

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 15.05.2019

Appeal No. 43 of 2018

1. RV Lifestyle Limited
(erstwhile Vasparrr Shelter Limited)
Flat No. G-002, Ground Floor,
Pushp Vinod 2, A Wing,
S.V. Road, Borivali (West),
Mumbai – 400 092.
2. Vas Educomp Private Limited
(erstwhile Vasparrr Trading Pvt. Ltd.)
401, Court Chambers, S.V. Road,
Borivali (West),
Mumbai – 400 092.
3. Pushpanjali Drums Private Limited
402, Court Chambers, S.V. Road,
Borivali (West),
Mumbai – 400 092.
4. Yashraj Containeurs Limited
Plot No. 757/758, Jwala Estate,
2nd Floor, Soni Wadi,
S.V. Road, Borivali (West),
Mumbai – 400 092.
5. Precision Containeurs Limited
Plot No. 757/758, Jwala Estate,
2nd Floor, Soni Wadi,
S.V. Road, Borivali (West),
Mumbai – 400 092.
6. Raj J. Valia
401, Court Chambers, S.V. Road,
Borivali (West),
Mumbai – 400 092.

7. Sangeeta J. Valia
C/24, Pushpa Park,
S.V. Road, Borivali (West),
Mumbai – 400 092.
8. Vinodrai V. Valia
C/22, Pushpa Park,
S.V. Road, Borivali (West),
Mumbai – 400 092.
9. Madhav J. Valia
401, Court Chambers, S.V. Road,
Borivali (West),
Mumbai – 400 092.
10. Jayesh V. Valia
C/22, Pushpa Park,
S.V. Road, Borivali (West),
Mumbai – 400 092.
11. Jayesh V. Valia (HUF)
C/22, Pushpa Park,
S.V. Road, Borivali (West),
Mumbai – 400 092. ...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. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh,
Ms. Ankita Roy and Mr. Ashish Venugopal, Advocate for
Appellants.

Mr. Mustafa Doctor, Senior Advocate i/b Legasis Partners for
the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala (Oral)

1. The present appeal has been filed questioning the validity of the order dated December 29, 2017 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a monetary penalty of Rs. 1 crore under Section 15H(ii) of the SEBI Act, 1992. In addition to the aforesaid, a penalty of Rs. 2 lakh was imposed for non-disclosure under Section 15A(b) of the SEBI Act, 1992.

2. The appellants are all persons acting in concert and promoters of a listed company known as Vas Infrastructure Ltd. (hereafter referred to as the 'target company'). On April 6, 2011 the appellants acquired 2.19% shares in the target company pursuant to a conversion of their portion of warrants thereby increasing their shareholding from 53.85% to 56.04%. Since the shareholding of the appellants increased beyond 55%, it triggered Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'Takeover Regulation, 1997'). On becoming aware of such increase in its shareholding, the appellants' suo motu reduced their shareholding to come to the original / initial level

of 53.85% i.e. below the permissible threshold limit of 55%. In spite of reducing it, a show cause notice was issued alleging that the appellants had crossed the threshold limit of 55% and, thus, violated Section 11 of the Takeover Regulations, 1997. The AO of SEBI after considering all aspects of the matter did not direct the appellants to make an open offer but, however, imposed a monetary penalty of Rs. 1 crore. The appellants being aggrieved by the imposition of the monetary penalty has filed the present appeal.

3. We have heard Shri Somasekhar Sundaresan, the learned counsel along with Mr. Paras Parekh, Ms. Ankita Roy and Mr. Ashish Venugopal for the appellants and Shri Mustafa Doctor, the learned senior counsel for the respondent.

4. The increase in the shareholding beyond 55% is admitted but what was contended that the appellants suo motu reduced their shareholding as a remedial measure, and, in any case, the appellants were themselves promoters of the target company and therefore this marginal increase of their shareholding beyond 55% did not result in any change in control of the target company nor brought any loss to the investors. It was further contended that the conversion of warrants was through a

preferential allotment and all the facts of the issuance of the warrants were in the public domain and thus the marginal increase beyond 55% was fortuitous and inadvertent, and, in any case, the excess shares were sold and thus the appellants effected a remedial measures on their own accord. It was further submitted that some of the promoters holding warrants to the tune of about 25% of the said warrants did not go for conversion. If all of them had converted the warrants, the appellants would not have crossed the threshold of 55% of the expanded share capital. It was thus urged that the imposition of penalty was very severe and unreasonable. Learned counsel for the appellants also placed reliance upon a decision of an Adjudicating Officer of SEBI in the case of *ISG Traders Limited* decided on March 8, 2017, wherein, in a similar situation a penalty of Rs. 10 lakh was only imposed.

5. On the other hand, the learned senior counsel for the respondent contended that the imposition of penalty was appropriate considering that a maximum penalty upto Rs. 25 crore could have been imposed and, thus, the imposition of penalty of Rs. 1 crore was justified in the circumstances of the case.

6. Having heard the learned counsel for the parties, we find that AO of SEBI had found that it could not be ascertained that there was any disproportionate gain or unfair advantage made by the appellants nor could it be ascertained with regard to the loss caused to the investors as a result of the failure on the part of the appellants to make a public announcement within the time required. We also find that the allotment of the shares by the target company to the appellants was made in accordance with resolution passed by the shareholders in its annual general meeting. Further there was no repetitive nature of the default made by the appellants. We also find that the appellants belong to the promoter group and even though there was a marginal increase in the individual shareholding of the appellants, there was no change in the management or control of the target company due to the increase in the shareholding of the appellants and the promoter's group. Further we find that the appellants after becoming aware of crossing the threshold limit of 55% took remedial measures and reduced its shareholding to less than 55%.

7. We find that the default is inadvertent, technical and, in any case, unintentional. The Supreme Court in *Hindustan Steel vs State of Orissa [(1969) 2 SCC 627]* held-

“whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

The Supreme Court also in ***Barjatiya Steel Industries vs Commissioner, Sales Tax (2008 11 SCC 617)*** held-

“where an authority has been conferred the discretionary jurisdiction to levy a penalty, by necessary implication, the authority may also chose not to levy a penalty.”

8. In the light of the aforesaid, we feel that in the given situation the imposition of penalty upon the appellants is excessive and disproportionate. The minimum penalty specified under Section 15H(ii) is Rs. 10 lakh to a maximum of Rs. 25 crore. This Tribunal, in appeal, apart from exercising the powers of the Board can also exercise powers to make such orders and given such directions as may be necessary or expedient to secure the ends of justice as specified under Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000. These powers have been conferred upon the Tribunal with a view to do

complete justice between the parties which is equitable in nature to be exercised to ensure justice between the parties or to prevent miscarriage of justice.

9. Consequently, for the reasons stated aforesaid, the appeal is partly allowed. The impugned order is modified and the penalty is reduced to Rs. 30 lakh which shall be paid by the appellants to the respondent within six weeks from today.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

15.05.2019

Prepared and compared by:msb