

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision 14.07.2016

Appeal No. 22 of 2016

Concord Realty Private Limited
312/3, Sharda Chamber No. 1,
Keshavji Naik Road, Bhat Bazar,
Masjid (W),
Mumbai – 400 009. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

WITH

Appeal No. 26 of 2016

Lakeside Properties Private Limited
312/3, Sharda Chamber No. 1,
Keshavji Naik Road, Bhat Bazar,
Masjid (W),
Mumbai – 400 009. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

WITH

Appeal No. 42 of 2016

Grantview Properteis Pvt. Ltd.
201, Pallavi CHS Ltd.
Tata Colony,
Mulund (East),
Mumbai – 400 081. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

**WITH
Appeal No. 138 of 2016**

Gazala Constructions Private Limited
D-1, Plot No. 854, Hari Om Bhawan CHS Ltd.,
Charkop, Kandivali (West),
R.S.C. – 12, No. 41, Sector – 8,
Mumbai – 400 067. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

**WITH
Appeal No. 145 of 2016**

Kinita Real Estate Pvt. Ltd.
Shop No. KI-04,
Gokul Village (Two) Hsg. Soc.,
Shanti Park, Mira Road (East),
Dist. Thane – 401 107. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

**WITH
Appeal No. 146 of 2016**

Nazima Impex Pvt. Ltd.
Shop No. 5, Adeshwar Krupa CHS Ltd.
Shanti Park, Mira Road,
Dist. Thane – 401 107. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

**WITH
Appeal No. 161 of 2016**

Jayalalita Commodities Pvt. Ltd.
Room No. 6, Hari Nivas CHS Ltd.,
Daulat Nagar No. 7, Nr. Daulat Nagar,
Borivali (East),
Mumbai – 400 006. ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

Ms. Rinku Valanju, Advocate for the Appellant in Appeal Nos. 22, 26, 42, 138, 145, 146 and 161 of 2016.

Mr. Aditya Chitale, Advocate with Mr. Pulkit Sukhramani, Advocate i/b. The Law Point for the Respondent in Appeal Nos. 22, 26, 42, 138, 145, 146 and 161 of 2016.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : J.P. Devadhar (Oral)

1. Appellants in all these appeals are aggrieved by the orders passed by the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short). The AO of SEBI has imposed penalty against each appellant u/s. 15A(b) of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) for violating the provisions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('1997 Regulations' for short) read with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('2011 Regulations' for short) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short). Penalty is also imposed against each appellant u/s. 15A(a) of SEBI Act for violating Section 11C(3) and Section 11C(5) of SEBI Act. Since the violations said to have been committed by each appellant is common, all these appeals are heard together and disposed of by this common decision.

2. Counsel for the parties state that the decision in one appeal would squarely apply to all other appeals.

3. Accordingly, facts relevant to Appeal No. 22 of 2016 are set out hereinbelow:-

- (a) Appellant is a private limited company and the business of the appellant is to trade in materials and invest in securities;
- (b) As on December 31,2009 Mahan Industries Limited ('MIL' for short) had issued capital of 71,50,000 shares of ₹ 10 each;
- (c) On January 4, 2010 MIL made preferential allotment of convertible equity warrants for ₹ 30 crores. All appellants herein had subscribed to the said convertible equity warrants;
- (d) On January 15, 2010 MIL split its one share of ₹ 10 each into 10 equity shares of ₹ 1 each. Hence, as on January 15, 2010 MIL had issued capital of ₹ 7,15,00,000 divided into 7,15,00,000 shares of ₹ 1 each and outstanding convertible equity warrants of ₹ 30 crores;
- (e) On February 20, 2010 the Board of Directors of MIL decided that convertible warrants, where full consideration was received by MIL may be converted into equal number of shares of ₹ 1 each. Accordingly, on February 20, 2010 MIL made allotment of 24,85,00,000 shares of ₹ 1 each (out of 30,00,00,000 shares of ₹ 1 each). Out of 24,85,00,000 shares issued on February 20, 2010 the appellant who had applied for convertible equity warrants received 1,69,50,000 shares. Balance 5,15,00,000 shares were issued by MIL to the remaining convertible equity warrant holders sometime in May 2010;
- (f) According to SEBI, on issuance of 24,85,00,000 shares on February 20, 2010, total shares issued by MIL stood at 32,00,00,000 shares and since the appellant on

