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CORPORATE LAWS

Case Law Update

Companies Act – Case No. 1

***IDBI Trusteeship Services Limited (Petitioner/IDBI) vs. Reliance Home Finance Limited (Respondent/Reliance) NCLT Mumbai,* dated 21st June, 2021.**

Facts of the case

- Respondent issued **Secured Non-Convertible Debentures (NCDs)** of 3 lakhs and unsecured NCDs of 50, 000 lakhs on **10th November, 2016**
- The respondent further issued two series of **unsecured debenture on 3rd January, 2017**, maturity date for the same is 3rd January, 2032
- **IDBI** entered into Debenture trustee agreement **(DTA)** and consented to act as debenture trustee for aforesaid debentures. After the issue of prospectus, the petitioner entered into a Debenture Trust Deed **(DTD)** with the respondent.
- There was a clause in DTD which states **about Events of default and remedies** wherein **rights of early redemption of debentures were also mentioned** in case of event of default occurred
- Respondent on 29th July, 2019 informed Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) that due to the ongoing liquidity crunch, the maturity of certain (other) debentures worth INR 400,00,00,000/- has been extended till 31.10.2019
- Further in pursuance of RBI Circular dated 07.06.2019 (framework for resolution of stressed assets) lenders of respondent entered into an Inter-Creditor Agreement (ICA) to arrive at a resolution plan'
- Credit rating as on date of issue was A++ and thereafter fall in credit rating to 'C' on 26th April, 2019 and to 'D' on 12th September, 2019
- **Fall in the credit rating and other events** as mentioned above **alarmed the Debenture trustees** who was obliged to act to safeguard the rights and interest of the debenture holders.

- Therefore, IDBI **called upon respondent to provide information** inter alia of any debenture redemption reserve, the list of receivables for securing the NCDs and regarding the future course of action in making the payment to the debenture holders
- Further by letter indicated several breaches and called to remedy the same
- Petitioner **obtained consent from more than 75% in value of unsecured NCD** holders as per DTD for accelerating redemption of debentures
- Further IDBI by letter **informed the Respondent of various acts of default and called upon to make the payment of the principal and the interest** aggregating to INR 471,28,77,146/- due in respect of the unsecured NCDs
- IDBI **filed a petition u/s 71(10)** of Companies Act, 2013 for **redemption of the debentures issued by the Respondent**.

Arguments on behalf of Petitioner

- **Debenture trustees are obliged to act to safeguard** the **rights and interest** of the debenture holders
- The fall in credit rating in such a brief period and intimation to BSE and NSE by respondent about delay in principle repayment in respect of loan due to various banks and extension of maturity date of certain debentures **constituted 'event of default' under DTD.**
- Neither petitioner nor any of the debenture holders had anything to do with the ICA nor had they agreed to the proposition
- The **respondent failed to make any payment in response to letter** of petitioner calling upon to make payment of principal and interest due in respect of unsecured NCDs
- Such **failure also constituted event of default** under prescribed clause under DTD

Arguments on behalf of Respondent

Respondent did not file a reply to the petition, written submission filed by the Respondent states as follows:

- The **power** under **Section 71(10)** of the Act is **discretionary** and could not be automatic solely on the basis of default in honouring the NCDs as contended by the Petitioner.
- Sub-section 8 of Sec. 71 provides that the **payment of interest** or the **redemption** of the debentures **has to be made in terms of the issue**. Therefore **without considering the terms** of the debenture issue, the **discretion** under sub-section 10 of Sec. 71 **cannot be appropriately used**.
- Sub-rule 4 of Rule 73 of NCLT Rules, 2016 provides that the **order** needs to be made **taking into consideration the interest** of the **Company, the debenture holders, the depositors** or in the **public interest**. While passing an order, the Tribunal should also **consider the financial condition** of the Company.
- **Order** in favour of the Petitioner would **not be in the interest of the Respondent or its body of creditors** and even in the interest of the debenture holders whom the Petitioner represents

- The **principal outstanding** against the **unsecured NCDs represent only 4%** of the **total principal debt burden** of the Respondent
- An order in terms of the relief sought would cause serious **prejudice to the Respondent and the ICA lenders** who so far have refrained from enforcing their security. An order as sought would rather **derail the Resolution Process** and would adversely affect the potential resolution of the Respondent.
- The **redemption date** of the principal amount is **more than 11 years away** (i.e. 03.01.2032). Therefore, the **proposed resolution** of the Respondent could **possibly take care of the payments**. Their redemption is claimed on the basis of right of acceleration provided under the DTD.
- **Event of default** under DTD as alleged are **erroneous and doesn't constitute the 'event of default'**. Therefore, the event of default has not been established and an order under Section 71(10) of the Act could not be passed.

