RESERVED

Case :- MISC. BENCH No. - 36170 of 2018
Petitioner :- Vijay Prakash
Respondent :- Securities & Exchange Board Of India Thru. Dir. Mumbai & Ors
Counsel for Petitioner :- Aarohi Bhalla,Sunil Kumar Singh
Counsel for Respondent :- A.S.G.,Ajit Kumar Dwivedi,Kuldeep Pati Tripathi,Sanjeev Singh

Hon'ble Dr. Devendra Kumar Arora,J.
Hon'ble Narendra Kumar Johari,J.

(1) Heard Mr. Aarohi Bhalla, learned Counsel for the petitioner, Mr. Rajesh Tewari, learned Counsel for the respondent No.1, Mr. Sanjeev Singh, learned Counsel for the respondent No.2, Mr. Kuldeep Pati Tripathi, learned Counsel for the respondent No.3 and Mr. Ajit Kumar Dwivedi, learned Counsel for the respondent No.4.

(2) The petitioner, a citizen of India and claiming to be a Minority Shareholders of IDBI Bank Ltd., has filed the present writ petition under Article 226 of the Constitution of India with the following reliefs :

> *"a) To issue a writ, order or direction in the nature of certiorari quashing the Final Observation made by Respondent no.1 SEBI dated : 07.12.2018 whereby to open offer and display on the website done in pursuance of Public Announcement dated : 04.10.2018 made by the Respondent no.2 whereby Offer Price of Rs.61.73 per Share has been offered upon exist from IDBI Bank Limited, upon its acquisition by Life Insurance Corporation of India.*
>
> *(b) Issue an appropriate writ, direction or order in the nature of Mandamus directing the regulator SEBI Respondent no.1 revise the offer price in terms of the Regulation 8 (2) (c) SAST regulations, 2011 to an amount of Rs.71.82 per share;*

(c) issue such other order or direction, which this Hon'ble Court may deem, fit and proper under the facts and circumstances of the case, in favour of the petitioner.

(d) Allow the writ petition with cost"

(3) Shorn off unnecessary details, the relevant facts of the case are that in the year 2015-2016, due to the poor performance of IDBI Bank Ltd. (hereinafter referred to as "***IDBI***") and the negative returns generated by the said entity, the Government of India had announced its intent to privatize IDBI in order to infuse funds in a debt-ridden company and to meet its financial obligations. On 16.8.2017, IDBI allotted 24,74,92,510 number of equity shares to the Life Insurance Corporation of India (hereinafter referred to as "***LIC***") on a preferential basis at a price of Rs.76.77/- per share respectively. It is said that in 2017-2018, LIC had started considering the acquisition of control by acquiring majority stake i.e. 51% in IDBI. In furtherance thereof, on 5.6.2018, LIC had applied to Insurance Regulatory and Development Authority of India (hereinafter referred to as "***IRDAI***") seeking permission to acquire control in IDBI. Thereafter, IRDAI, vide its letter dated 29.6.2018, had granted approval to LIC to acquire majority stake in IDBI. On 4.7.2018, IRDAI had sent a letter to LIC, communicating its decision to grant permission to acquire control over the IDBI. On 16.7.2018, after receipt of the impending permission from IRDAI, the Board of LIC had issued a letter to IDBI showing their interest in acquiring 51% of controlling stake and passed a resolution duly agreeing to acquire control in IDBI Bank by increasing more than 50% of its stake in its shares.

(4) According to the petitioner, IDBI through its Company Secretary issued a letter dated 17.7.2018 to the NSE/BSE, whereby the decision of LIC to acquire control in IDBI was duly communicated. Thereafter, on 17.7.2018, the IDBI

immediately called an emergent meeting of the Board Members. On 23.7.2018, the Board of Directors of IDBI, after detailed consideration of the acquisition proposal, had recommended the said acquisition of control in IDBI to the Government of India/Ministry of Finance for its '*No Objection/Approval*'. In pursuance thereof, on 1.8.2018, the Government of India in its Cabinet Meeting presided by the Hon'ble Prime Minister of India, had granted 'No Objection/Approval' to the said acquisition of the control in IDBI Bank with the observations that relinquishment of management control by Central Government in IDBI; the acquisition of IDBI by LIC upto 51% of shareholding (from 7.89% holding as on the said date). The said decision of granting 'No Objection/Approval' to the acquisition of control in IDBI by LIC was conveyed to the IDBI vide letter dated 6.8.2018. On 8.8.2018, IDBI had communicated the said decision towards 'No Objection/Approval' to the acquisition control by the LIC to the NSE and BSE .

