International BV's 29.7% shares held dire equity and voting rights of Coflexip Stena Offshore (CSO)
>
> Having made this acquisition, Technip would become CSO's biggest shareholder and would pr be appointed as members of CSO Board of Directors:

This acquisition should foster a strategic alliance between the two companies b business potential in the context of an offshore (especially deep sea) market wh integrated companies"

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-

> "The price envisaged for this acquisition is Euro 119 per share, resulting in a total of Euro 66 deal.
>
> Following a period of discussion, the Board approved the acquisition of Stena International BV upto a limit of Euro 119 per share for a maximum of Euro 660 million."

X

X

"Mr. Jacquard, ISIS's permanent representative on the Board and Mr. Prevot a
voting since ISIS owns shares in both the companies"

Shri Mukherjee submitted that the statement that "having made this acquisition Technip would shareholder and would propose that four persons be appointed as members of CSO's Board of Director the acquisition will come through, though ISIS had pre emptive right. He also submitted that ISIS nom Mr. Prevot, did not object to the proposed acquisition, they only abstained from voting due to technical r exercise the pre emptive right to stall the acquisition.

In this context Shri Mukherjee referred to the following disclosure made in the Technip' 30.8.2001:-

> "In January 2000, we retained J.P. Morgan & Cie SA as our financial adviser in con combination, and Coflexip retained Credit Suisse First Boston Corporation as its financ period between January and April 2000, our representatives met with representative respective financial and legal advisors to discuss various aspects of a possible combina these discussions, however, Dan Steno Lisson, the Chief Executive Officer of Stena Inter of approximately 29.7% of Coflexip's then outstanding share capital repeatedly express Valentin and Valot that Stena would not support a combination of Coflexip and Technip of Stenas strategy to hold an equity stake in an engineering and construction company. Valot on march 31, 2000, Mr.Olsson indicated that Stena would however, consider selling to us so as not to be an obstacle to a possible combination. Mr. Valot subsequently c

negotiate the purchase of Stena's interest. On April 19,2000 we acquired Stena's int purchase price of approximately Euro 657 million in cash"

Learned Counsel submitted that the above observation was also overlooked by SEBI.

Shri Mukherjee submitted that value of shares acquired is more than the net worth and this fact part of the acquisition was funded by borrowings made by Technip. In this context he referred to Technip's offer document dated 31.8.2001 that "the company financed this acquisition (i.e. acquisition shares) using its cash in hand with a credit facility of Euro 180 million, related interest rate being the resulting good will amounts to Euro 447 million and is amortized over 20 years." He submitted that o was paid as control premium.

Shri Mukherjee referred to the following portion in the letter dated 11.4.2000 from Mr. Dan Technip to Mr. Peter Marie Valentin, Chairman and CEO of Coflexip:

"We have advised you that once the discussions with Stena International BV (Stena) were com apprised of, we would very soon be acquiring all of Stena's direct and indirect equity stake 5,518,195 shares. You wanted us to know that you were in favour of this transaction (the Acqui of the Acquisition.

- Preserves the basic freedom of the company and its shareholders to formulate and execute C strategy;
- Should create possibilities for commercial and industrial co-operation between our two gr being particularly important and in line with the long terms interests of companies concerned.
- Enables Stena's equity stake to be re-assigned.

We are both in agreement with this analysis.

Please find the draft Statement of Intent which will soon release in accordance with current re

We want to make clear that any inhouse or public announcements that we might release about based on the information contained in the Statement of Intent and with the aforesaid reasc acquisition.

We want to make it clear that the Acquisition will proceed as stipulated in Article 4-1-32 (Markets Council's rules and regulations and will not take place unless we have received not the least, from both shareholders having pre emptive rights on the shares belonging to renounced or not exercised this right."

Shri Mukherjee referred to Technip's declaration to Coflexip referred to by SEBI in the impugn in the said declaration letter Mr. Valot of Technip had categorically stated that "I have taken note of yo four Technip representatives to sit on your company's twelve member Board of Directors, specifically tc who represent Stena", that this indicates that Technip entered into the place of Stena which was control and others. He submitted that on 11.4.2000 Mr. Valentin of Coflexip wrote to Mr. Valot of Technip agreement in the context of Technip's purchase of Stena's equity stake in Coflexip's share capital. It is 14.4.2000, Stena's nominees resigned from the Strategic Committee, Audit Committee and the Nomina Committee and Technip's nominees entered in their place. Learned Counsel submitted that SEBI can induction of 4 directors of Technip on Coflexip's Board and nomination of Technip's nominees on Co committees including Strategic Committee, though Technip's holding in Coflexip's voting capital was o not make any enquiry to find out the actual position. He submitted that it is clear with ISIS's active cc what they wanted. Learned Counsel submitted that it is an admitted fact that at the relevant time ISIS h board of Technip. He further submitted that on September 22, 1994 ISIS, Total Fina Elf and Gaz de shareholders agreement with respect to the Technip shares held by each one of them. The shareholders a term of six years and was automatically renewed for an additional three year term. As of September 2 ceased to be a party to the shareholders agreement. Pursuant to the shareholders agreement each of I Gas de France:

- Granted the other parties a right of first refusal on the Technip shares held by each one of them and would be represented on the Technip's Board of directors in proportion to their respective voting righ

Shri Mukherjee referred to press release dated 12.4.2000 issued by Stena in the context of the sale o Coflexip stating that:

> "Stena International B.V. has realised its investment with intention to redirect the proceeds to opportunities. Stena International B.V. is pleased to realise this disposal in a way that is consistei as well as Coflexips industrial and strategic interests.
>
> The transaction will provide Coflexip with a new strategic shareholder offering attracting indus group.
>
> Commenting on the transaction, Stena AB's CEO Da Sten Olsson said "we are impressed with project management skills and we are delighted that the realisation of our investment could coinc a promising industrial co-operation to pave the way for further development of Coflexip."

Shri Mukherjee submitted that Stena was an odd person in Coflexip and on its exit and with t obstacles were removed.

Shri Mukherjee submitted that those who extend co-operation to acquire shares or control ov considered to be persons acting in concert, as that co-operation is for a common purpose of acquisition.

Shri Mukherjee submitted that under the French Company law (L. 233) also there is a deeming p or less comparable to the provisions of regulation 2 (1)(e)(2) of the Takeover Regulations. In this co factual disclosure made in Technip's offer document in the following paragraph:

> "On December 12 and December 20, 2000 Messrs Valentin, Valot and Burlin and our representa advisors met again to discuss the possible combination between Coflexip and Technip to be ef exchange offer by Coflexip for our shares. At that meeting, we agreed with Coflexip that our re review the issues raised by that structure. In early 2001, the representative of Gimar Finance approached us to inform us that IFP had indicated a potential interest in selling its entire interest

He submitted that thereafter several meetings were held by the concerned parties and explored combination which is indicative of the mutual understanding and co-operation among Technip and IS Coflexip's shares on 12.4.2000, that this was the beginning for the mergers which were to follow.

Learned Counsel referred to the following observation in the order that:

> "on 6th July 2001, the board of Coflexip met to consider the announced offers to acquire Cofle was proposed by certain directors that a special committee of directors unaffiliated with Techni review the offers to acquire Coflexip. Significantly, the Board of Coflexip decided by a majo special committee though all the nominees of Technip voted against the formation of the com three nominee directors of ISS also voted in favour of the resolution. This itself indicates that n were in control of Coflexip even in July 2001 and that they are not acting in concert."

Shri Mukherjee submitted that from the observation itself it is clear that two out of 3 direct Technip, thus demonstrating that ISIS was with Technip in the process of Technip's acquisition of Cofle

Shri Mukherjee submitted that the acquisition of Coflexip by Technip attracted regulation 10 an is on record that two groups i.e. Stena and ISIS and others were in control of Coflexip, that Tech shareholding in Coflexip held by Stena and came in its place. In this context it is to be noted that ISIS

shares in Coflexip whereas Stena was holding 29.68% shares and Stena had the right to appoint 4 direct to appoint 3 directors. Thus it is clear that the element of control exercised by Technip is more than tha therefore by entering Technip has resulted in change in control. In this connection he referred to expla 12(as it then existed) that " Where any person or persons are given joint control, such control shall not be in control, so long as the control given is equal to or less than the control exercised by person(s) preser the company". He submitted that in the instant case Technip acquired more control.

Shri Mukherjee submitted that SEBI Act and the Takeover Regulations are beneficial legislation of the investors that interpreting the provisions of the same, should be in tune with the objective of the frustrate the objective. Shri Mukherjee cited the following authorities in support of his proposition following paras in Guinness PLC, The Distillers Company PLC (Panel hearing on 25th August 1987 and Reasons for decisions of the Panel), in support of his proposition of acting in concert.

The issue before the Panel, which came before it on a reference by the Executive was in the co offer in 1986 by Guinness in competition with Argyll for all the shares in Distillers. The issue that whether at a critical stage of the bid, Pipetec AG, a subsidiary of Bank Leu, in purchasing approxim shares which were subsequently assented to Guinness offer., was acting in concert with Guinness. The of some £76 million was made on 17.4.1986 at which time Guinness and persons declared to be Guinness, already held 14.99 per cent of Distillers shares acquired during the offer and within commencement. Accordingly if the purchase by Pipetec was made in concert, such purchase should n serious consequences would have arisen under the code.

"3. The reason why the Rule applies to persons acting in concert with the offeror is that, if su make share purchases and yet to be regarded as independent of the offeror, the Rule, and co Principle, could be easily and completely circumvented. The Code contains a definition o provides:

> "Persons acting in concert comprise persons who, pursuant to an agreement or understand informal), actively co-operate, through the acquisition by any of them of shares in a consolidate control (as defined in the Code) of that company."

This definition is supplemented by a statement of certain situations where a presumption arises t concert unless the contrary is established. There follows a non-exhaustive description of the ap of acting in concert in practice.

4. The nature of acting in concert requires that the definition be drawn in deliberately wi understanding as well as an agreement, and an informal as well as a formal arrangement, which purchase shares to acquire control of a company. This is necessary, as such arrangements are understanding may arise from a hint. The understanding may be tacit, and the definition cove parties act on the basis of a "nod or a wink." Unless persons declare this agreement or unders direct evidence of action in concert, and the panel must draw on its experience and commonsens those involved in any dealings have some form of understanding and are acting in co-operatio typical concert party case, both the offeror and the person alleged to be acting in concert wit notwithstanding the circumstances, they have no understanding or agreement. The Panel has to l to recognise that businessmen may not require much by way of formal expression to create such unnecessary for the Panel to know everything that actually passed between the parties in a take judgement required in an acting in concert issue must usually be made in the context of the asse persons whose interests will not be served by a finding of acting in concert – this is because suc entails consequences under the Code, often to the benefit of offeree company shareholders, wh concept, with a cost to the offeror.

5. It is common in the course of a bid for a broker acting for the offeror to seek to persuade shares in the offeree company and assent them to the bid. It is perfectly legitimate, provided tha broker is limited to encouraging the purchase on investment grounds and no other form of incent operation is given. Where the contact between the offeror and the potential purchaser goes persuasion by brokers, the circumstances must be examined with great care.

Since there is a variety of ways in which parties may act in concert, no one circumstance will necess Relevant facts will be whether the offeror himself makes direct contact with the proposed purc whether there is any pre-existing relationship between the offeror and the purchaser and, if so, relationship, in working and personal terms, between persons on the offeror side and the potential p is any form of inducement, or assistance, or hint of future benefits other than by way of shareho succeeds or fails, which might contribute to the decision to purchase. In order to reflect reality, the to draw inferences where it can reasonably do so where the offeror and purchaser deal otherwise t channels whereby a purchaser would customarily make an investment. The panel in making its juc not acting as a court of law but is applying the combined experience of its members to evidence wh circumstantial."

Shri Mukherjee also a cited another decision relating to the UK Takeover Code in Phillip Morris P Rothmans International Enterprises Ltd., & Anr. (Chancery Division – dated 19.7.2000) He ref observations therein:

"I will deal with each of these contentions in turn and turn first to the second of the claimants' a main head on construction. I do so because there is an issue as to what should be the proper appr construction of the words "acting in concert" and "control" under the Code as imported into th 14. It seems to me that the claimant's argument under this head can proceed on the basi contentions on the approach to construction are correct and that, to establish control the claimant BAT controlled 30% or more of the voting rights of RIE at a general meeting In my judge entitled to succeed on this part of their argument notwithstanding that the approach to construct for is not adopted. They do so for the following reasons:-

(1) I have already set out the words defining "control" to be found in the Code. That defi that the required holding or aggregate of holdings must be held by the same individual. That the required 30% of the voting rights can result from the holding of shares of demonstrated by the use of the words "aggregate holdings" in the definition of "

incorporation of the definition of "acting in concert" into that definition. The definition of "a
Code, which again I have set out, imports into the definition of "control" that such contr
where a party ("the purchaser") who acquires shares carrying less then 30% of the voting
result of an "understanding" with a second party, who holds shares in the target com
company provided that in aggregate they both hold shares carrying 30% or more the v
not, for the purposes of either of the definitions, that the second party may already contr
The definitions are silent on that point also. It is important to note that the concert of "act
applications to the construction of Clause 14.4; to define the two possible entities to
14.4.2 apply and to qualify the words defining "control" in the Code as incorporated into

(2) Whether or not the purchaser acquiring shares carrying less than 30% of the votes acqu
the nature of the understanding with the second party, found to exist, whether or snot
controls the company. Thus the understanding of the second party who already holds sh
30% of the votes may be that he will not vote those shares at general meetings leaving t
the company at general meetings b y his holding of shares carrying less than 30% of the v

(3) Thus, In my judgement, contrary to the defendant's submissions, control of a target co
by a "person" a stranger to that company, who does not control that company before acq
and who only acquires a shareholding having less than 30% of the voting rights at a gene
so if it can be demonstrated, as a matter of fact, that, at the time of his acquisition, he hac
another shareholder of the target company whose holding of shares carried votes which, a
the purchaser amounted to 30% or more of the votes available at a general meeting.

(4) In the present case the relevant acquisition of shares is that by BAT in indirectly acquiri
or ordinary shares in RIE carrying with them 29.9% of the voting rights. It is not in is
acquired through a chain of subsidiaries. At the time when the take-over was completed
was RIL which, as a result of the issue of the Special Shares, had by this stage surrende
but had retained the ordinary shares in that company.

(5) The question therefore becomes whether, on the evidence adduced before me, I find

acquired, through subsidiaries, all the shares in RIL there existed an "understanding" between BA by which BAT was left to control RIE through RIL's holding of ordinary shares or was to by the favourable voting of the Special Share. I have come to the conclusion that I should

47. I now give my reasons for arriving at this factual conclusion.

48. I start with the presumption contained in the definition in the Code of the words "acting in the second paragraph of that definition and the first sub-paragraph. I have already set o my judgement, on competition of the take-over by BAT, Richemont SA must be trea company of BATthrough its holding of two third of the shares of R & R Holdings SA in of the shares of BAT as a result of the take-over transaction. Further, Richemont SA a right to nominate one director to the main Board of BAT. (Rembrandt Group Ltd with shares directors and shareholders was given a similar right – see the information set out circular to its shareholders to which I have already referred.)

49. It followed that "unless the contrary is established" I must assume that from the moment v acquisition of RIL, acquired all the ordinary shares in RIE, it was "associated" with Richemont the definition of "acting in concert" contained in Code. It seems reasonable to make the same a the date when it was announced that BAT was to take over the Rothmans tobacco interests v would lead to such association.

50. The only evidence available to the defendants to rebut this presumption is that of their witnes Gourlay and Mr Cripps who each asserted that there were no constraints on the exercise by voting rights conferred by the Special Share apart from those set out in the amended A Shareholders Agreement. These assertions are to be found in their witness statements but n evidence given by Mr Du Plessis and Mr Gourlay under cross-examination .

51. Both Mr Du Plessis and Mr Gourlay accepted that there were understandings between th Rothmans/Richemont Group as to how the BAT Group would be managed after completion both accepted that these understandings were reached in the course of the negotiations leading to

52. Mr Du Plessis accepted that part of those understandings was an understanding that BAT sh managing the Partnership.

53. Both Mr Du Plessis and Mr Gourlay accepted that it would have been inconsistent with th Richement SA to vote the Special Share inconsistently with such understandings. Mr Du Plessis circumstances when it would have been contemplated that such an independent exercise of the Special Share by Richemont SA might arise.

54. Mr Du Plessis accepted that the purpose of the arrangements leading to the allotment of the Spec SA was solely to retain the benefit of the Licence Agreement for that Partnership and for no othe agreed that the retention of the benefit of the licence Agreement was the "prima benefit" to be a and allotment of the Special Share.

55. Both Mr Du Plessis and Mr Gourlay accepted that after the take-over was completed the inter the Partnership was in the income stream resulting from the Partnership business flowing to th Richemont SA had a substantial shareholding interest. Mr Du Plessis accepted that Richemo was, after the take-over, "highly academic".

56. Mr Gourlay accepted that the proforma accounts of the BAT Group, included in the circular to have referred, treated RIE as a subsidiary company in that group and were consolidated in the ac

57. The purpose of the creation of the Special Share was discussed in the course of a Board me March 1999 at which authority was given, subject to the approval of the shareholders of RIE in issue of the Special Share. The purpose of that issue was described on the following terms meeting:-

"(B) It was reported that there were existing arrangements between the Morris, under which Philip Morris had licensed the Marlboro trademark to a partners Trading Limited, a wholly-owned subsidiary of the Company, and subsidiaries the terms of those arrangements, at completion of the transactions referred to at (A)

above Philip Morris would become entitled to terminate the Marlboro licence by virtue of t
the company.

(E) It was further reported that to avoid Philip Morris becoming en
Marlboro licence, it was proposed that the company issue a Special Share to Richem
Richemont carrying the rights set out in the revised Articles of Associa
the meeting".

58. RIE was the parent of Rothmans Trading Limited which held the 65% interest of the R
Partnership. It is not in issue that the Partnership was a valuable asset which BAT were acqu
take-over. Besides the income stream resulting from the Partnership business, BAT's con
conferred on it the opportunity of an entry point into the UK tobacco market at the quality end
cost saving advantages in the promotion of BAT 's cigarette brands in the UK. It seems hig
would have agreed to an arrangement of the voting rights of RIE which contemplated that
exercised in a manner inconsistent with the interests of BAT.

59. I have already described the arrangements which, it is accepted, were brought into existence to a
change of control provisions contained in Clause 14 of the Master agreement. In my judgem
were plainly designed to, and did in fact, strip the special Share of any economic advantage
enjoyed by Richemont SA. There can have no incentive to Richemeont SA for the independen
rights conferred by the Special Share.

60. Since the completion of the take-over the board of RIE had consisted entirely of BAT employee

61. Finally there is a striking similarity between the arrangements made to circumvent the control p
Agreement and the examples of circumstances where the Panel might find control to exist in No
and Note 1 to the definition section of the Code at page C1 of the Code which I have quoted abo

62. For those reasons, in my judgment the presumption that BAT and Richemont SA have beer

relation to the control of RIE both before and since the completion of the take-over by BAT of interest in not rebutted. If I am wrong, and there is no such presumption, I would still hold that the claimants have established the existence of a understanding between BAT and Richem exercise of the voting rights conferred by the Special Share."

Shri Mukherjee submitted that it is not the percentage of the individual's shareholding that matt concert, that is sufficient.

Learned Counsel referred to the observation of the Hon'ble Supreme Court i of Income Tax, Bombay City I V Jubilee Mills Ltd., (1963) 48 ITR 9) and subı order to decide whether a company was controlled by a group, the "test is not v actually acted in concert, but whether circumstances are such that human exper it can safely be taken that they must be acting together. It is not necessary to st evidence as will prove such concerted actings. Each case must necessarily be c merits." The Court had said so on a point raised at the hearing that it has to be that the persons constituting the group, which owns the shares carrying more th per cent of the voting power, were acting in unison. The observation was mad interpreting section 23.A (1) of the Income Tax Act, as it stood at that point of cited Commissioner of Income Tax, West Bengal V East Coast commercial co SC 768) and stated that "it is sufficient, if having regard to their conduct and th interest it may be inferred that they must be acting together, evidence of actual is normally difficult to obtain and is not insisted upon". He cited the observati Hon'ble Supreme Court in another case also(Commissioner of Income Tax, Pa (1976) 2 SCC 510) relating to interpretation of the provisions of section 23A(1 Tax Act, 1922 –

"Having regard to the intimate relationship of the shareholders without the least evidence of a them, the ordinary expectation for individual profit in commercial undertakings, natural reluctar the history of the company and its continued smooth working in a manner which is normally inc other than full unison amongst the shareholders in decisions about the conduct of company's aff of all, this was a company of one paramount mind operating without the least doubt. The Board' of a well organised, well knit, close unity of views in all affairs and which in ordinary course of

not have been at all possible but for a single or concerted action in the company's management
When all the above conditions are present in a company, the onus would be on the assessee to s
evidence that what appears on the surface is that which is real".

Shri Mukherjee countered the Respondent Technip's submission that persons acting in concert al
He cited the observation made by the Hon'ble Bombay High Court in Shirish Finance and Inv
Sreenivasalu Reddy (2002) 2 Com.L.J 386 (Bom) that "it is not necessary that if two persons act in co
objective to purchase shares in a company they can not be said to have acted in concert with each oth
acquired either in joint names or by each of them during the period in question."

Shri Mukherjee in support of his contention that the provisions of regulation 12 are attract
acquisition, cited this Tribunal's decision in Eaton Corporation V Chairman, Securities and Exchange B
CLA 249) that "Regulation 12 refers to acquisition by 'acquirer'. The expression acquirer has been defi
any person who directly or indirectly acquires or agrees to acquire shares in the target company or acqui
control over the target company either by himself or with any person acting in concert with the acc
reading of regulation 12 with regulation 2(b) it is clear that the indirect acquisition of control, including
chain of subsidiaries as in the instant case, would attract the provisions of regulation 12."

Learned Counsel referred to this Tribunal's observation in Ashwin K. Doshi & Ors. V Securitie
India (2002) 40 SCL 545) and submitted that the Tribunal had held in the said case that it is not the majo
that decides the seat of control, that several other factors have to be taken into consideration, and furth
necessarily be dejure control but it can also be defacto control. Learned Counsel submitted that the
Court in Hindustan Motors Ltd. V MRTP Commissison (AIR 1973 Calcutta 450) had accepted the follo
by Gower on the Principles of Modern Company Law, Third Edition Chapter X p 197 that:

> "Control is a matter of degree, ranging from complete legal control for all purposes
> subsidiary to defacto control except in the event of a major scandal, normally exercisable by th
> even though they may hold few or none of the shares. It may be difficult to detect (particula
> through numerous subsidiaries and subsidiaries has been resorted to) but it is coming to be recog
> of property, the value of which will depend upon the degree of its completeness. The statutory d

right to place the emphasis which it does on the power to control the board, for as we ha company's head and brains. But defacto control over the board can exist without any legal powe known that in a company with a large and dispersed membership a comparatively small proporti held in one hand, may enable actual control to be exercised."