Held

- The conduct of the Respondent in **not being able to service its debts** clearly **constitutes** an **event of default**
- Further the interest in respect of unsecured NCDs was due on 03.01.2020. The payment was not made until 09.01.2020
- Therefore court has no hesitation in holding that the Respondent committed default in respect of the payment of interest on the debentures in terms of Section 71(10) of the Act.
- The Respondent defaulted in making the payment of interest as required under the terms and conditions of their issue. Therefore the Petitioner/debenture trustee was entitled to move the present forum in sub-section 10.
- Sec. **71(10) lays down the conditions and circumstances** where the **Tribunal may direct** the Company **to redeem the debentures** forthwith on payment of principal and interest due thereon. The **conditions as indicated** are that the Company **either failed to redeem the debentures** on the date of their maturity or **fails to pay the interest** thereon on their due date. The other condition being, before passing an order, the Tribunal is required to hear the parties concerned
- Issue of debentures is a contract in personam and not a contract in rem. The **debenture holders** who **are substantial in number are also members of the public**. Therefore, their prerogative in timely receipt of interest against their investment (debentures) cannot be sacrificed at the altar of public interest
- The submissions regarding consideration of the Resolution bids would have no bearing in the instant Company Petition. The **amount of debentures is substantial** and the Respondent having taken the deposit, there is no reason why any indulgence should be shown to the Respondent on the ground that any Resolution Process is underway.
- In our considered opinion **when the conditions** mentioned in **Sec. 71(10)** are fulfilled the word '**may' would assume**

mandatory characteristics and would **need to be read as 'shall'.**

- The Petitioner/debenture trustee **represents 1348 debenture holders** who are the **members of the public.** Therefore, **under the garb of public interest their interest cannot be foregone** nor the **mandate** under **Section 71(10)** of the Act can be **diluted**.
- The Respondent is **directed to pay the interest** on the debentures at the contractual rate, calculated **till realisation**, within a period of two months and **redeem the debentures on payment of the principal** within three months thereafter.

Companies Act – Case No. 2

Statesman Limited vs. Emaar Mgf Land Ltd and Another, Mgf Developments Limited

National Company Law Appellate Tribunal, New Delhi – Order dated 8th August, 2018

Facts of the case

(i) Emaar MGF Land Limited (Demerged Company) was engaged in activities pertaining to the real estate. It had filed an application on 12th day of May 2016 with the High Court of New Delhi for dispensing the meeting of shareholders and creditors. The High Court vide its order dated 30th day of May 2016 directed the convening of meetings of the shareholders and creditors.

(ii) Emaar MGF Land Limited prior to the filing of application with the High Court of Delhi, was involved in arbitral proceedings with Statesman Limited over lease of a period. The Arbitration tribunal on 12th day of May 2016 ruled in favour of Statesman Limited and directed Emaar MGF Land Limited to pay the arbitration award to the Statesman Limited.

(iii) Emaar MGF Land Limited complying with the order of the High Court, convened a meeting of the shareholders and creditors and published the notice of the meetings and invited objections, if any, through advertisements in Business Standard (English and Hindi Edition) on 24th day of August 2016.

(iv) The Demerged Company on receiving overwhelming consent of the shareholders and creditors filed the second motion application.

Contentions of the Objectors

The Scheme of Arrangement was objected by two sets of objectors.

(i) Objections by the Joint Venture Partners of the Demerged Company

(a) The Joint Venture partners of the Demerged Company objected to the Scheme as a project being carried on with the Demerged Company formed was included as an undertaking in the Demerged Undertaking.

(ii) Objection by Statesman Limited

The Second objection was raised by the Judgement Creditor i.e. Statesman limited, who claimed misstatement and suppression of facts by the Demerged Company on the following grounds:

(a) The arbitration award granted on 12th day of May 2016 made Statesman Limited a Creditor. However, the Demerged Company had failed to

include them in the list of Creditors submitted to High Court along with the First motion application.

(b) The Demerged Company had erroneously deducted a TDS of an amount approximately amounting to INR 5 crores. The Demerged Company, therefore, owed Statesman Limited an amount of approximately INR 5 crores. This made Statesman Limited a creditor of the Demerged Company.