(5) It has been averred in the writ petition that the IDBI Bank through a publication in the Newspaper dated 11.10.2018 and in their tentative schedule of activity, mentioned that December 14, 2018 is the offer closing date. In these backgrounds, the LIC and the Central Government are the Acquirers/Person Acting in Concert. Furthermore, as per the letter dated 25.5.2018, by the Company Secretary of IDBI, addressed to NSE and BSE, 1,09,73,26,649 number of Equity Shares were issued to the Government of India at a price of Rs.71.82 per share. Thus, the price of Rs.71.82 per share is confirmed. According to the petitioner, the present offer is being made by the Acquirer pursuant to Regulations 3 (1) and 4 of the Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011 (hereinafter referred to as "***SAST Regulations, 2011***").

(6) Petitioner contends that as per Regulation 8 (c) of SAST Regulations, 2011, the price of Rs. 71.82/- per share is the actual price which ought to be offered to the minority shareholders. However, in utter disregard to the aforesaid provision, the Securities & Exchange Board of India (hereinafter referred to as ***"SEBI***") had issued a final observation dated 7.12.2018, whereby open offer and display on the website done in pursuance of Public Announcement dated 4.10.2018 made by the LIC was Rs. 61.73/- per share exit from IDBI upon its acquisition by LIC.

(7) The petitioner is aggrieved and has assailed the Final Observation made by the SEBI dated 7.12.2018 in the instant writ petition.

(8) Mr. Aarohi Bhalla, learned Counsel for the petitioner has submitted that though a preliminary objection has been taken by the respondents with regard to maintainability of the present writ petition but under what provision, the petitioner is being asked to approach alternative remedy before SEBI when there is no provision which bars the jurisdiction of this Court at this stage. His submission is that though in para-4 of the counter affidavit filed on behalf of SEBI, it has been stated that that the petitioner is having remedy to file an Appeal before the Securities Appellate Tribunal, Mumbai (hereinafter referred to as ***"SAT***") under Section 15-T of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "***Act, 1992***") but as to how the petitioner would fall under the provisions of Section 15-T of the Act, 1992, that has not been explained. He submits that the Appeal is maintainable only against the orders passed by the authorities mentioned in Sections 15-T (a), (b) & (c) of the Act, 1992 but the petitioner does not fall in any of these categories. Therefore, the objection raised by the respondents with regard to availability of the alternative remedy is liable to be rejected.

(9) Elaborating his submission, learned Counsel for the petitioner has submitted that in the year 2015-16, looking to the post-performance of the IDBI, the Government of India had announced its privatization. On 25.5.2018, the Government of India had purchased shares of IDBI at the rate of Rs. 71.82/- per share. On 5.6.2018, LIC had applied to IRDAI, seeking permission to take over the IDBI. In pursuance thereof, the IRDAI had granted permission to LIC to take over the IDBI on 4.7.2018. Thereafter, on 17.7.2018, the IDBI wrote a letter to NSE/BSE regarding take over of IDBI by the LIC as well as seeking permission from the Government of India. Subsequently, the Government of India had approved the LIC to acquire 51% controlling stake in the IDBI. His submission is that as per Regulation 8 (c) of SAST Regulations, 2011, the price of Rs.71.82/- per share is the actual price but on 4.10.2018, a public announcement has been made, holding therein the offer price per equity share as Rs. 61.73/-.