Learned Counsel also referred to the letter dated 14.10.2001 from Technip's Chairman to the sh alia that "over a year they had been working on the merger of Coflexip with Technip passing through steps such as acquisition of 30% of Coflexip in April 2000, setting up in the summer of 2000 a strategic

Shri Mukherjee referring to the letter dated 18.12.2002 relied on by Technip stated that it exchanges for its views, that during the pendency of the appeal they wanted confirmation and to whi 20.12.2002 they stated on the law and did not give any information as sought for by Technip.

Shri Mukherjee submitted that Technip exercised defacto control over Coflexip is also evident the two general meetings of Coflexip share holders on May 30, 2000 and May 29,2001 when Technip he a total of 10258024 votes and 5518195 votes of a total of 9720114 votes respectively, representing in eac voting rights at that meeting.

In this context Shri Mukherjee referred to the following articles in the French Company Law:

L 233-3:

"A company shall be shall be regarded, in order to apply Sections 2 and 4 of this chapter, as contr

1. when it directly or indirectly holds a percentage of the capital conferring voting rights in the general meetings of this company;

2. when it alone holds the majority of the voting rights in this company pu concluded with other members or shareholders and which is not contrary company;

3. when it actually makes, due to the voting rights which it holds, the d

meetings of this company.

II. - It shall be presumed to exercise this control when it directly or indirectly holds a percent higher than 40% and when no other member or shareholder directly or indirectly holds a percenta

III. - In order to apply the same sections of this chapter, two or more persons acting in conc jointly controlling another when they actually make, under an agreement to implement a comm taken in the general meetings of the latter.

L 233-10:

I. – Persons who have concluded an agreement with a view to acquiring or assigning voti to exercising voting rights in order to implement a common policy with regard to the con as acting in concert.

II. Such an agreement shall be presumed to exist:

1. Between a company, the chairman of its board of directors and its ma members of its management or its managers;

2. Between a company and the companies which it controls within the meani

3. Between companies controlled by the same person or persons.

4. Between the members of a simplified joint-stock company with regard t the latter controls.

III. - Persons acting in concert shall be jointly and severally bound by the obligations imposed regulations.

Shri Mukherjee submitted that the legal provisions relating 'control', 'persons acting in concert' a under the French law and the Indian Law and therefore, adapting the French law, ignoring the Indian law

Shri M. P. Bharucha, learned counsel supplementing Shri Mukherjee's submissions submitted

decided the issues relying on the Technip's version of the applicability of French law and compli acquirers. He submitted that the Appellant has been all along pleading before SEBI that it is the don applied and not the foreign law, but SEBI, ignored the said plea and without assigning any reason to com the impugned acquisition is not an acquisition in terms of the French law. In this context countering th that the Appellant had not objected to the application of French law he referred to the Appellant's ave the Memorandum of Appeal (80/2002) to show that the Appellant had not at any time canvassed that tl French law, that it was clearly stated in the appeal that

> "SEBI failed to appreciate that French or any other law is wholly irrelevant for the purpose of tl facie apparent that the concept of control under French law is limited and circumscribed Regulations envisage control in its true and wide sense".

Shri Bharucha submitted that SEBI should be concerned about the acquisition of SEAMEC registered and existing in India and the applicable law to the acquisition of Indian companies is the Ind Regulations -- and not the French law as has been wrongly relied on. With reference to the conflict of decision of the Hon'ble Madras High Court in Re Travancore National and Quilon Bank Ltd. V L I others (AIR 1939 Madras 318) wherein the Court while considering the British Indian High Court's application under section 153 of the Indian Companies Act, 1913 had made it clear that **it** is the domic law that is applicable. The court had held that :

> "the application under section 153 in the case of a foreign company can not be initiated only be initiated in the court of the place where it was incorporated, at any rate, after an order f made by that court".

He submitted that the principle laid down in the said case is in equal force applicable to the inst in respect of the Indian company's take over should be with reference to the Indian law.

On the applicability of the French law Shri Bharucha referred to an opinion dated 27.2.2003 fron France) filed by the Appellant and submitted that the said opinion has clearly stated that Technip h SEAMEC in April 2000. Shri Bharucha referred to the legal opinions of the French lawyers tende

Technip and submitted that there is no uniformity in the opinions and submitted that in any case decide the issue in terms of the Indian law.

He submitted that SEBI has not made available certain documents which deciding the issues raised before it by the complainant. He tendered a list of "A documents" identifying the documents and the contextual relevance of the sam

Shri Bharucha submitted that the Respondent has placed partial reliance o documents, on a pick and choose basis that if a document is relied upon, it has entirety. In this context he referred to the following three decisions of the Hon Court, that a document should not be dissected and considered only in part whe inextricably connected with the other part which is not taken into consideration V Rup Singh (AIR 1952 SC 354) Dadaraao V State of Maharashtra (AIR 1974 Hanumant Govind Nargunkar V State of Mahdya Pradesh (AIR 1952 SC 343)

Shri Chirag Balsara., learned Counsel appearing for the Appellant in appe submitted that he was adopting the arguments advanced by Shri chinoy in appe

Shri A. M. Setalvad, learned Senior Counsel appearing for Respondent T that SEBI has rightly come to the conclusion that Technip, ISIS and IFP did no and that on acquiring 29.68% shares in Coflexip by Technip on 12.4.2000 it di control of Coflexip. He submitted that it was only in July 2001, that is after 15 initial acquisition of 29.68%, Technip acquired control over Coflexip. Learned submitted that whether persons acted in concert in an acquisition is a question decided on the attendant facts and circumstances and there is no rigid legal for the matter. He submitted that it is on record that Technip is engaged in comple and forging a strategic alliance for the betterment of the business of each of the considered as an acquisition of control by one over the other. In this context le Counsel referred to certain disclosures made in Schedule 14D – 9 by Coflexip and Exchange Commission of USA on 31..8.2001 , that against item 3 – "Part Transactions, Negotiations" it was stated inter alia that "(i)on April 19, 2000 T 5518195 shares from Stena International B.V. representing as of that date appr of the voting rights of the company. In April 2000, the company and Technip strategic alliance to jointly develop market opportunities with a particular empl integrated deep off shore projects. In a letter dated April 11, 2000 to Mr. Vale confirmed that it was not acting in concert with any other party with respect to

company.Technip also stated, that it had no intention to increase its intere company before April 19, 2001, that it would not sell or otherwise dispose of before October 19, 2000 and that any sale or other disposition of more than 18 during the period between October 19, 2000 and August 19, 2001 to persons ot institutional investors would be subject to the company's right upon receipt of notice to substitute a buyer of the company's choice (other than one of its direc He submitted that "in September and October 2000 representatives of the comp Technip's management and their respective financial and legal advisors met on occasions to discuss the possibility of a combination of the company (i.e. Cofle to be effected by means of an exchange offer for Technip shares." He submitte factual position itself is indicative of the fact that on 12.4.2000, Technip had nc Coflexip, that even in September 2000 they were talking about the possibility c He submitted that this proposal did not materialise, but only the reverse happer

Shri Setalvad submitted that what happened in April 2000 was only a sta integration process and not the final act, that actually Technip acquired control only in July, 2001. He further submitted that the shareholding in SEAMEC by very insignificant compared to its total activities and the SEAMEC acquisition only an acquisition incidental to the acquisition of Coflexip SA by Technip in there was no change in the shareholding pattern of the said SEAMEC even afte Shri Setalvad submitted that it does not stand to reason to hold that Technip ha Coflexip in April 2000 will spent huge sum of money and again acquire Coflex

Shri Setalvad submitted that the Appellants have raised many new things submitted that the Appellant's (appeal No.80/2002)averment in the rejoinder th prices of Coflexip during the relevant period as would appear from the relevar would clearly show that a control premium was, in fact, paid by Technip for ac said shareholding of Stena in Coflexip as just prior to the said acquisition the n two preceding quarters was significantly lower than the acquisition price", is b context he referred to the price movement from 31.3.2000 to 13.4.2000 and sul 10th April 2000 and 11th April 2000 the scrip had reached a high of Euro 120 respectively and in that context the purchase price of Euro 119 given by Techn standard can be considered to include a control premium, as alleged.

Shri Setalvad referred to the text of regulation 10 and 12 and submitted th the acquisition of shares on 12.4.2000 neither regulation 10 nor regulation 12 a case of acquisition of 29.68% shares of Coflexip. He narrated the developmer taken place in the process. He submitted that though ISIS has a stake in and h directors in both Technip and Coflexip, it was not in management or control o two companies. He further submitted that at all material times prior to July 20(holding 52.76% and the public holding was 47.24% in ISIS.

Learned Senior Counsel further submitted that Institut Francais du Petrole (French Petroleun independent centre for research and industrial development, education, professional training and informa and automotive industries, that it does not carry on industrial or commercial activities; neither does it c companies. IFP is a "professional body" created by a decree of the French government. The mer Administration are designated among national and international professionals of the industrial private sec Industry, Economic Affairs that from time to time a degree of control is exercised by the Director des Hy known as the Direction I'Energie et des Matieres Premieres) by a Government commissioner and by a and Financial mission for petroleum and chemistry. Its statutory purpose is to help to support the advanc and oil services industry and to that aim, it receives a part of the proceeds of the relevant taxes and subject to the financial control of the French Government. IFP conducts and funds research in various the oil industry, from oil exploration and related services to development and crude oil and gas productio production of light, finished products (such as petrol, lubricants, fuel oil and all raw materials of the pe that it also promotes companies created to apply the results of its own research, thus IFP was one of the of both Technip in 1958 and Coflexip in 1971. IFP supervises and controls the Ecole Nationale Supe Moteurs (National Engineering college for Oil and Fuel Engine Studies), located on IFP grounds.

He submitted that in 1975, IFP promoted ISIS as a wholly owned subsidiary to hold its inv majority control at all times until October 2001, although ISIS became listed on Euronext Paris in 1997.

Learned Senior Counsel submitted that on or about 11th April, 2000, Technip agreed to acqui Stena International BV in Coflexip amounting to 29.68% (which included shares held through J.P per share, that the said price was equivalent to the market price prevailing around the date of the said ag that no control premium was paid as neither was control acquired or was intended to be acquired by acquisition of shares from Stena. Technip had on 11th April, 2000 forwarded a letter to Coflexip whic undertaking on Technip enforceable in the French Courts. It stated that:

(i) Technip was not acting in concert with any one with respect to Coflexip and had no pl concerted action;

(ii) Technip has no intention to increase the interest they will take in Coflexip before April 19,

(iii) Technip agrees not to sell or otherwise dispose of any shares before October 19, 2000;

(iv) Technip agrees that any sale or disposition of 1,839,398 Coflexip shares between Octob 19, 2001 to any person other than investors would be subject to Coflexip's right upon receipt of 21 c to substitute a purchaser of Coflexip's choice other than a direct competitor of Technip;

(v) Technip informs Coflexip that these restrictions on sales and other dispositions would not apply offer by any other person or Coflexip shares and would terminate if a third party, acting a others, became the owner of 20% or more of the share capital or voting rights of Coflexip o Coflexip business resulted in its current business lines representing less than 65% of its consoli the agreement of Technip representatives on Coflexip's board of directors.

(vi) Technip agrees that until the earlier of August 11, 2001 and the date on which Technip's interest less than 10% of the outstanding share capital or voting rights of Coflexip, Technip would not a company with business in subsea engineering, manufacturing or installation of underwater e development of oil or gas fields without the prior written consent of Coflexip.

Shri Setalvad submitted that in fact, when the approval was granted by the Board of Directors c 2000, for purchasing the said shares held by Stena the members appointed under the proposal of ISIS o had abstained. The shares were transferred in favour of Technip on 19th April 2000.

On April 28, 2000 Technip issued to the Conseil des Marches Financiers (Market Authorities):

(i) a Notification for Crossing Legal Thresholds by acquiring 29.68% of Coflexip equi statutory obligation under French Company law;

(ii) a Statement of intent, binding for 12 months in which Technip declared that:

i) this acquisition of shares from Stena International B.V. was a friendly acquisition result in the conclusion of a strategic alliance;

ii) it was acting alone;

iii) it did not intend to increase its shareholding;

iv) it will be represented on the Coflexip board of directors by four members out of a tot

v) it does not intend to take control of Coflexip;

vi) for a period of six-months, it will not reassign its shareholding, except for a ma institutional investors, without prior consultation with Coflexip

Learned Senior counsel submitted that Section 356-1 of the French companies Act (as it incorporated under section 233-7 into the French Commercial Code) made such a statement of intent, breach was committed, the person committing the breach is deprived of his voting rights for 2 years ar raised by the Courts to 5 years, that apart from the aforesaid, criminal sanctions could also be incurrec

Statement of Intent is to be issued on crossing the 10% and 20% limits of shareholding or vot company. On crossing 1/3 of the shares or voting rights (whether acting alone or in concert) it is m Market Authorities and a public offer has to be filed for all the shares or any other kind of security (whic of shares or confer voting rights) under Article 433.3.1 of the Commercial Code and Article 5-5-2 (1^{s} Conseil des Marches Financiers Regulations. The terms of the public offer have to be acceptable to Failure to make the relevant disclosures would result in penal sanction including fine and prosecution. F offer on crossing the threshold mentioned above would result in the Market Authorities passing orders which would be enforceable in law. (Section 5-5-5 of the CMF General Regulations). Learned Senior the Notification for crossing legal threshold and the Statement of Intent were filed with the French Mar des Marches Financiers") which made them public on May 4, 2000 and with the Stock exchange Com des Operations de Bourse"). The Conseil des Marches Financiers thereafter issued a public notice recording and accepting the statements. Technip had complied with the above-mentioned Statement period Technip had only 4 directors out of 12 in the Board of Coflexip. Technip was not acting in con IFP. There was no shareholders agreement between Technip and ISIS with respect to Coflexip, that pri a shareholders' agreement relating to Coflexip dated 2nd November, 1994 entered into between Sten shareholders of Coflexip, the parties therein had whilst acting in concert with one another agreed to ce being granted to one another, consultation and control on appointment of the Chairman and managing I representation on the Board of Directors. The said agreement was valid till June 2000. After April 200 agreement continued between ISIS and Compagnie Financiere Atochem, (part of the ELF group), but T the said shareholders agreement nor was it an assignee or transferee thereunder nor did it act or agree to party whilst acquiring the shareholding of Stena International B.V. in Coflexip. Even after Technip acqu Stena in Coflexip, Technip did not step into its shoes nor was it bound by the agreement. The fact of always been disclosed in the Annual Report published in France and in Form 20F filed with the US S commission, that the Market Authorities also did not think that Technip was a party to or an assignee any public offer was required to be made or that Technip was acting in concert with any party.

On September 1, 2000, Technip and Coflexip released a statement, CSO/Technip upstream "all agreed to combine, when deemed appropriate, on an ad-hoc and non-exclusive basis, their capab

customers with the most effective team to target conceptual and detailed engineering contracts Procurement and Commissioning ("EPC") contracts. As a result of this statement, a steering committe of commercial persons representing both managements for the purpose of submitting joint tenders resultant contracts. This "alliance" had resulted in some joint bids, as both companies often do with o resulted in the conclusion of only two contracts. Shri Setalvad submitted that this alliance and steering been wholly unnecessary had Technip already controlled Coflexip as alleged. On 11th April 2000 a entered into between Technip and Coflexip where under Coflexip agreed to refrain from acquiring company engaged in activities of engineering and/or building super structures and platforms for of production unless prior written consent of Technip was obtained. Similarly, Technip agreed to refra equity stake in a company engaged in submarine engineering, fabrication and/or installation of submarin the development or exploitation of offshore oil and gas fields, without the prior written consent of Cof Division of Aker Maritime A.S.A. and Aker Maritime Norge AS was involved in some of the afores October 2000, when Coflexip wanted to acquire the Deep Water Division of Aker Maritime A.S.A. and AS it sought and obtained the permission of Technip. Similarly when Technip was desirous of acquirin SEAL based in France and another company known as UTC based in Brazil it sought the permission f Coflexip by its letter dated 24th April 2001, granted permission for acquisition of UTC and did not grant These facts clearly demonstrate that Technip had not acquired control of Coflexip in April 2000. I transactions pertaining to SEAL were thereafter pursued and completed only in October 2001 i.e. a Coflexip in July/October 2001.

In September/October 2000 representatives of the management of the Technip met with the management of Coflexip and the respective financial and legal advisors, to discuss the possibility Coflexip and Technip. What was discussed in the various meetings was the possibility of the acq Coflexip, that this in itself demonstrates that Technip had not acquired control of Coflexip.

On 3rd July 2001, Technip made an unsolicited public offer to buy the shares of Coflexip or

exchange of shares and/or for cash (the exchange for cash being limited to 5 million shares) EURO 193 per share. The price was significantly higher than the price paid to Stena, that if Technip Coflexip in April 2000 (whether acting alone or in concert) there was no reason for it to make a pub significantly higher then that paid to Stena i.e. 62% higher that the higher price was paid allegedly to ga

The Board of Directors of Coflexip on 6th July 2001 appointed a special committee composed o and one of the censors to review and consider whether they should recommend to the shareholders of Technip should be accepted. Whilst the appointees of Technip on the board voted against the resolutio committee that board voted in favour thereof, which clearly demonstrates that Technip had not acquired April 2000 (whether acting alone or in concert). The said special committee decided to request Technip it was willing to pay for the shares of Colfexip and to reach an agreement on the strategy and organi group. Because of the said request, Technip increased the cash part of the offer from EURO 193 to Eu Technip having to pay 13 million more EUROs which was equivalent to approximately Rs.125 crores. thereafter made and on 11th October, 2001 the results of the said offer were announced and it sh 98.63% of Coflexip shares owned by Technip. Simultaneously, in July-October, 2001 Technip made a that 18.17% of the shares of Coflexip were held by ISIS that this offer was made to facilitate the ac Technip over Coflexip.

Shri Setalvad referred to the provisions of regulation 12 and submitted th change in the voting rights of the controlling group. He referred to the explana regulation 12and submitted that regulation does not recognize inter se change a persons in control as a ground for triggering regulation 12 so as to make a publ submitted that there was no change in control on acquisition of shares of Cofle as it was jointly controlled by Stena group and ISIS and other major shareholde was only substituting Stena. He submitted that in view of the said factual posit acquisition under reference is one covered under explanation (ii) to regulation to the text of the said explanation that:

> "Where any person or persons are given joint control, such control shall n be a change in control so long as the control given is equal to or less than exercised by persons presently having control over the company."

In this context learned Senior Counsel submitted that Technip acquired
held by Stena and whatever control Stena had only come to Technip, nothing n
less.

Learned Senior Counsel referred to the definition of the expression 'pers
concert' in regulation 2(1)(e) of the regulation and submitted that: "person act
comprises (1) persons who, for a common objective or purpose of substantial a
shares or voting rights or gaining control over the target company, pursuant to
understanding (formal or informal), directly or indirectly co-operate by acquiri
acquire shares or voting rights in the target company or control over the target
that the deeming provision in clause (2) is related to the action in clause (1) an
independent by itself.

Shri Setalvad submitted that it is clear from sub regulation(1) of regulat
the common objective or purpose of substantial acquisition of shares or voting
has to be with reference to the target company, that in the instant case the targe
SEAMEC. In this context he referred to the definition of the expression target
regulation 2(1)(o) that "it is a listed company whose shares or voting rights or
directly or indirectly acquired or is being acquired". He submitted that the App
produced any evidence to show that Technip acquired SEAMEC and ISIS acte
Technip for the purpose. He submitted that Coflexip is not the target company
acquired shares or control over target company i.e. SEAMEC and therefore the
Technip acting in concert with ISIS vis-à-vis SEAMEC does not arise. Shri Se
that in the absence of any evidence to show that ISIS and Technip acted in con
put forth by the Appellants that Technip and ISIS acted in concert can not be s
connection he referred to the authorities cited by Shri Mukherjee and submitte
should be in relation to fact, that Shri Mukherjee has not brought on record any
sufficient to draw any inference He submitted that the submission that ISIS di
emptive right or that it did not object to the nomination of Technip's directors
ground to draw inference that ISIS was acting in concert with Technip. He su
the absence of direct evidence or atleast strong circumstantial evidence, such a
the parties acted in concert can not be drawn. To draw inference from a set of
objectively assess the circumstances. Shri Setalvad submitted that on the contr
available on record shows that Technip and ISIS had no community of interes
of objective in the alleged acquisition of SEAMEC. In this connection he refe
statement pursuant to section 14(d) (4) of the Securities Exchange Act, 1934 m
by Coflexip with Securities Exchange commission. He submitted that in item

said statement Coflexip had clearly disclosed the basic details, past contracts, t
negotiations and agreements. In this context he referred to the Solicitation or
made by Coflexip in the context of the Technip's exchange offer and submitte
had made it clear therein that "following a proposal made by Pierre Marie Vale
Chairman and Chief Executive Officer of the company, near the end of 1999 t
the Chairman and Chief Executive Officer of Technip to examine the merit of
between the Company and Technip, the board of directors of Technip determi
continuing strategic review undertaken by Technip in December 1999 that offs
production was a sector of particular interest to it and identified the company a
opportunity within that sector". He submitted that thus it is clear that the inten
a complementary basis and certainly not to take over Coflexip by Technip, that
view in September and October 2000, representatives of the company's and Te
management and their respective financial and legal advisors met on several oc
discuss the possibility of a combination of the Company and Technip to be effe
an exchange offer by the company for Technip shares. Shri Setalvad submitte
had taken over control over Coflexip there was no question of Coflexip consid
possibility of Coflexip making an exchange offer for Technip's shares. He sub
early January 2001, representatives of Gimar Finance and Cie, an investment b
Technip to inform it that IFP had indicated a potential interest in selling its enti
ISIS. He submitted that on January 4, 2001 at the request of Mr. Claude Mand
of IFP and Chairman of ISIS, Messrs Valot and Burlin met with Mr. Mandil an
Picard, the Chief Financial Officer of IFP. On January 15, 2001 representative
of the company and Technip and their respective financial and legal advisors m
review possible transaction structures for a combination between the company
Shri Setalvad submitted that ISIS and IFP came to the scene only in January 20
year 2000, i.e. after Technip acquired 29% shares on Coflexip. He also referre
on May 9, 2001 at the request of Mr. Valentin Mr. Valot met with Mr. Valentin
Mr. Claire Grant, Senior Executive Vice President, Finance (CFO) and Commu
company. Mr. Valot described his views regarding the strategic benefits of a c
Technip and the Company. He also expressed his interest in reaching a mutual
regarding a transaction and his intention if a combination were effected to supp
company's growth strategy and to establish a supervisory board management b
with a balanced representation of the Company's and Technip's executives. W
participants agreed that a combination between the Company and Technip wou
Mr. Valentin indicated that he would not make any commitment regarding any
before receiving a detailed proposal from Technip and that in any event such a
should not be explored before September 2001 in order to allow the company
advance the integration of the recently acquired Deepwater Division. Meetings

Technip's representatives and representatives of ISIS and their respective advis possible combination of ISIS AND Technip continued during the month of Ma submitted that if Technip had control over Coflexip Valentin would not have r question. He submitted that Coflexip even at that time was an independent ide Technip and Coflexip desired to work together and not to submit to the control other. He further referred to the portion in the statement that "Mr. Valot teleph Valentin on July 1 and 2, 2001 to inform him that due to the unplanned press c had no alternative other than to proceed on an immediate basis. Mr. Valentin c course of action. Shri Stealvad submitted that the above developments are par filed with SEC and it has therefore evidentiary value.

