

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 21.02.2018**

**Date of Decision : 06.03.2018**

**Appeal No. 368 of 2017**

1. M/s. Shreeyash Industries Ltd.  
(Now known as Nutricircle Ltd.)  
5-8-272, Flat No. 201,  
Ayeshya Residency,  
Opp. City Convention Centre,  
Public Garden Road, Nampally,  
Hyderabad – 500 002.
2. Manoj Kumar Saraogi  
Plot No. 26, Anand, Banjara Colony  
Road No. 12, Banjara Hills,  
Hyderabad – 500 034.
3. Sunil Kumar Agarwal  
15B, Santosh Nagar,  
Street No. 4, Old Hyderabad,  
Telangana – 500 059.

.....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. Ramesh Mishra, Practicing Company Secretary with Mr. Loknath Mishra, Advocate for the Appellant.

Mr. Aditya Mehta, Advocate with Ms. Aashta Vidhi, Advocate i/b Dave & Girish & Co. for the Respondent.

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

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the order passed by the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) on October 31, 2017. By the said order varying amounts of monetary penalty has been imposed against the three appellants for violation of Clause 36(7) of Listing Agreement read with section 21 of

Securities Contract (Regulations) Act, 1956 ('SCRA' for short) and Clause 2.1 of Schedule II of Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short).

2. Appellant No. 1 is a company incorporated in June, 1993, originally as Shreeyash Industries Ltd and subsequently renamed as Nutricircle Limited. This company, engaged in the business of manufacturing, trading and export of textiles and garments is listed on the Bombay Stock Exchange Ltd. (BSE). Appellant No. 2 is the Managing Director of the company and Appellant No. 3 is the Compliance Officer.

3. The company had disclosed receipt of 4 major orders from different parties to the BSE on different dates as follows:-

Date of Order	Name of Buyer	Order Value (Rs in Crores)	Date of Intimation to stock exchange
13.02.2012	M/s Trade Point, New Delhi	Rs. 6.96	14.02.2012
20.06.2012	M/s Colombo Trade, Italy	Rs. 21.30	25.06.2012
06.07.2012	M/s Silver Solution, South Africa	Rs. 23.92	09.07.2012
16.07.2012	Hapan Trade, South Africa	Rs. 24	17.07.2012

However, the company could not execute these orders and the said information was communicated to the BSE only on November 14, 2014 after a lapse of more than two years. The very fact that bagging the orders had been disclosed promptly by the company to the BSE makes it clear that the appellants were aware that the said information was price sensitive but still failed to disclose non-execution of those orders within the stipulated time.

4. We have heard the Learned Counsel Shri Ramesh Mishra and Shri Aditya Mehta appearing on behalf of the appellants and for SEBI respectively and perused the records placed before us.

5. We find no merit in the arguments advanced by the Learned Counsel for appellants. Submission that investigation of SEBI was initiated on a complaint received from one Mr. Anil Kumar Sharma, copy of which was

not given to the appellants was prejudicial to appellants has no merit since SEBI did a full investigation and the impugned order has been passed after following the due process like issue of show cause notice to the appellants and providing opportunity for reply and personal hearing etc.

6. Argument that appellants made sincere efforts to honour the commitments under 4 orders received by them and reported to the BSE but could not execute it because their efforts to acquire 3 other companies, particularly, SMM Paper Marketing Private Ltd. ('SMM' for short) as the company did not have enough working capital, plants, machinery and manpower to execute the order does not have merit since the company itself knew on July 10, 2012 that its efforts in acquiring SMM was not materializing. The order bagged on July 16, 2012 and informed to BSE on July 17, 2012 is subsequent to this date. In respect of the orders bagged on June 20, 2012 and on July 6, 2012 the execution dates communicated to BSE were August 30, 2012 and August 5, 2012 respectively. These short periods provided for executing the orders indicate that the company could not have honoured the commitments to start with, given that admittedly its capacity to honour the commitments was dependent on acquiring SMM. The argument that the company's efforts to acquire SMM failed and hence could not execute the orders was not taken into account by SEBI in the impugned order has no merit as the impugned order is not concerned with the company's execution of the contract or otherwise but with the correct disclosures relating to price sensitive information such as acquiring orders and its implementation or non-implementation. When the company itself was not aware that its capacity enhancing efforts by acquiring SMM was not materializing, which was also intimated to the BSE on July 12, 2012 it could have disclosed its inability to execute the orders bagged from 4 different parties within the stipulated time frame.

7. It is on record that SMM informed the appellant vide letter dated July 10, 2012 that the proposed acquisition of the former by the latter is not taking place in view of various reasons indicated in that letter of which the appellant was fully aware of the same. However, the appellant made the 4<sup>th</sup> announcement relating to bagging of another order dated July 16, 2012 (informed to BSE on July 17, 2012). It is also on record that the appellant itself had written to various parties on August 14, 2012 that they were unable to supply the material as per the order. Thus, by August 14, 2012 appellant was fully aware of their inability to enhance their capacity by acquiring SMM etc. and had already informed to the parties that various purchase orders cannot be honoured. The argument that the appellant has informed BSE about non-execution of the orders in time does not have any merit when in fact BSE was informed only on November 14, 2014. So the findings in the impugned order that there was a delay of more than two years in disclosing non-execution of the 4 orders received during February – July 2012 and promptly informed to the BSE within a few days of each cannot be faulted.

8. Argument that these announcements relating to bagging of 4 orders had no impact on the market or price of the scrip has no merit since disclosures have to be made as per rules irrespective of whether post facto such disclosures make any impact on the market or not. This is particularly important as it is impossible to foresee the impact of such disclosures. In any case we note from the impugned order that two of the announcements did make some impact on the price of the scrip.

9. In view of the above reasons findings in the impugned order that the company and its managing director have violated Clause 36(7) of Listing Agreement read with section 21 of SCRA and Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations and Appellant No. 3 have failed to

disclose non-execution of the order bagged by the company and violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT Regulations cannot be faulted.

10. The penalty imposable under Section 23A(a) of SCRA is not less than Rs.1 lac for each day during which such failure continues subject to a maximum of Rs.1 crore for each such failure. Similarly, under Section 15HB of SEBI Act the penalty imposable shall not be less than Rs.1 lac which may extend to Rs.1 crore. The AO has imposed a penalty of only Rs.7 lac, Rs.5 lac and Rs.2 lac, respectively on Appellant Nos. 1, 2 and 3 and that too in respect of four late disclosures, each one after 2 years, after considering the mitigating factors under Section 23J of SCRA and 15J of SEBI Act. Accordingly, the penalty imposed is not unreasonable by any yardstick.

11. Accordingly, appeal is dismissed with no order as to costs.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

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

06.03.2018

Prepared and compared by:msb