



**Objective of disclosures under Takeover Code, Insider Trading Regulations & Listing Agreement are independent, the compliance cannot be substituted for each other. SEBI penalizes select promoters for Takeover Code non-compliance.**

### Case Details:

1. In the matter of Orosil Smiths India Limited
2. Order passed by Mr. Mohammad Atif Alvi, Adjudicating Officer, SEBI
3. Order dated September 8, 2015

### Facts:

1. Orosil Smiths India Ltd. ('company'), company listed on BSE had filed the shareholding pattern with the stock exchange. Based on such filing and disclosures, SEBI examined the same and observed that the shareholding of the certain company promoter had increased without the compliance of SEBI Regulations;
2. SEBI also observed that the promoter group had acquired additional shares beyond threshold limit prescribed under Takeover Regulation, 1997 ('Takeover Regulation') without making mandatory disclosure under Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulation, to the company and BSE within the stipulated time period;
3. Accordingly, SEBI issued a Show Cause Notice to the select company promoters ('Noticees') in June 2014 and appointed the Adjudication Officer;
4. From the transaction details of the promoter group/ individual pattern submitted by the company, SEBI noted that the promoter's shareholding was at 57.88% in September, 2008 and after a series of acquisitions and some sales made by the promoters, the cumulative promoter shareholding increased to 69.89% in September, 2010. SEBI observed that promoters had not produced any evidence w.r.t the disclosures made under Reg. 7 (1A) of Takeover Regulation.

### Final Decision and its basis:

1. SEBI held that as the Noticees were part of a homogenous group, (i.e., the promoter group) which was acting in concert and had purchased shares aggregating more than 2% of the share capital of Company during the period 2009- 2010;
2. SEBI rejected Noticee's contention that the alleged offenses related to Oct. 2008 and Sep. 2010 and that the Takeover Regulation authorized the company to purchase shares upto 5% in 'every financial year' and purchase of shares in more than one financial year cannot be taken together for deciding the issue whether 5% bracket has been breached or not;
3. SEBI clarified that Reg. 7 (1A) relates to disclosure to be made in sale/ purchase aggregating 2% or more in the share capital and stated that "the sole purpose of mandatory disclosure under Takeover regulation had been unequivocally to bring more transparency by dissemination of complete information to the investors at large by the individual buyer/seller of shares as well without any delay."
4. SEBI also rejected the Noticee's contention that they had made disclosures about their purchase of shares Insider Trading Regulations and the disclosures of change in shareholding made under Insider Trading Regulations also served the purpose and object of disclosures under Takeover Regulation;
5. SEBI held that there is lot of difference between disclosure obligation under Insider Trading Regulations and Takeover Regulations. Under Insider Trading Regulations, the disclosure was to be made to the company which in turn was obligated to make the disclosure on the stock exchanges, whereas



Takeover Regulations, the disclosure had to be made to the stock exchanges directly. SEBI held that Noticees had a legal duty of making the disclosures under both the Regulations and by not making mandatory disclosures under one they could not escape their liability;

6. SEBI also rejected noticee's contention that company periodically informed the stock exchanges about change of promoter holdings through filing of quarterly shareholding pattern under Clause 35 of the Listing Agreement and annual disclosures under Takeover Regulation, and held that the Noticees cannot in anyway absolve themselves from complying with the statutory obligation of making disclosures under Takeover Regulations. Accordingly, SEBI imposed the penalty of Rs. 20 lacks to be paid by Noticees jointly and severally.

**CLB strikes down clause in Articles of Association conferring wide & discretionary powers of allotment, restores shareholding, relies on SC's ruling in Dale & Carrington Investment (P) Ltd.**

**Case Details:**

1. In the matter of Bhiku Ram Jain and Ors versus Vs Bharat Foam Udyog (Pvt.)Ltd.
2. Order passed by Mr. B.S.V. Prakash Kumar (Judicial Member), CLB New Delhi
3. Order dated June 10, 2015.

**Facts:**

1. With the support of the family members, two real brothers started a partnership firm which was subsequently, incorporated a company, wherein one brother held 32.72% shareholding and the remaining (67.28%) was held by the other brother (other brother is referred to as 'managing group', since, management was in his control);
2. The managing group increased the authorized share capital of co. without giving any EGM notice to petitioners. Thereafter, a Board

Meeting was conducted wherein resolution was passed for allotting 908 shares out of the increased capital to the managing group. This resulted in reduction of petitioners shareholding to 30.85%;

3. Aggrieved by such allotment of shares, petitioners filed a Sec 397/398 petition before CLB contending that such an act was not only in violation of Companies Act, but also was oppressive to them. Managing group contended that vide Article 7 of the Articles of Association (AoA), they had blanket power to allot shares as they think fit.

**Final Decision and its basis:**

1. With respect to Article 7 of AoA, CLB held that it is no doubt that right of allotment is accrued to the directors under the particular Article, but since it is a family company running on partnership line, the Board of Directors are not at liberty to change the shareholding pattern at the wish of the management in control;
2. CLB pointed out that in India, most of businesses are run by families, and observed that such family business are set up to get some Govt. benefit and the rights in family property are governed by Hindu Succession Act. CLB observed that, though it does not resort to Hindu Succession Act, it is necessary to take into consideration the family relations and arrangements and needs to be decided on partnership lines;
3. CLB relied on Apex Court's ruling in Dale & Carrington Investment (P) Ltd Vs P. K. Prathapan [(2004) 54 SCL 601 (SC)], and held that though Articles of Association provide for an absolute power to Directors, it cannot be said directors had absolute freedom in management of company affairs. It observed that private companies are closely held cos., i.e. the shares were held within the members of the company which was akin to partnerships where partners owe a duty to act with utmost good faith



towards each other. CLB held that the proportionate right of the other family members cannot be carved out by provisions in the Article;

4. CLB observed that in AoA, the Directors have absolute right to make allotment, however noted that there was no provision wherein the Board of Directors have right to make disproportionate allotments to the shareholdings already existing in the company. Accordingly, CLB held that to beat one section of shareholders, the board of directors of the company cannot take a route of preferential basis and allot shares disproportionately;
5. CLB termed the share allotment as 'oppressive' and set it aside the same, and accordingly, directed board of directors to restore earlier shareholding pattern.

**Note:**

1. The Article is compilation of noteworthy and impactful orders or judgments in Corporate Laws passed by Courts /Tribunals in recent past;
2. Authors feels that these Orders / judgment have very significant impact in day to day working of CS and urges every Student / Member (either in Employment or Practice) to go through the same;
3. Members / Students, who are interested in obtaining a copy of order / judgment can contact the author at [acsgauravpingle@gmail.com](mailto:acsgauravpingle@gmail.com)
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