BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 30.11.2016
Date of Decision : 15.12.2016

Appeal No. 102 of 2014

1. Sanjay Dalmia
   9, Tees January Marg,
   New Delhi- 110 001

2. Anurag Dalmia
   9, Tees January Marg,
   New Delhi- 110 001

3. Jyoti Prakash Khetan
   802, Joy Sapphire, 8th Floor,
   Plot No. 22 N. S. Road, N-6, JVPD Scheme,
   Vile Parle (West), Mumbai- 400 056

4. Ashok Kumar Joshi
   Vaishali, Flat No. 101,
   1st Floor, Janki Kutir,
   Juhu Church Road, Juhu,
   Mumbai- 400 049 …Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. Iqbal Chagla, Senior Advocate with Ms. Rajas Kasbekar, Advocate i/b Little & Co. for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 101 of 2014

1. Smt. Chanchal Kumar
   B-703, Uttpal Park,
   7th Floor, Temple Road,
   Mahim, Mumbai-400 016

2. Shri Bharat Merchant Bachubhai
8-A, Land's End, 8th Floor,
29-D, Doongersey Road,
Malber Hill,
Mumbai- 400 006

3. Shri Rishabh Jain
16/77-A Civil Lines,
Kanpur- 208 001

4. Shri Vijay Kumar Bhandari
1704- Wallance Apartment,
17th Floor, Sleater Road,
Grant Road (West),
Mumbai- 400 007 …Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. Vicky Singh, Advocate with Ms. Rajas Kasbekar, Advocate i/b Little & Co. for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per: Justice J.P. Devadhar

1. Appellants in these two appeals are aggrieved by the order passed by the Adjudicating Officer ("AO" for short) of the Securities and Exchange Board of India ("SEBI" for short) on February 14, 2014. By the said order penalty of ₹ 1 crore is imposed on the appellants under Section 15HB of the Securities and Exchange Board of India Act, 1992 (for short "SEBI Act") on the ground that the appellants have violated regulation 23(1) of the Securities and Exchange Board of India

(Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Takeover Regulations, 1997" for short). Since the appellants in these two appeals have challenged the common order passed by the AO on February 14, 2014, both these appeals are heard together and disposed of by this decision.

2. Facts set out in these two appeals and also revealed during the course of arguments are as follows:

a) Appellants at the material time were the Executive Directors/ Non-Executive Directors of Golden Tobacco Limited ("Company" for convenience). Appellant No. 1 in Appeal No. 101 of 2014 is the legal heir of the original Appellant No. 1 Shri Raghunath Kumar, who has died during the pendency of the appeal.

b) In the year 1997 company faced unexpected losses due to the devolvement of statutory liabilities and ongoing litigation as a result of which the company was referred to the Board of Industrial and Financial Reconstruction ("BIFR" for convenience). On April 03, 1997 the BIFR declared the company to be a sick undertaking. On December 16, 2002 the BIFR sanctioned a Rehabilitation Scheme for the company from April 01, 2003 which was to remain in operation for a period of 8 years ending on March 31, 2011.

c) Pursuant to the implementation of the Rehabilitation Scheme, the net worth of the company turned positive in the financial year ending March 31, 2007. Consequently on June 29, 2007 BIFR passed an order discharging the company from the purview of BIFR. However, while discharging the company, BIFR directed that implementation of the pending provisions of the sanctioned scheme be continued.

d) Due to increase in the excise duty on cigarettes announced by the Central Government in the Budget announced for 2008-2009, the company's turnover fell sharply and the company began to incur losses. Therefore, the Board of Directors ("BoD" for short) of the company in the meeting held on September 24, 2008 authorized the Managing Director and Director, finance to explore the possibility of making alternative use of the company's property located at Marol (West) Mumbai and Vile Parle (West) Mumbai.

e) On September 29, 2008 Mr. Pramod Jain, through his company Pranidhi Holdings Pvt. Ltd ("Pranidhi Holdings" for short) made an offer to the company for the joint development of the company's property

situated at Vile Parle (West) Mumbai, by offering ₹ 150 crore + sharing profit in the ratio of 50:50.

