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Real Estate (Regulation and Development) Act, 2016 – A Comment

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The land-population disparity heralded great demand in the real estate sector in India. This demand clubbed with the dearth of a proper vigilance mechanism ramified the real estate sector into a money minting ground.

Conscious of the growing need to regulate the real estate sector and regulated private participation for the realization of the 'Housing for all by 2022' agenda,[1] Government of India enacted the Real Estate (Regulation and Development) Act, 2016, (*"Act"*) and brought 69 of the 92 sections of the Act into force with effect from May 1, 2016.[2] The Act has been promulgated with the objective of establishing institutional infrastructure to ensure the functioning of the real estate sector in an efficient and transparent manner and to protect consumer interests.

The present article seeks to comment upon the efficacy of the Act in achieving its objectives, and allude to certain key issues which demand attention.

Institutions established

The Real Estate Regulatory Authority (*"RERA"*), the Real Estate Appellate Tribunal (*"REAT"*) and the Central Advisory Council are the institutions established under the Act which are yet to be operational. The Central Advisory Council shall act as an advisory body to Central Government and comprise of members from select ministries, RERAs and civil society stakeholders.[3] The RERA and REAT shall work as regulatory and adjudicatory authorities with members specializing in related areas,[4] thereby ensuring greater certainty to the proceedings, in comparison with the earlier remedy of approaching consumer redressal forums. The RERA has been vested with powers to accept complaints, call for information, and issue interim orders, directions and penalties.[5] However, it may be noted that there are certain infirmities with respect to the conferring of the powers on these institutions.

Uncertainty in suo-moto enquiry that may be initiated by RERA:

The Act devises a mechanism wherein the RERA can initiate investigations into the affairs of any promoter or real estate agent not only upon receipt of a complaint but also by a *suo moto* action. The Act fails to link the provisions between taking up investigation *suo*

1 Rajya Sabha Debates, accessible at http://rsdebate.nic.in/bitstream/123456789/649312/2/PD_235_29042015_p401_p408_34.pdf#search=The Real Estate (Regulation and Development) Bill, last retrieved at 4:48 pm, August 11, 2016

2 Notification of the Ministry of Housing and Urban Poverty Alleviation, accessible at http://mhupa.gov.in/writereaddata/Real_Estate_RegulationDevelopment_2016.pdf, last retrieved at 5:01 pm, August 11, 2016

3 Section 41 & 42 of the Real Estate (Regulation and Development) Act, 2016

4 Section 22, 46 of the Real Estate (Regulation and Development) Act, 2016

5 Chapter 5 of Real Estate (Regulation and Development) Act, 2016

moto, adverse finding therein, and imposing penalty and thereby lacks clarity as to what would happen when a case is taken up *suo moto* under Section 35 of the Act. This lacuna can be better understood by examining a similar model, for instance, that under the Competition Act, 2002 ("*Competition Act*").

As per the Competition Act, the Competition Commission of India ("CCI") is empowered to inquire into any contravention either by taking *suo moto* cognizance or upon receiving a complaint or upon a reference by statutory authority.[6] The Competition Act not only stipulates the procedure for such inquiry but also specifies the procedure that is to be adopted after the findings of such enquiry are produced before the Commission. In addition to the above two steps, the Competition Act also stipulates as to how the Commission is to act upon such report.

The Competition Act, by dealing with both the enquiries (i.e., on the basis of a complaint and *suo moto*) in the same section[7] establishes a link between investigations taken up *suo moto* and upon receipt of a complaint, on the one hand with the powers of the Commission to issue orders, on the other hand, which seems to be missing in the case of RERA. The Act lacks clarity in relation to the procedure for investigation under Section 35 of the Act and procedure for the adjudication after the findings of such investigation are handed over to RERA thereby creating a gulf between the provisions. This raises doubts as to whether the power of RERA to impose penalty is to be exercised only upon a complaint received or could be extended even to a *suo moto* investigation. It is suggested that the rules that are yet to be framed must plug out such ambiguity.

Advisory function of RERA – May lead to no-where

Moreover, the Act provides for the RERA to give recommendations to the government upon important aspects like environmental concerns, single window clearances, investments and grading of projects.[8] However, the future course of action of such recommendations is not discussed, thereby making it a toothless provision. In fact, it has been suggested that, some time limit may be contemplated within which such recommendations could be considered or deemed not considered so as to pin a certain level of certainty in relation to such recommendations.

