

Reading between the lines of SEBI Orders - Takeaways for the Compliance Team

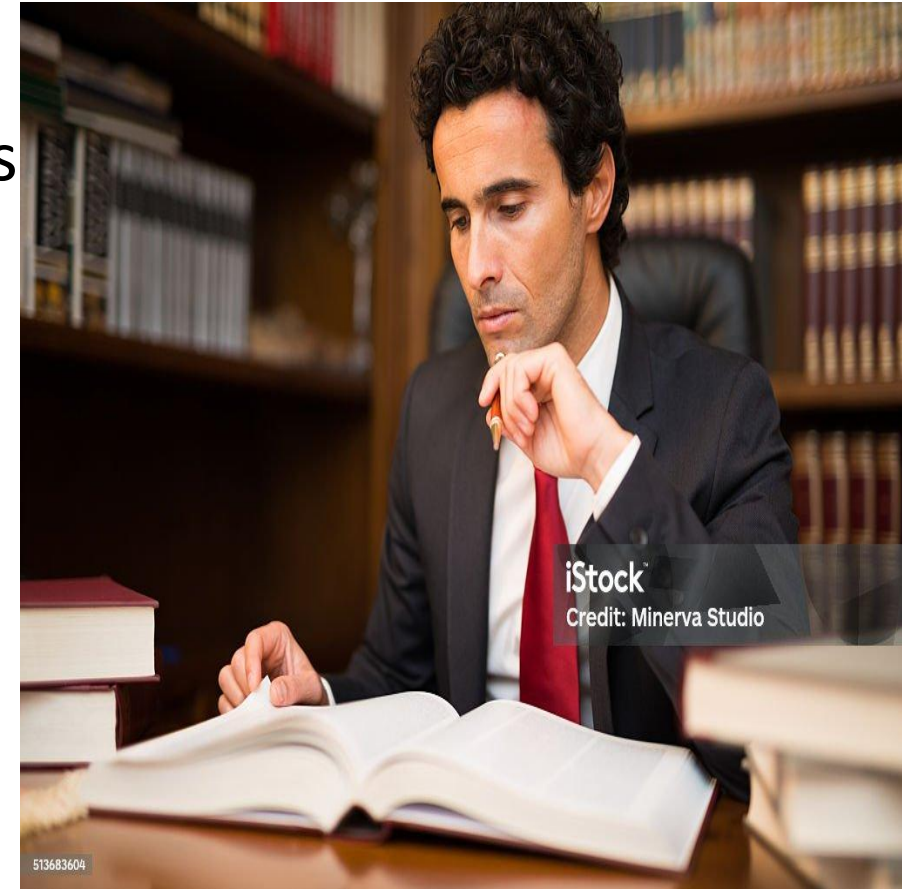
April 13, 2025

V S Sundaresan
Executive Director, SEBI



Why read and study judgments

- Decision making is backed by Jurisprudence
- Awareness on compliance with Securities laws
- Extremely helpful in drafting Legal Opinions
- Extremely useful in dealing with litigation matters
- Study & application of Principles of Interpretation of Statutes
- **Value addition to oneself and clients**



Case 1 - Prakash Steelage Ltd.(1/3)



Facts

- **MD** of PSL transferred shares on 6/5/16 to another person
- Received consideration after one year
- Disclosed under TO Regulations

Allegations

- **MD** of PSL traded while in possession of UPSI
- Failed to make discl. to PSL u/r 7(2)(a) of PIT Regulations, 2015
- PSL failed to make discl. to stock exchanges u/r 7(2)(b) of PIT Regulations
- Compliance Officer failed in statutory duty as required u/r 9(3) of PIT Regulations

Issues

- Is the Compliance Officer required to go into the nitty-gritty of the information submitted by DP (here transaction information)?
- When did UPSI come into existence ?



Case 1 - Prakash Steelage Ltd.(2/3)



Adjudication Order:

- Penalty of Rs. 17 lakh imposed on MD for trading while in possession of UPSI and non disclosure of transaction to company
- Penalty of Rs. 17 lakh imposed on PSL for failure to make disclosure to stock exchanges

Findings against the Compliance Officer in AO order:

- Failed to ensure that the company complied with all the relevant rules and regulations applicable under PIT Regulations, 2015.
- ***Penalty of Rs. 1 Lakh imposed*** upon the Compliance Officer.



