

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 04.08.2017

Appeal No. 188 of 2016

Anil B. Vedmehta,
Dariyalal CHS Ltd., 3 Silversand,
Juhu Tara Road,
Mumbai- 400 049

...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

Dr. S. K. Jain, Practicing Company Secretary for the Appellant.

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

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

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on 05.04.2016. By the said order the promoter group of Mobile Telecommunications Limited (“Target Company” for convenience) which includes the appellant is directed to make public announcement to acquire the shares of the Target Company in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations,

2011 (“2011 Regulations” for short) and pay the consideration amount with interest at the rate of 10% per annum from 07.06.2013 to the date of payment of consideration to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

2. Facts relevant for the purposes of the present appeal are as follows:-

- a) The appellant is Promoter/ Chairman/ Managing Director of the Target Company.
- b) As on 31.03.2012 the shareholding of the then promoter group of the Target Company was 51.26% shares. On 20.03.2013 the appellant acquired certain shares through open market transactions and 32,10,000 shares through an off market transaction from his ex-wife Ms. Priyanka Mehta. As a result of the said acquisitions, the shareholding of the promoter group increased by 5.56% during the Financial Year 2012-2013, which triggered the requirement of making public announcement for an open offer under regulation 3(2) of the 2011 Regulations.
- c) As no open offer was made, show cause notice was issued to the promoter group including the appellant and after giving an opportunity of hearing the impugned order was passed on 05.04.2016 directing

the promoter group to make an open offer in terms of the 2011 Regulations and also interest as stated hereinabove.

3. Mr. S. K. Jain, Learned Authorised Representative of the appellant submitted that the impugned order is ex-facie erroneous and deserves to be quashed and set aside for the following reasons:-

- a) By a Gift deed dated 26.04.2011 Ms. Priyanka Mehta wife of the appellant who was also a part of the promoter group gifted 32,10,000 shares in favour of the appellant. By an order dated 05.08.2011 the Family Court at Bandra disposed of the Divorce Petition filed by the wife of the appellant in terms of the consent terms arrived at between Ms. Priyanka Mehta and the appellant wherein the obligation to transfer the shares in the name of Ms. Priyanka Mehta to the name of the appellant have also been recorded. In terms of the Gift deed dated 26.04.2011, it is submitted that 32,10,000 shares were actually transferred to the name of the appellant on 20.03.2013. Since the transfer of the shares was between the promoter wife and promoter husband it was an inter se transfer between the promoters and, in such a case, open offer obligation contained in the 2011 Regulations are exempted and therefore the promoters including the appellant could not be

directed to make an open offer. Moreover, the WTM of SEBI failed to consider the consent order passed by the Family Court at Bandra on 05.08.2011 wherein the above facts are recorded. Accordingly, it is submitted that the impugned order is liable to be quashed and set aside.

- b) Even though Ms. Priyanka Mehta, ceased to be the wife of the appellant pursuant to the decree of Divorce granted by the Family Court at Bandra on 05.08.2011 Ms. Priyanka Mehta continued to be a promoter of the Target Company and therefore acquisition of 32,10,000 shares by the appellant from his ex-wife being a transfer from one promoter to another, the WTM of SEBI is not justified in holding that on account of above transfer, open offer obligation contained in the 2011 Regulations got triggered.

4. We see no merit in the above contentions.

5. Argument of the appellant that 32,10,000 shares of the Target Company were transferred by the ex-wife to the appellant on 20.03.2013 pursuant to the Gift deed dated 26.04.2011 was not the case put forth by the appellant before the WTM of SEBI. Neither in the affidavit in reply to the initial show cause notice nor in the Memorandum of Appeal the appellant has pleaded that acquisition of 32,10,000 shares of the Target Company on 20.03.2013 was pursuant to the Gift deed dated 26.04.2011.

Thus, the appellant is not justified in introducing an altogether new case by annexing a copy of the alleged Gift deed to the Memorandum of Appeal. Argument advanced on behalf of the appellant that a copy of the Gift deed dated 26.04.2011 was furnished to the WTM of SEBI after the conclusion of the argument cannot be accepted, because, if the Gift deed was furnished to the WTM of SEBI and the same was not considered in the impugned order, then the appellant would have made a grievance to that effect in the Memorandum of Appeal. Very fact that no such grievance is made in the Memorandum of Appeal clearly falsifies the case sought to be put forth by the appellant before this Tribunal. In any event, even the consent terms filed in the Divorce petition filed before the Family Court do not indicate that the appellant was entitled to receive 32,10,000 shares from Ms. Priyanka Mehta under the Gift deed dated 26.04.2011.

6. Similarly, argument of the appellant that even after the decree of Divorce was granted by the Family Court on 05.08.2011, Ms. Priyanka Mehta continued to be the promoter of the Target Company, is without any merit, because, in the shareholding pattern declared by the Target Company for the quarter ended December 2012 and March 2013, Ms. Priyanka Mehta, is not declared as a promoter of the Target Company. Moreover, it is not the case of the appellant that the above declaration made by the Target Company was erroneous. Thus, it is apparent that the date on which the appellant acquired 32,10,000 shares of the Target Company from Ms. Priyanka Mehta, even according to the Target Company in which the appellant is the Chairman /Managing

Director/, Ms. Priyanka Mehta was not a promoter of the Target Company. In such a case, the WTM of SEBI is justified in rejecting the contention of the appellant that acquisition of 32,10,000 shares of Target Company by the appellant was the inter se transfer between the promoters.

7. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

04.08.2017
Prepared & Compared By: PK