

## Petitioner couldn't be prosecuted for defaulting in complying with buy-back norms if no public offer was made

**Summary – The High Court of Bombay in a recent case of Dattaraj V. Salgaocar., (the Assessee) held that In absence of offer or public announcement of buy back of equity shares by petitioners, petitioners could not be prosecuted for offence punishable under section 77A(11)**

### Facts

- The petitioners were accused in criminal case and they were facing trial for the offence punishable under section 77A(11).
- The petitioners filed instant writ petition for quashing of proceedings pending before Metropolitan Magistrate.
- The petitioners submitted that the proceedings were initiated against the petitioners for the same issued by the Securities and Exchange Board of India (SEBI) and that the Board found the petitioners guilty. However, the Securities Appellate Tribunal, Mumbai exonerated the petitioners.
- The petitioners further submitted that the offence under section 77A(11) was not complete unless offer (announcement) was made by the company and that there was a resolution of the company which authorized the Board to buy-back the shares. However, there was no offer and, therefore, the ingredients of the offence under section 77A(11) were not complete.

### Held

- Considering section 77A and the regulation, it was necessary for the respondent to demonstrate that there was an offer or public announcement of buy-back of equity shares. Unless that is there the offence would not be complete. There was no public announcement. Similar view has been taken by the Tribunal also. For these reasons, the prosecutions against the petitioners cannot be continued as the same amounts to abuse of process of court.
- Hence, both the writ petitions are allowed. The proceedings pending against the petitioners in the court of Metropolitan Magistrate *vide* criminal case are quashed.