CORPORATE LAWS
Case Law Update

CS Makarand Joshi

Companies Act – Case 1

ROC adjudication order by ROC Delhi in the matter of VALOR ADVISORY (INDIA) PRIVATE LIMITED. Order dated 16th November 2023.

Facts of the case

- VALOR ADVISORY (INDIA) PRIVATE LIMITED (hereinafter known as 'company') was incorporated on 23.12.2021 under the jurisdiction of Registrar of Companies, Delhi ('ROC').
- From the annual return for the financial year 2022-23 filed by the company vide e-form MGT-7, ROC noticed that VALOR MANAGEMENT SDN. BHD is holding 100% shares in the subject company. However, it is seen that the company has in total 2 (two) shareholders. Therefore, the beneficial holder and the registered holder ought to have declared the status of their interest in the shares in terms of Section 89(1) and Section 89(2) of the Act, which was not done.
- It was also seen that the company has not filed MGT-6 in terms of Rule 9(3) of Companies (Management and Administration) Rule, 2014 with the ROC.
- In view of the above facts, a show cause notice u/s 89 of the Act dated 05.10.2023 was issued to the company.

Company's contentions

On behalf of the company, its authorised representative and the practising company secretary contended that,

- The requirement for declarations in Form MGT-4, MGT-5 and MGT-6 arises when there is a distinction between the registered owner and the beneficial owner of shares, and this fact is not known to the company.
- In our case, Mr. Chan Lye Yee is holding one share in the company as a nominee on behalf of VALOR MANAGEMENT SDN. BHD and not as registered owner of the share and this fact is known to the ROC and the company from the inception of the company.
- Section 89 is not applicable in the present matter. Yet, to avoid any further legal dispute and for the sake of brevity, the company has filed form MGT-6 on 16.10.2023 subsequent to the receipt of notice u/s 89.

ROC's contentions

- VALOR MANAGEMENT SDN. BHD is holding 100% shares in the subject company. However, it is seen that the company has in total 2 (two) shareholders. Therefore, the beneficial holder and the registered holder ought to have declared the status of their interest in the shares in terms of Section 89(1) and Section 89(2).
- The company has not filed MGT-6 in terms of Rule 9(3) of the Companies (Management and Administration) Rule,
- Subsequent to the receipt of notice u/s 89 It is seen that the company has filed form MGT-6 vide SRN F68464908 on 16.10.2023. Form MGT-4 and MGT-5 have been filed as attachments.
- The submissions of the company have no merits as at one point in time it has been submitted that the distinction between the registered owner and the beneficial owner does not exist in the present case. However, when the company filed the form MGT-6, it clearly indicated that the individual is a registered owner and not a beneficial owner in respect of the sole share. The foreign holding company (based in Malaysia) has also declared that in respect of that sole share, the beneficial interest lies with the Malaysian company. Therefore, the obligations u/s 89 are clearly attracted in respect of the registered owner, beneficial owner and concerned Indian company.

Penalty

- The facts suggest that while there has been considerable delay in submitting form MGT-4 and form MGT-5 to the company by the registered owner and beneficial owner respectively, the subject company on its part has complied with the provision of Section 89(3) of the Act by filing e-form MGT-6 within the stipulated time period.
- Ms. CHAN LYE YEE as registered owner was entered in the register of member on 31.03.2022 and accordingly was required to file a declaration in form MGT-4 on or before 30.04.2022. But the said declaration in form MGT-4 has been given on 16.10.2023 with a delay of 534 days by the registered owner. Hence, the registered owner is liable for penalty for violation of Section 89(1) of the Act.
- VALOR MANAGEMENT SDN. BHD. as a beneficial owner was entered in the register of member on 31.03.2022 and was accordingly required to file a declaration in form MGT-5 on or before 30.04.2022. But the said declaration in form MGT-5 has been given on 16.10.2023 with a delay of 534 days by the beneficial owner. Hence, the beneficial owner is liable for penalty for violation of Section 89(2) of the Act.
- The ROC imposed the following penalty on the registered owner and beneficial owner of the company for violation of section 89.

