



Luthra *and* Luthra
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REGULATIONS AND AMENDMENTS

1. **AMENDMENT TO THE GUIDELINES ON ANTI-MONEY LAUNDERING STANDARDS AND COMBATING THE FINANCING OF TERRORISM /OBLIGATIONS OF SECURITIES MARKET INTERMEDIARIES UNDER THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 AND RULES FRAMED THEREUNDER**

SEBI released a circular on “Amendment to the Guidelines on Anti-Money Laundering (“AML”) Standards and Combating the Financing of Terrorism (“CFT”) / Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under” on October 13, 2023 (“**Amendment Circular**”). The Amendment Circular amends the corresponding master circular dated February 03, 2023 (“**AML/CFT Master Circular**”) pursuant to the Prevention of Money-laundering (Maintenance of Records) (Second Amendment) Rules, 2023, which were notified on September 04, 2023.

The Amendment Circular, inter alia, stipulates the following:

- (i) Financial groups must implement group wide programmes for dealing with money laundering/terrorist financing to all branches and majority owned subsidiaries; such group wide programmes are to include, inter alia – group level compliance and audit, information and analysis of unusual transactions or activities, and adequate safeguards on confidentiality and use of information exchanged, including safeguards to prevent tipping-off;
- (ii) Identifying beneficial ownership and control with half yearly internal audits to be undertaken by – the Stock Exchanges and Depositories for listed entities, or Boards of Asset Management Companies and Trustees in case of mutual funds, or board of directors in case of other registered intermediaries;
- (iii) Where the registered entity does not have records of the identity of its existing clients, it shall obtain the records forthwith, failing which the registered intermediary shall close such accounts after giving due notice to the client;
- (iv) The principal officer, which is designated by a registered intermediary and must be an officer at the management level, shall have access to and be able to report to senior management at the next reporting level or the board of directors, and his particulars have to be communicated to the office of the Director of the Financial Intelligence Unit - India.

2. **SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (FIFTH AMENDMENT) REGULATIONS, 2023**

SEBI issued the SEBI (Listing Obligation Disclosure Requirements) (Fifth Amendment) Regulations, 2023, on October 09, 2023 (“**Amendment**”), amending the first proviso to Regulation 30(11) of the SEBI (LODR) Regulations.

Regulation 30(11) states that listed companies may, on their own, confirm, deny, or clarify any rumour present in mainstream media to the stock exchanges within 24 hours of its publication. The proviso to this Regulation makes this intimation mandatory for the top 100 and top 250 companies. Prior to the Amendment, the dates of applicability of the first proviso to Regulation 30(11) for the top 100 and top 250 companies were October 01, 2023, and April 01, 2023, respectively, but reference to any specific dates have been removed through this Amendment.

Preceding the Amendment, SEBI had issued a circular on September 30, 2023, extending the abovementioned timelines for the applicability of proviso of Regulation 30(11) for the top 100 and top 250 companies to February 01, 2024, and August 01, 2024, respectively. Since timelines have been removed



from the SEBI (LODR) Regulation, the timelines mentioned in the SEBI circular issued on September 30, 2023, shall apply.

3. SEBI (INFRASTRUCTURE INVESTMENT TRUST) (THIRD AMENDMENT) REGULATIONS, 2023

SEBI issued the SEBI (Infrastructure Investment Trust) (Third Amendment) Regulations, 2023, on October 20, 2023, amending Regulation 18(6) of the SEBI (Infrastructure Investment Trust) Regulation, 2014 (“**SEBI InvIT Regulations**”).

Regulation 18(6) concerns the distributions made by an InvIT, Holdco and/or SPV. Via this amendment, SEBI has added a proviso in clause (e) of Regulation 18(6) of the SEBI InvIT Regulations which states that any amount left unclaimed or unpaid out of the distribution declared by an InvIT should be transferred to the investor protection and education fund constituted by the SEBI, provided that the amount transferred to the investor protection and education fund shall not bear any interest. Further, SEBI also added a clause (f) in Regulation 18(6) according to which the amount submitted to the investor protection and education fund may be claimed in the manner specified by SEBI. The same changes have been made in the SEBI (Real Estate Investment Trusts) (Third Amendment) 2023.