Shri Setalvad referred to the minutes of the Board of Directors meeting o 7.4.2001 and submitted that ISIS representatives had abstained from voting in t abstaining from voting is not an affirmative action to be viewed to support the in concert, that abstaining from voting was an intentional decision suggesting acting in concert with Technip. With reference to the Appellant's version that the pre-emptive rights when Technip entered in place of Stena is indicative tha in concert with Technip, learned Senior Counsel submitted that at the highest i that regulation 2(1)(e) refers to concerted action and not to inaction. He submi had exercised the pre emptive rights then it would have required ISIS to acquir costing it nearly Euro 656 million dollors and further that the ISIS's holding w crossed the 30% triggering bench mark necessitating it to make a public offer s funds, that this was the rationale for not exercising the pre emptive right.

With reference to the Appellants' submission that 4 nominees of Technip as directors of Coflexip even before the shares were transferred, learned Senio submitted that the 4 directors came in place of the 4 directors of Stena and ISIS do in that matter. In this context he referred to the following portion in the lett 11.4.2000 from Mr. Valot to Mr. Valentin that

> "you wanted us to know that you were in favour of this transaction. (the Acquisitio Acquisition preserves the basic freedom of the company and its shareholders to formulate development strategy; -- should create possibilities for commercial and industrial co-oper groups, facets we see as being particularly important and in line with the long terms concerned. --enables Stena's equity stake to be re-assigned. We are both in agreement with want to make clear that any inhouse or public announcements that we might release about

based on the information contained in the Statement of Intent and with the aforesaid reasc acquisition. We want to make it clear that the Acquisition will proceed as stipulated in Artic Financial Markets Council's rules and regulations and will not take place unless we have r 4.5.2000 at the least, from both shareholders having pre emptive rights on the shares belon have renounced or not exercised this right."

He submitted that the object of the parties is thus clear, that it is also to be noted that Technip h for the purpose i.e. 4.5.2000. He also referred to the following portion from the said letter that :

"We agree, moreover, provided that you make a similar Commitment to us concerning our activi equity stake in Coflexip excludes our taking, under any terms whatsoever, any other new equ involved in sub sea engineering or the manufacture and/or installation of sub sea equipment rela or exploitation of offshore oil gas fields, except in the case where you gives us its prior writter transaction. This commitment shall expire at the earliest of the following two dates: (i) the end starting from today (ii) the date our company reduces its equity stake in Coflexip below the ten p in your company's share capital or voting rights.

We acknowledge that the violation of any one of the stipulations in this commitment may h consequences on your company's business, and that your company would be entitled to ask damages suffered.

I have taken note of your agreement to appoint four Technip representatives to sit on your com Board of directors, specifically to replace those directors who represent Stena."

Shri Setalvad submitted that on a perusal of the above statement in the letter it could be seen that binding a person who is alleged to have acquired the control over the company has been provided. The Technip. It is also to be noted that Technip submits itself to liabilities arising out of damages – that it i an acquirer who had acquired control would subject itself to such terms and conditions with the target co

noted that entry of Technip's representatives on the Board of Directors of Coflexip and its com the nominees of Stena on its leaving. Similar commitment sought by Mr. Valot from Coflexip came vi also of April 11, 2000 stating that "I am pleased to confirm Coflexip's agreement in the context of your Stena International B.V's equity stake in Coflexip's share capital ……." Each of the two had agreed th companies in the industry when the offer was operating.

Shri Setalvad referred to the declaration of Threshold Crossing and Statement of Intent Companies Act) made by Technip on 4.5.2000 and stated that it has been made clear therein that:

> "Stena International B V SIBV has crossed downwards the thresholds of 5% 10% and 20% c voting rights of Coflexip further to the sale of TECHNIP of all of its equity interest viz. 55 8,50,000 previously by the J. P. Morgan group pursuant to an equity swap agreement wh 11.4.2000
>
> Further to such sale, the action in concert between SIBV, ISIS and Elf Atochem has been termi 3378000 shares and voting rights being 18.17% of the share capital and 18.22% of the voting ri Atochem SA owns 5085521 shares and voting rights being representing 2.73% of the share ca Voting rights. These latter two shareholders remain bound by a right of first refusal until 15th Jur

Learned Senior Counsel submitted that the agreement came to an end with Stena's exit and als act in concert among the parties to the agreement. Learned Senior Counsel submitted that the declarati French Market Committee is a statutory declaration and such declarations are published. It is not the A French Authorities were influenced and got the declaration published. He submitted that the actual fac ignored, even if it is found inconvenient by the Appellants.

Shri Setalvad referred to the Mission Statement – June 2000 issued by Mr. Valot and Mr. Valent of alliance between them in the following words:

> "The mission of the Technip/Coflexip Stena Offshore alliance is to combine the major skills o management of large projects, surface facilities expertise, financial engineering) and those of C (sub sea knowledge, differentiating assets, market leadership) to provide close effective field de the offshore industry.
>
> This mission will be delivered through regionally based teams co-ordinated on a global basis, solutions, products, components and services that offer the best value to our customers irrespect are provided internally by the alliance partners or externally through other parties"

Learned Counsel submitted that if as alleged Technip had taken over Coflexip and was exercisin there was no need to seek their consent. Learned Counsel submitted that both the companies were a clear from the Technip's letter dated 16.3.2001 to Coflexip seeking their consent for Technip to acquir and UTC and Coflexip's letter dated 24.4.2000 confirming their agreement only to the purchase of UTC Coflexip had been under Technip's control, such a refusal would not have come.

Learned Senior Counsel referred to the following portions in the minutes of the Board of Directo held on 6.7.2001 to show that Coflexip was functioning not as a controlled unit of Technip, but was funct

> "1. Public offer launched by Technip to purchase Coflexip's capital on 3 July 2001, the Cha Directors was suddenly faced with an unsolicited public offer submitted to the Conseil des Mar Financial market council) from Technip to purchase the share capital of the company (the off Technip launched a friendly takeover bid for shares of ISIS...
>
> D. Valot recalled that P.M. Valentin 18 months ago working towards a business combination

Technip. D. Valot supported this idea which is clearly interesting from an operational p organisations. It was in this context that Technip took a 30% stake in Coflexip in April 2000. It that the two companies set up Strategic Alliance which was **worked** extremely well. It was in tl supported Coflexip's acquisition of Aker's Deepwater Division. The main difficulty facing C public offer for Technip was to obtain the support of Coflexip's US share holders to pay a p onshore engineering and construction company in a sector different from that of Coflexip. Unde transaction, the share of Coflexip and ISIS will receive premium. On 26 June the two Chairn review the two possible scenarios with a view to making a decision by the end of August..

X

X

The Chairman and D Valot explained that, although both Chairmen had been in contact with a alliance between the two groups, under no circumstances had they envisaged merging.

X

X

Coflexip's management will be invited to express its opinion on the offer and give a recomm Technip's responses to its questions."

Learned Senior Counsel referring to the minutes of the said Board meeting further submitte divided on the resolution to appoint the Special Committee, that it is not correct to say that ISIS voted the resolution. It was submitted that Coflexip was objecting to the offer price offered by Technip. If C the control of Technip, the question of Coflexip raising objection and requiring Technip to bear add would not have arisen at all. With reference to the majority voting rights exercised by Technip in the A of Coflexip in May 2000 and May 2001 Shri Setalvad submitted that these meetings were not extra ordi

but ordinary annual general meetings wherein routine matters are taken up for consideration. He voting rights exercised by Technip in these two meetings, it can not be held that Technip was holding m the Coflexip even before Coflexip's merger with Technip in July 2001. Sustained interest over a perioc that exercise of voting right in a routine annual general meeting is not the parameter. It is also to be nc has to be tested with actual facts, that even the French authorities did not raise any query based on the had acquired control over Coflexip. If Technip, as alleged had acquired control then Technip had to n shareholders of Coflexip as per the French law. But French Regulation did not consider that Technip's shares in Coflexip warranted such a public offer.

Learned Senior Counsel submitted that French Regulatory authorities are also statutory authoritie response to matters relating to acquisition of shares/control are not to be ignored. In this context Shri S letter of December 2000, from the French Market Authority, recording the Statement of Intent/declarati show that the French authorities had accepted the fact that though Technip had acquired 29.68% share result in acquisition of control by Technip over Coflexip.

Shri Setalvad referred to the letter dated 14.10.2001 of Technip's Chairman to its shareho Appellants. He submitted that the letter is dated 14.10.2001 i.e. after the acquisition of 99% shares referred to the following portion in the letter.

> "For over a year now, we have been working on this merger, passing through a number o acquisition of 30% of Coflexip in April 2000, the setting up in the summer of 2000 of a strategic the teams from the two companies to start working together on a few joint projects as well proposals. This period of acclimatisation was invaluable: it demonstrated that our conclusions w our teams knew how to work together in harmony. Thus we have done everything possible, I b total merger to take place in a climate of mutual confidence.

> The Institut Francais due Petrole (IFP) which was at the origin of the creation of the two cor remained through ISIS a major shareholder of both of them, acted as a catalyzer in their union. its majority stake in ISIS to Technip, it greatly facilitated the merger between Technip and Cofle the operations now underway, IFP will be, in accordance with its historical mission one of t Technip Coflexip, along side of Gaz de France and Total Fina Elf, both of which also gave their of the new entity."

Learned Senior counsel submitted that the said view does not in any way support the Appe Technip had acquired control over Coflexip in April 2000, that on the contrary it indicates that the con on merger. This letter says that they were working out a merger and not takeover, that the reference is and not to earlier period that IFP acted as a catalyzer for the purpose of merger and not for any thing e IFP came into the picture only in January 2001, as has been stated in the statement in 14D-9 made by and Exchange Commission, USA. He submitted that IFP is a Statutory Board created under a Government not interested in acquiring control of companies by itself or in helping others to acquire con

Shri Setalvad also referred to the opinion dated 13.11.2001 of a French Legal firm received, hold

> "Based on the facts made known to us as summarised above and on the applicable pr Companies Act as at the time of that purchase, we would conclude that the ownership of a and the appointment of four directors to the Board of Coflexip would not suffice to consti over Coflexip, and that in the absence of other factual elements of which we are not awa the period from April 2000 to October 2001 hold control over Coflexip within the mean law."

Shri Setalvad submitted that Conseil des Marches Financiers (CMF) and Commission Operations

statutory sets under the French law and their action has to be recognised. He submitted that it is part of control the purchase and sale of shares which are listed, as well as the exercise of the voting rights attach analyze whether such transaction and actions are done in accordance with the rules. The COB is in accuracy of the financial and finance related information given by the players on the stock exchange m that the Market Authorities agree to the publication of a statement or a notice or a financial publication accuracy of the contents of such communications is guaranteed by them. But it does however mean independent bodies have professionally verified the contents of such communications and have be accuracy. If following the issuance of such communications, it is discovered that inaccurate facts wer behaviour of the relevant persons was not in line with their communications, the Market Authorities w right to step in and for instance, express an opinion that there has been or become a concert ac correct to hold that the CMF would merely be, a "publishing" or a "printing" body which would any study or review, the communications and notices received from companies. Learned C particulars submitted to CMF are not automatically accepted. He stated that there are cases where CMF statements, that in fact CMF had even rebutted the filing. By way of example he referred to a decision m which the CMF refused a company called Olipar exemption from the obligations of filing a compuls result that the company Olipar be deprived from its voting rights in excess of one-third in the capital Lucia that by a decision number 197 CO 241, the CMF dealt with the situation of the Compan International BV. Teknecomp had acquired the control of a company Santavaleria. Santavalarai owned 6 a French company called Sediver. Taking in particular into account the fact that there was full consolid Sediver into the accounts of Santavalaria, the CMF directed that a compulsory bid be launched by Tekn prior decision no.197 CO 139, the CMF had taken note of the proposed acquisition and had reque Teknecomp pending its final decision.

Learned Senior Counsel submitted that Article 233.3 in the French Company law clearly sp company can be said to be controlled by another. He referred to the following Article233.3

"A company shall be shall be regarded, in order to apply Sections 2 and 4 of this chapter, as contr

1. when it directly or indirectly holds a percentage of the capital conferring
voting rights in the general meetings of this company;

2. when it alone holds the majority of the voting rights in this company pu
concluded with other members or shareholders and which is not contrary
company;

3. when it actually makes, due to the voting rights which it holds the d
meetings of this company.

II. - It shall be presumed to exercise this control when it directly or indirectly holds a percent
higher than 40% and when no other member or shareholder directly or indirectly holds a percenta

III. - In order to apply the same sections of this chapter, two or more persons acting in conc
jointly controlling another when they actually make, under an agreement to implement a comm
taken in the general meetings of the latter.

He submitted that in terms of the said section and based on the material on record, it can nc
acquired control over Coflexip in April 2000.

Shri Setalvad referred to the order passed by SEBI and submitted that the order has dealt with
and its conclusion, specially taking into consideration the role and status of ISIS and IFP, that Technip,
acting in concert for the purpose of acquiring shares/voting rights in Coflexip when Technip acqu
Coflexip from Stena on 12.4.2000 and there was no violation of the Takeover Regulations by Technip on

Learned Senior Counsel, with reference to the case law cited by the Appellants submitted that

those cases is based on the factual matrix in each case, that in the light of the facts specific to t nothing to show that Technip, ISIS and IFP acted in concert, as alleged or that Technip on acquis acquired control of Coflexip on 12.4.2000. He submitted that the Tribunal's observation in Ashwin K. D can be defacto control also and the defacto control element would be traceable to several facts is submitted that in the instant case the Appellants have not produced evidence to draw the present case in case.

Shri Setalvad submitted that the Respondent has gone on record in its reply that the Appellants file the present appeals and requested that the said objection be noted. He submitted that in view of the Tribunal holding that the shareholders of target companies are entitled to file appeal against SEBI's orde being pressing his objections before the Tribunal.

Shri D. Bhattacharya, learned Counsel appearing for IFP referred to IFP's affidavit in reply in tl that the Appellants are not aggrieved persons to file appeal against SEBI's order dated 9.9.2002, and th the appeal be dismissed.

Learned Counsel submitted IFP is a professional institute created by a de French government and is not a commercial company interested in acquiring/ companies, that its purpose is to conduct research and development on hydroca derivatives, to publish its works and to impart training. Its participation interes companies is to develop and use the results of its research, that it is not at all it manage, operate or control the composition of the Board of listed companies w equity. He submitted that this is evident from the fact that though it was hold paid up share capital of ISIS in April 2000, it had only 3 nominees on the Boar total of 9 directors, and therefore, to allege that Technip or ISIS belonged to th overreaching an assertion.

He further submitted that although Technip was incorporated by IFP in 1
French laws with IFP holding a 51% equity interest in the company, that it re
majority position in 1963 (i.e. nearly 40 years ago), that finally, in 1992 it trans
shares in Technip to ISIS. There was no privileges or rights granted to IFP un
of Association of Technip regarding, management, control, board representatio

Learned Counsel submitted that as of April 2000, IFP held 52.8% of the
equity capital of ISIS, and it had only 3 directors on the Board of ISIS out of a
ISIS held 11.8% of the shares of Technip and had only 2 directors on the Boarc
of a total of 11 directors, that it is thus clear that, IFP had even no indirect cont
through ISIS. Therefore, it is far fetched to assume that Technip and ISIS acte
the context of acquisition of Stena's holding in Coflexip by Technip.

In July, 2001 Technip launched a take-over bid on Coflexip S.A. ISIS
on the Board of Coflexip in its corporate capacity, which is very common in Fr
unique consequence, and had the right to propose 2 directors. Learned Counse
the Board of Coflexip decided to form a special committee to study the offers t
Coflexip S.A. According to French company law, directors are under a fiducia
company and not to the shareholders or group of shareholders which have prop
supported their appointment to the Board, that the breach of such fiduciary dut
personal civil liability and possible criminal liability. One of the ISIS nominat
Coflexip voted in favour of the resolution to form the special committee, while
directors proposed by ISIS and all of the nominees of Technip voted against th
the special committee, that the votes of the ISIS nominees were not unanimous
that they were not under the control or direction of IFP, that instead, it demons
fulfilled their legal obligations by voting based on what they believed were in t
of Coflexip, and not what was in the best interests of ISIS or IFP.

Even if it is assumed for argument sake that IFP had control over ISIS, the following facts prove t
whatsoever over Technip. The Technip shareholders' agreement dated September 22nd, 1994 betwee
Total Fina and Sogerap provided ISIS with only 2 directors out of 13 directors on the Board of Tech

right with respect to Technip shares held by the shareholders party to the shareholders' agreement no rights or privilege to ISIS with respect to the management or control of Technip or the acquisition c company (ie Coflexip S.A.) by Technip. Consequently, no control whatsoever was granted or exercise ISIS or by IFP under such shareholders' agreement. Furthermore, in France, the country where Tech incorporated, elaborate provisions for the protection of public shareholders in connection with takeover in existence, that IFP had never received any notice nor has it ever been alleged to have acted in co acquisition of Stena shares in Coflexip S.A. in April 2000. IFP played no part in the decision-making the acquisition by Technip of Stena's 29.68% stake in Coflexip S.A. in April 2000 either directly or directors on the Board of Technip nominated by ISIS did not participate in the vote relating to the acc Stena's shares in Coflexip in April 2000. Thus, the provisions of the Takeover Regulations are clearly has already been held by SEBI.

Learned Counsel submitted that under the Takeover Regulations certain persons are deemed to b the acquirer in which category IFP has been impleaded in the proceedings before the Tribunal. As has be High Court of Bombay in the matter of K.K. Modi Vs. Securities Appellate Tribunal (2002) 35 SCL though there is a presumption that the person described under the Regulation 2(1)(e) of the Takeov deemed to be a person acting in concert with the acquirer, the presumption is clearly rebuttable and ther facts have to be examined to reach a conclusion as to whether a person is or is not acting in concert w purpose of substantial acquisition of shares or voting rights or gaining control over the target compar demonstrated that it is not a person acting in concert.

IFP does not have any shareholders, does not distribute dividends, and is endowed with proce excises that the way in which IFP manages its affairs, and in particular use of its financial resources, i control by the relevant State bodies. Learned Counsel submitted that to exploit the industrial ou technological innovations, it may take shares in industrial companies, directly or via specialized invest this purpose, that the revenue earned, if any, is reinvested in new or existing ventures aimed at de

petroleum industry technologies. He submitted that IFP cannot be said to share in any way a c ISIS or Technip. It is clear that IFP would not be affected by or have any interest in Technip's acquisitic from Stena in April 2000. Therefore, its corporate status and lack of a common objective with ISIS a because it removes any motive that IFP may have to act in concert with ISIS and Technip with respect t of Stena's interest in Coflexip in April 2000, that the removal of motive creates a prima facie rebu assertion that IFP, ISIS and Technip acted in concert..

Learned Counsel submitted that a review of the share structure and IFP's involvement in Technip, Coflexip S.A. and ISIS clearly refutes the Appellant' as of April 2000 IFP was an indirect shareholder in Technip and Coflexip thro public company in which public investors held a 47.2% interest, that IFP did n controlling interest in either Technip or Coflexip S.A. ISIS held only an 11.8% Technip and it had only 2 directors on the Board of Directors of Technip out of directors. IFP had no right to propose that a representative be appointed to the Directors of Technip and as such, it is clear that IFP had no control over Techn directly or through ISIS. Furthermore, in April 2000, ISIS held only an 18.7% Coflexip at such time and had only 3 directors on the Board of Directors of Co total of 11 Directors. IFP had no right to propose that a representative be appo Board of Director of Coflexip. Therefore, it is also clear that IFP had no contr whether directly or through ISIS. Learned Counsel submitted that, contrary to the Appellant, at no time did IFP act in concert with Technip or Coflexip S.A., indirectly through ISIS, during Technip's acquisition of the 29.68% interest in

Shri Kumar Desai, learned Counsel appearing for Respondent SEBI subn Appellants' allegation that they were not given opportunity to present their cas and SEBI passed the order without following the principles of natural justice, i submitted that once SEBI had heard the Appellants and proceeded against the c Respondents, the principles of natural justice were complied with. Shri Desai s was no lis between the Appellants and the other Respondents and therefore, it v for it to conduct the hearing as in an adversarial proceedings, that in a show ca to the other Respondents no person other than the noticee is entitled to a hearin sufficient that SEBI had duly taken note of the Appellant's grievances, initiate of show cause notice, and addressed them while passing the impugned order.

that it is well settled that not all quasi judicial proceedings require the gra hearing and that in determining whether the principles of natural justice were c a given case, regard must be had to the facts and circumstances arising therein statutory provisions etc. He refuted the allegation that SEBI had not followed natural justice while passing the impugned order.

Learned Counsel submitted that the Takeover Regulations do not cover ta foreign companies, that its scope is restricted to takeover of Indian companies, takeover of Indian companies is covered by the Regulations. Learned Counse provisions of regulations 10,11 and 12 and submitted that the acquisition of sha beyond the bench mark provided in the regulations attrat compliance of the req regulations 10 and 11 and acquisition of control attracts regulation 12. The trig those stipulated in the said 3 regulations.

Shri Desai referred to the facts of the case and submitted that Technip by 29.68% of Coflexip's capital indirectly acquired control of SEAMEC is basele that if under the French law which is applicable to the acquisition of shares/cor by Technip, the acquisition can not be considered as a takeover of control und as the applicable law in the matter of 'acquisition of companies situated in Fra law.

Shri Desai also referred to the material furnished by Coflexip to Securitie Commission in Schedule 14D-9 that

"(a)-(b) (ii) Background to the Offer. Following a proposal made by Pier Valentin, the Chairman and Chief Executive Officer of the company, near the e Daniel Valot, the Chairman and Chief Executive Officer of Technip to examin combination between the Company and Technip, the board of directors of Tecl as part of a continuing strategic review undertaken by Technip in December 19 oil and gas production was a sector of particular interest to it and identified the attractive opportunity within that sector".

The board of directors of Technip believed that the Company's client relations would complement Technip's own client relationships and expertise and that th

Technip with a company of the Company's dimension would considerably incr capabilities and credibility in the offshore market. Accordingly, at a meeting h 17, 1999, the board of directors of Technip authorized Mr. Valot to approach t the purpose of discussing the possible combination between the Company and Following this meeting, Mr. Valot initiated contact with Mr. Valentin to discus combination between the Company and Technip.