Violation section & period	Penalty imposed on	Calculation of penalty amount (In Rs.)	Penalty imposed as per Section 89(5) (in Rs.)
Section 89(1) for delay of 534 days in filing of from MGT-4	Ms. CHAN LYE YEE **(Registered Owner)**	50000 + 534 x 200 =1,56,800 Subject to maximum 5,00,000	1,56,800
Section 89(2) for delay of 534 days in filing of from MGT-5	VALOR MANAGEMENT SDN. BHD. **(Company registered in Malaysia) (Beneficial Owner)**	50000 +534 x 200 = 1,56,800 Subject to maximum 5,00,000	1,56,800

Companies Act – Case 2

ROC adjudication order in the matter of BMM TESTLABS INDIA PRIVATE LIMITED, ROC Delhi, order dated 8th November 2023

Facts of the case

- BMM TESTLABS INDIA PRIVATE LIMITED (hereinafter known as 'company') was incorporated on 09.08.2021 under Registrar of Companies, Delhi ('ROC').
- From the annual returns of the company for the financial year ended 31st December 2022 filed in e-form MGT-7, ROC observed that BMM International LLC is holding 100% shares in the subject company. However, it is seen that the company has in total two shareholders. Therefore, the beneficial holder and the registered holder ought to have declared the status of their interest in the shares in terms of Section 89(1) and Section 89(2) of the Act.
- It was also seen that the company has not filed MGT-6 in terms of Rule 9 (3) of Companies (Management and Administration) Rule, 2014 with this office.
- In view of the above facts, a show cause notice u/s 89 of the Act was issued to the company vide dated 05.10.2023.

Company's contentions

The company's authorised representative contended that,

- The company had submitted the Significant Beneficial Ownership declaration in Form Ben-2 vide SRN-T74544206 dated 27.01.2022.
- As far as compliance of Section 89 is concerned, the company had received declarations pursuant to Section 89(1) and Section 89(2) in the forms MGT-4 and MGT-5 from both the registered owner and the beneficial owner of the share vide dated 25.11.2021 but company inadvertently omitted the filings of MGT-6 within the prescribed time limit.
- Now, pursuant to the SCN, the company has filed form MGT-6 with relevant

documents vide SRN-F69304939 dated 19.10.2023.

- It has been prayed that unintentional omission in the filing of e-form MGT-6 may be considered with no penalties.

ROCs contentions

- It is evident from the filings of e form MGT-6 that the company had received forms MGT-4 and MGT-5 on 25.11.2021 but form MGT-6 has been filed on 19.10.2023 with a delay of 664 days.

Penalty

Now in exercise of the powers conferred vide Notification dated 24th March 2015 and having considered the reply submitted by the noticee (s) in response to the notice issued on 20.10.2023, I do hereby impose the penalty on the company and its officers in default for violation of Section 89(6) of the Act:

Violation section & period	Penalty imposed on company/ director(s)	Calculation of penalty amount (In Rs.)	Penalty imposed as per Section 89(7) (in Rs.)
Delay of 664 days in filing of from MGT-6	BMM TESTLABS INDIA PRIVATE LIMITED (company)	664 x 1000 = 6,64,000 Subject to maximum 5,00,000	5,00,000
	MANNU KHANDELWAL (director)	664 x 1000 = 6,64,000 Subject to maximum 2,00,000	2,00,000
	MARTIN JOSEPH STORM (director)	664 x 1000 = 6,64,000 Subject to maximum 2,00,000	2,00,000

SEBI – Case 1

Order of the Securities Appellate Tribunal in the matter of New Delhi Television Limited

Facts of the case:

1. Securities Exchange Board of India ('SEBI') had received certain complaints dated July 16, 2013, December 27, 2013 and January 09, 2014 from New Delhi Television Limited ('NDTV') alleging that Sanjay Dutt and certain entities namely, Quantum Securities Limited ('QSL'), Taj Capital Partners Pvt Ltd ('TCPPL') and SAL Real Estate Private Limited ('SAL REPL') were involved in dealing in securities of NDTV in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ['PIT Regulations']

