BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On : 08.10.2013
Date of Decision : 31.10.2013

Appeal No. 2 of 2013

1. Smt. Madhuri S Pitti
   6-3-648, Moti Bhavan,
   Somajiguda, Hyderabad – 500 082.

2. Pitti Electrical Equipment Pvt. Ltd.
   6-3-648/2, Somajiguda,
   Rajbhavan Road, Hyderabad – 500 082.

3. Shri. Akshay S Pitti
   6-3-648, Moti Bhavan,
   Somajiguda, Hyderabad – 500 082. … 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. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh, Advocate for Appellants.

Dr. Mrs. Poornima Advani, Advocate with Mr. Ajay Khaire, Advocate for the Respondent.

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

Per : Jog Singh

1. The present appeal is preferred by three Appellants against impugned letter dated December 17, 2012, issued by the Respondent, directing the Appellant Nos. 1 & 2 to increase the offer price in respect of the open offer of 26,98,340 equity shares of Pitti Laminations Ltd. (“Target Company) and

also to incorporate certain allegedly unwarranted clauses relating to remote acquisition of some shares by the promoter group of the Target Company in the years 2006 and 2007 as the Draft Letter of Offer ("Past Allotments").

2. Detailed and lengthy arguments have been advanced by the parties for almost two days on various aspects. It is, therefore, necessary for us to cull out the relevant bare facts before addressing the legal issues actually involved in the matter.

3. Appellant Nos. 1 and 2, namely, Mrs. Madhuri Pitti and M/s. Pitti Electrical Equipment Pvt. Ltd., are the "acquirers" of Pitti Laminations Ltd., the target company and intend to acquire about 20% of the voting rights of the target company by way of the present open offer. They are acting jointly with Appellant No. 3, Mr. Akshay S. Pitti and Mr. Sharad Pitti, who is the chief promoter of the target company. Mr. Sharad Pitti is not one of the Appellants before us.

4. Records reveal that the target company was incorporated in the year 1983 under the Companies Act, 1956 and its six promoters, namely, Mr. Sharad B. Pitti; Mr. Akshay S. Pitti; Ms. Madhuri Pitti, Mrs. Shanti B. Pitti; Mr. Sharad B. Pitti and Pitti Electrical Pvt. Ltd, have been controlling the affairs of the company since its inception. It is also a matter of record that all the entities belonging to the Pitti Group have all along been acting in concert as is evident from their repeated annual filings under regulation 8(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and also from their periodical disclosures to the target company and to the Stock Exchanges as regards their increased or decreased shareholding.

5. Next, at the Annual General Meeting of the Target company on August 11, 2011, a preferential allotment of 40,50,000 equity shares to Appellant Nos. 1 & 2 was authorized by the shareholders of the Target company. It would increase the total shareholding of the three Appellants taken with that of Mr. Sharad Pitti from 41.70% to 59.21%. This increase in the shareholding of the Promoter Group being more than the prescribed threshold of 5% would naturally attract the provisions of regulation 11(1) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations" for short), regarding making of an open offer. Accordingly, a public announcement was made by the Appellants on September 9, 2011 and simultaneously a Draft Letter of Offer was filed before the Respondent for its approval through Merchant Banker, BOB Capital, on September 19, 2011. In response thereto and after a lapse of more than one year, the impugned letter dated December 17, 2012 under regulation 18(2) the SAST Regulations, 1997 came to be issued by the Respondent.

6. By the impugned letter, the Respondent has called upon the Appellants to, interalia, suitably amend the draft LO by incorporating the following :-

> *Firstly, that the offer is made in terms of regulation 10 on account of acquisition which entitled Mr. Akshay S. Pitti to exercise more than 15% of shares or voting rights on April 26, 2006 and April 11, 2007 and acquisition by Pitti Electrical Equipment Limited which entitled it to exercise more than 15% shares or voting rights pursuant to preferential allotment in the target company;*
>
> *Secondly, Shri Akshay S. Pitti, a PAC, had acquired 4.97% and 1.27% of shares on April 26, 2006 and April 11, 2007 respectively consequent to conversion of warrants resulting in increase in his individual shareholding from 11.87% to 16.25% and from 14.88% to 15.77% respectively. The said acquisitions of shares by Shri Akshay S. Pitti which entitled him to exercise more than 15% of the voting rights of the Target Company have attracted the provisions of regulation 10*

thereby making him liable to make an open offer. You are therefore advised to revise the offer price on account of the above.

