BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 11.02.2019
Date of Decision : 29.03.2019

Appeal No. 122 of 2017

Birla Corporation Ltd.
Birla Building (3rd & 4th Floors),
9/1, R. N. Mukherjee Road,
Kolkata- 700 001 …Appellant

Versus

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

2. Birla Education Trust
   Birla Building
   9/1, R. N. Mukherjee Road, 7th Floor,
   Kolkata- 700 001

3. Earthstone Holding (Two) Limited
   Hindustan Times House,
   25 Ashok Marg, Lucknow,
   Uttar Pradesh- 226 001

4. Adventz Finance Private Limited
   Hongkong House, 31,
   B.B.D. Bagh(s),
   Kolkata- 700 001

5. Adventz Securities Enterprises Limited
   Hongkong House, 31,
   B.B.D. Bagh(s),
   Kolkata- 700 001

6. Govind Promoters Pvt. Ltd.
   Continental Chambers
   15A, Hemanta Basu Sarani, 4th Floor,
   Kolkata 700 001

7. Merlin Securities Pvt. Ltd.
   2, Grastin Place,
   Ground Floor
   Kolkata- 700 001

8. Lifecycle Infotech Pvt. Ltd.
   609, 6th Floor,
   Inizio Cardinal Gracias Road,
   Opp. P and G Plaza,
   Andheri (E), Mumbai- 400 099
   Maharashtra (India)

9. G K Trading Pvt. Ltd.
   3, Mangoe Lane, 1st Floor,
   South Block,
   Kolkata- 700 001

10. Mr. Anil Goyal
    C-2601, Oberoi Garden III
    Thakur Village,
    Off W.E. Highway Kandivali (E), Mumbai
    Maharashtra- 400 101

11. Brijmohan Sagarmal Capital Services Pvt. Ltd.
    412 Stock Exchange Tower,
    Dalal Street,
    Mumbai- 400 023
    Maharashtra …Respondents

Mr. Dinyar Madon, Senior Advocate with Mr. Mikhail Behl, Mr. Pradeep Bakhru and Mr. Sanjiv Trivedi, Advocates i/b Wadia Ghandy & Co. for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Abhiraj Arora, Advocate i/b ELP for the Respondent No. 1

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ankit Lohia, Mr. Abhay Jadeja and Ms. Shruti Katakey, Advocates i/b M/s Crawford Bayley & Co. for the Respondent Nos. 2 to 6.

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b Corporate Law Chambers India for the Respondent No. 7

Mr. Kumar Desai, Advocate with Mr. Rohit Mangsule, Advocate for the Respondent Nos. 8 to 10.

Mr. Joby Mathew, Advocate with Mr. Nikhil Shah, Advocate i/b Joby Mathew & Associates for the Respondent No. 11

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Dr. C.K.G. Nair

1. This appeal has been filed challenging the order / communication dated December 27, 2016 issued by the Assistant General Manager of the Securities and Exchange Board of India ("SEBI" for convenience) disposing off a complaint made by the appellant alleging prima facie violation of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Regulations, 1997" for convenience) by some entities.

2. The appellant is a listed company. Vide communication dated September 26, 2011 the appellant lodged a complaint with SEBI, which, inter alia, stated that some parties connected to each other and were Persons Acting in Concert ("PACs") with the Birlas acquired shares of the appellant company without making mandatory disclosures as prescribed under law and thereby, violated Regulation 7(1) and Regulation 7(2) of the SEBI Takeover Regulations, 1997. Further, it was also alleged in this communication that the nature of trading of some of those parties and their source of fund may be investigated to ascertain whether these entities violated the SEBI PFUTP Regulations and the anti-money laundering laws. Those 10 entities who, allegedly committed

the violations, have been made respondents in this appeal and are listed as Respondent Nos. 2 to 11 while SEBI is Respondent No. 1.

3. On April 15, 2013 SEBI closed the complaint filed by the appellant on September 26, 2011 by stating that while some of the entities alleged to be PAC were in fact PACs, all those 10 entities together were not PACs. Further, the shareholding of the entities who were PACs was 1.07% (Respondent Nos. 2 to 5) and about 4% (Respondent Nos. 8 to 10), both of which was less than the threshold level of 'more than 5%' required for triggering disclosure under Regulation 7(1) of the Takeover Regulations, 1997.