> In January 2000, Technip retained J.P. Morgan & Cie SA as its financia connection with a possible combination, and Coflexip retained Credit Sui Corporation as its financial adviser. During the period between January a representatives met with representatives of Coflexip and our respective fi advisors to discuss various aspects of a possible combination. When adv discussions, however, Dan Sten Olsson, the Chief Executive Officer of S BV the holder of approximately 29.7% of Coflexip's then outstanding sh repeatedly expressed his view to Messrs. Valentin and Valot that Stena w a combination of Coflexip and Technip because it was not part of Stenas an equity stake in an engineering and construction company. At a meeti Valot on march 31, 2000, Mr.Olsson indicated that Stena would however its interest in Coflexip to us so as not to be an obstacle to a possible comb Valot subsequently contacted Mr. Olsson to negotiate the purchase of Ste April 19,2000 Technip acquired Stena's interest in Coflexip for a purcha approximately Euro 657 million in cash"

He submitted that from the above information it is clear that the discussio the two companies can have combined effort to advance their causes and for th explained by Stena it left and Technip came in. There is not even any clue that Technip in Coflexip it gained control over it. In this context he also referred to held on 12th and 20th December 2000 and 4th January 2001 by the concerned p cited by Shri Setalvad and re iterated the version put forth by Shri Setalvad. H submitted that ISIS had no choice but to waive its pre emption right available t share holders agreement for the simple reason that further acquisition of shares would have triggered the French law warranting public offer by ISIS and ISIS interested in spending huge money and acquire shares.

Learned Counsel referred to the show cause notice dated 19.2.2002 issue ISIS and IFP and referred to para 2.3 therein that:

> "Stena International B.V. along with ISIS was holding collectively 47.85

of 12.4.2000, out of which 29.68% was held by Stena and 18.17% by ISI
2000 you had purchased all the shares held by Stena International BV (Si
shareholder of Coflexip) in Coflexip. After the said acquisition of 29.68%
Coflexip held by Stena International BV you along with person acting in
ISIS enjoyed 47.85% voting rights in Coflexip and had 6 directors on the
Coflexip comprising 11 directors and were in a position to control Coflex

It is thus clear that acquisition of control alleged in the notice was based
available information that Technip had crossed 40% of the voting capital of C
had majority members in the Board of Coflexip that this was based on that ass
Technip & ISIS acted in concert and once it was established that they had not
the charge of taking over control over Coflexip on 12.4.2000 did not sustain.,
material to show that the parties had acted in concert and accordingly the findi
in the order.

Learned Counsel referred to the recitals in the shareholders agreement
and submitted that when Stena went out, the agreement also came to an end, th
agreement itself ended, question of Technip entering in place of Stena does not
submitted that the evidence on record indicates that even after April 2000, till J
Coflexip and Technip acted independently, that the subsequent events, as refe
Setalvad in his arguments, demonstrate that both the companies were acting in
if Coflexip had been under the control of Technip, there was no need for Techn
consent of Coflexip in matters as referred to.

Shri Desai submitted that the declarations/statement made under the Fren
otherwise proved wrong before the concerned authorities, are effective. There i
record to show that the statement made before the French authorities were disp
submitted that French law is relevant law to the case in as much as the relevant
taken place in France, that it was therefore necessary for SEBI to consider rele
French law and their impact on transactions in question, so as to determine wh
been any breach of the said Regulations as also the declarations and undertaki
various French companies involved to the authorities. Therefore, the facts aris
undertakings given to, and the view taken by jurisdictional authorities (in Fran
for the determination of the question as to whether Technip had in fact acquire
Coflexip on 12.4.2000 as alleged, that in the light of the declarations made/und

to the jurisdictional authorities, it is not possible to hold that Technip had control over Coflexip on 12.4.2000. Shri Desai submitted that SEBI is enti the materials accepted by market Regulator in France. Learned Counsel referr impugned order and submitted that it was clear therefrom that SEBI had consic under French law (paras 5.3.17 to 5.3.20) and the facts relied on in support of 5.3.9 to 5.3.13). Shri Desai submitted that in April 2000 Technip issued (i) a Crossing Legal Thresholds by acquiring 29.68% of Coflexip, and (ii) a Stateme binding for 12 months, that the said documents filed with the French market A made public on May 4, 2000 and with the Stock Exchange Commission (Comr Operations de Bourse), that the French Market Authority thereafter issued a pu 4th May 2000 recording and accepting the Statement of Intent. Shri Desai subr had relied on the statement in the said Statutory Statement of Intent that Techn alone and French Market Authority's acceptance of the same and SEBI has cle conclusion based on the fact that Technip was acting alone and had no commo objective or community of interest with ISIS or IFP for the purpose of acquirin rights/control over Coflexip". (Para 5.3.15)

Learned Counsel submitted that SEBI has taken into consideration all t factors including the role and status of IFP, ISIS and the applicable law and fac impugned order. He referred to several paras in the impugned order including 5.3.23 in this regard.

Shri Desai submitted that SEBI's order is a well reasoned order and des sustained.

Appeal nos.119/2002 and 01/2003 also connected to the SEAMEC's ac heard subsequently and with the consent of all the parties concerned it was dec common order in respect of all the 8 appeals would be passed.

Shri U. K. Choudhary, learned Senior Counsel appearing for the Appel no.119/2002 submitted that the Respondent SEBI has come to the conclusion t not acquire control over Coflexip on 12.4.2000 on acquiring 29.68% of the vot Coflexip, on wrong premises, that SEBI has gone by the concept of control un law, ignoring the concept of control as per the Takeover Regulations. He subm the target company is situated in India, and the applicable law being the Indian French law by SEBI is wrong. Learned Senior Counsel referred to the legal op by the parties in the related appeals and the legal opinions furnished by the Ap submitted that there is no unanimity in the legal opinion on the scope of the Fr

reference to the facts of the case. Learned Senior Counsel reiterated that SEBI by the Regulations made by it and not by alien regulations. He referred to the s Takeover Regulations and submitted that there is no scope for borrowing the c definitions from the legislations in foreign countries for regulating substantial a shares and takeovers of Indian companies. In support of his contention he refe 2(1) providing definitions of various expressions including control and submit from regulation 2(2) that only Indian law is to be relied as could be seen from said regulation "that all other expressions unless defined herein shall have the have been assigned to them under the Act or the Securities Contracts (Regulati the Companies Act, 1956 or any statutory modification or re enactment thereto may." He submitted that legislative intent is to go by Indian law, and in that c French law for the purpose and deciding the issues discarding Indian law is ina submitted that SEBI can not be expected to exercise its powers and decide mat of the legal provisions in vogue in different countries, ignoring the provisions c which it is expected to administer, that since the impugned order is based on pl on French law, the same deserves to be set aside.

Shri Choudhary submitted the Coflexip SA France is the ultimate holding target company with 58.24% voting capital held through its subsidiaries. He su Coflexip Stena Offshore (Mauritius) Ltd., the immediate holding company of S 100% subsidiary of Stena Offshore (Jersey) Ltd., (registered in Channel Islands is a 100% subsidiary of Coflexip SA France. Major shareholders of Coflexip S International BV (holding 29.68%) and ISIS (holding 18.17%). He submitted in the control over Coflexip SA will automatically result in change in control o including SEAMEC.

Learned Senior Counsel submitted that controlling interest in Coflexip Technip on 12.4.2000 and the other players involved are ISIS and IFP. In this referred to the shareholding pattern of Technip in April 2000 and submitted tha holding in Technip 11.80%, Gaz de France 10.90%, and Total Fina Elf 6.40%. Counsel submitted that it is admitted by SEBI that IFP promoted ISIS in the ye was the same IFP which promoted Technip in the year 1958; that the relationsh Technip & ISIS is thus evident, that they belong to the same group, that since the same group there is a presumption that they would act in concert. He subm apparent from the show cause notice dated 19.2.2002 issued by SEBI, that it ha the factual aspect of all the three entities coming under the same group, but for unexplained reasons it abandoned the said finding half way through, that there record to show that as to why SEBI changed its stand and what was the materia

such a change of view was taken especially when the evidence shows that Tec IFP acted in concert and acquired Coflexip shares.

Shri Choudhary referred to the background data furnished by SEBI in it submitted that some of the facts stated therein are very relevant in the present c submitted that as per the information furnished by SEBI, Coflexip SA is a wor provision of sub sea development systems for the offshore oil and gas industry engaged in the business of design and construction of petroleum and petrochen and IFP is a centre for research and development etc. for the oil and gas and au industries. ISIS was established to manage equity holdings of IFP in commerc Learned Senior Counsel submitted that ISIS was acting as a special purpose ve it is also to be noted that ISIS ceased to be a subsidiary of IFP in October 2001 that the common interest of the three entities is thus evident from the areas of t activities.

Shri Choudhary referred to the definition of the expression "group" in the Restrictive Trade Practices Act (MRTP Act) and the concept of "companies un management" as provided in Section 370(1B) (iii) of the Companies Act. He according to section 2(ef) of the MRTP Act "Group means a group of (i)two or individuals, associations of individuals, firms, trusts, trustees, or bodies corpor financial institutions) or any combination thereof, which exercises, or is establi position to exercise, control, directly or indirectly, over any body corporate , fi associated persons".

He also referred to the following provisions under section 370(1B) of th that:

> "1B: For the purposes of sub sections (1) and (1A), two bodies corporate to be under the same management –
>
> x
>
> x
>
> x
>
> (iii) if not less than one third of the total voting power with respect to relating to each of the two bodies corporate is exercised or controlle individual or body corporate"

Learned Senior Counsel submitted that IFP's shareholding through associate companies in Techr control over Technip, that IFP, Technip and ISIS belong to one group and they have interest in the sa they wanted Coflexip to further advance their business activities. ISIS was already holding 18.17% vot but Stena was holding 29.68%. ISIS, IFP, Technip combine wanted to control Coflexip and for th Stena's shareholding in Coflexip and made the acquisition through Technip, as it was not possible for shares and ISIS also could not acquire that much shares as the acquisition would have resulted in cros 30% bench mark warranting public offer under French law. Shri Choudhary referred to the shareh 2.9.1994 between Stena and ISIS and other major shareholders of Coflexip and submitted that since St need for such a written agreement, as the control came to Technip, ISIS and IFP combine. Learned Se that SEBI has failed to investigate into these aspects, and since SEBI having failed now the Appell acquisition of control by Technip ISIS and IFP combine. Shri Choudhary submitted that SEBI kn correctly described the same in its show cause notice dated 19.2.2002 and it has also stated clearly acquisition of shares of Coflexip held by Stena on 12.4.2000, Technip along with person acting in co control over 100% subsidiary of Coflexip namely Coflexip Stena Offshore (Mauritius) Ltd. which ov capital in SEMEC. As a result of the aforesaid acquisition, Technip acquired 58.23% voting capital of over SEAMEC and triggered the provisions of regulations 10 and 12". He submitted that thus SEBI h the conclusion that Technip acquired 58.23% of voting capital of SEAMEC and control over SEAMEC of regulations 10 and 12. He submitted that the impugned order and the show cause notice admi ownership and control. However in the order SEBI has come to the conclusion that the change took plac not on 12.4.2000, though the correct date of change is 12.4.2000 as is evident from the facts of the c submitted that in the show cause notice the factual position has been correctly stated that Stena along collectively 47.85% in Coflexip as on 12.4.2000, out of which 29.68% was held by Stena and 18.17% h Technip had purchased all the shares held by Stena (single largest shareholder of Coflexip) in Cofl acquisition of 29.68% shares of Coflexip held by Stena, Technip along with person acting in concert i.e voting rights in Coflexip and with their 6 directors on the Board of Coflexip out of the total 11 directors a position to control Coflexip. The holding of 47% voting capital by Technip with ISIS is more than

control Coflexip as 48% shares are widely dispersed among the public and there was hardly an shareholders joining together to vote against promoter holding of 47.5%. Further, the decision in t meetings are taken on the basis of the majority and the combine with 6 out of 11 directors had the majo resolutions, that further acquisition of shares on 3.7.2001 raising Technip's holding in Coflexip to 99% consolidation of its control – making it absolute. He submitted that between April 2000 to July 2001 control enlarging to absolute control. Learned Senior Counsel submitted that in November 2001 the 'n Technip in place of IFP, that this is nothing but a restructuring of the combine. He submitted that Tec did not bother much about the would be consequences of the acquisition of SEAMEC as it formed only the group and their focus then was to avoid the acquisition triggering the French law that it is in that cover the takeover of SEAMEC and now they are trying to extend the French law to SEAMEC's acquis of the Takeover Regulations.

Learned Senior Counsel submitted that SEBI's finding that Technip, ISIS & IFP were not acting the factual position and is baseless. He submitted that SEBI has failed to appreciate the correct factu went by the submissions made by Technip ISIS and IFP combine. In this context learned Senior C definition of the expression 'Promoter' in regulation 2(h) that –

i) 'promoter' means a person or persons who are in control of

ii) person or persons named in the offer document as promoters

and submitted that IFP group is the promoter in the instant case.

Learned Senior Counsel submitted that IFP is the common promoter of ISIS and Technip. With contention that the acquisition of 29.68% shares of Coflexip was by Technip alone and it did not act in learned Senior Counsel referred to the provisions of regulation 2(1)(e) and submitted that regulatio person who for a common objective or purpose of substantial acquisition of shares or voting rights or g target company, pursuant to an agreement or undertaking (formal or informal) directly or indirectly co-

agreeing to acquire shares/voting rights/control in the target company. According to the le regulation 2(1) (e) (1) identifies persons acting in concert with reference to action, that regulation 2(1) (acting in concert with reference to their position, that there is a presumption that the entities stated in re acting in concert and to take the person out of the deemed status, it has to prove that the person is not persons in terms of regulation 2(1)(e)(1). In this context Shri Choudhary referred to the factual statem 1.19 that "ISIS is a company organized under the laws of the French Republic. ISIS was promoted by I owned subsidiary to hold its investments. ISIS was established to manage equity holdings of IFP in c IFP retained majority control of ISIS at all times until October 2001" and submitted that having said same set of facts, and without any further investigation has come to a different conclusion that IFP wa He submitted that the nature of formation, the ownership, management and the objectives of IFP is not whether it had acted in concert in terms of the Takeover Regulations. In this context he submitted that "In view of the facts and circumstances of the case including nature of functioning of IFP, a professi decree of French Government and performing the role of a research body, it is difficult to hold that IF acting in concert with Technip for the purpose of acquiring shares/voting rights/control of Coflexip so control over SEAMEC. It is difficult to arrive at the said conclusion merely because IFP was the par Learned Senior Counsel submitted that there is no clue as to how SEBI has come to such a conclusio referred to earlier, in the show cause notice. He submitted that SEBI' erroneous finding is solely bas which are contrary to the facts on record.

With reference to the concept of "control", learned Senior Counsel submitted that control can b and defacto - that it is easy to come to a conclusion as to one exercised dejure control over a company case of defacto control. The control aspect is decided on several facts and there is no type cast formula f the circumstantial evidence that could suggest whether a person is in defacto control of a company c submitted that there is overwhelming evidence in the instant case to show that Technip with persons a was in defacto control of Coflexip, that it is on record that the combine had 7 directors out of 12 di Coflexip, that the strategic committee was manned by nominees of Technip & ISIS and further that meeting of Coflexip held in May 2000, and May 2001 Technip could exercise 54% and 57% voting righ

With reference to the Respondent Technip's submission that if Technip had control over Coflexip of any decision from Coflexip board against the proposal mooted by Technip, Shri Choudhary submitte in the Board meeting are not uncommon and that too in matters involving restructuring of the group, as t other entities in the group are also involved.

Shri Choudhary submitted that regulations 10 and 12 are independent. He referred to regulation 1 per the said regulation on Technip's acquiring 29.68% shares in Coflexip on 12.4.2000, it resulted in a the shares of SEAMEC as Coflexip was holding 58.24% shares in SEAMEC, that as per regulation on voting of 15% or more of the target company, regulation triggers. In this context he referred to regulatio the public announcement referred to in Regulation 10 or Regulation 11 to be made not later than four w into an agreement for acquisition of shares or voting rights or deciding to acquire shares or votin respective percentage specified therein.

Learned Counsel submitted that even the show cause notice states violation of Regulation 10, b the said charge, that even if the said violation is to be abandoned, the reason for the same has to be stated

Learned Senior Counsel in support of his submissions placed reliance on the following ob Committee report on Substantial Acquisition of Shares and Takeovers:

> "In the case of acquisition of Indian listed company by virtue of acquisition of an overseas co was of the firm view that the interest of Indian shareholders should be protected. Such interest s be compromised because the acquisition takes place through complex/multi tier organisa

Committee pointed out that specific amendments and explanations were incorporated in the 1997 cover such acquisitions"

Learned Senior Counsel submitted that SEBI's order is silent on the applicability of regulatio prayed that the Tribunal decide the applicability of Regulation 10 and pass appropriate orders. He furth light of the amendments made on 9.9.2002 to the explanation applicable to regulation 10, proportiona taken cognizance of. He referred to the provisions of regulations 10 and 12 and submitted that regulatio and the said amendment explains the position clearly. The amendment to the explanation of regulation 1 of regulation 10 and 11 acquisition shall mean and include indirect acquisition by virtue of acquisition be holding company as was earlier) whether listed or unlisted and whether in India or abroad". In supp relied on rule in Heydon's case (76ER 637) and submitted that when the material words are capable constructions the most firmly established rule for constructions of such words of all statutes in general Heydon's case. He also cited State of Bihar V SK Roy (AIR 1966 SC 1995) that "It is a well recogni with matters of construction that subsequent legislation may be looked at in order to what is the proper up on the earlier Act where the earlier Act is obscure or ambiguous or really capable of more than one in Senior Counsel also cited T. Manikam & Co., V State of Tamil Nadu (AIR 1977 SC 519) that "An an aid in constructing the earlier provision even though such amendment is not given retrospective effect."

Learned Senior Counsel submitted that the ratio in K. K. Modi (2002) 35 SCL 230 (Bom)) r order, has no application to the case as in the said case one promoter was seller and the other one was instant case it is not the case that both promoters had a common purpose of acquiring control of Cofle Tribunal's decision in Ashwin K. Doshi V SEBI (2002) 40 SCL 545 (Sat) requiring SEBI to investigat out as to whether there was any change in defacto control in the context of acquisition of 14.4% shares the instant case also such an investigation by SEBI was required to find out as to whether on Technip's Coflexip in April 2000, there was any change in the defacto control. He said that the Tribunal in the sai that "the majority holding of shares is not the decisive factor in determining effective control. Such co

ways. If the shareholding is widely dispersed, even a factional holding of equity can suffice to e company. Therefore SEBI's finding that Ambujas with just 14.4 per cent shareholding, not in majority v exercise control over the Company by itself was not a conclusive factor in that regard."Learned Senior in the instant case the acquisition was 29% as against the 14% referred in the cited decision.

Shri Choudhary referred to SEBI's decision in Rhodia's case (referred to in Rhodia SA V SEBI and submitted that it was also a case of indirect acquisition and in that case SEBI had directed Rhodia tc the shareholders of A & W India and the offer price was to be calculated as per the regulations taking date of acquisition of Indian company's holding company in U.K.

Shri Choudhary also referred to the following observation made by the Hon'ble Bombay High Finance(2002) 35 SCL 27 (citing Kanwar Singh V Delhi Administration (1965) 1 SCR 7) that "It is t construing a statute to give effect to the intention of the Legislature. If therefore giving a literal meanin draftsman, particularly in a penal statute, would defeat the object of a legislature which is to suppress a depart from the dictionary meaning or even the popular meaning of the word and instead give it a mean the remedy and suppress the mischief."

He also referred to the following observation from the said judgement to support the proposition tha Indian law and not French law.

> "On the other hand, Mr. Nariman brought to our notice several American decisions only to conv are passed in the United States of America. The learned Counsel for the defendants strongly obje those judgements which are neither binding precedents nor had persuasive value. Judgements c the United States of American could not be looked into by this court for determining the quest Indian laws such a freezing order can be passed. Mr. Chidambaram and Mr. Desai apart from rai

sought to distinguish those judgements on facts. We are not persuaded to consider those judge Nariman candidly submitted that those judgements have not been produced before this court b nature or persuasive value but for the very limited purpose of establishing that such orders are even in other countries, such orders are passed by the Courts" The Hon'ble High Court further necessary for us to look into the American Court's decisions because the validity of such an o reference & law as it exists in India.

Learned Senior Counsel referred to the Hon'ble Bombay High Court's decision in BP Plc V SEB 469 (Bom) wherein the court had held that the relevant date for deciding the offer price is the date decides to acquire shares/voting rights/control and not the actual date of acquisition, that in the instant decision was taken and acted upon on 12.4.2000. Shri Choudhary submitted that if SEBI's proposit foreign companies is not to be taken cognizance of, then its observation that the Takeover regulation tr also baseless, that SEBI can't take diametrically different stands on the same issue.

Learned Senior Counsel refuting the Respondent's allegation that the price of SEAMEC wa persons to benefit them, submitted that the Appellant is not a person who indulged in manipulatio shares even before the price hike and continued to be a shareholder even after the price fell.

Shri Choudhary referred to 2 opinions dated 15.1.2003 and 17.1.2003 from 2 French Lawyers fi the Tribunal and submitted that in one of the opinions based on detailed reasoning it has stated tha inferred in the present case that Technip did infact acquire control of Coflexip on April 19, 2000 a significantly through the strategic alliance and non completion arrangements entered into wit arrangements, and also acting in concert with ISIS or other Coflexip shareholders" that in the other op that "On and before this date (i.e. 12.4.2000) ISIS with Technip and Coflexip were held with a "refer

those companies by the Institut Fracais du Petrole (French Petroleum Institute : 11.8% in Technip, 1 52.4% in ISIS) which is a public entity owned by French State. Hence ISIS with Technip can be held a latter took a 29.8% voting rights interest in Coflexip on the 12th April 2000. Combination of such co-c Coflexip decisions since 12th April 2000 where ISIS and Technip held together 7 out of 12 members on t

Learned Counsel submitted that as per the material available on record it is evident that S indirectly acquired by Technip on 12.4.2000 and therefore, SEBI's order holding the acquisition date as 3

The learned Counsel appearing for the Appellant in Appeal no.01/2003 referred to para 12 of th on 9.9.2002 and submitted that the direction to Technip was to make a public announcement as required Regulations in terms of regulations 10 and 12 within 45 days of the date of the order, taking 3.7.2001 a calculation of offer price. He submitted that the public announcement though due by 25.10.2002 11.11.2002.

