BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 18.09.2014
Date of Decision : 30.09.2014

Appeal No. 78 of 2014

Akriti Global Traders Ltd.
(Formerly known as Akriti Realtech Ltd.)
Shop No. E-40, Nehru Ground,
N.I.T. Faridabad,
Haryana-121 001 …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. Prakash Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Advocate for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar

1. Appellant is aggrieved by the adjudication order passed by Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on December 27, 2013 whereby penalty of ₹ 4.5 lac is imposed upon appellant under Section 15A(b) of Securities and Exchange Board of India Act, 1992 ("SEBI Act, 1992" for short) for violating regulation 29(1) and regulation 29(2) read with regulation 29(3) of the Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeovers) Regulations, 2011("SAST Regulations, 2011" for short) and regulation 13(1) and regulation 13(3) read with regulation 13(5) of the Securities and Exchange Board of India (Prevention of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992" for short).

2. Facts relevant to this appeal are that prior to February 14, 2013 appellant held 94,71,709 shares of SRS Real Infrastructure Limited ("SRS" for short) representing 4.71% shares of the total equity shares issued by SRS. Pursuant to a scheme of amalgamation approved by the Delhi High Court the shareholders of SRS including appellant became entitled to receive additional shares of SRS. Accordingly, additional shares were received by appellant on two dates i.e. on February 14, 2013 and February 21, 2013.

3. On February 14, 2013, 14,85,735 shares (amounting to 0.74% of the total equity shares) were received by the appellant from SRS. As a result, the total shareholding of appellant in SRS became 1,09,57,444 shares (94,71,709+14,85,735) and the percentage to shareholding became 5.45% (4.71% + 0.74%).

4. On February 21, 2013 appellant received 10,29,080 shares constituting 0.51% and 43,87,162 shares constituting 2.19% from SRS. Thus, the total shareholding of the appellant on February 21, 2013 stood at 1,63,73,686 shares (1,09,57,444+10,29,080+43,87,162) and the percentage of shareholding increased from 5.45% to 8.15% (5.45%+0.51%+2.19%).

5. It is not in dispute that on receiving 0.74% shares on February 21, 2013, the shareholding of the appellant in SRS exceeded 5% thereby triggering regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 as well as regulation 13(1) of PIT Regulations, 1992. Subsequently, on receiving 2.19% shares on February 21, 2013, regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 as well as regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 got triggered and it became necessary for the appellant to make requisite disclosures in the manner prescribed under the respective regulations.

6. Admittedly, appellant made disclosures to BSE under regulation 29(1) of SAST Regulations, 2011, however, it was delayed by 120 days. Similarly, disclosures made under regulation 29(2), was delayed by 128 days. No disclosure was made to the company as provided under regulation 29(1),(2) and (3) of SAST Regulations, 2011. Similarly, there is no evidence on record to show that disclosures were made under regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992.

7. On a show cause notice issued by SEBI, appellant filed its reply denying the allegations made in the show cause notice. Thereafter, opportunity of personal hearing was granted to the appellant, but inspite of repeated opportunities appellant failed to appear and therefore, by impugned order the A.O. after considering all relevant factors imposed

penalty of ₹ 4.5 lac on appellant under Section 15A(b) of SEBI Act, 1992. Challenging aforesaid order present appeal is filed.

8. Mr. Prakash Shah, learned counsel appearing on behalf of appellant submitted inter alia as follows:

a) *Delay in filing disclosures were unintentional and there no was malafide intention on part of the appellant and that appellant has not gained anything by not making timely disclosures.*

b) *Receipt of additional shares of SRS by appellant was not an account of any positive act on part of appellant but the same were received on account of amalgamation/merger which was duly approved by the Delhi High Court.*

c) *Relying upon decisions of this Tribunal in case of Raghu Hari Dalmia & Ors Vs. SEBI (Appeal No. 134 of 2011 decided on 21.11.2011) and in the case of Vitro Commodities Pvt. Ltd. Vs. SEBI (Appeal No. 118 of 2013 decided on 04.09.2013) it is contended that the penalty imposed upon the appellant is grossly disproportionate to the alleged violation and since penalty is imposed by ignoring the provisions contained under Section 15J of SEBI Act, the impugned order is liable to be quashed and set aside.*