You are also advised to make a corrigendum to the Public Announcement (PA) in all newspapers, in which the original PA was made, Incorporating revised figures of offer price, before the date of opening of the offer.

Suitably disclose that SEBI may initiate appropriate proceedings against Shri Akshay S. Pitti for failing to make a public announcement on account of acquisition which entitled him to exercise 15% of shares and voting rights.

7. There are some other suggestions also to be incorporated in the Draft LO but the same are inconsequential. The appellants are mainly aggrieved of the comment regarding violation of regulation 11 of the SAST Regulations, 1997 by Mr. Akshay S. Pitti in April 2006 and April 2007. Similarly, the appellants also challenge the recommendation/comment of the respondent regarding revision of the offer price on account of said two acquisitions by Mr. Akshay S. Pitti.

8. The case of the appellants is that the impugned direction has been issued completely disregarding the concept of "persons acting in concert" which is enshrined in explicit terms in the SAST Regulations, 1997. The Appellants state that the past allotments for which they are being targeted after all these years did not trigger provisions of regulation 10 of SAST Regulations, 1997 for the simple reason that the shareholding of Appellant No. 3, taken with that of other persons acting in concert, was more than the 15% threshold prescribed under the said regulation before those allotments were made.

9. The Respondent did not issue any Show Cause Notice to the Appellants regarding the alleged violation with respect to the Past Allotments. It is,

therefore, submitted that the direction has been issued ignoring the due process as well as principles of natural justice by not providing the Appellants with an opportunity of being heard. It is also submitted that the impugned direction is ‘non-speaking’ and ‘non-reasoned’. The shareholding of Appellant No. 3 would have to be reckoned with that of the promoter group, since they were, admittedly, acting in concert, while ascertaining the application or non-application of regulation 10 of SAST Regulations, 1997.

10. The Appellants further submit that in cases where voting rights of persons acting in concert are aggregated for purposes of regulation 11, there cannot be any question of taking individual voting rights of the people who are part of the group of people acting in concert for the purposes of regulation 10 of the SAST Regulations, 1997. The Respondent has contradicted itself by holding the Appellants guilty of contravening regulation 10 of the Takeover Regulation, 1997 since there are several instances wherein the provisions of the said regulations have been interpreted to mean that the provisions of regulations 10 and 11 of the Takeover Regulation, 1997 cannot be attracted in the same case. Further, there is nothing in the language used in regulation 10 of the Takeover Regulation, 1997 which hints that the limit prescribed therein can be applied collectively as well as individually.

11. It is brought to this Tribunal’s notice that there are several cases of companies not having made any public announcement in similar circumstances of individual members accumulating voting rights beyond the prescribed threshold, in which no action has been taken by the Respondent.

The Appellants submit that this is violative of natural justice as well as their right to equality.

12. We shall now deal with the case of the Respondent in brief. To begin with, the Respondent submits that the present appeal is not maintainable before this Tribunal on the ground that the impugned letter is not a direction but consists of mere comments issued by the Respondent which cannot be challenged under provisions of Section 15T of the SEBI Act. It is submitted that an opportunity to be heard was granted on March 19, 2012, which was duly availed of by the Appellants. The letter in question has been issued under regulation 18(2) of the SAST Regulations, 1997 which do not mention any requirement regarding issuance of a Show Cause Notice.

13. The Respondent submits that as per regulation 10 of the Takeover Regulation, 1997, an acquirer is mandatorily required to make a public announcement in case if his shareholding goes beyond the 15% benchmark individually or collectively with persons acting in concert. Regulations 10 and 11 of the Takeover Regulation, 1997 are not mutually exclusive, and both regulators may apply simultaneously to a given set of facts in certain situations.

14. Regarding the Appellants' submission that action has not been taken by the Respondent against listed companies under similar circumstances, the Respondent states whether or not action has been taken in those other cases cannot absolve the Appellants of blame.

15. We have heard the learned counsel for both parties at length and minutely perused the appeal along with documents attached thereto.