(c) Statesman Limited despite being the creditor of the Demerged Company had not received notices for creditor meeting and claimed mala fide intention on Demerged Company's part and claimed that the same was done to avoid issuance of personal notice for approval of Scheme by the Creditors.

(d) The Demerged Company also did not include the name of Statesman Limited as Creditor of the Demerged Company at the time of Second Motion application.

Replies by the Demerged Company

(a) The objection raised by the Joint Venture Partners have been amicably resolved by separating the project from Demerged Undertaking. The Project in concern was no longer part of the Scheme of Arrangement.

(b) In response to the claims of Statesman Limited, the Demerged Company stated as follows:

- The arbitration awarded on 12th day of May 2016 required the Demerged Company to pay the arbitration award in three tranches, the first being due in the month of July 2016. Since at the time of application the Demerged Company owed no money to Statesman Limited, he was not included in the list of Creditors.
- The Demerged Company had settled all amounts due to Statesman Limited prior to the filing of second motion application and hence Statesman Limited were not included in list of creditors.

The Demerged Company had notified the notice of creditor meeting and invited objections through publication in the newspaper. Statesman Limited however did not appear to raise its objections.

The Scheme of Arrangement received the approval of NCLT, Delhi.

Appeal

Statesman Limited aggrieved by the order approached NCLAT.

Held by NCLAT

The appeals made by Statesman were dismissed and appellant was directed to pay INR 75,000 to each respondent as cost of appeal.

NCLAT stated the following reasons for dismissal:

(a) The list of creditors as submitted at the time of first motion application was as on the 29th day of February 2016. Since the list of Creditors was not older than six months, the list of creditors submitted was not erroneous. Further, it was observed that the appellant was not a creditor of the Demerged Company as on that day. Further, it is noted that

despite the application being filed on 12th day of May 2016, practically its preparation took place before that, hence the inclusion of the appellant as the Creditor was not practically feasible to be updated on day-to-day basis. Hence there was no concealment, suppression, or misrepresentation by the Demerged Company.

(b) Since the arbitration award was not due till the month of July, the appellant could not have been included in the list of creditors as it was not due for payment at the time of first motion application.

(c) It was observed that the Respondent Company had cleared its obligations arising out of the arbitration award as and when it became due and accordingly the appellant company was not included in list of creditors.

(d) It further acceded to the arguments of the Demerged Company, where in it was stated that even if the Respondent Company was to be considered as creditor, the total amount due to him under the arbitration awards did not exceed even 5% of the total outstanding obligation of the Respondent/Demerged Company and would not have had the impact on the outcome of the creditors meeting.

(e) The appellant company failed to attend the creditors meeting despite its advertisement in newspapers.

(f) In relation to the disputed TDS deduction amounting to approximately INR 5 crores, it is observed that under the Companies (Court) Rules, 1959 the format did not require the respondents to disclose commercial disputes or pending litigations in the Company Petition. Thus, it is claimed that if the averments of the appellant are accepted it would mean that the matter before the arbitral tribunal is still pending and it would not be required to be shown.

(g) It was clarified that the disputes pertaining to the deduction of TDS are not issues for NCLAT to settle and further the same were pending before the Hon'ble Arbitration Tribunal. It was stated that in light of this scenario NCLAT found substance to the arguments presented by the respondent/ Demerged Company in relation to the fact that the objection by appellant company even if considered would not have tilted the outcome of the creditors meeting.

SEBI - Case No. 3

Name of the Case: Under Sections 11(1), 11(4) 11 (4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 in the matter of Biocon Ltd re SEBI (Prohibition of Insider Trading) Regulations, 2015 in respect of Kunal Ashok Kashyap and M/s Allergo Capital Pvt ltd.

Facts of the case

1. Biocon Limited ("Biocon/Company") had made an announcement on January 18, 2018, on Bombay Stock Exchange ('BSE') at 15:44 hours and on National Stock Exchange ('NSE') at 15:47 hours regarding Press Release titled "*Biocon Announces Exclusive Global Collaboration with Sandoz on Next-Generation Biosimilars*. On investigation Securities and Exchange Board of India ('SEBI') observed that after the

public announcement was made, the scrip witnessed rise of 5.6% in the closing price on the next day post the announcement.