9. Mr. Kumar Desai, learned counsel appearing on behalf of respondent submitted that once it is accepted that the appellant had an obligation to make disclosures under SAST Regulations, 2011 as well as PIT Regulations, 1992, appellant cannot escape penal liability prescribed under the provisions of SEBI Act. In respect of delay in making disclosures penalty imposable at the rate of ₹ 1 lac per day under Section 15A(b) of SEBI Act would be ₹ 1 crore. However, after considering all mitigating factors AO has imposed penalty of ₹ 4.5 lac which cannot be said to be excessive, harsh or unreasonable.

10. We have carefully considered rival submissions.

11. Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.

12. In the present case, appellant holding 4.71% shares of SRS received additional shares of SRS on account of amalgamation and it is not in dispute that on receiving those shares, the holding of appellant

SRS exceeded the limit prescribed under SAST Regulations, 2011 and PIT Regulations, 1992. Admittedly, disclosures made to the Stock Exchange under regulation 29(1) and regulation 29(2) of SAST Regulations, 2011 were delayed by 120 and 128 days respectively. As noted earlier, penalty for violating regulation 29(1) at the rate of ₹1 lac per day would be more than ₹ 1 crore. Similarly, penalty for violating regulation 29(2) at the rate of ₹ 1 lac per day would be more than ₹ 1 crore. As against the above, after considering all mitigating factors, AO has imposed composite penalty of ₹4.5 lac which cannot be said to be excessive or unreasonable.

13. Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay. Secondly, taking above factors as mitigating factors, AO has imposed penalty of ₹ 4.5 lac as against the liability of ₹ 1 crore each imposable for violations committed under regulation 29(1) and 29(2) of SAST Regulations 2011. Similarly, fact that additional shares were not received on account of any positive act on part of appellant is also untenable, because, liability to make disclosure arises once the shareholding of a person exceeds the limits prescribed under SAST Regulations, 2011 and PIT Regulations, 1992, irrespective of the mode and the manner of acquiring those shares.

14. Decision of this Tribunal in case of Raghu Hari Dalmia (Supra) relied upon by counsel for appellant does not support the case of appellant. In that case, even though the shares held by appellant therein had remained the same, proportionate voting rights of the appellant therein got enhanced on account of company buying back shares of the company from other shareholders. In those circumstances, it was held that increase in voting rights on account of passive acquisition cannot be regarded as indirect acquisition. In the present case, admittedly, appellant has received shares on account of amalgamation and as a result of such receipt, shareholding of the appellant exceeded the limits prescribed under the respective regulations. Hence, decision of this Tribunal in case of Raghu Hari Dalmia (Supra) does not support the case of appellant.

15. Similarly, decision of this Tribunal in case of Vitro Commodities Private Limited (Supra) does not support the case of appellant. In that case appellant therein had received additional shares on account of amalgamation and also by way of bonus shares. Admittedly receipt of shares on account of amalgamation did not trigger the provisions contained in SAST Regulations, 2011, but on receipt of bonus shares SAST Regulations, 2011 got triggered. In those circumstances, taking over all view of the matter, this Tribunal deemed it fit to reduce the penalty. In the present case, appellant has violated not only regulation 29(1) but also violated regulation 29(2) of SAST Regulations, 2011. Penal liability for violating regulation 29(1) is independent of penal liability for violating regulation 29(2). Hence, discretion exercised by

this Tribunal in case of Vitro Commodities Pvt. Ltd. (Supra) cannot be said to be a yardstick to be applied herein for reducing the penalty imposed upon the appellant, especially when AO has already taken lenient view in the matter.

16. For all aforesaid reasons, we see no merit in this appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

30.09.2014
Prepared & Compared By: PK