f) In the meeting held on January 17, 2009, the Board of Directors of the company approved the proposal to raise finances for the company's real estate business. Accordingly, the company engaged the services of Ernst & Young (E&Y) to invite bids from renowned builders and shortlist the most suitable bidder.

g) On November 12, 2009 Mr. Pramod Jain and two Others made public announcement under the Takeover Regulations, 1997 disclosing their intention to acquire 44,02,201 equity shares (25%) of the company at a price of ₹ 101/- per share. On November 26, 2009 Mr. Pramod Jain and Others filed draft letter of offer seeking approval of SEBI for acquiring 25% shares of the company from the shareholders.

h) On December 21, 2009 a resolution was passed by the BoD of the company inter alia to develop the company's property at Vile Parle (West) Mumbai subject to the approval of the shareholders as contemplated under regulation 23(1) of the Takeover Regulations, 1997.

i) On December 21, 2009 itself a notice was addressed to the shareholders of the company convening an Extra Ordinary General Meeting ("EOGM") on January 18, 2010 at 11:00 a.m. to seek their approval under regulation 23(1) of the Takeover Regulations, 1997 for joint development of the Vile -Parle (West) property.

j) On December 26, 2009 a Memorandum of Understanding ("MoU" for short) was entered into by the company with Sheth Developers and Suraksha Realty Ltd. ("developers") for joint development of the Vile-Parle (West) Mumbai property inter alia for a consideration of ₹ 542 crore. As per the terms of MoU, amount of ₹ 35 crore was to be paid to the company on or before execution of the MoU and within 48 hours of the execution of the MoU title deeds in respect of the Vile-Parle (West) Mumbai property were to be kept in ESCROW with the company's Solicitors to be released only on execution of the Joint Development Agreement. The amount of ₹ 35 crore was accepted by the company for the purpose of discharging the company's liabilities.

k) Challenging the MoU dated December 26, 2009, Mr. Pramod Jain and Pranidhi Holdings filed Company Petition No. 3 of 2010 under Section 397

and 398 of the Company's Act, 1956 before the Company Law Board ("CLB" for short).

l) At the EOGM held on January 18, 2010, the shareholders gave their consent to the company to take necessary steps inter alia for joint development of the company's property at Vile-Parle (West) Mumbai. It also authorized execution of Joint Development Agreement in respect of the Vile-Parle (West) Mumbai property.

m) Vide interim order dated January 19, 2010 the CLB restrained the company and its promoters from implementing the resolution passed in the EOGM on January 18, 2010. Thereafter on, February 9, 2010 the CLB passed an order by consent of parties recording that Mr. Pramod Jain and Others had amicably settled the matter with the company and its promoters and permitted Mr. Pramod Jain to withdraw the Company Petition No. 3 of 2010.

n) On February 16, 2010, the BoD of the company resolved to convert the cost of the land at Vile-Parle (West) held as capital asset into stock in trade at cost.

o) On May 26, 2010 company decided to shift the plant and machinery from the company's premises at Vile

Parle (West) to Vadodara. In the Annual General Meeting ("AGM" for short) held on September 18, 2010 it was resolved that the registered office of the company be moved from Maharashtra to Gujarat.

p) On March 22, 2011 shareholders resolution was passed through postal ballot wherein the Board was authorized to enter into an agreement with Sheth Developers Pvt. Ltd. and Suraksha Realty Ltd. for the joint development of the Vile Parle (West) property of the company.

q) By a show cause notice dated September 19, 2013, SEBI called upon the appellants to show cause as to why entering into the MoU on December 26, 2009 during the period when the public offer made by Mr. Pramod Jain and Others was pending, should not be held to be in violation of regulation 23(1) of the Takeover Regulations, 1997.

r) Appellants in their reply to the show cause notice denied to have violated the Takeover Regulations, 1997. Thereafter, an opportunity of hearing was given to the appellants and by the impugned order dated February 14, 2014 penalty of ₹ 1 crore is imposed on the appellants in both the appeals on the ground that the appellants have violated regulation 23(1) of the

Takeover Regulations, 1997 and directed the appellants in both the appeals to pay the aforesaid penalty of ₹ 1 crore jointly and severally. Challenging the aforesaid decision these two appeals are filed.