(10) Learned Counsel for the petitioner has submitted that as per Regulation 2 (1) (a) of SAST Regulations, 2011, 'Acquirer' means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company. As per Regulation 2 (1) (b) of SAST Regulations, 2011, 'acquisition' means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company. Regulation 2 (1) (q) (1) of SAST Regulations, 2011 provides that persons acting in concert means, persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(11) In these backgrounds, while drawing attention towards paragraph-4.5 of Letter of Offer contained in Annexure No.CA-7 of the counter affidavit filed on behalf of the SEBI, Mr. Aarohi Bhalla, learned Counsel for the petitioner has submitted that the Acquirer i.e. LIC is wholly owned by the Central Government. Furthermore, the SEBI in its counter affidavit has categorically stated that presently, the Government of India is in control of the target company. The decision of LIC, which has triggered the present open offer is to acquire upto 51% shares and control of the target company. His submission is that Regulation 8 (1) of SAST Regulation, 2011 provides for the offer price and as per Regulation 8 (2) (c), the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement. Thus, as per Regulation 8 (2) (c), the price of 71.82 per share is the actual price which must be offered to the minority shareholders. Therefore, the action of respondents in determining the offer price as Rs.61.73/- per share is not in accordance with Regulation 8 (2) (c) of SAST Regulations, 2011.

(12) While opposing the submissions advanced by the learned Counsel for the petitioner, learned Counsel for the respondent No.1-SEBI Mr. Rajesh Tewari has contended that the present writ petition filed by the petitioner invoking extra ordinary discretionary writ jurisdiction under Article 226 of the Constitution of India is not maintainable in view of the availability of the alternate efficacious remedy of filing an Appeal before the SAT as provided under Section 15-T of the Act, 1992.

(13) Elaborating his submission with regard to the merit of the case, Mr. Tewari has submitted that the acquisition of shares of the Industrial Development Bank of India, Mumbai by LIC has led to filing of writ petition (C) No. 11974 of 2018 : ***Satish Gogia Vs. Union of India and others,*** wherein it was sought that the LIC may be directed to offer Rs.76.77/- per share as the offer price of IDBI share. The said writ petition was disposed off vide order dated 2.11.2018, whereby the Delhi High Court while observing that the petitioner had an alternate remedy of filing a complaint with SEBI, directed SEBI to treat the said petition as a complaint and to take an appropriate decision on the said complaint. In compliance of the aforesaid order dated 2.11.2018, SEBI had considered the issues raised by the petitioner of the aforesaid writ petition No. 11974 of 2018 and has disposed of the complaint of the said petitioner vide letter dated 15.11.2018.

(14) Learned Counsel for the SEBI has further submitted that as per information available on the website of Apex Court, it appears that the petitioner of writ petition No. 11974 of 2018 had challenged the order dated 2.11.2018 passed by the Delhi High Court as also the aforesaid letter dated 15.11.2018 issued by the SEBI before the Apex Court by filing a Special Leave Petition vide Diary No. 44980 of 2018, which was dismissed by the Apex Court on 14.12.2018.

(15) Learned Counsel for the SEBI has further pointed out that another writ petition bearing No. 8842 of 2018 : *All India IDBI Officers' Association Vs. Union of India and others* has also been filed before the Delhi High Court, challenging therein the whole process of acquisition of IDBI by LIC. The said writ petition was also dismissed by the Delhi High Court vide order dated 17.12.2018, which order was assailed by All India IDBI Officers' Association by filing LPA No. 732 of 2018. The Delhi

High Court, vide judgment and order dated 21.12.2018, dismissed the said Letter Patent Appeal.

(16) In these backgrounds, submission of the learned Counsel for the SEBI is that the issue involved in the instant writ petition is identical to the issue, which has already been decided by the Delhi High Court, therefore, none of the grounds as urged by the petitioner is tenable in the eyes of law and the present writ petition is also liable to be dismissed.

(17) Learned Counsel for the SEBI has further submitted that the concept of *'person acting in concert*' and its applicability to Regulation 20 (4) (b) of 1997 Regulations was considered by the Apex Court in ***M/s Dalichi Sankyo Company Ltd. Vs. Jayaram Chigurupati & others*** it has clarified the issue as to when two persons can be said to be '*acting in concert*' for the purposes of the Takeover Code. The Apex Court has held that two or more persons are acting in concert when there is a target company on one hand and two or more persons on the other hand and such persons must have come together with the shared objective or purpose of acquiring shares in the target. In these backgrounds, his submission is that the Union of India cannot be termed as *'Person Acting in Concert'* with LIC and consequently, Regulation 8 (2) (c)of SAST Regulations, 2011 has been applied correctly in the present case and the Offer Price of Rs.61.73/- per share, which has been offered by the LIC is correct as per the justification given at para 6.15 and 6.1.6 of the Letter of Offer.

