

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 09.10.2014

Date of Decision : 28.10.2014

Appeal No. 190 of 2014

M/s. SICOM Ltd.
Solitaire Corporate Park,
Building No. 4, 6th Floor,
Guru Hargovindji Road,
Andheri Ghatkopar Link Road,
Chakala, Andheri (East),
Mumbai- 400 093

...Appellant

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. P. N. Modi, Senior Advocate with Ms. Atika Vaz, Advocate for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Yogesh Chande and Mr. Tomu Francis, Advocates for the Respondent.

WITH

Appeal No. 242 of 2014

M/s. SICOM Ltd.
Solitaire Corporate Park,
Building No. 4, 6th Floor,
Guru Hargovindji Road,
Andheri Ghatkopar Link Road,
Chakala, Andheri (East),
Mumbai- 400 093

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SEBI Bhavan, Plot No. C-4A, G-Block,
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Mumbai – 400 051

...Respondent

Ms. Atika Vaz, Advocate for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Yogesh Chande and Mr. Tomu Francis, Advocates for the Respondent.

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

Per: Justice J.P. Devadhar

1. When a Public Financial Institution ('PFI' for short) acquires shares of a listed company on invocation of pledge, whether that PFI is exempted under the proviso to regulation 29(4) from making disclosures under regulation 29(4) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is the question raised in these two appeals.

2. Since above common question of law arises in these two appeals, both these appeals are heard together and disposed of by this common decision.

3. According to SEBI, exemption under the proviso to regulation 29(4) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations, 2011" for short) is restricted to the deemed acquisition of shares specified under regulation 29(4) and the said exemption cannot be extended to Scheduled Commercial Banks/PFI's when shares are actually acquired by them on invocation of pledge. According to the appellants exemption under the proviso to regulation 29(4) is available

to a PFI even when shares are acquired by the PFI on invocation of pledge in the ordinary course of business.

4. For convenience, facts in Appeal No. 190 of 2014 are set out herein. Counsel on both sides state that decision in Appeal No. 190 of 2014 would equally apply to Appeal No. 242 of 2014.

5. Facts relevant to Appeal No. 190 of 2014 are as follows:-

- a) *Appellant is a public financial institution duly notified by the Government of India.*
- b) *In December 2010, appellant, during the course of its regular business provided financial assistance to Raj Oil Mills by way of bill accounting facility up to a limit of ₹ 15 crore for which the promoter/director of that company had pledged 55,50,000 equity shares of Raj Oil Mills as and by way of security towards the financial facility granted by the appellant.*
- c) *As Raj Oil Mills failed to repay the amounts due under the Bill discounting facility and failed to maintain the account properly, appellant on September 28, 2011, invoked 23,00,000 pledged shares and invoked balance 32,50,000 pledged shares on February 24,*

2012. As a result, 55,50,000 pledged shares were transferred in the name of appellant and appellant became registered owner as well as beneficial owner of those pledged shares.

- d) By a show cause notice dated March 4, 2014 SEBI called upon the appellant to show cause as to why appellant should not be held guilty of violating regulation 29(1) and regulation 29(2) read with regulation 29(3) of Takeover Regulations, 2011. In the show cause notice it was alleged that on acquisition of 23,00,000 shares on September 28, 2011, shareholding of appellant in Raj Oil Mills stood at 6.39% of the total shares issued by the company and that acquisition being in excess of 5%, appellant was required to make disclosures under regulation 29(1) of Takeover Regulations, 2011. Similarly on acquisition of 32,50,000 shares on February 24, 2012 shareholding of appellant stood at 15.35% which again being acquisition in excess of 2% of shares by an acquirer holding shares in excess of 5%, appellant was required to make disclosures under regulation 29(2) of Takeover Regulations, 2011. On account of

above acquisitions, similar disclosures were also required to be made under regulation 13(1) and 13(3) read with regulation 13(5) of Securities and Exchange Board India (Prevention of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for short). Since no disclosures were made, appellant was called upon to show cause as to why inquiry should not be held and penalty should not be imposed upon the appellant.

- e) In its reply to the show cause notice, appellant contended that Scheduled Commercial Banks and PFIs holding shares under a pledge which are taken with a view to secure the indebtedness in the ordinary course of business are exempted from the operation of regulation 29(1)/29(2) read with regulation 29(3) of Takeover Regulations, 2011.*
- f) Rejecting the argument of appellant Adjudicating Officer of SEBI passed impugned order on May 19, 2014 imposing penalty of ₹5 lac upon appellant under Section 15A(b) of the SEBI Act, 1992. Challenging aforesaid order Appeal No. 190 of 2014 is filed by the appellant.*

6. Regulation 29 of Takeover Regulations, 2011 relating to disclosure of acquisition and disposal of shares in a target company as it stood at the material time reads thus:-

“29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.”