Palak Kohli Kochhar v SEBI before SAT

➤ Observations of the SAT:

- It is not necessary for the Company or the Compliance Officer to go into the correctness of the transaction and verify as to whether the transactions had actually been done or not
- Order of SEBI AO imposing penalty on the compliance officer set aside



Case 2 - Resurgere Mines and Minerals India Ltd.(1/3)

FACTS

- Company ***siphoned off funds raised in IPO*** to pay entities, who funded for making application in the employees' category by the Company and not used for the purposes of objects of the issue, as stated in the prospectus
- ***Company had not disclosed ICD*** Rs. 18 Cr. raised from a Company (PR Vyapar) in its prospectus;

Allegation

- ***Compliance Officer signed declaration made in Prospectus despite being aware of the actual intentions of Company*** and thus, accountable for misleading disclosures and fraud committed on the shareholders and investors.

Issue

- Is the Compliance Officer liable for misstatements in prospectus being a signatory to prospectus?
- Whether the company secretary was responsible for having knowledge of the financial functions of RMML?



Case 2 - Resurgere Mines and Minerals India Ltd.(2/3)

Adjudication Order:

- 2 Directors and Chief Financial Officer were held liable for fraud for mis-utilisation of IPO proceeds and misleading disclosures qua the money raised from P R Vyapar by issuing ICDs
- **Compliance Officer (Rakesh Gupta)** was held liable for *fraud for misleading disclosures qua money raised from P R Vyapar by issuing ICDs*
- ***Penalty of Rs. 2 Lakhs imposed*** upon the Compliance Officer.



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Case 2 - Resurgere Mines and Minerals India Ltd.(3/3)

Rakesh Gupta v SEBI before SAT

➤ Observations of the SAT:

- There is no evidence to show that the appellant was in charge of any financial functions of the Company to hold him liable for declarations made in the prospectus in terms of Schedule VIII Part A (XVI)(B) of the ICDR Regulations.
- SAT set aside AO order imposing penalty of Rs.2 Lakhs on the CO.

ICDR Regulations, 2009 (XVI) (B) Declaration:

“(1) The draft offer document (in case of issues other than fast tract issues) and offer document shall be approved by the Board of Directors of the issuer and shall be signed by all directors, the Chief Executive Officer, i.e. the Managing Director or Manager within the meaning of the Companies Act, 1956 and the Chief Financial Officer, i.e. the whole-time finance director or any other person heading the finance function and discharging the function.”



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Case 3 - Deccan Chronicle Holdings Ltd. (1/4)

FACTS

- Company had ***understated outstanding loans and interest in finance charges*** etc. and overstated profits in the annual report;
- Company had ***carried out buyback of the shares without having adequate free reserves*** which misled the investors;
- Company failed to disclose to the stock exchanges material price sensitive information on the date of entering into an agreement with Deccan Chronicle Marketers (“DCM”)

Issues

- What is the role of company secretary / compliance officer in respect of buy back of securities of DCHL?
- Whether the company secretary bears the obligation of verifying the details of the financial statements and disclosures before affixing signature?



Case 3 - Deccan Chronicle Holdings Ltd. (1/4)

Findings against the Compliance Officer in AO order:

- Compliance Officer, V Shankar was ***responsible as the Company Secretary*** of DCHL for signing the ***public announcement made by the company for buyback*** of its equity shares
- Is equally liable for mis-statements along with the company and its directors
- ***Penalty of Rs. 10 Lakhs imposed*** upon CO



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Case 3 - Deccan Chronicle Holdings Ltd. (3/4)

➤ Observations of the SAT:

- Company run and managed by its *Board of Directors who violated Section 68* knowingly and recklessly inducing investors by inflating profits of the company
- *Company Secretary had no role to play* except comply with the resolution made by the Board of Directors.
- *Company Secretary was nowhere responsible for false or misleading open offer made by the company.*
- SAT quashed the order of penalty of *Rs. 10 Lakhs* on CO.
- The *role of the Compliance Officer was only limited to redress the grievance of the investors* [Regulation 19(3) of SEBI(Buyback of Securities) Regulation, 1998].



Case 3 - Deccan Chronicle Holdings Ltd. (4/4)

➤ Appeal filed before Supreme Court:

Grounds for Appeal

- The **interpretation** which has been placed on **Regulation 19(3)** is **erroneous**;
- The **duty of authentication of CO** cannot be confined to merely a **signature** on the relevant statutory documents
- SAT was not justified in absolving CO on the ground that it was for the Board of Directors to ensure compliance
- The **observation of SAT** that the role of the Company Secretary is only confined to redressing the grievance of investors is **plainly contrary to Regulation 19(3)**

Decision

- SC set aside the order of the SAT and restored the matter to the file of the SAT for further consideration.

Current Status

- Order reserved by SAT

Regulation 19(3) of 19(3) of SEBI(Buyback of Securities) Regulation, 1998

“19(3) The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors.”



Case 4 - Kwaliti Limited (1/2)

Facts

- *Insiders traded while in possession of UPSI*
- *DPs traded during trading window closure*
- *DPs executed contra trades*
- *Director failed to make disclosure u/r 7(2) of PIT Regulations*
- ***Allegation***
- ***CO failed to monitor the trades*** of DPs, compliance of the Company's code of conduct and administer the PIT Regulations effectively.

