

# Case Law

## Huge non-disclosure penalty under SEBI (SAST) Regulations

### - Was it Justified?



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6<sup>th</sup> February, 2014

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## *Huge non-disclosure penalty under SEBI (SAST) Regulations – Was it Justified?*

### *Case Law*

By way of an Order dated 31<sup>st</sup> January, 2014, SEBI imposed a penalty aggregation Rs. 50 lakhs on 7 promoter entities ('Promoters') of Hindustan Unilever Limited ('HUL') for delay in filing of disclosure requirements under Regulation 8 (1) and 8 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations, 1997') and Regulation 30 (1) read with Regulation 30 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations, 2011').

#### **Facts of the case:**

SEBI, on 29<sup>th</sup> November, 2013, issued a show cause notice (SCN) to the Promoters of HUL for violations of the provisions of:

- SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010; and
- SAST Regulations, 2011 for the year 2013.

The SCN was issued on the basis of an open Letter of Offer made by Uniliver PLC alongwith Unilever N.V for acquisition of 22.5% shares of HUL.

Regulations 8 (1) of the SAST Regulations, 1997 required persons holding 15% shareholding in the company to make annual disclosure to the company within 21 days of the year ending 31<sup>st</sup> March of every year. Regulation 8 (2) of the SAST Regulations, 1997 and Regulation 30 (1) read with 30 (2) of the SAST Regulations, 2011 required promoters to make annual disclosure of their shareholding and voting rights to the company within 21 days and 7 days respectively.

Upon examination it was found that the Promoters had delayed in filing of annual shareholding disclosures under SAST Regulations, 1997 and SAST Regulations, 2011. The Promoters of HUL also acknowledged such delays and submitted that the non-compliance has been inadvertent in nature without any intention to conceal any information or gain any advantage.

They also contended that there was there was no change in promoter holding for the said years and therefore there was no unfair benefit attained by the promoters nor was any harm caused to the investors or public at large due to the delayed disclosure. It was observed that the delay was not prolonged and ranged between 4 to 31 days.



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SEBI placed reliance to the judgment of the Securities Appellate Tribunal in the matter of *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* and ruled out the view that violation was technical in nature and should be dealt with leniently.

For the purpose of levying monetary penalty, SEBI also referred to Supreme Court's decision in the matter of *SEBI Vs. Shri Ram Mutual Fund*, wherein it was held that once a violation of statutory requirements has been made, imposition of penalty becomes essential irrespective of the intension of the parties.

Referring to the Sections 15A (b) and 15J, SEBI held a strict view and contended that the disclosure requirement were '*an important component of the legal regime governing substantial acquisition of shares and takeovers*' and '*in the absence of these timely disclosures, the investors will be deprived of important information at the relevant point of time.*' It also noted that the non-compliance was not a one-time incident and was repetitive in nature.

Given the above, an important question that may arise here is whether the penalty of Rs. 50 lakhs was justified?

### **Our Opinion**

We hold an opinion that the penalty levied on the Promoters of HUL was a bit harsh given that there was no reportable change in promoter shareholding during the defaulting years and neither was the duration of such delay enormous. We believe that the Promoters could not have gained anything substantial from such delay, nor can the loss attributable to the investors be huge enough to prompt such high penalizing amount.

Though we strongly affirm that timely disclosure of shareholding is an important aspect of takeover regulation and non-compliance to it should be dealt with appropriately, we also believe that SEBI should consider the material nature of such delay.

The Hon'ble Supreme Court in *Ranjit Thakur V Union of India AIR 1987 SC 2386* observed that "*Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias.*"

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