



Case Study 1: Wipro's Geography Head termed as "Officer" under Insider Trading Regulations, SEBI levies fine of Rs. 5,00,000/- for non-disclosure: SEBI

Case Details:

1. In respect of Rajat Mathur in matter of Wipro Limited
2. Order passed by Mr. A.Sunil Kumar, SEBI, Adjudicating Officer
3. Order dated August 13, 2014

Facts:

- 1) SEBI conducted examination into irregularity in trading in shares of Wipro Ltd. for violation of SEBI Act and various Rules / Regulations made there under;
- 2) SEBI observed that Mr. Rajat Mathur ('Noticee'), one of designated employees had violated provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 ['PIT Regulations'].
- 3) Noticee had traded in scrip and sold 8,000 Equity Shares [as 3,000 Equity Shares on Day 1, 3,000 Equity Shares on Day 2 and 2,000 Equity Shares on Day 3] and resulted in change in shareholding by more than Rs. 5 lakh in value on three days;
- 4) Questions before SEBI, Adjudicating Officer:
 - (a) Whether Noticee had violated provisions of Reg. 13(4) read with 13(5) of PIT Regulations?
 - (b) Does violation, if any, attract monetary penalty?
 - (c) If so, what would be monetary penalty that can be imposed taking into consideration factors mentioned in Sec. 15J of SEBI Act, 1992?

Basis of Verdict & the Verdict:

- 1) SEBI, Adjudicating Officer observed that requirement of disclosure under Reg. 13(4) read with 13(5) of PIT Regulations is cast upon "Any person who is a director OR Officer of a company" to make disclosure to company and to Stock Exchange ('SE').
- 2) Noticee is 'Designated Employee' of

company and reports to CEO who is P&L owner and has SBU heads for various vertical segments (like manufacturing, telecom, energy and utilities etc) who are P&L owners under him.

- 3) Other reportees of CEO are service line heads who are responsible for practice building, geography heads who are responsible for sales and building country operations and functional heads.
- 4) SEBI, Adjudicating Officer observed that Noticee is occupying position of Geography Head who is responsible for sales and building country operations across Asia Pacific, Africa & Latin America and his major role is to get large local clients for Wipro through sales team in counties of operation.
- 5) By Relying on SAT in Sundaram Finance Limited Vs SEBI; SEBI, Adjudicating Officer observed that "...A reading of aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'officer' as distinct from a mere employee is a person who has the power of directing any person or persons to do anything whereas an employee is one who only obeys."
- 6) Along with above SAT judgment, SEBI – Adjudicating Officer also relied on letter / clarification of Department of Company Affairs (now, "MCA") and held that Noticee is holding senior position of responsibility and he has authority to give directions to other employees and concluded that Noticee is an "Officer" under PIT Regulations.
- 7) After considering various factors mentioned



in Sec. 15J of SEBI Act, 1992, SEBI – Adjudicating Officer levied monetary penalty of Rs. 5 Lacs on the Noticee.

Case Study 2: Rectification of the Member's Register is not an appropriate remedy for 'clerical errors' in Form-2: Company Law Board, Mumbai Bench

Case Details:

1. In matter of Badve Engineering Limited
2. Order passed by Shri. A.K. Tripathi, CLB Member (Judicial)
3. Order dated May 28, 2014.

Facts:

- 1) Board of Directors allotted 1,400 Equity Shares of Rs. 10/- at premium of Rs. 4,990/- per share but the Form 2 (Return of Allotment filed under Companies Act, 1956, now PAS–3 under Companies Act, 2013) was filed for allotment of 7,00,000 Equity Shares of Rs. 10/- (instead of 1,400 Equity Shares). E-Form was approved by the Registrar of Companies ('RoC');
- 2) Subsequently, Board of Directors allotted 18,600 Equity Shares of Rs. 10/- at premium of Rs. 4,990/- per share but the Form 2 (Return of Allotment filed under Companies Act, 1956, now PAS–3 under Companies Act, 2013) was filed as 93,00,000 Equity Shares of Rs. 10/- (instead of 18,600 Equity Shares). E-Form was approved by the RoC;
- 3) Company approached MCA for rectification of Form 2 but MCA directed to take up the matter with RoC and RoC stated that it has no power to correct Form 2 and suggested to approach CLB and get requisite order.

Basis of Verdict & the Verdict:

- 1) After considering the comments of Regional Director and RoC, CLB stated that though errors have been committed by clerks of the company, such wrong filing of Forms is not due to inadvertence and are bonafide;
- 2) CLB stated that it was difficult to believe that such major mistakes cannot be repeated one

after the other and observed that these are serious lapses on part of Company, Company Officers, Professionals who have certified the Forms, Statutory Auditor who has issued Auditors Report;

- 3) CLB also observed that Company had made requisite changes in Annual Return when matter was pending before CLB;
- 4) CLB observed that Company cannot change / reduce its paid share capital without the compliance of procedure of Reduction of Share Capital under Section 100 of Companies Act, 1956 and without seeking confirmation of High Court's confirmation;
- 5) CLB made concluding remarks by stating that petition is malafide, collusive and made with oblique motives and accordingly rejects the petition. Directs RoC to take action against the Officer(s) in default, responsible for such deeds. CLB also sent copy of the Order to Director (Inspection) MCA, New Delhi and SEBI for information / necessary action.

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. Analysis of the Order is based on the Order passed by Court / Tribunal and extract of the same is not reproduced in the Article;
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