February 20, 2010 received 1,69,50,000 shares of MIL, the shareholding of the appellant in MIL exceeded 5% and hence disclosure obligation under Regulation 7(1) and 7(1A) read with Regulation 7(2) of 1997 Regulations and also under Regulation 13(1) of PIT Regulations got triggered. Admittedly, the appellant made no disclosure under any of the aforesaid regulations;

- (g) During the course of investigation it was also noticed by SEBI that the appellant had failed to furnish certain information called for, pursuant to the summons dated February 22, 2013 which was in violation of section 11C(3) of the SEBI Act. Similarly, it was also noticed that the appellant had failed to appear in person before the enquiry officer pursuant to summons dated March 8, 2013 which was in violation of section 11C(5) of SEBI Act;
- (h) For the aforesaid violations committed by the appellant, SCN was issued to the appellant on October 1, 2014;
- (i) In view of the Show Cause Notice, appellant filed consent application which was rejected by SEBI.
- (j) Thereupon Show Cause Notice dated October 1, 2014 was heard and disposed of by passing the following order:-
 - (i) Penalty of ₹ 2,50,000 under section 15A(b) of SEBI Act for violating Regulation 7(1) of 1997 Regulations read with Regulation 35 of 2011 Regulations;
 - (ii) Penalty of ₹ 2,50,000 under section 15A(b) of SEBI Act for violating Regulation 13(1) of PIT Regulations;

- (iii) Penalty of ₹ 2,00,000 under section 15A(a) of SEBI Act for violating Section 11C(3) of SEBI Act; and
- (iv) Penalty of ₹ 2,00,000 under section 15A(a) of SEBI Act for violating section 11C(5) of SEBI Act.

Challenging the aforesaid order appellant has filed the present appeal. In all other cases similar penalties have been imposed for committing similar violations.

4. With reference to penalty of ₹2,50,000 imposed under section 15A(b) of SEBI Act for violating regulation 7(1) of the 1997 Regulations and penalty of ₹ 2,50,000 imposed under section 15A(b) of SEBI Act for violating Regulation 13(1) of PIT Regulations, it is submitted by counsel for appellant that in the present case, the controversy has arisen on account of MIL issuing 30,00,00,000 shares in two tranches i.e. initially issuing 24,85,00,000 shares on February 20, 2010 and thereafter issuing the balance 5,15,00,000 shares in May, 2010. If the entire 30,00,00,000 shares were issued at a time, the shareholding of the appellant would have been less than 5% and hence disclosure obligation would not have arisen. Therefore, if on account of MIL issuing shares in two tranches on account of which the shareholding of the appellant between February 20, 2010 to May, 2010 exceeded 5%, appellant cannot be held guilty of violating the 1997 Regulations and the PIT Regulations and in any event penalty ought not to have been imposed.

5. Counsel for SEBI, on the other hand submitted that in the present case it is not in dispute that as on the date of the appellant acquiring 1,69,50,000 shares of MIL on February 20, 2010 shareholding of the

appellant in MIL exceeded 5% and accordingly disclosure provisions contained under the 1997 Regulations and PIT Regulations got triggered. Counsel for SEBI further submitted that MIL had in fact issued a notice on November 5, 2009 wherein it was clearly stated that convertible warrants would be created, offered, issued, allotted and delivered in one or more tranches. Therefore, on February 20, 2010, when the appellant received 1,69,00,000 from MIL, the shareholding of appellant in MIL exceeded 5% and hence the appellant was liable to make disclosure under the provisions contained in the 1997 Regulations and PIT Regulations. Since no disclosures were made, the appellant was liable to pay penalty. In support of the above contention reliance is placed by counsel for SEBI on a decision of this Tribunal in case of Akriti Global Traders Ltd. vs. Securities and Exchange Board of India (Appeal No. 78 of 2014) decided on September 30, 2014.