(18) While supporting the arguments as advanced by the SEBI and rebutting the contention of the learned Counsel for the petitioner, it has been argued with vehemence by Shri Sanjeev Singh, learned Counsel for the respondent No.2-LIC that the writ petition at the behest of the present petitioner is not maintainable in view of the efficacious remedies available to

the petitioner under SEBI Act, 1992 and the rules and regulations framed thereunder, which are complete code in themselves with respect to all or any matters arising therefrom. His submission is that the petitioner has sought quashing of the final observation made by the SEBI with respect to open offer and public announcement dated 4.10.2018 and has further sought a mandamus for the SEBI to revise the offer price in terms of Regulation 8 of the SATS Regulations. In the event petitioner is aggrieved in any manner, he cannot rush directly to this court by passing the efficacious remedy by approaching the Manager to the open offer i.e. ICICI Securities Ltd. or the Registrar to the open offer i.e. Karvy Fintech Private Ltd. Besides that Clause-5.19 of the Letter of Officer provides that an investor may also approach the Compliance Officer of the target company i.e. IDBI who shall attend to all investor grievances of the target company. Further, if the shareholder is not satisfied or does not receive a satisfactory response to his/her grievance, he can very well approach SEBI through on-line SEBI Complaint Redressal System (SCORES) at www.scores.gov.in.

(19) It has also been urged by the Learned Counsel for the LIC that in case during the open offer or before the starting of the open offer, any investor has any comment/complaint about the disclosure given by the Acquirer in Public Announcement or in Detailed Public statement or in draft Letter of offer information, he can write to Corporate Finance Department, Division of Corporate Restructuring at SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.

(20) It has been stated by the LIC that under Regulations 31 (1) of SAST Regulations, 2011, SEBI has power to direct the Acquirer to make an open offer for acquiring shares of the target company at such price as determined by the Board in accordance with these regulations. The petitioner also has a

remedy of filing appeal under Section 15-T of the SEBI Act, 1992 before the SAT. However, the petitioner has failed to avail any of the said remedies prior to approaching this Court under Article 226 of the Constitution of India, which is not permissible under law.

(21) It has also been pointed out by him that almost similar petition bearing W.P. (C) No. 11974 of 2018 was filed before the Delhi High Court, seeking revision of offer price at Rs.76.77 per share, which has been dismissed vide order dated 2.11.2018 on the ground of alternate remedy of filing a complaint before SEBI and the order has been affirmed by the Apex Court. Thus, the order dated 15.11.2018 passed by the SEBI affirming the offer price of Rs.61.73 per has attained finality.

(22) It has also been pointed out by the learned Counsel for the LIC that the petitioner has claimed that he is a minority shareholder of IDBI and thus, is said to be aggrieved by the offer pricing, but the petitioner has not furnished any documentary proof in support of this contention and has not disclosed about the number and details of the shares held by the petitioner. The IDBI has confirmed that they did not find any transaction/holding details in the name/address of the petitioner in IDBI equity in demat form. Thus, the petitioner has failed to establish his locus for filing the present writ petition and consequently in the absence of the said disclosure, the writ petition is liable to be dismissed.

(23) Lastly, it has been asserted that the present writ petition is also liable to be dismissed on the ground of lack of territorial jurisdiction before this Court as the petitioner has failed to state that when the entire series of transactions leading to the filing of the present petition have taken place at Maharastra and all the respondents are based at Maharashtra, except the respondent

No.4 i.e. Union of India at Delhi, then, how the writ petition is maintainable before this Court at Lucknow.

(24) As regards allotment of 1097326649 equity shares to the Government of India at the price of Rs.71.82 per share, aggregating Rs.7881 Crore by the IDBI, learned counsel for the LIC has submitted that those equity shares have been issued by the IDBI through preferential issue to raise equity capital and since the Central Government is not a person acting in concert, the said price cannot be taken for any reference under Regulation 8 (2) (c) of SAST Regulations, 2011. His submission is that 'preferential issue' has been provided under Chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and pricing of the equity shares has been provided under Regulations 76 and 76A of the said Regulations, 2009.

