

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 20.10.2015

Appeal No. 199 of 2014

Inland Printers Limited
800, Sangita Ellipse Sahakar Road,
Vile Parle (East), Mumbai 400057.

..... Appellant

Versus

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

..... Respondent

Mr. Sanjay Shringarpure, Company Secretary for the Appellant.

Mr. Mihir Mody, Advocate with Ms. Shruti Chintwar and Mr. Saurabh Bachhawat, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member

Per: Justice J.P. Devadhar

1. Appellant is aggrieved by the order passed by the Adjudicating Officer of Securities and Exchange Board of India (SEBI for short) on April 30, 2014 whereby penalty of Rs.5 lakh is imposed on the appellant under section 15A(b) of SEBI Act for failing to make annual disclosures under Regulation 8(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ('Takeover Regulations, 1997' for short) during the financial years ended March 31, 2002 to 31st March, 2011.

2. Facts relevant for the present appeal are as follows:

(a) Appellant is a company listed on various stock exchanges. Trading in the shares of the said company were suspended by the Bombay Stock Exchange (BSE for short) on January 7, 2002 due to non

compliance of various clauses in the Listing Agreement and for non-payment of listing fees.

(b) On April 10, 2012 the appellant made disclosures under Regulation 8(3) of the Takeover Regulations, 1997 for the financial years ended 31.3.1998 to 31.3.2011 and also complied with various requirements of listing agreement.

(c) In view of the appellant company complying with all the requirements of the listing Agreements and also the requirements of Takeover Regulations (though belatedly) the suspension in the trading of the securities of the appellant company was revoked by the BSE on November 21, 2012.

(d) On March 11, 2013, Tigerstone Trading Private Limited (acquirer for short) entered into a share purchase agreement with the promoters of the appellant company for acquiring the shares of the appellant company. Since the shares sought to be acquired by the acquirer were in excess of the threshold limit, public announcement for the open offer were made as contemplated in the Takeover Regulations, 2011. On successful completion of the open offer the shares were transferred to the acquirer.

(e) On 27th January, 2014 a show cause notice was issued by SEBI calling upon the appellant to show cause as to why enquiry should not be held against the appellant for not making disclosures within the stipulated time under Regulation 8(3) of the Takeover Regulations, 1997. On receiving reply, personal hearing was granted to the appellant and by the impugned order dated 30th April, 2014, the Adjudicating Officer of SEBI has imposed penalty of Rs.5 lac under section 15A(b) of the SEBI Act for failing to make disclosures under Regulations 8(3) of the Takeover Regulations, 1997 for financial years

ending 31st March, 2002 to 31st March, 2011. Challenging the aforesaid order present appeal is filed.

3. Mr. Shringarpure authorized representative of the appellant submitted as follows:-

(a) Obligation to make disclosures under Regulation 8(3) of the Takeover Regulations, 1997 arises only when there is change in the shareholding of the promoter/promoter group of the target company. The words “changes if any” and the words “in respect of” appearing in Regulation 8(3) clearly indicate that the obligation to make disclosures therein is only when there is change in shareholding of the promoter/promoters group of the target company. In the present case, during the relevant years, neither there was any change in the shareholding of the promoter and promoter group nor the promoter/promoter group had made disclosures under Regulation 8(2) of the Takeover Regulations, 1997 and therefore the appellants were not obliged to make disclosures to the stock exchanges under Regulation 8(3) of the Takeover Regulations, 1997.

(b) From the format prescribed for making disclosures under Regulation 8(3) of the Takeover Regulations, 1997 it becomes clear that the object of making disclosures under Regulation 8(3) is to bring to the notice of the investors through the stock exchanges, any change in the shareholding of promoter/promoter group of the appellant company. Since there were no changes in the shareholding of promoter/promoter group in the years in question, appellant was not obliged to make disclosures under Regulation 8(3) of the Takeover Regulations, 1997.

(c) Object of the Takeover Regulations is to bring about transparency in the dealings of the securities and also to enable the existing shareholders to take an informed decision on the basis of the disclosure filed by the target company and/or the promoter of the target company. In the absence of any

change in the shareholding, appellant was not obliged to make disclosures under Regulation 8(3) of Takeover Regulations, 1997.

