

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 209 of 2014

Date of Decision: 11.08.2014

1. M/s. Coimbatore Flavors & Fragrances Ltd.
No. 6, 2nd Floor S. R. P. Nagar, Saibaba
Colony, Coimbatore – 641011.
2. Mr. Benny Abraham
671 A, Okamatthathil, 2, Koothattukulam,
Muvattupuzha – 686662.
3. Mrs. S. Subashini
Sivaram Enclave, 45 /3A, Arts College Road
Lane, Opp. Bala Lodge, Coimbatore – 641018. 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. Pankaj P. Pandit, Advocate with Mr. Sahil Vora, Advocate for the
Appellants.

Mr. Kumar Desai, Advocate with Ms. Khushboo Tatia, Advocate for the
Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : Jog Singh (Oral)

This appeal has been filed by the appellants against the impugned
order dated April 30, 2014 imposing a monetary penalty of ₹ 2,00,000/-
each on appellant nos. 1 and 2 for the violation of Regulations 8(3) and
Regulations 30(1), (2) read with Regulation 30(3) of the SEBI
(Substantial Acquisition of Shares & Takeovers) Regulations, 1997

respectively and ₹ 2,50,000/- on appellant no. 3 for the violation of Regulations 8(1), 8(2) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997, hereinafter referred to SAST Regulations.

2. While examining the letter of offer document of one Mr. P. B. Krishna Prasad, the acquirer, to acquire the shares of appellant no. 1 i.e. the company, it was observed by SEBI that the erstwhile promoter of the company, i.e. appellant no. 2 did not comply with the provisions of Regulation 30(1) & 30(2) read with 30(3) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, hereinafter referred to 'SAST Regulations, 2011' for the financial year ended March 31, 2012 within the stipulated time. Similarly, appellant no. 3 had delayed filings under the provisions of Regulation 8(1) and 8(2) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997, ('SAST Regulations, 1997') for the financial years ended March 31, 2003 and March 31, 2005. The company had also failed to comply with the provisions of Regulation 8(3) of the SAST Regulation 1997 within the stipulated time during year 2003. Adjudication proceedings were initiated under Chapter VI-A of SEBI Act, 1992 against the three appellants for the violation of aforesaid regulations, and a common show cause notice dated January 27, 2014 was issued to the appellants as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15A(b) of the SEBI Act for the alleged violations. In response to the said SCN, the three appellants filed their replies vide letters dated 28/25/27th March, 2014 respectively. The learned adjudicating officer after considering replies filed by the appellants and after affording an opportunity of personal hearing held the appellants guilty of violating the

regulatory provisions in question and imposed a penalty of ₹ 2,00,000/- each on the company and Shri Benny Abraham and further a penalty of ₹ 2,50,000/- on appellant no. 3 under Section 15A(b) of SEBI Act, 1992. This is how the present appeal has been preferred by the three appellants before this Tribunal challenging the impugned order dated April 30, 2014.

3. The relevant regulatory provisions which are alleged to have been violated by the three appellants are reproduced hereinbelow for the sake of convenience :-

SAST Regulations, 1997

“8(1) Every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, made yearly disclosures to the company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company .

(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 holding 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.”

SAST Regulations, 2011

“30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-

first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, 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 end of each financial year to, -

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.”

4. We have heard both the learned counsel for the parties at length and have perused pleadings and records.

5. It is an admitted position that Shri Benny Abraham, appellant no. 2 did not comply with the provisions of Regulation 30(1) and (2) read with Regulation 30(3) of the SAST Regulations, 2011 for the financial year ending March 31, 2012 within stipulated period and there was a delay of ten days in making such disclosures on one occasion. In the case of appellant no. 3, Ms. S. Subashini, it is noted that she did not comply with the provisions of Regulations 8(1) and 8(2) of the SAST Regulations, 1997 on two occasions i.e. for the year ending March 31, 2003 and the year ending March 31, 2005 within the time limit prescribed by the Regulations. There was a delay of 38 and 5 days respectively in making the required disclosures during years 2003 and 2005. Similarly, the appellant no. 1 i.e. the company failed to comply with the provisions of Regulation 8(3) of the SAST Regulations, 1997 on one occasion for the year 2003 in as much as there was a delay of 30 days.

6. It is, thus, evident that Mr. Benny Abraham was required to disclose his aggregate shareholding to the company within seven working days from the 31st day of March to the company as well as to the concerned Stock Exchanges where the shares of the said company were listed. He undoubtedly failed to do so within the stipulated time. Ms. S. Subashini was also required to make disclosures of the number and percentage of shares and voting rights within 21 days from the financial year ending March 31 to the company as per the provisions of Regulations 8(1) and 8(2) of the SAST Regulations, 1997. She also failed to do so. In the same manner the company was required to make yearly disclosures within thirty days from the financial year ending March 31 to all the concerned stock exchanges alongwith changes, if any, in respect of the holdings of the persons referred to in the sub-regulation (1) of Regulation 8. Therefore, the meager penalty of ₹ 2 lac each on appellant nos. 1 & 2 and ₹ 2.5 lac on appellant no. 3 cannot be said to be unreasonable on the ground of proportionality as contended by the learned counsel for the appellants. The principle of proportionality would come to the rescue of an appellant only when the penalty sought to be imposed by SEBI is highly, and rather shockingly, disproportionate to the gravity, nature and extent of the violation involved in a given case, including any illegal profits which might have been earned by a person as a result of such violation or any loss which might have been caused to the innocent investors directly due to such violation.

7. Similarly, the contention of the appellants that the lapses / delay in compliance with the disclosures norms were due to inadvertence or they

were unintentional, therefore, cannot be accepted. Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same.

8. In view of the abovesaid, the appeal is dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

11.08.2014
Prepared & Compared by
PTM