2. SEBI further found that Kunal Ashok Kashyap ('Noticee No. 1') and M/s Allergo Capital Pvt Ltd ('Noticee No. 2') had inter-alia traded in the shares of Biocon. Noticee no. 1 is Director and major shareholder of Noticee no. 2. The trading data is as follows:

	Date	***Gross buy quantity***	***Gross sell quantity***
Noticee no. 1	January 18, 2018	4,000	0
Noticee no. 2	January 15, 2018	50,000	0
	January 18, 2018	35,000	0

3. SEBI noted that Noticee No. 1 holds 99.99% -19,999 shares out of total 20,000 shares of Noticee No. 2. Further Noticee No. 2 was in a temporary business relationship with Biocon and consequent to the same Noticee No. 1 was in frequent communication with the officers of Company. Also by virtue of Noticee No. 1's directorship in M/s Mazumdar Shaw Medical Foundation and his majority shareholding in the trading member which was used by the officers of the company, it was alleged by SEBI that this puts Noticee No. 1 in a position where he was in regular touch with the officers of Company. Moreover, the allotment of ESOPs to Noticee No. 1 by Biocon shows that Company values his contribution and that there exists a professional relationship between them.

4. Biocon was concurrently negotiating agreements with CIMAB and Sandoz which would have had an impact on company's finances and operations. SEBI further found that Noticee No. 1 was having overall responsibility for the negotiation with CIMAB. SEBI also found that Noticee no. 1 had frequent communication with Mr. Arun Chandavarkar, Chief Executive Officer and Joint Managing Director [CEO & Jt. MD] and Mr. Siddharth Mittal ['CFO'] of Company, who had direct knowledge of Discussion of Biocon with Sandoz for exclusive collaboration on next generation Biosimilars ('UPSI').

5. SEBI further alleged Noticee No. 1 is reasonably expected to have access to UPSI and is a connected person to Company in terms of regulation 2(1)(d)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ['PIT Regulations'] looking at the fact that Noticee no. 1 had overall responsibility of negotiating agreements with CIMAB and also he was in frequent touch with CFO and CEO & Jt. MD who had direct knowledge of UPSI. SEBI further alleged that Noticee No. 1 is an "insider" as per regulation 2(1)(g)(i) of PIT Regulations. Also it was alleged that Noticee No. 2 indirectly through Noticee No. 1 is reasonably expected to have access to the UPSI and hence it is alleged that Noticee No. 2 is also a connected person Company in terms of regulation 2(1)(d)(i) of PIT Regulations and an "insider" as per regulation 2(1)(g)(i) of PIT Regulations.

Charges levied

Noticee no. 1 and Noticee no. 2 ['Noticees'] have violated regulation 4(1) of PIT Regulations and Section 12A (d) of Securities and Exchange Board of India Act, 1992 ['SEBI Act']. By dealing in securities of Biocon while in possession of UPSI, Noticees have also violated Section 12A(e) of SEBI Act. Moreover, by dealing in securities of Biocon on the basis of UPSI, it is alleged that Noticees have also violated Section 15G(i) of SEBI Act.

Arguments made by Noticees

1.` **Noticees submitted that CIMAB and Sandoz deals are not connected and Noticees are not connected to Sandoz deal:** Noticee no. 1 submitted that frequent communication with the officers of Biocon was in relation to discussions the Noticees were having in connection with the Equillium Transaction and CIMAB Licensing Deal. Noticees have further submitted that Biocon has not identified Noticee no. 1 as person to whom the UPSI was communicated in the list of "connected persons" furnished to SEBI. Assignment relating to Equillium Inc. was finalized in July, 2017 itself whereas the collaboration between Sandoz and Biocon was finalized in January, 2018. Noticee no. 1 further submitted that there are conditions subsequent to announcement of a deal which need to be completed and Noticee No. 1 was in touch with the employees of Biocon till December only to ensure that the conditions subsequent were completed and the transaction consummated. The term "connected person" need not spell out that the connection would be in relation to the UPSI that is handled by the connected person and not any and every piece of UPSI that may be in the possession of the company when any advisor is advising the company on any facet of the matter.

2. **Trading window was not opened after stock exchanges were informed of Global Collaboration with Sandoz on Next-Generation Biosimilars and hence this information was not UPSI:**

   (a) Noticees submitted that Biocon made a one-time payment of approx. $1-3 million to CIMAB. This is not material in Biocon's business (es) where the market cap of the company is in excess of $4 billion Thus, it is submitted that the announcement made on January 18, 2018 by Biocon is not UPSI.

