

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 43 of 2007

Date of decision: 6. 8. 2008

Anil Rai

..... Appellant

Versus

Adjudicating Officer,
Securities and Exchange Board of India

.....Respondent

None for the Appellant.

Mr. Kumar Desai Advocate with Mr. Anant Upadhyay Advocate for the Respondent.

CORAM: Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Challenge in this appeal is to the order dated June 1, 2005 passed by the adjudicating officer imposing a consolidated penalty of Rs 5 lacs on the appellant and several others who were said to be acting in concert with each other and acquired shares of Information Technologies (India) Limited (for short ITIL) in contravention of Regulation 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter called the takeover code). It has been found that when the acquirers crossed the limit of 75 per cent, they did not make a public announcement.

2. Regulation 11(2) of the takeover code as it stood in the year 2002 reads as under:

“No acquirer who, together with persons acting in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.”

It was alleged that during the period from September 1999 and September 2000, the acquirers acquired 24,15,532 shares of ITIL without making a public announcement to acquire further shares of ITIL in accordance with the takeover code.

The appellant is one of the promoters of ITIL. It was conceded before the adjudicating officer that he alongwith other promoters held shares of ITIL as on 7.1.2000 as under:

Promoters Group of ITIL	%
Vinay Rai, Anil Rai & Relatives	4.60
RKKR Agencies Ltd.	20.73
Utility Trade Links (P) Ltd.	20.68
Pukhraj Holdings (P) Ltd.	<u>6.78</u>
Total	52.79

There were several other companies which ITIL and its promoters had floated and those companies are also part of the Usha group to which ITIL belongs and they held another 25.35 per cent shares of ITIL. The details of the shareholding of these companies are as under:

*Sr. No.	Name	Shares	% of ITIL’s equity
7	Gulshan Leasing Pvt. Ltd.	243,800	0.35%
8	Krishna Akash Mercantile Pvt.	37,200	0.05%
11	Deepti Deposit & Advances Pvt. Ltd.	3,000,000	4.32%
12	Orphic Investment Pvt. Ltd.	3,000,000	4.32%
13	Gopal Deposits & Advances Pvt. Ltd.	3,343,800	4.81%
14	Sushil Leasing & Finance Co Pvt. Ltd.	109,600	0.16%
15	Frooti Investment Pvt Limited	2,400	0.00%
16	Amit Share trading Pvt. Ltd.	3,600	0.01%
27	Samidha Machineries Pvt. Ltd.	4,600	0.01%
30	Omega Iron Foundaries Pvt. Ltd	116,200	0.17%
32	Antique Forgings (P)Ltd.	2,400,000	3.46%
33	Parbati Forgings (P)Ltd.	2,560,000	3.69%
34	Liberty Machines & Fabricators	2,440,000	3.51%
40	Veena Steels Pvt. Ltd.	101,600	0.15%
41	Omega Iron Foundaries (P) Ltd.	46,200	0.07%
44	Aquarius Steels Pvt Ltd.	26,000	0.04%
46	Arunoday Vinimay Pvt Ltd.	170,656	0.25%
49	Vareen Financial Services (P) Ltd.	4,500	0.01%
57	Sumac Iron & Steels (P) Ltd.	188	0.00%
	Total.....	17,605,656	25.35%

It will be seen that as on 7.1.2000 the combined holding of the promoters of ITIL and the aforesaid companies which being group companies are persons acting in concert with the promoters, comes to 78.14 per cent. It is not clear from the record as to when the promoters and persons acting in concert with them actually crossed the limit of 75 per cent. The appellant disputed the fact that the aforesaid companies were acting in concert with the promoters and the adjudicating officer has found that the companies being group companies having been floated by the promoters of ITIL are deemed to be persons acting in concert with them. When we look at the combined shareholding of the promoters and the aforesaid companies it is in excess of 75 per cent. Regulation 11(2) of the takeover code reproduced hereinabove mandates that whenever an acquirer together with persons acting in concert with him acquires shares which exceed 75 per cent of the shares or voting rights in a company then he must make a public announcement to acquire shares in accordance with the takeover code. In the instant case, even though the exact date on which the limit of 75 per cent was crossed is not known, the acquirers and the companies acting in concert with them held 78.14 per cent shares of ITIL as on 7.1.2000. They crossed the limit sometime between September 1999 and September 2000 when they acquired 24,15,532 shares. Whenever they crossed the limit of 75 per cent, they were required to make a public announcement. Admittedly, no such announcement was made. It is for this violation that adjudication proceedings were initiated against the appellant and other acquirers and persons acting in concert with them. As already noticed above, the promoters of ITIL and the companies were persons acting in concert with each other being group company. In this view of the matter, no fault can be found with the impugned order holding the appellant and others guilty of violating Regulation 11(2) of the takeover code for not making a public announcement when they crossed the limit of 75 per cent mentioned in the regulation.

3. Before concluding, we may mention that despite service, the appellant has not appeared to argue his case and we have had no assistance from the side of the appellant.

The learned counsel appearing for the respondent Board took us through the impugned order and also the record to support the findings recorded by the adjudication officer.

4. In the result, we find no merit in the appeal and the same stands dismissed with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

6.8.2008
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