

## SAT Order of SICOM

Securities Appellate Tribunal (SAT) vide its order dated October 28, 2014, upheld SEBI's order against public financial institution SICOM in a case related to non-compliance with takeover norms. SEBI had imposed a penalty of Rs 5 lakh on SICOM Ltd. Subsequently, SICOM had filed an appeal with SAT against the ruling in the case and submitted that when a public financial institution acquires shares of a listed firm on invocation of pledge, it is exempted from making any disclosures.

### Background

In December 2010, appellant provided financial assistance to Raj Oil Mills (ROM) by way of bill accounting facility up to a limit of Rs. 15 cr for which the promoter/director of that company had pledged 55,50,000 equity shares of ROM. As ROM failed to repay the amounts and maintain the account properly, appellant on September 28, 2011, invoked 23,00,000 pledged shares and invoked balance 32,50,000 pledged shares on February 24, 2012. Thus, 55,50,000 pledged shares were transferred in the name of appellant and appellant became registered as well as beneficial owner of those shares.

### Facts of the case

- By a show cause notice dated March 4, 2014 SEBI called upon the appellant as to why appellant should not be held guilty of violating regulation 29(1) and regulation 29(2) read with regulation 29(3) of Takeover Regulations, 2011.
- It was alleged that on acquisition of 23,00,000 shares on September 28, 2011, shareholding of appellant in ROM stood at 6.39% of the total shares issued by the company and that acquisition being in excess of 5%, appellant was required to make disclosures under

regulation 29(1) of Takeover Regulations, 2011. Similarly on acquisition of 32,50,000 shares on February 24, 2012 shareholding of appellant stood at 15.35% which again being acquisition in excess of 2% of shares by an acquirer holding shares in excess of 5%, appellant was required to make disclosures under regulation 29(2) of Takeover Regulations, 2011.

- Disclosures were also required to be made under regulation 13(1) and 13(3) read with regulation 13(5) of Securities and Exchange Board India (Prevention of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992" for short). No disclosures were made by the appellant.

### Specific Regulations of Takeover Code

*10(1)(b)(viii) The acquisitions shall be exempt from the obligation to make an open offer subject to acquisition in the ordinary course of business by a Scheduled Commercial Bank, acting as an escrow agent.*

*29 (1), 29 (2), 29 (3) states that any acquirer who acquires shares/voting rights in a target company which taken together with shares/voting rights, if any, held by him and by persons acting in concert with him in such target company, must duly intimate such acquisition of shares in such form as may be specified.*

*29 (4): Shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:*

***Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.***



31 (3): The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed.

(b) the target company at its registered office.

### SICOM's Defence

SICOM contended that Scheduled Commercial Banks and PFIs holding shares under a pledge which are taken with a view to secure the indebtedness in the ordinary course of business are exempted from the operation of regulation 29(1)/29(2) read with regulation 29(3) of Takeover Regulations, 2011.

### SEBI Order

Failure on part of appellant to make disclosures under regulation 29 has deprived investors important information regarding acquisition of shares by the appellants on invocation of pledge. Adjudicating Officer of SEBI passed impugned order on May 19, 2014 imposing penalty of Rs. 5 lac upon appellant under Section 15A(b) of the SEBI Act, 1992.

### Appeal

Challenging the aforesaid order of the Adjudicating Officer, an appeal was filed by SICOM on the following grounds:

- ❖ Object of Takeover Regulations, 2011 is to provide an exit option to shareholders by way of an open offer in cases where there is a substantial acquisition of shares or a takeover of the Company by a third party. The shares acquired were in the ordinary course of business. Scheduled Commercial Banks/PFI's in the ordinary course of business can acquire shares on invocation of pledge with a view to recover to their loan and not with a view to take over the management or control of the company. Therefore, regulation 10(1)(b)(viii) of Takeover

Regulations, 2011 exempts Scheduled Commercial Banks as well as PFI's from making public offer when shares are acquired by them on invocation of pledge. Similarly, exemption under the proviso to regulation 29(4) must also apply to Scheduled Commercial Banks/PFI's on similar ground.

- ❖ In the case of Liquid Holdings vs SEBI (SAT Appeal 2010), it is provided that when shares are taken to secure indebtedness by Scheduled Commercial Banks and PFI's, they are exempted from making disclosures under Takeover Code. Thus, SEBI is not justified in denying exemption to the appellant.
- ❖ The shares are "taken" by the pledgee only when the pledge is invoked and the shares are taken into the account of the pledgee. Shares are not "given" by a mere release of pledge, since they are not taken in the first instance as aforesaid.
- ❖ Regulation 31(3) of Takeover Regulations, 2011 refers to making disclosure of encumbered shares within 7 working days from the "creation or invocation or release of encumbrance". None of those words are found in the proviso to regulation 29(4). The words "in connection with" must correctly be interpreted to include creation, invocation and release of a pledge, in order to construe the provision harmoniously.
- ❖ Failure to make disclosures under regulation 29 cannot be said to have deprived investors important information regarding acquisition of shares by Scheduled Commercial Bank/PFI, because, the shareholding pattern disclosure/filing made by the Target Company includes disclosure of parties holding more than 1%, and such disclosure is already within the public domain. Thus, the



objective of ensuring that the public is informed about the acquisition of shares over 5% is automatically accomplished.

#### Final Order

- It was held that but for the exemption granted to the banks under regulation 3(1)(f)(iv) of the Takeover Regulations, 1997 banks would have been required to comply with the public announcement requirements. It was further held that after the shares were acquired by the bank on invocation of pledge, it was open to the bank to transfer shares to other parties. Fact that the bank has returned the shares to the borrower on repayment of loan would not absolve the borrower from complying with the public announcement requirements. It is relevant to note that under explanation to regulation 7 of Takeover Regulations, 1997, every acquirer other than Banks/PFI's were required to make disclosures within two days of creation of pledge.
- Since regulation 13(1) of PIT Regulations, 1992 requires "any person" holding shares in excess of the limits prescribed therein to make disclosures, and admittedly appellants had acquired shares in excess of the limits prescribed therein, without dealing with various contentions raised by appellant in that behalf we hold that the expression "any person" in regulation 13(1) of PIT Regulations, 1992 is wide enough to cover acquisition of shares by Scheduled Commercial Banks/ PFIs on invocation of pledge. Hence, in the present case, failure on part of appellants to make disclosures constitutes violation of regulation 13 of the PIT Regulations, 1992.
- Obligation to make disclosures under regulation 29(1)/29(2) by Scheduled Commercial Banks/ PFIs on acquisition of shares by invocation of pledge is irrespective of the disclosures made by the Target Company. The appellants have failed to make disclosures even after acquiring shares on invocation of pledge and thus, couldn't escape penal liability.
- Various Scheduled Commercial Banks have been making disclosures as and when disclosure provisions are triggered on acquisition of shares by invocation of pledge. Hence, there is no reason as to why penalty ought not to be imposed on appellants for not complying with the disclosure provisions contained in Takeover Regulations, 2011.
- For all the aforesaid reasons, there was no merit in both these appeals and accordingly, both the appeals were dismissed with no order as to costs.

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