3. Mr. Chagla, learned Senior Advocate appearing on behalf of the appellants in Appeal No. 102 of 2014 and Mr. V. M. Singh, learned Advocate appearing on behalf of the appellants in Appeal No. 101 of 2014 submitted as follows:-

a) The MoU executed by the company with the developers on December 26, 2009 specifically records that the said MoU was subject to approval from the shareholders and that formal Joint Development Agreement in favour of developers would be executed within a period of one month from the date of the company getting necessary resolution passed at its shareholders meeting. The MoU further records that if the shareholders reject the Joint Development Proposal, then, the MoU shall come to an end and the advance amount received by the company under the MoU shall be returned with 18% interest. Thus, the MoU was in the nature of an agreement to agree and was not a binding contract. In such a case, the AO could not have held that by executing the MoU, the BoD of the company had created third party rights on the assets of the company to the detriment of the

acquirers under the open offer. Since no rights flowed under the MoU and the MoU was not a legally enforceable contract, the AO of SEBI is not justified in holding that by executing the MoU without the approval of shareholders, the appellants have violated regulation 23(1) of the Takeover Regulations, 1997.

b) Under Section 31 to Section 35 of the Contract Act 1872, execution of contingent contracts is permitted and those contracts become enforceable only on the contingent event happening. In the present case, the MoU dated December 26 2009 which was neither registered nor properly stamped was not intended to create any right in favour of the developers and was to be operative only if the shareholders of the company approved the proposal and thereafter a formal Joint Development Agreement was executed. Thus, in the facts of present case, at least till the shareholders gave approval for joint development of the Vile Parle (West) property it could not be said that by executing the MoU, the BoD had encumbered the Vile Parle (West) property in violation of regulation 23(1) of the Takeover Regulation, 1997, because, the MoU did not create any encumbrance or created any third party right on the Vile-Parle (West) property in favour of the developers till the contingent event happened in

the general body meeting scheduled on January 18, 2010. In support of the above contention reliance is placed on a decision of the Apex Court in case of Mrs. Saradamani Kandappan v/s Mrs. S. Rajalakshmi and Ors. reported in AIR 2011 SC 3234.

c) Alleging that execution of the MoU dated December 26, 2009 amounts to encumbering the Vile Parle (West) property, Mr. Pramod Jain and Ors. (acquirers) had sought to withdraw from the open offer. That contention of Mr. Pramod Jain was rejected by SEBI and the said decision of SEBI was upheld by this Tribunal and also by the Apex Court. Once the plea of Mr. Pramod Jain that by entering into an MoU on December 26, 2009 the company had encumbered or created third party rights over the Vile-Parle (West) property of the company is rejected by SEBI and upheld by this Tribunal and also by the Apex Court, it is not open to SEBI to take a contrary view in case of the appellants. Fact that this Tribunal while upholding the order passed by SEBI in the case of Mr. Pramod Jain, had recorded a finding that the MoU executed on December 26, 2009 was in violation of regulation 23 of the Takeover Regulations, 1997 would not bind the appellants, because, the appellants were not party to the said proceedings. Accordingly, it is submitted that

the appellants are entitled to agitate before this Tribunal that entering into an MoU subject to the approval by the shareholders in the EOGM was permissible in law and the said MoU did not violate regulation 23(1)(a) of the Takeover Regulations, 1997.

d) Regulation 23(1)(a) of the Takeover Regulations, 1997 provides that during the offer period, the BoD of the company, without the approval of the general body of shareholders shall not sell, transfer, encumber or otherwise dispose of the assets of the company. Entering into an MoU subject to approval from the shareholders would not amount to selling, transferring, encumbering or otherwise disposing of the assets of the company. Even the amount of ₹ 35 crore received under the MoU was liable to be refunded with interest in the event of the shareholders rejecting the proposal. Therefore, in the facts of present case it could not be said that the appellants had violated regulation 23 of the Takeover Regulations, 1997.

e) Assuming for the sake of argument that there is any technical breach of the Takeover Regulations, 1997 committed by the appellants, imposing maximum penalty of ₹ 1 crore is highly arbitrary

disproportionate and excessive high, especially when the shareholders have in fact approved the MoU in the EOGM held on January 18, 2010.

f) On behalf of the appellants in Appeal No. 101 of 2014 it is submitted that the said appellants were Independent Directors and were not involved in the execution of the MoU and therefore imposing penalty on the said appellants is unjustified.