16. First, we shall deal with the Respondent's averment that the impugned direction is in the nature of comments and advisory in nature as opposed to being mandatory. We find ourselves disagreeing with the Respondent in that it cannot presume to issue directions to listed companies, terming it mere advice but without giving the latter any choice in the matter. By using the expressions "advisory in nature" or " comments" the Respondent cannot turn a blind eye to the fact that inspite of issuing directions on the pretext of giving comments/ advice, the language of regulation 18(2) of the Takeover Regulation, 1997 is couched in mandatory terms. The said regulation clearly lays down that once the letter of offer is submitted to the Respondent and consequently the Respondent suggests any changes within 21 days of receiving the documents, the listed company in question shall necessarily have to make such changes to the letter of offer before making it public. We find that there is little room for doubt as to the nature of these comments which are clearly mandatory and hence can be challenged before us under the SEBI Act.

17. This Tribunal has taken such a view in the case of Akshya Infrastructure Private Limited Vs SEBI decided on June 19, 2013. In that case too, a letter issuing directions under Regulation 18(2) had been challenged by Akshya Infrastructure, and the Respondent had sought to dismiss the directions as mere advice/ comments. This Tribunal held that directions issued under regulation 18(2) of the SAST Regulations, 1997 could in fact be challenged before this Tribunal. The Respondent cannot issue directions akin to orders under the garb of making comments or giving advice. We reiterate that the language of regulation 18(2) of the Takeover

Regulation, 1997 is, on even a bare reading of the provisions, mandatory in nature.

18. The Tribunal thus, took a consistent view that a liberal interpretation is to be given to the expression "an order" used in section 15T of the SEBI Act, 1992. Para 14 of M/s. Akshaya Infrastructure is reproduced herein below:

> *"14. To any reasonable person who were to sit in judgment, it is clear that this Tribunal, while delivering the aforesaid judgment, had but one thing in mind, viz. every entity ought to be given at least one opportunity to be heard and to have their side of the story brought out in the open in every forum where it is their legal right to do so. It has been succinctly stated that the words "an order" in Section 15T must be read without any limitation while bringing every comment/observation put forth in the garb of mere advice within their ambit, and that is precisely what this Tribunal intends to do. The mandatory nature of the impugned communication cannot be denied by clothing it as mere innocuous advice. In light of the aforesaid observations, we hold that the impugned letter dated November 30, 2012 is an order within the meaning of Section 15T of the SEBI Act and hence appealable before this Tribunal."*

19. We now come to violations allegedly committed by the Appellants with respect to the Past Allotments, on the basis of which the Respondent desires the inclusion of certain superfluous information in the letter of offer as per the Appellants.

20. As far as these Past Allotments are concerned, the issue is one which has been dealt with before by this Tribunal in the case of Sunil Khaitan Vs SEBI, Appeal No. 23 of 2013 decided on 19.06.2013. The issue at the core of the present matter is whether the language of regulation 10 of the SAST Regulations, 1997 is such that it intends to give a disjunctive or conjunctive interpretation to the expression "or" in the phrase "taken together with shares or voting rights, if any, held by him or by persons acting in concert

with him" used in the said regulation 10 of the SAST Regulations, 1997 which is reproduced herein below:

> *"10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations."*

21. The first ingredient of the regulation in question is "acquirer", the second is "shares or voting rights, if any, held by him or by persons acting in concert with him"; and the third is "entitle such acquire to exercise fifteen percent or more of the voting rights in a company". The definitions of "acquirer" and "persons acting in concert" as given in the Code of Conduct, 1997 are reproduced below for the sake of convenience":

> ***2(b) "acquirer"*** *means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;*
>
> ***2(e) "person acting in concert"*** *comprises, -*
>
> *(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.*
>
> *(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:……"*

22. A simple reading of the definition of the word **"acquirer"** makes it clear that an acquirer may act alone or as part of a group of persons acting in

concert. On the other hand, the definition of **"persons acting in concert"** reveals that people who cooperate with each other in order to acquire substantial voting rights in a particular company would be considered persons acting in concert. At this point, we find it necessary to quote paragraph 31 from Sunil Khaitan Vs SEBI (Appeal No. 23 of 2013 decided on 19.06. 2013) mentioned herein below:

> *31. In this connection, it may also be pertinently noted that the SAST Regulations, 1997 allow certain persons/ entities to act in concert for the purpose of acquisition. Even the definition of "persons acting in concert" as provided in Regulation 2 (e)(1) clearly provides that this expression includes persons who agree to cooperate with each other to acquire shares/voting rights in a target company or control over the target company pursuant to a formal or informal understanding between them, directly or indirectly. Thus, the definition is wide enough and gives ample scope to persons to act in concert as one unit for the purpose of acquisition of shares/voting rights. Further, Regulation 2(e)(2) also enumerates various persons who could act in concert and they, inter alia, include a company, its holding company, a subsidiary, directors, mutual fund with sponsor or trustee, foreign institutional investors, merchant bankers, so on and so forth. In this context, if we look at the new SAST Regulations, 2011, we note that Regulation 3(3) specifically provides that acquisition of shares by any person within the meaning of sub-regulations 3(1) and 3(2) would be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of its aggregate shareholding with persons acting in concert if the shareholding of such individual person exceeds the threshold limit prescribed by regulation 10. <u>It is pertinent to note that such a specific and unambiguous provision making an individual liable to make a public offer in case the individual shareholding increases during the course of the acquisition even while acting in concert with other persons is conspicuously missing in the SAST Regulations, 1997.</u> KLL was, therefore, not required to make a public offer and the finding in the Impugned Order qua appellant no. 3, i.e., KLL is hereby set aside. At any rate, since the amendment of the Takeover Code and the inclusion of regulation 3(3) in the SAST Regulations, 2011 the discussion regarding the applicability of regulation 10 of the SAST Regulations, 1997 has been rendered academic. Having said that, in the facts and circumstances of the present case, KLL cannot be called upon to make an open offer by applying regulation 3(3) of the new Takeover Code retrospectively."*

23. Therefore, it is evident that the framers of the Takeover Regulation, 1997 intended to bring out a clear distinction between individual acquiring of shares on one hand and shares acquired by persons acting in concert on the other. The benchmark of 15% would, thus, apply to an individual when the individual is acquiring shares/voting rights on his behalf alone. Similarly, when we attempt to determine whether or not the said limit has been crossed, shareholdings of all members of the group of persons acting in concert would have to be reckoned as a whole. Any other interpretation which would serve to dilute the distinction between an individual acquirer and a group of "persons acting in concert" as an acquirer. It would, indeed, make the concept of "persons acting in concert" nugatory, which could never have been the intention of the law makers. We, therefore, find Appellant No. 3 free of any blame with respect to provisions of regulation 10 of the SAST Regulations, 1997 regarding his acquisitions in the years 2006 and 2007.

24. Moreover, before holding Appellant No. 3 guilty of violating regulation 10 of the Takeover Regulation, 1997, the Respondent ought to have conducted a proper investigation into affairs related to the Past Allotments. In Akshya Infrastructure (supra) this Tribunal has pertinently held that such allegations, although stated to be prima facie, go to the root of the matter and may lead to adverse monetary consequences on the Appellant and the Promoter-Group, particularly as they would not be a result of lawfully conducted proceedings. The said allegations levelled against the Appellants with respect to the violation of Regulation10 could have been proceeded with only as per law laid down in the SEBI Act, particularly

provisions of Regulation 11C, 15I and 15J read with provisions of Chapter V of the SAST Regulations which deal with investigations conducted into questionable acts of corporate houses while trying to circumvent the law. In the instant case, however, regrettably so, it is the Respondent which has failed to act as per law. Being the corporate watchdog of the country, it does not behove the Respondent to make such binding observations without recourse to the due process of law. Sections 15I and 15J of the SEBI Act empower the Respondent to adjudicate and while doing so take certain factors into account. Section 15I(1) specifically provides that for the purposes of acting under various preceding sections from 15A to 15HB, the Respondent is required to appoint an officer not below the rank of Divisional Chief to be an adjudicating officer for holding an enquiry in the prescribed manner after giving reasonable opportunity of being heard to the person concerned. The adjudicating officer is also entitled to impose any penalty if the facts of the case so require.

25. Similarly, Chapter V of the SAST Regulations of 1997 deals with investigations conducted and actions taken by the Respondent. Regulation 38 deals with the Respondent's right to investigate matters and lays down that it may appoint a person as investigating officer to undertake investigations into complaints regarding substantial acquisition of shares and takeovers by an entity/person or do so on its own knowledge and in the interest of the securities market or in the investors' interest. Regulation 39(1) requires notice of 10 days to be given to the acquirer, the seller, the target company, the merchant banker, as the case may be. However, Regulation 39(2) empowers the Board to dispense with the requirement of such a notice for reasons to be recorded in writing. Provisions of Regulation 40 broadly

require the acquirer, the seller, the target company or the merchant banker, whose affairs are being investigated to fully cooperate in the investigation by providing all the relevant material/documents in their custody to an investigating officer as per his requirement. After completion of the investigation, the investigating officer is required to submit a report to the Respondent which in turn shall communicate the same to the person concerned and give him an opportunity of being heard. On receipt of a reply from the said person/entity, the Respondent may call upon him/it to take such measures as may be deemed fit in the interest of the securities market and for due compliance with the provisions of the SEBI Act and SAST Regulations.

