

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 25.09.2017

Appeal No. 20 of 2016

United Breweries (Holdings) Limited
Level 12, UB Tower,
UB City, No. 24,
Vittal Mallya Road,
Bangalore – 560 001.

...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. Shashank M. Patil, Advocate i/b Finsec Law Advisors for the Appellant.

Mr. Aditya Mehta, Advocate with Mr. Pulkit Sukhramani and Ms. Vidhi Jhavar, Advocates i/b The Law Point for the Respondent.

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

Per : Dr. C.K.G. Nair, Member (Oral)

1. This appeal has been filed challenging the order of the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) dated November 27, 2015. By the said order a penalty of ` 15 Lakh has been imposed under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for failure to make disclosures regarding creation / invocation / release of four pledge transactions made by the appellant and thereby violating certain provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations').

2. Facts relevant to the matter are the following:-

- (a) SEBI conducted suo moto investigation relating to trading / dealing in the shares of United Spirits Ltd. (for Short 'USL'), a listed company, during the period from January 2, 2012 to November 30, 2012. During the investigation period it was, inter alia, noticed that the appellant (and another entity which has been exonerated in the impugned order) had made certain pledge transactions of their USL shareholding and disclosures as required were not done. In respect of the appellant herein the transactions include invocation of three pledges of 34,528 shares on February 15, 2012, 2,20,000 shares on March 24, 2012, 50,000 shares on March 26, 2012 and creation of a pledge of 1,50,000 shares on March 26, 2012.
- (b) As per the Takeover Regulations, the disclosure requirement relating to encumbered shares is as follows:-

“Disclosure of encumbered shares.

31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,-

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.”

Accordingly, as per Regulation 31(3) disclosures on all four transactions as stated in para 2(a) above had to be made to the stock exchanges as well as to the target company within 7 working days from the date of creation / invocation / release of encumbrance.

3. The main contention of the appellant is that the required disclosures have been made on April 4, 2012 for all the 4 transactions under reference in a consolidated manner. Shri. Shashank M. Patil Learned Counsel appearing on behalf of the appellant submitted a detailed chart stating the nature of transactions, number of shares involved in each transaction, date of each transaction, date of invocation / creation of pledge, due date for disclosure, actual date of disclosure etc. and argued that only in respect of one transaction i.e. invocation of pledge on February 15, 2012 relating to 34,528 shares there was an inadvertent delay of 24 days. In respect of other 3 transactions where delay has been alleged in the impugned order actually there has been no delay. These contentions take into account the date of receiving intimation from the depository, holidays coming in between the date of the event and the date of receipt of the information by the stock exchanges etc.

4. Shri. Aditya Mehta, Learned Counsel appearing on behalf of the respondent submitted that the filing made by the appellant dated April 4, 2012 claiming as consolidated filing for the 4 transactions referred to actually do not give the complete details. It does not disclose invocation of pledge of large quantities of shares. Furthermore, the dates are not matching and not fully disclosed; it only specifies 28 & 29 March, 2012 as the dates while the actual date of transactions were 15, 24 and 26 March, 2012. So the

so-called consolidated disclosure dated April 4, 2012 is not only confusing but is not a full picture of the actual encumbrances involved as invocation of pledge is not even indicated, whereas, sub-regulation 32(2) specifically mandates disclosure within 7 working days for such invocation / release.

5. We have perused the documents on record including the consolidated statement dated April 4, 2012 relied heavily by the appellant. We note that the consolidated disclosure is vague as is clarified and amplified in the impugned order as there is no indication to the effect of 3 invocation of pledge whereby the shareholding of the appellant in USL came down substantially. We also note that all the arguments made by the appellant before us have been dealt in the impugned order in detail and we see no reason to differ with the said reasoning. We also make it clear that the 4 transactions relating to the encumbrance of the shareholding of USL by the appellant were distinct events, each one needing disclosure within 7 working days from the date of each of the event and as such each one is a separate violation. Although penalty for each violation could be levied separately, in the facts of present case, considering all mitigating factors, the AO has imposed consolidated penalty of ` 15 Lakh which cannot be said to be unreasonable or excessive.

6. For the above said reasons, we find no merit in the appeal and appeal is dismissed with no order as to costs. Appellant is directed to pay the penalty within 30 days from the date of this order.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

25.09.2017

Prepared and compared by: msb