4. The appellant company filed an appeal before this Tribunal aggrieved by the decision of SEBI dated April 15, 2013. When the matter came up for hearing before this Tribunal on November 07, 2014 the learned counsel for Respondent No. 1 (SEBI) submitted as follows:-

> *"in view of the grievance of the appellant that the impugned communication does not contain detailed reasons, impugned order be set aside with liberty to SEBI to consider merits of the complaint filed by the appellant and pass fresh (order) on merits and in accordance with law. Accordingly, the impugned order dated April 15, 2013 is quashed and set aside and the matter is restored to the file of SEBI with a direction to consider merits of the complaint*

filed by the appellant and pass fresh order on merits and in accordance with law as expeditiously as possible."

5. Following the above direction of this Tribunal SEBI passed the order impugned in this appeal on December 27, 2016. The impugned order rejected the complaint of the appellant on the following grounds:-

"(i) Respondent Nos. 8, 9, 10 and Sunayna Commercial Pvt. Ltd. have admitted that they are persons acting in concert with each other and together hold around 4% shareholding of BCL;

(ii) Respondent No. 2 to 5 are directly/ indirectly being managed by the Birla Group may be deemed to be PAC with each other. However, their combined shareholding is only about 1% in the Appellant;

(iii) No link has been observed between Respondent No. 11 and other entities;

(iv) No relationship has been observed between all the entities to establish that all of them are persons acting in concert with each other. No violation of provisions of Regulation 7 of Takeover Regulations was observed."

6. Before coming to the details of the matter we propose to deal with two preliminary objections raised by some of the respondents, including SEBI. These respondents submitted that the appeal is not maintainable since the appellant is not a person aggrieved. A target company is not affected by who purchases or acquires its shares, it is a neutral legal entity. Therefore, it is contended that the real appellant is hiding behind the shield of the company who is not an aggrieved person and hence the appeal is not maintainable. The second preliminary objection raised by these respondents is that the impugned communication is an administrative order and hence not appealable before this Tribunal in view of the Judgement of Hon'ble Supreme Court ***in the matter of National Securities Depository Ltd. V/s Securities and Exchange Board of India (2017) 5 SCC 517 (decided on March 07, 2017)*** which held that circulars and administrative orders issued by SEBI cannot be appealed before this forum. Similarly, the appellant also raised a preliminary objection stating that the impugned order/ communication is issued by an Officer who does not have the power to issue such orders under the Scheme of Delegation in SEBI. Without going into the legality of all these preliminary objections we hold that in view of the order of this Tribunal dated November 07, 2014, which dealt with a similar order/ communication passed by same Officer of SEBI in the same matter and where no such ground was considered we are of the view that these preliminary objections at this stage are devoid of any

merit and are, therefore, disposed off. Accordingly, we proceed to deal with the basic issues raised in this appeal as to whether, given the factual matrix, there was indeed violation of the relevant Takeover Regulations by Respondent Nos. 2 to 11.

7. For convenience, we reproduce the relevant provisions of Takeover Regulations, 1997 as under:-

> **"Definitions.**
>
> *2. (1) In these Regulations, unless the context otherwise requires:-*
>
> *(a)…*
>
> *(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;*
>
> *(c) …*
>
> *(d)…*
>
> *(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:

(i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub-account(s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer:

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or

with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work;

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.

Note: For the purposes of this clause "associate" means,—

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu undivided families;"

"Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

[Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in sub-regulations (1) [and (1A)] shall be made within [two days] of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

[(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.]

(3) Every company, whose shares are acquired in a manner referred to in [sub-regulations (1) and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under [sub-regulations (1) and (1A)]."

8. The allegation of the appellant in its complaint is that Respondent Nos. 2 to 11 were PACs within the meaning of Takeover Regulations, 1997 and they acquired the shares of the appellant company with the motive/ intent to acquire/ control the company and since the combined acquisition of shares of these Respondents together came to about 10% of the aggregate share capital of the appellant company and, therefore, breach the 5% trigger which mandated disclosures to the appellant company and to the Exchanges. Therefore, Respondent Nos. 2 to 11 violated Regulation 7(1) and Regulation 7(2) of the Takeover Regulations, 1997.