(25) Mr. Kuldeep Pati Tripathi, learned Counsel for the respondent No.3 while adopting the arguments advanced by the learned Counsel for the SEBI and learned Counsel for the LIC has also contended that the present writ petition is not maintainable in view of the fact that the petitioner is having remedy to approach SAT as provided under Section 15-T of the Act, 1992.

(26) We have examined the submissions of the learned Counsel for the parties and gone through the record.

(27) Before dealing with the submissions of the learned Counsel for the parties, we would like to mention here that though counter affidavits have been filed on behalf of LIC and SEBI but learned Counsel for the petitioner has submitted that the petitioner does not want to file any rejoinder affidavit as the legal issue is involved in the present writ petition. Therefore, we have proceeded to hear the matter finally.

(28) First of all, we would like to mention here that learned Counsel for the respondents have raised serious objection with regard to the maintainability of the writ petition, therefore, it would be apt to first deal with the issue of maintainability of the writ petition.

(29) As much emphasis has been laid on Section 15 T of the Act, we deem it proper to reproduce the same hereinunder:-

"**15T. Appeal to the Securities Appellate Tribunal. –[**(1) Save as provided in sub-section (2), any person aggrieved,-

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer [under this Act; or],

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority]

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.]

(2) Omitted

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by [the Board or the adjudicating officer [or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority], as the case may be], is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks

fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to [the Board], [or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be] the parties to the appeal and to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

(30) A bare perusal of the aforesaid section reveals that any person aggrieved "by an order of the Board" or by an order made by an Adjudicating Officer under this Act can prefer an Appeal to the SAT. In the present case, the petitioner has sought quashing of the Final Observation made by the SEBI with respect to the open offer and the public announcement dated 4.10.2018. The petitioner has also sought a mandamus for the SEBI to revise the offer price in terms of Regulation 8 of the SATS Regulations, 2011.

(31) According to the LIC, the ICICI Securities Ltd. is the Manager of the Open Offer, whereas Karvy Fintech Private Limited is the Registrar of the Open Offer. Clause 5.19 of the Letter of Offer provides that an investor may also approach the Compliance Officer of the Target Company i.e. IDBI, who shall attend to all investor grievances of the Target Company. Further, if the shareholder is not satisfied or does not receive a satisfactory response to his/her grievance, he may approach SEBI through online SCORES. In case, during the open offer or any comment/complaint about the disclosures given by the Acquirer in Public Announcement or in Detailed Public statement or in draft Letter of offer information, he can write to Corporate Finance Department, Division of Corporate

Restructuring at SEBI. As per Regulation 32 (1) of the SAST Regulations, 2011, SEBI has power to direct the Acquirer to make an open offer for acquiring shares of the target company at such offer price as determined by the Board in accordance with these regulations.

(32) Furthermore, though the petitioner has stated that he is a minority shareholder of IDBI but the petitioner has not furnished any documentary proof in support of this contention and has not disclosed about the number and details of shares held by the petitioner. The respondents have stated in explicit words that they failed to locate any transaction/holding details in the name/address of the petitioner in IDBI equity in demat form. Thus, the petitioner has failed to establish his locus for filing the present petition and consequently in absence of the said disclosure, the writ petition is liable to be dismissed on this ground alone.

(33) However, while arguing the matter, learned Counsel for the parties have also touched the merit of the case, therefore, we proceed to hear the matter on merit also.

