SC on Insider Trading

SC: Larger Bench to decide on SEBI's penalty powers, correctness of previous ruling

SC refers the matter to Larger Bench to rule on interplay between Sec 15A (which prescribes the quantum of penalty for failure to furnish any document/return etc. under SEBI Act limiting it to lesser of Rs 1 cr. or Rs 1 lac for each day during which failure continues) and Sec 15J (which prescribes the factors to be taken into consideration while adjudging quantum of penalty) of SEBI Act; Examines the SC ruling in Roofit wherein it was held that Adjudicating Officers had no discretion (post 2002 amendment whereby penalty “not exceeding Rs. 1.5 lacs for each such failure” was removed) while imposing penalties u/s 15A by virtue 2002 amendment and it was held “once discretionary power of AO was withdrawn (by amendment), the scope of Section 15J was drastically reduced, and it became relevant only to the Sections where AO retained his prior discretion (which did not include Sec 15J)…”; However, differing from Roofit ruling, observes that, “The familiar expression “notwithstanding anything contained” does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15J…”; SC also observes that keeping in view the doctrine of harmonious construction and the fact that penalty provision is under consideration, “Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it.. We do not think that this could have been the intention of the Parliament in enacting Section 15A, as amended in 2002.”; Also observes that if Roofit interpretation was read into Sec 15A it would lead to anomalous results as “it would then arbitrarily and disproportionately invade the appellants’ (defaulters) fundamental rights”: SC [LSI-1000-SC-2016-(NDEL)]

SAT on Insider Trading

SAT: Lifeline for DLF, ‘overregulation’ tongue-lashing for SEBI; Justice Devadhar’s scathing dissent

Securities Appellate Tribunal (‘SAT’), by a 2-1 majority ruling, quashes and sets aside SEBI order that restrained DLF Ltd., 6 directors along with CFO from accessing securities market and prohibiting them from dealing in securities for 3 years, terms SEBI order as ‘troubled sea whose waters only cast up mire and dust’; Majority order rejects SEBI’s observation that transfer of entire shareholding of three ‘related companies’ (Felicite, Sudipti & Shalika) was ‘controlled’ by DLF’s wholly owned subsidiaries, also dismisses SEBI’s contention that share transfer to 3 spouses of DLF’s employees was made with an intention to camouflage that DLF had no ‘control’ over the related entities; SAT observes that SEBI referred to numerous provisions (e.g. Cos. Act, Takeover Code, DIP Guidelines, Accounting Standards, Prohibition of Fraudulent Trade Practices Regulations, etc.), holds that jumbling up of such rules & regulations operating in different fields leads to ‘grave miscarriage of justice’, making it a case of ‘over-regulation’; Refers to Takeover Code, observes that there is no reference of ‘unlisted cos. which propose to undertake an IPO’ and holds that SEBI’s reference to ‘control’ definition in the Takeover Code, reflects complete non-application of mind and that SEBI has shopped for clauses and provisions in different statutes; SAT refers to Sec. 4 of Cos. Act, 1956, observes that SEBI failed to conclusively demonstrate that DLF had unbridled discretion for appointing / removing director on the Board of Shalika, Sudipti and Felicite, holds that “SEBI order is full of incorrect inferences based on surmises, conjectures and some faint corroboration to support faulty and forced conclusions”; SAT quashes SEBI’s observation relating to disclosure of RPTs with Shalika, Sudipti and Felicite by DLF Ltd, holds that stated disclosures in offer document are adequate and true for
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the purpose of DIP Guidelines, states that ‘materiality’ envisaged in DIP Guidelines relates to ‘adequacy’ and not ‘arithmetic accuracy’ of material facts; SAT finds no legal infirmity in purchasing equity stakes by 3 women entrepreneurs by utilizing funds from joint a/cs, observes that it’s a settled law that joint a/c holders have equal rights to money, and 3 spouses cannot be condemned for utilizing money accounts just by virtue of being ‘housewives’; Holds SEBI’s Order as ‘unusual punishment’ & ‘counter-productive’ that manifestly causes more harm than benefit to members of society and such ‘punishment’ impairs one's business & affects millions of investors; Holds that “keeping a person out of market for few years after long lapse of time when things seem to have settled down in the market, particularly when the company’s scrip is showing a definite and positive upward movement, is definitely unjust, unfair and detrimental to the investors’ interest.”; SAT Presiding Officer Justice Devadhar dissents, holds divestment of shares to spouses of employees, as a “sham transaction executed with a view to avoid disclosing material information relating to those three companies in the offer documents...”; Holds Board of Directors & CFO who signed prospectus, individually as well as directly liable for material breach since they were running day to day affairs of company and had adopted modus operandi of divesting of shares to camouflage DLF’s association with the three companies; Further holds Directors & CFO guilty of violating Insider Trading norms, observes that ‘intention to deceive’ is not essential requirement for constituting ‘fraud’ under Regulation 2(c) of the said regulations; SEBI Prayer for staying the order of SAT rejected once again by 2-1 majority: SAT [LSI-369-SAT-2015-(MUM)]

SAT: Upholds penalty for share-purchase non-disclosure to stock exchange violating Insider Trading Regulations

SAT dismisses appeal, upholds SEBI Adjudicating Officer’s (‘AO’) order imposing penalty of Rs. 5 lac on appellant, (Promoter of Brijlaxmi Leasing and Finance Company Ltd.) for failing to make disclosures to stock exchange of shares purchased within time stipulated, thereby violating Insider Trading, Regulations; Observes that where disclosures under Insider Trading Regulations are not made, penalty ought to have been Rs.1 crore, however notes all mitigating factors taken into consideration by SEBI AO for imposing penalty of Rs.5 lac, observes that such penalty is not excessively harsh / unreasonable; Dismisses appellant’s contention that company has been incurring losses, holds that penalty for violating Insider Trading Regulations is imposable irrespective of whether co. /promoter-director have been incurring losses or not and irrespective of whether investor has suffered loss or not; Upholds SEBI AO’s observation that “the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market”; Rejects appellant’s reliance on SAT ruling in case of National Securities Depositories Ltd. vs. SEBI and DSE Financial Services Ltd. vs. SEBI, as distinguishable on fact: SAT [LSI-658-SAT-2015-(MUM)]

SAT: Contracts worth 65% of annual order-book a ‘price-sensitive information’, upholds penalty order for delayed disclosures