Issue

- Is CO liable for action ?



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Case 4 - Kquality Limited (2/2)



Findings / Action against the CO in AO order:

- CO **could have brought the non-compliances** observed by him **to the attention of company board or independent director or committee of Independent Directors or Stock Exchange or SEBI.**
- CO **always had the option of adopting route of whistle blower** to diligently discharge the duties and responsibilities as Compliance Officer of the Company.
- CO **should have taken action incumbent upon him under PIT regulations** wrt non-compliances from the failure of the respective disclosures by the Company to the Stock Exchanges and non-remittance of the profit made/loss avoided by the erring entities to the IPEF
- CO **failed to monitor the trades of all designated persons**, compliance of the Company's code of conduct and administer the PIT Regulations effectively in the Company during the Investigation Period.
- **Penalty of Rs. 2 Lakhs was imposed** upon CO.



Case 5 - Edelweiss (1/2)

Facts

- Edelweiss acquired a fintech co AIMIN by acquiring 100% of the latter's equity capital (Rs.4 crores)
- Term Sheet was signed on 25/1/17
- Disclosure made to Stock Exchange under LODR on 5/4/17 consequent to signing of Share Purchase Agreement

Issue

- Whether the aforesaid event qualifies as UPSI ?
- Whether trading window required to be closed ?
- Whether compliance officer is liable for action ?



Case 5 - Edelweiss (2/2)



SAT Order dated June 26, 2024

- While materiality with respect to the price of the securities or to the company is a benchmark for defining UPSI such interpretation of materiality cannot be done arbitrarily
- Disclosure included that this acquisition will help grow Edelweiss fixed income advisory business and no caveats are given
- 100% acquisition of a company, irrespective of its value or size, becomes material and liable to bring in UPSI and consequently liable for regulatory compliances under LODR and PIT
- Hence, trading window ought to have been closed
- Compliance officer failed to do so and liable for penalty.
- Reduced penalty - 5 to 1 lac (min. u/s 15HB of SEBI Act)



Case 6 - SEBI v. R.T. Agro (P.) Ltd. [2022] 137 taxmann.com 496 (SC) (1/3)



Facts

- R T Exports Limited entered into a transaction with Neelkanth Realtors Limited, which was a RPT. Hence, the defendant being a related party absented from voting
- Subsequently, the transaction was cancelled.
- The defendant being a related party voted in the resolution rescinding the transaction

Issue

- Whether the related party can vote in such a resolution ?



Case 6 - SEBI v. R.T. Agro (P.) Ltd. [2022] 137 taxmann.com 496 (SC) (2/3)



SEBI AO Order

- Held as violation of regulation 23 of LODR and levied penalty of Rs.37 lacs
- **SAT Order**

“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. AO order set aside***



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On appeal, Hon. SC upheld SAT order with following observations (3/3)



- *“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”*



Case : 7 SEBI v. Alps Motor Finance Ltd.



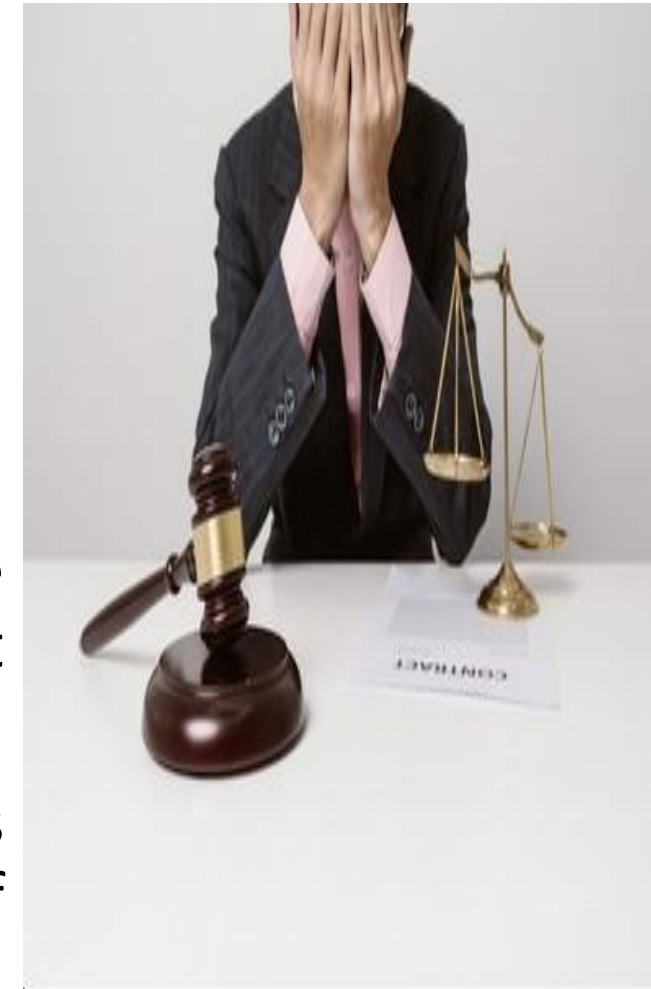
- Appellant Co. made 6 (six) preferential allotments during the period June 2013 to August 2013;
- Necessary disclosure on the stock exchange platform was made by the company;
- SEBI investigation revealed possibility of mis-utilization of proceeds / utilization of proceeds for purposes other than for which approval was obtained from shareholders earlier.
- However, company got ratified by shareholders the different utilization of proceeds
- SEBI AO levied penalty – May 23, 2023