   (b) If this announcement were to be that of UPSI becoming generally available, it would follow that the trading window would open after the announcement. In fact, this piece of information was not UPSI at all and there was no implication therefor.

3. **No confidentiality agreement entered was entered with Noticees:** Noticees have contended that any communication by Biocon of information pertaining to collaboration with Sandoz, to the Noticees would have required the Noticees to execute specific confidentiality and non - disclosure agreements with Biocon as in the case of the CIMAB Licensing deal. The very fact that Biocon did not enter into arrangements with Noticees that contains confidentiality covenants in relation to the Sandoz transaction

shows that it did not believe that the Sandoz transaction and the CIMAB Licensing Deal were at all linked or that the Noticee no. 1 was required to have details of the Sandoz Deal, for them to discharge their role as advisors in the CIMAB Licensing Deal. Ultimately it is for the listed company to determine whether two contemporaneous transactions are interlinked and decide, who should have access to UPSI, and not for SEBI.

4. **Noticees are not Insiders in terms of PIT Regulations:** Noticees submitted that they cannot be considered as Insiders as per PIT Regulations. Merely advising and supporting Biocon in its negotiations with CIMAB, the Noticees could not be reasonably expected to have access to UPSI as alleged in the show cause notice and cannot be considered as Insiders as per PIT Regulations. The definition of "Connected Persons'' under the PIT Regulations is being interpreted arbitrarily without any reasonable nexus by casting net unreasonably wide. If such interpretation is adopted, it would render every *bona fide* and legitimate trade by anyone however connected to advising any company, vulnerable to being assailed of a charge as heinous as insider trading, by alleging "frequency of communication" disregarding the purpose for the communication.

5. **Noticees are regular trader in shares of Biocon:** Noticees submitted that they were regular trader in the scrip of Biocon. Noticee No. 1 further submitted that he had also bought a total of 1,47,574 shares on February 9th and February 14th, 2018 at a much higher price per share being ₹ 607.68/- and ₹ 611.33/- respectively as compared to the share prices on January 18, 2018 which was ₹ 539.44/-. Noticees submitted that the total trades in Biocon between Noticees during the period January 1, 2016 to December 3, 2017 amounts to 1,47,000 shares i.e., approximate 3 times the trades on the two days i.e. 15 and 18, January 2018. Thus, it is obvious that the Noticees did not trade on the basis of UPSI which in any event was not in their possession. The total turnover of trades of Noticee No. 1 during the period July 1, 2016 to July 30, 2019 is to the tune of ₹ 82.7 crore. This would show that the trades being assailed are not trades that have suddenly been executed in a large magnitude but that they were consistent with the trading scale of the Noticee No. 1. Noticee placed reliance on **[*Abhijit Rajan* vs. *SEBI* (Appeal 232 of 2016) and in *Rajiv Gandhi* vs. *SEBI* (Appeal 50 of 2007)].**

6. **SEBI has not established leak of UPSI:** Noticees submitted that there is no evidence on record to establish either the nature of information that Noticee No. 1 had or how he came into the possession of UPSI. In the name of circumstantial evidence, every disjointed and unconnected circumstance cannot be arbitrarily pressed into service. Noticees have contended that SEBI has failed to produce any email and/or any written or oral communication which shows that the employees of Biocon communicated the alleged UPSI to the Noticees. If it is SEBI's case that it is not required to show how the UPSI (which according to Biocon was

not communicated to persons except on a need-to-know basis) reached the Noticees, that stand is directly contrary to the ruling of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in ***Samir C. Arora* vs. *SEBI*** **[Appeal No. 83 of 2004**].

7. **If there is leak of UPSI SEBI should charge the Insiders of Biocon for communication of UPSI:** Noticees submitted that if it is indeed SEBI's case that UPSI was communicated by the officers of Biocon to the Noticees, at the very least, it ought to have charged the officers of Biocon with communication of UPSI to the Noticees under regulation 3 which it has admittedly not done. Noticees placed reliance on the matter of *Emami Limited* dated May 18, 2018 passed by SEBI.