Registrations

Compulsory registration of the real estate project and the agents is mandated under the Act. Registration must be done before the promoter or real estate agent can advertise or market or sell or offer the concerned property for sale.[9] Such a project could either be

6 Section 19 of Competition Act, 2002
7 Section 26, 27 of the Competition Act, 2002
8 Section 32 of the Real Estate (Regulation and Development) Act, 2016
9 Section 3(1), Section 9(1) of the Real Estate(Regulation and Development) Act, 2016

residential or commercial. However, the cases where the land proposed to be developed is less than 500 square meters or the number of apartments proposed to be developed is less than 8 in total, have been exempted from such registration.[10] It may be noted that a good chunk of the residential plots would fall under the exemption range thereby rendering small buyers no relief under the Act. It is therefore suggested that instead of conferring the power on the State Government to reduce the threshold of the exemption, registration of the real estate projects may be made compulsory across all projects.

The registration is facilitated by furnishing the requisite documents to the RERA.[11] Further, for projects in phases, the registration for each phase is to be done separately.[12] Registration can also be revoked on the event of non-compliance of either statutory or contractual obligations or on the ground of unfair practices by the promoter.[13] The Act also provides for the registration of ongoing projects in which the completion certificate has not been obtained. However, with respect to the existing projects, there is an ambiguity as to which plan (original, sanctioned or modified) must be submitted during the registration and it will have to be seen as to how such registrations are effected without leaving lacuna.

Further, it seems that transparency in the sector has been ascertained by imposing duties on the promoter to furnish information from time to time about the completion of the project on the website maintained by RERA.[14] The RERA is also bound to ensure that the names and photographs of the defaulters are displayed.[15]

However, the procedure of registration of the real estate agents which is required as per the Act to be done on a project by project basis seems to be cumbersome. A provision for a onetime registration of the real estate agents and subsequent maintenance of records may prove to be a better way to regulate the same.

Furthermore, if the definition of the term 'real estate agent'[16] is amended so that the words 'in a real estate project' are deleted, the secondary market traders might also be included under the ambit of the Act thereby ensuring better efficiency in the mechanism.

Consumer Interests

The interests of the consumers seem to have been taken care of through various obligations imposed on the promoters and rights conferred on the buyers.

For example, the Act fixes 10% of the cost of the apartment, plot or building as the

[10] Section 3, r/w. S. 2(e), 2(j) of the Real Estate(Regulation and Development) Act, 2016
[11] Section 4(1) , 4(2) of the Real Estate(Regulation and Development) Act, 2016
[12] Explanation to Section 3(2) of the Real Estate(Regulation and Development) Act, 2016
[13] Section 7, Section 9(7) of the Real Estate(Regulation and Development) Act, 2016
[14] Section 11 of the Real Estate (Regulation and Development) Act, 2016
[15] Section 34 of the Real Estate (Regulation and Development) Act, 2016
[16] Section 2(zm) of the Real Estate (Regulation and Development) Act, 2016

maximum advance amount that a promoter could accept without entering into a written agreement for sale.[17] Further, the Act stipulates that alterations or additions to the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project shall not be made without the previous written consent of at least 2/3rd of the members who have agreed to take apartments in such establishment.[18] The Act also casts an obligation on the promoter to transfer the title in the property to the buyer within three months from the date of issue of occupancy certificate.[19]

Further, the buyers have the right to withdraw from the project, if the promoter fails to complete or is unable to give possession of the said real estate project within the agreed time frame.[20] The buyer is also entitled to full refund and compensation. In cases where the buyer chooses not to withdraw from the project, the promoter is obligated to pay the buyer, interest for every month of delay till the handing over of the possession at the prescribed rate. Additionally, the penalties that can be imposed for the violation of the provisions of the Act have been listed under Chapter VIII of the Act further guaranteeing the rights of the consumers.

In this regard, consideration must be given to Section 71 of the Act. It confers powers upon RERA to appoint judicial officer, who is or had been a District Judge, for the purposes of adjudicating compensation. This provision may turn out to be redundant as a separate adjudicating authority is already put in place by the Act. This provision may lead to duplication, confusion which in all probability would be better if avoided.

