

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 10.10.2019
Date of Decision : 17.10.2019

Appeal No. 325 of 2017

1. Premier Capital Services Ltd.
4, Bhima Vaitarana Complex,
Sir Pochkhawala Road, Worli,
Mumbai, MH- 400 030
2. R G Agrawal
7-A, Shrinagar Annex,
Indore- 452 001
3. R G Agrawal HUF
7-A, Shrinagar Annex,
Indore- 452 001
4. R K Agrawal HUF
7-A, Shrinagar Annex,
Indore- 452 001
5. Rajesh Agrawal
7-A, Shrinagar Annex,
Indore- 452 001
6. Bimla Agrawal
7-A, Shrinagar Annex,
Indore- 452 001
7. Sangeeta Agrawal
7-A, Shrinagar Annex,
Indore- 452 001
8. G L Agrawal HUF
7-A, Shrinagar Annex,
Indore- 452 001
9. Yukti Investment Private Limited
23 Shrinagar Annex,
Indore- 452 001

10. Vertex Investment Private Limited
23 Shrinagar Annex,
Indore- 452 001
11. Vastu Commodities Private Limited
23 Shrinagar Annex,
Indore- 452 001
12. Suman Agrawal
7-A, Shrinagar Annex,
Indore- 452 001
13. Premier Protein Limited
47/48-B Industrial Area No. 1,
Agra Bombay Road Dewas,
(M.P.)- 455 001
- ...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

Mr. Somasekhar Sundaresan, Advocate with Mr. Abhishek Venkatraman and Mrs. Poonam D. Gadkari, Advocates i/b Juris Matrix Partners LLP for Appellants.

Mr. Vishal Kanade, Advocate with Mr. Kaushal Parsekar, Advocate i/b Legasis Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala

1. The appellants have filed the present appeal against the imposition of penalty by the Adjudicating Officer (“AO” for convenience) of Securities and Exchange Board of India

(“SEBI” for convenience) for violation of Regulation 7(1A), 8(3) and 10 & 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers), Regulations, 1997 (“SAST Regulations” for short) as well as Regulations 13(3) and 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations” for short).

2. The facts leading to the filing of the appeal is, that the Appellant No. 1 is a public limited company known as Premier Capital Services Limited (“PCSL”/ “Appellant No. 1 Company” for convenience). Appellant Nos. 2 to 7 and 10 to 13 were the erstwhile promoters of the Appellant No. 1. The Appellant No. 1 Company remained suspended since September 30, 2005 on account of non-compliance of certain clauses of the Listing Agreement. In 2010 the Company complied with all the requirements of the Listing Agreement and thereafter the suspension in the equity shares was revoked and trading in the securities of the Company resumed thereafter. In July 2010 Appellant Nos. 2 to 7 and 10 to 13 entered into a Share Purchase Agreement with third parties and pursuant thereto the appellants were required to make a public announcement. It was then noticed that the appellants had not complied with the SAST Regulations. Accordingly, necessary disclosures and

compliances were made belatedly. It is also noticed that the appellants also moved an application for settlement. However, noticing the irregularities, SEBI issued a show cause notice for violation of various provisions of the SAST Regulations. After hearing all the appellants and after considering their replies, the impugned order was passed imposing penalties on each of the appellants to pay individually for violation of different provisions of SAST Regulations. By the same order, for violation of Regulation 11(1) of the SAST Regulations the penalty imposed was required to be paid by all the appellants jointly and severally. The appellants being aggrieved by the aforesaid order has filed the present appeal.

3. We have heard the learned counsel Shri Somasekhar Sundaresan for the appellants and the learned counsel Shri Vishal Kanade for the respondent.

4. Penalty of various amounts has been imposed upon the appellants individually for violation of Regulation 7(1A) of the SAST Regulations. According to the AO the appellants sold their shares aggregating to 45.41% of the paid up capital of the Company to Tekriwal and Hisaria Group which resulted in a decrease in the shareholding of the promoters from 68.68% to

23.27% of the paid up capital of the Company. The AO found that necessary disclosures were required to be made under Regulation 7(1A) of the SAST Regulations which was made belatedly by 424 days accordingly imposed a penalty of various amounts upon the appellants.

5. In our opinion, no penalty could be imposed for violation of Regulation 7(1A) of the SAST Regulations, in view of the decision of this Tribunal in *Ravi Mohan and Others vs. SEBI in Appeal No. 97 of 2014 decided on 16.12.2015* and in *Rakesh Kathotia and Others vs. SEBI in Appeal No. 7 of 2016 decided on 27.05.2019*. It was observed in the decision of Rakesh Kathotia that the decision in Ravi Mohan's case has not been questioned by the SEBI before a superior forum and that SEBI has accepted the decision of the Tribunal. Since the benefit of the decision in Ravi Mohan has been given to other persons the same benefit is also being given to the appellant. Consequently, in the light of the decision of this Tribunal in Ravi Mohan and Rakesh Kathotia's case (Supra) no penalty under Regulation 7(1A) of the SAST Regulations could be imposed. The order of the AO to that effect cannot be sustained.

6. The AO has imposed a penalty upon the Company for violation of Regulation 8(3) of the SAST Regulations. It was urged by the learned counsel for the appellant that between 1997 to 2007 the collective holding of the group remained unchanged and therefore there was no requirement for the appellant to make continuous disclosure under Regulations 8(3) of the SAST Regulations. It was contended that Regulation 8(3) of the SAST Regulations requires disclosure of annual holding of the promoters group only when there is a change in the collective holding. It was thus contended that no penalty could be imposed under this Regulation.

7. In this regard, it would be appropriate to refer Regulation 8(3) of the SAST Regulations which is extracted hereunder:

“8(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.”

