Recent Important Judgments under Corporate Laws

Presentation at Thane Chapter of ICSI

February 12, 2023

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ISSUE OF SHARES & SECURITIES

LIABILITIES OF DIRECTORS & KMP

Coverage of session

Few Important Disclaimers

Personal views

Academic discussion

Rights Issue Of FCD By Unlisted Public Company – Whether Provisions Of Public Issue Is Applicable?

Canning Industries Cochin Ltd vs. SEBI

[2020] 115 TAXMANN.COM 379 (SAT - MUMBAI)

BRIEF FACTS OF THE CASE

- Appellant Co. had 1929 shareholders.
- Till 2008, Co. was having profits and giving dividends but since then has suffered losses & its net-worth has been reduced considerably.
- On 28th Sep. 2015, in its 68th AGM, the Co. resolved & passed Special Resolution u/s 62(3) and 71 of the Cos. Act, 2013 read with Rule 18 of the Cos. (Share Capital and Debentures) Rules, 2014 proposing to issue 1,92,900 Unsecured Fully Convertible Debentures (FCDs) of Rs. 250/- each to its 1,929 shareholders at the rate of 100 FCDs with no right to renounce the offer to any other person.

… BRIEF FACTS OF THE CASE

- Maturity of Debentures was 5 years from date of allotment, namely, that every FCD would be compulsorily converted into equity shares on maturity or earlier if the call option is exercised by the Co.
- No call option was given to the shareholders.
- Co. sought to raise Rs. 25,000/- from each shareholder totaling Rs. 4,82,25,000.
- However, the subscription raised through these FCDs was only Rs. 2,83,50,000/- from 335 members.

SEBI'S OBSERVATION:

- SEBI WTM held that – the offer to 335 persons is a deemed public issue in violation of Section 42(1) of the Cos. Act and Rule 14(2)(b) of the Securities Rules.
- SEBI further held that the FCDs are covered under the expression of 'shares or other securities' as per explanation (ii) of Rule 13 of the Debenture Rules which mandates compliance of conditions stipulated under section 42 of the Companies Act and is also applicable to issue of FCDs on a preferential basis to existing members of the Company.
- SEBI held that the offer of FCDs made by the Co. was to more than 200 persons and, therefore, the same is deemed to be a public issue u/s 42(4) of the Companies Act read with Rules.

SAT'S OBSERVATIONS

- *"Section 42 of the Companies Act read with Rule 14(2)(b) of the Securities Rules is not applicable to the offer of FCDs by the Company as it is not a private placement. Private placement as per Explanation II(ii) of section 42 means an offer of securities to subscribe securities to a select group of persons by a Company which is other than by way of a public offer through a public issue, rights issue, employee stock option scheme bonus shares, etc."*

SAT'S OBSERVATIONS

- *"The term 'select group of persons' though not defined under the Act indicates a specified number of persons. In the instant case, the offer of FCDs has been made only to the shareholders of the Company and to none else. The offer of shares to the Company's shareholders cannot be termed as an offer to a 'select group of persons'. The expression "select group of persons" is not a technical expression but has to be understood in its ordinary popular sense, namely, an offer made privately such as to friends and relatives or a selected set of customers distinguished from approaching the general public or to a section of the public by advertisement, circular or prospectus addressed to the public. Thus, the restriction of subscription of shares to 200 persons or more is not applicable in the instant case as it is not a private placement. Thus, section 42 read with Rule 14(2)(b) of the Securities Rules are not applicable in the instant case."*

SAT'S OBSERVATIONS

- *The WTM has considered the provisions of section 62(1)(c) read with Rule 13 of the Debenture Rules to hold that the said provision is not applicable and even if the said provision was applicable the requirements of Section 42 was required to be complied with and one such requirement is that the shares cannot be issued to more than 200 persons.*

SAT'S OBSERVATIONS

- *SAT – In our opinion the provision of section 62(1)(c) is not applicable in the instant case as it is not a case of issuance of preferential shares but is a case of increase of the subscribed capital of the Company caused by the exercise of an option as a term attached to the debentures issued by the Company to convert such debentures into shares of the Company.*

SAT'S OBSERVATIONS

- *We further find that the Company had passed a special resolution under section 62(3) read with section 71 in respect of issuance of FCDs. The prospectus and the explanatory statement clearly state that the only members holding equity shares were eligible for allotment. It is clear that the offer of FCDs was made to the existing shareholders of the Company. Consequently, the Company was not required to ensure compliance with the limit of allottees as applicable in the case of private placement of securities.*

