

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 10.04.2018**

**Date of Decision : 13.04.2018**

**Appeal No. 231 of 2017**

1. Kunal Pradeep Savla
2. Pradeep V Savla,
3. Nirmala Pradeep Savla

1B-181, Kalpataru,  
L.B.S. Road, Ghatkopar West,  
Mumbai- 400 086

...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. G. T. Mestha, Advocate for Appellants.

Mr. Sagar Ghogare, Advocate with Mr. Santanu Mitra and Mr. Anubhav Ghosh, Advocates i/b Desai & Diwanji for the Respondent.

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

Per: Justice J.P. Devadhar

1. Appellants are aggrieved by the order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI for short) on 20.07.2017. By the said order penalty of ₹ 7 lac is imposed under Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) on the appellants and two other

persons for violating regulation 11(2) read with regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“Takeover Regulations, 1997 for convenience) and regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and the appellants as also the other two persons are directed to pay the penalty of ₹ 7 lac jointly and severally.

2. It is not in dispute that on account of Shri Kunal Savla (Appellant No. 1) along with other persons, namely, Shri Pradeep Savla, Ms. Nirmala Savla (Appellant Nos. 2 & 3) and Sri Rajesh Dedhia and Vantage Corporate Services Limited forming part of promoter/ promoter group of Hansu Controls Limited (“Company” for convenience) acquiring 43,600 shares of the company by way of off-market transactions on 28.11.2002, the collective shareholding of the promoter group of the appellants crossed the threshold limit of 75%, as a result whereof, open offer obligations contained in Regulation 11(2) of the Takeover Regulations, 1997 got triggered. Accordingly, the appellants were required to make public announcement of open offer within the time stipulated under regulation 14(1) of the Takeover Regulations, 1997.

3. As the appellants failed to make open offer within the stipulated time, penalty proceedings were initiated against the appellants and the ‘persons acting in concert’ (PACs) with them and by the impugned order dated 20.07.2017 the AO of SEBI has imposed penalty of ₹ 7 lac under Section 15H(ii) of SEBI Act for violating regulation 11(2) read with

regulation 14(1) of the Takeover Regulations, 1997. Challenging the aforesaid order the present appeal is filed.

4. Mr. Mestha learned counsel appearing on behalf of the appellants fairly stated that there was failure on part of the appellants to make an open offer on acquisition of 43,600 shares on 28.11.2002. However, he submitted that imposition of exorbitant penalty of ₹ 7 lac is unjustified for the following reasons:-

- a) *In the present case show cause notice has been issued to the appellants after delay of more than eight years from the date on which SEBI came to know about the violations committed by the appellants. Admittedly, SEBI came to know about the violations committed by the appellants from the letter of offer filed by third parties on 12.06.2008, whereas, the show cause notice has been issued to the appellants belatedly on 30.06.2016. Neither the appellants were given any document before issuing show cause notice, nor any reason is given in the impugned order for issuing show cause notice belatedly after 8 years.*
- b) *No grievance is made by any investor or shareholders of the company, that failure to make open offer has caused prejudice to them.*

- c) *Since 2008, the appellants have severed their connection with the company and Appellant Nos. 2 & 3 have also resigned as Directors of the Company.*
- d) *Relying on a decision of this Tribunal in case of Stockholdings Limited V/s SEBI (Appeal No. 114 of 2012 decided on 27.08.2013), it is submitted that in view of delay of 8 years in initiating proceedings penalty imposed against the appellants is liable to be quashed and set aside.*

5. We see no merit in the above contentions.

6. Fact that the appellants by failing to make open offer within the stipulated time have violated regulation 11(2) read with regulation 14(1) of the Takeover Regulations, 1997 is not in dispute.

7. Obligation cast on the appellants to make open offer was not dependent on SEBI acquiring knowledge about the violation or dependent on SEBI initiating action against the appellants for non-compliance of the open offer obligations. In other words, delay on part of SEBI in initiating action did not absolve appellants from their obligation to make open offer. Therefore, the appellants who are guilty of violating the open offer obligations contained in the Takeover Regulations, 1997 cannot escape penal liability by alleging that there is delay on part of SEBI in initiating action against the appellants for non-compliance of their open offer obligations.

8. Reliance placed by counsel for appellants on a decision of this Tribunal in case of HB Stockholdings Ltd. (Supra) is misplaced. This Tribunal in case of Mr. Ravi Mohan & Ors. V/s SEBI (Appeal No. 97 of 2014 decided on 16.12.2015) has distinguished the decision of this Tribunal in case of HB Stockholdings Ltd. (Supra) and has held that in the absence of any specific provision contained in the Takeover Regulations, 1997 for issuing a show cause notice, fact that there is delay on part of SEBI in initiating proceeding for the violations committed, cannot be a ground to quash the penalty imposed for such violations.

9. Argument of the appellants that the penalty imposed is exorbitant or excessive is also without any merit. Penalty imposable under Section 15H(ii) of SEBI Act for violating the open offer obligations contained in Takeover Regulations, 1997 is up to ₹ 25 crore, however, the AO after taking into consideration all mitigating factors has imposed penalty of ₹ 7 lac and directed that the said penalty be paid by the appellants and other two PACs jointly and severally, which cannot be said to be unreasonable or excessive.

10. 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