SAT dismisses appeals filed by Man Industries (India) Ltd. and its Vice Chairman and Managing Director, promoters/director (‘Appellants’), upholds SEBI’s order for penalizing the appellants for violating SEBI (Prohibition of Insider Trading) Regulations, 1992 for delayed disclosure of bagging of substantial orders; Notes that Appellant had obtained two orders from Iranian cos. constituting 65% (i.e. Rs. 1,340 crore) of annual order book and disclosed such orders after 59 days and 7 days from date of signing the contracts; Notes that share prices of Man Industries Ltd. increased by 4.74% on the date of announcement; SAT peruses the contracts, notes that the contracts are ‘binding and effective’ from date of signing, holds that “conditions in the contract relating to advance payment, commencement of the contract, conditions of cancellation, etc. are part of any standard contract and
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cannot be taken as ground for delay in disclosure of entering into contract as on the date of signing the contracts”; Rejects appellants’ contra-position that premature disclosure would have invited penal action and appellants were liable to make disclosure only under Cl. 36 of Listing Agreement, holds that “it is the responsibility of any entity to prove that they made the right disclosures at the right time and if anything genuinely going wrong subsequently can be proved with evidence to that effect”; SAT states “it is difficult to fine tune the merit of disclosures in a disclosure based regulatory regime and as such the ideal course of action is to disclose every material information on an immediate and continuous basis. Changes in contract specifications and conditions which are material also need to be disclosed in that spirit of a disclosure based regulatory regime”; Rejects Appellants’ reliance on SAT’s rulings in Gujarat NRE Mineral Resources Ltd. Vs SEBI, Mr. Anil Harish Vs SEBI, Alka India Ltd. Vs SEBI and BPL Ltd. Vs SEBI.: SAT [LSI-1166-SAT-2016-(MUM)]

SAT: Co. disclosures not substitute for disclosures under Insider Trading & Takeover Regulations

SAT dismisses appeal, upholds SEBI Adjudicating Officer’s Order imposing Rs. 5 lac penalty on promoter for failure to disclose sale of shares under Reg. 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 & Reg. 29(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011; Observes that though sale is reported on BSE’s website in “bulk deal data” or company has made disclosures under Listing Agreement to Stock Exchange, it will not absolve appellant from making disclosures under said Regulations; Failure to disclose though unintentional or technical or inadvertent, cannot escape penal liability; Observes that appellant being person dealing in securities ought to know his rights and obligations w. r. t. disclosures under Regulations: SAT [LSI-41-SAT-2014-(MUM)]

SAT: Continual Disclosures under Insider Trading Regulations contemplates separate & independent compliance

SAT upholds SEBI’s order imposing penalty on appellant for failure to make necessary Continual Disclosure under Reg. 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations), though appellant made disclosure under Reg. 13(4); Rejects appellant’s contention that disclosure under Reg. 13(4), being special provision absolves appellant from making disclosure under Reg. 13(3) of PIT regulations which is general provision; Observes that disclosure obligation under Reg. 13(3) & 13(4) are independent and principle of ‘general provisions & specific provision’ is to be considered only in case of conflict; Holds that disclosure under Reg.13(3) is required to be made in Form ‘C’, whereas disclosure under Reg. 13(4) ought to be made in Form ‘D’ and observes that yardstick for triggering respective regulation is different; States that though expression ‘Any person’ in Reg. 13(3) includes ‘director’ or ‘officer’ referred to in Reg. 13(4), it cannot be inferred that disclosure made under Reg. 13(4) would mean complying with disclosure requirement under Reg. 13(3). SAT [LSI-134-SAT-2014-(MUM)]

SAT: Upholds SEBI order penalizing blind person for disclosure lapses under Regulations

SAT dismisses appeal, upholds SEBI order penalising appellant for failure to make required disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 & SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011; Rejects appellant’s contention that he had not accrued any gain/disclosure failure was unintentional and that requisite details of shares transacted were already available on stock exchange website; Further rejects appellant’s contention that he being blind person, SEBI ought to have given a sympathetic consideration, holds that “when a person dealing in shares in stock market violates any of regulatory provisions, then that person whether blind or not, cannot escape
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 penal liability”; Also observes that appellant is not novice in stock market and has been regularly dealing in shares of various cos. for several years: SAT [LSI-316-SAT-2014-[MUM]]

**SAT: ITC’s ‘Operations Head’ low in management hierarchy, not ‘Officer’ for Insider Trading**

Adjudicating Officer (SEBI) holds ‘Heads - Operations’ of ITC (‘noticee’) as not liable to disclose change in shareholdings exceeding Rs. 5 lakhs under Regulation 13(4) of PIT Regulations, as he was not ‘director’/‘officer’ of the company; Observes that two conditions to be fulfilled to trigger the said Regulation, viz., first, the person is a director / officer, and second, there is change in his shareholdings exceeding Rs. 5 lakhs/ 25,000 shares / 1% of total shareholding; Since noticee’s position was very low in chain of management, observes that he could neither direct/instruct directors nor could have any interaction with Board of Directors; Further notes that noticee was involved solely in manufacturing of products for relevant strategic business unit and could not even be said to have the management of relevant business unit; Relies on company’s Annual Report containing Report on Corporate Governance to hold that noticee had no role to play in governance and management; Thus, holds that the first condition to trigger PIT Regulations not fulfilled, accordingly, no penalty can be levied for non-disclosure of shareholding change: SEBI [LSI-339- SEBI-2015-[MUM]]

**SAT: Orders SEBI for expediting investigation in Factorial’s involvement in L&T-Finance’s ‘insider trading’**

SAT orders SEBI to complete investigation within 2-months, wherein SEBI by its interim order held Factorial Master Fund (a Cayman Island-based hedge fund, ‘Fund’), prima-facie guilty of insider trading in L&T Finance Holdings’ scrip and restrained it from accessing Indian securities market; SAT notes SEBI’s submissions that it sought assistance from U.S. Securities & Exchange Commission in the matter; States that on completion of investigation, if SEBI deems it fit to proceed further, then show cause notice (‘SCN’) shall be issued and order shall be passed after giving an opportunity of hearing; Orders that if SEBI fails to issue SCN to the Fund or fails to pass an order within prescribed time, the restrain-order passed shall come to an end and the Fund would be entitled to access Indian securities market: SAT [LSI-480-SAT-2015-[MUM]]

**SEBI on Insider Trading**

**SEBI: Hedge fund prima-facie guilty of insider trading in L&T Finance, pattern “suspicious”**

SEBI interim order holds Factorial Master Fund, a Cayman Island based hedge fund, prima-facie guilty of insider trading in L&T Finance Holdings (LTFH) scrip, restrains Factorial from dealing in & accessing Indian securities market; Factorial took unusually aggressive short positions, in cash & derivative markets and made enormous profits on basis of 'Unpublished Price Sensitive Information' relating to Offer for Sale (in LTFH); Fact that Factorial was involved as potential investor in the market gauging exercise undertaken by Credit Suisse (Seller Broker of L&T), strengthens this inference; Further, fact that it did not have any previous exposure in the securities of LTFH and that it used five different FIIs for its trades in derivatives contracts, makes its trades even more ‘aberrant and suspicious’: SEBI [LSI-84- SEBI-2014-[MUM]]