(d) Obligation to make disclosure under Regulation 8(3) and obligation to maintain a register in the specified format under Regulation 8(4) of the Takeover Regulation, 1997 are obligations consequential to Regulation 8(1) and 8(2). It is only when information is received under Regulation 8(1) and 8(2), obligation is cast on the target company to make disclosures under Regulation 8(3). Since no information was received, there was no obligation cast on the appellant to make disclosures under Regulation 8(3) of Takeover Regulations, 1997.

(e) Relying on a decision of the Apex Court in the case of Reserve Bank of India vs. Peerless General Finance and Investment Company Ltd. reported in AIR 1987 SC 1023 it is submitted on behalf of the appellant that regulation 8(3) must be construed on the basis of the words used in that Regulation and it would be impermissible to construe that regulation by adding or omitting any words used in that regulation. It is submitted that plain reading of regulation 8(3) would mean that if there is no change in the shareholding of promoter/promoter group, then, there is no obligation cast on the target company to make annual disclosures under Regulations 8(3) of the Takeover Regulations, 1997.

(f) Alternatively, it is submitted that the delay in making disclosures is not deliberate or in defiance of law. The breach flows from a bonafide belief that the target company is required to comply with Regulation 8(3) only when there is a change in the shareholding of the promoters. Admittedly no disclosures were received from the promoters of the company under Regulation 8(2) of the Takeover Regulations, 1997 during the relevant years and therefore, no fault could be found with the appellant under Regulation 8(3).

(g) The Adjudicating Officer of SEBI has not considered all mitigating factors as contemplated under Section 15J of the SEBI Act.

(h) Relying on a decision of Apex Court in case of Hindustan Steel Ltd. vs. The State of Orissa reported in AIR 1970 sc 253 it is submitted that the breach if any, in the present case is a technical or venial breach and the breach flows from a bonafide belief that the appellant is liable to disclose under Regulation 8(3) only when information regarding change in shareholding is received under Regulations 8(1) and 8(2) of the Takeover Regulations, 1997. Therefore, the Adjudicating Officer was not justified in imposing penalty on the appellant.

4. We see no merit in the above contentions.

5. Before dealing with the rival contentions, it would be appropriate to quote Regulation 8 of the Takeover Regulations, 1997 which reads thus:-

“Continual disclosures

8. (1) Every person, including a person mentioned in Regulation 6 who holds more than fifteen percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

(4) Every company whose shares are listed on a stock exchange shall maintain a register in the specified format to record the information received under sub-regulation(3) of Regulation 6, sub-regulation (1) of Regulation 7 and sub-regulation (2) of Regulation 8”.

6. Regulation 8(1) and 8(2) deal with the obligation cast on the persons holding shares of the Target company in excess of the prescribed limits and by promoters/persons holding control over the company to make annual disclosures regarding their shareholding in the Target Company to the Target Company within the time stipulated therein. Regulation 8(3) deals with the obligation cast on the Target Company to make annual disclosures to all the stock exchanges in which the shares are listed within the time stipulated therein.

7. Obligation cast on the listed company to make disclosure to the stock exchange under Regulation 8(3) is firstly, the yearly disclosure to be made within 30 days of each financial year ended on 31st March and secondly, disclosure to be made at each record date fixed by the company for the purposes of dividend. Very fact that multiple disclosures are required to be made especially by dividend paying listed companies under Regulation 8(3) clearly shows that the obligation to make disclosure under Regulation 8(3) is not dependent on the yearly disclosures to be made by the shareholders/promoters under Regulations 8(1) and 8(2) to the company. In other words, while the shareholders/promoters of the company are obliged to make annual disclosures to the Company under Regulations 8(1) and 8(2) of the Takeover Regulations, 1997, the company is obliged to make annual disclosures to the stock exchanges under Regulation 8(3) of the Takeover Regulations, 1997. To put it simply, if the shareholders/promoters fail to make annual disclosures under Regulations 8(1) and 8(2) they are liable for penal action under Section 15A(b) of SEBI Act and if the Company fails to make annual disclosures to the stock exchanges within the time stipulated under Regulation 8(3), the Company is liable for penal action under Section 15A(b) of the SEBI Act.

