

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of Decision: 11/01/2018

**Misc. Application No.303 of 2017
And
Appeal No.331 of 2017**

Jesingbhai Badarmal Parikh
21, Dhanushya Society,
New Sama Road,
Opp. Chanakyapuri,
Vadodara,
Gujarat – 390 008.

... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

... Respondent

None for the Appellant.

Mr. Vishal Kanade a/w Mr. Rohan B. Agrawal, Advocates i/b MDP &
Partners for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

Misc. Application No.303 of 2017:

1. There is delay of 30 days in filing this appeal. For the reasons stated in the Misc. Application, the delay is condoned. The Misc. Application is disposed of accordingly.

Appeal No.331 of 2017:

1. This appeal is filed by the appellant-in-person to challenge the order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on 31st August, 2017. By the said order, penalty of Rs. 6 lakh is imposed on the appellant under Section 15A(b) of the SEBI Act for violating regulation 29(1) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations, 2011") and regulation 13(1) and regulation 13(4A) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations" for short).

2. The appellant has sent a letter dated 8/1/2018 wherein he has stated that on account of ill health he is unable to attend the hearing and that the appeal be disposed of on the basis of the averments made in the Memorandum of Appeal. Accordingly, the appeal is taken up for hearing in the absence of anyone appearing on behalf of the appellant.

3. In the impugned order it is held that for the quarter ending on March 31, 2012 the shareholding of the appellant in Minal Industries Limited ("the company" for convenience) was nil and in the quarter ending on June, 2012, the shareholding of the appellant in the company was 3,89,92,000 shares that is, 20.32% of the total shareholding of the company. As the appellant failed to make disclosures under the Takeover Regulations, 2011 and PIT Regulations, show-cause notice was issued to the appellant and after hearing the authorized representative of the appellant, the AO has passed the impugned order on 31st August, 2017 imposing penalty of Rs.6 lakh under Section

15A(b) of SEBI Act for violating the Takeover Regulations, 2011 and PIT Regulations.

4. In the Memorandum of Appeal, the appellant has advanced two arguments. Firstly, it is contended that the appellant had not purchased any shares of the company and it is only because appellant was shareholder of C. Mahendra Jewels Pvt. Ltd. which merged with the company, appellant received shares of the company on account of merger. In such a case, it is submitted that neither the appellant can be said to have acquired shares of the company nor can it be said that the disclosure obligations under the Takeover Regulations, 2011 and PIT Regulations get triggered. Secondly, it is contended that the appellant who is 84 years old is suffering from ill-health and as such could not monitor his shareholding on day to day basis and hence penalty of Rs.6 lakh imposed on the appellant being exorbitant and excessive be quashed and set aside.

5. We see no merit in the above contentions.

6. First argument of the appellant that the shares of the company acquired on account of merger do not trigger disclosure obligations prescribed under the Takeover Regulations, 2011 and PIT Regulations, is without any merit, because, this Tribunal in the case of Akriti Global Traders Ltd. vs. SEBI (Appeal No.78 of 2014 decided on 30/9/2014) has held that the disclosure obligations get triggered even when the shares are acquired due to allotment of shares on amalgamation of the companies. Thus, the first argument advanced by the appellant is without any merit.

7. Second argument of the appellant that he is 84 years old and on account of ill-health he could not monitor his shareholding on day to day

basis and, therefore, lenient view ought to have been taken in the matter. In para 6.1 of the memo of appeal, the appellant has stated that he is the promoter of Minal Industries Ltd. Being a promoter of the company, the appellant ought to have known that if his shareholding in the company was nil in the quarter ending on March 31, 2012 and in the quarter ending in June, 2012, he received 3,89,92,000 shares of the company which constituted 20.32% of the total shareholding, it would attract disclosure obligations under the Takeover Regulations, 2011 and PIT Regulations. Thus, the appellant who is promoter of the company cannot feign ignorance about his obligations under the Takeover Regulations, 2011 and the PIT Regulations, especially when shares are acquired to the extent of 20.32% of the entire shareholding. In any event, as against the maximum penalty of Rs.1 crore imposable under Section 15A(b) of the SEBI Act for such violations, the AO after considering all mitigating factors has imposed penalty of Rs.6 lakh which cannot be said to be exorbitant or excessive.

8. In these circumstances, we see no reason to interfere with the impugned order.

9. Appeal is accordingly dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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