Conclusion

It is hardly of any dispute that the Act is a much needed legislation and a welcome change. The Act puts in place various institutions and procedural regulations thereby providing stability, certainty and transparency to the mechanism. However, the efforts in formulating the Act shall be of no significance in the absence of effective implementation. The listing of penalties does not in itself ensure convictions, nor mere establishing an authority result in a regulated sector. The onus is now on the State Governments to formulate rules accordingly. Further, the aspects of environment, disaster management, black money, investments in relation to real estate sector are still to be effectively regulated. A combined effort of various ministries could be the way forward.

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[17] Section 13 of the Real Estate (Regulation and Development) Act, 2016
[18] Section 14 of the Real Estate (Regulation and Development) Act, 2016
[19] Section 17 of the Real Estate (Regulation and Development) Act, 2016
[20] Section 18 of the Real Estate (Regulation and Development) Act, 2016

Notifications & Circulars

Companies (Share Capital and Debentures) Rules, 2014 amended:

The Ministry of Corporate Affairs ("MCA") has, by way of Notification dated 19-7-2016 amended the Companies (Share Capital and Debenture) Rules, 2014 ("Capital and Debenture Rules").

Differential voting rights

Hitherto, companies could not issue equity shares with differential rights if they had defaulted in (a) the payment of dividends on preference shares, (b) the repayment of a term loan (or interest thereon) from specified institutions, (c) the payment of statutory dues relating to employees, or (d) crediting prescribed amounts in the Investor Education and Protection Fund. The amendment allows such defaulting companies to issue equity shares with differential rights after 5 years from the end of the financial year in which they make good the default. It may be noted here that the said amendment is only meant to liberalise the regime for public companies since private companies have in any case been exempt from applicability of Rule 4 of the Capital and Debenture Rules, which govern issuance of shares with differential voting rights.

Relaxations for start-up companies

A start-up company (as recognised by the Department of Industrial Policy and Promotion) may now issue sweat equity shares not exceeding 50% of its paid up capital for the first 5 years from the date of its incorporation (unlike the limit of 25% applicable to all other kinds of companies). Unlike all other companies, where there is restriction on issuing stock options to promoters and directors holding more than 10% of the share capital, a start-up has now also been permitted to issue stock options to its promoters and to directors who hold more than 10% of such start-up's equity shares for the first 5 years from the date of its incorporation.

Partly paid-up securities

The amendment has done away with the requirement of securities being fully paid up at the time of their preferential allotment. Earlier, due to a restriction in the Capital and Debenture Rules which was not clear in its purport, interpretational issues arose while analysing the permissibility of undertaking a preferential allotment of partly paid up shares, and the only way out was to undertake a rights issue, wherein the non-subscribing members would waive their rights to the rights issue, with such waived portion of the issue being allotted to third parties. With this change, it will be possible to structure partly paid instruments in deal making.

Conversion price in case of convertible securities

Pursuant to this amendment, conversion price of resultant shares issued upon conversion of convertible securities, can now be determined (i) upfront, or (ii) 30 days before the holder of the convertible securities is eligible to convert its convertible securities, based on a valuation report of a registered valuer, which must be

issued not later than 60 days prior to such date. The option to choose between (i) or (ii) above shall be decided and disclosed appropriately by the company, while making an offer of the convertible security. Through this amendment, the controversial requirement of making an upfront determination of the conversion price of convertible securities, at the time of issuance of the convertible securities, has now been done away with paving the way of greater regulatory clarity suiting convertible security structures, which by nature require flexibility in conversion and the pricing thereof.

Intimation to Registrar of Companies in case of companies not having share capital

In case a company not having share capital increases number of its members, notice of such increase has to now be filed with the Registrar of Companies ("Registrar") and an intimation in Form SH-7 will have to be filed with the Registrar irrespective of actual increase in share capital.

Changes pertaining to debentures

The Capital and Debenture Rules have now permitted companies issuing secured debentures to create a charge or mortgage on properties or assets *not only* of the company, but also of its holding company or subsidiary or associate companies or otherwise. This relaxation, of course, is limited only to creation of charge over 'specific movable properties', since creation of a charge over 'specific immoveable property' of the holding, subsidiary or associate companies had been permitted even before the avowed amendment.

