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**SEC's** REGULATORY OVERSIGHT ON PUBLIC COMPANIES: AN APPRAISAL OF SECURITIES AND EXCHANGE COMMISSION V. BIG TREAT PLC & ORS.

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## Introduction

The Court of Appeal, Lagos Division, recently restated the powers of the Securities and Exchange Commission "SEC" to intervene in the management and control of Public Companies to protect the interest of investors and maintain a free, fair, efficient and transparent capital market. This was contained in the decision of the appellate Court in Securities and Exchange Commission v. Big Treat Plc & Ors. (2019) LPELR-46520(CA).

## Brief Facts

The 1st Respondent, ("The Company"), a Public Company registered with the Securities and Exchange Commission ("SEC") filed returns to SEC as required under the extant laws and Rules. Following the analysis of the Audited Accounts of The Company, the SEC took immediate steps to intervene in the seemingly deplorable financial affairs of the Company and protect further depletion of their assets.

In doing this, SEC approached the Federal High Court Lagos, and obtained ex parte preservative Order of injunction, restraining the Company from obstructing SEC in the appointment of an interim management of the day to day administration of the Company, in order to preserve the assets and interest of stakeholders.

On their part, the Company contended that while it registered its securities with SEC, it was not registered as a Capital Market Operator ("CMO") under the Investment and Securities Act ("ISA") and therefore not amenable to the powers and control of SEC. They argued further that a combined reading of Sections 54(1) and 315 of ISA envisages registration of a CMO to perform specific functions, different from registration of securities. Based on this line of argument, the Federal High Court vacated the preservative order obtained by SEC.

## The decision of the Court of Appeal

Dissatisfied with the decision of the Federal High Court, SEC challenged the Order and sought the determination of a lone issue, to wit:

"Whether the lower Court was right when it held that the 1st respondent is not a capital market operator because it does not play any specific role in the capital market and as such, not registrable or subject to the control of the appellant"

Upon consideration of arguments, the Court of Appeal allowed the appeal and held as follows:

- By a community reading of Sections 13, 38(1) & (5), 60, 61 and 315 of the Investments and Securities Act 2007, Big Treat, an issuer of securities, having been registered with SEC and was at all times performing the specific function of issuing securities in the capital market is a Capital Market Operator and subject to the intervention of the statutory powers of SEC as the pinnacle regulatory authority for the Nigerian Capital



market whose sole purpose is to ensure the protection of investors and to maintain fair, efficient and transparent capital market as well as reduction of systemic risk.

- That SEC is statutorily empowered to regulate the Company and save it from financial distress.
- The powers of control and intervention of SEC under the ISA extends to private companies where there is alien participation in the sale or transfer of shares.
- The Federal High Court should not have vacated the interim preservative order made by it to prevent the imminent collapse of the Company as SEC duly exercised its statutory powers to stem the tide of decay in the internal management of the Company.
- The Court of Appeal restored the interim preservative order for the protection of investors of the securities registered with SEC.

### **An Appraisal of the decision of the Court of Appeal**

The SEC is empowered by Section 13 of ISA to regulate capital market in Nigeria, exercise oversight functions over public companies and prevent fraudulent and unfair trade practices relating to the securities industry, amongst other functions.

Also, under Section 315 of ISA, a Capital Market Operator is defined as any persons (individual or corporate) duly registered by SEC to perform specific functions in the Capital Market. To this extent, Rule 45 of the SEC Rules 2013, defines Capital Market Operators to include Issuing Houses/Merchant Bankers, Underwriters, Broker/Dealers, Sub brokers, Receiving Bankers, Registrars, Trustees, Investment Advisers, Fund/Portfolio Managers, Rating Agencies, Market Makers, Custodian and any other function the Commission may determine from time to time.

From the foregoing, the 1st Respondent may not qualify as a Capital Market Operator within the meaning and intendment of ISA and SEC Rules. The Supreme Court has, in a plethora of cases, reiterated the position of the law that where the letters of the law are clear and unambiguous, the literal Rule of interpretation should be adopted: *Abegunde v. Ondo State House of Assembly & Ors.* (2015) LPELR-24588(SC).

### **Conclusion**

The decision of the Court of Appeal, no doubt, appears to have introduced a new vista on the scope of a Capital Market Operator under the ISA and SEC Rules. While the Court of Appeal seems to re-affirm the wide powers of SEC under Section 13 of ISA as the apex Capital Market regulator, it is hoped that this decision is further tested at the apex Court, to determine the true meaning and scope of a Capital Market Operator in Nigeria.

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