4. Mr. Rustomjee, learned Senior Advocate appearing on behalf of SEBI supported the order passed by the AO and submitted that the terms of the MoU dated December 26, 2009 as also the conduct of the appellants subsequent thereto leave no manner of doubt that the said MoU was entered into in gross violation of the provisions contained in the Takeover Regulations, 1997 and hence there is no merit in these two appeals.

5. We have carefully considered rival submissions.

6. Before dealing with the rival contentions, it would be appropriate to quote regulation 23(1) of the Takeover Regulations, 1997 which reads thus:-

"General obligations of the board of directors of the target company.

23. (1) Unless the approval of the general body of shareholders is obtained after the date of the public

announcement of offer, the board of directors of the target company shall not, during the offer period,-

(a) sell, transfer, encumber or otherwise dispose of or enter into an agreement for sale, transfer, encumbrance or for disposal of assets otherwise, not being sale or disposal of assets in the ordinary course of business, of the company or its subsidiaries; or

(b) issue 2 [or allot] any authorised but unissued securities carrying voting rights during the offer period; or

(c) enter into any material contracts.

Explanation.-Restriction on issue of securities under clause (b) of subregulation (1) shall not affect-

(i) the right of the target company to issue or allot shares carrying voting rights upon conversion of debentures already issued or upon exercise of option against warrants, as per pre-determined terms of conversion or exercise of option; (ii) issue or allotment of shares pursuant to public or rights issue in respect of which the offer document has already been filed with the Registrar of Companies or Stock Exchanges, as the case may be.

7. Regulation 23(1) of the Takeover Regulations, 1997 expressly provides that during the public offer period without obtaining prior approval of the general body of shareholders, the BoD of a company shall neither sell, transfer, encumber or otherwise dispose of the assets of the company nor the BoD of the company shall enter into any agreement

for sale, transfer, encumbrance or disposal of the assets of the company. In other words, regulation 23(1) of the Takeover Regulations 1997, not only makes it mandatory for the BoD of a company to first seek approval of the general body of shareholders before selling, transferring, encumbering or otherwise disposing of the assets of the company but also before entering into an agreement for selling, transferring, encumbering or disposing of the assets of the company. Object of the above provision is to ensure that during the offer period, the assets of the company are not dealt with in any manner whatsoever without the approval of the general body of shareholders, because dealing with the assets of the company would have direct bearing on the shareholders decision either to participate in the open offer or not.

8. In the present case, it is not in dispute that on the date of entering into an MoU on December 26, 2009, the public offer made by Mr. Pramod Jain and Others was subsisting. Question, therefore to be considered is, whether entering into an MoU on December 26, 2009, during the offer period for development of the Vile-Parle (West) property jointly with the Developers subject to the approval of general body of shareholders amounts to violating regulation 23 of the Takeover Regulations, 1997.

9. In view of the prohibition contained in regulation 23 of the Takeover Regulations 1997, in our opinion, the BoD of the company could not have entered into an MoU on December 26, 2009 for joint development of the Vile-Parle (West) property with the Developers. Regulation 23 contemplates that without the approval of the general body

of shareholders, the BoD of a company cannot enter into any form of agreement for selling, transferring or encumbering the assets of the company. To hold that the expression 'agreement' used in regulation 23 would not apply to an 'MoU' would amount to defeating the object with which regulation 23 has been framed. Therefore, in the facts of present case, entering into an MoU on December 26, 2009 for joint development of the Vile-Parle (West) property subject to approval of the shareholders was in gross violation of regulation 23 of the Takeover Regulations, 1997.