(34) In paragraph-6 of the counter affidavit filed on behalf of respondent No.2-LIC, it has been stated that the Acquirer-LIC is a statutory Corporation established under Section 3 of the Life Insurance Corporation Act, 1956. The Acquirer is registered with IRDA and the registration number of the Acquirer is 512. The Target Company-IDBI was originally established as a Development Financial Institution in the name of Industrial Development Bank of India under the appellation 'Industrial Development Bank of India Act, 1964'. Subsequently, the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 was passed and it repealed the Industrial Development Bank of India Act, 1964 for the purpose of transforming the erstwhile Development Financial

Institution into a banking company, on September 27, 2004. Accordingly, the Target Company is carrying on the business of banking under the statutory dispensation like public sector banks and the Target Company is not required to obtain a license under Section 22 of the Banking Regulation Act. Further, by way of a letter dated 15.4.2005 issued by the RBI, the Target Company has been classified as a Government owned bank under the category of 'Other Public Sector Bank'. The Target Company was incorporated as Industrial Development Bank of India Ltd. on 27.9.2004 under Companies Act, 1956. The name of the Target Company was changed to IDBI and it received a fresh Certificate of Incorporation from RoC on May 7, 2008. The Target Company is engaged in the banking business. The acquirer-LIC had, by way of its letter dated 15.6.2018 and letter dated 26.6.2018, sought permission from the IRDA in relation to it being permitted to acquire up to 51% of the shareholding of the Target Company. The IRDA by way of its letter dated 4.7.2018, permitted the Acquirer to acquire upto 51% of the shareholding of the Target Company subject to certain conditions. Further, the Acquirer sent a letter dated 16.7.2018 to the Target Company wherein the acquirer expressed it's interest in acquiring up to 51% of the shareholding of the Target Company. Upon receipt of such a letter, the Board of Directors of the Target Company decided to seek the decision of the Central Government in relation to the same. The Department of Financial Services, Ministry of Finance, Government of India by it's letter dated 6.8.2018 granted it's No Objection in relation to, among others, the acquisition by the Acquirer of up to 51% of the shareholding of the Target Company and relinquishment of management control by the Central Government in the Target Company. Thereafter, the Acquirer sent a letter dated 27.9.2018 to the Target Company by way of which the Acquirer informed the Target Company that the Acquirer's Board of Directors has

now at its meeting held on 4.9.2018 approved the proposed acquisition by the Acquirer of up to 51% of the shareholding of the Target Company. Thereafter, the Target Company Board, at their meeting held on 4.10.2018, authorized the issuance and allotment of Equity Shares aggregating up to 51% of the Full Diluted Voting Share Capital, to the Acquirer, by way of a preferential issue at an issue price to be determined in accordance with Chapter VII of the SEBI (ICDR) Regulations (Preferential Issue), to be paid in cash, subject to receipt of the approval from the shareholders of the Target Company as well as receipt of the statutory and other approvals. The Offer therefore triggered on 4.10.2018 in terms of Regulation 13 (2) (g) of the SAST Regulations, 2011, being the date on which the Target Company Board authorised the Preferential Issue. The Offer was made to the Equity Shareholders in accordance with Regulations 3 (1), 4 and 7 (6) of the SEBI (SAST) Regulations, 2011 pursuant to the approval of the preferential issue by the Target Company Board. In terms of Chapter VII of the SEBI (ICDR) Regulations, the 'relevant date' for the Preferential issue was 8.10.2018 and accordingly, the price at which each Equity share will be issued has been calculated to be '60.73' that aggregates up to Rs.2,02,28,47,14,614 in relation to the issuance and allotment of 3,33,08,86,129 Equity Shares.

(35) After careful scrtuiny, we are of the considered opinion that it is wrong to say that LIC and Central Government are persons acting in concert. For being covered under the definition of *'persons acting in concert'*, there should be common objective for purpose of acquisition of shares or for exercising control over a target company pursuant to an agreement or understanding, however in the present case the Central Government vide its letter dated 6.8.2018 has expressly not only relinquished it's shareholding to below 50% and has agreed to the acquisition of the controlling stake by LIC as

promoter in IDBI through preferential allotment/open offer of equity. Not only this, the Central Government vide it's letter dated 3.12.2018 has conveyed that it will not participate in the offer and the same has been mentioned at point number 4 in the pre-offer advertisement dated 21.12.2018.

(36) The Central Government cannot be termed as the Acquirer of the Target Company nor is person acting in concert with LIC, for the reason that the definition of 'Acquirer' as provided in Regulation 2 (1) (a) of SAST Regulations, 2011, says that 'Acquirer' means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company. In the present case, the Central Government is not acquiring shares of the target company i.e. IDBI rather it is diluting it's shareholding and relinquishing it's management and control over IDBI.

