

Non-Compliance of Insider Trading Norms would attract Penalty even after Compliance of Takeover Code

In an interesting case of Organic Coatings Ltd, SEBI SAST had visited on the aspect whereon sale of shares of company in excess of 2 per cent of total shareholding appellant made disclosure under Takeover Regulations but failed to make disclosure to company within prescribed time under PIT Regulations, penalty was to be imposed upon appellant for violation of PIT Regulations.

Brief facts of the aforesaid case are highlighted herein below:

- The appellant held 9.79 per cent of the total share capital of company OCL.
- On 5-10-2012 appellant sold all shares of OCL.
- Since sale of shares effected by appellant on 5-10-2012 was in excess of 2 per cent of the total shareholding, appellant under the SEBI (Prohibition of Insider Trading) Regulations, 1992 was required to disclose to the company in Form C within two working days of sale of shares regarding the change in shareholding or voting rights in the company.
- Although 6 & 7-10-2012 were holidays and 8-10-2012 was the first working day after 5-10-2012, under PIT Regulations, appellant was required to disclose the transactions to the company latest by 9-10-2012.
- On 8-10-2012 appellant had prepared disclosure letter, however, filed that letter with the company on 12-10-2012.
- The declaration was not in compliance of PIT Regulations but was in compliance with regulation 29(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- The Adjudicating Officer held that even if the disclosure was to be treated as disclosure made under PIT Regulations, since such disclosure was made beyond time prescribed under regulations 13(3) and 13(5), it was apparent that appellant violated PIT Regulations.

Analysis

In this case the relevant facts are that the appellant had held 7,51,000 shares of Organic Coatings Ltd. ('OCL') which represented 9.79% of the total share capital of OCL on quarter ended September, 2012. On October 5, 2012 appellant sold entire 7,51,000 shares of OCL. It is not in dispute that since sale of shares effected by appellant on October 5, 2012 being in excess of 2% of the total shareholding, appellant under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short) was required to disclose to the company in Form C within two working days of sale of shares regarding the change in shareholding or voting



rights in the company. Although October 6 & 7, 2012 were holidays and October 8, 2012 was the first working day after October 5, 2012, under PIT Regulations appellant was required to disclose the transactions to the company latest by October 9, 2012. It is not in dispute that on October 8, 2012 appellant had prepared disclosure letter, however, filed that letter with the company on October 12, 2012. It is relevant to note that above declaration was not in compliance of PIT Regulations but was in compliance with Regulation 29(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations' for short). Even if above disclosure is to be treated as disclosure made under PIT Regulations, since such disclosure was made beyond time prescribed under Regulation 13(3) & 13(5), it is apparent that appellant violated PIT Regulations.

Penalty under Section 15A (b) of SEBI Act for non-compliance of disclosure requirements specified under PIT Regulations is Rupees One lakh per day or Rupees One crore whichever is less. In the present case, admittedly no disclosure has been made under PIT Regulations. Even if disclosure made under SAST Regulations could be treated as disclosure made under PIT Regulations, such disclosure being not made within the time prescribed under PIT Regulations, appellant cannot escape penal liability. Further penalty of Rs. 1 lakh imposed upon appellant cannot be said to be unreasonable or harsh, because, in the present case, declaration has not at all been made under PIT Regulations till date and even if declaration made under SAST Regulations could be considered as declaration made under PIT Regulations, even then there being three days delay, instead of imposing penalty of Rs. 3 lakh (at the rate of Rupees One lakh per day), adjudicating officer after considering all relevant facts has imposed penalty of Rs. 1 lakh only, which is reasonable.

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Mumbai

159/11, Amar Brass Compound,
Vidya Nagari Marg,
Kalina, Santacruz (E),
Mumbai – 400098
Landline: 022-26528671-72
Fax: 022-26528673

New Delhi

Anthem House,
E-360, 1st Floor,
Nirman Vihar, Delhi - 110092
Landline: 011-22449817,
011-22449815
Fax: 011-22439816

CONTACT US

Please write to us with your feedback,
suggestion or query at smelisting@sarthiwm.in
www.sarthiwm.in | www.smelisting.net

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