For measuring adequacy of the Debenture Redemption Reserve (which is a reserve required to be created for the purposes of redemption of debentures, out of the profits of a company) ("DRR"), a company shall now take the value only of its 'outstanding' debentures, and not of all its debentures. Further, if the company intends to redeem its debentures prematurely, it may provide for transfer of such amount in DRR, even if it exceeds the limits specified in the Capital and Debenture Rules.

Companies (Accounts) Rules, 2014 amended: Ministry of Corporate Affairs has amended the Companies (Accounts) Rules, 2014 by a notification issued on 27-7-2016. As per the amendment, the companies which meet the following conditions do not have to fulfill the requirements of preparing consolidated accounts:

a) the company is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those who are otherwise not entitled to vote, have been intimated in writing and do not object to non-presentation of consolidated financial statements, and

b) the securities of the company are not listed or are not in the process of listing on any of the stock exchange, whether in India or outside, and

c) Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which is in compliance with the applicable Accounting Standards.

Further, instead of annexing a detailed report on the performance and contribution of subsidiaries, associate companies and joint venture companies to the Board's report, as was originally required in Companies (Accounts) Rules, 2014, pursuant to this amendment, the Board's report will only need to contain a section detailing highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under the report.

Companies (Incorporation) Rules, 2014: Ministry of Corporate Affairs has amended the Companies (Incorporation) Rules, 2014 by notification dated 27-7-2016. As per the amendment, a natural person can neither be a member nor a nominee of more than a one person company. At the time of incorporation of the company, the requirement of filing the proof of identity and residence by the subscribers to the memorandum is now done away with, if such subscriber holds a valid Director Identification Number, and the particulars provided therein have been updated as on the date of application, and a declaration to this effect is given in the application.

Further, as per the amended Rule 26 of the Companies (Incorporation) Rules, 2014 every company which has a website for carrying out online business or otherwise, is required to publish on its home page, its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances. Change of name is now allowed to a company which has, after initial default, subsequently filed necessary documents and has paid/repaid its matured deposits or debentures or interest.

Post amendment, shifting of registered office will be allowed only after: (a) completion of any pending inquiry or investigation; and (b) it is concluded that no prosecution is envisaged or pending, against the applicant. Lastly, a new rule, Rule 37 has been inserted specifying the procedure for conversion of an unlimited liability company into a limited liability company by shares or guarantee.

Rupee denominated bonds to overseas investors: MCA, in consultation with the Reserve Bank of India, has issued Circular No. 9/2016, dated 3-8-2016 on issue of rupee bonds to overseas investors by Indian companies. It has been clarified that any issue of rupee denominated bonds made by an Indian Company to any person resident outside India in accordance with applicable External Convertible Bonds policy, will not attract compliance of provisions of Chapter III of the Companies Act, 2013, dealing with public offer and private placement and Rule 18 of Companies (Share Capital and

Debentures) Rules, 2014, regarding issue of secured debentures by an Indian entity. However, it is further clarified that this is subject to any circular, directions or regulation issued by the RBI at a later point of time which may provide for such application. Subsequently, vide the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016, necessary amendments have been made to the Companies (Share Capital and Debentures) Rules, 2014 to reflect this change.

Acceptance of Fixed Deposit Receipts (FDRs) by Clearing Corporations:

SEBI has issued a circular regarding implementation, by Clearing Corporations, of certain recommendations made by the Risk Management Review Committee of SEBI in order to align the risk management practices of the securities market with Principles of Financial Markets Infrastructures. According to Circular No. CIR/MRD/DRMNP/65/2016, dated 15-7-2016, Clearing Corporations are directed not to accept FDRs issued by trading/clearing members themselves or banks who are their associates, as a collateral. It is stated that the term 'associate' shall have the same meaning as under Regulation 2(b) of Stock Exchange and Clearing Corporations Regulations, 2012. Further, Trading/Clearing Members have been directed to replace such collateral, with other eligible collateral as per extant norms, within 6 months of the date of issuance of the circular. Clearing Corporations have also been directed to take necessary steps to put in place systems for implementation of this circular.

Ratio Decidendi

Penalty when benami transactions at time of IPO affecting interests of others:

Several appeals had been brought before the Supreme Court against the order passed by the Securities Appellate Tribunal (SAT). The Supreme Court upheld the SEBI Order, which had earlier been set aside by SAT on the grounds that the findings recorded by the Whole Time Member as well as the Adjudicating Officer of the SEBI were incorrect. The dispute involved the manner in which excessive number of shares of Jet Airways Limited and Infrastructure Development Finance Company Limited had been acquired during their respective initial public offerings in an irregular manner, which could have had an adverse effect on other investors including Retail Individual Investors ("RII"). The Supreme Court noted that as per the investigations conducted by the SEBI on the two specified companies, at the time of their initial public offering ("IPO") there had been an over-subscription and that shares which were meant for RIIs, had been cornered by the respondent through hundreds of benami/fictitious demat account holders. SEBI had concluded that the act of improper acquisition of shares through benami/fictitious means was in violation of Section 12A (a), (b), (c) of the SEBI Act, 1992 and Regulations 3 and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets)

Regulations, 2003.

Upon appreciation of evidence, SEBI had found out that the entire chain of the transactions of shares was doubtful inasmuch as the demat account holders were not genuine. This conclusion was based on the grounds that the acquisition of shares was carried out from 553 specific demat accounts, whereby shares were sold to the respondent at a significantly lower price than the prevailing market value of the shares and that respondent later down sold these shares at a much higher price. It was noted that the scam was fixed in such a way that the shares from all the benami accounts would finally reach the respondent, in a way that he could derive undue advantage from such benami transactions. On perusal of the facts, especially the evidence relating to fictitious demat accounts, the Supreme Court held that transfer of shares did not comply with the requirements of the provision of either Section 13 or Section 2(i) of the Securities Contracts (Regulation) Act, 1956. For the above recorded reason the court held that SEBI was justified in imposing penalty on the respondent and hence, it set aside the SAT decision. [*SEBI* v. *Opee Stock-Link Ltd.* - Civil Appeal No. 2252 of 2010, decided on 11-7-2016, Supreme Court of India]

Restoration of name of company with Registrar of Companies, subject to compliance with requisite formalities:

The name of the petitioner company was struck off from the register of companies. The petitioner in this regard alleged that due procedure has not been followed by the Registrar inasmuch as no notices/ letters were received by the petitioner and no hearing was afforded to them, as mandated under Section 560 of Companies Act, 1956. It was submitted by the petitioner that it was fully functional and due to certain unavoidable circumstances, there was delay in complying with the statutory requirements of annual fillings.

During the course of proceeding, it was brought to the notice of the Court that the reason why notices/ letters had not been received by the petitioner, as was required under Section 560(1) of the Companies Act, 1956, was on account of the records of Registrar containing incorrect particulars in relation to the registered address of the petitioner. Noting that the petitioner had not applied for a change of registered address because of which the notices could not be duly served upon it, the Delhi High Court ordered restoration of the name in the list. The Court in this regard relied on a Bombay High Court decision in the case of *Purushottamdass and Anr.* v. *Registrar of Companies, Maharashtra,* (1986) 60 Comp Cas 154 (Bom), and agreed that, the *"object of section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies…"*. It also noted that in the instant matter, the petitioner approached the Court within the limitation period and thus the law in *Purushottamdas* was applicable. Further,

observing that the petitioner was not filing the statutory returns for the past 14 years, liberty was granted to the Registrar to take penal action against the petitioner under Section 162 of the Companies Act, 1956. [*Ascot Shoes Pvt. Ltd.* v. *Registrar of Companies,* Co. Pet. 23/2016, decided on 29-7-2016, Delhi High Court]

Environmental clearance - Fulfillment of requirement of public consultation, mandatory:

An appeal was brought before the Supreme Court challenging the order passed by the High Court which had set aside the environmental clearance granted to the appellant in the year 2010 (*"EC"*) for expansion of its steel plant on the ground that the said EC was granted relying on the public consultation carried out earlier in the year 2007; and that no fresh public consultation had been done for the latest expansion of the steel plant of the appellant.