Requirement of Valuation Report by listed entity for private placement of securities – SEBI (ICDR) Regulations Vs. Companies Act Vs. Co.'s AoA

PNB Housing Finance Ltd. v. SEBI

[2021] 129 taxmann.com 136 (SAT - Mumbai)

QUESTION BEFORE SAT

For the preferential offer by Appellant Company (i.e. listed entity) is it required to get its shares valued from a registered valuer as required under the Articles of Association or whether the Appellant Company is required to get the pricing calculated in accordance with the pricing mechanism provided under Regulation 164 of SEBI (ICDR) Regulations?

Whether approval of shareholders required for cancelation of 'Material' Related Party Transaction (RPT) ?

SEBI v. R.T. Agro (P.) Ltd. [2022] 137 taxmann.com 496 (SC)

SAT'S OBSERVATION

- *"Section 188 of the Companies Act as well as Regulation 23 of the LODR does not prohibit related party entities from voting for recalling/rescinding resolution which was passed earlier by the Company. In the absence of any such prohibition it was open to the appellants to participate in the resolution of 16th December, 2016. The bar under Section 188 of the Companies Act and Regulation 23(7) of the LODR Regulations is that no related party can vote to approve any contract or arrangement in which he is a related party. In the light of the aforesaid clear provisions in Section 188 of the Companies Act and Regulation 23 of the LODR Regulations, we find that the appellants did not commit any violation. The AO committed an error in holding that they had violated Regulation 23 of the LODR Regulations."*

ON APPEAL, SC'S OBSERVATIONS

- *"The view, as taken by the Appellate Tribunal, in the given set of facts and circumstances of the present case, appears to be a plausible view of the matter. In fact, nothing of ill-intent on the part of the respondents has been established in the present case. The hyper-technical stance of the appellant could have only been, and has rightly been, disapproved on the given set of facts and circumstances"*

Several Company Law issues are part of matter
- issue of shares
- related party transactions
- charge registration, etc.

Vikramjit Singh Oberoi v. Registrar of Companies

[2020] 114 taxmann.com 512 (Madras)

Fact of case – summarised:

- The petitions are filed u/s 463(2) of the Cos. Act to relieve the Petitioner/s from liability in respect of threatened criminal prosecution for the alleged violation of various provisions of the Cos. Act, 1956/2013 by EIH Associated Hotels Ltd. and its directors or other officers.

Where Co. allotted shares on right basis to its existing shareholders, merely because many of them renounced their entitlement in favour of more than 50 third parties, it could not be said that right issue was converted into public issue ?

- Existing shareholders are statutorily entitled to renounce their rights in favour of any person.
- The company does not have any control over the process and, consequently, cannot insist that such renunciation should be in favour of existing shareholders of the Company.
- MCA communication No.8/81/56-PR dated 04.11.1957 whereby the MCA opined that the issue of further shares by a company to its own members with the consequential statutory right to renounce their entitlement in favour of a third party does not require the issuance of a prospectus.

Payment of royalty did not qualify as contract related to sale, purchase or supply of goods, materials or services, thus, not covered by section 188 of Cos. Act?

- The payment of royalty does not qualify as a contract relating to the sale, purchase or supply or goods, materials or services.
- It is a license fee for the use of a brand/trade name.
- Therefore, section 297 was not violated. In addition, as stated above, the disclosure was made in the notes to the accounts and it is only disclosure as per AS 18, which has not been made for the financial year 2012 - 2013, whereas it was made for the financial year 2013 - 2014.
- Keeping in mind the fact that the CA 2013 became applicable only from the financial year 2013 - 2014, I am of the view that it is, at worst, a technical breach, and there is no indication that the non-disclosure was dishonest or that it caused prejudice to stakeholders of the Company.

Where company had availed services, such as car rentals, laundry services etc. from related party ….?

- Where company had availed services, such as car rentals, laundry services etc. from related party and it had not disclosed same in board of directors, report, since these transactions were in ordinary course of business on an arm's length basis, section 134 would not apply?
- Once again, I am convinced that the breach, if any, is purely technical and a case is made out to be relieved of liability in this regard.