MASTER CIRCULARS

1. MASTER CIRCULAR ON KNOW YOUR CLIENT (KYC) NORMS FOR SECURITIES MARKET

The Securities and Exchange Board of India (“SEBI”) has notified the master circular for ‘Know Your Client norms for Securities Market’ on October 12, 2023. This master circular consolidates prior circulars and directions issued pursuant to the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the SEBI [KYC (Know Your Client)] Registration Agency Regulations, 2011.

Background of KYC

KYC and client due diligence are the foundation of an effective anti-money laundering process. It requires every registered intermediary with SEBI to obtain proof of identity (“POI”) and proof of address (“POA”) from the client. This master circular also enlists documents acceptable as POI and POA.

Uniformity in KYC format

Registered intermediaries shall perform KYC in either physical or digital mode via the same KYC form to maintain uniformity in the securities market. According to this master circular, the KYC procedure is divided in two parts i.e., i) Part I shall be the KYC form which captures the basic details of the client and ii) Part II shall obtain additional information specific to the area of work of the intermediary as sought appropriate by them. This master circular stipulates that verification of PAN is mandatory for identification of every client and it also includes the exemptions to the requirements. Further, a list of admissible documents for corporate body, partnership firm, trust, HUF, body of individuals, banks, army/government bodies and registered society is provided.

KYC User Agency (“KUA”) and Sub-KUA mechanism as per Section 11 of the Prevention of Money Laundering Act, 2002

As per a notification by the Department of Revenue and Ministry of Finance vide circular dated May 09, 2019, entities willing to undertake Aadhar authentication services in the securities market can do so as notified by the Central Government. These entities would have to be registered with the Unique Identification Authority of India (“UIDAI”) as a KUA/sub-KUA. A list of entities to be registered as KUA/sub-KUA, the onboarding process, and compliance requirements of KUA and sub-KUA while performing Aadhar authentication has been provided under this master circular.

KYC Registration Agency

A mechanism of ‘KYC registration agency’ (“KRAs”) in the securities market has been developed for centralization of the KYC records. Guidelines for cooperation between intermediaries and KRAs, and a framework for KRAs with regard to cyber security, cyber resilience and incident reporting form for KRAs with respect to cyber-attacks have been stipulated in this master circular.

Complaints against KRAs by investors

All complaints against KRAs should be sent through SEBI Complaint Redress System portal (SCORES).

2. MASTER CIRCULAR FOR STOCK EXCHANGES AND CLEARING CORPORATIONS

SEBI has released a master circular for stock exchanges and clearing corporations dated October 16, 2023. This master circular was issued in exercise of powers conferred under Section 11(1) of the SEBI Act, 1992. SEBI has been issuing guidelines for stock exchanges and clearing corporations and this master circular has been issued to consolidate all the guidelines, frameworks and circulars previously issued for stock exchanges and clearing corporations.



The master circular referred to contains all relevant circulars/communications pertaining to stock exchanges and clearing corporations issued by SEBI up to August 31, 2023.

3. MASTER CIRCULAR ON DEPOSITORIES

SEBI issued a master circular on depositories on October 6, 2023, covering the relevant circulars and communications pertaining to depositories issued up to August 31, 2023. It shall come into force from the date of its issuance. The circulars and communications listed in Schedule - A of this master circular have been rescinded.

Notwithstanding the rescission, anything done, or any action taken or purported to have been done under the rescinded circulars shall be deemed to have been done or taken under the corresponding provisions of this master circular. Anything done or suffered under the operation of the rescinded circulars shall remain unaffected as if the rescinded circulars have never been rescinded.

The Master Circular consists of **four sections**. They pertain to:

1. Beneficial Owner accounts
2. Depository Participants
3. Issuer
4. Depositories



CIRCULARS

1. **CENTRALIZED MECHANISM FOR REPORTING THE DEMISE OF AN INVESTOR THROUGH KRAs**

SEBI has issued a circular with regard to reporting the demise of an investor through KRAs, dated October 3, 2023 (“**Circular**”) with an objective to provide a centralized mechanism and stipulate operational norms for reporting and verification in case of the demise of an investor, to smoothen the process of transmission in securities market. SEBI has notified that this Circular shall be applicable from January 01, 2024.

