

Info Capsule

STANDARD OPERATING PROCEDURE (SOP) TO BE FOLLOWED BY THE ASSESSING OFFICERS IN VERIFICATION OF CASH TRANSACTIONS RELATING TO DEMONETISATION¹

Standard Operating Procedure (SOP) to be followed by the Assessing Officers in verification of Cash transactions relating to demonetisation

Post demonetisation of Rs. 500 and Rs. 1000 notes on November 8, 2016, several malpractices has been noticed. The Income Tax Department is enquiring/seeking information and analysing instances of deposits to identify cases involving risk of tax evasion. Based upon vast amount of information of cash deposits collected and analysed by CBDT, a number of persons have been identified in whose case the cash transactions did not appear to be in line with their profile available with the Income-tax Department ('ITD'). In such cases, it has been decided to undertake online verification of select transactions through jurisdictional Assessing Officers ('AOs').

GOODS & SERVICES TAX

- Delhi government is preparing to announce extension of the deadline for enrolment in GST till March 15, 2017 under the GST portal which seeks to empower the dealers with a complete online experience with no manual interface. The earlier deadline was December 31, 2016. The state government is clear that those who do not register by the extended deadline will not be considered for any of the tax payment related benefits given to dealers by the VAT department from thereon. The dealers who choose not to get enrolled on the GST portal will come under the scanner of the VAT department which plans to begin the exercise of pruning the list of registered dealers for weeding out any possibility of bogus dealers.²
- 'The Central and State Government may require a person in charge of a conveyance carrying any consignment of goods of value exceeding '50,000 to carry with him such documents as may be prescribed', positions the Model GST Law. Though permit may become an e-permit, the vehicle incharge transporting goods within or outside the states will have to get e-permits checked at border check posts. States have such provision under the existing VAT structure.³

¹ Available at : http://incometaxindia.gov.in/Lists/Latest%20News/Attachments/140/instruction3_2017.pdf

² Available at: <http://timesofindia.indiatimes.com/city/delhi/govt-extends-deadline-for-registering-on-gst-portal/articleshow/57260798.cms>

³ Available at: <http://economictimes.indiatimes.com/news/economy/policy/setback-for-gst-need-for-e-permit-to-be-flashed-at-inter-state-borders/articleshow/57300620.cms>

CASE LAW – INSIDER TRADING

A Case of Insider Trading Reliance Petroinvestments Limited: SEBI ADJUDICATION ORDER NO. AO/SG-AS/EAD/15/2016

Backdrop

Surveillance alerts were generated at the stock exchanges on March 2, 2007 and March 07, 2007 for news in the shares of Indian Petrochemicals Corporation Ltd (hereinafter referred to as 'IPCL / Company'). The scrip also witnessed sudden rise in its share price and trading volume on March 8, 2007. The company made an announcement on March 2, 2007 to the stock exchanges about its intention to declare interim dividend and on March 7, 2007 it announced (on Stock Exchange after market hours) that it was going to consider and recommend amalgamation of the company with Reliance Industries Limited (hereinafter referred to as 'RIL'). Based on the above news and alert generated at the exchanges, analysis of dealing in shares of IPCL was carried out by BSE Ltd. (hereinafter referred to as 'BSE') and National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE') for the period February 22, 2007 to March 08, 2007 wherein it was observed that certain entities had bought large quantities of IPCL shares before aforesaid announcements.

Brief facts

A brief summary of the facts in the above matter is as under:

- (a) Pursuant to a Share Purchase Agreement dated May 21, 2002 with the Government of India, RPIL acquired 6,45,38,662 shares of IPCL from Government of India, constituting 26% of the total voting capital of IPCL.
- (b) Thereafter, on 24th July 2002, RPIL made an open cash offer to the existing shareholders of IPCL (in compliance with the then applicable SEBI (substantial Acquisition of shares and Takeover) Regulations, 1997) to acquire upto a further stake of 20% of the shareholding of IPCL. Upon the close of the said open offer, RPIL held 46% stake in IPCL.
- (c) RPIL passed a resolution dated April 25, 2006 authorising, Directors of RPIL and Authorized Signatory of RPIL to invest ` 30 crores by acquiring equity shares of IPCL. This was a commercial decision taken by RPIL, which already held a major stake in the shareholding of IPCL since 2002.
- (d) On January 4, 2007, in line with its commercial decision to invest in IPCL, RPIL passed another resolution authorizing the aforesaid persons to make additional investments upto ` 100 Crore in the equity shares of IPCL.
- (e) On February 22, 2007, the price of the shares of IPCL fell from ` 270.30 to ` 262.70, thereby bringing the shares into the price range at which RPIL was agreeable to invest more money into IPCL.
- (f) On March 2, 2007, a whole-time director of IPCL, advised Company Secretary of IPCL) and Mr. Sethuraman to call a board meeting of IPCL to consider declaration of interim dividend. As per recollection of Mr. Sethuraman, Mr. S. K Anand's advice to convene a board meeting for considering declaration of interim dividend was acted upon and was intimated to stock exchanges within a couple of hours.
- (g) At this stage, it is to clarify that Mr. K. Sethuraman, was the Vice President, Corporate Secretarial for RIL. In performance of his duties in RIL, Mr. Sethuraman also oversaw the secretarial activities of the subsidiaries and associate companies of RIL.