Retrospective or Prospective application of Section 196(3)(a) of the Companies Act, 2013

Sridhar Sundararajan v. Ultramarine & Pigments Limited

[2016] 66 taxmann.com 167 (Bombay)

SEC. 196(3)(a) – Appointment of Managing Director, Whole-time Director or Manager

(1) ***

(2) ***

(3) No company shall *appoint or continue the employment* of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of 70 years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person:

Provided further that …….

SEBI (LODR) REGULATIONS – RELEVANT PROVISIONS

- Reg. 17 (1A) of SEBI (LODR) Regulations:
- *No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

SUMMARISED – FACTS OF CASE

- R-2 was appointed as CMD of the Co. On August 1, 2012, the R-2 was re-appointed as CMD for further 5 years till 2017 and Appellant/Plaintiff was appointed as Joint MD
- On April 1, 2014, Cos. Act, 2013 was introduced amended – a new clause was introduced in section 196(3)(a). By virtue of the said amendment vide sub-clause (3)(a), additional disqualification was added to the disqualifications which already existed in the said provision namely MD could not be appointed or continued after he had attained the age of 70 years. The said amendment admittedly came into force on April 1, 2014.

SUMMARISED – FACTS OF CASE

- The contention of the plaintiff was that in view of the incorporation of the said clause in section 196(3)(a), R-2 could not continue as MD and, therefore, he had sought an order of injunction, restraining him from functioning or continuing to exercise his powers as CMD of Co.
- R-2 contended that the said amendment could not operate retrospectively. Bombay HC Single Judge accepted the contention of R-2 and dismissed the Notice of Motion.

SHORT QUESTION BEFORE DIVISION BENCH OF BOMBAY HIGH COURT

- On appeal, short question before Division Bench of Bombay HC was – Whether, after the amendment of the Companies Act in 2013 which was brought into force with effect from 1-4-2014, any Managing Director who was appointed prior to the Amendment Act, i.e., before 1-4-2014 would have a right to continue to act as Managing Director after his attaining the age of 70 years without special general resolution being passed by the company in its general meeting?

Observations of the Bombay High Court (Division Bench)

- This position changed after the amendment in 2013. Section 196(3) provided disqualification for appointment as well as for continuation of a person as Managing Director. The said section 196(3) not only incorporated three disqualifications which were mentioned in section 267 for a person to be appointed as MD, viz., (a) a person who is an undischarged insolvent or has adjudged as an insolvent, (b) a person who suspends or has suspended payment to his creditors and (c) a person who is convicted by a Court for offence viz., moral turpitude but one more disqualification was added to section 196(3) by way of the said amendment and a person who was below the age of 21 years or who had attained the age of 70 years could not be appointed or could not be continued as MD if he had attained the age of 70 years.

… Observations of the Bombay High Court (Division Bench)

- The legislative intent in introducing section 196(3)(a) is quite clear. Obviously, the intention was to change the earlier position by providing that the person who has been appointed as Managing Director before he was 70 years old is prohibited from continuing as Managing Director once he has attained the age of 70.

… Observations of the Bombay High Court (Division Bench)

- **In other words, if appointment to the post of Managing Director is made after coming into force of the Amendment Act, 2013 on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfilment of the proviso. On the other hand, if he was already appointed prior to 1-4-2014 when he was below the age of 70 years, on account of operation of statute, disqualification, whenever incurred after the Amendment Act, would operate automatically, subject to proviso, i.e., special resolution being passed by the company.**

LIABILITY OF INDEPENDENT DIRECTORS

Neera Saggi Vs. Union of India and Others (Civil Appeal No. 3531 of 2020)
Renu Challu Vs. Union of India and Others (Civil Appeal No. 2841 of 2020)
Decided on February 15, 2021

BRIEF FACTS OF THE CASE:

- Two appeals arise from the NCLAT judgment, NCLT (in July 2019), allowed an application seeking that the appellants should be impleaded, amongst other persons, in the course of its proceedings relating to IL&FS Limited.
- NCLT & NCLAT directed that a number of persons be impleaded. Among them were both, Executive and non-Executive Directors and the auditors of IL&FS.
- Both the appellants were appointed as Independent Directors of IL&FS Financial Services Limited.
- Ms. Neera Saggi was appointed as ID on March 18, 2015. She resigned from the position on July 25, 2016.
- Ms. Renu Challu was was appointed as ID on September 27, 2017. She resigned on September 17, 2018.

