CORPORATE LAW MOOT COURT PROBLEM 2008

Before the Company Law Board, Southern Region Bench
(Ordinary original Civil Jurisdiction Company Petition No. 3 of 2007)

ZEON Ltd. **Petitioner**

V.

ANC Ltd **Respondent 1**

And Mr. Anand **Respondent 2**

1. ANC. LTD [ANC] was incorporated in Hyderabad, Andhra Pradesh in the year 1992 as a closely held company engaged in the manufacture of consumer products. The company was formed by two friends, Mr. Anand and Mr. Chander, who, after stints in top business schools and MNCs, decided to put their entrepreneurial skills to test in their home country, which was beginning to be recognized as one of the emerging markets of the world. With the post-liberalisation boom and trends of increased consumerism, the company grew from strength to strength and in the year 1998, ANC went public. The company raised Rs. 50 crores by way of the public issue to fund its upcoming projects and investments and its shares were listed on the Bombay Stock Exchange and the National Stock Exchange.

2. The FMCG sector in India, being one with diverse players and numerous verticals, provided ample growth opportunities for ANC, most of which was organic in nature. The beginning of the 21st century however, saw a sudden surge in the M & A activity across the world and particularly in India. ANC, one of the prominent players in the industry, was actively involved in acquisition of smaller brands and consolidating them under its huge corporate brand. During the said period [in June 2001 to be exact], ANC also entered into a commercial collaboration agreement (ACC) with Heitzer Gmbh & Co., a German FMCG giant, that had expanded its portfolio by venturing into movie production in a big way by setting up its own media house. Among other things, the said agreement contained the following clauses:

   "Clause 18- ANC shall assist Heitzer in its acquisition of any company incorporated in India and such assistance shall include, but not be restricted to, scouting for targets, financial technical and legal due diligence, negotiations for the purchase of desired shareholding in the identified target and such other requirements as may be incidental or ancillary to the said acquisition. Heitzer shall indicate its interest in any target Indian company to ANC and accordingly ANC shall acquire the said target and re-transfer its holding to Heitzer at mutually-agreed upon prices, in accordance with all relevant Indian securities market regulations, in particular, SEBI's takeover code."

"Clause 22- For a period of 5 years from the date of signing of this agreement, Heitzer shall not enter into any agreement with any person for the sale or purchase of shares in any company incorporated in India, except with the prior consent of ANC or in the event of failure by ANC to fulfill its obligations under Clause 18."

3. ANC and Heitzer had a very fruitful relationship that went beyond the borders of the ACC. ANC would do a lot of groundwork for Heitzer in relation to investment options and research in relation to any new production house they were tying up with while Heitzer loaned large sums of money at very reasonable rates of interest to ANC at times of financial crisis faced by the latter.

4. In May of 2007, Mr. Anand and Mr. Chander traveled to Berlin to discuss the renewal of the ACC for a further period of 3 years, with the top brass of Heitzer. Though no formal agreement was executed, the signs were extremely positive and the Indian management was confident of renewing its relationship with the German company. Over informal discussions concerning the current market scenario in India, the Managing Director of Heitzer expressed his interests in ZEON Ltd., a niche player in print and broadcast journalism, which would make a grand addition to Heitzer's existing portfolio.

5. On their return to Hyderabad, Mr. Anand put forth the proposal at the next Board Meeting held on June 3, 2007. But, the Board was not convinced to take any steps in furtherance of Clause 18 of the ACC, in the absence of any formal renewal. After much deliberation, ANC initially picked up a 3.75% stake in ZEON Ltd on June 30, 2007 and another 4% stake on July 25, 2007. The acquisition of shares beyond 5% of the entire share capital was duly notified the company in accordance with the provisions of the SEBI takeover code.

6. It was a coincidence that Mr. Anand's brother-in-law, Mr. Bala was a director on the Board of ZEON Ltd. At a family function, Mr. Bala indicated his surprise that ANC Ltd. had picked up a stake in ZEON, considering the fact that the stock price was dipping in the past couple of years. He also stated that he had got out of the company's Board of Directors in January of that year due to his inability to get along with the present BOD. A week later, Mr. Anand made an offer for the purchase of Mr. Bala's 4% holding in ZEON Ltd. and the same was accepted. By a conditional share purchase agreement dated August 1, 2007, the transfer of shares was effected in favour of Mr. Anand subject to the condition that Mr. Anand would not exercise his voting rights in relation to those shares. The agreement provided that the voting rights in those shares

would be exercised only by ANC Ltd or any subsequent transferee, if and when the shares are transferred.