- (h) In this regard, following points were pointed out that
- The orders to purchase 98,280 shares of IPCL were placed by RPIL at 10:24 am on March 2, 2007;
 - The corporate announcement of the board meeting of IPCL to consider the declaration of interim dividend was made at 2:28 pm on March 2, 2007 and had been made within a couple of hours after the discussion between Mr. S.K. Anand and Mr. Sethuraman, in accordance with the requirements of Clause 36 of the Listing Agreement. The said board meeting was scheduled to take place on March 10, 2007.
- (i) The Proposal for a possible merger of RIL and IPCL was considered and discussed for the first time in a meeting among Mr. Mukesh Ambani, Mr. Alok Agarwal, RIL Chief Financial Officer and Mr. L.V Merchant, RIL Controller Accounts on March 4, 2007.
- (j) On March 5, 2007, the steps for initiating the discussion regarding the proposed merger were taken.
- (k) In line with the same. (i) JM Morgan Stanley were appointed as a financial advisor by way of an engagement letter dated March 5, 2007: (ii) PricewaterhouseCoopers ("PwC") were appointed as an independent valuer for the proposed amalgamation by way of an engagement letter dated March 5, 2007: and (iii) Ernst & Young ("E&Y") were appointed as joint valuers for the proposed amalgamation by way of an engagement letter dated March 5, 2007.
- (l) On March 7, 2007, IPCL made a corporate announcement at 5:15 pm stating that it will consider and recommend amalgamation of IPCL with RIL at the upcoming board meeting on March 10, 2007.
- (m) DSP Merrill Lynch were appointed as the joint financial advisor for the proposed amalgamation on March 5, 2007.
- (n) At the meeting of the board of directors of IPCL on March 10, 2007, the proposal for declaration of interim dividend was considered and approved by the board of directors of IPCL.
- (o) A joint meeting of the boards of directors of RIL and IPCL also took place on March 10, 2007, where a joint report of E&Y and PwC was submitted setting out the recommendation of a swap ratio in the event that a merger took place between RIL and IPCL. The joint financial advisers also presented their views on the proposed merger.
- (p) In view of the same, the boards of directors of RIL and IPCL approved the merger at their respective Board meetings.
- (q) In view of the above findings of the preliminary examination by the exchanges, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') ordered an investigation, vide order dated June 26, 2007 into the matter relating to buying, selling or dealing in shares of IPCL in order to ascertain whether any provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') or Rules and regulations made thereunder have been violated.

Decision

- RPIL is not an “Insider.”
- RPIL is not an “insider” as defined in Regulation 2(e) of PIT Regulations.
- Regulation 2(e) of the PIT Regulations stipulate that an ‘insider’ is a person who: (a) is or was connected with the company or is deemed to have been connected with the company AND is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company; OR (b) has received or has had access to such unpublished price sensitive information.
- RPIL is not a person ‘deemed to be connected’ within the meaning of Regulation 2(h) of the PIT Regulations.
- As per Section 370(1B) (iii) of the companies Act, 1956: Two bodies corporate are deemed to be under the same management under sub-clause (iii) of section 370(1B) of the Companies Act, 1956, if not less than one-third of the total voting power relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate.
- For this condition to be satisfied, it is not sufficient to allege that one body corporate merely holds more than one third of the total voting power in another body corporate. On the other hand, it is imperative to establish that the same individual or body corporate holds more than a third of the voting rights with respect to both the companies being examined for the purposes of this clause.
- In this regard, it is submitted that: i. RIL did not exercise any voting power in RPIL directly, as is evident from the shareholding pattern of RPIL during the financial year 2006-07.
- As is evident from the shareholding pattern, RIL as a single entity did not directly hold the requisite one-third shares in RPIL, as the shareholding of RPIL was cross-held by a number of subsidiaries.
- The one-third voting right in RPIL were exercised by RVL and not by RIL.
- To summarise,
 1. For the requirement to be satisfied, a triangular corporate structure is contemplated, where one entity, namely “A” should hold shares in two entities, namely “B” and “C”, for “B” and “C” to be “companies under the same management”.
 2. “A and C” or “A and B” are never “companies under the same management”, in absence of any other relationship contemplated under section 370 (1B) of the Companies Act, 1956.
 3. Admittedly, RIL does not even hold shares in RPIL and does not fulfil requirement of triangular structure.
 4. There is no single entity which holds shares in the other two entities.
 5. Further, the composition of the board of directors of the intermediary companies was also different, which establishes that all the companies were being managed by distinct and separate entities.

It is clear that neither did any single entity have the right to control the board of directors of RPIL nor did it exercise or control more than half of the total voting power of RPIL. Consequently, RPIL was not a subsidiary of RIL. Therefore the allegation that IPCL and RPIL were “companies under the same management” is factually and legally incorrect.

Further, IPCL is a separate legal entity with its own independent management and this is evident from the composition of the boards of RIL and IPCL. Without prejudice to the submission that the alleged UPSI was not in existence at the time that the Relevant Trades were executed, it is submitted that RPIL has rebutted the presumption of being in possession of the alleged UPSI at the time of executing the Relevant Trades. In any event RPIL is not an insider.

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