26. We, therefore, reiterate that for determining the crossing of threshold limit of 15% prescribed by the erstwhile Regulation 10 of the SAST Regulations, 1997, it is the collective holding of the entire group/concert which would be the benchmark for determining the increase in shareholding and not Appellant No. 3's (Mr. Akshay S. Pitti) shareholding as an individual. Once an individual becomes part of the group acting in concert with the intention of acquiring shares, it loses its identity as an individual and takes on the identity of the group as a whole. As per scheme of law as envisaged in the erstwhile SAST Regulations, 1997 an individual is no longer regarded as a separate entity of the group as he becomes an integral part of the entire unit as one cohesive structure. This is the only logical inference since it is not disputed by the Respondent that all the Appellants had been acting in concert with each other by agreeing to pool their holdings together in respect of the target company in a common basket as per law and

hence in our considered opinion all the Appellants have acted as a unit/group and not in their individual capacity at least for the limited purpose of the acquisition of shares/voting rights in question. It is also not denied by the Respondents that the shareholding of all the Appellants taken together had been far more than 15% and they had been in control of the affairs of the company, along with Mr. Sharad Pitti, since its inception in 1983.

27. We agree with the Respondent to the extent that the SEBI Act is certainly a social welfare legislation. But this does not take away from the undeniable fact that Regulations 3(3) of the SAST Regulations, 2011 introduced the provision stating that even in case of an individual's shareholding crossing the stipulated threshold, which is now 25%, the need to make a public offer shall arise. The Respondent has in all fairness has agreed that the new Takeover Code of 2011 does not apply retrospectively.

28. We have also gone through the judgement of this Tribunal in case of Hanumesh Realtors Pvt. Ltd. in Appeal No.66 of 2012 decided on 25.07.2012 and relied upon by the Respondent. Its opening paragraph states that the main issue before the Tribunal was whether the Appellant in that case had violated provisions of regulation 11(1) read with regulation 14(1) of the SAST Regulations, 1997 and whether the penalty of ₹ 1.87 crore imposed by the Respondent was justified or not. The Appellant company in Hanumesh Realtors Pvt. Ltd. was in the business of builders and developers. The target company was one S Kumars Online Ltd. which was listed on BSE. The Appellant was allotted 28,25,000 shares on preferential basis on March 3, 2010 due to which the shareholding of the Appellant in the target company increased to 1,22,72,814 shares as the Appellant was already

holding 94,47,814 shares i.e., 36.62%. In the process the total shareholding of the promoter group also increased from 49.62% to 54.59% whereas the individual shareholding of the Appellant in the promoter group increased from 36.62% to 42.87%. This naturally raised the shareholding and voting rights of the Appellant in the target company by 6.5% thereby triggering regulation 11(1) of the SAST Regulations, 1997. Since the Appellant had acquired more than 5% shares it was required to make an open offer within 4 days as required by regulation 14(1) of the SAST Regulations, 1997 in question. This having not been done, a Show Cause Notice dated November 22, 2010 was issued by SEBI and after following due process of law penalty to the tune of ₹ 1.87 crore was imposed as per Section 15H(ii) of the SEBI Act, 1992.

29. It is, therefore, evident that regulation 10 of the SAST Regulations, 1997 was never in dispute in the case of Hanumesh Realtors and whatsoever has been stated or held by this Tribunal in Hanumesh Realtors Pvt. Ltd. is only in the context of violation of regulation 11(1) of the SAST Regulations, 1997 which is clear from para 5 that order as reproduced below:-