SC OBSERVATIONS

- SC noted that MCA had issued a Circular on March 2, 2020, in regard to the circumstances in which IDs could be construed to be 'officers in default' within the meaning of Section 2(60) of Cos. Act.

… SC OBSERVATIONS

- "…. we are of the view that neither before the NCLT nor before the NCLAT has there been an appropriate and due application of mind to the facts pertaining to the appellants before an order impleading them was passed. Insofar as the NCLT is concerned, as we have seen, there is an observation to the effect that the second SFIO report does not implicate the role of the Independent Directors."

…. SC OBSERVATIONS

- "….. that the ends of justice would be met if an order of remand is passed requiring the NCLT to apply its mind to the issue as to whether the appellants should be impleaded. Undoubtedly, Independent Directors have a vital role, as is indicated by the provisions of the Companies Act 2013. While Independent Directors are intended to be independent, they cannot remain indifferent to the position of the company. Since, however, the NCLT and NCLAT have not devoted due consideration to the role, position and allegations against the appellants, we have decided to remand the proceedings only in relation to them. This will not affect the impleading of others."

Liability of non-executive professional director w.r.t. signing of financial statements under SEBI Listing Regulations

(SAT – Appeal No. 688 of 2021, dated September 21, 2022)

SUMMARISED FACTS OF CASE

- Appellant is non-executive professional director and was not responsible for the day to day running of the Company. (*fact is admitted by SEBI*).
- Appellant was charged for signing the Annual Report and approving Financial Results in which he was member of BoD and, consequently, violating Reg. 33(2)(a) of LODR Regulations.
- On June 9, 2017, MCA issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the SEBI Act, 1992 and its Regulations.
- Based on the said letter, SEBI issued an order dated August 7, 2017 placing trading restrictions on the Co., its directors and promoters.

OBSERVATIONS OF SEBI WTM:

- SEBI WTM (after considering replies of appellants and material evidence on record) concluded that:
  - Co. misrepresented its financials and violated AS.
  - Various provisions of LODR Regulations were not complied with during 3 FYsand there were lapses on the part of the Company in not making complete disclosures.
  - F/S contained mis-statements and the same were not in line with the applicable AS.
  - Annual Audited Financial Results approved by BoD were misrepresented and since Noticees Nos. 3 to 7 which includes the appellant approved the financial results of the company for FY 2015-2016, 2016-2017 and 2017-2018 the same were in violation of the Reg. 33(2)(a) of LODR Regulations.

OBSERVATIONS OF SEBI WTM:

- Appellant being a director did not exercise due diligence in approving the financials and, consequently, violated Regulation 4 of the LODR Regulations.
- Since the Appellant had also certified the Annual Report which contained misrepresentation of the financial statements the appellant violated Reg. 33(2)(a) of the LODR Regulations.

RELEVANT SEBI LISTING REGULATIONS :

- SEBI LODR Regulations – "33(2)(a) The quarterly financial results submitted shall be approved by the board of directors:
- Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading."

ON APPEAL, OBSERVATIONS OF SAT

- **Merely because the appellant is a signatory to the annual report does not mean that the misstatements contained therein has been approved by the appellant.**
- **He is only a signatory in the annual report as per the provisions of the Companies Act.**
- **The violation under 33(2)(a) of the LODR Regulations is with regard to the approval and authentication of the financial results and that approval and authentication in the first instance is required to be done by the chief executive officer and chief financial officer.**
- **The appellant being a non-executive professional director cannot be held liable under any circumstances to have violated Regulation 33(2)(a) of the LODR Regulations.**

… ON APPEAL, OBSERVATIONS OF SAT

- In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive.
- We also find that directions of debarment and imposition of penalties have also been imposed upon the appellants.

Role of independent director vis-à-vis his appointment as Additional Director

Surendra Kumar Singhi Vs Registrar of Companies, West Bengal & Anr.

CRR 1752 of 2020, January 20, 2023.

SUMMARIZED FACTS OF CASE:

- Petitioner was requested to join the BoD of Mani Square Ltd. as ID on May 2, 2014.
- Petitioner gave his consent to join as ID on May 6, 2014 and the formal consent was given on May 17, 2014.
- Petitioner appointed as ID w.e.f. June 2, 2014.
- e-Form DIR-12 was filed with RoC on June 8, 2014.
- Petitioner resigned as ID on December 31, 2016 by submitting eForm DIR-11.

