

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 14.10.2016

Appeal No. 470 of 2015

1. Sudarshan Walia
2. Rachna Uppal
3. Shobhit Uppal
4. Vikas Ahluwalia
5. Pradeep A. G.
6. Mukta Ahluwalia
7. Ahluwalia Contract India Ltd.
8. M K G Pillai
9. Geeta Gopal Krishnan
10. Sangeeta Krishna Kumar
11. M P Vaidya
12. Ram Piari
13. Pushpa Rani
14. Raman Pal

..... Appellants

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. 471 of 2015**

Rohini Ahluwalia
4, Community Centre, Saket,
New Delhi – 110017.

..... 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. 472 of 2015**

Capricon Industrials Ltd.
4, Community Centre, Saket,
New Delhi – 110017.

..... 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

Appeal No. 474 of 2015

Tidal Securities Pvt. Ltd.
4, Community Centre, Saket,
New Delhi - 110017

.... 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. 475 of 2015**

Ahluwalia Builders & Development Group
(Private) Ltd.
4, Community Centre, Saket,
New Delhi – 110017.

..... 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. 476 of 2015**

1. Bikramjit Ahluwalia
2. Sudarshan Walia
3. Rohini Walia
4. Rachna Uppal
5. Ahluwalia Builders and Development
Group Pvt. Ltd.
6. Tidal Securities Pvt. Ltd.
7. Shobhit Uppal
8. Vikas Ahluwalia
9. Mukta Ahluwalia
4, Community Centre, Saket,
New Delhi – 110017.

10. M. K. G. Pillai

K 34 C, Kailash Colony,
New Delhi 110048.

..... Appellants

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. 477 of 2015**

Capricon Industrials Ltd.
4, Community Centre,
Saket, New Delhi – 110017.

..... 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. 478 of 2015**

1. Rohini Ahluwalia
2. Ahluwalia Builders and Development
Group Pvt. Ltd.
3. Capricon Industries Ltd.
4. Shobhit Uppal
5. Vikas Ahluwalia
6. Rachna Uppal
7. Sudarshan Ahluwalia
8. Mukta Ahluwalia

4, Community Centre, Saket,
New Delhi – 100 017.

..... Appellants

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. 479 of 2015**

Bikramjit Ahluwalia
4, Community Centre, Saket,
New Delhi – 110017.

..... 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. 481 of 2015**

Tidal Securities Pvt. Ltd.
4, Community Centre, Saket,
New Delhi – 110017.

..... 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. 482 of 2015**

Pushpa Rani
A 78 / 1, SFS Flats, Saket,
New Delhi – 17.

..... 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. 483 of 2015**

Raman Pal
16 A, Qutub Enclave, Phase – T,
MIG Flats, New Delhi – 17.

..... 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. 484 of 2015**

1. Ram Piari
Flat No. 702, Ahlcon Apts,
Sector 3, Vaishali, Ghaziabad, UP.
2. Pushpa Rani
A 78/ 1, SFS Flat, Saket,
New Delhi – 17.
3. Raman Pal
16 A, Qutub Enclave, Phase – T,
MIG Flats, New Delhi – 17.
4. Rohini Ahluwalia
4, Community Centre, Saket,
New Delhi – 110017.
5. Ahluwalia Builders And Development
Group Pvt. Ltd.
4, Community Centre, Saket,
New Delhi – 110017.
6. Capricon Industrials Ltd.
4, Community Centre, Saket,
New Delhi – 110017.
7. Tidal Securities Pvt. Ltd.
4, Community Centre, Saket,
New Delhi – 110017.
8. Shobhit Uppal
4, Community Centre, Saket,
New Delhi – 110017.
9. Vikas Ahluwalia
4, Community Centre, Saket,
New Delhi – 110017.
10. Rachna Uppal
4, Community Centre, Saket,
New Delhi – 110017.
11. Sudarshan Walia
4, Community Centre, Saket,
New Delhi – 110017.
12. Mukta Ahluwalia
4, Community Centre, Saket,

New Delhi – 110017.

..... Appellants

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. 485 of 2015**

Bikramjit Ahluwalia
B-10, Saket, New Delhi – 110017.

..... 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

Mr. Neeraj Matta, Advocate with Mr. R. Ranjan, Advocate for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis, Advocate for the Respondent.

