

Whether Compliance Officer is liable for non-disclosure of events under SEBI LODR Regulations?



GAURAV N PINGLE
CS

Chapter II of the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015 ('Listing Regulations') relates to 'Principles governing disclosures and obligations'. The expectation of disclosures by listed entity under Listing Regulations is exhaustively deliberated in the said Chapter. According to the provisions, the listed entity shall ensure that disseminations made under Listing Regulations is adequate, accurate, explicit, timely and presented in a simple language. The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders. In the point relating to 'disclosure and transparency', the listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity.

This article is an analysis¹ of the recent order, *New Delhi Television Ltd. Vs SEBI* ([2019] 108 taxmann.com 141 (SAT)), wherein SAT deliberated on 'immediate material disclosures' under the erstwhile Listing Agreement. There is also a reference to the corresponding provisions in the Listing Regulation and ultimately the impact of the SAT order under Listing Regulations.

Clause 36 of Listing Agreement

1. According to Clause 36 of the erstwhile Listing Agreement, apart from complying with all specific requirements, the listed company shall immediately intimate to the Stock Exchanges of the events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on company's performance/operations as well as price sensitive information both at the time of occurrence of event. In the

interest of the securities holders, the listed company shall after the cessation of event appraise the position. The erstwhile Listing Agreement then provided an illustrative list of material events.

Non-disclosure of 'material event' by NDTV Ltd.

2. In the case², Income Tax, Assessing Officer had issued tax demand notice on NDTV Ltd. demanding ₹ 450 crores (February 21, 2014). NDTV Ltd. filed an appeal before Income Tax Appellate Tribunal, wherein order of the Income Tax, Assessing Officer was stayed subject to payment of ₹ 5 crores. NDTV Ltd. made such disclosure in submission of the audited financial results for financial year 2013-14, but had not made the requisite disclosure under Clause 36 of the Listing Agreement. SEBI also noted the fact that the networth of NDTV Ltd. was ₹ 365 crores. After hearing the parties, SEBI (Adjudicating Officer) imposed penalty on NDTV Ltd. and Compliance Officer for not disclosing the material event of receipt of income tax demand notice. SEBI imposed penalty for violating the provisions of Listing Agreement, Securities Contract (Regulation) Act, 1956, SEBI Act and SEBI (Prohibition of Insider Trading) Regulations.

SAT observed that disclosures under Clause 41 (submission to financial statements to stock exchanges) and Clause 36 (disclosure of material information) of the erstwhile Listing Agreement operate in different circumstances and in different areas. Financial statements under Clause 41 are required to be disclosed 60 days after the end of the financial year whereas material events are required to be constantly disclosed 'immediately' as and when the event occurs during the financial year. SAT opined that when an action under the Listing Agreement is required to be done in a particular manner and in a particular way, then the same is required to be done in that way and not in any other manner.

Compliance Officer under Listing Regulations

3. According to Regulation 6 of Listing Regulations, a listed entity shall appoint a qualified company secretary as the Compliance Officer. The Compliance Officer shall be responsible for following functions/activities:

- (i) Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit,
- (ii) Co-ordination with and reporting to SEBI, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time,
- (iii) Ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under the Listing Regulations,
- (iv) Monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

Under Listing Regulations, the Compliance Officer of the listed entity shall co-ordinate with the company and report to SEBI, recognised stock exchange(s) and depositories w.r.t. compliance with applicable rules, regulations and other directives. The Compliance Officer shall also ensure that the correct procedures has been followed that would result in correctness, authenticity and comprehensiveness of the information, statements and reports filed by listed entity.

In addition to the above functions, the Compliance Officer is also responsible for submission for quarterly compliance report on corporate governance to the stock exchanges within 15 days from close of the quarter. Such report can be signed by Compliance Officer or CEO of the listed entity. The board of directors

of a listed entity may delegate the power of transfer of securities to a committee or to compliance officer or to the registrar to an issue and/or share transfer agent.