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-

(a) every stock exchange where the shares the target company are listed; and

(b) the target company at its registered office.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a Scheduled Commercial Bank or public

financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

7. Mr. Modi, learned Senior Advocate appearing on behalf of appellant submitted that the impugned order deserves to be quashed and set aside on the following grounds which are without prejudice to one another:-

- a) Entire object and purpose of Takeover Regulations, 2011 is to provide an exit option to shareholders by way of an 'open offer' in cases where there is a substantial acquisition of shares or a takeover of the Company by a third party. The concept is that shareholders invest in companies on the faith of the management of the company and its performance under such management. If the management changes or is likely to change by a substantial acquisition of shares or voting rights, apart from the normal option of divesting in the secondary market, the existing shareholders should also be given an exit option by an open offer, including the benefit of the 'negotiated price. However, Scheduled Commercial Banks/PFI's in the ordinary course of business acquire shares on invocation of pledge with a view recover to their loan and not with a view to take over the management or control of the company.

Therefore, regulation 10(1)(b)(viii) of Takeover Regulations, 2011 exempts Scheduled Commercial Banks as well as PFI's from making public offer when shares are acquired by them on invocation of pledge. Applying the same yardstick, exemption under the proviso to regulation 29(4) must also be held to apply to Scheduled Commercial Banks/PFI's from making disclosures when shares are acquired by them on invocation of pledge.

- b) Regulation 29(4) was specifically incorporated in Takeover Regulations, 2011 to cover situations/ contentions raised in case of Liquid Holdings vs SEBI (SAT Appeal No. 83 of 2010 decided on 11.03.2011). In that case, shares were pledged in favour of two banks. The banks invoked the pledge and took the shares. Thereafter, on repayment of loan, shares invoked by the bank were returned to the borrower. Parties therein argued that the shares were pledged to the bank with a view to secure loan and on repayment of loan, banks were obliged to return the pledged shares and in such a case, provisions relating to open offer

are not triggered. Rejecting the contention of the borrower this Tribunal held that where a pledge is invoked and shares are actually taken by the banks on invocation of pledge and thereafter returned to be borrower, the open offer provisions are triggered. In view of the above decision, it is provided in the proviso to regulation 29(4) that when shares are taken to secure indebtedness by Scheduled Commercial Banks and PFI's they are exempted from making disclosures under regulation 29 of the Takeover Regulations, 2011.

- c) When a pledge is created, the shares are not “taken” by the pledgee, and the pledged shares continue to be in the account of the borrower. On creation of pledge shares are simply marked as “pledged” by the Depository Participant (‘DP’), which prevents the borrower from transferring the pledged shares. The shares are “taken” by the pledgee only when the pledge is invoked and the shares are taken into the account of the pledgee. Similarly, shares are not ‘given’ by a mere release of pledge, since they are not taken in the first instance as aforesaid. Accordingly,

shares are “given” by the pledgee only when having invoked the pledge, the same are taken into the account of the pledgee and then returned to the borrower upon repayment of loan. Hence, exemption under proviso to regulation 29(4) would apply when shares taken in to the account of the pledgee by invoking the pledge.

- d) Even after taking shares on invocation of pledge, the Scheduled Commercial Banks and PFI’s do not show such shares in their audited accounts as their own investments, because the shares are inter alia held only as security for sale to the account of the borrower. That is why, the Scheduled Commercial Banks and PFI’s are treated as a special class and exempted from the disclosure requirements contained under regulation 29 of Takeover Regulations, 2011. Hence, SEBI is not justified in holding that the exemption is not available when shares are taken by the appellant-PFI on invocation of the pledge.
- e) Use of the words “in connection with” in the proviso to regulation 29(4) clearly show that the exemption set out therein is not restricted to

creation of pledge. It is settled law that expressions such as “in connection with” are of the widest amplitude and content and therefore the expression “in connection of a pledge of shares” used in the proviso to regulation 29(4) would cover creation/invocation/release of a pledge.