2. With regards to the complaints received, SEBI investigated suspected insider trading in the scrip of NDTV during the period starting from September 1, 2006, to June 30, 2008 ['Investigation Period']

3. The investigation revealed that Mr. Sanjay Dutt and his associated entities had indulged in insider trading in the scrip of NDTV from September 2006 to June 2008. The investigation further

revealed that the promoters of the NDTV Dr Prannoy Roy ['Appellant 1'] and Mrs. Radhika Roy ['Appellant 2'] were also involved in the trading in scrip of NDTV during the Investigation Period. It also needs to be highlighted that during the Investigation Period their activities undertaken by NDTV and hence SEBI alleged that there were six different types of price-sensitive information during the Investigation Period.

4. SEBI further stated that as per NDTV's annual reports for the financial years 2006-07, 2007-08 and 2008-09 Dr Prannoy Roy, apart from being one of the promoters, was also the Chairman and Whole Time Director of NDTV during the Investigation Period. Mrs. Radhika Roy, spouse of Mr. Prannoy Roy, was also one of the promoters and served as the Managing Director of NDTV.

5. On completion of the investigation Whole Time Member ['WTM'] SEBI vide order dated November 27, 2020, held the appellant Sanjay Dutt in violation of Section 12A(d), (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulations 3(ii) and 4 of the PIT Regulations. WTM SEBI held that except Mr Sanjay Dutt all other entities viz, QSPL, Prenita Dutt, TCPPL and SAL REPL were liable for insider trading. Aggrieved by this order an appeal was preferred before Hon'ble Securities Appellate Tribunal ('SAT') which was allowed by SAT *vide* its order dt: February 2, 2023. SAT quashed the order of WTM SEBI dt: November 27, 2020, stating that information relating to the decision of the board of NDTV to evaluate options for the reorganisation of NDTV which could include demerger, a split of company into news related business and investments in 'Beyond News' businesses which are currently held through its subsidiary NDTV Networks Plc is not UPSI ['PSI-6']. With respect to other aspects of the impugned order SAT referred matter back to SEBI.

6. SEBI WTM vide order of same date i.e., November 27, 2020, held Appellant 1 and Appellant 2 liable for insider trading. SEBI stated that PSI 6 had come into existence on September 7,2007 and it was published post trading hours on April 16,2008 and Appellants 1 and 2 being insiders had traded on December 26, 2007, by buying NDTV shared during UPSI period relevant to PSI 6.

7. Appellant 1 and Appellant 2 have now preferred appeal against the order of the WTM dated November 27, 2020, pursuant to the show cause notice August 31, 2018.

Charges levied

1. Appellants 1 and 2 were alleged to have violated the provisions of sections 12A(d) and (e) of the SEBI Act, 1992 read with regulations 3(i) and 4 of the PIT Regulations, 1992.

2. Appellant 1 and 2 are also alleged to have violated NDTV's Code of Conduct and the provisions of regulation 12(2) read with regulation 12(1) of the PIT Regulations, 1992.

Arguments by Appellant 1 and Appellant 2

1. **PSI-6 is not unpublished price-sensitive information as per PIT Regulations:** Appellant 1 and Appellant 2 placed reliance on the order of SAT dt: February 2, 2023, in the matter of Mr. Sanjay Dutt and Ors. It was submitted that vide this order SAT held that PSI-6 cannot be considered as unpublished price-sensitive information as the board of directors was exploring options for restructuring the business of the company. Hence it was submitted to SAT that trading by Appellant 1 and Appellant 2 would not be considered as UPSI.

2. **Pre-clearance was taken before executing trades by Appellant 1 and Appellant 2:** It was submitted that pre-clearance was taken by Appellant 1 and Appellant 2 from the compliance officer of NDTV before executing trades.