Disclosure of events or information under Listing Regulations

4. Regulation 30 of the Listing Regulations relates to 'Disclosure of events or information'. According to the said provision, SEBI has divided disclosures in 2 parts:

- (i) Disclosures of events or information which, in the opinion of the board of directors of the listed entity, is material. In this case, SEBI has prescribed criteria for determination of materiality of events/information. In this regard, the listed entity shall frame a policy for determination of materiality. The listed entity shall first disclose to stock exchange(s) of all said events or information as soon as reasonably possible and not later than 24 hours from the occurrence of event or information. However, in case of any delayed disclosure, the listed entity shall, along with such disclosures provide explanation for delay.
- (ii) Certain prescribed events are deemed to be material events and listed entity shall make disclosure of such events. In this regard, the Schedule to Listing Regulation has been prescribed.

The Regulations further state that the board of directors of listed entity shall authorize one or more Key Managerial Personnel (CEO/CFO/CS/MD, etc.) for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange.

Clause 36 of erstwhile Listing Agreement vis-à-vis Regulation 30 of Listing Regulations

5. The scope, coverage and accountability under Regulation 30 of the Listing Regulations is much wider than Clause 36 of the erstwhile Listing Agreement. However, Clause 36 of the Listing Agreement contemplates 'immediate intimation' to the Stock Exchanges for certain events. In case of Regulation 30 of the Listing Regulations, the disclosures are divided into 2 parts: (i) Disclosures of events or information which, in the opinion of the board of directors of the listed entity, is material. The listed entity shall first disclose to stock exchange(s) of all said events or information as soon as reasonably possible and not later than 24 hours from the occurrence of event or information, (ii) Certain prescribed events are deemed to be material events and listed entity shall make disclosure of such events.

Whether Compliance Officer is liable for non-disclosures under SEBI LODR Regulations?

6. In *New Delhi Television Ltd. Vs SEBI* ([2019] 108 taxmann.com 141 (SAT)), the SAT noted that NDTV Ltd. had failed to make immediate disclosures to the stock exchange and accordingly, SEBI had imposed penalty of ₹ 2 lacs on the Compliance Officer. SAT observed that "... imposition of ₹ 2 lakh upon the Compliance Officer for violation of Clause 36 of the Listing Agreement was unjustified. The Compliance Officer works under the direction of the Board of Directors of the Company. It was not open to the Compliance Officer to comply with Clause 36 of the Listing Agreement. At the end of

the day, the Compliance Officer is only an employee of the Company and works on the dictates and directions of the management of the Company. Thus, when the entire management is being penalized, it was not open to the AO to also book the Compliance Officer for the said fault".

SAT has noted that the disclosure to the stock exchanges is the duty of the board of directors and imposing penalty on the compliance officer was not justified. It has rightly noted that the compliance officer works on the directions of the management of the company. However, it is necessary to compare these observations of SAT (under Listing Agreement) in relation the provisions of Listing Regulations, 2015.

Under the Listing Regulations, it is mandatory that board of directors of listed entity authorize one or more Key Managerial Personnel (CEO/CFO/CS/MD, etc.) for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange³. The SEBI Listing Regulations contemplates specific appointment of KMP and not just Compliance Officer. Where a listed entity has authorised the Compliance Officer (*i.e.* CS) to determine materiality of an event or information and make necessary disclosures to stock exchange, then in such cases, Compliance Officer (*i.e.* CS) will be liable for non-compliances/penalty. However, the observations' of SAT have far reaching effect as the other KMPs (who are not authorised) may take such defense.

•••

1. In the article, the analysis is of SAT order is limited upto only one issue – Responsibility and liability of Compliance Officer is disclosure of events or information.
2. New Delhi Television Ltd. v. SEBI ([2019] 108 taxmann.com 141 (SAT)).
3. Regulation 30(5) of SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.