9. At the relevant time these 10 Respondents together held less than 10% of the aggregate share capital of the appellant company as follows:-

Sr. No.	**Particulars**	**Number of Shares**	**Shareholding (%)**
1.	Birla Education Trust Respondent No. 2	6,50,961	0.85
2.	Earthstone Holding (Two) Limited. Respondent No. 3	65,790	0.09
3.	Aventz Finance Pvt. Ltd. Respondent No. 4	98.316	0.13
4.	Adventz Securities Enterprises Ltd. Respondent No. 5	11	0.00
5.	Govind Promoters Pvt. Ltd. Respondent No. 6	5155	0.01
6.	Merlin Securities Pvt. Ltd. Respondent No. 7	21,65,481	2.81

7.	Lifecycle Infotech Pvt. Ltd. Respondent No. 8	11,85,010	1.54
8.	G K Trading Pvt. Ltd. Respondent No. 9	12,45,589	1.61
9.	Mr. Anil Goyal Respondent No. 10	34,381	0.05
10.	Brijmohan Sagarmal Capital Services Pvt. Ltd. Respondent No. 11	14,22,500	1.85
11.	Sunayana Commercial Pvt. Ltd.	6,54,072	0.84
	Total Shareholding	**75,27,266**	**9.78**

Serial No. 11 is not a party. However, since it is connected to Respondent No. 9, this entity is also considered a deemed to be connected entity and hence its shareholding in the appellant company has also been considered by the Adjudicating Officer.

10. What is held in the impugned order/ communication is as follows:-

> *"10. In the light of the aforesaid, the following observations have been made:-*
>
> *i. Lifecycle, G.K, Anil Goyal and Sunayana Commercial Pvt. Ltd. have admitted that they are PACs with each other and together hold around 4% shareholding of BCL.*
>
> *ii. Since, BET, Fullford, Britex, Poddar I and Poddar H are directly/indirectly being managed by Birla Group, they may be deemed to be PAC with each other. However, it may be noted that their combined holding is only about 1% in BCL.*

iii. No link has been observed between Brijmohan Ltd. and other entities except that Brijmohan Ltd. had taken loan from Birla Global Finance Ltd. and IGH Holding Pvt. Ltd., which are entities belonging to Aditya Birla Group. As noted above, the said loan was returned along with interest. Even assuming that Brijmohan Ltd. is a PAC with the six petitioners, their combined holding along with Brijmohan Ltd. did not cross the threshold limit of 5%, as together they hold only 2.85 shareholding of BCL.

Therefore, no relationship has been observed between all the entities, i.e., six petitioners and 'consenting shareholders' to establish that all of them are PACs with each other. As such, no violation of provisions of Regulation 7 of the Takeover Regulations has been observed."

11. Learned senior counsel Shri Dinyar Madon appearing for the appellant strenuously argued that what is held in the impugned order is patently wrong and devoid of merit. He also argued that natural justice was violated in passing the order in a cavalier manner since an opportunity of being heard was not provided to the appellant. He further contended that the Officer concerned who passed the order/ communication despite giving an opportunity of explanation to the Respondent Nos. 2 to 11 neither gave an opportunity of hearing to the appellant nor the documents obtained from the respondents were shared with the appellant. It was also contended that some of the statements made by the respondents regarding their PAC status were relied on by the SEBI Officer blindly and if an opportunity was provided to the appellant

it would have been able to prove that all these respondents were indeed PACs.

12. It was further contended by the learned senior counsel for the appellant that detailed "evidence" was provided by the appellant in its complaint regarding the reasons for the respondents therein to be PACs. All of them were parties to Company Petition No. 1 of 2010 filed before the Company Law Board ("CLB") under Section 397/ 398 of the Companies Act, 1956 seeking removal of the Chairman of the appellant company and they acquired about 8% of the share capital of the appellant company during the period 2008-2009. Further they had voted against the management in the General Body Meeting of the Company. Therefore, all these respondents had a single motive in removing the then management of the company and taking over control of the company. Their behavior undoubtedly shows the same motive and, therefore, they were acting in concert. Further, it is contended that the inter-relationship between these entities and their common connection to the Birla family (M. P. Birla) is prima facie evident. They were not given any interim relief sought while filing the Company Petition.

13. It was also submitted that some of the respondents had only a minuscule of share capital and/ or networth prior to 2008-2009 but suddenly, they acquired shares of the appellant company worth

several crores during the period 2008-2010 in the run up to the Company Petition filed in 2010. Therefore, the complaint made to SEBI by the appellant also contained specific information relating to the financial activities of these entities. In addition to violation of Takeover Regulations, 1997 SEBI was also asked to investigate whether there was violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short) as well as anti-money laundering laws.