Contentions by SEBI

1. **PSI-6 is not unpublished price sensitive information as per PIT Regulations:** SEBI submitted that Appellant 1 and Appellant 2 while submitting information regarding the alleged insider trading by one Mr. Sanjay Dutt and his connected entities, had submitted details of various price sensitive information, including the information as to when each of those six(6) price sensitive information was crystallized and who were the entities privy to such information. The information submitted by the NDTV itself clearly identified the UPSI period from September 07, 2007, to April 16, 2008, regarding the PSI-6 that dealt with the proposed reorganization/demerger of the NDTV. It cannot be the case of Appellant 1 and Appellant 2 that the very same information that was undisputedly price sensitive for one set of insiders was not to be treated as a PSI for another set of insiders.

2. **Pre-clearance was taken before executing trades by Appellant 1 and Appellant 2:** In this regard, SEBI submitted that the charge levied against Appellant 1 and Appellant 2 are not related to any non-disclosure or trading without obtaining pre-clearance. Rather, the SCN has a serious charge of insider trading against the Noticees, who have traded in securities while in possession of the UPSI. Code of Conduct applies to listed companies for the purpose of regulating, monitoring and reporting by the insiders of their dealing in securities as insiders, as specified under the provisions of PIT Regulations. The above stated mechanism only prescribes the mode and way an insider is expected to act while dealing in securities. It cannot be contemplated that the regulatory regime under the PIT Regulations read with the Code of Conduct can envisage of a situation in which the Company can give pre-clearance to anybody to engage in insider trading in violation of the PIT Regulations, 1992. Therefore, compliances relating to disclosure (under the Takeover Regulations, etc.) and obtaining a pre-clearance from the Company before indulging in such activities would not legitimize any insider trades executed in violations of the statutory provisions governing the same.

Decision by SAT

SAT mentioned that PSI-6 was about the board of the company merely deciding to evaluate various options for re-organization of the company and no definite decision either of de-merger or of split or any other re-organization was taken by the board. Further Clause (vii) of the definition of PSI under PIT Regulation 1992 declares that significant changes in policies, plans or operations of the company would be deemed to be a PSI. In this case, there was no change in policies, plans or operations of the company, but merely the board decided to evaluate the options regarding the same. Further, SAT mentioned that it is a common knowledge when the board evaluates various options and ultimately makes some proposal, the same is placed before the shareholders and thereafter a definite decision is taken. However, in the present case, the board had not even contemplated any specific plans but merely thought to explore the possibility. Hence same, therefore, cannot be called as PSI within the ambit of the definition. Therefore, their trading cannot be called as insider trading, and no charge of insider trading can be sustained on Appellant 1 and 2. Hence SAT concluded PSI 6 which was about the board of the company merely deciding to evaluate various options for re-organization of the company and no definite decision being taken was not PSI.

Appellants 1 and 2 had sold their shares on April 17, 2008, when the trading window was closed and, therefore, it was urged that they had violated NDTV's Code of Conduct and the provisions of Regulation 12(2) read with Regulation 12(1) of the PIT Regulations, 1992. In this regard, SAT stated that as it already held that PSI-6 was not a price sensitive information and hence, the question of violating the NDTV's Code of Conduct for trading during the window closure period becomes immaterial. Further, SAT stated that Appellant 1 and 2 had secured pre-trade clearance from the Compliance Officer of NDTV which was also admitted fact in the show cause notice and, therefore, the trades executed by these two entities was in conformity with the NDTVs Code of Conduct and the PIT Regulations. Hence SAT held that Appellants 1 and 2 had not violated NDTV's code of conduct as they did not buy shares during the investigation period rather were allotted shares in tranches by the Company NDTV under Employee Stock Option Scheme-ESOP's. SAT allowed the appeal and quashed order of the WTM SEBI dt: November 27, 2020.

■●■

""Practise hard; whether you live or die does not matter. You have to plunge in and work, without thinking of the result."

— *Swami Vivekananda*

ML-160