

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 11.06.2018

Misc. Application No. 124 of 2018
And
Appeal No. 167 of 2018

Amit Shantilal Mehta
Shree Krishna Kunj,
13/3, Nivedita Nagar,
Behind Telephone Exchange, Raiya Road,
Rajkot, Gujarat- 360 007

...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

Mr. J.J. Bhatt, Advocate with Ms. Hiral Shah and Ms. Rinku Valanju,
Advocates i/b R.V. Legal for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Chirag Bhavsar, Advocate i/b
MDP & Partners for the Respondent.

WITH
Misc. Application No. 166 of 2018
And
Appeal No. 196 of 2018

Shailesh Mulraj Ved
45, G.K. Bhatia Building,
Room No. 17, 2nd Floor,
Vithaldas Road,
Mumbai- 400 002

...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

Mr. J.J. Bhatt, Advocate with Ms. Hiral Shah and Ms. Rinku Valanju, Advocates i/b R.V. Legal for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP & Partners for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

Misc. Application Nos. 124 & 166 of 2018

There is delay of 7 & 18 days respectively in filing the above two appeals. By these Miscellaneous Applications, applicants seek condonation of the said delay. For the reasons stated in the respective applications, the delay is condoned.

Miscellaneous Applications are disposed of accordingly.

Appeal Nos. 167 of 2018 & 196 of 2018

1. These two appeals are filed to challenge the common order passed by the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) on 26.03. 2018. By that order penalty of ₹ 20 lac is imposed on Shailesh Mulraj Ved (Appellant in Appeal No. 196 of 2018) and penalty of ₹ 10 lac is imposed on Amit Shantilal Mehta (Appellant in Appeal No. 167 of 2018) under section 15 A(a) of SEBI Act, 1992 for violating section 11(C)(2) and 11C(3) of SEBI Act, 1992. Since facts are common both these appeals are heard together and disposed of by this common decision.

2. Facts relevant for disposal of these two appeals are as follows:-

- a) Pursuant to an order passed by this Tribunal on 06.07.2011 it was obligatory on part of SEBI to reinvestigate the issue relating to the source of funds received in the bank account of Shailesh Mulraj Ved ('Shailesh' for short) which were used by him for trading in the scrip of Nandan Exim Limited. The said direction was issued with a view to ensure that tainted/ unaccounted money does not come into the securities market. As per that order, after getting full information from Shailesh, SEBI was at liberty to proceed further in the matter.
- b) Accordingly, by a letter dated 25.07.2011 Shailesh was called upon to furnish particulars contained in the summons which was earlier issued to him on 5.11.2009.
- c) By a letter dated 26.09. 2011 Shailesh submitted that during the period from 5.10.2006 to 15.12.2006 he had received ₹ 332.8 lakh from the sources set out there in which reads thus:-

Sr. No.	Amount in lakh (Rs.)	Source of money (Name & Address)	Purpose / Reason
1	125.5	Amit S. Mehta, Shree Krishna Kunj, Nivedita Nagar CHS, Near Tulsi Baug, Rajkot.	Sale of land at Viramgaum, Ahmedabad
2	74.8	Krishna Capshares Pvt. Ltd. 7A/B, Panchratna, Raiya Road, Rajkot – 360001.	Loan
3	75	Avani Biotech Ltd. Shop No. 3, Bandhutwa CHS, Vakola Bridge, Santacruz (E), Mumbai – 400055.	Loan
4	30	Sincere Equity Services Pvt. Ltd.	Loan
5	13	Amrut Securities Ltd. 822, Star Chambers, Harihar Chawk, Rajkot.	Loan
6	14.5	K.D. Jewellers (Rs. 8.5 Lakh) and Nilesh Pandya (Rs. 6 Lakh)	Sale of Jewellery
Total	332.8		

- d) According to Shailesh, out of ₹ 332.8 lakh, ₹ 269.8 lakh was received through banking channels and balance amount of ₹ 63 lakh was deposited in cash. Out of ₹ 63 lakh deposited in cash, Shailesh claimed that he had received ₹ 48.5 lakh from Amit Shantilal Mehta ('Amit' for short), who is appellant in Appeal No. 167 of 2018, for sale of land at Viramgaum, Ahmedabad and ₹ 14.5 lakh was received from Nilesh Pandya and K.D. Jewellers on account of jewellery sold to them. According to Shailesh, the Viramgaum land was sold by him to Amit on November 16, 2006 for a consideration of ₹ 125.5 lakh.
- e) By a letter dated 27.07.2011 Shailesh and by summons dated 18.01. 2016 and reminder letter dated 01.02.2016 Amit were called upon to produce documentary evidence in support of the purported sale of land at Viramgaum by Shailesh to Amit. However, both of them failed to furnish documentary evidence in that behalf.
- f) Investigation carried out by SEBI at the office of Sub Registrar, Viramgaum revealed that no such land at Viramgaum was sold by Shailesh to Amit.
- g) Investigation carried out by SEBI revealed that the total income of Shailesh as per the Income Tax return for Assessment Year 2005-2006 was ₹ 1.08 lakh,

whereas during that period Shailesh had traded in the securities market with cash deposited in his bank account to the tune of ₹ 63 lakh which was beyond his known source of income. Similarly, during the said period annual income of Amit was in the range of ₹ 60,000 to ₹ 1,20,000, whereas, he had given cheque amount of ₹ 77 lakh and cash amount of ₹ 48.5 lakh to Shailesh to but failed to disclose the source from where he got the said amounts.