**SEBI: Clause 49 disclosures independent of Insider Trading Regulations disclosures**

SEBI’s Adjudicating Officer holds Director liable and imposes penalty for non-disclosures of transactions relating to sale of shares under SEBI (Prohibition of Insider Trading) Regulations; Rejects Director’s contention that transaction is inter-se promoters, company made requisite disclosures to stock
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Exchanges under Cl. 49 of listing agreement on quarterly basis and accordingly director was absolved from making disclosure under Insider Trading Regulations; Holds that compliance under Cl. 49 of Listing Agreement is separate and independent of compliance and disclosure requirements under Insider Trading Regulations; Holds that though amended disclosure Form under Insider Trading Regulations was not introduced, Director ought to have made disclosure in existing format at time of sale; Relies on SC’s Ruling in SEBI Vs. Shri Ram Mutual Fund that once contravention of SEBI regulations is established, intention of parties committing such violation becomes totally irrelevant and penalty ought to follow.: SEBI [LSI-88- SEBI-2014-(MUM)]

SEBI: Restrains Gammon Infra CMD from accessing securities market for insider trading violation

SEBI passes ad-interim ex-parte order restraining Gammon Infra CMD for trading in shares based on Unpublished Price Sensitive Information (UPSI); Termination of shareholders agreement for infrastructure projects company is price sensitive information and dealing in shares till such information is disclosed to Stock Exchanges, would amount to insider trading; Grants 21 days to file reply and provides an opportunity for personal hearing.: SEBI [LSI-115- SEBI-2014-(MUM)]

SEBI: SHA termination ‘price sensitive info’; Confirms ban on Gammon Infra’s ex-CMD

SEBI confirms its interim order restraining Abhijit Rajan (‘noticee’), former Chairman & Managing Director of Gammon Infrastructure Projects Ltd. (‘GIPL’) from accessing securities market; Relies on conclusion in interim order, wherein it held that the noticee engaged in insider trading by selling GIPL’s shares on the basis of unpublished price sensitive information, relating to termination of Shareholders’ Agreement (‘SHA’); Rejects noticee’s challenge to interim order’s validity on the ground that pre-decisional hearing was not granted, peruses sec. 11 & 11B of SEBI Act, 1992 (provisions that empower SEBI to pass appropriate directions in the interests of investors/ securities market, pending investigation/ inquiry) and states that “it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing...principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity”; Further rejecting noticee’s contention, states that key element of determining whether or not information is ‘price sensitive information’ is its likely impact and not actual movement of the price of scrip and “information regarding the termination of SHA...was very significant and had all the potential to affect the price of the scrip of GIPL...”; Relies on SC observations in Liberty Oil Mills &Ors. Vs UoI & Ors.and SAT observations in Libord Finance Ltd. Vs. SEBI and Rajiv B. Gandhi &Ors. Vs. SEBI: SEBI [LSI-399- SEBI-2015-(MUM)]

SEBI: Restrains Satyam’s top-management from accessing securities market, directs disgorgement of gains

SEBI prohibits Ramalinga Raju et al (of erstwhile Satyam Computers Services Limited) from dealing, directly or indirectly, in securities market for 14 years; Directs disgorgement of wrongful gains amounting to Rs. 1843 Crores with 12% p.a. simple interest within 45 days.: SEBI [LSI-112- SEBI-2014-(MUM)]

SEBI: Holds Ramalinga Raju’s family as ‘insider’; Directs disgorgement of Rs. 1800 cr unlawful gains

Pursuant to SEBI order dated July 15, 2014 whereby Satyam Computer’s top management was restrained from securities market for deliberately projecting a grossly false picture of Stayam’s financials, directs 10 entities including members of Raju family to disgorge around Rs 1,800 cr of unlawful gains; Directs Mr. B. Ramalinga Raju and Mr. B. Rama Raju to jointly and severally disgorge Rs. 56.16 crores which they had earned by sale/transfer of shares held by them in Satyam Computers;
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Rejects contention that certain family members of Raju family were not insiders, peruses definition of ‘relative’, ‘connected persons’ under PIT Regulations, holds Ramalinga Raju’s mother, brother, son, brother’s wife as ‘deemed to be connected persons’; Also holds related entities namely, Chintalapati Holdings Pvt. Ltd, SRSR Holdings Private Limited & IL&FS Engineering and Construction Company Limited (formerly known as Maytas Infra Limited) as ‘insiders’ holding ‘unpublished price sensitive information’ during the relevant period: SEBI [LSI-723-SEBI-2015-(MUM)]

**SEBI: Cites Facebook mutual friend status to nail ‘insider’, directs unlawful gains disgorgement**

SEBI passes ad-interim ex-parte order, directs impounding of unlawful gains of Rs. 2.22 crores (including interest) made by promoters for trading on unpublished price sensitive information (UPSI) and violating Insider Trading Regulations, 1992; Notes that in Sep. 2012, co. had initiated discussion for slump sale of its software business, executed non-disclosure agreement and also agreed that on its completion, amount would be distributed to shareholders (by way of one-time special dividend/buy back/capital reduction), also observes that corporate announcement was made in Aug. 2013, states that during such period, the information was UPSI; Peruses Insider Trading Regulations, notes that Chairman & MD were ‘connected persons’ and therefore ‘insiders’, further observes that person who traded in co. shares was related/connected to ‘deemed to be connected person’ through mutual friend on Facebook, holds that such person is an ‘insider’; Observes that insiders traded in shares when PSI relating to slump sale and declaration of special dividend was unpublished and made an unlawful gains of Rs. 1.66 crores; Observes that by initiating investigation and quasi-judicial proceedings, promoters/noticees may divert unlawful gains which may result in defeating effective implementation of disgorgement direction, states “non-interference by Regulator at this stage would therefore result in irreparable injury to interests of the securities market and the investors”: SEBI [LSI-937-SEBI-2016-(MUM)]