10. Apart from the above, as rightly contended by the counsel for SEBI, it is apparent that by executing the MoU on December 26, 2009 the BoD of the company sought to encumber the Vile-Parle (West) property in violation of regulation 23 is established as can be seen from the following:-

a) The notice issued by the company to the shareholders on December 21, 2009 specifically records that the company intends to enter into a material contract inter alia for joint development of the Vile-Parle (West) property and since regulation 23 of the Takeover Regulations, 1997 prohibits the BoD to take any steps in that behalf without the approval of the general body of shareholders, EOGM is convened on January 18, 2010 at 11:00 AM seeking approval of the shareholders, inter alia, for joint development of

the Vile Parle (West) property. Having convened the EOGM on January 18, 2010, the BoD of the company could not have bypassed the general body of shareholders and enter into an MoU on December 26, 2009. Fact that the appellants instead of entering into an 'agreement' have entered into an 'MoU' does not entitle the appellants to violate regulation 23 of the Takeover Regulations, 1997.

b) Apart from the above, perusal of the terms set out in the MoU reveal that the BoD of the company had not only finalized the terms for joint development of the Vile-Parle (West) property at ₹ 542 crore but also in implementation of the MoU, the company had received ₹ 35 crore from the developers as part payment. Moreover, the MoU records that within 48 hours of the execution of MoU, the title deeds of the Vile-Parle (West) property be kept in ESCROW with the Company's Solicitors. Thus, on execution of the MoU, the title deeds of the Vile-Parle (West) property were encumbered in violation of regulation 23.

c) It is interesting to note that clause 9.1 of the MoU records that if the company is unable to obtain

approval of the shareholders, then the developers will have an option to terminate the MoU by giving two days notice and upon such termination the company shall refund the amounts paid by the developers with 18% interest. Clause 9.2 of the MoU records the undertaking given by the company that in the event of termination of the MoU by the developers, the company shall not enter into any transaction for disposal or alienation of the Vile-Parle (West) property till the amounts payable by the company to the developers have been paid and discharged. These two clauses in the MoU unequivocally establish that in the event of the shareholders rejecting the joint development proposal, the MoU was not to come to an end and it was open to the developers to seek enforcement of the MoU even if the shareholders rejected the proposal for joint development of the Vile-Parle (West) property. In other words, the MoU was binding on the company and inspite of the developers opting for termination of the MoU, the Vile-Parle (West) property of the company was to remain encumbered till the amounts received by the company under MoU were refunded with interest by the company to

> the developers. Thus, the terms of the MoU establish beyond any doubt that on execution of the MoU the Vile-Parle (West) property of the company was encumbered by the BoD in gross violation of regulation 23 of the Takeover Regulations, 1997.

11. Argument advanced on behalf of the appellants that the MoU was not a legally enforceable contract and that the Vile-Parle (West) property was not encumbered under the MoU is without any merit, because, the MoU specifically provides that the developers could seek joint development of the Vile-Parle (West) property even if the proposal was rejected by the general body of shareholders and in the event of developers opting to terminate the MoU, then the said property was to remain encumbered till entire amount received by the company under the MoU was refunded with interest to the developers. It is not in dispute that even after the general body of shareholders approved the joint development of the Vile-Parle (West) property the company has decided not to proceed with the joint development of the said property as per the MoU dated December 26, 2009 and in view of the dispute between the parties, the company has not refunded the amount received from the developers. As a result, under the terms of the MoU dated December 26, 2009, the Vile-Parle (West) property continues to be encumbered.

12. Strong reliance was placed by counsel on behalf of the appellants on Section 30 to Section 35 of the Indian Contract Act, 1872. Fact that the Indian Contract Act permits execution of contingent contracts and such contingent contracts become enforceable depending upon the

contingent event taking place or not, would have no bearing on the facts of present case because, regulation 23 of the Takeover Regulations, 1997 specifically provides that during the offer period, the BoD of a company shall not enter into any agreement in respect of any assets of the company without prior approval of general body of shareholders. Therefore, in view of specific bar contained in regulation 23 of the Takeover Regulation, 1997, appellants without the prior approval of the general body of shareholders could neither have entered into an agreement nor could have entered into an MoU for joint development of the Vile-Parle (West) property. Hence, appellants are not justified in relying on the provisions contained in the Indian Contract Act.