(37) At this juncture, it would be apt to mention that on 23.8.2018, IDBI sent one letter to LIC offering issue of shares under 'preferential allotment' as per the SEBI (ICDR) Regulation, 2009. LIC vide letter dated 28.8.2018 granted 'in principle' approval for subscription of equity shares on preferential basis, as a price calculated as per SEBI (ICDR) Regulations, 2009 subject to LIC's total exposure not exceeding 14.90% of post issue paid up capital of IDBI. The IDBI vide letter dated 7.9.2018, provided copy of IDBI Bank's Statutory Auditors' certificate dated 4.9.2018 certifying correctness of the issue price of the preferential issue in compliance of SEBI (ICDR) Regulations, 2009 calculated to Rs.61.73/- per share as per Regulation 76 (4) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) Regulations, 2009 i.e. SEBI (ICDR) Regulations, 2009.

(38) SEBI has been established under SEBI Act, 1992. The objective of SEBI, as elucidated in the preamble of the SEBI Act is as under :

"i. In terms of Section 11 of the SEBI Act, the primary function of SEBI is the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In terms of Section 11 (2) (h) of the SEBI Act, one of the function of SEBI is to regulate the substantial acquisition of shares and takeovers of companies.

ii. In discharge of the aforesaid functions, SEBI in exercise of powers conferred by Section 30 of the SEBI Act, has from time to time framed regulations for regulating the substantial acquistition of shares and takeover of companies. First such regulations were framed by SEBI in the year 1994 which were replaced by the Regulations of 1997. Presently, the regulations governing substantial acquistition of shares and takeovers of companies is SAST Regulations, 2011.

iii. The SAST Regulations, 2011 applies to substantial acquistion of shares or voting rights or control in a company having its shares listed on a recognized stock exchange. The SAST Regulations, 2011 provides that acquistion of shares or voting rights by an acquirer beyond certain thresholds as specified in Regulation 4 of the SAST Regulations, 2011, attracts obligation of such acquirer to make public announcement of an open offer to acquire at least 26% shares from the shareholders of the concerned target company. The acquisition of shares or voting rights or control in a target company can be solely by an acquirer or by an acquirer along with persons acting in concert with him as defined in Regulation 2 (1) (a) and Regulation 2 (1) (q), respectively. The SAST Regulations, 2011, in Regulation 8 also provides for

computation of the offer price, for shares to be acquired by such acquirer in such an open offer.

iv. Once an acquirer makes acquisition as contemplated in Regulation 3 or 4, such an acquirer is required to make public announcement of an open offer to acquire at least 26% shares from the shareholders of the concerned target company. For making acquisition of shares in an open offer, an acquirer is required to send a letter of offer to the shareholders of the target company, in terms of Regulation 18 (2). Before sending such a letter of offer to the shareholders, acquirer is required to file the draft letter of offer with SEBI, through its merchant banker, in terms of Regulation 16 (1), SEBI gives its observations on such draft letter of offer and if any changes are suggested by SEBI, such changes are required to be carried out in the draft letter of offer before it is dispatched to the shareholders."

(39) In the present case, the shares of the target company i.e. IDBI are listed on Bombay Stock Exchange Ltd. (BSE) and National Exchange of India Ltd. (NSC). Union of India is presently in the control of the target company. LIC was holding 67,36,20,000 shares in the target company, representing 14.90% of the voting rights in the target company, as a public shareholder of the target Company. The Board of Directors of the target company in their meeting held on 4.10.2018, authorized the issuance and allotment of equity shares aggregating upto 51% of the fully diluted voting share capital to LIC by way of a preferential issue. Therefore, an open offer was required to be made in terms of Regulation 3 (1) and (4) of the SAST Regulations, 2011.

(40) The LIC has issued an announcement of an open offer on 4.10.2018 in terms of Regulations 13 (2) (g) of the SAST Regulations, 2011. As needed in terms of Regulation 16 of

SAST Regulations, 2011, LIC through its Merchant Banker i.e. ICICI Securities Limited, filed a draft letter of offer with SEBI on which SEBI issued its observation letter on 7.12.2018 in terms of Regulations 16 (4) of the SAST Regulations. Thus, the price to be paid to the shareholders of the target company for acquisition of their shares in the open offer made by the LIC, has been determined in terms of Regulation 8 of the SAST Regulation, 2011.