**SEBI: Price sensitive information 'broad concept', fines Co. for not informing order bagging**

Slams penalty of Rs. 25 lacs on MAN Industries (India) Limited with its Chairman, MD, Executive Director, Company Secretary & Compliance Officer for delay in disseminating price sensitive information (‘PSI’) to Stock Exchange; ‘Bagging of orders’ with value of 90 Million Euro & 112 Million Euro constitutes as PSI in accordance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (‘PIT Regulations’); Notes that PSI is broad concept and two tests need to be applied: (1) Whether information directly or indirectly related to company and (2) Whether information, if published, is likely to materially affect price of securities, irrespective of actual price witnessed post disclosure of information; Compares order size with net sales and turnover of company to determine whether information relating to bagging of order is PSI or not; Delay of 59 days & 7 days in reporting to stock exchanges amounts violation of PIT Regulations; Sending ‘Circular’ to all branches of company informing that ‘Code of Conduct’ for Insider Trading has been amended is not ‘material’ and ‘effective’ for amendment in ‘Code of Conduct’: SEBI [LSI-119-SEBI-2014-(MUM)]

**SEBI: Discharges Reliance Petro from insider trading charges, cites ‘lack of evidence’**

SEBI disposes adjudication proceedings initiated against Reliance Petroinvestments Ltd. (‘Noticee’), observes that when trades were made by Noticee, it did not have access to Unpublished Price Sensitive Information (‘UPSI’, relating to declaration of dividend and merger of IPCL’s merger with Reliance Industries Ltd.) while trading in IPCL scrip, holds that there is no violation of Insider Trading Regulations, 1992; Peruses Investigation Report (‘IR’), announcement copies from BSE websites and NSE Reports, notes that corporate announcements relating to declaration of interim dividend (on March 2, 2007) and IPCL-RIL merger (on March 7, 2007) were made on the respective day with stock exchanges; SEBI
Noteworthy Rulings on Insider Trading Regulation

SEBI: Transferring shares to lender not ownership change; Insider trading regulations not violated

SEBI concludes adjudication proceedings initiated against Noticee and India Infoline Finance Limited (‘lender’), states that charges leveled against Noticee do not stand established; Adjudication proceedings were initiated on the ground that noticees had violated Model Code of Conduct that provides for prevention of Insider Trading & fraudulent trade practices by listed cos.; Holds that ‘transferring’ shares of company from Noticee’s a/c to its lender’ demat a/c and later retransferring in Noticee’s demat a/c does not amount to ‘change in ownership’ of shares and no false market / misleading market is created; Observes that lender (India Infoline Finance Limited - NBFC registered with RBI) had entered into loan agreement with Noticee for providing finance against securities, where shares were taken as ‘security’ and transaction was part of its business & shares were towards ‘margin’; Accepts Lender’s contention that such transaction was done in accordance with RBI guidelines and in compliance of KYC procedures and shares are sold only on repayment default by borrower; Concludes that “the said transaction was purely a loan agreement between the Noticees and did not amount to any fraudulent activity”: SEBI [LSI-248- SEBI-2015-(MUM)]

SEBI: 'Ignorance' of law no excuse, penalizes foreign fund for delayed disclosure

SEBI Adjudicating Officer (AO) penalizes foreign fund to the tune of Rs. 10lakhs for failure to make disclosures to company under Reg. 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992; States even though noticee is a foreign fund, it cannot simply act ignorant of such regulatory requirements; Citing latin maxim ‘Ignorantia juris non excusat’, rules that “if any individual should infringe the law of the country through ignorance or carelessness, he must abide by the consequences of his error”; Rejects noticee’s contention that no action should be taken against it as required disclosures were made immediately after receiving show cause notice; States “timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all... when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay”; Relies on SC observations in SEBI vs. Shri Ram Mutual Fund: SEBI [LSI-227- SEBI-2015-(MUM)]
SEBI: Subsidiary investment write-off, ‘price sensitive’ info; CMD disowning accounting statement unacceptable

SEBI imposes penalty under Insider Trading Regulations, of Rs.15 cr. each on PVP Global Ventures Pvt. Ltd. [‘Noticee 1’, wholly-owned subsidiary of PVP Ventures Ltd. (‘PVP’) and its promoter-director (‘Noticee 2’, who was also the Chairman & Managing Director of PVP); Observes that negative financial results of PVP arising out of write off in the value of investments in equity shares, debentures and advances extended to Noticee 1 for the quarter ended Sept. 2009, was ‘price sensitive information’ held by noticees; Rejects noticees’ contention that such information was not price sensitive as there was only a minor decrease in price of PVP’s shares pursuant to declaration of financial results, holds that “information is price sensitive if it is likely to materially affect the price of the scrip. It is not that the information must affect the price”; Observes that disclosures in audited financial statements were “... very general in nature and not specific which is the fundamental requirement for treating any information as published”; Dismisses Noticee 2’s contention that though he was Chairman & Managing Director of PVP, he was not involved directly in preparing the accounts of the company and was thus, unaware of unpublished information, observes that the instant transaction was “not a routine one but is of significant importance arising out of the changed opinion of the management of PVP about the adequacy of assets held by the subsidiaries. Noticee no.2, who was CMD of PVP, cannot disown knowledge to PSI by simply stating he was not involved in the preparation of accounts”: SEBI [LSI-443-SEBI-2015-(MUM)]

SEBI: Penalizes promoters for ‘repetitive’ non-disclosures under Takeover Code & Insider Trading Regulations

SEBI’s Adjudicating Officer (‘AO’) imposes penalty of Rs. 35 lakhs on promoter group (‘noticees’) of Austral Coke and Projects Ltd. for non-disclosure of change in shareholding under Takeover Code (at 15 instances) & Insider Trading Regulations (2 instances), for the violation being ‘repetitive’ nature; SEBI AO observes that Noticees’ share holding was 65.29%, and majority stake was off-loaded during Nov. 2009 to Jan. 2010, for which Noticees failed to disclose under Reg. 7(1A) of Takeover Code, also observes that one of Noticee’s shareholdings (22.78% shares) was pledged with SICOM which was invoked, and Noticee failed to make disclosure under Insider Trading Regulations; Interprets Reg. 7(1A) of Takeover Regulations, states that provisions are triggered, on satisfaction of two conditions (i) if acquirer has acquired shares / voting rights either under Reg. 11(1) or second provisions to Reg. 11(2) & (ii) such purchase / sale aggregates 2% or more of target company’s share capital; SEBI refers stock exchanges website, observes that Noticees had acquired shares only after Oct. 2008 (before amendment in Takeover Regulations), accordingly concludes that acquisition of shares falls under second proviso to Reg. 11(2) and ultimately falls under Reg. 7(1A) of the Takeover Regulations; With reference to pledge invocation by SICOM, SEBI rejects Noticee’s contention that invocation was made without informing Noticee, holds that “pledge is invoked when conditions of agreement entering into pledge are violated by pledgor” and that the Noticee at the time of offering shares was fully aware of the outcome of violation the agreement; Gives concluding remarks that by non-disclosures of such information, Noticee has deprived investors of important information at relevant time, states that India’s entire securities market stands on disclosure based regime, where ‘accurate’ & ‘timely’ disclosures are fundamental in maintaining securities market’s integrity: SEBI [LSI-483-SEBI-2015-(MUM)]
Noteworthy Rulings on Insider Trading Regulation