3. In view of the fact that both appellants inspite of repeated reminders failed to furnish requisite information called for, penalty proceedings were initiated and by the impugned order penalty of ₹ 20 lakh has been imposed on Shailesh and penalty of ₹10 lakh has imposed on Amit under Section 15A(a) of SEBI Act for violating Section 11C (2) & (3) of SEBI Act.

4. Penalty of ₹ 20 lakh is imposed on Shailesh for the following reasons:-

- a) Shailesh had falsely stated that he had received ₹ 125.5 lakh from Amit on account of sale of land at Viramgaum, Ahmedabad to Amit, when in fact the records maintained in the office of Sub-Registrar at Viramgaum does not show sale of any land by Shailesh to Amit.
- b) Shailesh claimed to have taken loan of ₹ 75 lakh from Avani Biotech Limited but failed to produce any loan

document from Avani Biotech Limited. However, from the bank account details it was seen Shailesh received ₹ 45 lakh from Laxmi Udyog Limited on 22.11.2006 and ₹ 30 lakh from Tarang Suppliers Pvt. Ltd. on 01.12.2006. Thus, the particulars furnished by Shailesh were falsified by his bank account details.

- c) By summonses dated 09.03.2015 and 12.03.2015 Shailesh was called upon to give details of the interest paid and the mode and the manner in which the above loan was repaid. However, Shailesh failed to provide any information in that behalf.
- d) Shailesh claimed to have received ₹ 14.5 lakh from Nilesh Pandya and K.D. Jewellers on account of jewellery sold to them. To ascertain the authenticity of the bills submitted which appeared to be fictitious, summons dated 27.11.2015 and reminder dated 03.12.2015 was issued to Shailesh calling upon him to produce complete mailing address, phone/mobile number/ PAN and Bank Account details of Nilesh Pandya and K.D. Jewellers. Even after taking one month time to furnish the said particulars, Shailesh has not furnished any such particulars. In these circumstances, decision of the AO that Shailesh not only failed to furnish requisite particulars but also furnished false particulars in violation of Section 11C (2) & (3) of SEBI Act cannot be faulted.

5. Similarly, Amit by his letter dated 10.02.2016 had confirmed that he had made cash payment of ₹ 48.5 lakh to Shailesh. In the Memo of Appeal, Amit has stated on oath that he had paid ₹ 77 lakh by cheque and ₹ 48 lakh by cash to Shailesh for acquiring the land at Viramgaum from Shailesh. As noted earlier, records maintained by the office of Sub-Registrar at Viramgaum does not show any sale of land by Shailesh to Amit. Thus, it is apparent that Amit has falsely stated that he had made payments to Shailesh for acquiring the land. Apart from the above, Amit has not disclosed the source from where he got ₹ 125 lakh when his annual income was between ₹ 60,000/- to 1,20,000/-. In these circumstances, decision of the AO that Amit not only made false statement but only failed to requisite particulars in gross violation of Section 11C (2) & (3) of SEBI Act cannot be faulted.

6. Argument that in view of inordinate delay in initiating proceedings, Amit is unable to recollect the source from where he got ₹ 125 lakh for purchasing the land from Shailesh, clearly shows that even now he is not willing to come clean and disclose the truth. It is impossible to believe that Amit whose annual income was between ₹ 60,000/- to ₹ 1,20,000/- is unable to recollect from where he got ₹ 125 lakh and gave that amount to Shailesh for acquiring land at Viramgaum, when in fact no such land is acquired by him. Although, Amit has not actually traded in the scrip of Nandan Exim Limited, very fact that he is not disclosing the source from where he got ₹ 125 lakh and the very fact that he had falsely stated that the said amounts were given by him to Shailesh for acquiring land at Viramgaum is sufficient to hold that Amit is guilty of violating Section 11C (2) & (3) of SEBI Act. In

these circumstances, imposing penalty of ₹ 10 lakh on Amit for such violations cannot be faulted.

7. Strong reliance was placed by counsel for the appellants on the decision of this Tribunal in case of Indivar Traders Pvt. Ltd. V/s SEBI (Appeal No. 378 of 2015 decided on 09.09.2015), decision in the case of Mr. Ashwin Bhandari V/s SEBI (Appeal No. 61 of 2018 decided on 21.03.2018) and an order passed by the AO of SEBI on 08.09.2011 in case of Ramesh Bhai Parmar in support of the contention that in the present case, imposition of penalty is either unwarranted or deserves to be reduced substantially.

8. In our opinion, none of the aforesaid decisions are comparable to the facts of present case. As noted earlier, apart from failing to furnish various particulars including the source of receipt of funds inspite of repeated reminders, appellants have made false statements, which clearly shows the mindset of the appellants in subverting the efforts made by SEBI to find out the truth.

9. Penalty imposable under Section 15A(a) of SEBI Act for violating Section 11C (2) & (3) of SEBI Act is not less than ₹ 1 lakh but which may extend to ₹ 1 lakh each day during such failure continue subject to maximum to ₹ 1 crore. As the appellants have failed to furnish particulars till date, penalty imposable would be up to ₹ 1 crore against each appellant. However, after considering all mitigating factors the AO of SEBI has imposed penalty of ₹ 20 lakh on Shailesh and ₹ 10 lakh on Amit which cannot be said to be excessive of unreasonable.

10. In view of the fact that the appellants even now are not willing to furnish requisite particulars including the source of the money received by them and are not willing to disclose the circumstances under which they made the false statements, we dismiss both appeals with costs quantified at ₹ 1 lakh to be paid by each appellant to SEBI within four weeks from today.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

11.06.2018
Prepared & Compared By: PK