(41) It appears that the case of the petitioner proceed on the premise that in terms of the provisions of LIC Act, 1956 and resultant disclosure made by the LIC in clause 4.5 of the letter of offer, to the effect that LIC is wholly owned by the Central Government, therefore, the Central Government is the 'person acting in concert' with LIC within the meaning of Regulation 2 (q) of the SAST Regulations, 2011, for the purpose of present acquisition of control of the target company by the LIC. On this assumption, the petitioner is of the view that since on 25.5.2018, the Government of India acquired 1,09,73,26,649 number of shares of the target company at the price of Rs.71.82/- per share, thus, the said price of Rs.71.82/- per share paid by the Government of India being 'person acting in concert' of LIC will fall within Regulation 8 (2) (c). The petitioner is of the view that price of Rs. 71.82/- per share, being highest amongst all parameters laid down in Regulation 8 (2) (a) to (f) should be the price of open offer.

(42) The concept of PAC and its applicability to Regulation 20 (4) (b) of the SAST Regulations, 2011 was considered by the Apex Court in ***M/s Daiichi Sankyo Company Ltd. Vs. Jayaram Chigurupati & others*** : [(2010) 157 Comp. Case 380 (SC)]. The relevant extract of the report is reproduced hereinbelow :

"Regulation 2(1)(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with regulation 2(1)(e)(1) which states that person acting in concert

comprises of persons who in furtherance of 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 cooperate by acquiring or agreeing to acquire shares or voting rights in the target company or to acquire control over the target company. The word "comprises" in regulation 2(1)(e) is significant. It applies to regulation 2(1)(e)(2) as much as to regulation 2(1)(e)(1). A fortiori, a person deemed to be acting in concert with others is also a person acting in concert. In other words, persons who are deemed to be acting in concert must have the intention or the aim of acquisition of shares of a target company. It is the conduct of the parties that determines their identity. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company.....

We are clearly of the view that for the application of regulation 20(4)(b) it is not relevant or material that the acquirer and the other person, who had acquired the shares of the target company on an earlier date, should be acting in concert at the time of the public announcement for the target company. What is material is that the other person was acting in concert with the acquirer at the time of purchase of shares of the target company."

(43) In the aforesaid case, the Apex Court has observed that '*persons acting in concert'* are persons who directly or indirectly cooperate by acquiring (or agree to do so) shares/voting rights or control over the target company "*for a common objective or purpose of substantial acquisition of shares or voting rights or control*". Regulation 2(1)(e)(2) provides that certain categories of persons are "deemed" to be "persons acting in concert" with each other, and sub-regulation (i) provides that this includes a company, its holding company and its subsidiary. Examining the term "*persons acting in concert"*, the Apex Court has observed that the deeming provision does not provide that the mere existence of a holding-subsidiary relationship is sufficient

to create this relationship. The Apex Court further held that the deeming provision does not dispense with the requirement that the parties must have cooperated for the common objective or purpose of substantial acquisition of shares, and held further that this must be established as a matter of fact, on an analysis of the conduct of the parties. In addition, the Apex Court found the relationship of "*persons acting in concert*" must exist not at the time of the public announcement, but at the time of acquisition, for the purposes of Regulation 20(4)(b) of SAST Regulations, 2011.

(44) On applying the aforesaid ratio to the facts of the present case, it can easily be inferred that Union of India cannot be term as *'person acting in concert'* with LIC and consequently, Regulations 8 (2) (c) of the SAST Regulations, 2011 has been applied correctly in the present case and the Offer Price of Rs.61.73 per share, as being offered by the LIC is correct as per the justification given at para 6.1.5 and 6.1.6 of the Letter of Offer, the said price has already been affirmed by a judicial verdict.

(45) Considering the totality of the matter, we are of the considered view that no interference under Article 226 of the Constitution of India is made out as the open offer price of Rs.61.73 per share is in accordance with the applicable legal provisions.

(46) The writ petition stands dismissed. Costs easy.

Order Date :- 15.02.2019
MH/-