By way of background, the environmental impact assessment notification of 2006, issued by the Ministry of Environment and Forests mandates an environmental clearance for carrying out any sort of modernization and expansion of an existing plant. Typically, an environmental clearance process comprises of the following stages: (1) screening, (2) scoping, (3) public consultation and (4) appraisal.

In the present case, environmental clearance was granted to the appellant without complying with the mandatory requirement of conducting a public consultation. The High Court of Gujarat, on a special civil application, filed in public interest, held that the environmental clearance was invalid since the obligatory requirement of conducting a public hearing/ consultation before granting the EC was not met. It further directed that all operations of the steel plant shall be closed down till fresh environmental clearance has been accorded.

The Supreme Court, however, in an appeal against the High Court Order, after receiving the report of the Central Pollution Control Board ("CPCB"), observed that an exemption from conducting public consultation could not be permitted for any applicant since the purpose of public consultation was to serve as a forum for the general public to seek redressal of his/ her grievances with regard to the said expansion. It was held that public consultation/ public hearing is one of the important stages while considering the matter for grant of an environmental clearance.

However, in view of the fact that the CPCB's recommendations were complied with by the appellant, before undertaking expansion, the Supreme Court held that the interest of justice would be subserved if that part of the decision exempting public consultation/ public hearing is set aside and the matter is relegated back to the concerned authorities to effectuate public consultation/public hearing. The Supreme Court further held that closure of the steel plant till fresh environmental clearance is granted would not be a viable practicable solution in light of the fact that the industry had started functioning and operations were

in full swing. In the peculiar facts of the case and in order to meet ends of justice, Court found it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional and held that if the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance granted earlier. [*Electrotherm (India) Ltd.* v. *Patel Vipulkumar Ramjibhai.* - Civil Appeal No. 7222 of 2016 {arising out of SLP (Civil) No. 16860 of 2012}, decided on 2-8-2016, Supreme Court]

Withdrawal of public offer when not possible:

Consequent to the open offer made by the acquirers, intending to acquire 75% equity share of the target company, the target company informed SEBI of it being registered with BIFR and stating that it was a sick company. The representation made by the target company was forwarded to the lead managers of the open offer. Subsequently, SEBI also received complaints about acquisition of shares of target company by various entities connected to the acquirers.

The target company through a miscellaneous petition filed before the BIFR requested BIFR to declare the detailed public statement and the public announcement issued by the acquirers null and void. Through an interim order, BIFR directed the target company to maintain status quo on the operations of the company, controlling stake and management of the company. Later, BIFR declared the target company sick on grounds that it fulfilled the criteria of sickness under SICA. The order was forwarded to SEBI and therefore, SEBI had put open offer on hold.

The acquirers then preferred an appeal against the interim order of BIFR, which was dismissed on grounds that there was no illegality or infirmity in the order passed by BIFR. The acquirers were now of the view that since the proceedings before the BIFR are long drawn along with the inability of SEBI to clear the draft Letter of Offer, they are entitled to withdraw the open offer under Regulation 23(1) of the Takeover Regulation, 2011.

SEBI, placing its reliance on the decision of the Apex Court in *Nirma Industries Limited* v. *SEBI* (Civil Appeal No. 6082 of 2008 – Judgment dated September 9, 2013), noted that the wordings in clauses (a), (b), (c) of Regulation 23(1) of the SEBI Takeover Regulations, 2011, denote circumstances which pertain to a class, category or genus and that the common thread which runs through them is the impossibility in carrying out the public offer. It was held that since withdrawal of open offer in the instant proceedings only attracts the provisions of Regulation 23(1)(d) of SAST Regulations, the phrase 'such circumstances' has to be read in accordance with the conditions stipulated in Regulations 23(1)(a), (b) and (c) of the SAST Regulations.

SEBI finally held that the condition of impossibility cannot be said to have arisen in the present case till proceedings are pending

with BIFR and till the order of status quo with respect to the target company has attained finality, and accordingly the acquirers did not have the legal right to withdraw from the open offer. [*Open Offer of Jyoti Limited in respect of Shri. Lavjibhai Daliya and Anjani Residency Pvt. Ltd.*, WTM/SR/CFD/39/08/2016, decided on 1-8-2016, SEBI]

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