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Analysing developments impacting business

STOCK EXCHANGE DISCLOSURES AND FAMILY SETTLEMENTS

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Introduction

Family settlements are increasingly becoming common whereby family-owned businesses are divided in an amicable manner to segregate ownership of jointly owned assets. Also, it is common to address several other forms of mutual co-existence going forward including releases from disputes and claims, non-compete covenants, brand usage related restrictions, and other similar applicable understandings. Further, since large businesses are usually conducted through corporate structures, it is always debated whether or not a family settlement should be possible when companies and corporations of the group are involved. If companies and corporations of the group are excluded, there has to be good justification as to how the understanding between family members is to be made applicable to the companies, as companies are separate legal entities from the family members. Given such concerns, particularly when listed companies are involved, it is very common for such companies to be made aware of family settlements and in such a scenario they are obliged to notify the stock exchange with suitable details. The Securities Appellate Tribunal (Tribunal) has recently pronounced an order in the matter of *Kirloskar Brothers Limited v SEBI*[1] and laid down some important principles governing such disclosures.

Brief overview of the Law

As per the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations), a listed company is obliged to disclose certain events to the stock exchange that are deemed to be material, whereas certain other items are required to be disclosed if they are material, and each listed company is obliged to frame a policy for determining the materiality of events.[2] Amongst the events that are specified as being mandatorily disclosable events, one such event is family settlement agreements which impacts the management and control of a listed company.[3]

The extent to which information on such matters is required to be disclosed is prescribed by a separate circular.[4] In particular, for family settlements, it requires, *inter alia*, the following items to be disclosed: (i) names of parties; (ii) purpose of entering into the agreement; (iii) significant terms of the agreement including special rights; (iv) whether the transaction is a related party transaction.[5] It is noteworthy that matters of continuous disclosure were

[1] Decision dated 13 May 2022, *Kirloskar Brothers v SEBI*, Appeal No 311 of 2021
[2] Regulation 30 of the LODR Regulations
[3] Item A.5 of Part A, Schedule III of the LODR Regulations
[4] Circular on "*Continuous Disclosure Requirements for Listed Entities*", No. CIR/CFD/CMD/4/2015 dated 9 September 2015
[5] Item A.5 of Annexure I of the circular referred in footnote 4

hitherto governed by the listing agreement executed between stock exchanges and listed entities.[6] Family settlements were not specifically covered as a disclosure item before the LODR Regulations were promulgated in 2015, although, it was open to companies to take a view and disclose such matters if felt relevant. In 2014, a discussion paper was released post expert consultation seeking public stakeholder inputs on continuous disclosure requirements, and this proposed mechanism did specifically include family settlements, but interestingly, was not qualified by the requirement that such family settlements should impact the management and control of the company.

Facts of the matter in Kirloskar Brothers

Kirloskar Oil Engines Limited (KOEL) is a listed company and made certain stock exchange press releases in 2016 recognising a certain family settlement between the Kirloskar family. It appears that the family settlement had actually been signed on 11 September 2009 and amended on 12 October 2009. However, at the time when family settlement was signed in 2009, no press release was made by KOEL. The Securities and Exchange Board of India (SEBI) observed that there was no reason for KOEL to have made any disclosures about the family settlement of 2009, whether in 2009 or thereafter in 2015, because the LODR Regulations did not have retrospective application. It was further observed by SEBI that KOEL was not a party to the family settlement and the same was entered into amongst Kirloskar family members in their individual capacity. Furthermore, SEBI concluded that KOEL having recognised the family agreement in April 2016 has validly provided the necessary stock exchange disclosure in April 2016. The Tribunal also upheld the view taken by SEBI in the matter. The tribunal confirmed that the LODR Regulations did not have retrospective applicability and therefore, as such in 2015 there was no reason for KOEL to make any disclosure.

Comment

While on the face of it, the decision seems to make a very obvious point which is that the LODR Regulations did not have retrospective applicability, the decision also recognises a very important principle that a listed company need not make stock exchange disclosure unless they themselves are a party to the family settlement, or they otherwise recognise the family settlement. This becomes ever more critical in light of the fact that family settlements are usually complex affairs given the different interpersonal relationships between family members and the potential to not apply usual commercial sense based negotiation given the extent of these interpersonal equations.

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[6] Clause 36 of the Listing agreement, to be specific