- f) Regulation 31(3) of Takeover Regulations, 2011 expressly refers to making disclosure of encumbered shares within 7 working days from the “creation or invocation or release of encumbrance”. None of those words are to be found in the proviso to regulation 29(4). Therefore, the words “in connection with” in the proviso to regulation 29(4) must correctly be interpreted to include creation, invocation and release of a pledge, which is the only way to construe the provision harmoniously.
- g) Failure to make disclosures under regulation 29 cannot be said to have deprived investors important information regarding acquisition of shares by Scheduled Commercial Bank/PFI, because, the shareholding pattern disclosure/filing made by the Target Company includes disclosure of parties holding more

than 1%, and such disclosure is already within the public domain. Thus, the objective of ensuring that the public is informed about the acquisition of shares over 5% is automatically accomplished in view of the Target Company filing the shareholding pattern disclosures. Therefore, SEBI is not justified in holding that failure on part of appellant to make disclosures under regulation 29 has deprived investors important information regarding acquisition of shares by the appellants on invocation of pledge.

- h) The purpose and object of PIT Regulations, 1992 is to prevent an “insider” from trading while in possession of “Unpublished Price Sensitive Information” (“UPSI”), as stipulated in Regulation 3. Regulation 2(e) defines an “insider” as being any person who is “connected” or “deemed to be connected” with the company and reasonably expected to have UPSI or a person who has actually received UPSI. Regulation 2(c) defines “connected persons” as being a director, officer or employee of a company or a person having a professional or business relationship with the

company and who is expected to have access to UPSI. Regulation 2(h) defines expression “person is deemed to be a connected person” and identifies variety of such parties. However, in respect of Public Financial Institutions, Regulation 2(h)(iv) provides that members of the Board of Directors and the employees would be treated as deemed to be connected. Since Public Financial Institutions are left out of the definition, obviously the intention and concept of such exclusion was that the Public Financial Institution may have such UPSI in relation to loans given to the company, default in payment by the company, invocation of a pledge of shares etc., and would obviously be entitled to sell such shares for recovery of its debt, but such acquisition or sales ought not to be treated as being in violation of the PIT Regulations. However, Board of Directors and employees are restrained from dealing in shares so long as such information is UPSI.

- i) Expression “person” is used extensively in the PIT Regulations, 1992, but always in the context of being an insider or deemed to be connected person. Consequently, the

expression “any person” in regulation 13 of PIT Regulations has to be read and construed in the same context. In that context, a PFI is not a person who is an insider or connected or deemed connected. The disclosure provision under regulation 13 of PIT Regulations, 1992 is in parimateria with the provisions of regulation 29 of Takeover Regulations, 2011. Therefore, Public Financial Institutions themselves are not included in the scope of regulation 2(h)(iv) as being “deemed to be connected”. Hence, the phrase “any person” in Regulation 13 ought to be given a contextual and purposive construction in which case Public Financial Institution cannot be deemed to fall within its scope.

Accordingly, it is submitted by counsel for appellants that the impugned order suffers from serious infirmities and hence liable to be quashed and set aside.

8. We see no merit in the above contentions.

9. Regulation 29(1)/29(2) read with regulation 29(3) contained in Chapter V of the Takeover Regulations, 2011 provide that when any acquirer acquires shares or voting rights in a Target Company in excess of the limits prescribed therein, by himself and by persons acting in

concert with him, then that acquirer shall disclose to the Target Company and to the Stock Exchange their aggregate shareholding and voting rights in such Target Company in such form as may be specified. Expression “acquirer” is defined under regulation 2(1)(a) of Takeover Regulations, 2011 to mean any person, who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over, a Target Company. Therefore, when Scheduled Commercial Banks/ PFI’s invoke pledge and acquire shares or voting rights in excess of the limits prescribed under regulation 29(1)/29(2) then, as an acquirer, those Scheduled Commercial Banks/ PFI’s would be required to make disclosures in the manner specified under regulation 29(1)/29(2) of the Takeover Regulations, 2011. In other words, expression “any acquirer” in regulation 29(1)/29(2) read with regulation 2(1)(a) of Takeover Regulations, 2011 is wide enough to cover Scheduled Commercial Banks/ PFI’s and when they acquire shares/voting rights of the Target Company on invocation of pledge in excess of the limits prescribed under regulation 29(1)/29(2), then, they would be required to make disclosures in such manner as are specified.

10. Regulation 29(4) of the Takeover Regulations, 2011, however, creates a deeming fiction and provides that for the purposes of regulation 29(1)/29(2) taking shares by way of encumbrance shall be treated as an acquisition and giving back shares upon release of encumbrance shall be treated as disposal and in both cases disclosures shall be made by such person in such form as may be specified.