Conclusions made by SEBI

1. **Noticees submitted that CIMAB and Sandoz deals are not connected and Noticees are not connected to Sandoz deal:** In this regard SEBI stated that it is not the case that collaboration with Sandoz and CIMAB Licensing deal are connected transactions. SEBI further observed that the list provided by Biocon of connected persons with respect to CIMAB licensing deal and Sandoz is the version Biocon. The same does not preclude SEBI to conduct independent examination/investigation in the matter. Based on the evidence collected at the time of examination/ investigation, if the connection of an entity who is not on the list as provided by the company, comes up, the same is no bar for SEBI to initiate appropriate proceedings against such an entity. In the instant matter based on the strength of evidence collected at the time of investigation, extant proceedings were initiated against the Noticees. Hence, the submission of the Noticees that they have not been named on the list of "connected persons" and hence they are not connected to Sandoz deal is unacceptable. In fact considering that Biocon in the month of December, 2017 was concurrently negotiating agreements with CIMAB and Sandoz and this when seen along with other facts and circumstances of the matter viz., association with key managerial personnel of Biocon, trading behaviour in the scrip of Biocon and other scrips etc., leads to a reasonable conclusion that Noticees had access to the UPSI.

2. **Trading window was not opened after stock exchange was informed of Global Collaboration with Sandoz on Next-Generation Biosimilars and hence this information was not UPSI:**
   (a) SEBI submitted that as per press release of Biocon it is understood that collaboration with Sandoz would enable Biocon to lead commercialization in geographies other than North America and EU for next generation Biosimilars. Thus, it can be reasonably held that the collaboration would have a material impact on the finances/ operations/performance of Biocon which when made generally available is likely to materially affect the price of the securities. Therefore, in the present matter, it has been established that the information pertaining to the

collaboration is a material event and hence, the said information was an unpublished price sensitive information

(b) SEBI stated that in this case it is observed that the trading window was closed by Biocon from January 1, 2018 to January 26, 2018 as the Board Meeting was scheduled on January 24, 2018 to *inter alia* consider, approve and take on record, the un-audited financial results (both standalone and consolidated) of the company for the quarter ended December 31, 2017. Since the Board Meeting was not over, the trading window was not opened on January 19, 2018. As noted above, the closure of trading window in the instant case has nothing to do with the unpublished price sensitive information. Thus, the question of opening of trading window, post announcement, does not arise.

3. **No confidentiality agreement entered was entered with Noticees:** SEBI stated that this submission of Noticees is flawed, as the confidentiality and non-disclosure agreement, is executed with parties who are directly involved in the discussions by virtue of which they will have knowledge of the details of the ongoing transaction. In the instant matter as the Noticees were not directly involved with the ongoing discussion with Sandoz, there was no need for non-disclosure agreement for the Sandoz deal. However, that does not preclude access of Noticee no. 1 to UPSI.

4. **Noticees are not Insiders in terms of PIT Regulations:** SEBI stated that Noticee no. 1 can be considered as an Insider as per Regulation 2(1)(g) (i) of PIT Regulations. To come under the ambit of the aforesaid regulation, following two parameters of a "connected person" **viz. (i)** The person must be directly or indirectly associated with a company in any capacity and (ii) The person must have direct or indirect access to UPSI or is reasonably expected to have access to UPSI. SEBI observed that during January, 2017 to July, 2017, Noticee No. 1 was working on the assignment (Advisory Services-Structuring of investment of Biocon in Equillium Inc.) with Biocon. Post, July, 2017, Noticee No. 1 continued working with Biocon on the related CIMAB Licensing deal till December, 2017. Thus, it can be held that Noticee no.1 was directly associated with Biocon and accordingly he meets first parameter for being considered as an Insider. SEBI further observed that Noticee No. 1 was closely associated with key managerial personnel of Biocon, to become aware of and have knowledge of finances of the Biocon immediately and in near future, as he was advising Biocon on the CIMAB Licensing deal wherein he was working on the negotiations with the counter party. SEBI further stated that Noticee no. 1 was working with the same set of Biocon officers who were concurrently working on the Sandoz deal. Further SEBI also took note of Noticees trading behaviour and pattern in the scrip of Biocon and other scrips, both pre and during UPSI period and timing and particulars of their trades in the scrip of Biocon. All

these parameters showed that there is a strong preponderance of probability that when the trades were executed by Noticees, Noticee No. 1 was in possession of UPSI and/or had access to UPSI. Hence SEBI concluded that Noticee no. 1 is an Insider.