14. It was further contended that the impugned order artificially segregates the 10 respondents into smaller groups and held that none of the group or individuals held more than 5% of the shares of the appellant company and does not go into their inter-se relationship/ connection which is the core of the complaint made by the appellant company. It is an undisputed fact that if all factors were taken into account it would have been proved that the respondents were indeed acting in concert. The impugned order, therefore, wrongfully concludes that no entity or group of entities who are PACs has crossed the threshold limit of 5% and therefore not violated the Takeover Regulations, 1997. In fact, it is argued, that the name of one of the major entities i.e., Respondent No. 7 Merlin Securities Pvt. Ltd. which held 2.81% of the shares of the appellant company

at the relevant time is not even explicitly stated in the impugned order.

15. Relying on the judgment of the Supreme Court of India in the matter of ***Technip SA V/s SMS Holding (P) Ltd. and Ors. (2005) 5 SCC 465 (Civil Appeals Nos. 9258-65 of 2003 with Nos. 10092-98 of 2003, decided on May 11, 2005)*** the appellant submitted that the degree of proof required to prove persons acting in concert is one of probability and the same can be proved by looking at the conduct of parties. Further citing ***Guiness PLC and Distillers Co. PLC (Panel hearing on 25 August 1987 and 2 September 1987)*** direct evidence in such issue may not be forthcoming inference need to be drawn based on the circumstances. Similarly appellant submitted that as held in the judgment of the Supreme Court of India in the matter of ***Chairman, SEBI V/s Shriram Mutual Fund and Anr. (2006) 5 SCC 361 (Civil Appeals Nos. 9523-24 of 2003, decided on May 23, 2006)*** *mens rea* or intension is always not needed while deciding imposition of penalty wherever breach or contravention of statutory obligation is established.

16. We have heard the learned counsel for the various respondents Shri Rafique Dada and Shri Janak Dwarkadas, learned senior counsel and learned counsel Shri Kumar Desai, Shri Vinay Chauhan and Shri Joby Mathew.

17. Shri Dada, learned senior counsel for SEBI contended that the only ground on which the appellant is holding that Respondent Nos. 2 to 11 are acting together is based on the fact that they were party to the Company Petition filed under Section 397/398 of the Companies Act. It was further contended that apart from what is shown in the impugned order that some of these Respondents were PACs there is nothing on record to show that all the Respondent No. 2 to 11 have anything common in between them. Being party to a Company Petition relating to alleged mismanagement and oppression of minority shareholders etc. is not the same as being PACs as defined under Regulation 2(1) e(1) of the Takeover Regulations, 1997. As such no group which is found to be acting in concert or no other respondent ever held more than 5% of the shares of the appellant company necessitating disclosures under Regulation 7 of the Takeover Regulations, 1997. Some of these parties had acquired shares much prior to the Company Petition filed in the year 2010 while some of them have acquired shares more than a year before filing the said Company Petition. The impugned order has clearly brought out the connections, wherever exist, between the respondents by their names. Whoever is not specifically stated in the impugned order is covered under 'others'. Accordingly, Respondent Nos. 2 to 5 were found to be PAC's and so were Respondent Nos. 8 to 10 but other Respondents were stand alone entities. In fact, SEBI also found that Sunayana Commercial Pvt.

Ltd. was also deemed to be connected with Respondent No. 9 and included it as a PAC. Respondent No. 2 held shares of the appellant since incorporation of the latter. Respondent Nos. 3, 4 and 5 had acquired shares of the appellant company prior to 2004 though some of them changed their names subsequently. Respondent No. 8, 9 and 10 are found to PACs but held only 4% shares (approximately) of the appellant company. Even after the share holding of Sunayana Commercial Private Limited became of its connection to Respondent No. 9 is added these PACs together held less than 5% of the shares of the appellant company. Accordingly, no group of PACs or stand alone respondents has held more than 5% of the shares of the appellant company necessitating disclosures under 7(1) of the Takeover Regulations, 1997.

18. Learned senior counsel for SEBI further contended that persons acting in concert as defined under Regulation 2(1) e(1) of the Takeover Regulations, 1997 is not the same thing as persons who come together in a Company Petition under Section 397/ 398 of the Companies Act alleging mismanagement or oppression of minority shareholders. If that is taken as a criteria then all the signatories of such a Petition are to be treated as acting together which is not the case here even according to the appellant. Conversely, if such a view is taken, then all the parties who support the promoter group entity/ entities would automatically become

PACs supporting the promoters thereby necessitating an enquiry as to whether there is any violation of Takeover Regulations committed by the promoters and such PACs. Therefore, PACs as under Takeover Regulations, 1997 and shareholders coming together for filing a Company Petition are different. Beyond that the appellant has not provided any evidence of acting in concert nor SEBI could find any evidence by its investigation to link all the respondents, other than the two identified sub-groups of PACs. Therefore, there is nothing on record to show that all the ten Respondents were indeed PACs as defined under Regulation 2(1) e (1) of the Takeover Regulations, 1997. Regarding the submission of the appellant that they were not given an opportunity of personal hearing nor given the documents collected from the respondents the senior counsel for SEBI submitted that the impugned communication is an administrative order and not an adjudication order. Information from the respondents was sought and the same, appellant's complaint and other records available with SEBI had been used in preparing the impugned communication. No personal hearing, cross examination etc. was involved in the process, as it was not a quasi-judicial process.