11. Since expression “encumbrance” is defined under regulation 28(3) to include a pledge, lien or any such transaction by whatever name called, it is evident, that “taking shares by way of encumbrance” under regulation 29(4) is referable to pledge or lien, where shares are encumbered with a view to secure indebtedness. When a pledge is created, the pledged shares continue to be in the name of the borrower and till the date of invocation of pledge, the pledgee does not actually acquire the shares. By a deeming fiction, regulation 29(4) provides that when shares are taken by way of encumbrance under a pledge to secure indebtedness the pledgee for the purposes of regulation 29 shall be deemed to have acquired the shares even though the shares are not actually acquired by the pledgee and such pledgee shall be liable to make disclosures. Thus, a pledgee, apart from being required to make disclosures under regulation 29(1)/29(2) when shares are actually acquired on invocation of pledge, the pledgee is also required to make disclosures under regulation 29(4) in view of the deeming fiction introduced under regulation 29(4).

12. Proviso to regulation 29(4) further provides that such requirement of making disclosures shall not apply to Scheduled Commercial Banks/ PFI’s as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

13. Question therefore, to be considered is, whether the expression “such requirement” under the proviso to regulation 29(4) is relatable to deemed acquisition of shares specified under regulation 29(4) or does it

extend to actual acquisition of shares by Scheduled Commercial Banks/PFI's on invocation of pledge?

14. In our opinion, plain reading of the proviso to regulation 29(4) makes it clear that the exemption set out therein is relatable to deemed acquisitions specified under regulation 29(4) because, normally proviso does not travel beyond the provision to which it is a proviso and since regulation 29(4) deals with the deemed acquisitions, it is just and proper to hold that the proviso to regulation 29(4) applies only to the deemed acquisitions specified under regulation 29(4).

15. Moreover, the language used in the proviso to regulation 29(4) does not even remotely suggest that the exemption contained therein is intended to cover categories other than those specified under regulation 29(4). Very fact that the proviso to regulation 29(4) uses the expression 'such requirement....as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business' instead of using the expression "such requirement arising on acquisition of shares by invocation of pledge" clearly shows that the proviso to regulation 29(4) is obviously referable to disclosure requirements which the Scheduled Commercial Banks/ PFI's are required to discharge as pledgee when shares are taken by way of pledge for securing indebtedness in the ordinary course of business. It is relevant to note that the liability to make disclosures under regulation 29(4) is with reference to deemed acquisitions and therefore, in the absence of any contrary indication, the expression "such requirement" under the proviso to

regulation 29(4) would be referable to deemed acquisitions specified under regulation 29(4) and not to actual acquisitions.

16. Contention of the appellants that since regulation 10(1)(b)(viii) exempts Scheduled Commercial Banks/ PFI's from making open offer when shares are acquired by them on invocation of pledge, proviso to regulation 29(4) must also be construed to exempt Scheduled Commercial Banks/ PFI's from making disclosures when shares are acquired on invocation of pledge is without any merit, because, firstly exemption under regulation 10(1)(b)(viii) is a general exemption with reference to open offer obligation specified under regulation 3 and 4, whereas, exemption under the proviso to regulation 29(4) is a specific exemption with reference to such disclosure requirements as are specified under regulation 29(4). Secondly, disclosure requirements under regulation 29(1), 29(2) are with reference to actual acquisitions, whereas, disclosure requirements under regulation 29(4) is with reference to deemed acquisition. Since the proviso to regulation 29(4) uses the expression "such requirement" and does not use the expression "such requirements", it is evident that the expression "such requirement" is used in the context of deemed acquisitions specified under regulation 29(4) and not with reference to actual acquisitions specified under regulation 29(1)/29(2). Thirdly, regulation 10(1)(b)(viii) specifically exempts acquisition in the ordinary course of business by invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee, whereas, proviso to regulation 29(4) does not refer to acquisition of shares by invocation of pledge. Thus

regulation 10(1)(b)(viii) and proviso to regulation 29(4) operate in different fields and therefore, appellants are not justified in contending that since Scheduled Commercial Banks/PFI's are exempted from making open offer on acquisition of shares by invocation of pledge under regulation 10(1)(b)(viii), Scheduled Commercial Banks/ PFI's must also be held to be exempted from making disclosures under regulation 29(4) when they acquire shares by invocation of pledge.

