



Disclosure Obligation under Regulation 8(3) of Takeover Code, 1997 is 'continual obligation' and 'conditional obligation'. Disclosure ought not to be made only in change in shareholding:

Case Details:

1. In the matter of Inland Printers Ltd. Vs SEBI.
2. Order passed by Justice JP Devadhar, Presiding Officer and Jog Singh, Member
3. Order dated October 20, 2015,
4. [2015] 64 taxmann.com 208 (SAT - Mumbai)

Facts:

1. Inland Printers Ltd. ('Appellant Co.') is a company listed on stock exchanges and the trading in the shares of the said company were suspended by BSE due to non-compliance of various clauses in Listing Agreement and for non-payment of listing fees. Appellant Co. made disclosures under Reg. 8(3) for FYs ended 1998 to 2011 and also complied with various requirements of listing agreement.
2. Taking into account the compliance with all the requirements of Listing Agreements and also Takeover Code requirements, BSE suspended the trading of securities of Appellant Co. in November 2012;
3. In March 2013, Acquirer entered into Share Purchase Agreement ('SPA') with Appellant Co.'s promoters for acquiring shares of Appellant Co. Since proposed acquisition was in excess of the prescribed threshold, Acquirer made a Public Announcement for and on successful completion of Open Offer, shares were transferred to Acquirer;
4. SEBI imposed penalty on Appellant for failing to make disclosures under Reg. 8(3) of Takeover Code, 1997 for FYs ending 2002 to 2011;s
5. On appeal to SAT, Appellant contended that

breach flows from a bona fide belief that it was liable to disclose under Reg. 8(3) only when information regarding change in shareholding was received under Reg. 8(1) & 8(2), therefore, the Adjudicating Officer was not justified in imposing penalty on the appellant.

Final Decision and its basis:

1. SAT perused Reg. 8(1) and 8(2) of Takeover Code, and observed that there is an obligation cast on persons holding shares of target co. in excess of prescribed limits and by promoters/persons holding control over co. to make annual disclosures regarding their shareholding in the target co. to the target co. within time stipulated therein. Reg. 8(3) deals with obligation cast on Target Co. to make annual disclosures to stock exchanges in which the shares are listed within the time stipulated therein.
2. SAT noted that obligation is cast on co. to make disclosure under Reg. 8(3) as the yearly disclosure to be made within 30 days of each FY and disclosure is also required to be made at each record date for the purposes of dividend;
3. SAT observed that obligation to make disclosure under Reg. 8(3) is not dependent on yearly disclosures to be made by shareholders/promoters under Reg. 8(1) and 8(2), as Reg. 8(3) contemplates multiple disclosures (yearly and on happening of event). SAT also observed that if shareholders/promoters/company fail to make disclosures under Reg. 8(1), 8(2) and 8(3), then they are liable for penal action u/s 15A(b) of SEBI Act;
4. SAT perused the format for making disclosures under Reg. 8(3), wherein company is required to give details of shareholding/voting rights as on 31st March



of current and previous FY and changes if any. Accordingly, SAT held that where there is no change in shareholding of persons/promoters referred to in Reg. 8(1) and 8(2), the company is required to make annual disclosures to the stock exchanges by disclosing the existing shareholding as per the format;

5. SAT held that when Reg. 8(3) specifically requires that yearly disclosures should be made by the co. to stock exchanges, it would not be proper to hold that under Reg. 8(3) disclosures have to be made only if there is change in shareholding of the persons/promoters set out under Reg. 8(1) and 8(2). SAT pointed out that obligation to make yearly disclosures is a 'continual obligation' and not a 'conditional obligation';
6. SAT perused the Reg. 8(3), noted the mention of the expression 'the changes, if any' and held that not merely the shareholding as on the last day of the FY but also changes if any between the current and previous FY has to be disclosed.

“In Cos. Act, 2013 there is no provision for rescheduling of deposits, it has all been done away with, and 'rescheduling of deposits' is a history now”

Case Details:

1. In the matter of Unitech Ltd., In re,
2. Order passed by Mr. B.S.V. Prakash Kumar, Judicial Member,
3. Order dated May 22, 2015,
4. [2015] 57 taxmann.com 423 (CLB - New Delhi)

Facts:

1. Unitech Ltd. ('Company') filed an application u/s 74(2) of Cos. Act, 2013 for seeking extension of time for payment to

deposit-holders after maturity. On March 31, 2014, Company had outstanding dues of Rs. 241.123 crores towards principal and interest outstanding to Bank and Financial Institutions.

2. Company submitted that it was a going concern and had all intentions to profitably and effectively run the company and to pay to its depositors. It further submitted that it had been repaying principal sum alongwith agreed rate of interest regularly without delay since May, 2009.
3. Company submitted that it had deployed funds in development of its projects, etc. and submitted that it will repay outstanding dues within 1 year or from date on which such payments are due, whichever is earlier or may approach Tribunal for re-schedulement;
4. However, several depositors appeared before CLB and complained that despite making several requests and their fixed deposits having matured, they have not been paid their dues;

Final Decision and its basis:

1. CLB observed that company has defaulted in repaying deposits that are already matured despite company making profits. CLB stated that Cos. Act, 2013 has given a mandate repayment of all deposits collected within the ambit of repealed Cos. Act, 1956 on or before April 1, 2015, whether the deposits are matured or premature;
2. CLB noted that there are many complaints from depositors, and also observed that company has not even cleared the deposits already matured, which the company ought to repay to the depositors as agreed by the company. CLB observed that the company has failed to clear the cases of matured fixed deposits and has not made any serious



efforts in clearing the deposits already matured long before;

3. CLB stated that Cos. Act, 2013 there is no provision for reschedule of deposits, it has all been done away with, and 'rescheduling of deposits' is a history now;
4. CLB stated that "company knows that it entered into an agreement with non-shareholders (depositors), collected money, made use of somebody else money for its own gain and the company must be diligent in repaying money to the depositors, whereas the depositors are not concerned with cos. projections";
5. CLB granted 30 days time to clear all matured deposits alongwith interest accrued and formed 'Hardship Committee' headed by CLB, Secretary for monitoring the process. Accordingly, CLB directed the company to pay deposits as per order of maturity.

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 / gp@csgauravpingle.com
4. Views expressed / Analysis prepared in the Article are personal and are not binding on Pune Chapter of ICSI. But, the same should not be construed as legal / professional advice/opinion.

