

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 16.03.2020

Misc. Application No. 396 of 2019
And
Appeal No. 315 of 2019

1. G P Shah Investment Private Limited
107, Pratik Chamber, Hathi Falia,
Zampa Bazar,
Surat- 395 003
2. B G Jain Investment Private Limited
101, Pratik Chamber, Hathi Falia,
Zampa Bazar,
Surat- 395 003
3. P B Jain Investment Private Limited
103, Pratik Chamber, Hathi Falia,
Zampa Bazar,
Surat- 395 003
4. Varju Investment Private Limited
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
5. Nakoda Syntex Private Limited
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
6. Shri Babulal G Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
7. M/s. B G Jain (HUF)
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
8. Ms. Pushpadevi B Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001

9. Shri Devendra B Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
10. Shri Kartik B. Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
11. Ms. Shilpa B. Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
12. Ms. Neetu D. Jain
101, Thakkar Palace, GhodDod Road,
Surat- 395 001
- ...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

Ms. Rishika Harish, Advocate with Mr. Jintendra Sharda,
Advocate i/b Mindspright Legal for 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)

Misc. Application No. 396 of 2019

1. For the reasons stated in the application the delay in filing
the appeal is condoned. The Misc. Application is allowed.

2. A Misc. Application on behalf of Appellant No. 11 has been filed today which is taken on record and is allowed.

3. The Appellant No. 11, Ms. Shilpa Mahavir Deshlahra, is permitted to withdraw the appeal and liberty is given to file afresh within two weeks from today.

4. We have heard the learned counsel for the parties. 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 March 13, 2019 imposing a penalty of ₹ 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“SAST Regulations, 2011” for convenience).

5. The facts leading to the filing of the appeal is, that the proceedings under Section 11 and 11B of the SEBI Act read with Regulation 3(2) of the SAST Regulations were initiated by the WTM which culminated in the following findings:-

“32., the consequence of breach provided in regulation 3(2) should follow unless in the

facts and circumstance of the case any other direction could be found in the interest of investors and the securities market. In this case, I have already rejected the contention that conversion of warrant in the financial year 2011-12 was beyond the control of noticees and it was due to the act or omission of the GDR holders. The noticees have further argued that the shareholders who are sought to be protected under the Takeover Regulation, 2011 had duly approved the proposal of issuance of warrants to the noticees. It is to be kept in mind that, by the special resolution, the shareholders of a company approve every proposal of preferential allotment. I note that the Takeover Regulations do not exempt acquisition through preferential allotment from obligation of public announcement and in case of acquisition of shares or voting rights or control through preferential allotment also the consequence is the same as in case of acquisition through any other mode. I find that the facts and circumstances of this case do not suggest any reason to deviate from the normal rule of requirement of making public announcement in terms of regulation 3(2) of the Takeover Regulations, 2011. I, therefore, find that the noticees should make open offer to the public shareholders in accordance with the Takeover Regulations, 2011.

33. I note that had the noticees made the public announcement in accordance with the Takeover Regulations, 2011 and complied with all related activities within the timelines specified under therein, all formalities with respect to their public announcement and the open offer would have been completed on March 12, 2012. Since the noticees have failed to make the public announcement within the stipulated time and the public announcement in compliance with this order would be after delay, the noticees shall pay interest on consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.

34. I, therefore, in exercise of powers conferred upon me under sections 19, 11 and 11B of the SEBI Act and regulation 32 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby issue the following directions:

(a) The noticees, G.P. Shah Investment Private Limited, B.G. Jain Investment Private Limited, P.B. Jain Investment Private Limited, Varju Investment Private Limited, Nakoda Syntex Pvt. Ltd, Mr. Babulal G. Jain, B.G. Jain HUF, Ms. Pushpadevi B. Jain, Mr. Devendra B. Jain, Mr. Kartik B. Jain, Ms. Shilpa B. Jain and Ms. Neetu D. Jain shall make a combined public

announcement to acquire shares of the target company, M/s Nakoda Limited, in terms of regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, within a period of 45 days from the date of this order;

(b) The noticees shall, along with consideration amount, pay interest at the rate of 10% per annum from March 13, 2012 to the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares have been accepted in the open offer, after adjustment of dividend paid, if any.”

Against the said order the appellants preferred in Appeal No. 169 of 2013 which was dismissed by judgement dated November 13, 2013. This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement to acquire the shares of the target company.

6. The aforesaid order of the WTM as affirmed by this Tribunal has become final and, till date, the appellants have not

complied with the obligation to make a public announcement of an open offer for acquiring the shares of the target company.

7. Since there was no compliance, the AO issued a show cause notice to show cause as to why penalty should not be imposed for violating Regulation 3(2) of the SAST Regulations, 2011. In spite of service of the notices and sufficient time being granted the appellants did not file any reply and consequently the AO proceeded ex-parte and passed the impugned order imposing a penalty of ₹ 5 crores to be paid jointly and severally by all the appellants.

8. Before this Tribunal, the only ground urged was that Appellant No. 6 was the head of the family and all decisions were been taken by him and by his son Appellant No. 9. They had the entire knowledge but could not appear or contest the matter before the AO as Appellant No. 6 and 9 were arrested by the Central Bureau of Investigation (CBI). It was also contended that the quantum of penalty imposed was excessive and therefore urged that if an opportunity was given to the appellants they would be able to satisfy the AO for relaxation in the quantum of penalty. The learned counsel thus contended that the matter may be remanded for a fresh decision.

9. Having heard the learned counsel for the parties, and upon a perusal of the record we find that no relief can be granted to the appellants. We find that the Appellant No. 6 was released on bail on July 24, 2018 and thereafter the AO granted several opportunities vide notices dated September 24, 2018 and October 10, 2018 but the appellants chose not to appear or file any reply. We also find no explanation was given by the other appellants as to why they could not appear and contest the matter before the AO. In the light of the aforesaid, we are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise.

10. With regard to the quantum of penalty, we find that the order of the WTM directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, we do not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of ₹ 25 crores or three times the amount of profits could have been imposed. In view of the

aforesaid, we do not find any merit in the appeal and the same is dismissed with no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

16.03.2020
Prepared & Compared By: PK