SEBI: Impounds Rs 2 cr unlawful gains derived from insider trading; Expedites issue of notice

SEBI impounds unlawful gains of around Rs 2 cr made by third parties (‘suspected entities’) by trading in the scrip of Sabero Organics Gujarat Ltd (‘target co.’) which was being acquired by Coromandel International Ltd (‘acquirer’), based on unpublished price sensitive information (UPSI); Notes that acquisition of Sabero was a price sensitive information, which was passed on by Chairman of acquirer co. and Mr. Murugappan (Chairman of Murugappan Group) who was connected with Chairman of acquirer co; Observes that suspected entities (which included an HUF) shared personal relations with each other and deviated from their usual pattern of trading; Observes that ‘Mr. A. Vellayan and Mr. A.R. Murugappan were sharing personal relationship and in all possibilities communicated the UPSI to Mr. A.R. Murugappan, which was shared to Mr. Gopalkrishnan C”; Holds that, “the funding to Mr. Gopalkrishnan C. (suspected entity) through layered transactions by person connected with the Chairman of Coromandel, prima facie..was based on the knowledge of UPSI...passed on from Mr. A. Vellayan and Mr. A.R. Murugappan”, and directs SEBI to expedite the process of issuing show cause notice against suspected entities: SEBI [LSI-572-SEBI-2015-(MUM)]

SEBI: Directs re-investigation in Sabero insider-trading case, observes inadequate evidence against insider

SEBI directs re-investigation in insider trading matter against 4 suspected entities (‘Noticees’) while trading in the scrip of Sabero Organic Gujarat Ltd (‘the co.’), observes inadequate evidence against the alleged insider passing Unpublished Price Sensitive Information (‘UPSI’); Notes that on May 15, 2011, the co. had held meeting to discuss and negotiate acquisition of its share by another entity (‘Acquirer’) and on May 31, 2011 informed Stock Exchanges about acquisition, states that during such period, the acquisition information was UPSI; Observes that Noticees which included the Chairman of Acquirer had certain personal & financial relationship among them and had made gains, by buying shares of the co. during UPSI period, also notes that Chairman of Acquirer, was privy to UPSI regarding acquisition, thus was covered under the definition of ‘insider’ as per Insider Trading Regulations; However, observes that there were in all 69 persons/entities comprising of the management of the co. & Acquirer, besides their employees and professionals, who were privy to UPSI, 19 suspected entities who traded in the shares of Sabero during the investigation period and of whom only 4 were investigated, notes that there was no material evidence to conclude that none of the other suspected entities could be connected to persons privy to UPSI; Thus, holds that “unless the investigation dwells deeper and brings out the truth in respect of all the entities, many of the perpetrators of the insider trading in this case may remain undetected forever”: SEBI [LSI-1093-SEBI-2016-(MUM)]

SEBI: Listing agreement compliance no saviour against insider trading, based on unpublished financials

SEBI restrains Chairman and Managing Director (‘CMD’) of Ramsarup Industries Ltd. (‘company’) from dealing in securities market for 3-years and directs disgorgement of Rs. 98 lakhs - potential loss avoided by him by violating Insider Trading Regulations; Observes that CMD traded in shares while in possession of unpublished price sensitive information (‘UPSI’) in form of unaudited financial results when trading window was closed and such notice of closure was intimated to directors and designated employees; Rejects CMD’s submission that shares were sold with an intention of complying with Listing Agreement (Cl. 40A) for bringing down promoters shareholding to 75%, holds that “such sale has nothing to do with compliance of Clause 40A and had everything to do with wrongful advantage of UPSI which CMD
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Possessed, leading to the avoidance of potential loss”; Rejects CMD’s contention that he was aware of crystallized financial results only when Finance Dept. forwarded results and share sale was ‘inadvertent’, holds that the top corporate executives are expected to set an example of good behavior and should strictly follow the rules laid down; Further rejects CMD’s submission that shares were sold to help the company by way of extending unsecured loans, states that “it cannot be treated as a mitigating factor and cannot justify or absolve CMD of trading while in possession of UPSI, in violation of provisions of SEBI Act and SEBI PIT Regulations, or the unlawful avoidance of loss made by the Noticee by such sales during the period of prohibition”; Relies on SC ruling in N. Narayanan vs. Adjudicating Officer, SEBI, SAT ruling in Samir Arora Vs. SEBI and Rajiv Gandhi vs. SEBI: SEBI [LSI-657-SEBI-2015-(MUM)]

SEBI: Penalizes Acquirer for non-compliance of Takeover & Insider Trading Regulations, rejects ‘ignorance’ defense

SEBI imposes penalty on acquirer co. (‘Noticee’) for acquiring shares in target company and failing to make requisite disclosures under Takeover Regulations and Insider Trading Regulations; Notes the fact the Noticee was allotted 4.5 Crores equity shares of the target co. upon conversion of convertible warrants, constituting 14.06% of target co.’s issued share capital; Rejects Noticee’s contention that it is a small private limited co. operating through a limited amount of personnel and was not aware such disclosure requirements and that it was under impression that target co. was required to make disclosures to stock exchange, holds “ignorance of law is not an excuse and does not exclude any person from the penalty for the breach of it” (refers to Latin maxim: “Ignorantia juris non excusat’); Observes that failure to make requisite disclosures within prescribed time under the said Regulations has deprived disclosure and dissemination of valuable information at relevant point of time, states that “securities market operates on disclosure-based regime and hence true and timely disclosure of information is an important regulatory tool intended to serve a public purpose”; Relies on SAT ruling in Bindal Synthetics Private Limited V. SEBI, states “the disclosure made under Insider Trading Regulations is not substitute for the disclosure to be made under Takeover Regulations”; Also relies on SAT rulings in Premchand Shah and Others Vs SEBI, Ambaji Papers Pvt. Ltd. Vs Adjudicating Officer, SEBI and SC ruling in SEBI Vs Shriram Mutual Fund: SEBI [LSI-706-SEBI-2015-(MUM)]

SEBI: Directors’ wife with independent income a “dependent”, can’t trade sans pre-clearance

