

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 02.02.2018

Appeal No. 2 of 2017

Manoj Mittal
501-A, The Capital, B-Wing,
C-70, G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

..... Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.

2. IndiaStar (Mauritius) Ltd.
International Trust Limited, Level 3,
Alexander House, 35, Cybercity Ebene,
Mauritius.

... Respondents

Mr. Pesi Mody, Senior Advocate with Mr. Neville Lashkari, Mr. Deepak Dhane, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi Jhavar, Advocates i/b The Law Point for the Respondent No. 1.

Mr. Karthik Somasundram, Advocate with Ms. Sneha Herwade, Advocate i/b Krishnamurthy & Co. for the Respondent No. 2.

**With
Appeal No. 11 of 2017**

Anupam D. Dighe
3/207, Mehta Park, Bhagoji Keer Road,
Mahim, Mumbai 400 016.

..... Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.

2. IndiaStar (Mauritius) Ltd.
C/o International Trust Limited, Level 3,
Alexander House, 35, Cybercity Ebene,
Port Louise, Mauritius.

3. General Insurance Corporation of India
 “SURAKSHA” 170, J. Tata Road,
 Churchgate, Mumbai – 400 020.Respondents

Mr. Kiran Padalkar, Advocate i/b India Law Alliance for the Appellant.
 Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
 Ms. Vidhi Jhavar, Advocates i/b The Law Point for the Respondent No. 1.
 Mr. Karthik Somasundram, Advocate with Ms. Sneha Herwade, Advocate
 i/b Krishnamurthy & Co. for the Respondent No. 2.
 None for the Respondent No. 3.

**With
 Appeal No. 44 of 2017**

Mr. Jitendra M. Tolia
 203, Jaisingh Landmarque, Azad Road,
 Vile Parle (East), Mumbai – 400 057. Appellant

Versus

Securities and Exchange Board of India
 SEBI Bhavan, C-4A, G-Block,
 Bandra Kurla Complex,
 Bandra (E), Mumbai – 400 051.Respondent

Mr. O. D. Goswani, Advocate for the Appellant.
 Mr. Vishal Kanade, Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi
 Jhavar, Advocates i/b The Law Point for the Respondent.

**With
 Appeal No. 128 of 2017**

Vijay N. Bhatt
 2, Palacimo CHS Ltd.
 Plot No. 47/48, Indranarayan Road,
 Santacruz (West), Mumbai – 400 054. Appellant

Versus

Securities & Exchange Board of India
 SEBI Bhavan, C-4A, G-Block,
 Bandra Kurla Complex,
 Bandra (E), Mumbai – 400 051. Respondent

Mr. O. D. Goswani, Advocate for the Appellant.
 Mr. Vishal Kanade, Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi
 Jhavar, Advocates i/b The Law Point for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C. K. G. Nair, Member

Per : Justice J. P. Devadhar (Oral)

1. Appellants in all these appeals are aggrieved by the communications issued by Securities and Exchange Board of India ('SEBI' for short), to the respective appellant, whereby the complaint filed by each appellant has been rejected.
2. Initially, SEBI raised a preliminary objection regarding the maintainability of the appeals, however, later on gave up that contention on ground that it is preserving its right to raise that contention in appropriate cases.
3. Appellants herein are all shareholders of a company known as Global Offshore Services Ltd. (formerly known as Garware Offshore Services Ltd.), hereinafter referred to as the 'target company' for convenience.
4. India Star (Mauritius) Ltd., respondent No. 2 in Appeal No. 2 of 2017 and 11 of 2017 ('acquirer' for convenience) held 14.57% shares of the target company. On June 1, 2006, the acquirer was allotted 10% unsecured optionally convertible debentures in the target company which was converted into equity shares representing 9.54% of the paid up equity capital of the target company vide approval of the allotment committee of the Board of directors of the target company in the meeting held on November 6, 2007. As a result of the said conversion, aggregate shareholding of the acquirer became 20.42% of the paid up equity share capital of the target company which triggered open offer obligation

contained in the SEBI (Substantial Acquisition of Shares and Takeover Code) Regulations, 1997 (“Takeover Regulations, 1997” for convenience).

5. Accordingly, the acquirer made a cash offer to the shareholders of the target company to acquire up to 47,63,819 equity shares representing aggregate 20% of the expanded paid up voting equity share capital of the target company at a price of Rs. 230/- per fully paid up equity shares of face value of Rs. 10 each. Admittedly, the appellants did not participate in the open offer.

6. It is not in dispute that 41 complaints were filed before SEBI by various complainants including the appellants as well as the General Insurance Corporation alleging that material facts were suppressed by the acquirer in the open offer. One such complaint filed by Amit Barot was disposed of by the whole Time Member (WTM) of SEBI on November 21, 2014 by holding that the disclosure made in the letter of offer does not present a true and a fair representation of the persons having control over the acquirer. By the said order, the WTM of SEBI reprimanded the acquirer and its Merchant Banker and advised them to be careful and ensure that such lapses do not recur in future. The complainant Amit Barot has not challenged the aforesaid decision of WTM dated November 21, 2014.

7. Based on the aforesaid decision of WTM dated November 21, 2014, the Assistant General Manager of SEBI with the approval of the Executive Director of SEBI has disposed of the complaints filed by the appellants.

8. Although, no fault can be found with the Assistant General Manager of SEBI in disposing of the complaints by following the decision of the WTM of SEBI dated November 21, 2014, in our opinion, the said order of

the WTM of SEBI is ex-facie bad in law and runs counter to the spirit of SEBI Act.

9. Basic object of SEBI Act is to protect the interests of the investors in securities and to promote the development of and to regulate the securities market. Where an acquirer is found to have violated the provisions contained in the SEBI Act and the regulations framed thereunder, then, simply reprimanding the acquirer but not taking any remedial action would be detrimental to the interest of investors and against the spirit of SEBI Act.

10. In the order dated November 21, 2014, the WTM of SEBI has clearly held that the letter of offer issued by the acquirer did not represent a true and fair representation of the persons having control over the acquirer. Therefore, the appellants are justified in contending that the facts suppressed by the acquirer from the investors apart from being in violation of the Takeover Regulations, 1997, if disclosed at the time of open offer then they would have offered their shares in the open offer and that argument of the appellants deserves serious consideration. In such a case, decision of the WTM in merely reprimanding the acquirer and the Merchant Banker would be nothing but gross injustice done to the investors.

11. In these circumstances, we set aside the impugned communications and restore the complaints for fresh decision on merits and direct a competent officer of SEBI to dispose of the complaints on merits without being influenced by the decision of the WTM dated November 21, 2014.

12. All contentions of all parties including the acquirer are kept open. SEBI is directed to pass fresh order on the complaints filed by the

complainants as expeditiously as possible and in any event within a period of four months from today.

13. All four appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C. K. G. Nair
Member

02.02.2018
Prepared & Compared by
PTM