7. In the meantime, the news of ANC's purchase of a 7.75% stake in ZEON Ltd. triggered a lot of speculation about a possible takeover move. The media anticipated stiff resistance from the controlling group, in such an event. The suspense heightened with ANC increasing its stake to 9.25% in October of 2007. In December of 2007, the ACC was formally renewed and at a Board Meeting on December 2007, ANC Ltd. passed a resolution to proceed with the acquisition of controlling shareholding in ZEON Ltd. On December 30, 2007 ANC Ltd. purchased an additional 2% stake in ZEON Ltd.

8. In February 2008, the media predictions came true and ZEON Ltd. filed an application before the Company Law Board under Section 111 A of the Companies Act, 1956 to rectify the registration of the shares purchased by ANC Ltd. on the ground that ANC had purchased the shares in violation of law.

9. In its application, ZEON Ltd. contended as follows:
   (a) ANC Ltd, acting in concert with Mr. Anand, director, had deliberately violated the provisions of the takeover code in October 2007 when it increased its stake to 11.25%, as the said holding combined with Mr. Anand's purchase of 4% share capital from his brother-in-law, was in excess of 15% of the entire share capital of ZEON Ltd. and warranted an open offer at that stage.
   (b) Furthermore, Mr. Anand's purchase of the 4% shares from his brother-in-law was itself in violation of Insider Trading Regulations.

10. It was also submitted that in any case, ANC Ltd. should be restrained from making any further acquisition of shares equal to or exceeding 15% shares or voting rights in aggregate, because in such an event, the shareholding of ANC Ltd., combined with the subsequent open offer, could result in a holding to the tune of 35%. According to Zeon Ltd such holding seen in light of the fact that all share purchases are being funded by Heitzer will obviously lead to a violation of the FDI limits in the newspaper industry.

11. In response to the above contentions, ANC Ltd contended as follows:
    (a) ANC Ltd. has not acquired the shares in violation of any provision of law.
    (b) ANC Ltd. and Mr. Anand were not acting in concert. Mr. Anand had acquired the shares independently. ANC Ltd. made a formal decision to acquire only in December of 2007.

(c) The purchase of shares by Mr. Anand from his brother-in-law was not in violation of insider trading regulations as neither party derived an unfair advantage from the said transaction.

(d) Neither ANC nor its foreign collaboration partner Heitzer has violated FDI norms/limits nor do they have any intentions of doing so. ZEON's allegation has been made with the sole ulterior motive of restraining ANC from taking over the company.

12. Further, being aggrieved by the application under Section 111 A, ANC filed a petition before the Company Law Board under S.397 for relief against oppression by the Board of ZEON Ltd. in attempting to wrongfully deprive ANC of its significant shareholding.

13. The Company Law Board has decided to hear applications made by ZEON Ltd. and ANC Ltd. together as the subject matter of the disputes and parties involved are the same.

14. On a perusal of the contentions of both parties, the Hon'ble Company Law Board has framed the following issues:

I. Jurisdiction: Does the CLB have the jurisdiction to adjudicate upon violations of the SEBI Regulations and FDI ceilings over which the SEBI and RBI / FIPB have exclusive jurisdiction?

II. Violation of Insider Trading Regulations: Has Mr. Anand violated the insider trading regulations in the acquisition from Mr. Bala under the share purchase agreement?

III. Violation of the Takeover Code: Can ANC Ltd. be justifiably accused of having acted in concert with its Director Mr. Anand and subsequently be charged with the offence of having violated the takeover code?

IV. Validity of rectification of register: Is ZEON Ltd. justified in seeking rectification of the register of members and cancellation of the entire transaction? Further, should an order restraining ANC from making any further acquisition as might trigger the takeover code, be passed?

15. Though two petitions are being heard together, for the purpose of arguments, the ZEON Ltd will be referred to as "Petitioners" and ANC Ltd will be referred to as "Respondents".

16. You are required to substantiate the allegations of the parties with applicable case laws and statutory provisions and also decide as to what relief the respective parties should pray for.