



SEBI considers Facebook mutual friend status for concluding a person as 'insider', directs disgorgement of illegal gains

Case Details:

1. In the matter of trading in the shares of Palred Technologies Ltd.
2. Order passed by Mr. Prashant Saran, Wholetime Member, SEBI,
3. Order dated February 4, 2016.

Facts:

1. SEBI conducted investigation into the scrip of Palred Technologies Ltd. ('PTL') for the period of Sep. 18, 2012 to Nov. 30, 2013 to ascertain possible violation of Insider Trading Regulations, 1992. The investigation alleged that Mr. Palem Srikanth Reddy, Chairman & Managing Director ('CMD') of PTL, and others had traded in PTL's scrip during investigation period, while in possession of 'price sensitive information' ('PSI');
2. PTL's board of directors in the meeting held on Aug. 10, 2013 approved the slump sale of software solutions business and on the same day, PTL also considered distribution of one-time special dividend post closure of the sale transaction. After the announcement of 'slump sale', PTL's scrip price moved from Rs. 17.95/- on Aug. 8, 2013 to a high of Rs. 42.15/- on Oct. 15, 2013, registering thereby an increase of 135% in 44 trading days. PTL's trading window was closed from Aug. 8, 2013 to Aug. 13, 2013;
3. On Oct. 7, 2013, PTL (vide letter dated Oct. 4, 2013) informed NSE about completion of deal i.e. relating to slump sale of its software solutions business;
4. PTL's board of directors in meeting held on Oct. 13, 2013 considered and approved interim dividend at Rs. 29/- per share payable on or after Oct. 22, 2013 to shareholders holding shares as on record date (i.e. Oct. 18, 2013). Trading Window was closed from Oct.

10, 2013 to Oct. 15, 2013;

5. SEBI investigations have revealed that CMD had communicated/counselled, directly or indirectly the UPSI to one Mr. Ameen Khwaja, his relative Ms. Kukati Parvathy and others ('suspected entities');
6. Mr. Pirani was also found to be connected to CMD / CMD's relative through mutual friends on 'Facebook'. He was employed with Deloitte Tax Services India Pvt. Ltd. (co. which had conducted PTL's due diligence during slump sale). However, during course of investigation, Mr. Pirani failed to reply to the specific details, as sought by SEBI.

Final Decision and its basis:

1. SEBI noted that trading pattern of Mr. Pirani, and held that proportion of his investments in PTL shares when considered in relation to his income and that too in a scrip which was not frequently traded (during relevant period), did not commensurate with usual investment behavior.
2. SEBI held that Mr. Pirani had traded on PTL's PSI and accordingly, termed him as 'insider' under PIT Regulations, as he dealt in PTL's scrip based on UPSI communicated/ counselled by CMD / CMD's relative;
3. SEBI stated that "with initiation of investigation and quasi-judicial proceedings, it was possible that noticees might divert the unlawful gains, which might result in defeating effective implementation of direction of disgorgement, if any to be passed after adjudication on merits" and accordingly held that "non-interference by the Regulator at this stage would result in irreparable injury to interests of the securities market and the investors";
4. Accordingly, SEBI as an interim measure, passed an ad-interim ex-parte Order for impounding of unlawful gains of a sum of Rs. 2,22,14,383/- (alleged gain of Rs. 1,65,59,129/- + interest of Rs. 56,55,254/-),



jointly and severally from all noticees (15 in total, including Mr. Pirani).

Oppression/Mismanagement petition constitutes complete court in-itself and no Arbitrator can give relief to an aggrieved party

Case Details:

1. In the matter of Avigo PE Investments Ltd. Vs Tecpro Engineers Ltd.,
2. Order passed by Chief Justice M.M. Kumar, Chairman, CLB,
3. Order dated March 18, 2016
4. [2016] 68 taxmann.com 138 (CLB)

Facts:

1. Petitioner held 25.18% shares in Respondent Co., and filed instant petition alleging that Respondent No. 2 to 5 ('Respondents') stopped communicating with petitioner and also stopped reverting to communications sent by him to Respondent Co. Respondents have also refrained from providing any information in respect of financial / operational affairs of Respondent Co. to the petitioner;
2. Petitioner alleged that AGM approving Annual Accounts (w.r.t. FY 2012-13) was to be called, however, no notice of any such meeting was given to the petitioner. Petitioner also alleged that Respondent Co. failed to convene board meeting for quarter ending June 2013, in accordance with AoA provisions, despite notice/reminders;
3. Respondent submitted that all disputes raised in the co. petition emanate from Share Subscription cum Shareholder's Agreement entered between parties, which contain Clause 19 providing for Arbitration.
4. Respondent further submitted and emphasized that disputes raised in the Co. Petition have already been brought before Arbitral Tribunal at the instant of petitioner and the arbitration was in progress. Respondent contented that petition filed by

the petitioner-non applicant was a dressed-up petition and the matter squarely falls within the exclusive jurisdiction of an Arbitrator and no adjudication of the same issues would be permissible in the co. petition.

Final Decision and its basis:

1. CLB observed that serious allegations have been levelled w.r.t. transfer of share belonging to Respondents, and noted that prima facie such transfers as per allegations violate Article 74 and the provisions of Companies Act, 2013. Accordingly, CLB held that all these matters would be alien to the area of jurisdiction of the arbitrator and have to be adjudicated by CLB as CLB's jurisdiction cannot be overtaken by a private forum appointed by parties styled as 'Arbitrator';
2. CLB noted that there are pre-emptive rights of petitioner for receipt of share before transferring it to any outside by virtue of provisions made in AoA. CLB also observed that AGM as per averments is in violation of Article 53 of AoA, as the quorum without presence of petitioner's nominee could not be considered complete and a clear notice of 21 days in terms of Article 52 was required to be given;
3. CLB noted that though some of the allegations made in petition relate to breach of Shareholders' Agreement, however held that it would not necessarily leads to the conclusion that it is a 'dressed-up petition';
4. CLB perused Sec. 397, 398 and 402 of the Act, held that "CLB has wide power to adopt correctional mechanism when the affairs of the co. are being conducted in a manner prejudicial to the interest of general public or in a manner oppressive to any Member and/or shareholders. CLB is also clothed with wide powers of regulating the affairs of the co. in a manner so as to sub-serve the public interest and put an end to oppression of an individual member". CLB held that Petitions u/s 397, 398 & 402 constitutes a complete court in-itself and



no Arbitrator can possibly give relief to an aggrieved party like the petitioner in terms of section 402 and 403 of the Companies Act

5. CLB perused Sec. 402 of Cos. Act, 1956, held that it enjoys wide powers to adopt correctional mechanism where the company affairs are being conducted in a manner prejudicial to the interest of the general public or in a manner oppressive to any member(s) and/or shareholders of the company. CLB held that “close scrutiny of Sec. 402 would show that CLB is clothed with wide powers of regulating the co. affairs and it is competent to terminate, set aside or modify any agreement arrive at between the co. on the one hand and any of the person like MD the other Director, on such terms and conditions as may appear to be just and equitable. CLB also held that the nature of powers enjoyed by CLB is alien to the powers of an Arbitrator”

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.

