

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 02.03.2020

Appeal No. 138 of 2018

1. Mrs. Sangita Sethi
2. Mr. Sanjay B. Sethi HUF
3. Ms Soniya Sethi
4. Mr. Sudhir B. Sethi HUF
5. Mr. Sudhir B. Sethi
6. Mr. Sohil Sethi
7. Mr. Babulal Sethi
8. Mrs. Tara Sethi HUF
9. Mr. Babulal Sethi HUF
10. Mr. Sanjay Sethi

Address for the Appellant Nos. 1 to 10
133, Kanchan Bag,
Indore- 452 001

...Appellants

Versus

Securities and Exchange Board of India,
Mittal Court, B-Wing,
1st Floor, Nariman Point,
Mumbai- 400 021

...Respondent

Mr. Vinay Chauhan, Advocate with Mr. Kamal Agrawal, for the Appellants.

Mr. Abhiraj Arora, Advocate with Mr. Vivek Shah, Advocate i/b ELP 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 against the order of the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) dated February 28, 2018 imposing a penalty of ₹ 25 lakhs under Section 15H of the SEBI Act for violating the provisions of Regulation 3(1) and Regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2013 (“SAST Regulations” for convenience) for non-disclosure of acquisition of shares.

2. The appellants had crossed 25% of voting rights in the target company pursuant to the purchase of shares thereto triggering Regulation 3(1) and Regulation 3(3) of the SAST Regulations. Proceedings were initiated and, after considering the reply, the Whole Time Member (“WTM” for convenience) passed an order dated August 24, 2017 directing the appellants to make a public offer in terms of Regulation 13(2) of the SAST Regulations. Instead of complying with the order of the WTM and making a public announcement the appellants chose to file Appeal No. 304 of 2017 which was withdrawn on November 06, 2017 with liberty to file afresh. It transpires that a fresh Appeal No. 393 of 2017 was again filed which was again dismissed as withdrawn on February 02, 2018.

3. The appellants did not comply with the order of the WTM or the directions of this Tribunal. In the meanwhile, notices were issued by the AO initiating proceedings for non-disclosure of the acquisition of shares in violation of Regulation 3(1) and 3(3) of the SAST Regulations. The WTM after considering the reply passed the impugned order imposing penalty of ₹ 25 lakhs to be paid jointly and severally. The appellants being aggrieved have filed the present appeal.

4. This Tribunal in its order dated January 06, 2020 recorded that the open offer had not been made within the stipulated period. The default was admitted and accordingly the Tribunal directed the appellants to deposit the entire penalty that was levied and further direct that it would be open to the appellants to question the quantum of penalty at the time of hearing of the appeal. Pursuant to our order, the amount has been deposited.

5. Having heard the learned counsel for the parties, we find that the default committed by the appellants in violating Regulation 3(1) and 3(3) of the SAST Regulations is admitted. Regulation 3(1) of the Act provides that acquisition of voting rights exceeding 25% requires the acquirer to make a public announcement of an open offer for acquiring shares of the target

company. In the instant case, admittedly such public announcement of an open offer was not made before acquiring the shares.

6. Further in the instant case, the direction of the WTM to make an open offer within the stipulated period was also not complied with. After passing of the order of the Tribunal dated February 02, 2018 the appellants still did not make any effort to make an open offer. By making an offer now in January 2020 does not entitle the appellants to pray for mitigation of the quantum of penalty. The submission that the appellants are also paying interest at the rate of 10% per annum for the delay in making the open offer cannot be a ground to lessen the quantum of the penalty imposed. The law requires that if an open offer is not made within the stipulated period then penalty can be imposed. The AO was kind enough not to impose the maximum penalty of ₹ 25 crores under Section 15H of the Act but considering the circumstances has only imposed a penalty of ₹ 25 lakhs which is just and proper in the circumstances of the case. Reliance made by the appellants on the decision of this Tribunal in *Contact Consultancy Services Pvt. Ltd. vs. SEBI in Appeal No. 138 of 2004 decided on 17.11.2004* and on the

decision of SEBI in *Shri Radheyshyam Lahoti and Ors.* is distinguishable and not applicable in the instant case.

7. For the reasons stated aforesaid, the appeal lacks merit and is dismissed.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member