

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 97 of 2008**

**Date of decision : 12.9.2008**

M Z Khan

..... Appellant

Versus

1. Securities and Exchange Board of India
2. Burren Energy India Limited
3. Unocal Bharat Limited
4. Hindustan Oil and Exploration Company

..... Respondents

Mr. Sunil Mathews Advocate for the Appellant.

Dr. Mrs. Poornima Advani Advocate with Mr. Anubhav Roy Legal Officer  
for Respondent No.1.

Mr. Tejas Karia Advocate for Respondents No. 2 and 3.

Mr. Soli Cooper Senior Advocate with Mr. Aditya Mehta Advocate for Respondent No.4.

Coram : Justice N.K. Sodhi, Presiding Officer  
Arun Bhargava, Member  
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

Burren Energy India Limited (for short Burren) was incorporated as a private limited company under the Companies Act, 1985 of England and Wales with its registered office in London. Unocal International Corporation (for short UIC) is a company incorporated in California in USA. Unocal Bharat Limited (for short UBL) is yet another company incorporated in Mauritius according to the law prevalent in that country and its entire issued share capital was acquired by UIC. UBL has no activities but is holding 26.01 per cent of the issued share capital of Hindustan Oil and Exploration Company Limited (hereinafter called the target company) which is a company incorporated in India under the Companies Act, 1956. On February 14, 2005 Burren entered into a share purchase agreement with UIC to acquire the entire equity share capital of UBL which owns and holds 1,52,81,633 equity shares of Rs.10 each representing 26.01 per cent of the paid-up share capital of the target company. This agreement was entered into in England and the shares of UBL were registered in the

name of Burren on the same day. As a result of this agreement, UBL which was earlier owned by UIC is now owned by Burren and it continues to hold 26.01 per cent of the share capital of the target company. Since Burren indirectly acquired 26.01 per cent of the equity share capital of the target company, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter called the takeover code) got triggered and it became necessary on its part to make a public announcement to acquire shares of the target company in accordance with the takeover code. It is common case of the parties that Burren made a public announcement on February 15, 2005. It is also not in dispute that on February 14, 2005 Burren appointed two of its directors (Mr. Finan O’Sullivan and Mr. Atul Gupta) on the board of directors of the target company. It is this appointment which is now being challenged in the present appeal.

2. Soon after the two directors were appointed, the appellant herein made a complaint to the Securities and Exchange Board of India (for short the Board) alleging several irregularities in regard to the public announcement made by Burren including the appointment of the directors, it being alleged that they had been appointed in contravention of the provisions of Regulation 23(3) of the takeover code. We are not concerned with the other issues raised by the appellant in the complaint as he is now challenging only the appointment of the directors. The Board did not find any merit in the complaint filed by the appellant and it appears that it did not communicate its formal decision rejecting the same to the appellant. The appellant laboured under the impression that his complaint had not been considered by the Board and feeling aggrieved by its inaction, filed Writ Petition no. 1402 of 2008 in the High Court at Bombay. In response to the notice issued by the High Court, the Board filed its affidavit in reply and this is what it stated in para 13 thereof which is reproduced hereunder for facility of reference:

“That there is no question of violation of regulation 23(3) of the Takeover Regulations. It has been mentioned by the petitioner that the only difference between regulation 22(7) and regulation 23(3) is that the offender in respect of former is acquirers whereas in respect of latter the offender is target company. Therefore, if SEBI had initiated adjudication for regulation 22(7) it should have also initiated adjudication for violation of regulation 23(3). This interpretation given by the petitioner is wrong as

22(7) creates a prohibition on the acquirers on appointing directors on the Board of target company during the “offer period” whereas the regulation 23(3) prohibits the target company from appointing any director on its Board as representing or having interest in the acquirer “after making of public announcement”. Since in the present case acquirers appointed their two directors on the Board of the target company before making of public announcement, regulation 23(3) was not attracted.”

The learned judges treated the aforesaid paragraph of the affidavit as the order passed by the Board. They did not find any merit in the writ petition and disposed of the same on June 13, 2008 leaving it open to the petitioner therein to follow any alternative remedy that may be available to him. It was thereafter that he filed the present appeal treating the afore-quoted para 13 of the affidavit as the order of the Board.

3. We have heard Mr. Sunil Mathews Advocate on behalf of the appellant, Dr. Poornima Advani Advocate, Mr. Soli Cooper Senior Advocate and Mr. Tejas Karia Advocate on behalf of the Respondents and find no merit in the appeal. As already observed, the grievance of the appellant is that the appointment of the two directors by Burren on the board of directors of the target company was contrary to Regulation 23(3) of the takeover code. At this stage it is necessary to refer to the provisions of Regulation 23(3) which read as under:

- “23. (3) Once the public announcement has been made, the board of directors of the target company shall not, -
- (a) appoint as additional director or fill in any casual vacancy on the board of directors, by any person(s) representing or having interest in the acquirer, till the date of certification by the merchant banker as provided under sub-regulation (6) below:  
**Provided** that upon closure of the offer and the full amount of consideration payable to the shareholders being deposited in the special account, changes as would give the acquirer representation on the board on control over the company can be made by the target company;
  - (b) allow any person or persons representing or having interest in the acquirer, if he is already a director on the board of the target company before the date of the public announcement, to participate in any matter relating to the offer, including any preparatory steps leading thereto.”

What is contended by the learned counsel for the appellant is that the appointment of the directors is contrary to the aforesaid provisions. We do not think so. A plain reading of

Regulation 23(3) of the takeover code makes it clear that the board of directors of a target company is prohibited from appointing an additional director or from filling in any casual vacancy on the board of directors by any person (s) representing or having interest in the acquirer once the public announcement has been made. In other words, no person having any interest in the acquirer can be appointed on the board of directors of the target company after the public announcement has been made till such time the acquirer fulfills all the obligations under the takeover code. In the present case, the public announcement was made on February 15, 2005 and the two directors whose appointment is sought to be challenged were appointed on the board of directors of the target company on February 14, 2005 i.e., one day prior to the public announcement. There is, thus, no violation of Regulation 23(3) when the directors were appointed as they had been appointed prior to the public announcement which is not barred.

In the result, the appeal fails and the same stands dismissed with no order as to costs.

Sd/-  
Justice N.K. Sodhi  
Presiding Officer

Sd/-  
Arun Bhargava  
Member

Sd/-  
Utpal Bhattacharya  
Member

12.9.2008  
ddg/-