

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) No. 240 of 2017**

[Arising out of Order dated 5<sup>th</sup> July, 2017 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in C.P. No.550/KB/2004]

**IN THE MATTER OF:**

**SICGIL India Ltd. & Ors.**

**...Appellants**

**Vs.**

**IFB Agro Industries Limited**

**...Respondent**

**Present: For Appellants: - Mr. Amit Sibal, Senior Advocate with Mr. Dhruv Dewan, Mr. Arjun Sharma, Ms. Reena Choudhary, Ms. Yashna Mehta, Mr. Bodhisatta Biswas, Mr. Rahul Kumar and Mr. Vinay, Advocates.**

**For Respondent: - Mr. S.N. Mukherjee, Mr. Arun Kathpalia and Mr. Ratnanko Banerjee, Senior Advocates with Ms. Soumya Roy Chowdhury, Mr. Krishnendu Datta, Ms. Iram Hassan, Mr. Rook Ray, Mr. Gaurav Gupta, Ms. P. Johri, Mr. Debanjan Mandal and Mr. Kumarjit Banerjee, Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The 'IFB Agro Industries Limited' ('the Company' hereinafter referred to as the "Petitioner") filed a petition under Section 111A of the Companies Act, 1956 before the then Company Law Board, Eastern Regional Bench, Kolkata, seeking relief against the alleged illegal acquisition of the shares of the Company by the Appellants (hereinafter

referred to as the “Respondents”), in violation of the Regulation 13 of the ‘Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992’.

The National Company Law Tribunal (hereinafter referred to as “Tribunal”), on its transfer, after hearing the parties, by impugned judgment dated 5<sup>th</sup> July, 2017, held the acquisition of shares by the Respondents as being in violation of Regulation 13 of the ‘Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992’ and passed the following orders:

“ORDER

*The present Company Petition is allowed.*

*The Respondents having furnished the declaration at a later point of time are hereby barred from exercising their rights as to the shares acquired by them in the Petitioner Company in excess of 5%. The Company is hereby authorised to buyback the shares that the Respondents hold in excess of 5% of the shareholding in the Company at the rate which was prevailing on the date of presentation of the Petition or market value, whichever is higher.*

*The Respondents are directed to hand over the share certificates and share transfer forms*

*within 30 days of the order to the Company and in response to that the Petitioner will be liable to pay the buyback price which shall be the value of shares which was prevailing on the date of presentation of the petition or market value whichever is higher.*

*It is clear that the power exercised by the Company Law Board and the powers exercised by the SEBI fall in different and distinct jurisdictional fields. Therefore, the present order shall not preclude the jurisdiction of SEBI as an adjudicating authority for deciding on the violation of SEBI Regulations as have been laid down in the present petition.*

*No order as to costs.*

*Company Petition No.550 of 2004 is hereby disposed off.”*

2. The question arises for consideration in this appeal is whether the Tribunal in exercise of powers conferred under sub-section (3) of Section 111A of the Companies Act, 1956 (now sub-section (3) of Section 59 of the Companies Act, 2013) has jurisdiction to direct the Respondents (Appellants) to sell its shares to the company and the Company to buy back the shares of the Respondents (Appellants).

3. The brief facts of the case are as follows:

On 22<sup>nd</sup> January, 2004, the Company (Petitioner) received a letter from the Respondent (1<sup>st</sup> Appellant) under Regulation 7(1) of the 'Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997' notifying that it had acquired 600 shares taking the total shareholding of the Respondents beyond 5% of equity share capital of the Company and as a result the Respondents became entitled to a further 0.008% of the voting rights in the Company and the combined shareholding strength and/or voting rights of the Respondent (1<sup>st</sup> Appellant), as at the date of issuance of the said letter stood at 5.003%. Following the receipt of the said letter of 16<sup>th</sup> January, 2004, the Company enquired and discovered that the shareholding strength and/or voting rights of the Respondents (Appellants) in the Company as on 16<sup>th</sup> January, 2004 was 4.988%. The Company alleged that the Respondents (Appellants) were acting in concert and/or as a combined entity. The Company also came to learn that the shareholding of the 1<sup>st</sup> Respondent (1<sup>st</sup> Appellant) and/or the Respondents (Appellants) in the Company has been gradually increasing since 20<sup>th</sup> January, 2004. It was only on or about 4<sup>th</sup> June, 2004 that the Petitioner Company came to learn that the 1<sup>st</sup> Respondent (1<sup>st</sup> Appellant) itself had purported to increase its own shareholding and/or voting strength in the Company from 3.131% of the paid-up capital as at 16<sup>th</sup> January, 2004 to over 5% of the paid up capital of the Company. The Petitioner (Company) submitted that the no mandatory disclosure in compliance with the