19. It was further contended by the learned senior counsel for SEBI that there was no 'substantial acquisition of shares' as alleged, which would have resulted in acquiring or controlling the company,

because, at the relevant time the trigger for such substantial acquisition was 15% of the share capital of the company while the allegation is that all the 10 Respondents if combined had acquired only less than 10% of the share capital. Investigation found that no PACs or individual entities had acquired more than 5% of the share capital. At the same time, the promoter shareholding in the appellant company was 63%. Therefore, by no stretch of imagination the Respondent Nos. 2 to 11 by their combined holding of less than 10% of the shares have made a substantial acquisition and taken over the company or its management as alleged. Therefore, there is no violation of Takeover Regulations, 1997 even with respect to the disclosure requirement, which is alleged, under Regulation 7 of the Takeover Regulations, 1997.

20. It was further submitted by learned senior counsel for SEBI that it is not correct to say that SEBI has not investigated into the other allegations made by the appellant in his complaint dated September 26, 2011. The allegations relating to the PFUTP Regulations, 2003 was investigated by the concerned department and found to be incorrect. Other allegations relating to violation of anti-money laundering laws etc. is being investigated by the concerned department.

21. Senior counsel for SEBI cited judgments on ***State of Orissa V/s Dr. (Miss) Binapani Dei And Ors. (1967) 2 SCR 625 (Civil Appeal No. 499 of 1965, decided on February 7, 1967)*** and ***Union of India and Anr. V/s W. N. Chadha 1993 Supp (4) SCC 260 (Criminal Appeal No. 567 of 1992, decided on December 17, 1992)*** to support their contention that while dealing with administrative orders the principle of providing hearing is not always required. Further, citing the order of this Tribunal in the matter of ***Alliance Capital Mutual Fund and Ors. V/s Securities and Exchange Board of India (Appeal No. 132 of 2004 decided on 01.11.2007), Daiichi Sankyo Company Limited V/s Jayaram Chigurupati and Ors. (2010) 7 SCC 449 (Civil Appeals No. 7148 of 2009 with 7314 of 2009, decided on July 8, 2010)*** submitted that to decide on PACs those who cooperate with each other should have a common objective of acquiring substantial number of shares in a target company while interpreting Regulation 2(1) e(1) of Takeover Regulations, 1997. Even in the case of co-promoters said to be acting in concert it is held in the matter of ***K.K. Modi V/s Securities Appellate Tribunal and Ors. 2001 SCC OnLine Bom 969 (SEBI Appeal No. 9 of 2001 with Notice of Motion No. 2033 of 2001 decided on November 5, 2001)*** that there is a need for proving a common objective for acquiring shares. "The mere fact that one of the promoters of the company wishes to acquire more shares of the

company is not a reason to hold the other promoters also necessarily share the same objective or purpose".

22. Learned counsel for Respondent Nos. 2 to 11 also made their submissions broadly on the above lines. However, in addition, learned senior counsel Shri Dwarkadas appearing for Respondent Nos. 2 to 6 made additional submissions that the reliefs sought by the appellant are far beyond the alleged disclosure violations made by the Respondents. The appellant seeks to restraint the Respondent Nos. 2 to 11 and all other parties who were acting in concert from buying, selling or dealing in the shares of not only the appellant company but from the securities market itself. This shows that the motive behind filing the complaint and that of hiding behind the face of the company is quite different from what is appears to be. The respondent Nos. 2 to 6 together held only 1.07% of the shares of the appellant company; between five of them this range from 11 shares to 6,50,961 and in no way they could have either substantially acquired the company or control it. They exercised a shareholders democratic right in a legal manner and filed a Company Petition about mismanagement and oppression which does not amount to acting in concert with those who became consenting parties to the Petition. It is an exercise of statutory right of a shareholder.