According to this Circular, upon intimation of death of an investor from a notifier, the concerned intermediary will be required to obtain the death certificate of the investor along with the PAN of the notifier from the notifier, verify the death certificate the next day and record and retain the self-certified copy of proof of identity, relationship with deceased and contact details of the notifier. After verification of the death certificate, the concerned intermediary shall submit a KYC modification request to the KRA, upload the relevant documents and block all debit transactions in the account/ folios of the deceased investor.

Upon intimation of inference of death of an investor, if an intermediary does not get access to the death certificate of an investor, it shall notify the investor/nominee/notifier that the KYC status of the investor has been flagged off as ‘On Hold’, seek the death certificate of the investor from the nominee/notifier and submit a ‘KYC modification request’ in the KRA system mentioning information of death of the investor received and confirmation awaited.

Upon receipt of the ‘KYC modification request’, the KRA shall carry out independent validation and verification of the information by the next day, contact other linked intermediaries to cross check for any updates on the accounts maintained by them, update the KYC record as ‘Blocked Permanently’ and intimate all the intermediaries accordingly. In case the death certificate does not get verified, the KRA shall flag the KYC of the investor as ‘On Hold’. After receiving notification from the KRA, all intermediaries shall immediately block all debit transactions in the accounts of the deceased and if the account is flagged as ‘On Hold’, the intermediary shall allow the transactions with additional due diligence and put in the ‘KYC modification request’ to update the KRA if the information of the investor being deceased is found false, which in turn obligates the KRA to change the KYC status from ‘On Hold’ to ‘Clear and Validated’.

2. **RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015**

SEBI has released two circulars granting limited relaxation and relaxation from compliance with certain provision of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI (LODR) Regulations**”). The circulars were released on October 6, 2023 and October 7, 2023 respectively.

The circular granting limited relaxation pertains to Regulation 58(1)(b) which provides that a listed entity shall send a hard copy of the statement containing the salient features of all documents such as board’s report, auditor’s report or other documents to be attached with, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not so registered. Ministry of Corporate Affairs (“**MCA**”) had relaxed the submission of physical copy vide Circular dated May 5, 2020, and September 23, 2023, pursuant to which SEBI has granted relaxation on 4 different occasions including this circular. In the recent circular, SEBI has extended the same relaxation until September 30, 2024 pursuant to a notification by the MCA.

The circular granting relaxation pertains to applicability of –



- (i) Regulation 36(1)(b) i.e., dispatching of hard copies of abridged annual report for Annual General Meetings; and
- (ii) Regulation 44(4) i.e., sending proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution for General Meetings in Electronic Mode of the SEBI (LODR) Regulations. These regulations were relaxed vide SEBI letter dated July 11, 2023 till September 30, 2023. The same relaxation has been extended to September 30, 2024 via this circular.

SEBI also clarified that in order to avail these relaxations, listed entities shall ensure compliance with para 5.1 and 5.2 of Section VI-J of Chapter VI of the SEBI (LODR) Regulations i.e., send the hard copy of the full annual report to those shareholders who request for the same and the annual general notice published by advertisement shall disclose the web-link to the annual report so as to enable shareholders to have access to the full annual report.

3. EASE OF DOING BUSINESS AND DEVELOPMENT OF CORPORATE BOND MARKETS- REVISION IN THE FRAMEWORK FOR FUND RAISING OF DEBT SECURITIES BY LARGE CORPORATES

SEBI has released a circular to modify the framework for fund raising by issuance of debt securities by Large Corporates (“LCs”) pursuant to Regulation 50B of the SEBI (Issue and Listing of Non-Convertible Securities) Regulation, 2021 (“SEBI NCS Regulations”) read with the master circular on ‘Fund raising by issuance of debt securities by large corporates’ which mandated LCs to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities which were to be met over a contiguous block of three years from financial year 2022 onwards. This framework will be applicable with effect from April 01, 2024 for LCs following April-March as their financial year and January 01, 2024 for LCs following January- December as their financial year.

This framework shall be applicable to all the listed entities (except scheduled commercial banks) which as on the last day financial year –

- (i) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognized stock exchange in terms of the SEBI (LODR) Regulations;
- (ii) have outstanding long term borrowings of INR 1,000 crore or above; and
- (iii) have a credit rating of “AA”/ “AA+”/ “AAA”.