6. We see no merit in the above contentions advance on behalf of the SEBI. It is relevant to note that when the appellant applied for the convertible equity warrants of MIL it was known that as and when the warrants were converted into shares, the shareholding of the appellant would be below 5% and as such the appellant would not be required to make disclosure either under the 1997 Regulations or under the PIT Regulations. Therefore, on February 20, 2010 when the appellant received 1,69,50,000 shares from MIL, there was no reason for the appellant to believe that its shareholding in MIL would exceed 5%. Fact that as per notice dated November 5, 2009 MIL could issue shares in tranches does not mean that the appellant was given to understand that on account of MIL issuing shares in tranches, the shareholding of the appellant may exceed 5%. Apart from the above, there is no material on record to suggest that the appellant was made aware that its shareholding in MIL between February 20, 2010 till

May 2010 exceeded 5%. In such a case, where the appellant had subscribed to the convertible equity warrants so as to hold shares on conversion below 5%, cannot be said have violated the regulations made by SEBI on ground that the appellant had failed to make disclosures, especially, when there was no reason for the appellant to believe that its shareholding had exceeded 5%.

7. The decision of this Tribunal in case of Akriti Global Traders Ltd. (supra) is distinguishable on facts. In that case admittedly the appellant therein had made belated disclosures to the stock exchange under Regulation 29(1) of 2011 Regulations but no disclosures were made to the company as provided under Regulation 29(1), (2) and (3) of the 2011 Regulations. In that context, it was held that the obligation to make disclosures under provisions contained in 2011 Regulations and also under the PIT Regulations would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations. In the present case, the appellant had subscribed to the convertible equity warrants with a view to have less than 5% shareholding and there is nothing on record to suggest that the appellant was informed or made aware that on account of partial conversion of convertible equity warrants on February 20, 2010 the shareholding of the appellant had exceeded 5% and hence, the appellant was required to make disclosures under the 1997 Regulations and PIT Regulations.

8. In these circumstances, in the facts of present case, in our opinion, failure to make disclosure during the period from February 20, 2010 till May 2010 cannot be attributed to the appellant and, therefore, the appellant cannot be held guilty of violating the 1997 Regulations and PIT Regulations. Consequently, penalty imposed under section 15A(b) of SEBI Act on ground that the appellant has violated the 1997 Regulations and PIT Regulations cannot be sustained.

9. As regards the penalty of ₹ 2,00,000 imposed for violating section 11C(3) and ₹ 2,00,000 for violating section 11C(5) of the SEBI Act it is not in dispute that the appellant had failed to furnish all particulars sought in the summons issued against the appellant and that the appellant had failed to appear inspite of receiving the summons. Counsel for the appellant, however, submitted that in the present case, inadvertently the date of summoning was mistaken to be the date before which the letters, documents were to be filed with SEBI and accordingly it is submitted that it is not a fit case for imposing penalty on the ground the appellant has violated section 11C(3) and section 11C(5) of the SEBI Act.

10. Once it is established that there is failure to furnish requisite particulars called for and there is failure to appear before the concerned officer of SEBI as per the summons issued to the appellant, it obviously means that there is violation of section 11C(3) and section 11C(5) of SEBI Act. Penalty for such violations under section 15A(b) of the SEBI Act is ₹ 1 lakh per day subject to a maximum of ₹ 1 crore. Thus as against the penalty of ₹ 1 crore imposable for violating section 11C(3) and penalty of ₹ 1 crore imposable for violating section 11C(5), the AO of SEBI after considering all mitigating factors has imposed penalty of ₹ 2 lakh for violating section 11C(3) and ₹ 2 lakh for violating section 11C(5) of SEBI Act which cannot be said to be unreasonable and excessive. Accordingly, the penalty imposed for violating section 11C(3) and 11C(5) is upheld.

11. In the result, in all these appeals penalty imposed under section 15A(b) of SEBI Act for allegedly violating the 1997 Regulations and PIT Regulations is quashed and set aside. However, penalty under section 15A(a) of SEBI Act for violating section 11C(3) and section 11C(5) of SEBI Act respectively is upheld. Each appellant is directed to pay the

penalty imposed by the AO of SEBI for violating section 11C(3) and penalty imposed for violating section 11C(5) of SEBI Act, within a period of six weeks from today. If the appellants pay the said amount within six weeks from today, then, SEBI shall accept the same in full and final settlement of the claim under the impugned order. If the appellants fail to pay the aforesaid penalty within six weeks from today, then, SEBI shall be entitled to recover that amount with interest @ 12% p.a. from the date of the order passed by the AO of SEBI till payment.

12. All the appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

14.07.2016
Prepared and compared by:
msb