…SUMMARIZED FACTS OF CASE:

- Main contention of the Petitioner is that he was not associated to the Co. in the FY 2013-2014 and as such he is not liable in any manner whatsoever.
- ROC initiated action, wherein upon scrutiny of Financial Statements as on March 31, 2014, it was found that BoD did not furnish fullest information and explanation in the Directors' Report w.r.t. the Auditors in their Report on Balance Sheet for the year ending March 31, 2014 have raised reservations/qualification/adverse remark w.r.t. – Sec. 217(2A) of Cos. Act, 1956 read with Cos. (Particular of Employees) Rule, 1975.

QUESTIONS BEFORE HIGH COURT:

- 1. What post was being held by the petitioner on the date of filing the report?
- 2. Whether the petitioner is responsible/liable for the offence alleged?

HIGH COURT'S OBSERVATIONS

- **"That an Additional Director is a director having the same powers, responsibilities and duties as other directors. The only difference between them is regards to their appointing authority and their term of office."**

HIGH COURT'S OBSERVATIONS

- **"Though appointed on a temporary basis, an additional director is vested with the same powers of a director. Moreover, they are subject to all obligations and limitations of a director. They are also entitled to seek appointment as a permanent director at the Annual General Meeting. The additional director must utilize his/her powers in the best interest of the company and the shareholders."**

HIGH COURT'S OBSERVATIONS

- In the present case the petitioner as seen from the documents was an Additional Director on the date the board report was filed. To counter the same evidence is required to be adduced during trial so also to decide as to whether the petitioner at the relevant time of filing the report was a Director, Additional Director or an Independent Director. The responsibility of an Additional Director being the same as that of a director (but difficult from an independent director) they remain responsible, as the statute provides for the same.

Typographical/inadvertent error in recording of Board meeting Minutes rectified subsequently can under no stretch of imagination be termed as an offence under Companies Act

USHA MARTIN TELEMATICS LTD. V. REGISTRAR OF COMPANIES

[2021] 127 TAXMANN.COM 251 (CALCUTTA)

FACTS OF CASE

- Petitioner Co. applied to the RBI for being registered as Core Investment Co. (CIC) pursuant to CIC (Reserve Bank) Directions, 2011 following which RBI sought certain clarifications and documents;
- **Board meeting was held on June 11, 2014 and in course of preparing the minutes of the said meeting in compliance with section 118(1) of the Companies Act, 2013, it was erroneously recorded in item no. 12 of the minutes that the company submitted application with the RBI for its de-registration as NBFC and registration as a CIC;**
- Such recording was an inadvertent/typographical error as the Co. was not registered as NBFC at the relevant time and the question of de-registration as NBFC did not arise. The said error was detected by the company subsequently and in the board meeting held on Sep. 9, 2015 the error was rectified.

…. FACTS OF CASE

- In Feb. 2016, ROC inspected the books of account and other relevant records of the Co. u/s 206(5) of Cos. Act, 2013 and detected the erroneous recording in the minutes of the meeting dated June 11, 2014.
- Co. was asked to show cause as to why prosecution would not be initiated against it under the provisions of section 118(2) and (7) read with section 447/448 of the Act for violation of the said provisions of law by the company, such notice being issued on August 24, 2018.

HIGH COURT'S OBSERVATIONS

- It is crystal clear from the minutes dated 11th June, 2014 and 9th September, 2015 that the words "for its de-registration as NBFC" was inadvertently recorded and was rectified upon detection;
- Application for registration dated 28th March, 2014 supports the contention of the petitioners that no such request for de-registration was made in the said application;
- The company not being registered as NBFC at the relevant time, the question of de-registration did not arise and there could have been no mala fide on the part of the company on that score.

HIGH COURT'S OBSERVATIONS

- Typographical/inadvertent error in recording of minutes rectified subsequently can under no stretch of imagination be termed as an offence, far less an offence under the provisions of the Act of 2013 as alleged;
- That the petitioners acted with a mala fide intention to deceive, gain undue advantage or injure the interest of the company or any person connected thereto is not reflected in the four corners of the complaint;
- Allowing the proceeding to continue shall be a futile exercise and abuse of the process of law in view of the fact that the inadvertent error has been sufficiently and adequately explained and does not call for any prosecution.

