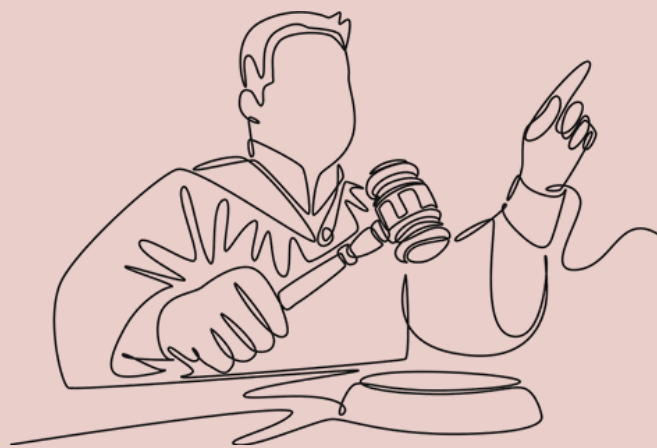




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Verdict Vistas

SAT Interprets Reg. 33 of SEBI LODR Regulations, Rejects Reliance on SEBI's Informal Guidance

Facts of the Case: The appellant (Amit Securities Limited) was engaged in the business of trading and investing in equity of domestic companies. The shares of Appellant have been listed on the Bombay Stock Exchange ('BSE'). Based on SEBI's Informal Guidance in the matter of Shriram Transport Finance Company Limited (issued on August 2, 2019), the BSE had issued a circular dated September 26, 2019, which stated, "it is mandatory for the listed companies to file quarterly/year-to-date consolidated financial results. For this purpose, companies are required to consolidate the accounts of Subsidiary and/or their Associate companies / Joint ventures, as the case may be, with the standalone results of the listed company. The consolidated financial results as mentioned above shall be submitted to the Exchange from the quarter ending September 30, 2019 onwards".

As a listed company, the Appellant had to comply with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI Listing Regulations') and other regulations of SEBI and BSE circulars, norms, guidelines, directions, etc. Admittedly, the Appellant failed to comply with the BSE circular dated September 26, 2019, and did not submit consolidated financial statements for the quarters ending September 2019 and December 2019 within the stipulated timelines. However, the said consolidated statements were filed by the Appellant with BSE on January 12, 2021. Subsequently, the Appellant also failed to comply with these directions for the quarters ending March 2020, June 2020, and September 2020. BSE, in terms of SEBI's SOP circular (dated May 3, 2018), levied fines on the Appellant. Since the Appellant failed to ensure compliance and make payment of fines, the

BSE issued instructions in December 2020 to the Depositories to freeze the demat accounts of the promoters. As non-compliance with Regulation 33 of LODR Regulations continued for two consecutive quarters (March 2020 and June 2020), the trading of securities of the Appellant was suspended from January 18, 2021.

Observations of SAT: On appeal, SAT noted that the basic issue under challenge is whether the said listed company, without a subsidiary but having Associates / Joint Ventures ('JV'), is required to submit consolidated financial statements on a quarterly basis to stock exchanges. SAT referred to Regulation 33(3)(b) of SEBI Listing Regulations, and observed that the Regulations specify that in case a listed company has subsidiaries, it has to prepare and submit quarterly and annual consolidated financial results. Based on this, SAT observed that it is only in the case that a listed entity has a subsidiary company, it needs to submit a quarterly financial statement.

SAT noted that Schedule III of the Companies Act, 2013 provides general instructions for the preparation of consolidated financial statements, and it starts with the phrase "where a company is required to prepare a consolidated financial statement.....". Instruction No. 3 states that "all subsidiaries, associates or joint ventures (whether Indian or foreign) will be covered under consolidated financial statements". SAT noted that Schedule III to the Companies Act is provided in section 129(1) of the Companies Act and that it lays down the format of accounts required under the said provisions. After thorough analysis of section 129 of the Companies Act, SAT observed that "..... Regulation 33(3) of LODR Regulations lays down the requirement of preparation of quarterly consolidated financial statements, and these are to be prepared by a listed entity that has a subsidiary. In case the listed entity prepares a quarterly consolidated financial statement, then the accounts of its associates / joint ventures (if any) will also have to be consolidated."

SAT referred to the BSE Circular (dated September 26, 2019) and observed that in Para 2 of the said Circular, and notes that SEBI's Informal Guidance in the matter of Shriram Transport Finance Company Limited has been referred to, which mandates listed companies to file quarterly consolidated financial results of its subsidiary and associate companies.

SAT referred to Clause 13 of SEBI (Informal Guidance) Scheme, 2003, which states that "the letter issued by a department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI." Based on this, SAT observed that reliance on informal guidance given by SEBI in a particular case is patently incorrect.

Based on this background, SAT observed that "... in our view there is ambiguity in the interpretation made by BSE that the Appellant has violated Regulation 33(3) of LODR Regulations by not submitting quarterly consolidated financial results for quarters ended September and December, 2019..... In our view, the Appellant

should be given the benefit of doubt with regard to this ambiguous position. Accordingly, we hold that there is no violation of Regulation 33(3) of LODR Regulations by the Appellant and the fines imposed have no basis.”

SAT allowed the appeal, the communication of BSE was set aside, suspension of trading in Appellant’s scrip was lifted, and the promoter’s accounts were defreezed with immediate effect. SAT also directed that SEBI may examine the issue regarding the need for consolidation of quarterly financial results by listed companies having only Associates / Joint Ventures without having any subsidiary, and issue necessary clarification in this regard.

Analysis and Conclusion: The SAT Order is important from two perspectives: (1) Interpretation of Regulation 33 of the SEBI Listing Regulations, (2) non-reliance of SEBI’s Informal Guidance. There are several occasions, wherein SEBI’s views are sought on the interpretation of securities laws; however, it is important to note that such Informal Guidance Notes are not precedents and hence not binding on listed companies. In my view, the Informal Guidance Notes provided by SEBI should be read only from the perspective of understanding the views of the capital market regulator. It is important to see whether any principles of interpretation of statutes are applied when the capital market regulator provides any observations on a complex situation. The observations by SAT in this case ultimately mean that such Informal Guidance is a letter issued by the SEBI Department under the scheme, which should not be construed as a conclusive decision or determination of any question of law or fact by SEBI.

Also, based on the extant Regulation 33 of the SEBI Listing Regulations, there is no specific provision for the consolidation of the financial statements of an Associate Company with the financial statements of a listed entity (whether quarterly or annual). This is in spite of the fact that SEBI has amended Regulation 33 of SEBI Listing Regulations on several occasions:

- (i) SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2016 (effective from April 1, 2016),
- (ii) SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 (effective from April 1, 2019),
- (iii) SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 (effective from May 5, 2021),
- (iv) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 (effective from December 12, 2024).