

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 278 of 2009

Date of decision: 27.1.2010

Mr. Vikas Gourihar Narnavar
C/151, Shastri Nagar,
Vibhag C, Sion Koliwada,
Mumbai.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai.

...Respondent

Dr. S.K. Jain, Practicing Company Secretary for the Appellant,

Mr. Advait M. Sethna, Advocate for the Respondent.

Coram : Justice N. K. Sodhi, Presiding Officer
Samar Ray, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

This order will dispose off two Appeals no. 278 and 280 of 2009 filed by the same appellant involving common questions of law and fact.

2. **Appeal no. 278 of 2009** : The Securities and Exchange Board of India (for short the Board) had carried out investigations in the scrips of two companies, namely, Shree Yaax Pharma and Cosmetics Ltd. and Somani Cement Co. Ltd. (hereinafter referred to as the companies). During the course of the investigations, the investigating officer issued summons dated March 24, 2006 to the appellant calling upon him to appear before him on March 29, 2006 along with the record referred to therein. Admittedly, the appellant received the summons but he did not respond thereto. He did not appear on the appointed date and time nor did he produce the record that he was called upon to do so. The Board initiated adjudication proceedings against the appellant and the adjudicating officer served him with a show cause notice calling upon him to show cause why an enquiry should not be held against him and why monetary penalty be not imposed under section 15(A)(a) of the Securities and Exchange Board of India Act, 1992 for allegedly violating the

provisions of section 11C of the Act. He filed a reply in which he admitted the non-compliance to the summons and stated that he was a small investor in the securities market and that he had traded in a few scrips and the volume of his trading was negligible. It appears that the appellant is alleged to have executed circular trades in the scrips of the companies which is not permissible and this is what he further stated in his reply to the show cause notice.

“I say that one Shri Ramnik Lal Manji Bhai Patel had used my name for this circular trading purpose. He said that he wanted to trade in my name because his stars were not favoring him. He said that he would give some share in profit if he earned in my account. He had taken my all proof and used them to open accounts with various brokers. I never know that he was misusing my name and doing illegal trading.

I was really unaware about any wrong doing like circular trading happen in share market. I never listen SEBI name before I received first enquiry letter. You may understand that when someone is not directly involved with the market, then he would not aware about SEBI rules and regulation about trading in shares market.

When I receive any letter or notice from SEBI I normally gave to Sri Ramnik Lal Patel. I have kept some original letter and notices with me and gave only Xerox copy to him. At that time I handed over the first letter to him then and he said that he would manage all these. He gave me only Rupees 5000 – 10000 totals till date against his commitment to give share in profit. He never disclosed me any account etc. I was also not interested in all these because my busy schedule at office.”

On the basis of the material collected by the adjudicating officer during the course of the enquiry and having regard to the reply filed by the appellant, the former concluded that the appellant had failed to comply with the summons and was guilty of violating section 11C of the Act. Accordingly, by his order dated October 26, 2009 he imposed a monetary penalty of Rs. 50,000/- on the appellant under section 15(A)(a) of the Act. It is against this order that the present appeal has been filed.

3. We have heard Mr. S.K. Jain, learned representative of the appellant and Mr. