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APPLICABILITY OF AMENDED ACCOUNTING STANDARDS

Ministry of Corporate Affairs, vide General circular No. 04/2016, has given clarification with regard to accounting period for which the accounts would be prepared using the Accounting Standards as amended through Companies (Accounting Standards) Amendment Rules 2016. The amended accounting standards are applicable for preparation of accounts for accounting periods commencing on or after notification dated 30th March, 2016 i.e from Financial Year 2016-17 onwards.



The following Accounting Standards have been amended and substituted:

S.No	List of amended /substituted Accounting Standards
1.	Accounting Standards (AS) 2 Valuation of Inventories
2.	Accounting Standards (AS) 4 Contingencies and events occurring after Balance Sheet Date
3.	Accounting Standards (AS) 10 Property, Plant and Equipment
4.	Accounting Standards (AS) 13 Accounting for Investments
5.	Accounting Standards (AS) 14 Accounting for Amalgamation
6.	Accounting Standards (AS) 21 Consolidated Financial Statements
7.	Accounting Standards (AS) 29 Provisions, Contingent Liabilities and Contingent Assets

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF VARIOUS E-FORMS UNDER THE COMPANIES ACT

Circular No. 3/216 dated 12th April, 2016 issued by Ministry of Corporate Affairs provided relaxation of additional fees and extension of the last date of filing of various forms under the Companies Act, 2013.

Due to V2R2 system launched on 28th March, 2016 it has been decided to relax the additional fee payable on e-forms which are due for filing by companies in between 25th March, 2016 to 30th April, 2016. Relaxation of additional fees is one time waiver of additional fee and it is also clarified to stakeholders that forms filed after 10th May, 2016 no such relaxation shall be allowed. Thereby, upto 10th May no additional fee will be levied for the filing which are due between 25th March to 30th April.

NO PERSON RESIDENT IN INDIA SHALL ACCEPT ANY DEPOSIT FROM, OR MAKE ANY DEPOSIT WITH, A PERSON RESIDENT OUTSIDE INDIA

RBI vide its circular RBI/2015-16/371 A.P (DIR Series) Circular No. 59 dated April 13, 2016 hereby states that no person resident in India shall accept any deposit from, or make any deposit with a person resident outside India.

Under section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a



director in an Indian company is required to place a deposit with the said company.

It is clarified that keeping deposits with an Indian company by a person resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.

CENTRAL GOVERNMENT AMENDS SCHEDULE III OF THE COMPANIES ACT, 2013

In exercise of the powers conferred by sub section (1) of section 467 of the Companies Act, 2013, the Central Government hereby makes the amendment to Schedule III of the Companies Act, 2013 by inserting Division II at the end to Schedule III containing General Instructions for preparation of financial statements of a Company required to comply with Indian Accounting Standards.

The said notification came into force from 6th April, 2016.

FACEBOOK FRIENDS MAY BE TREATED AS CONNECTED PERSONS FOR THE PURPOSE OF INSIDER TRADING

SEBI in its order No: WTM/PS/152/IVD/Feb/2016 dated 4th February, 2016 in the matter of trading in the shares of Palred Technologies Limited by



Mr. Palem Srikanth Reddy and 14 others has observed that having “mutual friends” on facebook will form the basis of determining and establishing connection between the parties who have committed Insider Trading in violation of SEBI, Prohibition of Insider Trading (PIT) Regulations, 2015.



It seems to be first instance when SEBI has considered Facebook profile as a factor while considering connection between the parties for determination of Insider Trading.

Insider means any person who is (i) A connected person; or (ii) in possession of or having access to unpublished price sensitive information.

Brief facts of the case Mr. Palem Srikanth Reddy, Chairman and Managing Director (CMD) and Chief Executive Officer (CEO) of Palred Technologies Limited (PTL), a micro-cap which runs LatestOne.com, an online mobile accessories store and 14 others had traded in the scrip of PTL during the investigation period, while in possession of ‘price sensitive information’ (‘PSI’). The PTL had run into financial difficulties and thereafter it decided to sell its business on a slump sale basis to another entity. PTL informed the Exchanges about the slump sale and that the Board of Directors had approved the proposal for slump sale and signing of the ‘acquisition agreement’. Post the completion of the sale of the business undertaking and investments, such amount as the Board may determine be distributed to shareholders by way of onetime

special dividend and/ or buy back or other means. Because of this, the shareholders received an amount far higher than the, then ruling market price of the shares. Subsequently, the price of the shares also started rising substantially.



The PSI regarding the 'slump sale of software solutions business to Kewill group' came into existence, i.e. when the non-disclosure agreement was executed between Kewill group and PTL. The non-disclosure agreement (having a confidentiality clause) was a binding contract on both the sides. Disclosure of the agreement would certainly have an impact on the deal. Therefore, the same was considered to be an 'unpublished price sensitive information' ('UPSI'). The period of such UPSI was approximately for a year.

It was later on revealed through investigation that the CMD, CEO were part of a cartel of 15 people termed as 'insiders' and were in possession of unpublished price sensitive information (UPSI) on the basis of which they traded in the scrip of PTL. These persons allegedly connected had purchased the shares of PTL at the earlier low ruling price.

The connections with the other parties were found on various grounds. Mr. Palem Srikanth Reddy, the Chairman and MD of PTL was a connected person under the Regulations and the company accepted that he, along with two other persons, were privy to the UPSI relating to slump sale. He was also accepted to be privy to the UPSI relating to special dividend. On scrutiny, it was also known that Mr. Ameen Khwaja

was found to be common director/promoter with the Chairman of another company which incidentally had also provided services to PTL. Mr. Ameen Khwaja did not trading the scrip of PTL during the period of investigation. However, his family members were found to be trading in the scrip of PTL during the unpublished price sensitive information period.

The trading pattern of the Khwaja family suggests that they had traded on Price Sensitive Information from Mr. Ameen Khwaja. Therefore, being relatives of the connected person, persons comprising of Khwaja family are 'deemed to be connected person' in terms of the provisions of Regulation 2(h)(viii) of the PIT Regulations and are covered in the definition of 'insider'.

Mr. Pirani Ameen Abdul Aziz was also found to be connected to Mr. Ameen Khwaja through mutual friends on 'Facebook'. He was employed with Deloitte Tax Services India Pvt. Limited (a group company of Deloitte Touche Tohmatsu India Pvt. Limited, which had conducted the due diligence of PTL during the slump sale). During the course of investigation, Mr. Pirani Ameen Abdul Aziz failed to reply to the specific details, as sought by SEBI. His trading pattern was found in deviation from the established trading pattern. It was found that he had transacted only in the scrip of 'Cummins India Limited' for a quantity of only three shares for a consideration of ₹1,330, which he had purchased and sold during July 2013. Further, he was not found trading in any other scrip since April 2011



except that of investing about ₹5 lakh in PTL shares from June 2013 onwards, i.e., during the UPSI of 'slump sale'. The proportion of his investment in PTL shares when considered in relation to his income and that too in a scrip which was not frequently traded, is not commensurate with the usual investment behavior. It was found that he had opened a trading account with HDFC Securities Limited just one day prior to his trading, in the scrip of PTL. Further an analysis of his bank account details revealed that he had received a series of cash deposits, prior to each payment to his broker for transacting in the shares of PTL. Mr. Pirani Aryn Abdul Aziz did not furnish any detail of the source of such cash deposits. The same raises serious suspicion on his transactions. The above discussion, suggests that Mr. Pirani Aryn Abdul Aziz had traded on the PSI regarding the scrip of PTL. In view of the same, he was also considered to be an 'insider' in terms of the Regulations 2(e) of the PIT Regulations who had dealt in the scrip of PTL on the basis of UPSI communicated counselled by Mr. Ameen Khwaja through Mr. Palem Srikanth Reddy.

Further, SEBI noted that Mr. Pirani Aryn Abdul Aziz was also found to be connected to Mr. Ameen Khwaja through mutual friendship basis on Facebook. Mr. Pirani Aryn Abdul Aziz was employed with Deloitte Tax Services, a group company of Deloitte Touche Tohmatsu India Pvt. Ltd which had conducted the due diligence of PTL during the slump sale. On investigation, SEBI considered connections on social media on internet between the parties, i.e., through



Facebook as relevant factor to determine connections between parties.

SEBI'S Interim Order: Orders issued by SEBI for freezing the bank account and demat account of parties till they deposit such amount and also interim orders were issued whereby the illegal profits made, along with interest till date of order, were impounded and required to be deposited till final orders are passed.

CLASS OF EXEMPTED COMPANIES FROM XBRL FILING

Ministry of Corporate Affairs, vide its notification dated 4th April, 2016 in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, in rule 3, for the proviso, the following proviso shall be substituted, namely:- "Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.



ENTITLEMENT TO SHARES EVEN IF NOT BROUGHT ON RECORD IN THE REGISTER OF MEMBERS IN RESPECT OF THOSE SHARES

Bombay High Court- Judgement 7th January, 2016 (Yusuf Kagzi and Another vs Avigo Trustee Co. (P) Ltd/ Pervez Akhtar vs Avigo Trustee Co. (P) Ltd/Vishnu Ajit Saria vs Avigo Trustee Co. (P) Ltd)

Brief facts: Yusuf kagzi and Pervez Akhtar had invested a sum of Rs 40 crore in Avigo Trustee Co. (P) Ltd, under share subscription cum

shareholders agreement (SSSA) entered into between promoters of the company who are represented by Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria (Respondent 1 to 3) and the company. After acquiring

land and setting up a new factory, the company commenced production. Due to a world-wide recession and market crash around that time and withdrawal of several orders placed on the company by its prospective customers, the business of the company was severely affected and again they offered to invest a further sum of

Rs 10 Crore in the company. A Board meeting was duly called up followed by a general meeting, resolutions approving amendments to the share subscription cum shareholders agreement (SSSA) as well as Articles of Association of the company to give effect to the amendments inter alia allowing Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria to convert their preference shares (Series A) into equity shares in the manner provided in the amended SSSA were passed. This was followed by a Supplemental Agreement. Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria claimed to have exercised their right of conversion of preference shares into equity shares. After such conversion, the shareholding of Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria went up from 0.01 per cent to 69.38 per cent of the issued, subscribed and paid up share capital of the company. Upon such conversion, Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria requested for re-constitution of the Board of Directors of the company, which was not done. Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria also served a notice pointing out various breaches of the terms of SSSA and the Articles and



misconduct of affairs of the company by the promoters. Soon, the nominee director of Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria resigned from the Board. Respondent Nos. 1 to 3 filed a case that instead of reconstituting the Board, in a meeting of the Board, other respondent were appointed as additional directors and as director and that instead of acting upon such termination in compliance with the SSSA, the appellants fabricated the records of the company inter alia resulting in 100 per cent net worth erosion and made a reference before BIFR. Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria thereupon, by notice terminated the SSSA. The reference was, however, rejected by BIFR. Also an appeal was made by respondent Nos.1 to 3 that various meetings and general meetings held by the appellants were void and illegal and alleging oppression and mismanagement against the appellants was filed by Yusuf Kagzi, Pervez Akhtar and Vishnu Ajit Saria.

Judgement The court held that the issue relating to maintainability of the petition i.e. on the ground of not having claimed a relief of rectification under section 111 of the Companies Act was already decided at the preliminary stage in favour of respondent Nos. 1 to 3 (original Petitioners) and the same not having been appealed from, was final and could not be re-agitated at the hearing. The meeting of the Board of Directors and the Extra-ordinary General meeting were duly held and the resolutions passed therein were valid and binding upon the parties. Holding of Board meetings as well as general body meetings without notice to



the nominated directors of respondent Nos. 1 to 3 (original petitioners) was a clear violation of the articles and showed lack of probity and unfairness, seriously jeopardizing the interest of the original petitioners. The court held that non-rectification of the register of members does not reflect on the threshold requirement of maintainability of the petition for the purposes of reliefs under sections 397 and 398. The original petitioners were three shareholders in number, out of a total number of fourteen shareholders, satisfy the requirement of being 1/10th of the total number of members and are qualified as such to file the petition. The contention is that the general meeting of 5th March, 2010 and decisions taken thereat, on the basis of which the original petitioners claim to be entitled to conversion of their preference shares (Series A) to equity shares, are subject matters of dispute that there is no entry made in the register of members in respect of equity shareholding of 69.38 per cent of the petitioners and that in the premises, no relief could be claimed on the basis of the petitioners actually being members in respect of those shares. The court held that the company cannot take advantage of its failure to enter particulars in the register. The court also held that section 155 (now, section 111) was only an enabling provision and could not be invoked to defeat the rights of petitioners who claimed reliefs on the basis of those shares. As per one of the clauses of the SSSA (as amended) mandates the company to purchase shares offered by respondents at a specified price. The company has refused to honour the mandate. Till the shares are



purchased in accordance with the provisions of the SSSA, respondent Nos. 1 to 3 are surely entitled to exercise their rights as shareholders and if they are not allowed to do so by way of an act of oppression or mismanagement, to seek redressal under sections 397 and 398 of the Companies Act, 1956.

Conclusion

The petitioner claimed relief against oppression on the basis of his entitlement to the additional shareholding or allotment of shares. So long as the threshold requirement of the requisite number or value of shares is satisfied, the petitioner can claim reliefs on the basis of his entitlement to shares even if he is not brought on record in the register of members in respect of those shares. Reduction of a petitioner's shareholding or non-allotment of shares to him may itself be an act constituting an oppression.

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