5. **Noticees are regular trader in shares of Biocon:** SEBI analysed the trading behaviour of Noticee no. 1 in the shares of Biocon during Pre-UPSI period (September 1, 2017 to December 19, 2017), UPSI Period (December 20, 2017 to January 18, 2018) and post UPSI Period (January 19, 2018 to March 31, 2018). SEBI found that Noticees were active in scrip other than that of Biocon in terms of value and quantity in five months prior to UPSI period. Further during UPSI period SEBI observed that there was significant trading activity in terms of value and quantity by Noticees in the scrip of Biocon. Also there was decrease in trading activity in other scrip (from Rs 1.87 crore to Rs 21 lakh) as compared to Pre-UPSI period. During post UPSI period Noticees continued their focused trading activity in the scrip of Biocon. SEBI further noted that as on January 2020 Noticee no.2 does not hold any shares of Biocon and focused trading activity of Noticees decreased substantially during the period April, 2018 to January, 2020. Thus SEBI concluded that the trading activity of Noticees post UPSI period can at best be held to be an extension of their activity of UPSI period which decreased substantially post March, 2018. In other words, it cannot be held that the Noticees were regular and active trader in the scrip of Biocon.

6. **SEBI has not established leak of UPSI:** In this regard, SEBI observed that there are many ways that an individual can get access to UPSI. In insider trading matters, direct evidence will usually not be available. A reasonable inference must be drawn from the circumstantial evidence (viz. association with key managerial personnel of Biocon, trading behaviour in the scrip of Biocon and other scrips etc.) and conduct of parties. In the present matter based on the cumulative effect of the circumstances, it can be seen that when the trades were executed by Noticees, Noticee No. 1 was in possession of UPSI and/or had access to UPSI.

SEBI further stated that reliance placed by Noticees on the ruling of Hon'ble SAT in Samir Arora's case with regard to prove the point that they had not access to UPSI is flawed. SEBI stated that in ***Samir C. Arora's*** case there were no circumstances to suspect the source where the information was generated or the channel of transmission of the information to the destination. Moreover, the appellant in the said case was able to demonstrate that there were plausible reasons for the impugned sale trades and it was not on the basis of UPSI, as alleged. In the present matter, considering Noticee No. 1 was working on negotiations on CIMAB Licensing deal along with officials who were also working concurrently on the Sandoz deal, when seen along with Noticees trading pattern in the Biocon scrip and other scrips, leads to a reasonable conclusion that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI and/or had

access to UPSI. The plausible reasons given by Noticees for the impugned trades are that it is their normal trading behaviour and the shares of Biocon were undervalued. The former reason is not supported by Noticees trading data and the latter is unsubstantiated. Therefore, the current case is not on the same plane as that of ***Samir C Arora's*** case.

7. **If there is leak of UPSI SEBI should charge the Insiders of Biocon for communication of UPSI:** In this regard SEBI stated that the sum total effect of various circumstances including trading behaviour of Noticees in Biocon and other scrip, timings and particulars of the trade in Biocon, concentrated/ focus trading in the scrip of Biocon, multidimensional associations with Biocon which on a preponderance of probability basis leads to the conclusion that Noticee No. 1 had access to UPSI. Noticees reliance in the *Emami Ltd.* matter passed by SEBI is misplaced as the said matter held that in view of the specific restriction on communication of UPSI by the insiders contemplated under regulation 3 of PIT Regulations, evidence to show that the same has been communicated by the insider, have to be specifically brought out. SEBI further held that the present matter, as noted above, is based on the cumulative effect of various circumstances which shows that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI as he had access to UPSI. A distinction has to be made between communication of UPSI and being in possession/having access to UPSI. The instant matter belongs to the latter category.

Penalty

1. Disgorgement: Rs 24,68,751/- along with an interest at the rate of 12% per annum jointly and severally by Noticees

2. **Penalties and Debarment**

Sl. No	***Noticee***	***Provisions under which penalty is levied***	***Penalty***	***Debarment***
1	Noticee no. 1	Section 15G(i) of SEBI Act	₹ 10,00,000	One year
2	Noticee no. 2	Section 15G(i) of SEBI Act	₹ 10,00,000	One year

Cases referred

Noticees: ***Samir Arora vs SEBI, Adjudication Order in the matter of Emami Limited dated May 18, 2018 passed by SEBI. Abhijit Rajan vs. SEBI (Appeal 232 of 2016) and in Rajiv Gandhi vs. SEBI (Appeal 50 of 2007)***

SEBI: ***SEBI vs. Kishore R Ajmera*** decided on February 23, 2016 [Hon'ble Supreme Court].

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