13. Strong reliance was placed by the counsel for the appellants on a decision of the Apex Court in case of Saradamani Kandappan (Supra). That decision has no bearing on the facts of present case, because, in that case the issue related to the provisions contained under the Indian Contract Act, whereas, in the present case, we are concerned with the obligation cast on the BoD of a company under the Takeover Regulations, 1997. Since regulation 23 prohibits execution of agreement in any form which would inter alia encumber the assets of the company without the approval of the general body of shareholders, the appellants are not justified in relying on the Apex Court decision in the case of Saradamani Kandappan (Supra) in which the Apex Court had considered the provisions contained in the Indian Contract Act and not the provisions contained in the Takeover Regulations, 1997.

14. Relying on a decision of the Apex Court in case of Mr. Pramod Jain and Ors. v/s SEBI (Civil Appeal No. 9103 of 2014 decided on 07.11.2016) it is contended on behalf of the appellants that once the plea of Mr. Pramod Jain and Others that the MoU dated December 26, 2009 was in violation of regulation 23 of the Takeover Regulations, 1997 has been rejected by the Apex Court, the AO of SEBI could not have held that the appellants have violated regulation 23 of the Takeover Regulations, 1997. We see no merit in the above contentions. In the case of Mr. Pramod Jain, the Apex Court has considered the issue as to whether an acquirer can be permitted to withdraw the open offer when the public offer is capable of being carried out and has not become impossible to perform. In fact, in para 27 of the order passed in the case of Mr. Pramod Jain, the Apex Court has specifically kept open the issue relating to violation of regulation 23 by the BoD of the company. Nowhere in the case of Mr. Pramod Jain, the Apex Court has held that the BoD of the company had not violated regulation 23 of the Takeover Regulations, 1997. Thus, the decision of the Apex Court in the case of Mr. Pramod Jain and Others (Supra) does not support the case of the appellants.

15. Argument of the appellants in Appeal No. 101 of 2014 that the appellants therein were independent directors and were not involved in the execution of the MoU is without any merit. Admittedly the BoD of the company had passed a resolution on September 24, 2008 authorizing the Managing Director and Director Finance to explore the possibilities of making alternate use of the Vile-Parle (West) property of the

company. Admittedly, notices were sent to the shareholders on December 21, 2009 convening EOGM of the company on January 18, 2010 to seek approval of the general body of shareholders for joint development of the Vile-Parle (West) property in terms of regulation 23 of the Takeover Regulations, 1997. However, the MoU was executed on December 26, 2009, even before the EOGM scheduled on January 18, 2010. Moreover, the MoU dated December 26, 2009 specifically records that the MoU be placed before the EOGM on January 18, 2010. Admittedly, the shareholders in the EOGM held on January 18, 2010 have approved the proposal contained in the MoU for joint development of the Vile-Parle (West) property. In these circumstances, the independent directors of the company cannot be said to be unaware of the MoU executed on December 26, 2009. Moreover, it is not the case of the appellants in Appeal No. 101 of 2014 that the MoU was executed on December 26, 2009 without their consent or that they had opposed execution of the MoU on December 26, 2009. Hence the appellants in Appeal No. 101 of 2014 being part of the BoD of the company cannot escape penal liability for executing the MoU on December 26, 2009 without the prior approval of the general body of shareholders in violation of regulation 23 of the Takeover Regulations, 1997.

16. Argument of the appellants that the AO is not justified in imposing the maximum penalty of ₹ 1 crore is also without any merit. In the present case the appellants as BoD of the company knew very well that prior approval of the general body of shareholders was necessary before entering into any document for encumbering the assets of the company

and accordingly the appellants as BoD of the company had convened EOGM on January 18, 2010. Even after knowing their obligation under regulation 23, the appellants ought not to have indulged in encumbering the Vile-Parle (West) property of the company in gross violation of regulation 23 of the Takeover Regulations, 1997. In the absence of any compelling reason for entering into the MoU on December 26, 2009, before the EOGM scheduled on January 18, 2010 the appellants who have grossly violated regulation 23 of the Takeover Regulations, 1997, deserve harsh punishment.

17. In these circumstances, we see no reason to interfere with the penalty of ₹ 1 crore imposed on the eight appellants which is directed to be paid jointly and severally.

18. For all the aforesaid reasons, both the appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

15.12.2016
Prepared & Compared By: PK