SEBI penalizes director (‘noticee’) for non-compliance of Insider Trading Regulations, wherein director’s wife traded in co. shares (when RBI restrained co. from accepting/renewing public deposits) without obtaining pre-clearance; Rejects noticee’s argument that board of directors discussed and conveyed it’s no objection on such share sale in its meeting, states that neither agenda nor minutes contains such decision, holds that there are prescribed procedures in conducting and convening Board Meetings under company law & secretarial practice, wherein agenda papers are circulated in advance, decisions are recorded and minutes are maintained; States the object of obtaining pre-clearance of trades by directors and their dependents is to ensure that trades in shares of co. in which they are associated are not based on price-sensitive information, notes such prescribed application and undertaking was not made; Explains purpose of Model Code for prevention of insider trading, states that Code monitors and regulates transactions of persons close to co. management, opines that “merely because the company has not defined the term ‘dependent’ in terms of financial limits, it cannot be said that a spouse with independent income can trade without the other spouse who is on the Board obtaining pre-clearance”; Rejects noticee’s contention that share sale is mere ‘technical violation’ and does not warrant any
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penalty, observes that violation was repetitive in nature as noticee’s wife failed to obtain pre-clearance for two transactions, relies on SC ruling in SEBI Vs. Shri Ram Mutual Fund: SEBI [LSI-686-SEBI-2015-(MUM)]

SEBI: Jagran Prakashan’s Compliance Officer violated insider trading norms, orders impounding of gains

SEBI issues ad-interim ex-parte order for impounding of unlawful gains of Rs. 10 crs, jointly and severally, from JagranPrakashan Ltd.’s Company Secretary and Compliance Officer (‘CS’) and his wife for violation of Insider Trading Regulations; Holds CS as ‘insider’ being connected with company and having access to Unpublished Price Sensitive Information (‘UPSI’) in respect of declaration of interim dividend, quarterly financial results and proposed stake-sale of Jagran by its associate co, and treats his wife as “person deemed to be a connected person”; Notes that CS was in possession of Unpublished Price Sensitive Information as he was involved in preparation of agenda proposing interim dividend, board approval and audit committee approval process; Compares CS and his wife’s high trading activity when Jagran’s associate co. traded in its shares, observes substantial matching of buy trades, holds CS and his wife utilized information of share-sale; States that by trading in ‘trading window’, failing to obtain pre-clearance for share-trade and also entering into an opposite transactions within 3-months, CS and his wife have also violated Model Code of Conduct for Prevention of Insider Trading: SEBI [LSI-824-SEBI-2015-(MUM)]

SEBI: Penalizes promoters/connected-persons for non-compliance of multiple SEBI-Regulations; Rejects non-residents shareholders’ exit

SEBI imposes penalty on promoters and ‘connected persons’ (‘Noticees’) for non-compliance of Insider Trading Regulations, Takeover Code and Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market, Regulations (‘PFUTP Regulations’), for trading in the scrip based on ‘price sensitive information’; Observes that the co. had secured work orders of Rs 464.17 crore from three Electricity Boards and prior to making such corporate announcement to the stock exchanges, certain entities (relating to promoters / Chairman and Managing, ‘CMD’) traded in scrip when the CMD was one of the participants in such discussions/meetings; Rejects Noticees’ contention that work order are ‘normal routine business’ orders for any engineering process company, pursues the co. financials and observes these orders are for more than half of previous year’s orders and accounted for nearly half the current year’s increase, opines that orders are not just ‘routine’ and are likely to materially affect scrip price (i.e. price sensitive information); Also notes that CMD through ‘connected’ cos. funded the share purchase, and after share-sale, the proceeds were transferred to promoters, observes that these entities acted as conduit in routing and transferring the funds; Rejects Noticees contention that motive of purchasing shares was to provide an exit route for non-resident shareholders and the bulk deal was carried out for preventing sudden fall of scrip price, observes “CMD is trying to artificially maintain scrip price as he feared that if he purchased the shares directly from NR, the market would get an impression that he was increasing his shareholding in the co.”; Concludes that CMD’s wife and other connected persons/entities are ‘related’ CMD, who have gained out of Insider Trading, and have violated PFUTP Regulations: SEBI [LSI-783-SEBI-2015-(MUM)]
SEBI: Directs impounding of Rs 1.60cr unlawful gains by Bank of Rajasthan’s shareholders prior to merger-announcement

SEBI passes ad-interim ex-parte order, directs impounding of unlawful gains of Rs. 1.60 crores from ‘connected persons’ / ‘insiders’ (dominant shareholder of Bank of Rajasthan’s (‘BoR’) and their relatives) for insider trading in BoR shares, prior to announcement of merger with ICICI Bank Ltd. (‘ICICI’); Notes that agreement relating to merger was executed on May 18, 2010 between BoR’s dominant shareholders and ICICI and on same day ICICI’s board considered and approved the amalgamation; Peruses Insider Trading Regulations, observes that information relating to such agreement execution is deemed to be ‘price sensitive information’ (‘PSI’) and is Unpublished PSI till the same is made public, further observes that BoR’s director involved in negotiations with ICICI is ‘connected person’ and ‘insider’ and his relatives are ‘deemed to be a connected person’; Observes that one of the ‘deemed to be a connected persons’ received money from a company (controlled by BoR) for purchasing BoR shares during existence of UPSI, states that such person is an ‘insider’ under the Regulations as he had access to UPSI; Observes that the insider was facilitated by information and funds by ‘connected persons’ and ‘deemed to be connected persons’, holds “parties connived with each other in furtherance of the common intention of indulging in the scheme of Insider Trading and thereby deriving undue profits, it is pertinent to make each of these 7 persons/entities, jointly and severally, liable for the undue profits made by Rohit by trading in the scrip of BoR on the basis of UPSI”; States that non-interference by Regulator at this stage would result in irreparable injury to interests of securities market and investors:

SEBI [LSI-898-SEBI-2016-(MUM)]

SEBI: Penalizes promoter-director for non-compliance of Insider Trading Regulations; Rules on directors’ continual disclosures