17. Argument that the expression “shares taken by way of encumbrance” in regulation 29(4) would mean taking shares into the account of the pledgee on invocation of pledge is without any merit, because, firstly, object of regulation 29(4) is to introduce a deeming fiction and to treat shares taken by way of encumbrance to be deemed acquisition, even though taking shares by way of encumbrance does not involve actual acquisition of shares by a pledgee and the borrower continues to be registered as well as beneficial owner of the encumbered shares. To illustrate, where shares are encumbered by creation of pledge, pledgee does not acquire the shares till the pledge is invoked. However, under regulation 29(4), by a deeming fiction, the pledgee is treated to have acquired shares and is required to make disclosures. Where the shares are acquired on invocation of pledge, question of introducing deemed fiction would not arise because, in such a case, shares are actually acquired on invocation of pledge. Thus it is evident that the expression “taken” used in regulation 29(4) is used in the context of deemed acquisition of shares on creation of pledge and not actual acquisition of shares on invocation of pledge. Secondly, if the contention

of the appellant that the expression “taken” in regulation 29(4) applies to taking shares into the account of the pledgee on invocation of pledge is accepted, then it would lead to absurdity, because, in such a case, Scheduled Commercial Banks/ PFI’s would be exempt from making disclosures when shares are actually acquired on invocation of pledge and they are required to make disclosures when shares are deemed to be acquired under regulation 29(4). Since taking shares by creation of pledge to secure indebtedness and to release the shares on discharge of indebtedness is a rule and acquisition of shares on failure to discharge indebtedness is an exception, proviso to regulation 29(4) provides that Scheduled Commercial Banks and PFI’s shall be exempt from making disclosures when shares are taken by them to secure indebtedness in the ordinary course of business. Since the object of regulation 29(4) is to relieve Scheduled Commercial Banks and PFI’s from disclosure requirements arising from deemed acquisitions specified under regulation 29(4), it is evident that the expression “taken” used in regulation 29(4) relates to deemed acquisitions and not actual acquisition.

18. A legal fiction is created to assume existence of a fact which does not really exist. When a pledge is invoked and shares are acquired, actual acquisition of shares is a fact. When a pledge created and shares are taken by way of encumbrance to secure indebtedness, there is no acquisition of shares, because, the borrower continues to be the registered as well as beneficial owner of pledged shares. Therefore, it is

reasonable to hold that regulation 29(4) as well as the proviso to regulation 29(4) apply to deemed acquisitions.

19. Relying upon three decisions of the Apex Court in the case of *Renusagar Power Co. Ltd. vs General Electric Company & Anr.* Reported in (1984) 4SCC 679, *Hindustan Still works Construction Ltd. vs Limestone and Dolomite Mines Welfare and Cess Commissioner & Anr.* reported in (1996) 10 SCC 188 and *Chloro Controls India Pvt. Ltd. vs Severn Trent Water Purification Inc. and Ors.* Reported in (2013) 1SCC 641, it is contended on behalf of the appellants that the expression “in connection with a pledge of shares” under proviso to regulation 29(4) of Takeover Regulations, 2011 have to be construed widely and not narrowly. We see no merit in the above contentions, because, fact that in each of the aforesaid cases, the Apex Court on consideration of the provisions which were subject matter of those proceedings held that the expression “in connection with” has to be construed widely, it cannot be said that in each and every case the expression “in connection with” has to be construed widely. Expression “in connection with” in regulation 29(4) is followed by the expression “a pledge of shares for securing indebtedness”. Since, indebtedness is secured by Scheduled Commercial Banks/ PFI’s by encumbering the shares under a pledge and by a deeming fiction such encumbrance is treated to be acquisition of shares for the purposes of regulation 29(4), it is obvious that the expression “in connection with” in the proviso to regulation 29(4) would apply to the obligation which the Scheduled Commercial Banks/ PFI’s are required to follow on account of the deemed acquisition under regulation 29(4).

20. Fact that Scheduled Commercial Banks/ PFI's even after acquiring the pledged shares on invocation of pledge do not show such shares in their audited accounts as their own investments, would have no bearing while construing the scope and ambit of the proviso to regulation 29(4). Once it is seen that the exemption under the proviso to regulation 29(4) relates to the obligation arising from the deemed acquisition specified under regulation 29(4), then, it is wholly irrelevant for the purpose of construing the proviso to regulation 29(4) as to how shares acquired by Scheduled Commercial Banks/ PFI's on invocation of pledge are treated in their audited books of accounts. In other words, scope and ambit of the proviso to regulation 29(4) is to be construed on the basis of the language used in the said proviso and not on the basis of the treatment given by Scheduled Commercial Banks/ PFI's to the shares acquired by them on invocation of pledge.