He referred to this Tribunal's interim order in M. A. Sumathi Bayer Cropscience (2003) 42 SCL the Tribunal therein had held that suggestions made by SEBI to the Merchant Banker in terms of regula order, that since the Appellant is aggrieved by the said order he is entitled to file an appeal in terms of s In support of this contention he cited this Tribunal's decision in Eider E Commerce V SEBI (2001 Industries Ltd.,. V SEBI (2003) 42 SCL 22) and M.A. Sumathi V Bayer (2003) 42 SCL 591). Learn SEBI's letter to J. P. Morgan India P. Ltd., (Respondent No.2) (Morgan) dated 6.12.2002 asking them to is made in accordance with Takeover Regulations prevailing at the time of violation i.e. 3.7.2001 provisions of withdrawal option to shareholders, disclose that as the same is an investor friendly measu provided for shareholders as detailed in the letter of offer. Accordingly disclose the last date of withdrav activity schedule" Accordingly in the public offer document it was disclosed that the shareholders s

withdraw acceptance tendered by them upto three working days prior to the date of the closure of the o was made in the letter of offer. This new disclosure requirement was put in the regulation on 9.9.2002 a submitted that though the facts of the complaints received in respect of the acquisition was to be documents, the Acquirer did not mention about the two complaints dated 25.11.2002 and 6.12.2002 n that this omission has to be noted.

The Appellant submitted that in the public announcement made on behalf of Technip etc.on purchase 20% shares of SEAMEC the offer price has been wrongly calculated as Rs.43.12 by taking 3. date ignoring 11.11.2002. In this context he referred to the interim order passed by the Tribunal on 25 that the Tribunal, subject to the outcome of the appeal, had allowed the acquirer to comply with the direc 9.9.2002 subject to certain conditions and one of such conditions was that the offer price be decided as submitted that the acquirer did not follow the regulations for the purpose of calculating the price. The provisions of regulation 20(2) (d) according to which the average of the weekly high and low of the clos company as quoted on the stock exchange where the shares of the company are most frequently trade preceding the Public Announcement was to be provided, and that the relevant public announcement on was made on 11.11.2002 that the date of 3.7.2001 is the offer date relating to the global acquisition. I mischief of delay in public offer by the acquirers and to give the benefit of best price to the shareholde Regulations 1997, has clearly dealt with this by providing regulation 20(2)(d) which puts the condition price by taking actual Public Announcement date vide amendment effected on 9.9.2002. Thus in acquisitions whenever there is delay in public offer, higher of two prices has to be offered taking actua and parent acquisition dates. This principle of higher of two prices has been directed by SEBI in its num acquisition viz. Castrol India Ltd., Foseco India Ltd. Albright & Wilson Ltd., Caprihans India International Ltd., and others. In the instant case, the parent acquisition date was July 3, 2001 Announcement in India ought to have been made in the month of July, 2001, and price would hav shareholders taking July 3, 2001 as the reference date. But 16 months latter the acquirers came to India to acquire the shares stating that price will be calculated only by taking July 3, 2001 as the reference date Public Announcement made 16 months later on November 11, 2002 to the Indian minority shareholde

fixing an embargo on the market price fluctuations subsequent to July 3, 2001 but in reality trading in tl and subsequently prices can rise or fall in the course of market price discovery. Referring the Bhagwati C factor it was submitted that in the market price fluctuations close to the Public Announcement for any pu public announcement was made, prices were higher than price as calculated by taking July 3, 2001 Regulation 20(2)(d) clearly protect the investors by fixing actual Public announcement date as one of the the minimum offer price. Respondents are now trying to by pass regulation 20(2)(d) and importing some 20(2)(d) which should not be allowed when the regulation is crystal clear. In this context he referred to regulation 20 brought in force on 9.9.2002 which stipulate that "The offer price for indirect acquisit determined with reference to the date of the public announcement for the parent company and announcement for acquisition of shares of the target company, whichever is higher in accordance with s regulation 5.

With reference to BP Amoco's judgement by Hon'ble Bombay High Court it was submitted tl Amoco the price corresponding to parent acquisition date was much higher than price corresponding t Announcement and, therefore a case for upholding parent acquisition date was put up, but the facts different from SEAMEC case. In BP Amoco the dispute to be adjudicated was with reference to two dat acquisition viz. 14th March, 2000 on which a conditional announcement for acquisition was made in when all the pre-conditions were finally approved and the offer became unconditional, that nowhere the public announcement was raised. It was further submitted that in the case of BP Amoco price prece actual date of public announcement was much lower at Rs.253 than the price preceding parent acqui Rs.311 or Rs.351 (as disputed). The dispute was between two parent acquisition dates and therefore uphold either of the two parent acquisition dates and in that circumstances the judgement was delivere acquisition date. The judgement could have never ever thought of upholding actual date of public anno was much lower. However in the case of SEAMEC the price preceding 26 weeks average prior to the public announcement is much higher at Rs.82 than the price preceding 26 weeks average prior to the da which is Rs.43. Therefore the facts and disputes raised are diametrically opposite and therefore I considered as a precedent to be applied to the present case of SEAMEC, that if some derivative pri

regulation 20 and regulation 15 will be clearly violated, that an interpretation which violates the allowed. The following observation made in para 6.11 of the Bhagwati Committee Report, which fo 1997 Takeover Regulations was cited.

"The Committee agreed that there should be a principle setting down the minimum level of offer price a regulations. Laying down this minimum level of offer price was, in the opinion of the Committee, neces interests of investors and not discordant with free pricing regime."

Thus it is the intention of Justice P. N. Bhagwati Committee that there has to be some formula to ensure a price to the investors of the Target company in order to protect the investors' interest. This intention is ir regulation 20. Thus at any point of time whenever a public offer is made regulation 20 has to be complie present case regulation 20(2)(d) in particular has to be complied, that the Respondent can not ignore the regulation expressly provided.

It was submitted that the amendment made in 2002 through regulation 20(12) is in the nature o remove ambiguity and that it is well settled that amendments can be imported in the old regulatic proposition he cited the following authorities:

1) State of Bihar V/s. S.K. Roy AIR 1966 SC 1995 pg no.1998 (2)T. Manickam & Co. 1977 SC 519 pg nos 522 & 523. (3) Jeewanlal ltd, & others V/s Appellant Autho Gratuity Act & others AIR 1984 SC 356 pg no. 364 para 11 (4) N.T. Corp Ltd., V/s. S 1986 SC 1234 pg no. 1250 para 39. (5) Heydon's Rule

The Appellant submitted that if a competitive bidder emerges, will not SEBI insist the minimum offer 20(2)(d) i.e. the price calculated as per date of actual Public Announcement which may be somev

November, 2002. In the present case the acquirer has made the offer at Rs.43/- but the competitive bidde Rs.82/- approximately because he has to comply with regulation 20(2)(d). SEBI can not discrimina respect of the same target company during same time. He submitted that the guiding principle is the Eq opportunity to all Shareholders as Bhagwati Committee observed**.**

He submitted that the Public Announcement dated November 11, 2002 clearly states in the be Announcement is made in compliance with Takeover Regulations and subsequent amendments regulation 20(12) For Minimum Offer Price clearly states that "The Offer Price for the indirect acquisi determined with reference to the date of the Public Announcement for the parent company and announcement for acquisition of shares of the target company, whichever is higher, in accordance wit sub-regulation (5)".

It was also submitted that the present case is one of indirect acquisition and SEBI has passed th fixing July 3, 2001 as the reference date i.e. the date of Public Announcement of the Parent (Acquirer) fo Regulation 20(12) requires two reference dates in case of indirect acquisition. SEBI order has fixed only the date of public announcement of the Parent (Acquirer). He submitted that the Merchant Banker h Announcement and has taken only the date of Parent's (Acquirer) Public Announcement date while th the date of Actual Public Announcement for the Indian target Company which is November 11, 2002. per regulation 20(12) price of Rs.43.12 as announced corresponds to Public announcement date of pare of Rs.80/- approximately which ought to have been announced corresponds to the reference Announcement date for Indian target company, that the offer price therefore is not as per regulation takeover regulations with effect from 9th September 2002. Since the Public Announcement with refer made after that date i.e. on November 11, 2002 it has to certainly comply with the amended regulation 15(4) of the Takeover Regulations define that the offer shall be deemed to have been made on the da announcement has appeared in the newspapers that the public announcement in terms of regulation 15(on 11.11.2002.

Even prior to SEBI amended the Takeover Regulations on 9.9.2002 it was well settled principle acquisitions two prices of Indian target company are to be computed -- one corresponding to Public An Parent (Acquirer) and another corresponding to actual Public Announcement date for Indian target com of the two prices has to be the open offer price for the shareholders of Indian target company.

The Appellant submitted that as per regulation 20(12) as amended with effect from 9.9.2002 "the acquisition or control shall be determined with reference to the date of the public announcement for the p date of the public announcement for acquisition of the shares of the Target Company whichever is hig sub regulation (4) or sub regulation (5), SEBI's order was issued on 9.9.2002 i.e. on the same day this ar in force and that the public announcement for acquisition of shares of SEAMEC was on 11.11.2002 i.e.r regulation came into force. He submitted that the correct regulation to be applied in the instant case is r came into force on 9.9.2002, and in support he referred to clause 5 of the General Clauses Act.

It was further submitted that as per the new sub regulation 5A of regula shareholder shall have the option to withdraw acceptance tendered by him upt days prior to the date of the closure of the offer" that SEBI has directed the ac provision in the Public Announcement, that if the provisions of regulation 5A read together it is clear that referral date for the purpose of calculating the offe shareholders of SEAMEC has to be 11.11.2002. He submitted that Takeover F beneficial legislation and therefore the provisions of the regulations are require interpreted keeping in view the purpose of the same.

In reply to the submissions made by the appellants in the cited two appeals, the Responder submissions:

Shri Setalvad, learned Senior Counsel submitted that even though he is not giving up his objecti the Appellants to file the present appeals on the ground that they are not the aggrieved persons in terms

the SEBI's communication dated 6.12.2002 (referred in appeal no.01/2003) is not an appelable order decisions of the Tribunal in certain cases referred to by the Appellants, he is not pressing before the T locus standi, for the time being.

Shri Setalvad referring to the Appellants' submission that French law is inapplicable to the case, subr acquisitions and takeover of companies incorporated in France is amenable to the French law oper acquisition of shares by Technip in Coflexip, both being companies under the French jurisdiction, the ap the French law. He submitted that as a result of acquisition of 29.68% shares of Coflexip in April further acquisition raising Technip's total holding to 99% in July 2001, there was no change in the management of the target company i.e. SEAMEC. He submitted that the target company is registered i April 2000 and July 2001 were solely in relation to French companies taken place in France and the qu internal management of Coflexip in France, that in the said circumstances, it is incorrect to say tl application to the developments affecting the said two French companies. In this context he ref authorities:

From the Book – Private International Law (by Paras Diwan – former Director Indian Institu Family Law and Formerly Professor and Chairman, Department of Law, Punjab University)

> "……the law of the domicile of the company governs not only matters relating to its constitut but also all other internal matters. Thus the extent and limitations of the liability of its members, liability, what transactions are ultravires and intravires of its powers, whether the director or represent it in legal proceedings, its internal constitution, its relationship with its members and r interse, powers of alienation of its property, <u>its merger with another company and like matters a of domicile.</u> (emphasis supplied)

He also referred to Halbuy's law of India (2001) in support of his submissions that the applicable law is t

> "[75.175] <u>Amalgamation.</u> If a foreign corporation is amalgamated with another foreign corporat

place of incorporation, the resultant entity will be recognised in India. It follows as a corollary to for the new corporation to succeed to the assets and liabilities of its predecessors, it will be recog done so. However, the law of the place of incorporation can not discharge the new company fr old except by the law applicable to the contract giving rise to those liabilities."

[75.178] Powers of Foreign Corporations. The powers of a foreign corporation are define constitution as interpreted by the law of its place of incorporation. Its powers in relation to a pa also be limited by the law of the country which govern the transaction in question. However, it the transaction is ultravires the corporation, it must be void. The effect of this lack of capacity transaction is a matter for the law which governs the transaction in question."

Learned Senior Counsel also referred to the Privy Council decision in Carl Zeiss Stiftung Vs. Reyner & 853:

"That, although, the German Democratic Republic is not recognized by her Majesty's Governm recognized by the English Courts as lawful, not as the acts of a sovereign state, but as acts done which the USSR set up to act on its behalf, since a dejure governing body can not disclaim respo subordinate bodies set up by it."

"That questions relating to the constitution of a foreign corporation should be decided according where it is incorporation and since, on the evidence every court in the Eastern Zone of Germa Counsil of Gera was the special board of the foundation, the courts of another jurisdiction are the question in any other way."

Shri Setalvad referred to the opinion relied on by Shri Bharucha in the earlier batch of appeal those opinions it has been clearly stated that various laws and regulations referred to the notion of contro under corporate laws, control under accounting regulations and control under concentration law. In thi the following observations in the opinion:

- The mere percentage of voting stake does not itself suffice to demonstrate the existence of d to control a company (i) a shareholder has to have decisive influence on the outcome of the has to be established over a period of time i.e. for several general meetings. Should genera voted unanimously, such decisive influence would not be established. Since Technip's ma general meeting took effect in May 2000 only, it seems that the condition of several genera established.

- Concert is a question of fact and such concert could result from the information such Coflexip's board, any correspondence (letters, e mails, fax, notes etc. exchanged between T Coflexip's management and or Coflexip's shareholders.

Shri Setalvad referred to several other portions of the opinion also and submitted that the opinions Appellants do not support their contention on control and concerted action. He submitted that in the saic been stated that "should the control of a listed company have consequences regarding stock market regul have to bring legal proceedings in order to ensure that the existence of control over one or more compani if necessary, would have to apply these regulations." The fact that COB has not taken any legal proceed shows that there was no change in control. He submitted that no evidence in support of the alleged conce produced. In this context learned Senior Counsel referred to the Declarations of Threshold Crossing and filed by Technip on 4.5.2000 before the Council of Financial Markets and submitted that the Council did necessary to take any adverse action against Technip, that is to be noted that Council is an authority vest a mere publication set up. In this context he referred to the submission made by him earlier regarding th the Council. He submitted that French law is manifestly applicable and CFM and COB, are duty bound t investors and if there had been any thing unacceptable in the declaration/Statement of Intent, they would proceeded against Technip in the matter. He submitted that SEBI has rightly recorded in para 5.3.11 of t observed that the aforesaid documents have been filed with the French Market Authority (Conseil des M which made them public on 4.5.2000 and with the Stock Exchange Commission (COB). The Conseil des thereafter issued a public notice dated 4.5.2000 recording and accepting the statements made hereinabove

Counsel referred to the legal opinion dated 24.2.2003 filed by Technip and submitted that the sai countered the view of the 2 French lawyers relied on by the Appellant. He also referred to the conclusio Technip's French Lawyers that "Based on the facts made known to us as summarised above and on the a the French Companies Act as at the time of that purchase, we would conclude that the ownership of a 29. and the appointment of 4 directors to the Board of Coflexip would not suffice to constitute control by Te and that in the absence of other factual elements of which we are not aware, Technip did not in the perio October, 2001 hold control over Coflexip within the meaning of French Company Law".

With reference to the Appellants' version that Technip had acquired shares at a higher price tha the difference was the control premium, Shri Setalvad reiterated his submission in the earlier appeals. H premium means "a premium paid for shares carrying the power to control a corporation. The co computed by comparing the aggregate value of the controlling block of shares with the cost that would b could be acquired at the going market price per share". Shri Setalvad also reiterated his submissions establish that there was no change in control and that Technip, ISIS and IFP did not act in concert. averments made in this regard in the Technip's reply. He submitted that the Appellant Counsel's subm ISIS belong to IFP is based on the wrong appreciation of the facts, and referred to the formation, owne objectives of IFP and the French Government's involvement and submitted that there is no such IFP g by Shri Choudhary – that IFP is an independent non commercial set up, that if Choudhary's con argument's sake that IFP group existed then there was no change in shareholding of Coflexip as transactions. He further submitted that to say that the French Government and the market authorities e law are not independent is very unfair and the said submission should not be entertained at all.

Learned Senior Counsel submitted that the Counsel has brought in several matters which are n that a plea **as** not raised in the pleadings can not be taken up subsequently, that no amount of proof which is the foundation of claim of a litigating party. In support of the proposition he referred to Ho Abubakar Abdul Inamdar Vs. Harun Abdul Inamdar (AIR 1996 SC 112)

With reference to Shri Choudhary's argument on the admissibility of regulation 10 and compu SEAMEC shares on a prorata basis learned Senior Counsel submitted that there is no scope for such regulation at all, that while putting forth the said proposition the Counsel has ignored the explanation t

For the purposes of regulation 10 and regulation 11 acquisition shall mean and include:

(a) direct acquisition in a listed company to which the Regulations apply

(b) indirect acquisition by virtue of acquisition of holding companies, whether listec India or abroad

He submitted that in terms of clause(b) at the relevant point of time (before the amendment effected o acquisition holding company was required to be acquired that acquiring 29% voting capitals in the p considered as acquisition of holding company and therefore reguilation 10 is not attracted as alleged.

Shri Setalvad referred to the provisions of regulation 12 and submitted that the said regulatic acquisition of control over target company, that target company is SEAMEC and there was no change in or management pattern and so no change in control. Therefore it can not be said that Technip acquired so as to attract the provisions of regulation 12.

With reference to Shri Choudhary's submission that what is stated in the show cause notice has Setalvad submitted that what is stated in the show cause notice is only a broad prima facie opinion, that on the basis of the limited information available at that point of time and on receiving fu clarification/explanation on the same set of facts, the authority issuing the notice is free to take a view at stated in the show cause notice. SEBI on receiving the details in response to the show cause notice cor facts and reached at the conclusion as recorded in the order and therefore, the charge of non application c

Learned Senior Counsel submitted that the only basis of the appeal no.01/2003 is that the offer calculated under the Takeovers Regulations, as amended with effect from 9th September, 2002, mer announcement was made after that date. He submitted that this submission is untenable, as the amen liabilities incurred by Technip on 3rd July, 2001 and the obligation of Technip to comply with the ord 2002, consequent upon a show cause notice dated 19th February, 2002, issued to Technip and an exempt Technip dated 26th June, 2002, all of which were before the amendment came into force. In this conne that if the Appellant's argument is accepted that would amount to giving retrospective effect to the an would necessarily involve Technip being required to do, with reference to the acquisition of Coflexip in the amended Regulation), what they were not required to do under the 1997 Regulations (which were in whilst section 30 of the Act empowers SEBI to make regulations, and whilst section 21 of the Gen empowers the SEBI to amend such regulations from time to time, and no power is conferred on it necessary implication, to make regulations with retrospective effect. Consequently, SEBI can not confe any regulation. In support of this contention the following authorities were cited:

> Income Tax Officer, Alleppey vs. M.C Ponnoose, AIR 1970 S.C.385; Cannan Mills Ltd., Vs. Collector of Customs & Central Excise, Cochin A.I.R. 1970 S.C Vs. Union of India, A.I.R. 1972 S.C. 2427; and Commissioner of Incom Cooperative Sugar Factory Ltd., A.I.R. 1988 S.C. 1263.

It was further submitted that regulation 23 of the SEBI Amendment Regulations, 2002 does not eve amendment regulations retrospective; its effect is merely to repeal and re-enact the earlier regulation principle of section 6 of the General Clauses Act, 1897, applies so that any rights acquired or liabil amendment becomes effective and the same is not affected by the amendment. In support of this he State Transport Appellant Tribunal, A.I.R. 1997 S.C. 412, 421 and Bhagat Ram Vs. Union of Indi Regulation 23 of the Takeover Regulations Amendment merely provides that whatever had been done regulations would be deemed to have been done under the corresponding provisions of the amended reg this provision in the saving clause in the Amendment Regulations, 2002 does not affect the liabilit

amendment became effective; such liabilities are kept alive. In support of this he cited P. V. Mohamm of Enforcement. A.I.R. 1993 S.C. 1188, 1192. The rights of the parties are concerned by the law as it proceedings were commenced and amendment of the law during the currency thereof is irrelevant. This clear in Bakor Moti Pagi vs Iswar Thakur A.I.R. 1935 Bom 257. Thus amended Regulation 2(Regulations cannot be applied to the present case. In so far as the contentions of the Appellants are conc was required even under the unamended regulation to take the higher of the two prices, namely, that calc 3rd July, 2001 and that calculated with reference to11th November, 2002 the same are clearly fallacious same are contrary to the Order dated 9th September, 2002 passed by the SEBI and the Order dated 25th O this Hon'ble Tribunal that there was no provision under the unamended regulation requiring any acquir the two prices, namely, the price calculated with reference to the date of the global announcement announcement. It has been held by both the Tribunal as also the Hon'ble High Court in the case of B reference date for the purpose of determining the price of the open offer is the date on which the public have been made under Regulation 14 i.e. the date of the global public announcement. Thus, the price has to be calculated taking 3rd July, 2001 as the reference date that the shareholders have been duly compe delay in making the public announcement by requiring Technip-Coflexip to pay 15% interest for the peri till the date of actual payment. Accordingly, interest has been paid in compliance with order of SEBI thus no prejudice is caused to any shareholders as the same has been suitably compensated. It was submi relied upon by the Appellants in respect of the earlier orders passed by SEBI requiring the acquirer to m higher of the two prices are clearly misleading as the same are either orders passed before the decisio Court in BP plc relating to the determination of the reference date and the decision of the Bombay High plc. upholding the levy of interest. The case of Aventis Crop Science (MA. Sumathi) referred to by the where the acquirer voluntarily chose to make an offer at a higher price although its was not statutorily re from a mere reading of its letter of offer. The same is wholly irrelevant to the facts of the present case. sofar as the SEBI Act being beneficial to the shareholders is concerned, when the shareholders have bee by payment of interest, the Act or the Regulation cannot be interpreted in a manner as that would b Regulation only so as to justify a higher price. Insofar as the directions of SEBI requiring Technip Regulation 22(5A) is concerned, Technip though not bound to comply with it agreed to do so as it was a and an investor friendly measure, not having any adverse financial implications, that the same cann

analogy to the other provisions of the amended regulations or to suggest that the amended regulatior present case.

Shri Bhattacharya, learned Counsel appearing for IFP reiterated his version regarding the role, s and ISIS and submitted that IFP is a French Government Organization and not doing any commercial ac is incorrect to say that it was a part of the combine desiring to take over the control of a Coflexip. He st standard can be considered as person acting in concert with others and it did not share commonality o control over Coflexip by Technip. He refuted Shri Choudhary's argument that IFP and ISIS are under and as such deemed to be acting in concert, and submitted that such an argument is incredible in the fac the case. He referred to the opinions from the French legal firm relied on by Shri Setalvad and submitt position as recorded in those opinions be accepted , that whether Technip acquired control over Cofl matter to be decided in accordance with Indian law, that it is a matter to be decided as per the French opinions from the French legal firms relied on by the Appellants and submitted that those opinions do n no firm view has been expressed therein, that in any case there is nothing to show that IFP acted in co acquiring shares/control of Coflexip. He also submitted that the French Market Authority had accepted t that it had acted alone and not acted in concert with anybody.