SEBI penalizes co.’s promoter-director (‘Noticee’) for non-compliance of Reg. 13(4) of Insider Trading Regulations, 1992, holds that director has an obligation to make continual disclosure only under sub-regulation (4) and not under sub-regulation (3) of Reg. 13; Notes that Noticee had pledged his entire shareholding (1,53,387 shares, constituting 6.55%) for availing financial facility and on invocation, the shareholding was Nil, and the Noticee failed to make requisite disclosures under Insider Trading Regulations; SEBI peruses Reg. 13(3), observes that disclosure is required to made by ‘any person’ which include all persons including director or officer, however states “Since Directors and officers have been singled out as a class apart from other persons and treated differently under Regulation 13(4) of PIT Regulations, 1992 with more onerous responsibilities, it has to be assumed that by necessary implications they are excluded from the requirements of Reg. 13(3)”; States that directors holds an important position in senior management and are responsible for the policy making and control of the business and are to be treated differently as more onerous responsibility has been cast on them in respect of continual disclosures, observes “separate provision for continual disclosure by directors and officer of listed co. have been carved out under Regulation 13(4)”; Peruses Reg. 13(3) and (4) together, observes “it becomes clear that disclosure requirements are more detailed on the Directors under sub-regulation (4) than for those governed under sub-regulation (3)” and opines “directors are not only required to disclose on continuous basis change of 1% in total shareholding or voting rights as against 2% in sub-regulation (3) but also required to disclose change relating to value or number of shares if the change exceeds the limit stipulated under sub-regulation (4) of Reg. 13”: SEBI [LSI-851-SEBI-2015-(MUM)]
SEBI issues ad-interim ex-parte order for impounding of unlawful gains of Rs. 2.04 crs from Polaris Software Lab’s Chairman & Managing Director (CMD) and its former Chief Financial Officer (CFO), for violation of Insider Trading Regulations; Observes that CMD and CFO had traded Polaris shares during the possession of Unpublished Price Sensitive Information ('UPSI') - pertaining to declaration of quarterly financial results and commencement of real estate activities; Peruses Regulations, observes that CMD and CFO being ‘connected person’ having access to UPSI, and are ‘insiders’ under Insider Trading Regulations; Peruses e-mail communication between CMD, CFO and Merchant Banker relating to demerger Polaris’ non-core assets, holds that such communication was internal communication and prima-facie UPSI and trading on such information by insiders amounts to violation of Regulations; Refers to the demat statements, observes that CMD and CFO made share purchase prior to Polaris’ Board Meeting when in possession of UPSI, and have also failed to make requisite disclosures to the co. for such acquisition under Regulations: SEBI: SEBI [LSI-837-SEBI-2015-(MUM)]

SEBI: Penalizes promoters for shirking ‘responsibility’, non-disclosure of individual shareholding increase

SEBI penalizes target co.’s promoters (‘Noticees’) for non-compliance of Takeover Code (1997 and 2011) and Insider Trading Regulations, 1992 on several occasions in the inter-se acquisition / transfer of shares; Peruses Reg. 3(3) of Takeover Regulations, 2011 (requiring acquirer to make public announcement, if acquisition exceeds 25% or more of voting rights), holds that Takeover Code makes it categorically clear that even an individual acquirer is liable to make public offer, in case of inter-se share transfer, if individual shareholding increases above threshold, further states “by the same logic, it follows that an acquirer/ seller is also liable to make disclosures for his own acquisitions/ sale, as applicable, under Reg. 29(2) of Takeover Regulations, 2011, if such acquisition/disposal represents 2% or more of shares or voting rights”; Peruses Reg. 29(3) of Takeover Regulations, 2011, states “merely because Regulation does not specifically refer to disclosure within 2 working days of ‘disposal of shares’, it does not imply that there is no time limit for disclosure of disposal representing 2% or more of shares/voting rights in target co., although there is requirement of making such disclosure under Reg. 29(2)”, points out that intent of legislature was that even disposal of shares representing 2% or more of shares/voting rights, was also required to be disclosed to target co. and stock exchange within 2 working days of disposal; Rejects Noticees contention that the violations have neither caused any loss to any investor nor adversely affected shareholders / securities market, as promoter group’ shareholding has remained same, states that main objective of Takeover Code (1997 & 2011) is to afford fair treatment for shareholders who are affected by change in control, holds “correct and timely disclosures are also an essential part of proper functioning of securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, cornerstone of both Takeover Regulations and PIT Regulations is investor protection”; States that Noticees being co. promoters, they had greater responsibility to ensure compliance with applicable regulations, and, ought to have put in place appropriate levels of accountability and checks and balances for ensuring that documents dispatched by Noticees were received by addressee(s) within timeframe for compliance, points out that “as the Noticees have not ensured receipt of documents at recipients end within timeframe provided under Takeover & PIT Regulations, there was delay in dissemination of information to the general investors”: SEBI [LSI-934-SEBI-2015-(MUM)]
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SEBI: Bans promoters from securities market for wrong disclosures, variance between audited-unaudited results

SEBI restrains Yashraj Containeurs Ltd. (Listed Co., ‘YCL’), its executive director and Vasparr Shelter Ltd. ('VSL') (collectively referred to as ‘Noticees’) from accessing securities market for 5 years for violating SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market), Regulations and Insider Trading Regulations; Notes that YCL’s executive director and his wife held entire share capital of VSL and therefore VSL falls under ‘promoter’s group’, observes that YCL has failed to make such disclosure under Cl. 35/41 of Listing Agreement relating to ‘promoters’ and ‘promoters’ shareholding'; Observes that there was huge variance between YCL’s unaudited quarterly results and audited annual results for FY 2005-06 and YCL has failed to furnish adequate reasons/justifications for the said variance to BSE; Also observes that several positive corporate announcements were clubbed and then disclosed to stock exchanges under Listing Agreement, during which stock price increased from Rs. 37.25 to Rs. 98.60 in 44 days; Notes that Noticees traded in YCL’s shares during the period of non-disclosure to stock exchanges, holds “the acts of the noticees created false and misleading appearance of trading in the shares of YCL. Such acts and omissions apart from being non-compliance of Cl. 35 & 41 are clearly part of a fraudulent device or artifice under PFUTP Regulations”; Holds that non-disclosure of shareholding as part of promoter’s group, huge unjustified variance between unaudited quarterly results and audited annual results, failure to furnish adequate reasons/justifications for variance and clubbing of many positive corporate announcements, are ‘material’ and ‘price sensitive information’ and trading of shares on such unpublished information amounts to insider trading: SEBI [LSI-922- SEBI-2016-(MUM)]

SEBI: Shareholding increase beyond threshold post-merger requires disclosures under Takeover Code/Insider Trading Regulations

SEBI penalizes co. promoter (‘Noticee’) for failing to make timely disclosures under Takeover Code and Insider Trading Regulations pertaining to his acquisition/sale of shares in co.; Notes that noticee was allotted 73,10,780 shares pursuant to merger scheme, resulting in shareholding increase to 9.81 % stake, which required disclosures under the said Regulations; Observes that such disclosure under the Regulations was made with a delay of more than 7 months; SEBI observes that Noticee being co. promoter, timely disclosures by him under relevant Regulations were of significant importance from shareholders’ perspective, states “purpose of these disclosures is to bring about transparency in transactions and assist Regulator to effectively monitor the transactions in the securities market”: SEBI [LSI-966- SEBI-2015-(MUM)]