8. A perusal of the aforesaid provision indicates that every company whose shares are listed on a stock exchange is required to make yearly disclosure within 30 days from the financial year ending 31st March to the stock exchange where the shares of the Company are listed. In *Inland Printers Limited vs. SEBI Appeal No. 199 of 2014 decided on 20.10.2015*, this Tribunal held that the obligation of the Company is to make yearly disclosures is a continual obligation and not a conditional obligation and even if there is no change in the shareholding, one is still required to make a disclosure.

9. We are in complete agreement with the said decision. We are of the opinion that there is an obligation cast upon the Company to make a disclosure to the stock exchange under Regulation 8(3) of the SAST Regulations. The yearly disclosure is required to be made within 30 days of each financial year ending on 31st March. Further, the disclosure to be made at each record date fixed by the Company for the purposes of dividend. The very fact that multiple disclosures are required to be made shows the obligation of the Company to make disclosures under Regulation 8(3) irrespective whether there is a change in the shareholding or not. We are further of the opinion, that Regulation 8(3) mandates continual obligation

on the Company to make yearly disclosures and is not a conditional obligation. Whether there are changes in the shareholding or not the company is still required to make disclosure under Regulation 8(3) of the SAST Regulations. Thus, the contention of the appellant that the Company was not required to make disclosures under Regulation 8(3) since there was no change in the shareholding is misconceived and cannot be accepted. The penalty imposed on the appellant under Regulation 8(3) is perfectly justified and no interference is called for.

10. Appellant Nos. 10 and 11 have been penalized for violation of Regulation 10 of the SAST Regulations. The argument of the leaned counsel is, that the counter party namely, Tekriwal and Hisaria Group who holds the shares were also imposed a penalty under the same provision by a different AO imposing lesser quantum of penalty. In the case of Tekriwal and Hisaria Group a sum of ₹ 5 lakh each was imposed whereas, in the instant case, Appellant Nos. 10 and 11 have been imposed a penalty of ₹ 10 lakh each. The fact that lesser quantum of penalty for the same violation of the provision has been imposed upon Tekriwal and Hisaria Group for the same transactions has not been disputed by the

respondent. In the light of the aforesaid, we are of the view that there should be consistency in the imposition of penalty for violation of the same provision of the Regulations for the same set of transactions. We consequently reduce the penalty of ₹ 10 lakh each imposed upon the Appellant Nos. 10 and 11 under Regulation 10 to ₹ 5 lakh each.

11. In so far as violation of Regulation 11(1) is concerned, the learned counsel contended that Regulations 10 and 11 can never be applied to the same transactions as they operate in different spheres. In order to substantiate this submission, the learned counsel for the appellants also relied on the order of Supreme Court in the matter of *Swedish Match AB and Anr. vs. SEBI and Anr. (2004) 11 SCC 641*.

12. For facility Regulation 10 and Regulation 11(1) of the SAST Regulations, 1997 is reproduced below:-

Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which taken together with shares or voting rights, if any, held by him or by persons acting in concert with him, entitle such acquirer to exercise fifteen per cent

or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

Consolidation of holdings.

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) 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 financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

13. Regulation 11(1) categorically states that no acquirer who, together with persons acting in concert has acquired 15% or more but less than 55% shall acquire either by himself or with persons acting in concert with additional shares or voting rights entitled him to exercise more than 5% of the voting rights, in

any financial year ending on March 31, unless such acquirer makes a public announcement. Therefore, even any acquirer already holding more than 15% individually or along with persons acting in concert with while acquiring more than 5% under Regulation 11(1) have to make a public announcement in accordance with regulations. In the facts of the case, on 15.05.2009 the appellants acquired an additional 15.39% and 12.01.% on 30.06.2009 and hence they were mandated to make public announcements.

14. The learned counsel for the appellants contended that Regulations 10 and 11 of the SAST Regulations cannot be pursued simultaneously since these regulations operate at different spheres. The former is dealing with substantial acquisition and the later deals with additional/ creeping acquisition; therefore there cannot be any overlap and either or would apply. We do not agree with this contention. Reliance on Swedish Match (Supra) is not tenable as the said order states of normally no overlap between Regulations 11 and 12; not between 10 and 11 of SAST Regulations, though, the order considers all the three Regulations 10, 11 and 12. Moreover, in paragraph 81 the said order states “ we may, however, hasten to add that there may be a situation where Regulations 11 and 12

may overlap with each other, in which event, it would be open to the acquirer to issue a combined notice fulfilling the requirement of both Regulations 11 and 12". Therefore, the Apex Court is conscious of possibilities of overlap between these two Regulations. Moreover, in the absence of an explicit statement on Regulations 10 and 11 that they cannot overlap in any situation the benefit of the ratio cannot be applied in the present matter. Regulation 11(1) of the SAST Regulations deals with acquisition of additional shares or voting rights exceeding 5% in a financial year. However, in the facts of the present matter the acquisition was of a substantial nature of more than 15% and 12% and hence application of Regulations 10 and 11 simultaneously cannot be faulted, as it is an exceptional situation as stated in *Swedish Match (Supra)* in respect of Regulations 11 and 12. In any case, since the impugned order has only directed payment of a penalty of ₹ 20 lakhs jointly and severally on eleven Appellants for violation of Regulation 11(1) of the SAST Regulations, we are of the view that the impugned order has considered the mitigating circumstances while passing the order, since normally for such violations a direction to make a public announcement for open offer would be made. Therefore, in the facts of the present matter the mitigating

circumstances have been considered and only an appropriate amount of penalty has been imposed for these violations.

15. In the light of the aforesaid, the appeal is partly allowed. The AO is directed to recalculate the penalty in the light of the observation made above and communicate the amount payable by the appellants which amount shall be paid within 30 days from the date of such communication. In view of the partial success, parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member