According to this circular, LCs shall raise not less than 25% of its qualified borrowings by way of debt issuance of debt securities in the financial year in which it has been identified as an LC. For a better understanding, qualified borrowings shall be incremental borrowings between two balance sheet dates having original maturity of more than one year but shall exclude external commercial borrowing, inter-corporate borrowing involving holding company and/or subsidiary and/or associate companies, grants and others.

Further, from financial year 2025 onwards, the requirement of mandatory qualified borrowing by an LC in a financial year shall be met over a contiguous block of three years. According to this circular, LCs that have surplus requisite borrowings after three years will be eligible for incentives such as reduction in annual fees of financial year pertaining to debt securities or non-convertible redeemable preference shares and credit in the form of reduction in contribution to the core settlement guarantee fund (“SGF”) of limited purpose clearing corporations. Further, LCs which will have shortfall of requisite borrowing will be required to make additional contribution to the SGF.



Stock exchanges are required to prepare a list of LCs following April-March financial year and January-December financial year and are required to calculate disincentives and incentives for LCs as on the last day of third financial year.

4. SEBI CIRCULAR - REVISION IN MANNER OF ACHIEVING MINIMUM PUBLIC UNITHOLDING REQUIREMENT–INFRASTRUCTURE INVESTMENT TRUSTS

The Master Circular for Infrastructure Investment Trusts (“**InVITs**”) dated July 6, 2023, lists methods for privately placed InVITs in order to achieve minimum public shareholding. An additional method i.e., issuance of units through preferential allotment has been added vide the circular dated October 31, 2023 (“**Circular**”). Only units issued to the public shall be compliant with the requirement of minimum unitholding requirement under this method.

Further, the Circular has eased the conditions applicable to privately placed InVITs for the sale of units held by Sponsor(s)/investment manager/project manager and their associates/related parties in the open market.



INFORMAL GUIDANCE

1. REQUEST FOR INFORMAL GUIDANCE IN THE MATTER OF GAIL (INDIA) LIMITED IN RELATION TO THE SEBI (LODR) REGULATIONS

SEBI vide its informal guidance dated October 4, 2023 has provided clarity on disclosure of arbitral proceedings of pending arbitration matters or arbitral awards under the SEBI (LODR) Regulations. The informal guidance was issued in response to a letter from GAIL (India) Limited (“**GAIL/Company**”), a government company incorporated under the provisions of the Companies Act, 1956.

Regulatory provisions: Certain amendments were made to Regulation 30 and Schedule III of the SEBI (LODR) Regulations in respect of disclosure of material information/events vide the SEBI (LODR) (Second Amendment) Regulations, 2023.

Further, on July 13, 2023, SEBI issued a circular titled “Disclosure of material events/information by listed entities under Regulation 30 and 30A of the SEBI (LODR) Regulations (“**Circular**”). As per Para B (pt. no. 8) at page 15 of the Circular, pendency of any litigation(s) or dispute(s) or the outcome thereof which may have been impact on the listed entity has to be disclosed. Further, in case the amount involved in ongoing litigations or disputes become material on a cumulative basis, the same shall be disclosed to the stock exchanges.

Queries raised:

- i. Whether arbitral proceedings of the pending arbitration matters can be disclosed to SEBI as it may contravene Section 42A of the Arbitration and Conciliation Act, 1996 which deals with confidentiality of information pertaining to arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award?
- ii. With reference to the provision in the Circular, what does ‘cumulative basis’ mean?

Informal Guidance:

- i. Disclosure of details pertaining to pending arbitration proceedings can be made to the extent permissible under the Arbitration and Conciliation Act, 1986, like facts of the proceedings, amount claimed and its effect on the listed entity.
- ii. The term ‘cumulative basis’ means figures arrived at by taking together the claims by or against a party in all ongoing litigation and disputes with the same party. Claims by the listed entity or against the listed entity in any single litigation may not be added together.

2. INFORMAL GUIDANCE IN THE MATTER OF RAMA MINES (MAURITIUS) LTD. UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI vide its informal guidance dated October 25, 2023, has provided clarity on whether the provisions of contra-trade apply to individual promoter or whether the entire category of promoter and promoter group is considered for the same, to a query sought by Rama Mines (Mauritius) Ltd.