Liability of Company Secretary during notice period but not attending board meeting

POOJA MAHNA VS SEBI

APPEAL NO. 480 OF 2018, JUNE 28, 2019.

BRIEF FACTS OF THE CASE

- Appellant was a Compliance Officer in BGIL Films & Technologies Ltd.
- SEBI AO had imposed a penalty of Rs. 50,000/- for non-compliance of Reg. 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 & Code of Corporate Disclosure Practices for PIT Regulations, 1992.
- **Appellant had tendered the resignation as CS on February 19, 2010 which was duly accepted and that she was serving the notice period and eventually ceased to be in service w.e.f. March 02, 2010. Appellant was not involved in the Board Meeting held on February 23, 2010.**

SAT'S OBSERVATIONS:

- **"When there was ample evidence on record to show that the appellant was not involved as a Compliance Officer in the Board Meeting which was held on February 23, 2010 and was only serving the notice period pursuant to her resignation, the question of imposition of penalty for non-compliance of the Regulation does not arise.**
- **The imposition is wholly unjustified and cannot be sustained especially when it has also come on record that the Chairman of the company had confirmed that the appellant was not involved in the Board Meeting which was held on February 23, 2010. In the light of the aforesaid, the impugned order cannot be sustained and is quashed."**

SAT'S OBSERVATIONS:

- "Considering the fact that the appellant had to undergo this litigation and face harassment for almost 1 and a ½ years, coupled with the fact that a substantial portion was spent towards fee paid to an advocate for drafting the appeal, we think it appropriate that the appellant is entitled to costs which we compute at Rs. 50,000/-."

INDEPENDENT DIRECTOR AS TRAINEE – LIABILITY IN CASE OF MISUTILISATION OF IPO PROCEEDS

SAKSHI SAXENA VS. SEBI

ORDER DATED DECEMBER 8, 2022. MISC. APPLICATION NO. 647 OF 2022 AND APPEAL NO. 190 OF 2022.

BRIEF FACTS OF CASE

- Appellant was Noticee nos. 12 in the proceedings and contended that she joined the company as a trainee for internship purposes for CS.
- She was a student and a CS trainee and was pursuing graduation in law and CS course from ICSI.
- During her internship, she was offered the post of ID which she accepted but subsequently resigned on July 13, 2015.
- Appellant contended that at no stage she had signed any documents relating to the IPO nor was ever involved in the day-to-day affairs of the management of the company.
- She has specifically stated that she never attended any board meeting nor was involved in the issuance of the IPO proceeds.

… BRIEF FACTS OF CASE

- SEBI AO gave a finding that since Appellant was Chairman of Audit Committee as well as a member of the Shareholder / Investors Grievance Committee, she had attended most of the board meetings, annual general meetings and occupied important positions during her tenure and, therefore, she had deemed knowledge of the contents of the prospectus and the manner in which the IPO proceeds were being utilized.

- SEBI AO further came to the conclusion that being associated with the company as an independent director for three and half years, the appellant cannot plead ignorance regarding the day to day affairs of the company.

OBSERVATIONS OF SAT

- Before SAT – evidence has been placed to show that she never attended any meeting of the board of directors in her capacity as an independent director nor did she ever attend meeting of Audit Committee. Resolutions passed by the Co. in which she has been shown absent was obtained by her from the Co. These documents have not been denied, therefore, AO findings are incorrect.
- We find that the appointment of the appellant as chairman of the audit committee was done by the board on the date when she was not present. The appellant was not made aware of her appointment. Further, there is no document to show that she attended any meeting of the audit committee.

OBSERVATIONS OF SAT

- **"We are of the opinion that the finding of the AO against the appellant is passed on the surmises and conjunctures.**
- **The AO has not appreciated the facts that the appellant joined as a trainee which fact has not been disputed. In the absence of any finding that the appellant was part of the day-to-day management of the company and in the absence of any evidence to show that she was actively involved in the issuance of the IPO and diversion of the IPO proceeds, we are of the opinion that the appellant has wrongly been penalized for a violation which she did not commit."**

OBSERVATIONS OF SAT

- **"In normal circumstances, we would have remanded the matter to the AO for fresh consideration but since the document so filed before us have not been disputed by the respondent and the same has been obtained by the appellant from the company, we are of the opinion that no useful purpose would be served in remanding the matter."**

Q & A

SESSION

Thank you – Thane Chapter of WIRC ! ☺

Thank you, Members, for active participation!☺

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