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

Per : Jog Singh (Oral)

1. In this bunch of 14 appeals, we are concerned with three impugned orders which contain a common question of law viz. the acquisition of shares without making the required public announcement in violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“SAST Regulations”). A brief description of the three impugned orders, along with the Appeals against each of the three, is given hereinbelow:

- Impugned order dated September 30, 2014 bearing Adjudication Order No. CFD/APIL/AO/DRK/AKS/EAD3-619-643/163-188/214 imposing penalty of ₹ 15 lac under Section 15H(ii) of SEBI Act, 1992 for failure to comply with Regulations 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. It covers appeal Nos. 470, 471, 475, 477, 481, 485 of 2015 i.e. 6 appeals in all. It involves 25 entities and the acquisition period in all appeals is 2000-2001. Regulation 11(1) of the SAST Regulations lays down that any person who already owns 15% or more shareholding in a company, but less than 75%, must make a public announcement if it intends to purchase new shares amounting to more than 5% shareholding in a particular year.
- Impugned order dated September 30, 2014 bearing Adjudication order No. CFD/APIL/AO/DRK-AKS/EAD3-605-618/149-162/2014 imposing penalty of ₹ 15 lac under Section 15H(ii) of SEBI Act, 1992 for failure to comply with Regulations 11(2) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. It covers appeal Nos. 472 and 476 of 2015 i.e. 2 appeals. It involves 14 entities and they acquired shares on September 15, 2005. Regulation 11(2) of the SAST Regulations lays down that any person who already owns 55% or more shareholding in a company, but less than 75%, must make a public announcement if it intends to purchase

new shares amounting to more than 5% shareholding in a particular year.

- Impugned order dated October 1, 2014 bearing Adjudication Order No. CFD/APIIL/AO/DRK-AKS/EAD3-643-660/189-206-2014 imposing penalty of ₹ 20 lac under Section 15H(ii) of SEBI Act, 1992 for failure to comply with Regulations 11(2) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. It covers appeal Nos. 474, 478, 479, 482, 483, 484 of 2015 i.e. 6 appeals in all. It involves 18 entities and the acquisition period is from March 4, 2010 to March 23, 2010.

2. Since a common question of law and facts is involved in all the 14 appeals, with the exception of different acquisition periods, with the consent of the parties involved, we have taken up these appeals together and are consequently disposing them off by this common order.

3. As mentioned above the facts in all 14 appeals are similar, we are, therefore, taking facts of Appeal No. 470 of 2015 as the lead case for the purposes of the present order. The facts in brief are that certain irregularities were noticed by SEBI while examining the letter of offer filed by B. Braun Singapore Pte. Ltd. along with B. Braun Melsungen AG to acquire 26% of the shareholding of Ahlcon Parenterals (India) Ltd. ("APIL"). In the year 2000-2001, Mr. Bikramjit Ahluwalia made an acquisition of 2,49,000 shares amounting to the 3.45% of the total shareholding of APIL. Further, 2.01% shareholding was purchased by other persons acting in concert. As a result of the two acquisitions, the

shareholding of the Appellants went beyond the 5% threshold and no consequent public announcement was made in accordance with Regulation 11(1) read with Regulation 14(1). The said regulations read as follows:

“11(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but not more than 75% of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

14(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than 4 working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.”

5. Show Cause Notice dated June 26, 2014 (“SCN”) was issued by the Respondent - Securities and Exchange Board of India (“SEBI”) to the Appellants asking them to show cause as to why action should not be taken against them for the violation of Regulation 11(1) read with Regulation 14(1) of the SAST Regulations. Opportunity of personal hearing was granted and availed of by the Appellants on September 4, 2014. Reply to the SCN was filed by the Appellants on September 15, 2014. After considering all the material on record, SEBI issued impugned order dated September 30, 2014 levying a penalty of ₹ 15 lac on the Appellants for violating Regulation 11(1) read with Regulation 14(1) of the SAST Regulations.

6. The case of the Appellants is that the SCN at the outset failed to establish any misconduct on the Appellants’ part. Specifically, it failed to establish that the promoters who purchased shares of APIL were persons acting in concert. The Appellants submit that the concept of ‘persons acting

in concert' has been misapplied in the instant matter. Nothing in the impugned order indicates any intention of the Appellants who are all promoters of the same company to act in concert to acquire shares. There is no mention of the common intention/objective in the impugned order in pursuance of which the acquisition of shares is said to have occurred.

