



SEBI: CBI arrest of Merchant Banker's MD/KMP in bank bribery-case impinges the 'fit & proper' criteria under Merchant Banker's Regulation, Code of Conduct and SEBI (Intermediaries) Regulations

Case Details:

1. In the matter of Altius Finserv Private Limited and its director and KMP, Shri. Pawan Bansal,
2. Order passed by Mr. S Raman, Wholetime Member, SEBI,
3. Order dated March 17, 2016,
4. Citation: LSI-1103-SEBI-2016-(MUM).

Facts:

1. SEBI granted a certificate of registration as a Merchant Banker to Altius Finserv Pvt. Ltd., in accordance with SEBI (Merchant Bankers) Regulations, 1992, for the period from June 10, 2010 to June 9, 2015.
2. Shri. Pawan Bansal was appointed as MD of Altius Finserv w.e.f. Nov. 2, 2009 and was then appointed as KMP w.e.f. March 12, 2010 (i.e. prior to grant of certificate by SEBI). Subsequently, he continued in the aforementioned capacity during the validity period of the certificate of Altius Finserv;
3. In August 2014, SEBI took on record several newspaper clippings reporting the Syndicate Bank bribery case involving M/s Bhushan Steel Ltd., which resulted in the arrest of Shri. Bansal along with Shri S. K. Jain (C & MD, Syndicate Bank) and 9 other individuals, by CBI. Shri Bansal was arrested on alleged charges of taking a bribe of Rs. 50 Lakhs to enhance the credit;
4. SEBI issued Show Cause Notice ('SCN') u/s 11 and 11B of SEBI Act, 1992 read with Reg. 35 of Merchant Bankers Regulations, to Altius Finserv, and Shri Bansal ('Notices'), alleging that Notices have failed to satisfy the criteria for 'fit and proper person' specified under Merchant Bankers Regulations read SEBI (Intermediaries Regulations) and in respect of

the 'fit and proper person' criteria, Altius Finserv was also alleged to have violated the Code of Conduct for Merchant Bankers.

Final Decision and its basis:

1. SEBI restrained Shri. Bansal, from associating himself or holding any controlling shareholding in any intermediary (directly or indirectly) and Altius Finserv Pvt. Ltd. for failing to comply with eligibility criteria of being 'fit and proper person' under Merchant Bankers Regulations & Intermediaries Regulations;
2. SEBI noted that the CBI had registered FIR against MD and arrested him for carrying out undesirable or illegal activities through Altius Finserv, and held that "charge of criminal conspiracy to commit offence under Prevention of Corruption Act, is certainly of grave nature and if established, has serious consequences for securities market and investors too";
3. SEBI stated that such charge, if established, creates an anomaly in solemnity that is expected in financial transactions carried out by registered intermediary and will also involve moral turpitude;
4. SEBI rejected the Notices' contention that show cause notice violated the Merchant Banking Regulations/Intermediaries Regulations, and stated that the proceedings are initiated u/s 11 and 11B of SEBI Act read with said Regulations. SEBI held that "SEBI Act confers upon SEBI power to restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities pending investigation/enquiry/on completion thereof";
5. SEBI opined that if persons who do not satisfy 'fit and proper person' criteria are permitted to associate themselves with any registered intermediary functioning in securities market, the integrity of securities market and



investors' interests would be put to great risk;

6. SEBI concluded that it takes into account financial integrity, honesty, good reputation and character of applicant/intermediary and also persons who hold responsible positions in such applicant/intermediary, and held that "the important facts such as registration of FIR and subsequent arrest of Shri Bansal, cannot be ignored while considering eligibility of Altius Finserv to continue as a Merchant Banker"

Bombay HC: Procedure relating to share transmission is applicable for 'share transfer' under amalgamation scheme

Case Details:

1. In the matter of Shakti Insulated Wires (P.) Ltd. Vs Great View Properties (P.) Ltd.,
2. Order passed by Justice SC Gupte, Bombay HC,
3. Order dated March 1, 2016,
4. Citation: [2016] 68 taxmann.com 169 (Bombay).

Facts:

1. Jayalaxmi Holdings Pvt. Ltd. ('JHPL') held 1,980 shares ('subject shares') of Shakti Insulated Wires (P.) Ltd ('Appellant Company'). In pursuance of a scheme of amalgamation sanctioned by the Court, all assets and liabilities of JHPL were transferred to Great View Properties (P.) Ltd. ('first respondent'). The assets included the subject shares;
2. First respondent, thereafter, applied for registration of such transfer and inclusion of its name in the register of members. The appellant rejected the application on the ground that the transfer of shares was in breach of the relevant Articles of Association providing for a right of pre-emption;
3. The rejection was challenged by the first respondent before the CLB u/s 111 of Companies Act, 1956. The CLB allowed the petition declaring first respondent to be the owner of 1,980 shares of the petitioner

company and directed rectification of the register.

4. On appeal, the appellants submitted that the CLB had erred in law by treating the transfer of shares under the scheme of amalgamation as a case of transmission by operation of law, whereas transfer of assets by a scheme of amalgamation is considered as a voluntary transfer between the transferor and transferee companies. The appellants relied on the Articles of Association ('AoA') of Appellant Company and contended that all voluntary transfers come within the pre-emption clause of the Articles. It submitted that the subject transfer was in breach of the AoA and was thus, rightly rejected by the appellant company.

Final Decision and its basis:

1. The Bombay HC held that in company amalgamation there is no general proposal for share transfer and there is no particular value for such transfer which takes place on sanctioning of scheme;
2. HC noted that the Appellant co. had rejected Respondent co.'s application on ground that transfer of shares was in breach of relevant Articles of Association, by not providing for pre-emption right;
3. HC observed that the transfer occurs upon or subject to Court sanctioning the Scheme, and held that in amalgamation there is transfer of co. or its undertaking as going concern and not of any individual assets (including shares held by transferor co.);
4. HC perused the Articles of Association, and held that share transfer occasioned by amalgamation scheme is not transfer of shares under Article 21 to 38 (relating to 'share transfer procedure') but Article 39 (relating to 'share transmission') by 'any lawful means other than by transfer';
5. HC held that such transmission merely requires production of evidence under Article 39, and



stated that “all entitlements to shares other than by virtue of transfers in pursuance of Articles 21 to 38 are covered by Article 39 and must abide by it”;

6. HC stated that in such share-transmission clause, directors are not under any obligation to give consent, but if directors refuse to give consent, then respondent would be free to invoke regulations which apply to share transfer.

NOTE:

1. The Article is compilation of noteworthy and impactful orders or judgments in Corporate Laws passed by Courts /Tribunals in recent past;
2. Author 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
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