> *"5. …The takeover code obligates acquirer of shares or voting rights of a company in three different scenarios which are discussed in regulations 10, 11 and 12 of the takeover code. They operate in different areas of acquisition and consolidation of holdings of a listed company. Regulation 10 provides for making the public announcement in cases where acquisition of shares or voting rights of the company is 15 per cent or more by the acquirer or by persons acting in concert with him. Regulation 12 makes a provision for public announcement in case of acquisition of "control" over the target company. Regulation 11 makes provision for public announcement in case of consolidation of holdings.* ***For the purpose of present case, we are concerned with regulation 11(1) of the takeover code which reads as under:***
>
> *"11(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per*

cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

30 It is in this backdrop, that the Tribunal held that:

"A bare reading of the aforesaid provisions will make it clear that the provisions of this regulation apply to an acquirer when he is acting (i) by himself or (ii) through persons acting in concert with him, or (iii) with persons acting in concert with him. Hon'ble Supreme Court, while interpreting the provision of regulation 11 in the case of Swedish Match AB (supra), has observed that the pre-conditions attracting regulation 11 are:
"(i) that an acquirer had acquired shares in concert with another; (ii) such acquisition was more than 15% but less than 55% of the shares or voting rights in a company; (iii) in the event, the acquirer intends to acquire such additional shares or voting rights which would allow him to exercise more than 5% of the voting rights within a period of 12 months, public announcement is required to be made therefore. (iv) such acquisition of additional shares contemplates three different situations, i.e., ***the acquisition may be by acquirer himself or through or with the person acting in concert with the person with whom they had acquired shares earlier in concert with each other."*** *(emphasis supplied)*
The Court has also observed that regulation 11 does not brook any other interpretation. The Apex Court further observed that if additional shares are acquired entitling an acquirer to exercise more than 5 per cent of the voting rights, the statutory embargo to the effect that the acquirer must make a public announcement to acquire shares in accordance with the regulation comes into operation."

31. In the case in hand, it is not the Respondent's allegation that the Appellants have violated the provisions of regulation 11(1) of the SAST Regulations, 1997. On the contrary it is only the Appellants who have taken initiative by going to the Respondents, pursuant to the provisions of regulation 11(1) of the SAST Regulations, 1997 to duly comply with the said provisions by making public announcements and offer. While doing so and as required by the regulations, the Appellants had submitted a Draft

Letter of Offer dated September 19, 2011 to the Appellants and while giving its comments under regulation 18(2) of the SAST Regulations, 1997, the Respondent had alleged that the Appellants had not complied with the regulation 10 of the SAST Regulations, 1997 in the remote past i.e., in the years 2006-2007. Therefore, Hanumesh Realtors case is clearly distinguishable and does not help the case of the Respondent at all.

32. It is pertinent to keep in mind that regulation 10 mandates an acquirer, whether acting individually or collectively as a group, to make a public offer if the shareholding of such an acquirer crosses the threshold of 15%. On the other hand, regulation 11, lays down the concept of creeping acquisition and its limit as 5% in a year for an acquirer who already holds between 15% to 55% of the shares in a given company whether, individually or with persons acting in concert. Therefore, we hold that the ratio laid down in Hanumesh Realtors does not apply to the case in hand.

33. Lastly, it is worthwhile to note that the SAST Regulations, 1997 have since been replaced by SAST Regulations, 2011 with some significant changes. An analysis of relevant and corresponding provisions i.e., Regulations 3(1), 3(2) and 3(3) of SAST Regulations, 2003 shows that Regulation 3(3) specifically provides that acquisition of shares by any person within the meaning of sub-regulations 3(1) and 3(2) would be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of its aggregate shareholding with persons acting in concert if the shareholding of **such an individual person** exceeds the threshold limit prescribed by regulation 10. It is pertinent to note that such a specific and unambiguous provision, making an individual liable to

make a public offer in case the individual shareholding increases during the course of the acquisition even while acting in concert with other persons, is conspicuously missing in the SAST Regulations, 1997. Further, the limit of 15% has since been increased to 25% by regulation 3(1) in SAST Regulations, 2003. In other words, when regulation 3(3) of SAST Regulations 2011 has come in to force with effect from October 6, 2011 (thirteenth day from publishing SAST Regulations, 2011) SEBI could not have invoked that regulation in respect of acquisition that took place during 2006 and 2007 especially when, no such regulation was existing in SAST Regulations, 1997.

34. The appeal, thus, stands allowed and the Appellants are permitted to continue with their offer excluding Respondent's impugned directions as spelt out above in para 6 of this order mainly relating to the acquisitions by Appellant No. 3 in the years 2006 and 2007. Ordered accordingly. No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

31.10.2013
Prepared & Compared By: Pk