Brief Background:

Rama Mines (Mauritius) Ltd (“**RMML**”) and Australian Indian Resources Ltd. (“**AIRL**”) are promoters of Deccan Gold Mines Ltd (“**DGML**”). AIRL was allotted shares of DGML on March 02, 2023, which has a minimum lock-in period of 18 months. RMML proposes to sell equity shares of DGML. Further, Yandal Investments Pty. Limited (“**YIPL**”) and Halcyon Investments Limited (“**HIL**”) are majority shareholder promoters in both RMML and AIRL.

Query raised:



Whether Clause 10 of Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015 which restricts the designated person from executing contra trade shall apply to trades made by an individual promoter or whether the entire category of promoter and promoter group is considered for the same?

Informal Guidance:

SEBI stated that the provisions of contra trade restrictions may apply to a promoter individually. However, in the instant matter, the provision of contra trade restrictions shall apply to Rama Mines and AIRL jointly, since both the promoters of DGML have common promoter shareholders with majority shareholding i.e., HIL and YIPL.

**ORDERS****1. SECURITIES APPELLATE TRIBUNAL (SAT) QUASHES SEBI'S INSIDER TRADING ORDER AGAINST NDTV'S FOUNDERS PRANNAY AND RADHIA ROY**

SEBI received multiple complaints from New Delhi Television Limited (“**NDTV**”) in 2013 and 2014 consisting allegations that Sanjay Dutt and certain other entities namely, Quantum Securities Private Limited and others were involved in dealing in securities of NDTV in violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**SEBI (PIT) Regulations**”) during the period of September 2006 to June 2008. Pursuant to these complaints, SEBI conducted an investigation in the scrip of NDTV.

Amongst several accusations, the founders of NDTV Prannay and Radhika Roy (“**Founders**”) were accused of trading on December 26, 2007 by buying NDTV shares while being in possession of undisclosed price sensitive information (“**UPSI**”). The UPSI was regarding board consideration to evaluate options for reorganization of NDTV, which included de-merger/split of NDTV into new related businesses and investments in ‘Beyond News’ businesses which were currently held through its subsidiary (“**concerned UPSI**”). NDTV’s Founders being insiders to the company and involved in the process of crystallization of such information had violated SEBI’s norms on prevention of insider trading. The shares acquired by them were sold by them on April 17, 2008, earning them a profit of ₹16,97,38,335.

According to the order passed by whole-time member, the Founders violated SEBI (PIT) Regulations and NDTV’s code of conduct. They were directed by SEBI to disgorge the amount wrongfully gained i.e. ₹16,97,38,335. An appeal was instantly filed with the SAT by the Founders against the order passed by SEBI.

SAT in its order dated October 05, 2023, quashed the order passed by the whole-time member. SAT held that in the case of ‘Quantum Securities’ it was already held that the concerned UPSI is not a Price Sensitive Information under Regulation 2(ha) of the SEBI (PIT) Regulations. Hence, the accusation of insider trading does not stand.

As for the allegation of violating NDTV’s Code of Conduct, it was held that the Founders had secured pre trade clearance from the Compliance Officer at NDTV, hence, the trades executed by the Founders does not violate NDTV’s Code of Conduct.

2. ORDER OF THE SAT IN THE MATTER OF G.R.K. REDDY & OTHERS V SEBI

One of the appellants, which was a promoter of M/s MARG Limited (“**Target Company**”) made a public announcement of voluntary open offer for the acquisition of equity shares of the Target Company. Pursuant to the public announcement, a draft letter of offer dated October 28, 2011 was submitted by such promoter pursuant to a voluntary open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“**SAST Regulations**”). SEBI raised certain issues pertaining to the creeping acquisition limit of 5% under Regulation 11 of the SAST Regulations as on March 30, 2007, October 12, 2007 and February 19, 2011, to which the appellants duly replied, and SEBI made no response on the draft letter of offer.

On account of passage of time and delay by SEBI in finalizing the draft letter of offer, the appellants on March 29, 2012 withdrew the draft letter of offer and duly filed a withdrawal letter with SEBI. After more than a year from the submission of the draft letter of offer and after 8 months from the withdrawal of the draft letter of offer, SEBI issued an observation letter dated November 30, 2012 contending that the open offer was triggered by the appellants under Regulation 11(1) of the SAST Regulations on March 30, 2007, October 12, 2007 and February 19, 2011.