SEBI: Impounds unlawful gains made by Gammon CMD on shareholders agreement termination info

SEBI in ad-interim ex-parte order, directs impounding of unlawful gains of Rs. 1.44 crores (including interest) made by Gammon Infrastructure’s Chairman & MD (‘CMD’) & another entity – Consolidated Infrastructure Company Private Limited (‘CICPL’); Notes that CMD and CICPL had traded in Gammon Infra’s scrip during the period when information regarding termination of shareholders agreement with another co. was not published, holds that such information was price sensitive information; Notes that CMD who had participated in the Board Meeting in which termination agreement was discussed had divulged Unpublished Price Sensitive Information (‘UPSI’) to CICPL, and also notes that CICPL had acquired certain properties from CMD, thus, holds that both CMD & CICPL were ‘insiders’ under Insider Trading Regulations; Holds that since CMD and CICPL connived with each other in furtherance of common intention of indulging in scheme of Insider Trading and thereby averting losses, they and
CICPL’s directors were jointly and severally, liable for undue profits made by them by trading in the scrip of Gammon Infra on basis of UPSI: SEBI [LSI-1011-SEBI-2016-(MUM)]

SEBI: ITC’s HR head can’t instruct directors, hence not ‘officer’ for Insider Trading compliance

SEBI disposes of Show Cause Notice against ITC Ltd’s Head-Human Resource & Competency Development (‘Noticee’), holds that the Noticee is not liable for violation of Reg. 13(4) read with Reg. 13(5) of Insider Trading Regulations; Notes that Noticee’s primary duties include recruitment of personnel for Trade Marketing & Distribution, recruitment profile, qualifications and terms of employment of new employees, dealing with appraisals, promotions and processing of exits and maintenance of reports/records; Peruses ITC’s hierarchy, notes that it is a multi-business conglomerate with 5 businesses, 9 corporate functions each and structural governance consisting of board of directors, executive chairman, executive director, divisional management committee, divisional CEO, etc.; Peruses Reg. 2 (g) and Sec. 2(30), Cos. Act, 1956 (both relating to definition of ‘officer’), holds “plain reading of the said definition clearly shows that apart from a director, manager or secretary, any person who is in a position to direct or instruct the Board of Directors is included within the ambit of the said definition”; Thus, holds that noticee being Head- HR & Competency Development cannot be termed as ‘officer’ as she was “holding a position which is capable of giving directions / instructions to her subordinates only and not to Board of Directors or any of the directors of the company”; Relies on SAT ruling in Sundaram Finance Ltd. Vs SEBI [LSI-1009-SEBI-2016-(MUM)]

SEBI: ITC executive’s ‘miniscule’ share trading, though non-serious attracts Insider Trading Regulations

SEBI disposes adjudication proceedings against ITC’s Vice President (Hotel Division) (‘Noticee’) for non-compliance of Insider Trading Regulations and Model Code of Conduct; Notes that Noticee (‘designated employee’ under the Regulations/Code) entered into opposite transactions of 493 shares of ITC Ltd. within period of 6 months, for which ITC levied penalty of Rs. 2,521 (amount equal to profit made in the transaction); Observes that Noticee has also undergone debarment from buying or selling ITC’s shares for 6 months, rules that penalty imposed by ITC on the Noticee commensurates with the violations; Holds that Noticee has violated the provisions, however notes extant shareholding of the Noticee (1,42,549 shares of ITC), and states “quantity of 493 shares is miniscule and it seems highly improbable that Noticee was privy to any price sensitive information relating to the Company, which could have motivated him to buy and sell 493 shares of the Company...”; However rejects Noticee’s contention that only company (and not SEBI) is empowered to penalize or prosecute any person/entity for trading in the securities for contravention of Model Code of Conduct, holds “such violation by any director/employee or ‘designated employee’ can be independently dealt with by SEBI as a violation of Reg. 12(1) of Insider Trading Regulations”; Relies on SAT ruling in Manmohan Shetty Vs SEBI, wherein it was held that company’s Code of conduct for prevention of insider trading as mandated by Regulations for all practical purposes is to be treated as a part of the Regulations and any violation of the Code can be dealt with by SEBI as violation of Regulations: SEBI [LSI-1160-SEBI-2016-(MUM)]

SEBI: Penalizes NBFC for delayed disclosures under Insider Trading Reg. & Takeover Code in disposing-off collateral security

SEBI penalizes RBI registered non-deposit taking NBFC for disposing shares (12.54% shareholding of listed co.) and making delayed disclosures under Takeover Code and Insider Trading Regulations; Notes that loan agreement was executed between Noticee and borrowing co. and listed co.’s shares were taken as collateral security against extension of loan facility in normal course of business, and the shares were disposed by ‘off- market transfers’; Rejects Noticee’s contention that they did not have beneficial
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interest in shares as it was held as collateral security, peruses reporting made to BSE under Listing Agreement, observes that there was change in beneficial ownership; Peruses Takeover Code and Insider Trading Regulations, observes that disclosure requirements under Code/Regulations is triggered when minimum 5% of co. shares are acquired by an entity, holds that Noticee has failed to make necessary disclosures; Observes that Noticee, being in business of lending against collateral, is expected to be aware of regulatory disclosure requirements under SEBI Regulations, holds “Noticee cannot escape the liability by stating ignorance of the regulatory requirements”; Relies on SAT ruling in Milan Mahendra Securities Pvt. Ltd. Vs SEBI wherein it was held that purpose of disclosures is to bring about transparency in transactions and assist Regulator to effectively monitor the transactions in the market: SEBI [LSI-1055-SEBI-2015-(CHE)]

SEBI: Penalizes promoter for Insider Trading Regulations’ non-compliance for belated disclosures of ‘bulk deals’

SEBI penalizes promoter (‘Noticee’) for acquiring 1,00,000 shares of listed co. on two occasions (each constituting acquisition of 0.50% shares) and making belated disclosures under Insider Trading Regulations, 1992 (Reg. 13(4) and Reg. 13(5)); Rejects Noticee’s contention that disclosures were not made under the Regulations due to lack of knowledge, holds “it is a settled principle of law that ignorance of law is no excuse”; Observes that disclosure made under the Regulations by promoter is made public only through Stock Exchange, wherein investing public is not deprived of any vital information, states “delay for making disclosures on 2 occasions was for 1394 days and 1392 days which cannot be ignored and demands imposition of appropriate monetary penalty”; Notes that acquisition of such shares along with Persons Acting in Concert does require compliance of Takeover Code, as such acquisition was ‘bulk deal’ in accordance with Takeover Code and SEBI Circular: SEBI [LSI-1046-SEBI-2015-(MUM)]

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