SAT's Decision



- Preferential allotment made in **August 2013**. Facts known to Ses and SEBI. No action whatsoever was taken
- BSE Ltd. itself took cognizance of the alleged violation in **2016** in spite of which it took SEBI another 5 years to issue a show cause notice in **2023**
- Thus, there was an inordinate delay
- Deviation was placed before the shareholders in the extraordinary general meeting of the company and the object of the issue was ratified by the shareholders on 29/9/2017
- Thus, prior to SCN, the alleged deviation by the company was ratified and, therefore, there was no violation of LODR or of the listing agreement on the date when SCN was issued



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Observations of Hon. Supreme Court

- *There is no good ground and reason to interfere with the impugned judgment and hence, the instant appeals are dismissed.*
- *The question(s) of law is left open.*

[2024] 159 taxmann.com 422 (SC) – order dated 5/2/24



Case 8 - Infosys Limited (1/2)

Facts

- On 14/6/20 Infosys announced a strategic partnership with Vanguard. As per the announcement, Vanguard was the largest asset manager in the Defined contribution space and Infosys would provide a cloud based record keeping platform to Vanguard
- 1,300 employees of Vanguard will join Infosys.
- Largest ever deal signed in INFY's history projected to generate significant fees over 10 years
- Deal projected to generate significant fees over 10 years
- This was not disclosed as Unpublished Price Sensitive Information (UPSI) by Infosys.
- But Vanguard has disclosed this as UPSI to NYSE

Issue

- Who is responsible for the above lapse ?



Case 8 - Infosys Limited (2/2)

Undertaking submitted by Infosys before HPAC:

- i. The practice followed within Infosys to identify UPSI has been placed before the Audit Committee and the Board of Infosys for guidance and approval.
- ii. The practice of breaking the Total Contract Value of any deal into average revenue per annum for comparing with the annual revenue of Infosys has also been informed to the Audit Committee and Board of Infosys.
- iii. The practice has been converted into a written and approved policy.

Settlement Order dated June 26, 2024

Adjudication proceedings against Shri Salil Parekh, MD, disposed off against a settlement amount of Rupees Twenty Five Lakhs.



Case 9 - Elcid Investments Limited (1/2)

• Facts

| Alleged Violations | SEBI Provisions |
|--|---|
| Elcid failed to maintain a Structured Digital Database during the Investigation Period | Regulation 3(5) read with Regulation 3(6) of the PIT Regulations. |
| Elcid failed to disclose one promoter's joint shareholding of 50 shares with his spouse, as part of promoter and promoter group, for the quarters ending December 2021 to June 2022. | Regulation 31(1)(b) of LODR Regulations read with SEBI Circular dated November 30, 2015 and Regulation 2(1)(pp) of ICDR Regulations |

Issues

- Is Compliance Officer liable for the above lapses ?

Case 9 - Elcid Investments Limited (2/2)

| Alleged Violations | SEBI Provisions |
|--|---|
| Elcid failed to maintain a Structured Digital Database during the IP | Regulation 3(5) read with Regulation 3(6) of the PIT Regulations. |
| Elcid failed to disclose one promoter's joint shareholding of 50 shares with his spouse, as part of promoter and promoter group, for the quarters ending December 2021 to June 2022. | Regulation 31(1)(b) of LODR Regulations read with SEBI Circular dated November 30, 2015 and Regulation 2(1)(pp) of ICDR Regulations |

Settlement Order passed on June 24, 2024

- Adjudication proceedings disposed off against settlement amount of Rs.17.31 lacs



If you think compliance is expensive,
try non-compliance.

- Paul McNulty,
Former U.S. Deputy Attorney General



Irresponsible behaviour =
self destruction

*Regulator and Regulated entities are not adversaries;
but partners in progress*

Thank You

**WIRC and Thane Chapter of
ICSI for the invitation! 😊**

**Members and Students for the
active participation! 😊**