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provisions of the 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992', as amended by the Amendment Regulations 2002 for the said increase, had been made by the 1<sup>st</sup> Respondent (1<sup>st</sup> Appellant) who was obviously functioning as a combined unit in the matter of acquiring shares of the Company.

4. It was pleaded that on 21<sup>st</sup> May 2004, the list of Beneficiaries/Beneficial owners (hereinafter referred to as "BENPOS") reported by depositories to the Company indicated that the Respondents (Appellants) had acquired further 2% equity shares of the Company which was in violation of Regulation 13(1) & 13(3) and under Chapter IV of the 'Prohibition of Insider Trading Regulations' of 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992'.

5. It was alleged that the Respondents ('Appellants') were required to make the continual disclosure under 'Chapter IV of the Prohibition of Insider Trading Regulations' which the Respondents have failed, neglected and omitted to do and no intimation was given to the Company within four working days.

6. The Petitioner (Company) also alleged that there is a continual violation of Regulation 13(1), (3) & (6) of the 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992' as well as Regulation 7 of the 'Securities and Exchange Board of India

(Substantial Acquisition of Shares & Takeover) Regulations, 1997 and 2011’.

7. The stand of the Respondents (‘Appellants’) is that the expression ‘persons acting in concert’ used in Regulation 7 of the ‘Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeover) Regulations, 1997’ finds no mention in the ‘Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992’. Different expressions of persons have been mentioned therein. It was also submitted that the Respondents (‘Appellants’) have given the requisite information either within time or a little bit beyond the time.

8. Learned counsel appearing on behalf of the Appellants (‘Respondents’ before the Tribunal) submitted that the 1<sup>st</sup> Appellant purchased fresh shares of the Company from the open market. When the combined shareholding of the Appellants in the Company exceeded 5% of the issued capital on 19<sup>th</sup> January, 2004, the same was disclosed by the 1<sup>st</sup> Appellant in terms of Regulation 7 of the ‘Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997’ on the next day i.e. 20<sup>th</sup> January, 2004 to the Company as well as to the stock exchange.

9. In so far as the disclosure as required to be made under Regulation 13 of the ‘Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992’ is concerned, it was submitted that the 1<sup>st</sup> Appellant inadvertently failed to make such disclosure within time with

regard to the acquisition of shares on 27<sup>th</sup> May, 2004. However, when it came to their notice, it was intimated on 17<sup>th</sup> August, 2004.

10. Therefore, according to the Appellants (Respondents), it is not a case of non-disclosure to the 'Securities and Exchange Board of India' under Regulation 13 of the 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992', but a disclosure beyond the date due to mistake.

11. According to learned counsel for the Petitioner Company, the statutory period for intimating the 'Securities and Exchange Board of India' under Regulation 13(1) is four working day which admittedly the Appellants failed to intimate. Therefore, according to learned counsel for the Company, the Tribunal rightly cancelled the transfers of shares and directed to transfer in favour of the Company.

12. The Tribunal referred to Section 111A of the Companies Act, 1956 and held that sub-section (3) of Section 111A empowers the Tribunal to direct the parties to undone the mischief. The Tribunal held that the acquisition of shares in excess of 5% of the shareholding was in violation of Regulation 13 of the 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992'

13. The Tribunal having not held that the transfer was in violation of Regulation 7 of the 'Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997' and as admittedly the intimation to the stock exchange was given by the 1<sup>st</sup>

Appellant (Respondent) on the next working day i.e. on 20<sup>th</sup> January, 2004, we are not deliberating on such issue as there is no violation of Regulation 7(1) 'Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997'.