Pursuant to an order of the Supreme Court, the appellants approached SEBI requesting that they may be permitted to implement the open offer and vide letter dated June 1, 2015 contended that in view of the change in the circumstances, the appellants should be allowed to carry out the open offer on the current market price prevailing at that time. Vide letter dated June 9, 2015, SEBI informed the appellants that their request cannot be acceded to.

Thereafter, SEBI issued a show cause notice dated February 25, 2016 pertaining to non-compliance of the voluntary offer made by the appellants vide public announcement dated October 28, 2011. During the pendency of the proceedings, a supplementary show cause notice dated May 11, 2018 was issued pertaining to failure to make the public announcement with regard to the breach of 5% creeping acquisitions limit for the financial year 2006-07, 2007-08 and 2010-11. On the same cause of action and on the same violation, another show cause notice dated June 18, 2018 was issued pertaining to violation of the SAST Regulations.

The SEBI Whole-Time Member (“WTM”) passed an order dated November 15, 2019 directing the appellants to make a consolidated open offer for the alleged creeping acquisition that took place in the financial year 2006-07, 2007-08, 2010-11 and 2012-13. The SEBI Assessment Officer (“AO”) by an order dated March 16, 2020 also found that the creeping acquisition and non-compliance of the voluntary offer was in violation of the Regulation 11(1) of the SAST Regulations and accordingly imposed a penalty against the appellants. For non-compliance of the WTM order dated November 15, 2019, the AO issued another show cause notice dated June 4, 2020 and imposed a penalty.

The Order of the SAT primarily delved into the following issues:

i. Inordinate Delay by SEBI

The principle enunciated in *SEBI V Sunil Krishna Khaitan, 2022*, was found applicable in the instant case. The creeping acquisitions were known to the stock exchange and, consequently, to SEBI, but no action was taken. No action further to the letter of observation was taken, and it was only on May 11, 2018 that the show cause notice on the corresponding matter was issued. Proceedings were initiated after 11 years from the date of the first trigger in the financial year 2007-08 and 7 years after the date of the 3rd trigger. Further, show cause notice against the non-compliance of the voluntary offer was issued on July 10, 2016 after 4 years. Consequently, there is an inordinate delay in the issuance of the show cause notices, and direction to make an open offer at this belated stage was arbitrary and without any application of mind.

ii. The WTM’s Order imposing a penalty for non-compliance did not take into account relevant factors

It is obligatory upon the WTM to consider all relevant factors and circumstances and pass an appropriate order which would be best suited to the facts and circumstances prevailing at that time. The acquiring company had a negative net worth and was financially incapable to make an open offer having no income for last five years. The escrow account in which an amount of Rs. 17.45 crore was deposited was attached by the revenue authorities. Further, the lenders invoked a pledge which led to the holding of the promoters to come down to 12.5% making it unviable for them to make an open offer. These facts have to be taken into consideration while issuing an appropriate and/or while imposing a penalty.

iii. The AO’s Orders imposing penalties were improper and did not take into account relevant factors

The order of the AO imposing a penalty of Rs. 74.75 crore for violation of the SAST Regulations is arbitrary, passed without any application of mind, without considering the provisions of Section 15H, and without taking into consideration the factors mentioned in Section 15J of the SEBI Act. The AO has exceeded the powers that can be exercised under Section 15H(ii). The maximum penalty is Rs. 25 crore or three times of the amount of profits. In the absence of calculation of the profits the imposition of penalty is wholly arbitrary.



The second order of the AO imposing a penalty of Rs. 1 crore for non-compliance of the order of the WTM is patently erroneous, as when the order of the WTM was challenged before this Tribunal, there was no occasion for SEBI to issue a show cause notice and impose a penalty during the pendency of the appeal. Penalty under Section 15HB cannot be issued for enforcement of an order of the WTM passed under Section 11 and 11B of the SEBI Act read with Regulations 44 and 45 of the SAST Regulations. Further, Section 11B(2) was amended w.e.f. March 8, 2019 which gave powers to the Board (in the instance case to the WTM) to levy penalty under Section 15HB. This power was not utilized and, therefore, AO could not exercise such power under Section 15HB.

In view of the aforesaid, the appeal was allowed, the WTM's and AO's Orders were quashed, and a composite penalty of Rs. 40 lakh payable jointly and severally was levied on the appellants.



This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or capital markets in general), please feel free to contact Geeta Dhania, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

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