21. Similarly, fact that regulation 31(3) specifically requires promoters of every Target Company to make disclosures within seven days from the creation or invocation or release of encumbrance does not support the case of appellants. On the contrary, very fact that the expression "invocation of pledge" is specifically used in regulation 31(3) and the said expression is conspicuously absent in regulation 29(4) clearly shows that neither regulation 29(4) nor the proviso to regulation 29(4) are intended to apply acquisition of shares on invocation of pledge.

22. Decision of this Tribunal in the case of Liquid Holdings (Supra) does not support the case of the appellants. Dispute in that case was,

when a bank invokes pledge and becomes registered as well as beneficial owners of pledged shares and thereafter on account of the loan being repaid, releases the shares in favour of the borrower, then, whether the borrower is required to make public announcement to acquire shares of such company in accordance with the provisions contained in Takeover Regulations, 1997. The borrower therein, contended that when the pledged shares are returned and released from the encumbrance upon repayment of loan, borrower is not required to comply with public announcement requirements, inspite of the bank acquiring shares on invocation of pledge. Rejecting the contention of the borrower, this Tribunal held that upon bank being recorded as beneficial owner of the shares in the records of the depository, bank become member of the Target Company and the bank not only acquires the shares but also the voting rights attached thereto. In that context it was held that but for the exemption granted to the banks under regulation 3(1)(f)(iv) of the Takeover Regulations, 1997 banks would have been required to comply with the public announcement requirements. It was further held that after the shares were acquired by the bank on invocation of pledge, it was open to the bank to transfer shares to other parties. Fact that the bank has returned the shares to the borrower on repayment of loan would not absolve the borrower from complying with the public announcement requirements. It is relevant to note that under explanation to regulation 7 of Takeover Regulations, 1997, every acquirer other than Banks/PFI's were required to make disclosures within two days of creation of pledge. In other words even under explanation to regulation 7 of the Takeover Regulations, 1997 exemption to Banks/PFI's from making disclosures

was restricted to the obligation arising within two days of creation of pledge. Thus, the decision of this Tribunal in case of Liquid Holdings (Supra) does not support the case of the appellants.

23. Similarly, in the absence of any exemption, under PIT Regulations, 1992 SEBI is justified in holding that on acquisition of shares by invocation of pledge, appellants were required to make disclosures under regulation 13 of PIT Regulations, 1992. Since regulation 13(1) of PIT Regulations, 1992 requires “any person” holding shares in excess of the limits prescribed therein to make disclosures, and admittedly appellants had acquired shares in excess of the limits prescribed therein, without dealing with various contentions raised by appellant in that behalf we hold that the expression “any person” in regulation 13(1) of PIT Regulations, 1992 is wide enough to cover acquisition of shares by Scheduled Commercial Banks/ PFI’s on invocation of pledge and therefore, in the facts of present case, failure on part of appellants to make disclosures constitutes violation of regulation 13 of the PIT Regulations, 1992.

24. Argument of the appellants that failure on their part to make disclosures, if any, has not deprived investors important information regarding acquisition of shares by the appellant, because, requisite filing has been made by the Target Company is also without any merit. Obligation to make disclosures under regulation 29(1)/29(2) by Scheduled Commercial Banks/ PFI’s on acquisition of shares by invocation of pledge is irrespective of the disclosures made by the Target Company. In other words, fact that the Target Company has made

disclosures does not absolve Scheduled Commercial Banks and PFI's from making disclosures under regulation 29(1)/29(2) when shares are acquired by them on invocation of pledge. In the present case, admittedly the appellants have failed to make disclosures even after acquiring shares on invocation of pledge and hence, appellants cannot escape penal liability.

25. Although penalty is imposed on the appellants for the first time for violating disclosure provisions that triggered on acquisition of shares by invocation of pledge, it is a matter on record that various Scheduled Commercial Banks have been making disclosures as and when disclosure provisions are triggered on acquisition of shares by invocation of pledge. If various Scheduled Commercial Banks have been making disclosures from time to time, there is no reason as to why penalty ought not to be imposed on appellants for not complying with the disclosure provisions contained in Takeover Regulations, 2011. In these circumstances, we see no reason to interfere with the quantum of penalty imposed against the appellants.

26. For all the aforesaid reasons, we see no merit in both these appeals and accordingly, both the appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member