Shri Zal T. Andhyarujina, learned Counsel submitted that the Appellant has unnecessarily impleading as a Respondent in appeal no.01/2003. He submitted that the presence of the Respondent N for the full and proper determination of the present matter and therefore it is neither a necessary nor a pro proceedings, that the submissions in this regard are supported by this Tribunal's order in M.A. Sumath and circumstances the Tribunal had held that the Merchant Banker to a public issue is not a necessary such appeals. He submitted that the appeal is not maintainable, that the appeal impugnes the direction letter dated 6.12.2002, that those directions are consequential to SEBI's earlier order dated 9.9.2002 and Tribunal dated 25.10.2002. He submitted that till such time as SEBI's earlier order is quashed and the is vacated, the same remain binding on the parties in the present appeal. The Appellant has not challen

9.9.2002 and the Tribunal's interim order dated 25.10.2002. Learned Counsel submitted that th considered as a person aggrieved by SEBI's communication dated 6.12.2002, so as to be entitled to file 15T of the SEBI Act.

Learned Counsel submitted that in the present proceedings, the Appellant has failed to bring o against Morgan. In this context he referred to para 12.1 and 12.2 of SEBI's order dated 9.9.2002 and par Tribunal's interim order dated 25.10.2002 and submitted that the Respondent had to comply with the di orders and it did effectuate those directions. He submitted that the SEBI's order and the Tribunal's direc take 3.7.2001 as the referral date for calculating the offer price and the Respondent did go by the sa Tribunal in its interim order had directed the acquirer to strictly comply with its directions. He submit order of SEBI and Tribunal, it was incumbent upon Technip to make the said public offer by taking 3. date. He submitted that SEBI's directions in the communication dated 6.12.2002 is in exercise of the p 18 and SEBI had in the said letter cautioned the Respondent that any failure to carry out the suggest document would result in appropriate action being taken by SEBI. Learned Counsel submitted that Mor with SEBI's order dated 9.9.2002 read with the interim order of the Tribunal dated 25.10.2002 and the and clarification issued by SEBI by its letter dated 6.12.2002, that Morgan has committed no breach of th the concerned Regulations. He submitted that the provisions of the regulation 18 of the Takeover Regul character and the merchant banker is duty bound to carry out the changes and clarifications sugges thereto, that any failure and neglect to carry out SEBI's directions in this regard would have resulted in Respondent. He referred to this Tribunal's interim order in M.A. Sumathi and submitted that the Tribuna Merchant Banker and the Acquirer are bound to carry out SEBI's 'suggestions' and 'directions' issuec 18.

Learned Counsel submitted that the relevant regulation for the purpose of determining the minimum offer price in the issue is the 1997 Regulations as it stood on 3.7.2001, that the ame subsequently pursuant to the notification on 9.9.2002 do not have retrospective effect and accordingl submitted that provisions brought in to the regulation vide amendment effected on 9.9.2002 are plain ar

not purport to have retrospective effect,that even if it is assumed that it is a beneficial legislatic relevant provisions must be literally construed. In support of the proposition he cited Shyam Sunder a Anr. (2001) 8 SCC 24. Learned counsel submitted that in any case no action lies against Morgan and th be dismissed.

Shri Kumar Desai, referred to the provisions of regulation 20(12) and 14(4) as stood prior to the after the amendments. He submitted that since there were practical difficulties in complying with the p 14(4) 3 months' time has been now provided in regulation 14(4) for compliance. He submitted th determination in terms of regulation 20(12) was put consequential to the amendment effected to regulatic the observation in para 12.2 of the order that "The public announcement in the instant case ought to 3/7/01" as the reference date is to be noted.

Countering the Appellant's contention that the regulation as amended as on 9.9.2002 is the app Desai submitted that the regulation has no retrospective application. The subject acquisition relat 9.9.2002 and, therefore, the regulation as was in position on the date of acquisition is the relevant amended on 9.9.2002. He submitted that after Hon'ble Bombay High Court's order dated 8.8.2001 in consistently taking a stand that the price be decided with reference to the date on which the obligat arose. He submitted that in the said B.P.plc case the Hon'ble High Court had held that date on which make a public offer is the relevant date, that there is no justification to take a different date for calcula instant case. Learned Counsel submitted that offer price is decided taking a base date and following the regulation and that SEBI is not the person who decides the prices, that the price is decided as per t context he referred to prayer in appeal no 01/2003 and submitted that the Appellant is praying for a dir price. He referred to the prayer seeking direction to SEBI to initiate action against Merchant Banker u submitted that the Tribunal is not the forum to seek such a relief. He also referred to para (f) of the p Tribunal later comes to the conclusion while adjudicating appeal nos. 79, 80, 85, 91 all of 2002, tha correct date and not July 3, 2001, the said finding will only lead to shareholders receiving further balar

the price as per reference date of April 12, 2002 is higher than the price as per the reference date and therefore, the question of refund will not arise." He submitted that this is not a prayer but a statemen that the Appellant in appeal no. 01/2003 having not challenged SEBI's order dated 9.9.2002 in appeal letter of SEBI dated 6.12.2002 which is not an order, that if he is aggrieved by the interim order 25.10.2002 then he should have appealed against it, that since he has failed to appeal against the base ord file the present appeal.

With reference to Shri Choudhary's submission that regulation 10 is attracted, he refe under regulation 11 and submitted that unless there is an acquisition of the holding company there is triggering regulations 10 and 11, that in the instant case there was no acquisition of SEAMEC's holding and as such there was no acquisition of SEAMEC on that date. He submitted that when the statutory au accepted that there was no acquisition of control, and that the transaction had taken place in France and are also French companies, SEBI is right in accepting the French authorities' decision and SEBI did referred to paras 5.3.9 to 5..3.13, 5.3.17 to 5.3.20 in the impugned order and submitted that SEBI has why it considered that the French law is applicable and viewed that there was no acquisition of Cofle submitted that since SEBI has decided that Technip, ISIS and IFP were not acting in concert, it can not rebuttal of the presumption that the said three entities were acting in concert.

Shri Desai referred to regulation 12 and the definition of the expression target company in regula that the expression 'company' used in these regulations is companies registered in India. With referenc the Explanation to regulation 12, Shri Desai submitted that the explanation is making some thing expl implicit. He submitted that regulation 12 triggered only when change in control has taken place in th there was no change in control in SEAMEC on 12.4.2000.

With reference to Shri Choudhary's argument on proportionate acquisition of shares of SEAM since there was no acquisition of SEAMEC's holding company, the question of acquisition of SEAM further submitted that there is no provision in the regulation which recognises proportionate acquisitic Choudhary. Shri Desai submitted that this is a new factor being read into regulation 10 which is not pe that the Appellant's contention that IFP being a French Government sponsored set up, the market autho Government did not take seriously the conduct of IFP, is without any basis and should not be accept Appellant has brought in this new ground only at the time of argument which is not in the pleading.

With reference to the Appellant's reliance on Ashwin K. Doshi's case the learned Counsel subı ordered further investigation in that case to ascertain whether control was really acquired by the acq certain facts, that in the instant case there is no dispute or paucity of facts and therefore no further inves necessary by SEBI. He submitted that the facts are now before the Tribunal as well and a decision base by the Tribunal.

I have carefully considered the arguments advanced by the Counsel for the parties and the mater In all the 8 appeals the main grievance of the Appellants is common. According to them the price ofl shareholders of SEAMEC , the Indian target company vide the public offer made is low. According to t wrongly calculated by taking a wrong reference date, contrary to the regulations.

It is noted that regulation 20 of the Takeover Regulations prescribe the manner in which the ı calculated when an acquirer makes a public announcement to acquire shares of the target company, in t 11 and 12. It is noted that SEBI vide its order dated 9.9.2002 had directed Technip to make a public o of SEAMEC at a price calculated by taking 3.7.2001 as the reference date for the purpose. Technip w interest at the rate of 15% to the shareholders of SEAMEC from 1.11.2001 till the date of actual paym

the shares to be tendered and accepted in the offer to be made in terms of SEBI's direction. Tec and in compliance thereof made a Public Announcement to acquire 20% of the voting capital Announcement for the purpose was made on 11.11.2002. According to the Appellants 3.7.2001 is not t purpose of calculating the offer price. According to them it should be 12.4.2000. One of the Appellar has taken an alternate stand that in case for any reason 12.4.2000 is not considered as the correct relev taken as the relevant date and the price be calculated accordingly. The "relevant date" is very relev calculating the offer price in the instant case as the offer price per share depends on the date chose fluctuation in the market price of the scrip during the relevant periods. According to the information fur 3.7.2001 is taken as the relevant date the offer price per share would be around Rs.43/- If 11.11.2002 date the price would be around Rs.82/- If 12.4..2000 is taken as the relevant date the price would be Further it is also noted that the quantum of interest to be received by the investors also has a bearir relevant date as the same extends or curtails the period for which interest is receivable. According t respects they would benefit more on accepting 12.4.2000 as the relevant date.

The short delay involved in filing appeal nos 105/2002, 119/2002 and 01/2003, after taking reasons put forth by the Appellants is condoned. The Appellants' eligibility to file the appeals was ground that they are not persons aggrieved by the order, and the order is not directed to them. It is Appellants are the shareholders of SEAMEC. According to them they are aggrieved by SEBI's order order by choosing 3.7.2001 as the reference date for calculating the offer price, has deprived them of the the legitimate price and exit from the target company on Technip acquiring control over target compan past had admitted appeals filed by the shareholders of target companies claiming to be aggrieved by SEI Industries Ltd., M. A. Sumathi and several other cases)in the context of acquisition of shares/v companies. I do not see any reason to take a different view in these appeals. The Tribunal had also v (Eg. M.A. Sumathi) that the directions issued by SEBI under regulation 18 are also appelable orders direction the shareholders are aggrieved. Some of the Appellants had alleged that the impugned orc following the principles of natural justice. This allegation in my view is not supported by facts. On th on record indicates that the Appellants were given opportunity to put forth their views in the matter. T

referred to by Shri Bharucha, in my view are not that relevant to decide the issues involved in thes

The Appellants had in their appeals prayed for interim stay order in the context of the Re Technip to make a public offer within the time frame specified in the order. The prayer for interim orde order was passed on 25.10.2002. Vide the said interim order the Tribunal had allowed Technip to mak to certain conditions. The details of the said interim order with the conditions stipulated therein have earlier part of this order.

Coflexip SA, a company organised under the French law was the ultimate holding cor Technip acquired control over the said Coflexip SA.. Indirectly, through its subsidiaries Coflexip SA the voting capital of SEAMEC. It is noted that there are three intermediary subsidiaries in between Cof i.e. Coflexip Stena Offshore (Mauritius) Ltd., which directly held 58.24% voting capital of SEAMEC. C (Mauritius) Ltd., incorporated in Mauritius is a wholly owned subsidiary of Stena Offshore (Jersey) Ltd in Channel Islands. Stena Offshore (Jersey) Ltd. , is a wholly owned subsidiary of Coflexip Stena Offs incorporated in Netherlands. The said Netherlands company is a wholly owned subsidiary of Coflexip SA provides sub sea development systems for offshore oil and gas industry. Technip SA is also a p organised under the laws of the French Republic. Technip is also stated to be engaged in the b construction of petroleum and petrochemical facilities. Coflexip and Technip have common business in sector.

In April 2000, in Coflexip SA, public share holding was 48.6%, Stena was holding 29.6%, IS 2.7% and Employees etc. 0.7%. On 12.4.2000 Technip acquired the entire holding (29.6%) from St four of its nominees thereafter on the Board of Coflexip comprising 12 members. It is the said acqui Appellants agitate alleging that Technip acquired control over Coflexip SA and consequently SEA

Technip to make a public offer to the shareholders of SEAMEC to purchase their shares at a p price calculated in terms of regulation 20, taking 12.4.2000 as the relevant date. But the Respondent's st change in Coflexip's control on 12.4.2000 that actually the change in control took place only on 3.7.200 Technip made the open offer to the shareholders of Coflexip SA as a result of which Technip's holding i 98.36% of the voting capital of Coflexip SA, that it was only on acquisition of shares in the said public in control of SEAMEC's holding company, warranting a public offer to be made to the shareholders their shares and for the purpose of calculating the offer price the reference date was 3.7.2001. T shareholders of SEAMEC was made on 11.11.2002. Appellant in appeal no.01/2003 had argued that i considered as the relevant date 11.11.2002 should be taken as the relevant date being the date of public India by Technip, making public offer to the shareholders of SEAMEC.

Before proceeding further in the matter, it is felt necessary to have a look regulatory provisions applicable to substantial acquisition of shares and takeov bearing on the issues involved in the present appeals. In terms of section 11(1 Securities and Exchange Board of India Act, 1992 (the SEBI Act) one of the fu Respondent SEBI is regulating substantial acquisition of shares and takeover For the purpose SEBI has notified the Takeover Regulations. These Regulatio ground rules to be followed by the concerned parties in the matters relating to acquisition of shares and takeovers. The objective of the regulation is to provi framework within which the process of substantial acquisition of shares/contro conducted. In the Justice Bhagwati Committee Report, based on which the Re been drafted, it has been stated that the Regulations for substantial acquisition should operate principally to ensure fair and equal treatment of all shareholders substantial acquisition of shares and takeovers and the Regulations should ens process do not take place in a clandestine manner without protecting the intere shareholders.

Regulations 10, 11 and 12 are core regulations. Regulations 10 and 11 re acquirer acquiring the shares beyond the prescribed limit to make a public ann acquire shares of the target company from the other shareholders in accordan Regulations. While regulations 10 and 11 deal with substantial acquisition of

12 is on the acquisition of control over the target company. The applicab they stood in the year 2001 are extracted below for ready reference.

According to regulation 10:

> "No acquirer shall acquire shares or voting rights which (taken together v voting rights, if any, held by him or by persons acting in concert with hin acquirer to exercise fifteen percent or more of the voting rights in a comp acquirer makes a public announcement to acquire shares of such compan with the Regulations"

Regulation 11 is on creeping acquisition. It has no application to the instant ca explanation thereunder is relevant. Regulation 11 with Explanation thereto is a

According to regulation 11

1) No acquirer who, together with persons acting in concert with him, has acquired, i provisions of law, 15% or more but less than 75% of the share or voting rights in a compa by himself or through or with persons acting in concert with him additional shares or vot to exercise more than 10% of the voting rights, in any period of 12 months unless such a announcement to acquire shares in accordance with the Regulations.

(2) No acquirer who, together with persons acting in concert with him has acquired, in accorda of law, 75% of the shares or voting rights in a company, shall acquire either by himself or th concert with him any additional shares or voting rights, unless such acquirer makes a p acquire shares in accordance with regulations.

(3) Notwithstanding anything contained in regulations 10, 11 and 12, in case of disinvestm Undertaking, an acquirer who together with persons acting in concert with him, has made a shall not be required to make another public announcement at the subsequent stage of further voting rights or control of the Public Sector Undertaking provided:-

(i)both the acquirer and the seller are the same at all the stages of acquisition, and

(ii)disclosure regarding all the stages of acquisition, if any, are made in the letter of o

Regulation 18 and in the first public announcement.

Explanation.—For the purposes of regulations 10 and regulation 11, acquisition shall mean and ir

(a) direct acquisition in a listed company to which the regulations apply;

(b) indirect acquisition by virtue of acquisition of holding companie or unlisted, whether in India or abroad.

According to regulation 12:

Irrespective of whether or not there has been any acquisition of shares or a company, no acquirer shall acquire control over the target company unl makes a public announcement to acquire shares and acquires such shares with the regulations.

Provided that nothing contained herein shall apply to any change in contr place in pursuance of a resolution passed by the shareholders in a general

Explanation: (i) For the purpose of this regulation, where there are two or control over the target company, the cessor of any one such person from shall not be deemed to be a change in control of management nor shall ar nature and quantum of control amongst them constitute change in control

Provided however, that if the transfer of joint control to sole control is th than the market value of the shares, a shareholder meeting shall be conve the mode of disposal of the shares of the outgoing share holder, by a lette block transfer to the existing share holders in control in accordance with passed by a special resolution. Market value in such cases shall be deterr accordance with regulation 20.

(ii) Where any person or persons are given joint control, such contr deemed to be a change in control so long as the control given is equal to control exercised by person(s) presently having control over the company

The expression “acquirer” has been defined in regulation 2(1)(b) as follo

“Acquirer” means any person who, directly or indirectly, acquires or agre shares or voting rights in the target company, or acquires or agrees to acq

the target company, either by himself or with any person acting in concer
acquirer."

The expression 'control' has been defined in regulation 2(1) (c) as follow

" Control" shall include the right to appoint majority of the directors or management or policy decisions exercisable, by a person or persons acting indi concert, directly or indirectly, including by virtue of their share holding or mar or share holders agreements or voting agreements or in any other manner"

'Person acting in concert' has been defined in regulation 2(1)(e) as follows:

(e) "person acting on concert" comprises .—

(1) persons who, for a common objective or purpose of substantial acqui or voting rights or gaining control over the target company, pursuant t or understanding (formal or informal), directly or indirectly co-operat agreeing to acquire shares or voting rights in the target company or co target company,

(2) without prejudice to the generality of this definition, the following pe deemed to be persons acting in concert with other persons in the same the contrary is established:

(i) a company, its holding company, or subsidiary or such compar under the same management either individually or together with

(ii) a company with any of its directors, or any person entrusted w management of the funds of the company;

(iii) directors of companies referred to in sub-clause (i) of clause (associates;

(iv) mutual fund with sponsor or trustee or asset management com

(v) foreign institutional investors with sub-account(s);

(vi) merchant bankers with their client (s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or which is a holding company, subsidiary or relative of the acquire

Provided that sub-clause (ix) shall not apply to a bank whose sol with the acquirer or with any company, which is a holding comp subsidiary of the acquirer or with a relative of the acquirer, is by providing normal commercial banking services or such activities with the offer such as confirming availability of funds, handling other registration work;

(x) any investment company with any person who has an interest a manager, trustee, or as a shareholder having not less than 2 per c up capital of that company or with any other investment compar person or his associate holds not less than 2 per cent of the paid- latter company.

Note: For the purposes of this clause "associate", means,--

(a) any relative of that person within the meaning of section 6 of th Act, 1956 (1 of 1956); and

(b) family trusts and Hindu undivided families;

Target company as per regulation 2(1)(o) means,

"a listed company whose shares or voting rights or control is directl acquired or is being acquired"

According to regulation 14(1):

"The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant b working days of entering into an agreement for acquisition of shares or voting rights or deciding to acqu exceeding the respective percentage specified therein"

According to regulation 14(3):

"The public announcement referred to in regulation 12 shall be made by the me not later than four working days after any such change or changes are decided t would result in the acquisition of control over the target company by the acquir

According to Regulation 18:

(1) Within fourteen days from the date of public announcement made under R Regulation 11 or Regulation 12 as the case may be, the acquirer shall through i banker, file with the Board, the draft of the letter of offer, containing disclosure the Board

(2) The letter of offer shall be despatched to the shareholders not earlier than 2 submission to the Board under sub-regulation (1).

Provided that if, within 21 days from the date of submission of the letter of offe specifies changes, if any, in the letter of offer (without being under any obligat merchant banker and the acquirer shall carry out such changes before the letter despatched to the shareholders.

Regulation 20 deals with minimum offer price.

According to Regulation 20:

(1) The offer to acquire shares under regulations 10,11 and 12 shall be made at a minimun payable

(a) in cash ; or

(b) by exchange and, or transfer of shares of the acquirer company, if the person seeking to listed body corporate; or

(c) by exchange and, or transfer of secured instruments of acquirer company with a minimu

a credit rating agency.

(d) A combination of clauses (a), (b) or (c) :

Provided that where a payment has been made in cash to any class of shareholders for acqu any agreement or pursuant to any acquisition in the open market or in any other manner d months from the date of public announcement, the offer documents shall provide that the option to accept payment either in cash or by exchange of shares or other secured instruments

"(2) For the purposes of sub regulation (1), the minimum offer price shall be the highest of –

(a) the negotiated price under the agreement referred to in sub regulation (1) of regulatior

(b) highest price paid by the acquirer or persons acting in concert with him for any ac way of allotment in a public or right issue, if any, during the 26 week period pric announcement.

(c) the price paid by the acquirer under a preferential allotment made to him or to pe with him, at any time during the twelve month period upto the date of closure of the of

(d) the average of the weekly high and low of the closing prices of the shares of the tai on the stock exchange where the shares of the company are most frequently trade preceding the date of public announcement"

Explanation xxxxxx

The Appellants in support of their contention that there was a change in control in Coflexip have ISIS had acted in concert and as a result Technip ISIS combine had 47.7% shares with them and seven c were on the 12 member board of Coflexip. Answer to the question as to Technip and ISIS acted in c

acquisition of shares of Coflexip by Technip in April 2000, decides the question of applicability the acquisition. SEBI has infact identified this as first issues for consideration by it, as could be seen that part of its order dealing with the complaints, has identified the following three issues. (in para 5.2):

(i) whether ISIS and or IFP can be termed as persons acting in concert with Technip, v 29.68% of shares/voting rights in Coflexip on 12th April 2000 from Stena.

(i) If yes, whether pursuant to acquisition of 29.68% of shares/voting rights in Coflexip or Technip indirectly acquired control of SEAMEC in terms of the said Regulations.

(ii) Was Technip under an obligation to make Public Announcement for acquisition of share

SEBI, based on its perception came to the conclusion that

> "Technip was not acting in concert with IFP or ISIS for the purposes of acquiring control over acquired 29.68% shares of Coflexip from Stena on 12.4.2000 for the reasons detailed hereinbe indirectly acquire the control of SEAMEC in terms of the said Regulations by virtue of such shares of Coflexip. Hence there was no obligation to make a Public Announcement for a SEAMEC by Technip. Therefore the other two issues as stated at 5.2 require no further considera

It is seen from the impugned order that SEBI, while arriving at the said conclusion had heavily re and found the same applicable to acquisition of shares/control on the ground that Technip and C registered in France and therefore matters relating to their action in France need be viewed as per the Fre SEBI for the purpose of testing as to whether Technip acquired control over Coflexip and whether Te concert, French law should be applied and if according to French law there was no change in control or action by Technip and ISIS, Takeover Regulations can not reach them. The Respondent Technip statutory declarations and statements filed by it before the French regulatory authorities stating that it w it 'does not intend to acquire control over Coflexip.' In this context certain observations made by SEBI be noted:

"I have noted that Stena, ISIS and other major shareholders of Coflexip had a formal agre
2, 1994 to control Coflexip. The agreement provided the right of first refusal, which r
wants to opt out of the agreement then it is has to first offer the shares to the other
agreement and only after their refusal if any, and with their permission, they can sell
permission was not required if the sale of shares is amongst members of a group or in
member of that group."

Having stated so, SEBI referred to the definition of the expression "person acting in concert" as provide
The text of this regulation has already been set out in this order and as such the same is not reproduc
cited the said regulation SEBI observed:

"5.3.8 From the definition it is clear that in terms of regulation 2(1)(e) (1) persons acting in cc
who for a common objective or purpose of substantial acquisition of shares or voting rights or g
target company pursuant to an agreement or understanding (formal or informal) directly or i
acquiring or agreeing to acquire shares or voting rights in the target company.