7. It is submitted by the Appellants that a person classified under 'Promoter Group' for the purposes of clause 35 of the Listing Agreement has no duty to adhere to the SAST Regulations unless that person is either proved to be an acquirer or a person acting in concert with the acquirer. It is also put forth by Id. Counsel on behalf of the Appellants that SEBI has been unable to satisfy the ingredients of Regulation 11(1) and prove that the Appellants were holding 15% of the shareholding of APIL in the first place and that they actually acquired more than 5% shareholding subsequently.

8. The Appellants further submit that the Impugned Order is based on surmises and conjectures with nothing to prove the Respondents allegations regarding persons acting in concert. It is submitted by the Appellants that it has been incorrectly assumed by the Respondent that if certain persons have acted in concert once, they will always act in concert with respect to any transaction in the future. Moreover, the Respondent has incorrectly applied Regulation 22(19) of the SAST Regulations which states that the acquirer and the persons acting in concert will be jointly and severally liable for fulfillment of obligations under the SAST Regulations. The Appellants contend that even if it is assumed that the acquirer herein violated the SAST Regulations, only the acquirer ought to have been punished instead of the penalty being imposed on all Appellants under the pretext of Regulation 22(19).

9. It is also pertinent to note the submission of the Appellants that at the relevant time i.e 2000-2001, the maximum penalty prescribed in Section 15H(ii) was ₹ 5 lac. The law was later amended and the penalty increased to ₹ 15 lac. The Appellants therefore submit, without prejudice to their other submissions, that the penalty prescribed at the relevant time alone shall be applicable in this case. Further, it took the Respondent 14 years to penalize the Appellants for the alleged misconduct. The Appellants submit that such an unwarranted delay ought not to be condoned by this Tribunal.

10. Turning to the case of the Respondent, it is submitted before this Tribunal that Regulation 11(1) read with Regulation 14(1) of the SAST Regulations makes it abundantly clear that in case of an acquirer who already owns 15% shareholding or more of the target company, but less than 75% shareholding of the same, such an acquirer on purchase of additional shareholding amounting to more than 5% in a period of 12 months, must make a public announcement within four days of such acquisition.

11. In the present case, the Respondent submits that it has been accepted by the Appellants at the stage of the personal hearing in response to the SCN itself that the Appellants had in fact acquired 5.0346% additional shareholding in the year 2000-2001. Even if this submission of the Appellants is accepted, the fact remains that 0.0346% shareholding in excess of the prescribed limit was in fact made without making the necessary public announcement. It is therefore submitted by the Respondent that considering the fact that the SAST Regulations were in fact violated, the penalty of Rs. 15,00,000 is just and acceptable.

12. We have heard the learned counsel for both parties at length and perused the Appeal and all documents attached therewith, along with the reply to the same.

13. An analysis of Regulation 11(1) of the erstwhile SAST Regulations reveals that if any person intending to acquire shares in a company already owns more than 15% of the shareholding of that company, but less than 75% shareholding, he must mandatorily make a public announcement if the new acquisition in a given year is going beyond 5%.

14. In the instant matter, the issue which presents itself for our consideration is whether the Appellants ought to have made a public announcement when their new acquisition went beyond the creeping acquisition limit of 5%.

15. It is an undisputed fact that in the year 2000-2001, the Appellants cumulatively acquired 5.0346% of the shareholding of APIL. This fact has indeed been admitted by the Appellants as far back as the personal hearing conducted before the Ld. Adjudicating Officer. At the personal hearing, the Appellants admitted that inadvertently they had not made a public announcement when their newly acquired shareholding went beyond the limit of 5% as prescribed in Regulation 11(1).

16. In light of the aforesaid categorical admission by the Appellants it is evident that the Appellants understand the import and underlying philosophy of Regulation 11(1). Participants in the securities market are allowed to actively indulge in trading and other related activities because SEBI as the market regulator is given assurances by these market players that they understand the law and regulations as laid down by the Legislature

and SEBI respectively. If the Legislature and SEBI, acting on such assurances, give companies and other market participants the right to execute their business decisions in the manner these entities deem fit, it goes without saying that there is a corresponding duty placed on the market participants to ensure that such mistakes as acquiring more than the creeping acquisition limit of 5% without making the necessary public announcement are not made.

