SEBI's orders legal heir of deceased MD of Bhanot Construction And Housing Limited to make open offer after 12 yrs which was rejected by SAT

Case: Rajeev Bhanot *v.* Sebi

Appellant: Rajeev Bhanot to Securities Appellate Tribunal,

Respondent: Sebi

Facts: In the year 2005, the Chairman and Managing Director of the Bhanot Construction And Housing Limited acquired 7.71 percent of its shares in excess of the threshold limit of five percent without making an open offer and thus, violated the SEBI's regulation 11 of (Substantial Acquisition of Shares and Takeovers)1997. On the other hand, said the acquisition was carried out in the public domain and was known to the stock exchange as well as to SEBI.

In the year 2017 Securities exchange board of India initiated proceedings for alleged violation of regulation 11 and directed legal heirs of said company to make an open offer.The market regulator SEBI however did not raise any query for several years. In meantime, promoter of the company died. After 12 years SEBI initiated proceedings for the alleged violation and by impugned order directed legal heirs to make an open offer.

The Impugned order was passed without impleading legal heirs and without giving them the opportunity of hearing. Since the purpose of making an open offer is to bring relief to shareholders on creeping acquisition and such relief is required to be made at the earliest opportune moment.

Analysis : In the instant case, the acquisition of shares was made in the financial year 2005-06. The proceedings were initiated in the year 2017. There is a lapse of 12 years. There is an inordinate delay in the initiation of proceedings. Said acquisition was a fact which was in the public domain and was known to the Stock Exchange as well as to SEBI. Since they had information SEBI did not raise any query for several years. It only shows the lackadaisical attitude on the part of the SEBI in handling the matter. The purpose of making a public offer is to bring relief to the shareholders on the creeping acquisition. Such relief is required to be made at the earliest opportune moment and the purpose is lost if steps are taken after 12 years.

The direction of making a public offer cannot be made where the acquirer has died. Thus, no direction could be issued to the heirs of the acquirer. In this regard, the principle 'actio personalis moritur cum persona' is fully applicable, meaning thereby, that the personal action dies with the person. The finding of the SEBI that the open offer which is not personal in nature would survive the death of the acquirer and that the legal heirs are required to make an open offer to the extent of the estate inherited is patently erroneous. The cause of action comes to an end on the death of the acquirer.

Prejudice has been caused to the heirs of the deceased acquirers by issuing an order without impleading them and without giving them an opportunity of hearing. Even otherwise, long delay in initiating proceedings by itself causes prejudice. In addition to the aforesaid, the target company had merged with another company. Nothing has been brought on record to show as to who are the original shareholders to whom the

open offer is to be made. It is not known as to whether the original shareholders of the original target company are alive or dead. In the end, the direction of make an open offer after 12 years of the alleged transactions was not an appropriate measure.

Order : In the instant case said purpose was lost as steps were taken after 12 years. Therefore, the impugned order of SEBI directing legal heirs to make an open offer was not appropriate in the circumstances of the case and, thus, was rejected by SAT.