Further, the provisions of regulations 2(1)(e)(2) being a deeming provision must be read in conj
2(1)(e)(1). Further, persons who are deemed to be acting in concert must together have some int
acquisition of shares of target company

5.3.9 It is observed that Technip prior to acquiring the entire interest of Stena amounting to 29.68%
held through J.P. Morgan) in Coflexip, had on 11th April 2000 forwarded a letter to Coflexip
following and which was a legally binding undertaking enforceable in the French Courts:-

(i) Technip was not acting in concert with any one with respect to Coflexip and had no pl
concerted action;

(ii) Technip has no intention to increase the interest they will take in Coflexip before April 1

(iii) Technip agrees not to sell or otherwise dispose of any shares before October 19, 2000;

(iv) Technip agrees that any sale or disposition of 1,839,398 Cofelxip shares between Octob 19, 2001 to any person other than institutional investors would be subject to Coflexip's r days prior notice to substitute a purchaser of Coflexip's choice other than a direct competi

(v) Technip informs Coflexip that these restrictions on sales and other dispositions would n a public offer by any other person for Coflexip shares and would terminate if a third p concert with others, became the owner of 20% or more of the share capital or voting ri reorganization of Coflexip businesses resulted in its then current business lines represent consolidated net sales without the agreement of Technip representatives on Coflexip's boa

(vi) Technip agrees that, until the earlier August 11, 2001 and the date on which Techr constituted less than 10% of the outstanding share capital or voting rights of Coflexip, Tec any interest in a company with businesses in subsea engineering, manufacturing or ins equipment linked to the development of oil or gas fields without the consent of Coflexip.

5.3.10 It is also observed that on April 28, 2000, Technip issued :

(i) a Notification for Crossing Legal Thresholds by acquiring 29.68% of Coflexip equ statutory obligation under French Company law;

(ii) a Statement of Intent binding for 12 months in which Technip declared that:

- this acquisition of shares from Stena was a friendly acquisition of shares which should res a strategic alliance;
- it was acting alone;
- it did not intend to increase its shareholding;
- it will be represented on the Coflexip board of directors by four members out of a total of
- it does not intend to take control of Coflexip;

- for a period of six-months, it will not reassign its shareholding, except for a ma institutional investors, without prior consultation with Coflexip.

Further, as submitted by Technip, it is observed from the documents duly certified, tha French Companies Act makes such a statement, binding in law and if a breach is committed, the per breach is deprived of his voting rights for 2 years. Under French law a Statement of Intent is to b 10% and 20% limits of shareholdings or voting rights in any listed company.

5.3.11 It is also observed that the aforesaid documents have been filed with the French Market A Marchds Financiers") which made them public on May 4, 2000 and with the Stock l ("Commission des Opdrations de Bourse"). The Conseil des Marche's Financiers thereafter issu 4th May, 2000 recording and accepting the statements made hereinabove.

5.3.12 From the various declarations filed by Technip before French authorities that it was not acting i else for the purpose of acquiring shares/ voting rights / control over Coflexip and in view of the 4/5/00 vide which it had filed declaration of threshold crossing and statement of intent with Fren of Financial Markets) declaring the objectives it intends to pursue vis-a vis Coflexip in the tw stated hereinbefore, and specifically that-

- Technip is acting alone
- That it does not intend to increase its equity interest on Coflexip
- That it shall be represented on the Board of Directors by four directors out of a total of twelve
- That is does not intend to acquire control over Coflexip

It would be difficult to hold that Technip was acting in concert with ISIS or IFP for the purpose o Coflexip, when it acquired 29.68% shares from Stena, on 12.4.00.

5.3.13 Further it is also noticed that Technip has further undertaken to Coflexip that it shall not for the interest and that it shall not for the following ten months, dispose of such interest without Coflexip, subject to retaining the right to sell shares representing less than a third of its interest to

Technip also specified that the above undertakings relating to the standstill of its equity in possible sale of such interest shall lapse in certain circumstances, including (i) the filing of a ten of Coflexip and (ii) the acquisition by a shareholder of several shareholders acting in concert share capital or voting rights of Coflexip.

5.3.14 It is also observed that there was no agreement between Technip and a third party or ISIS o majority of voting rights in Coflexip. Further under the French Companies Act, the parties to any have been subject to a disclosure obligation to the French Market Authority, which publicises Official Bulletin as well as on its Internet site since undisclosed agreements are unenforceable.

5.3.15 From the aforesaid it is clear that Technip was acting alone and had no commonality of obje interest with ISIS or IFP for the purposes of acquiring shares / voting rights / control over Cofle no agreement between Technip and a third party or ISIS or IFP giving to Technip a majority of vo

5.3.16 It would be pertinent here to advert to Securities Appellate Tribunal order in case of Modipon v July 31, 2001 (2001) 44 CLA 94 (SAT), holding inter-alia that

"….. Any person and shareholder including the promoter will become an acquirer or a p with the acquirer only if he falls within the definition of these expressions provided in regulation 2(b conduct of the party that decides the identity…."

It may be noted that the rationale behind clubbing the shareholding of persons acting in conc that, such persons may have commonality of objective and a community of interest which could be voting rights beyond the threshold limit or gaining control over the company and this act of acquiring in a company must serve this common objective. Implicit in the concerted action of these pers of co-operation.

It would also be pertinent to advert to the order of Hon'ble High Court of Bombay in the n Securities Appellate Tribunal, in SEBI Appeal No.9/2001 (with Notice of motion no.2033 of 2001, c 5, 2001), (2002) 35 SCL 230 (BOM.) wherein it has been, inter alia, held that "…… there is no h promoter must always be deemed to be an acquirer or a person acting in concert with the a may be held that a promoter shares the common objective or purpose of substantial acquisition of sh It may well be that he may not share the said common objective or purpose. If he does, he person acting in concert with the acquirer, but if he does not, he cannot be deemed to be an acquire happens to be a promoter. Regulation 2(1)(e)(2) also makes this clear. The persons named th persons acting in concert with other persons in the same category, unless the contrary is establishe follows that even though there is a presumption that the persons described therein may be deemed concert with the acquirer, the presumption is rebuttable, and therefore, in each case, the facts have reach a conclusion as to whether a person is or is not acting in concert with the acquirer for the acquisition of shares or voting rights or gaining control over the target company. He may do so by or understanding, and the agreement or understanding may be proved by evidence on record. operate with the acquirer directly or indirectly. What is important is that it must be shown that with the acquirer …… What is relevant is not whether the promoters have acted in co managing the target company, but whether they are acting in concert for the purpose of substantial voting rights or gaining control over the target company. The fact, therefore, that the target com managed in the past by the promoters acting in co-operation and concert with each other is

determining the question whether the promoters are acting in concert in the matter of substantia shares or voting rights in the target company. The mere fact, therefore, that the acquirers, while r assumed and acted on the basis that Modipon Ltd. was acting in concert with them, will not ma person acting in concert with them……."

Thus, from the above it follows that under regulation 2(1)(e)(2), the persons named therein ar acting in concert with other person in the same category, unless the contrary is established meaning rebuttable presumption and therefore in each case the facts have to be examined to reach a con person is or not acting in concert with the acquirer for the purpose of substantial acquisition of shares gaining control over the Target company. From the facts of the instant case as discussed in c apparent that Technip, IFP and ISIS were not persons acting in concert for the purposes of acquisition c when Technip acquired 29.68% shares of Coflexip from Stena on 12.04.2000.

5.3.17 It is also observed that:

(i) French company law compels the company, upon crossing the equity interest level o capital or voting rights in the Target company, and again of twenty per cent of share ca the Target company, to file with the French market authority (with copy to the abovementioned Notification for Crossing Legal Thresholds and a Statement of Intent (S Companies Act);

(ii) pursuant to the same Section of the Companies Act, that Statement of Intent is bi Company for the twelve months from its date, and the stated intent may only be alt "significant" change in the circumstances surrounding the target company, in its position of the interested parties;

(iii) the declaring shareholder who fails to abide by the stated intent is liable to being depri exceeding the declared threshold for a period of two years.

5.3.18 As submitted by Technip, it is also observed that under French law had Technip, acting alone o more other entities acquired control of Coflexip it would have to disclose the fact to the French the public and to make a bid for all shares in Coflexip not held by Technip. Failure to make su such a bid would have deprived Technip of voting rights. Further, Technip neither made any su any bid for the entire shareholding of Coflexip, establishes that in fact Technip did not acquir 2000.

5.3.19 I also find merit in the submission of Technip that it had filed declaration regarding actin authorities and Technip would have faced legal action in a large number of countries throughout would have had to make open offer for all the shares of Coflexip in April 2000 itself had it bee anybody and no authority in the United States or Europe has alleged that by virtue of the a Coflexip in April 2000, Technip had acquired control over Coflexip.

5.3.20 In view of the provisions of French law and the regulatory provisions prevailing in France, it is not acting in concert with ISIS and IFP when Technip acquired 29.68% shares/voting rights of 12/4/2000.

5.3.21 It is also observed that IFP is an independent centre for research and industrial development, training and information for the oil and gas and automotive industries. It does not carry on in activities, neither does it control or mange other companies. IFP is a "professional body" cre French government. The members of the Board of Administration are designated by the Economic Affairs and Government control is exercised by the Directeur des Hydrocarbons Go and by the head of Economic and Financial mission for petroleum and chemistry.

Its statutory purpose is to support the advancement of the petroleum (and oil services) indu endowed with a part of certain petroleum taxes and excises in return, it is subject to the financi state. IFP conducts and funds research in various directions, all related to the oil industry fr related services to development and crude oil, and gas production down to refining and product

products (such as petrol, lubricants, fuel oil and all raw materials of the petro chemical industry).

It also promotes companies created to apply the results of its own research thus IFP wa shareholders of both Technip in 1958 and Coflexip in 1971.

In 1975, IFP promoted ISIS as a wholly owned subsidiary to hold its investments. IFP retai ISIS at all times until October 2001, although ISISI became listed on Euro Next Paris in 1997.

IFP supervises and controls the Ecole Nationale Superiere Du Petrole et Des Moteurs (Nation for Oil and Fuel Engine Studies) located on IFP grounds. From time to time, Technip has been Engineers go give training courses at the aforesaid college.

5.3.22 It is also observed that IFP is a professional institute acting as a research development and educat not a policy of IFP to manage, operate or control the composition of the Boards of companies which is very evident from the fact that IFP had only 3 directors on the Board of ISIS out of a t when it held 52.8% of the paid-up share capital of ISIS, as of April, 2000.

5.3.23 In view of the facts and circumstances of the case including nature of functioning of IFP, a 'pro by a decree of French Government and performing the role of a research body, it is difficult to h was acting in concert with Technip for the purpose of acquiring shares/voting rights/ contr indirectly acquire control over SEAMEC. It is difficult to arrive at the said conclusion merel parent/promoter of ISIS. There was no common objective or purpose amongst them for acquiring

or gaining control over Coflexip. Further, there was no agreement or understanding amongst them to acc
shares or voting rights in Coflexip.

In the K K Modi's case, Hon'ble Bombay High Court has held that "…. It therefore, follows t
person is a promoter does not make him an acquirer, unless it is shown that he either intends tc
concert with the acquirer for the acquisition of shares of the target company. Before he can
concert with the acquirer, it must be shown that he shares with the acquirer a common ob
substantial acquisition of shares or voting rights or gaining control over the target company, purs
understanding and directly or indirectly co-operates with the acquirer or agrees with him to a
rights in the target company or control over the target company. It is significant that the definiti
include a promoter, but includes persons acting in concert with an acquirer. The question as
acting in concert with the acquirer is essentially question of fact. A promoter may not act in co
whereas a stranger might……"

From the above, it follows that the mere fact that a person is a promoter does not make him
shown that he either intends to acquire or is acting in concert with the acquirer for the acquisitior
company. Further, before he can be said to be acting in concert with the acquirer, it must be sh
the acquirer a common objective or purpose for substantial acquisition of shares or voting rights
target company pursuant to an agreement or understanding and directly or indirectly co-operat
acquire shares or voting rights or control over the target company. From the facts of the instant
though IFP is the parent/promoter of Technip and ISIS, it did not share any common objective
Technip or ISIS to acquire shares/voting rights or control over SEAMEC when Technip acqu
Coflexip from Stena on 12.04.2000. Further, there was no agreement or understanding among IF
acquisition of shares of Coflexip on 12.04.2000.

5.3.24 In view of the above factual position, merely because ISIS was a major shareholder of Technip directors on the Board of ISIS and IFP was parent of ISIS and Technip, it is difficult to hold that were acting in concert for the purpose of acquiring control over Coflexip when Technip acqu Coflexip from Stena on 12.04.2000.

5.3.25 In view of the fact that the Technip was not acting in concert with IFP or ISIS for the purposes o Coflexip when Technip acquired 29.68% shares of Coflexip from Stena on 12.04.2000, for the before, Technip did not indirectly acquire the control of SEAMEC in terms of the said Regula acquisition of 29.68% shares of Coflexip. Hence there was no obligation to make Public Annou of shares of SEAMEC by Technip.

Therefore the other two issues as stated at 5.2 require no further consideration."

On a persual of SEBI's order it is clear that it had noted the formal shareholders agreement datec between Stena and ISIS and other major shareholders of Coflexip to control Coflexip. The purpose of to control Coflexip. In this context it is to be noted that 48.7% of the shares of Coflexip were held by widely dispersed. Out of the remaining 51.3%, Stena was holding 29.68% and ISIS was holding 18.17 in Coflexip's voting capital accounted for 47.85%. They had majority number of directors on Coflexip

Before proceeding in the matter with reference to facts, it is felt necessary to decide as to which the take over of SEAMEC – French law or Indian law. SEBI has viewed that since Technip an companies, matters relating to them should be decided in accordance with French law. To the said e SEBI has no jurisdiction to regulate takeovers and acquisitions taking place outside India. But certainly S regulate substantial acquisition and takeovers of companies in India. Whether there is a substantial acqu rights/control of an Indian company, has to be decided according to the Takeover Regulations. Law

outside India can not enforce their regulations in respect of acquisitions and takeovers of Indian comp acquisition of Indian companies by foreign companies is not outside the purview of the Takeover cod made clear by an illustration -- company 'A' is an Indian company. It is a subsidiary of a foreign hold holding company 'B" is taken over by another foreign company "C" and as a result 'A' becomes subsi situation "C" is expected to comply with the requirements of Takeover Regulations. When the ap regulations is considered to such case as shown in the illustration, the definitions, procedures etc. pr Regulations are to be followed. It is to be noted that in the present case SEBI is not adjudicating the Technip was required to make a public offer to the shareholders of Coflexip SA in France on acquiring 2 Coflexip from Stena in April 2000. Acquisition of Coflexip shares by Technip is a matter to be considere under French law. SEBI is adjudicating the question of indirect take over of SEAMEC by Technip as a shares in SEAMEC's ultimate holding company. In my view in that context what is required to be con there was a change in control of Coflexip and that ISIS and Technip can be considered as persons actin the provisions of the Takeover Regulations. SEBI is not supposed to go blindly by the foreign law pr and takeover is evident from the Takeover Regulations itself. The instances as per the foreign law are of, has been specifically spelt out in the Takeover Regulations as could be seen therefrom. In this co regulation 3(1)(k) providing exemption to certain acquisitions from the scope of regulations 10,11 a According to the said regulation

3(1) Nothing contained in regulation 10,11 and 12 of these regulations shall ap

(k) acquisition of shares in companies whose shares are not listed on any

Explanation:- The exemption under clause (k) above shall not be applic of acquisition or change in control of any unlisted company whether in Ir the acquirer acquires shares or voting rights or control over a listed comp

In this context the exemption provided under regulation 3(1)(j) is also a pointe

3(1) Nothing contained in regulation 10, 11 and 12 of these regulations sl

(j) pursuant to a scheme –

(i) framed under section 18 of the Stick Industrial Companies (Specia

Act, 1985

(ii) of arrangement or reconstruction including an amalgamation or m demerger under any law or regulation, Indian or foreign.

Takeover Regulations thus specifically recognise "acquisition or change in con unlisted company" abroad and amalgamation or merger or demerger under fore purpose of exemption. That it is to be noted in this context that the exemption i to statutory amalgamations mergers and demergers and not to substantial acqui or acquiring control in any other manner.

Yet another case of such specific recognition could seen in the following Expla regulation 11:

Explanation.—For the purposes of regulation 10 and regulation 11, acquisition shall

(a) direct acquisition in a listed company to which the regulations apply;

(b) indirect acquisition by virtue of acquisition of holding companie or unlisted, whether in India or abroad.

In this context it is also noted that by way of an amendment effected from 9.9.2 Explanation clause has been put under regulation 12 which is also a pointer in t According to the said Explanation –

"For the purposes of this Regulation, acquisition shall include direct or i acquisition of control of target company by virtue of acquisition of comp listed or unlisted and whether in India or abroad."

Regulation 2 provides definition of certain expressions including ' cont acting in concert' etc. referred to in the Takeover Regulations. The scope of th cannot be abridged or enlarged for the purpose of administering the provisions Regulations, by borrowing the definitions from laws in vogue in other countrie meaning of those expressions which are not specifically defined in the regulati to refer to the Indian legislations referred to in the regulations and not to borro law.

On a perusal of the scheme of the Takeover Regulations, it is clear that in substantial acquisition of shares and takeovers of Indian companies, the applica Takeover Regulations as notified by SEBI under the SEBI Act. If a contrary v may sometimes lead to absurd consequences even defeating the very objective Regulations. Take a hypothetical case of acquisition of a foreign holding comp Indian target company by another foreign company, in a country where there a regulations on substantial acquisition of shares and takeovers, and there is no c persons acting in concert etc. Does it mean that as a result of change taken pla the holding company in that 'unregulated' country, the change in the ownershi the target company taken place should not require compliance of Takeover Reg acquirer ? In my view to take a view that in such a case no compliance of Take is required is untenable. In my view the change in control need be viewed fro point of view. It is all the more relevant when the applicable provisions are no scope.

In the instant case I have considered the scope of 'control' as provided in Company Law:

In article L.233-3 of the French Code de commerce provided:

"I.. A company shall be regarded, in order to apply Sections 2 and 4 of this chapter, as controlling an

1. When it directly or indirectly holds a percentage of the capital conferring on it the majority of general meetings of this company;

2.When it alone holds the majority of the voting rights in this company pursuant to an agreeme members or shareholders and which is not contrary to the interests of the company;

3.When it determines in fact, due to the voting rights which it holds, the decisions in the g company.

II. It shall be presumed to exercise this control when it directly or indirectly holds a percent higher than 40% and when no other member or shareholder directly or indirectly holds a percentag own."

III. In order to apply the same sections of this chapter, two or more persons shall be regarded as jointly controlling another when they actually determ decision in general meetings.

In 1998 the Court of Appeal of Paris (CA Paris, 20th February, 1998, ADAM V Havas) specified that regarding article L. 233-3(i) one person only has the abili control over a company and (ii) the exercise of a control over a company can n acting in concert. Such jurisprudence was strongly contested and in order to do jurisprudence, the legislator clarified the notion of control within the meaning o was clarified by modifying the said article in 2001 and that modification is Sec above.

It is noted that there are different definitions of control for different pur French law and I do not consider the definition of control such as the one under regulations, or under concentration law etc. is relevant for the present purpose

In the context of the scope of the expression control in L.233.3 in the Fr law let us see the concept of control under the Takeover Regulations. Accordi 2(c) of the Takeover Regulations:

" Control shall include the right to appoint majority of the directors or to contr management or policy decisions exercisable, by a person or persons acting indi concert, directly or indirectly including by virtue of their share holding or mana share holders agreements or voting agreements or in any other manner"

The scope of the expression control as per the Takeover Regulations is undoub the scope of control under French code de Commerce (French company law). that the definition in regulation 2(c) is an inclusive regulation. It is open ended "control in any other manner" leaves sufficient scope to the enforcement autho to the existence of defacto control. In my view whether Technip acquired cont

on 12.4.2000 and consequently over SEAMEC need be tested in the light of 2(The concept of person acting in concert is also very relevant for the purpose ir of ISIS in the present case.

In this context following Article L.233.10 and regulation 2(1)(e) of the Regulations also need be perused.

Article L.233.10

I. Persons who have concluded an agreement with a view to a assigning voting rights or with a view to exercising voting rights in implement a common policy with regard to the company shall be re in concert.

II. Such an agreement shall be presumed to exist:

5.3.23.1 Between a company, the Chairman of its board of directors and i directors or the members of its management or its managers.

5.3.23.2 Between a company, and the companies which it controls within Article L.233.3;

5.3.23.3 Between companies controlled by the same person or persons.

5.3.23.4 Between the members of a simplified joint stock company with r companies which the latter controls.

III. Persons acting in concert shall be jointly and severally obligations imposed thereon by the acts and regulations"

At the cost of repetition I would again like to set out the concept of "person act regulation 2(1)(e) for a comparison with the concept under French law: Before to refer to the relevance/importance of person acting in concert with reference shares/voting rights/control. In this context, for the purpose, the most appropri the observation made by Justice Bhagwati Committee based on its recommend Takeover Regulations was re-enacted after repealing the Regulations notified i

According to the committee (1st Report 1997)

"Persons acting in concert" have particular relevance to public offers, for can acquire shares or voting rights in a company "in concert" with any ot manner that the acquisitions made by him remain below the threshold lim together with the voting rights of persons in concert, the threshold may w It is therefore, important to define "persons acting in concert".

To be acting in concert with an acquirer, persons must fulfill certain "brig They must have commonality of objectives and a community of interests acquisition of shares or voting rights beyond the threshold limit, or gainir the company and their act of acquiring the shares or voting rights in a cor this common objective. Implicit in the concerted action of these persons element of cooperation. And as has been observed, this cooperation coul several ways, directly or indirectly, or through an agreement – formal or

The Committee was of the view that the present definition of "persons ac in sub-clause (d) of regulation 2 needed to be strengthened by incorporati ingredients discussed in the foregoing paragraph to bring out clearly the i in concert.

Any person fulfilling the "bright line" tests would be acting in concert. E also be certain persons who, by their position in relation to an acquirer or nature of their business, could be generally presumed to be acting in conc proved to the contrary. In other words, a rebuttable presumption of being concert with burden of proof cast on them will be raised against these per Committee was of the view that while the net of presumption should be c such persons, it should not be cast too widely so as to impinge on the fre person to carry on his normal business activities. In other words, there sh defined bounds of presumption."

