



SEBI: ITC's Human Research Head not 'officer', therefore compliance of Insider Trading Regulations is unwarranted, disposes show cause notice:

Case Details:

1. In respect of Ms. Chandana Ghosh, in the matter of ITC Limited
2. Order passed by D. Sura Reddy, SEBI – General Manager & Adjudicating Officer,
3. LSI-1009-SEBI-2016-(MUM)

Facts:

1. In Nov. 29, 2013, SEBI had issued Show Cause Notice to Ms. Chandana Ghosh ('Noticee'), a 'Manager' in Human resources function of Trade Marketing and Distribution vertical of Tobacco Division of ITC Ltd. alleging violation of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations');
2. Show Cause Notice alleged that in July, 2013, the Noticee had sold 10,000 shares worth Rs. 35,37,078/- and being an 'officer' of company, and the Noticee was under an obligation to disclose such change in shareholding [as required under Reg. 13 (4) read with Reg. 13 (5)] to the company and stock exchange. SEBI observed such non-compliance and levied penalty;
3. On Appeal, SAT [vide order dated Oct. 9, 2015] set aside SEBI's order and restored the matter to SEBI, Adjudication Officer for passing of the fresh order on merits;
4. During hearing before SEBI, Noticee stated that she was never in possession of any Unpublished Price Sensitive Information ('UPSI') about ITC and also contended that she was neither a director nor an 'officer' of company within the meaning of Reg. 13(4), 2(g) of the PIT Regulations read with Sec. 2(30) of Cos. Act, 1956, along with definition of 'Manager'/ 'Secretary' under provisions of Cos. Act, 1956;
5. Noticee submitted that she had inadvertently

referred to her position in company as a 'Manager' but her designation was not that of a manager, rather persons internally were given the nomenclature of 'manager'. She submitted that there were 65 personnel in the co. who were at the same level and 42 personnel who were above her in the hierarchy;

Final Decision and its basis:

1. SEBI noted that ITC was a multi-business Indian Conglomerate with 5 businesses (i.e. FMCG, Hotels, Paperboards, Specialty Papers & Packaging and Agri-Business) and 9 Corporate Functions (i.e. Planning & Treasury, Accounting, Legal, Secretarial, Employees Health Scheme, Human Resources, Communications, Internal Audit and Information technology). SEBI also noted that the Noticee held the position of head of 'Competency Development and Human Resource' function of 'Trade Marketing and Distribution' vertical of Indian Tobacco Division of ITC;
2. SEBI perused the definition of 'Officer' under Cos. Act, 1956 and PIT Regulations, observed that the definition was an inclusive definition which included any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors was accustomed to act;
3. SEBI also relied SAT ruling in Sundaram Finance Ltd. V. SEBI [2010 SAT 286] wherein it was held 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 other person or persons to do anything whereas an employee is one who only obeys.";
4. SEBI observed that primary duty of Noticee was recruitment of personnel for Trade Marketing & Distribution. SEBI stated that "Noticee, being the Head-Human Resource & Competency Development, is holding a position which is



capable of giving directions or instructions to her subordinates only and not to the Board of Directors or any of the Directors of the Company and that she is an officer in the Company could not be established in the present case.”

5. SEBI relied on its own order dated February 26, 2015 against Shri. A.K. Chowdhury wherein it was held that “the position held by Shri. A. K. Chowdhury i.e. “Head – Operations” - Education and Stationery products Strategic Business Unit is very low in the chain of management and would have no interaction with the Board of Directors...”
6. SEBI concluded that Noticee could not be held liable for violating the provisions of Reg. 13(4) read with Reg. 13(5) of PIT Regulations as the Noticee is not an “officer” under Cos. Act, 1956 and the said Regulations. Accordingly, SEBI disposed of charges leveled against Noticee.

CLB: Resignation letter does not amount to board resolution, acceptance of resignation is mandatory, dismisses petition filed u/s 614 of Cos. Act, 1956

Case Details:

1. In the matter of Manav Kumar Agarwal Vs Discovery Enterprises Pvt. Ltd.,
2. Order passed by Mr. B.S.V. Prakash Kumar, Judicial Member,
3. LSI-990-CLB-2016-(NDEL)

Facts:

1. The petitioner was the director of the Respondent Co., and had resigned on January 18, 2011 and such change in director was informed to the Registrar of Companies on January 20, 2011. After few years and on inspecting records at the office of Registrar, petitioner noticed that he was shown as relieved from company's director position on June 11, 2014 and again shown as continuing as director from July 17, 2014;

2. Based on such background, the petitioner lodged complaint with the Registrar to find out as to how his name was appearing on the MCA portal. When no action was taken either from company or Registrar, petitioner filed petition before CLB u/s 614(1) of Companies Act, 1956 against respondent co. seeking direction to MCA/Registrar to remove his name as director;
3. Petitioner also sought directions from CLB to file e-form Form No. 32 / DIR-12 for resignation of director. The petitioner submitted that pursuant to Sec. 303(2) of Cos. Act, 1956, it is obligatory on every company to file e-form 32 on being informed of the inclusion or exclusion of the directors from the company and the company has failed to file e-Form 32 with the Registrar;
4. Petitioner also submitted that pursuant to Article 37 of Articles of Association, a director is entitled to resign from the office of director from such date as he may specify in his resignation and stated that resignation was not filed with the Registrar with an oblique motive. Petitioner submitted that since it was a Private Co., though not covered u/s 283(1), his resignation had to be given effect to from resignation date as mentioned company's Articles.

Final Decision and its basis:

1. CLB rejected the director's ('petitioner') petition filed u/s 614 of Cos Act 1956 (section relates to enforcing co's duty to make returns) to direct the co. to file e-form 32 / DIR 12 stating that petitioner had resigned and also to directed MCA to remove his name as director;
2. CLB noted that petitioner had given his resignation letter to the co., however, there was no resolution passed to that effect, and in absence of any resolution company could not be said to have defaulted in filing returns/resolutions with the Registrar of Companies. CLB held that “mere giving resignation letter will not amount to resolution by board. Unless



there is a board resolution, it shall be presumed that petitioner has been continuing as director”;

3. CLB rejected petitioner's argument that, when a director vacated office u/s 283 (relating to vacation of office of director), such director would automatically cease to be director, notwithstanding any resolution passed by company, held that Sec. 283 is applicable to prescribed limited cases and not for voluntary resignation;
4. CLB further rejected petitioner's contention that since he had resigned in June 2014 and his name did not appear as director, however again in July 2014 his name was shown as director, company committed default in not filing the form with RoC, stated that “merely because petitioner's name was not appearing for sometime in between, it could not be assumed that company was in default of filing a form showing that petitioner resigned as

director”

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.



Required Company Secretary

A qualified Company Secretary is required at Pune for ACG Pharmapack Private Limited. Candidate must be proficient in English and well versed with Corporate Laws. The candidate should be member of ICSI, preferably having experience of 2-3 years of managing legal affairs compliance work with ROC and corporate secretarial policies in Private sector.

Please apply to e-mail id: vivek.limkar@acg-world.com

Contact No. : +91-9881904030

Required Company Secretary

Jarandeshwar Sugar Mills Private Limited engaged in the business of Manufacturing of Sugar and Allied Products, requires a Company Secretary who is a member of the Institute of Company Secretaries of India and is qualified for the post and experience of around 1 to 3 years.

Interested candidates may apply to:

Jarandeshwar Sugar Mills Private Limited
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