14. Regulation 13 of the 'Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992' relates to 'disclosure of interest or holding by directors and officers and substantial shareholders in listed companies'. Clause (3) of Regulation 13 relates to 'continual disclosure', relevant portion of which reads as follows:

***“13. Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.***

*(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working 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.*



(2) *Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within four working days of becoming a director or officer of the company.*

**Continual disclosure**

(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company*

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*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within four working days of:*

*(a) the receipts of intimation of allotment of shares, or*

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

15. In the present case, it is not in dispute that the shares were purchased by the 1<sup>st</sup> Appellant (Respondent) on 27<sup>th</sup> May, 2004. However, the ‘Securities and Exchange Board of India’ was intimated much beyond four working days on 17<sup>th</sup> August, 2004 i.e. after filing of the Company Petition. Thus, the intimation to the ‘Securities and Exchange Board of India’ is in breach of the provisions of Regulation 13(3) aforesaid.

16. Section 111A of the Companies Act, 1956 relates to ‘rectification of register on transfer’ and reads as follows:

**“111A. Rectification of Register on transfer:**

*(1) In this section, unless the context otherwise requires, "company" means a company other*

*than a company referred to in sub-section (14) of section 111 of this Act.*

*(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable: Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board and it shall direct such company to register the transfer of shares.*

*(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), or any other law for the time*

*being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.*

*(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.*

*(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.*

*(6) Notwithstanding anything contained in this section, any further transfer, during the*

*pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.*

*(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far it may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.”*

17. From sub-section (3) of Section 111A, it is clear that if the transfer of ‘shares’ or ‘debentures’ are in contravention of any of the provisions of the ‘Securities and Exchange Board of India Act, 1992’, the Tribunal, after inquiry, may *direct any depository or company to rectify its register or records. It does not empower the Tribunal to pass a penal order annulling the transfer or to direct the shareholders to transfer the shares to the Company.*

18. Admittedly, the application under Section 111A of the Companies Act, 1956, was filed by the Petitioner (‘Respondent Company’ herein) before the erstwhile Company Law Board, Eastern Regional Bench, Kolkata, and stood transferred to the Tribunal in view of Section 434(1)(a) of the Companies Act, 2013, which reads as follows:

**“434. Transfer of certain pending proceedings.** — (1) *On such date as may be notified by the Central Government in this behalf, —*

*(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act.”*

19. Clause (a) of Section 434 (1) makes it clear that on transfer the Tribunal is required to dispose of such matters, proceedings or cases in accordance with the provisions of the Companies Act, 2013 and not in accordance with the provisions of the earlier Act (Companies Act, 1956).

20. After transfer the application under Section 111A of the Companies Act, 1956 is to be dealt with in terms of Section 59 of the Companies Act, 2013, which reads as follows:

**“59. Rectification of register of**

**members.—** (1) *If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.*

*(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case,*

*direct the company to pay damages, if any, sustained by the party aggrieved.*

*(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.*

*(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.*

*(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which*



*may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.”*

21. From sub-section (4) of Section 59, it is clear that *where the transfer of securities is in contravention of any of the provisions of the ‘Securities Contracts (Regulation) Act, 1956’, the ‘Securities and Exchange Board of India Act, 1992’ or the ‘Companies Act, 2013’ or any other law for the time being in force, the Tribunal can direct the company or a depository to set right the contravention and rectify its register or records concerned.*

22. The Tribunal has failed to notice that the petition having filed under Section 111A of the Companies Act, 1956, on transfer was required to deal with the Petitioner in terms of sub-section (4) of Section 59 of the Companies Act, 2013.

23. For the said reason, we hold that the Tribunal exceeded its jurisdiction by annulling the shares and by directing the Respondents (Appellants) to transfer the shares to the Company. If there is contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the ‘Securities and Exchange Board of India Act, 1992’ or the Companies Act, 2013 or any other law for the time being in

force, the Tribunal could have directed the company or a depository to set right the contravention and rectify its register or records concerned.

24. In view of the aforesaid findings, the impugned judgment dated 5<sup>th</sup> July, 2017 cannot be upheld and the same is accordingly set aside. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI

6<sup>th</sup> December, 2018

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