8. Above reasoning is further fortified from the format prescribed for making disclosures under Regulation 8(3). As per the prescribed format, a listed company is required to give details of shareholding/voting rights (in number and

percentage) as on 31st March of the financial year in question, as on 31st March of the previous financial year and the changes if any, between the above two financial years. From the format it becomes abundantly clear that every listed company is required to make yearly disclosures to the stock exchanges disclosing the shareholding of the persons/promoters referred to in Regulations 8(1) and 8(2) as also the changes if any, in the shareholding of those persons/promoters. In other words, where there is no change in the shareholding of the persons/promoters referred to in Regulations 8(1) and 8(2), the company is required to make annual disclosures to the stock exchanges by disclosing the existing shareholding as per the format. When Regulation 8(3) specifically requires that yearly disclosures should be made by the company to the stock exchanges, it would not be proper to hold that under Regulation 8(3) disclosures have to be made only if there are changes in the shareholding of the persons/promoters set out under Regulations 8(1) and 8(2). Accepting such a contention advanced on behalf of the appellant would be contrary to the words expressly used under Regulation 8(3).

9. It is relevant to note that the obligation to make yearly disclosures is a continual obligation and not a conditional obligation. Regulation 8(3) provides that every listed company shall make yearly disclosures to all the stock exchanges on which the shares of the company are listed and thereafter uses the words ‘the changes, if any’ which obviously means that not merely the shareholding as on the last day of current financial year but also the difference between the shareholding as on the last day of the previous financial year and as on the last day of the current financial year has to be disclosed to the stock exchanges so that the investors are made aware about the change in the shareholding of the company, if any. Fact that there are no changes in the shareholding cannot be a ground for the Company not to make disclosures under Regulation 8(3). Therefore, the expression ‘the changes, if any’ in Regulation 8(3) simply means that not merely

the shareholding as on the last day of the financial year but also the changes if any between the current and previous financial year has to be disclosed. Therefore, the argument of the appellant that the disclosure under Regulation 8(3) has to be made only if there is change in the shareholding cannot be accepted.

10. Reliance placed by the representative of the appellant on the decision of the Apex Court in case of RBI (*supra*) is misplaced because as noted above, without adding any word and without omitting any word if Regulation 8(3) is read, it would mean that every listed company has to make yearly disclosures to the stock exchanges disclosing the shares held by the persons/promoters set out under Regulations 8(1) and 8(2) as on the last day of the financial year including the change in the shareholding, if any, compared to the shareholding on the last day of the previous financial year. In other words whether there is any change in the shareholding or not, the listed company is obliged to make disclosures under Regulation 8(3) and cannot avoid such obligation on ground that there is no change in the shareholding of the persons/promoters set out under Regulations 8(1) and 8(2) of Takeover Regulations, 1997.

11. Various alternative contentions raised by the appellant for the delay in making disclosures under Regulations 8(3) as also various mitigating factors pointed out on behalf of the appellant do not exonerate the appellant from the obligation to make disclosures under Regulation 8(3), because the obligation under Regulation 8(3) is mandatory and the company failing to discharge that obligation is statutorily liable to pay penalty under section 15A(b) of SEBI Act. The penalty imposable under section 15A(b) of the SEBI Act for violating Regulation 8(3) at the relevant time was Rs. One Lakh for each day during which such failure continues or One Crore rupees whichever is less. In the present case, penalty imposable for failure to make yearly disclosures for the financial years ended March 31, 2002 to March 31, 2011 at the rate of Rs. One Lakh per day would run into several crores of rupees. However, after taking into consideration all the

mitigating factors set out under Section 15J of SEBI Act, the Adjudicating Officer of SEBI has imposed penalty of Rs.5 Lakh which cannot be said to be unreasonable or excessively harsh.

12. In these circumstances, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

20.10.2015

Prepared and compared by
RHN