BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI

Present: Shri. Ashok Kumar Tripathi
Member (Judicial)

Company Appeal No. 21 of 2014

Under Sections 58 and 59 of the Companies Act, 2013.

In the matter of:

M/s Transchem Ltd. ... **Appellant**

Versus

M/s Firstcorp International Ltd. & Ors. ... **Respondents**

Appellant:

M/s Transchem Ltd.

Respondents:

1. **Firstcorp International Limited. (R-1)**
2. **Earthtech Enterprises Limited. . (R-2)**
3. **Kamakhyaa Impex Pvt. Ltd. (R-3)**
4. **Firstcorp Holdings Pvt. Ltd. (R-4)**
5. **Bayswater Enterprises Pvt. Ltd. (R-5)**
6. **Upasana Distributors Pvt. Ltd. (R-6)**
7. **Bayswater Enterprises Ltd. (R-7)** ....**Respondents**

Counsels appeared on behalf of the Parties :-

1. Mr. Iqbal Chagla, Sr. Advocate, Mr. Riaz Chagla, Advocate, Mr. Zal Andhyarujina, Advocate, Mr. Hursh Meghani, Advocate, Mr. Neerav Merchant, Advocate, Mr. Bharat Merchant, Advocate, i/b M/s. Thakordas & Madgavkar, Advocates for the Appellant

2. Mr. Rafeeq Peermohideen, Advocate, i/b Ms. Sapana Rachure, Advocate for the Respondent Nos.1 to 7.

Judgment

(Reserved on March 11, 2015)
(Delivered on March 26, 2015)

1. The above captioned Company Appeal has been filed by the Appellant Company invoking the provisions contained in Section 59(4) of the Companies Act, 2013 (hereinafter referred to as "the Act" in short) praying

therein to pass an order thereby declaring that the equity shares acquired by the Respondents as illegal and liable to be forfeited being in violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Code" for the sake of brevity) The Appellant has further sought an order that consequent upon forfeiture of the said shares, the share capital of the Appellant Company may be modified and/or reduced on such terms and conditions as this Tribunal may deem fit and proper. It is further prayed that the Appellant Company may be permitted to remove the names of the Respondent Nos. 1 to 7, including their transferees, from its Register of Members and accordingly the Appellant Company may be permitted to carry out rectification of its Register of Members. The Appellant Company has also sought a permanent injunction order thereby restraining the Respondents from acquiring directly or indirectly equity in the Appellant Company.

2. The facts of the case leading to filing the present appeal may be summarized as under:-

2.1 The Appellant Company is a public limited company and was incorporated on 18/11/1976 under the provisions of the Companies Act, 1956. The Respondent No.1 Company is having a paid-up capital of Rs.6,62,59,120/- and the main business of the Appellant was growing mushrooms and manufacturing pharmaceutical products. However, the said manufacturing pharmaceutical products were sold in the year 2007 and the business of growing mushrooms has been shut as it being found not viable. The current issued paid-up and subscribed share capital of the Appellant is Rs.12,24,00,000/- divided into 1,22,40,000 equity shares of Rs.10/- each.

2.2 It is the case of the Appellant that the Respondent No.1 Company acquired 5,49,752 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.49% of the total shareholding of the Appellant Company.

2.3 It is further case of the Appellant Company that the Respondent No.1 Company had transferred its entire equity to Religare on 31/12/2006. However, on 31/12/2012 the said equity was re-transferred to the Respondent No.1 Company and since then its name is reflected in the books of the Appellant Company.

2.4 It is stated that the Respondent No.2 is an unlisted company, having a paid-up capital of Rs.10,00,00,000/- and it has acquired 5,70,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.65% of the total shareholding of the Appellant Company. It is stated that the Respondent No.2 Company acquired the said shares in 2005 and thereafter transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant as shareholders.

2.5 It is stated that the Respondent No.3 Company is having a paid-up capital of Rs.5,00,00,000/- and it has acquired 5,68,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.64% of the total shareholding of the Appellant Company. It is stated that the Respondent No.3 Company acquired the said shares in 2005 and thereafter transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant Company as shareholder.

2.6 The Respondent No.4 is having a paid-up capital of Rs.59,21,680/- and it has acquired 5,70,000 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 4.65% of the total shareholding of the Appellant Company. It is stated that the Respondent No.4 Company acquired the said shares in 2005 and transferred the same to Religare on 31/12/2006 and since then the name of Religare is on the record of the Appellant Company as shareholder.

2.7 The Respondent No.5 is having a paid-up capital of Rs.2,92,08,650/- and it has acquired 2,27,363 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 1.86% of the total shareholding of the Appellant Company.

2.8 The Respondent No.6 is having a paid-up capital of Rs.32,76,000/- and it has acquired 4,17,663 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant Company are representing 3.41% of the total shareholding of the Appellant Company.

2.9 The Respondent No.7 has acquired 2,92,108 equity shares of Rs.10/- each of the Appellant Company. The said equity shares in the Appellant

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Company are representing 2.38% of the total shareholding of the Appellant Company.

2.10 It is stated that the Respondents herein had filed a Company Petition, being C.P. No.111 of 2013, under Sections 397 and 398 of the Companies Act, 1956 before this Board against the Appellant Company, the Respondent No.1 therein, and its Directors for the acts of oppression and mismanagement purportedly committed by them in the affairs of the Respondent No.1 Company. In the said Petition, the Petitioners, who are the Respondents herein, had referred to various proceedings pursuant to the complaint filed by National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), the details of which are set out in the said C.P.No.111/2013.

2.11 It is further stated by the Appellant that the Respondents, (the Petitioners in C.P. No.111 of 2013) had suppressed in the said Petition the various facts and particulars of the case and the orders passed by the CBI, which are material and relevant to the status of the Respondent Nos.2 to 4. It is further averred that the Respondents herein are wrongly holding themselves out as shareholders of the Appellant Company.

2.12 It is pleaded that the Respondents in their Company Petition No.111/2013 have *inter alia* stated that the Petitioner Nos.1 to 7 therein collectively hold 31,94,886 shares of Rs.10/- each in the Issued and Paid-up Capital of the Respondent No.1 Company, the Appellant Company herein, which represents 26.10% of the shareholding in the Respondent No.1 i.e. Appellant Company. In other words, on 13/9/2013, the Respondents herein claim to hold collectively 26.1% equity shares as on the date of filing of their C.P.No.111/2013. Thus, according to their own admission, even in 2013 the Respondents had equity beyond the threshold limit of 25% and hence, their holding is illegal. Further, in 2006 itself the Respondents held more than 15% equity and had the said equity in violation of Takeover Code applicable on the date of acquisition of the shares.

2.13 It is further averred that in the absence of any open offer, earlier, when the threshold limit was 15%, the Respondents continued to hold the equity thereafter, and therefore, it is also illegal. Further, after 2011 acquisition of equity in the absence of Takeover open offer, is also illegal.

2.14 Based on the above grounds, the Appellant Company has submitted that the illegalities attached to the shares, render the same illegal and invalid and liable to be forfeited under the provisions of the Takeover Code and the Companies Act, 1956 then applicable. Further, such illegalities cannot be rectified, and the entire equity held by the Respondents is thus illegal being acquired in violation of the Takeover Code as applicable from time to time. It is submitted that the Appellant Company became aware of the holding of the Respondents only from the Petition No.111 of 2013, and therefore, the Appellant Company has now approached for the reliefs mentioned above by invoking the provisions contained in Section 59(4) of the Companies Act, 2013, and hence, this appeal.

3. Pursuant to the notice, the Respondents appeared and filed their Reply. In their reply, they have challenged the maintainability of the present Appeal on a preliminary ground contending that the Company Law Board is not a competent authority to adjudicate the questions raised in this appeal by the Appellant regarding the alleged violation of the provisions of the Takeover Code. It is further submitted that the Appellant has filed this Appeal with malafide and oblique motive in order to defeat a subsequent petition, being C.P. No. 29 of 2014, filed by the Respondents against the Appellant under Section 397/398 of the Companies Act, 1956 alleging various acts of oppression and mismanagement purportedly committed by the Appellant Company and its Directors. It is further stated by the Respondents that this Appeal has been filed for the alleged violation of the provisions of the SEBI Takeover Code only after the Respondents have pointed out the acts of oppression and mismanagement committed by the Appellant and its Directors and sought redressal of the grievances from this Board. It is lastly stated in the Reply that there is no violation of the provisions of the Takeover Code, and hence, the Appeal deserves to be dismissed.

4. In the Reply, the Respondents have further stated that this appeal is a counterblast to the previous petition filed by them, wherein the Consent Terms came to be entered into between the parties. It is further stated that the appellant herein did not enquire into whether or not the respondents are presently "the persons acting in concert" or their respective shareholding, and they having entered into the consent terms with the Respondents, now they have chosen to raise these disputes indirectly. The

Appellant is, therefore, stopped from disputing the shareholding of the Respondents now.

5. I have heard the Ld. Counsels appearing for the respective parties at length and perused the record.

6. In order to appreciate the controversies involved in the present case in a better manner, I would first like to cite the relevant provisions of the SEBI Takeover Code hereunder :-

DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

Rule 7 : Acquisition of 5 per cent and more shares or voting rights of a company

[(1) ***Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]***

[(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate share holding after such acquisition or sale.]

[Explanation:-For the purposes of sub-regulations (1) and (1A), the term -acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in sub-regulations (1) and (1A), shall be made within [two days] of, -

(a) the receipt of intimation of allotment of shares; or (b) the acquisition 01 shares or voting rights, as the case may be.

[(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.]

(3) Every company, whose shares are acquired in a manner referred to in [sub-regulations (1) and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each

of such persons referred above within seven days of receipt of information under[11] [sub-regulations (1) and (1A)].

SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS IN AND ACQUISITION OF CONTROL OVER A LISTED COMPANY

Rule 10 Acquisition of [fifteen] per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.
[....]

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Rule 3 Substantial acquisition of shares or voting rights

(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open alter for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public share holding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.- For purposes of determining the Quantum of acquisition of additional voting rights under this sub-regulation,-

(1) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(2) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any