Regulation 2(1)(e) "person acting on concert" comprises .—

(3) persons who, for a common objective or purpose of substantial acqui or voting rights or gaining control over the target company, pursuant t or understanding (formal or informal), directly or indirectly co-operat agreeing to acquire shares or voting rights in the target company or cc target company,

(4) without prejudice to the generality of this definition, the following pe deemed to be persons acting in concert with other persons in the same the contrary is established:

(xi) a company, its holding company, or subsidiary or such compar under the same management either individually or together with

(xii) a company with any of its directors, or any person entrusted w management of the funds of the company;

(xiii) directors of companies referred to in sub-clause (i) of clause (associates;

(xiv) mutual fund with sponsor or trustee or asset management com

(xv) foreign institutional investors with sub-account(s);

(xvi) merchant bankers with their client (s) as acquirer;

(xvii) portfolio managers with their client(s) as acquirer;

(xviii) venture capital funds with sponsors;

(xix) banks with financial advisers, stock brokers of the acquirer, or which is a holding company, subsidiary or relative of the acquire

Provided that sub-clause (ix) shall not apply to a bank whose sc with the acquirer or with any company, which is a holding comp subsidiary of the acquirer or with a relative of the acquirer, is by providing normal commercial banking services or such activities with the offer such as confirming availability of funds, handling other registration work;

(xx) any investment company with any person who has an interest a manager, trustee, or as a shareholder having not less than 2 per c up capital of that company or with any other investment compar person or his associate holds not less than 2 per cent of the paid- latter company.

Note: For the purposes of this clause "associate", means,--

(c) any relative of that person within the meaning of section 6 of th
Act, 1956 (1 of 1956); and

(d) family trusts and Hindu undivided families;

On a comparison of the provisions relating to persons acting in concert in the T
Regulations and the French law, it is clear that the scope of regulation 2(1)(e) i
Article L-233.10.

I do not consider it necessary, to give any weightage to the legal opinions
law firms in France and produced in the present proceeding, as those opinions
legal position prevailing in France. In my view it is not proper to go simply by
and Statement of Intent made by the companies under French law and decide th
those statements/declarations that Technip acted alone and that there was no ch
on 12.4.2000. I am not saying that the statements made by them in France are
Those statements might have been made as per the law prevailing in France an
Authorities obviously accepted and recorded the same. They are not concerne
applicability of the Takeover Regulations to the facts with reference to the take
SEAMEC in India. French law does not operate in India as Indian law does no
France. I am not for a moment even suggesting that the information furnished
before the French Authorities were not correct or that the French Authorities ha
those statements before taking them on record/notifying those information. In
may state th7at I have examined the authorities cited by Shri Setalvad to buttre
that the applicable law in the present case is French law. I regret my inability t
view for the simple reason that we are not dealing with the takeover of a compa
outside India. We are testing SEAMEC's case in the light of the facts relating
shares/control of Coflexip by Technip, as to whether there was any change, vie
Indian angle. In that context what is required to be seen is that whether the fa
change in control as provided in the Takeover Regulations and ISIS can be con
acted in concert with Technip as per the Indian law. For the purpose the facts a
record, assumes importance.

It is an admitted fact that there was shareholders agreement dated 2.11.
Stena group on one side and ISIS and others on the other to control Coflexip.
management pattern of Coflexip – majority on the board of Coflexip – it is clea

groups were in control of Coflexip. In this context it is also to be noted that C considerable interest in the petroleum sector. Technip also had interest in the s evident from the material on record that Technip and Coflexip were interested move forward. It was in that context Technip acquired 29.68% shares held by Coflexip. 29.68% is not an insignificant portion in the share capital of Coflexi capital was with the public widely dispersed. It is also to be noted that Techni shares to begin with beyond 30%, because such acquisition would have require make a public offer to the shareholders of Coflexip in terms of the French law itself. It is also noted from the shareholding pattern of Technip, Coflexip and I having common interest. In Coflexip, ISIS the subsidiary of IFP held 18.17% Technip ISIS held 11.8%, with two associate companies of ISIS i.e. Gas de Fra Fina ELF, ISIS's holding was around 29.1% of Technip's capital. Again, it is coincidence that the holding rested at 29.1%. It was capped a shade below 30% avoid the requirement of public offer under French law. It is noted that in ISIS holding 52.76% as against the public holding of 47.34%. It is also to be noted was formed in the year 1958 by IFP. Coflexip was also promoted by IFP in the ISIS was also promoted by IFP in the year 1975. In fact when ISIS was floated owned subsidiary of IFP. Whether these companies belonged to one "group" o "companies under the same management" may be in dispute. But no one can d belonged to one family in the real sense. The "affinity" of these entities is ve context it is also to be noted that IFP, though created under a decree of the Fren and not a profit motivated commercial set up by itself, is interested in developi sector. Coflexip and Technip are having interest in the Petroleum sector. Obv be interested in these 2 entities joining together and forming a combine strong the competition in the field. It is in this context the observation made by Justi Committee be noted –"implicit in the concerted action of these persons must be co-operation". "The Committee also recognized that the process of takeover is inter related to the dynamics of the market place. It would therefore be imprac regulations in such detail as to cover the entire range of situations which could process of substantial acquisition of shares and takeovers" In my view the spir regulation has to be recognised. It is not technicalities, but realities that should stone while deciding as to a person was acting in concert with another. It is suf regard to their common interest, it may be inferred that they must be acting tog relationship of the parties is a pointer in the normal course towards their comm this context the following observation in Guinners relied on by Shri Mukherjee very relevant:

"The nature of acting in concert requires that the definition be drawn in

terms. It covers an understanding as well as an agreement, and an inforn formal arrangement, which leads to co-operation to purchase shares to ac a company. This is necessary, as such arrangements are often informal, a understanding may arise from a hint. The understanding may be tacit, ar covers situations where the parties act on the basis of a "nod or a wink". declare this agreement or understanding, there is rarely direct evidence o concert, and the panel must draw on its experience and commonsense to whether those involved in any dealings have some form of understandin in co-operation with each other. In a typical concert party case, both the person alleged to be acting in concert with it are declaring that, notwithst circumstances, they have no understanding or agreement. The Panel has realistically to recognise that businessmen may not require much by way expression to creaate such an understanding. It is unnecessary for the Pa everything that actually passed between the parties in a take-over. In add judgement required in an acting in concert issue must usually be made in the assertions and arguments of persons whose interests will not be serve acting in concert – this is because such a finding inevitably entails consec code, often to the benefit of offeree company shareholders which is the o concept, with a cost to the offeror".

The argument that the persons acting in concert must also acquire shares with t correct. In Shirish Finance, referred to earlier, Hon'ble Bombay High Court ha position as pointed out by the Appellants.

It is in this context the message conveyed by Mr. Daniel Valot the Chairman o dated 14.10.2001) to the shareholders of Technip need be taken note of. In the had stated that:

"For over a year now, we have been working on this merger, passing through a num the acquisition of 30% of Coflexip in April 2000, the setting up in the summer of 2000 of a allowed the teams from the two companies to start working together on a few joint projects as we proposals. This period of acclimatisation was invaluable: it demonstrated that our cultures were teams knew how to work together in harmony. Thus we have done everything possible, I believ merger to take place in a climate of mutual confidence.

The Institut Francais due Petrole (IFP) which was at the origin of the creation of the two cor remained through ISIS a major shareholder of both of them, acted as a catalyzer in their union. its majority stake in ISIS to Technip, it greatly facilitated the merger between Technip and Cofle the operations now underway, IFP will be, in accordance with its historical mission one of t Technip Coflexip, along side of Gaz de France and Total Fina Elf, both of which also gave their of the new entity." (emphasis supplied)

It is evident from the Technip Chairman's letter that they were ultimately over Coflexip and they "were on this merger, passing through a number of nec which included "the acquisition of 30% of Coflexip in April 2000, the setting u of 2000 of a strategic alliance" etc., It is to be noted that Mr. Daniel Valot is r the Chairman and Chief Executive Officer of Technip. He has also stated there Shareholders that, "A new major step in the development of Technip, thanks to Coflexip, your group, which will be called Technip – Coflexip, will rank amon leading integrated engineering and oil services companies". The argument that after the acquisition made in the public offer made on 3.7.2001, in my view do difference, as far as Technip's objective is concerned. Exactly with this objec acquired shares from Stena, IFP through ISIS facilitated the ultimate merger as up/creating such an integrated strong world leader in engineering and oil servic in tune with the goal of developing petroleum sector undertaken by IFP".

The Respondents had argued at length to show that IFP is not a commerc not interested in acquiring control or assisting somebody else in acquiring cor companies and that it is not a profit motivated set up. But they have not deni ISIS is an arm of IFP and ISIS is managing IFP's commercial investments. It mandate of IFP to invest in companies with profit motive or to interfere in the r the companies in which it has invested. But ISIS is not bound by any such rest an admitted fact that ISIS looks after the commercial aspects of the investment uses ISIS as a medium to make investments. That is the reason why in the sha agreements executed for the purpose of controlling the entities, instead of IFP, party. It is noted that IFP stated to be a Government funded set up is perhaps, restrictions. But ISIS is not so. It is evident that ISIS is even involved in the r companies in which it holds shares – e.g. it had its representative in the strateg Coflexip. I have noted that ISIS has also restricted its investment in companie upto 30% only. This could be only to avoid the requirement of making public

provisions of the French Company Law. ISIS does not appear to be outs
of the regualtory provisions of the French Company Law. In fact in Technip i
the associated companies is just 29%. Gas de France is also one of its associate
ISIS has its nominees on the Board of Technip. ISIS has its nominees of Cofl
para 5.3.6 of its order has stated that "ISIS and Gas de France had disclosed at
admission of listing of the Technip shares on the Paris Bourse (September 199
acting in concert with regard to their interest in Technip pursuant to a sharehol
between ISIS and Gas de France which provided that (i) in the event of either
France wanting to sell their shares in Technip the same would have to be offere
party (ii) each party were to be represented on Technip board of directors in pr
respective voting rights." In para 5.3.7 of the order it has been recorded that "I
Stena, ISIS and other major shareholders of Coflexip had a formal agreement d
2, 1994 to control Coflexip. The agreement provided for the right of first refus
that if one party wants to opt out of the agreement then it has to first offer the s
parties involved in the agreement and after their refusal, if any, and their perm
sell it to the other party. The permission was not required if the sale of shares
members of a group or in favour of affiliates of a member of that group." The
ISIS in these two companies is thus clear. It is to be noted that it was Technip
place of Stena in Coflexip. Stena is a rank outsider and its exit paved the way
combination.

From the material available on record there is every justification to infe
was to combine Technip and Coflexip and form a strong combined entity to be
in the petroleum sector and that it was with this end in view Technip in which
acquired Coflexip in which also ISIS had interest. It is to be noted that Stena is
it was coming in the way of the proposed integration of Technip and Coflexip
getting the right price for its investment, as Stena stated, moved out allowing th
Technip. In this context the following observation made by Technip's Chairm
dated 11.4.2000 is to be noted. – "With the Swedish group Stena proposing to
CSO's capital Technip seized the opportunity on the one hand to achieve one o
priorities which consists in increasing its activity in the petroleum upstream sec
supplied) Why Technip would acquire Coflexip has also been explained in the

> "CSO (Coflexip SA) is the world leader in subsea technologies and servic
> and gas field development. It holds a 30% world wide market share of su
> construction and a 75% world wide market share in the manufacturing of
> pipelines and umblicals for offshore platforms. CSO boasts extensive inc

fleet of 15 ships for the construction and installation of subsea piping, ma
plants for flexible piping and control of umblicals in France, Great Britai

Through the acquisition Technip and CSO forge a strategic alliance that v
companies to take advantage of the fast growing offshore and deep water
market….."

The Respondents had submitted that the shareholders agreement dated 2.9.199
operative with the exit of Stena, and as a result the agreement providing for co
also ceased. But this in my view is only partially correct. Stena ceased to be a
controlling group. In the absence of any evidence brought on record to show t
assigned its right and obligations under the agreement it is difficult to accept th
agreement continued to operate after Stena's exit. But after Stena's exit no suc
agreement as such was required, as Technip, ISIS and IFP had one lineage – th
parenthood in IFP. ISIS/IFP's participation in shareholding, management, com
the petroleum sector etc. clearly demonstrates their invovement in the process
from day one i.e. 12.4.2000 to the final act on 3.7.2001. Mr. Daniel Valot in h
14.10.2001 had rightly stated that "for a year now we have been working on th
passing through a number of necessary stages, the acquisition 30% of Coflexip
the setting up in the summer of 2000 of a strategic alliance."

The process of acquisition started with Technip acquiring 29.68% shares. It is
ISIS group had not exercised its pre emptive right to block Technip's entry. In
4 directors and ISIS had 3 directors on the Board of Coflexip and the total hold
companies were around 47%, sufficient enough to control Coflexip in view of
widely held by public. It is also noted that in fact in the annual general meetin
in May 2000 and May 2001 (before the merger effected on 3.7.2001) Technip
54% and 57% of the voting rights, that this itself is indicative of the fact that T
than 50% voting rights at its command, even though on record it was holding c
Daniel Valot in his letter dated 14.10.2001 referred to above, has acknowledge
"IFP which was at the origin of the creation of the two companies and which h
through ISIS a major shareholder of both of them, acted as a catalizer in their
deciding to commit its majority stake in ISIS to Technip, it greatly facilitated t
between Technip and Coflexip" He had also acknowledged the support from C
and Total Fina Elf – both associated with IFP family. The whole idea as coul
make Technip, the controller of Coflexip and ISIS rendered full co-operation i
Technip to acquire the shares. It is to be noted that ISIS, one time shareholder
merged with Technip, on Coflexip merging with Technip in July, 2001. ISIS's
Technip is not a coincidence. It was because by that time Technip had acquuir

Coflexip and ISIS involvement vis-à-vis Coflexip had become redundant. It is on Technip acquiring 29.6% shares it got 4 of its nominees on the Board of Co acted in concert with Technip had 3 of its nominees. Thus in a 11 member Bo Technip ISIS combine had a majority. It is also noted that Technip and ISIS n majority in the Strategic Committee – which is a core committee in the manag Coflexip.

The Respondent had argued that if Technip and ISIS were acting togeth question of ISIS voting in favour of setting up a committee to revise the offer p Technip while making the public offer to the shareholders, that Technip would subjected several restrictions on undertaking new business etc. without the app Coflexip. In this connection it is to be noted that Coflexip is a public company legal entity. ISIS has investment in it. ISIS objecting to the setting up of a co the offer price, is but natural as an increase in offer price was to its advantage it was not in any way acting against its objective of helping Technip to acquire Coflexip. It is to be noted that supporting Technip to acquire control of Coflex acquisition of shares, does not mean that ISIS should forego the monetary gain otherwise accrue to it in the transaction. It is an admitted fact that ISIS is a cor and as such it was but natural that it would bargain for a higher price for the sh But this does not mean that ISIS was acting against Technip. Technip is not a subsidiary of ISIS. Adding a little more financial burden on Technip by asking price can not be viewed as a hostile action from ISIS or as evidence of non co- Respondent has stated that at one point of time Coflexip was mooting takeove that such a proposal would not have come from Coflexip, if it had been under t Technip, as is being alleged. The Respondents have not produced any evidenc the proposal was made and why it was not pursued and given up. Even otherwi can not be viewed as to indicate that on 12.4.2000 Technip had not acquired sh Coflexip. The fact is that on 3.7.2001 it was Technip which acquired 99% sha About the several binding covenants on Technip it is to be noted that in the cor such binding terms and conditions in contracts entered between even holding c subsidiaries are common from the commercial angle and legal angle. . As long remaianed two separate legal entities, inter se agreements/contracts would be n be noted that ultimately Technip had acquired 98% of the shares in Coflexip in Further that it acquired 99% shares in ISIS is also an important factor. The Re posed a query as to in case Technip had acquired control on 12.4.2000 what wa for it to spend huge sum of money to acquire further shares on 3.7.2001. It is r

the corporate sector that a person already holding control, especially defacto co more shares to strengthen his position or to gain exclusive control. The acquis Coflexip through public offer by Technip was to gain exclusive control as the in terms of the number of shares in their possession was only 47%. This holdi to exercise control in a company in which 48% shares are widely distributed ar But, Technip possibly wanted to strengthen its position dejure as well with 99% acquired shares to that level through the public offer in July, 2001. In my view raising the shareholding to 99% in Coflexip was the final act whereas the proce 12.4.2000. The disclosure made by Technip in the Exchange offer prospectus acquisition of shares on 12.4.2000 was for fructification of a plan to acquire co Coflexip. In the said prospectus it has been stated that Board of Directors of T in December 1999 that Coflexip client relationship and expertise would compl integration of Technip with a company of Coflexip dimension would considera capacity. Accordingly at a meeting held in December 1999, the Board of Tech authorised Mr. Valot to approach Coflexip for discussing a possible combinati two companies.

It is to be noted that in terms of regulation 12 an acquirer shall not acqui the target company unless such acquirer makes a public announcement to acqu acquires such shares in accordance with the regulations. In terms of regulation public announcement referred to in regulation 12 shall be made by the merchar than four working days after any change or changes are decided to be made as the acquisition of control over the target company". It is crystal clear from Mr statement that process of acquisition of control started in April 2000 and culmi public offer on 3.7.2001 and in that context Coflexip was required in terms of r read with regulation 12 to make a public announcement offering to acquire the SEAMEC as it had decided to acquire shares of Coflexip on 12.4.2000.

It was submitted that even in terms of regulation 12, there was no change Technip entered only in place of Stena. According to the Respondents regulat applicable. According to regulation 12 (ii) "Where any person or persons are g such control shall not be deemed to be a change in control so long as the contro to or less than the control exercised by the persons presently having control ov This sub regulation has no application, as the instant case is not one giving joi question of acquisition of control by TechnIp with persons acting in concert. (I

An argument was advanced that even if it is assumed that Technip had ac
control over coflexip SA, there was no change in the ownership of SEAMEC o
SEAMEC as a result of the alleged acquisition. This argument in my view is f
context it is to be noted that regulation 12 even though does not speak of indir
that it covers indirect acquisition as well is implicit from the scheme of the reg
especially when viewed from the objective of the Regulations. In this context
that the incidence for making public offer under regulation 12 is acquisition o
obligation to make public offer in terms of regulation 12 is on the acquirer. W
"Acquirer" in terms of regulation 2(b) means "any person who directly or indir
agrees to acquire shares or voting rights in the target company or acquires or ag
control over the target company, either by himself or with any person acting in
acquirer." This definition clears the doubt, if any, as to on indirect acquisitio
to make public offer under regulation 12 would attract or not. It is to be noted t
Takeover Regulations is to protect the interest of shareholders. Regulations 10
substantial acquisition of shares/voting rights takes care of direct and indirect
that context there is no reason to believe that if it is acquisition of control then
acquisition is to be taken cognizance. It is in this context one has to remembe
Regulations is a beneficial legislation and it has to be interpreted in a manner s
shareholders. In fact, the intent of the regulation 12 has now been made clear
explanation added vide amendment effected on 9.9.2002 stating that regulation
or indirect acquisition of control. This is only an explanation – an explanation
nature. It does not stand to reason that the investors' interest requires protecti
acquisition is direct and if it is an indirect acquisition no such protection is requ

The Respondent had advanced an argument that Takeover Regulations as
9.9.2002 should be applicable to the case, as the impugned order is dated 9.9.2
view of the fact that the Public Announcement in India was issued on 11.11.20
considered the authorities cited by them in support of the same. Shri Setalvad
had rightly pointed out that the SEBI Regulations can not be retrospectively ap
has not been empowered to make regulations with retrospective effect and in th
clear specific power empowering to make regulations with retrospective effect,
not be brought in to force with retrospective effect. It is not the date on which
order that matters. It is the date of the cause of action that decides the applicab
Regulation. Cause of action in this case is acquisition of shares/control of Cofl
on 12.4.2000. Therefore, in my view , the applicable regulations having a beari
and obligations on Technip should be the one in position on 12.4.2000 and not

into force on 9.9.2002.

Shri Choudhary had advanced an argument that regulation 10 is attracted Technip acquired 29.68% shares of Coflexip, and that Coflexip through its sub holding 58.24% of the voting capital of SEAMEC, and therefore the Technip l shares in SEAMEC (proportionate to 58.24%). This argument in my view is u of all the regulations do not recognise such proportionate acquisition for trigge 10. More than that, it is a well accepted principle that a shareholder is not the o assets of the company in which he holds shares. Assets are owned by the inves shareholder in terms of his holding in the investor company, has no legal right voting rights available to the shares in which the company has invested its func noted that the dividend/bonus shares etc. if any received from such investments separately treated and paid to the shareholders of the investor company based o shares held by each one of the shareholders of the investor company. The que proportionate ownerhip is not recognised. Shri Choudhary's submission that T acquired shares in SEAMEC more than 15% for the reason stated above, is no

I have taken note of the decision of the Hon'ble Bombay High court in B holding that the relevant date for deciding the offer price is the date on which t decides to aquire shares/voting rights/control and not the actual date of acquisit of the facts and circumstances of the case, in my view Technip had decided to of Coflexip and to achieve the said objective, acquired 29.68% shares of Coflex 12..4.2000. The evidence before me leads to the conclusion that ISIS had acte the said purpose.

In the light of the finding that the relevant date for calculating the offer pr 12.4.2000, the appeal no.01/2003 has become redundant. But I would like to n the allegation made therein that the public announcement/offer document was n terms of this Tribunal's interim order dated 25.10.2002 and that the Merchant l had failed in its duties, is unfounded.

It is noted that Technip has already made the public offer, as per this Trib order dated 25.10.2002. Technip has not contested SEBI's direction to pay int interest to be paid, the persons to whom interest is to be paid and the period for to be paid. Therefore, it is not considered necessary for the Tribunal to pass an

This Tribunal in its interim order dated 25.10.2002 had recorded that

(i) The acquirer will implement the impugned order dated 9.9.2002 by making a public an

shares of SEAMEC in accordance with SEBI(Substantial Acquisition of Shares and Takeovers) I

before 15.11.2002 by taking 3.7.2001 as the reference date at a price decided as p

make the payment within the time limit prescribed in the regulation for the purpose.

(ii) xxxxxxxx

(iii) In the event this Tribunal comes to a findings that the reference date sha and not 3.7.2001 as directed by SEBI in its order, the price payable for the shar be with reference 12.4.2000 and the acquirer will pay the difference between th as per SEBI's order and the price payable taking 12.4.2000 as the reference dat will also pay interest at such rate as may be fixed by the Tribunal on the differe from such date as the Tribunal decides till the date on which payment is made t share holder of SEAMEC pursuant to the open offer, with in 30 days from the order by the Tribunal in the appeals. Contents of this para also will be disclose announcement and in the letter of offer".

This Tribunal has come to the conclusion that the reference date shall be not 3.7.2001 as directed by SEBI in its order.

Since this Tribunal has come to the conclusion that the reference date for offer price should be 12.4.2000, Technip is directed to pay to the SEAMEC's h the shares accepted in the public offer the differential amount and interest at th thereon as directed in para (iii) of this Tribunal's interim order dated 25.10.20 11.8.2000 till the date on which the payment of the differential amount is made from the date of the order.

Appeals disposed of in the above lines.

Sd/-

(C. ACHUTHAN)

PRESIDING OFFICER,

Mumbai,

Date: October 27 , 2003