17. Various decisions have been cited by learned counsel for the appellants in support of his contention that in view of delay in initiating proceedings, penalty cannot be imposed against the appellants and that the appellants are not estopped from taking a stand contrary to the stand taken before the learned A.O. We see no merit in the above contentions. As such, there is no provision in the SEBI Act, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. However, it goes without saying that the regulator should always make an endeavor to take prompt action against the defaulting companies to render speedy and timely justice. In the present case, however, action was taken immediately after SEBI came to know about the violations. Therefore, delay, in itself, cannot defeat the ends of justice in the facts and circumstances of the case in hand. Moreover, there is nothing on record to suggest that the admission made by the appellants before the A.O. that the acquisition made by them exceeded the prescribed limit was erroneous. In these circumstances, no fault can be found with decision of the A.O. in holding that the appellants are guilty of violating the Takeover Regulations and, accordingly, imposing penalty on the appellants.

18. However, it has been rightly brought to our notice by the Appellants that at the time the misconduct was committed and the shares acquired by the Appellants, the maximum penalty for the default of acquiring more than the prescribed limit of shareholding without making the required public announcement was Rs. 5 lac. The penalty of Rs. 15 lac was introduced later when the Act was amended. SEBI cannot be allowed to retrospectively apply the law in this situation.

19. Therefore, in our considered opinion the penalty of ₹ 15 lac imposed by SEBI in one of the orders dated September 30, 2014 covering Appeal Nos. 470, 471, 475, 477, 481, 485 of 2015, is more than what was applicable in 2000-2001 and is therefore reduced to Rs. 5 lac. Adjudication Order No. CFD/APIIL/AO/DRK/AKS/EAD3-619-643/163-188/214 therefore stands modified to the above-said extent and the corresponding Appeals stand partly allowed.

20. However, the second impugned order dated September 30, 2014 covering appeals 472 and 476 of 2015 relates to acquisition done in 2005. Section 15H was amended in 2002 and the penalty for the misconduct committed in the instant cases was increased to a minimum of ₹ 10 lac and a maximum of Rs. Twenty-Five crore or three times the amount of profits made out of the violation in question. In our considered view, the penalty of ₹ 15 lac imposed vide the second impugned order dated September 30, 2014 is completely justified in view of the facts and circumstances of the situation and is not liable to be interfered with by this Tribunal. Adjudication order No. CFD/APIIL/AO/DRK-AKS/EAD3-605-618/149-162/2014 is, therefore, upheld in its entirety and the corresponding Appeals are hereby dismissed.

21. Similarly, impugned order dated October 1, 2014, imposing a penalty of ₹ 20 lac relates to violation committed in the year 2010. The said penalty being appropriate for the violation of Regulation 11(2) read with Regulation 14(1) of the erstwhile SAST Regulations need not be interfered with by this Tribunal. Adjudication Order No. CFD/APIIL/AO/DRK-AKS/EAD3-643-660/189-206-2014 is, therefore, upheld and the corresponding Appeals being Appeal nos. 474, 478, 479, 482, 483, 484 of 2015 are hereby dismissed. No order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

14.10.2016
Prepared & Compared by
PTM

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 480 of 2015

Date of Decision : 21.06.2017

Ram Piari

Flat No. 702, Ahlcon Apartments,
Sector 3, Vaishali,
Ghaziabad, UP.

...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

Mr. Rajesh Ranjan, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Mr. Vivek Shah,
Advocates for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. By a praecipe it is brought to our notice that in our order dated October 14, 2016 inadvertently it is recorded that Appeal No. 484 of 2015 has been disposed of instead of Appeal No. 480 of 2015. The inadvertent error be corrected accordingly.

2. Praecipe filed on behalf of SEBI is disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

21.06.2017

Prepared and compared by:
msb

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 473 of 2015

Date of Decision : 21.06.2017

Bikramjit Ahluwalia
B-10, Saket, New Delhi – 110017. ...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

Mr. Rajesh Ranjan, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Mr. Vivek Shah,
Advocates for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. By a praecipe it is brought to our notice that in our order dated October 14, 2016 inadvertently it is recorded that Appeal No. 485 of 2015 has been disposed of instead of Appeal No. 473 of 2015. The inadvertent error be corrected accordingly.

2. Praecipe filed on behalf of SEBI is disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

21.06.2017
Prepared and compared by:
msb