23. Learned counsel Shri Chauhan appearing for Respondent No. 7 submitted that its total shareholding in the appellant company at the peak was only 2.81% of the share capital of the appellant company. Further it sold 12000 shares during March 23-24, 2009, much before the filing of the Company Petition in March 2010 and also well before the complaint made by the appellant company to SEBI in September 2011. It continued to sell the shares of the appellant company on various occasions and presently holds only about 0.5% shares of the appellant company. Learned counsel further submits that Respondent No. 7 is not a PAC and had no interest in taking control of the appellant company. It was investing in the shares of the appellant company as usual and citing the order of this Tribunal in the matter of ***Triumph International Finance India Limited (SAT Appeal No. 183 of 2009 decided on 09.02.2010)*** contended that having close business association between two or more persons does not by itself make them persons acting in concert.

24. Learned counsel Shri Desai appearing for Respondent Nos. 8 to 10 have submitted that they were persons acting in concert but they were not persons acting in concert with Respondent Nos. 2 to 7 or with Respondent No. 11. Their investment in the appellant company was only like any other investment which they periodically sold and made a profit out of it.

25. Learned counsel Shri Mathew appearing for Respondent No. 11 submitted that it is a stock broker who trades in shares on proprietary account as well as on behalf of its clients. It is contended that the investment in the shares of the appellant company was made because the book value of the share was greater than its market value in 2008. They were not acting in concert with any other respondent. Its borrowing from Birla Global Finance Co. ("BGFC") has nothing to do with any common interest in the appellant company. It was borrowing which is like they borrowed from other entities such as Religare Finvest Pvt. Ltd. and whatever was borrowed from BGFC or Religare Finvest Pvt. Ltd. was repaid with interest. Total acquisition of the shares of the company of this respondent was only 14,22,500 shares (1.85%) and as such no violation of disclosure requirement under Regulation 7 of Takeover Regulations, 1997 has been committed.

26. We have perused the documents placed before us and carefully considered the submissions of all parties. We do not find any merit in the contention of the appellant that Takeover Regulations, 1997 has been violated by Respondent No. 2 to 11 herein looking at the facts and the evidence/ records produced before us. Without going into the details of the Company Petition, which is not relevant to the matter before us, we hold that coming together for exercising the basic rights of shareholders in a Company Petition

relating to alleged mismanagement and oppression of minority shareholders stand on a different pedestal as compared to coming together to acquire shares/ control of a target company. Here the target company in question is the appellant whose promoters held 63% of its share capital at the relevant time. That means even if all other parties coming together would still be in a minority. The argument that an effort in substantial acquisition of shares in the appellant company has been made stands disproved as it is an admitted fact that the combined shareholding of all respondents together was less than 10%. The trigger for mandated disclosure under Regulation 7 of the Takeover Regulations, 1997, has been violated does not have merit since it is found that respondents who were found to be PACs had a maximum shareholding of only about 4.85% of the shareholding in the appellant company. We also found no merit in the argument that all the 10 respondents were persons acting in concert and came together to dislodge the then management of the company based on the fact that they were petitioners/consenting shareholders to a Company Petition filed against mismanagement and oppression etc. In fact what is on evidence is that some of the respondents had sold part of their shares even prior to the Company Petition filed in March 2010. If these entities were in fact consolidating their shareholding in the appellant company such reverse transactions would not have been done. Similarly, some of the entities such as Respondent No. 2 had

acquired the shares of the appellant company since the latter's incorporation and as such cannot be held to have acquired the shares of the appellant with a motive or objective of dislodging the management and for taking over the company. In the light of these facts even if Respondents 2 to 11 were parties to a Company Petition filed under Section 397/398 of Companies Act as shareholders with certain objective that same motive cannot be extended to allege commonality of intent or motive as PACs under 2(1) e (1) of the Takeover Regulations, 1997. Though orders relied on by the appellant states that only circumstantial or indirect evidence is necessary to prove PACs still some degree of probability needs to be established. As held in ***Daiichi Sankyo Company Limited*** and ***K.K. Modi*** (supra) a common objective for acquiring shares need to be established which is not available in this present matter. Accordingly, we find no merit in the contention that the respondents have violated Regulation 7 of Takeover Regulations, 1997.

27. In the light of the above, we find no merit in the appeal and the same is dismissed. However, SEBI is directed to complete the investigation into the complaint of the appellant relating to alleged violation of anti-money laundering laws within a period of six months from today and if found to have merit take such steps as

provided under laws. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

29.03.2019
Prepared & Compared By: PK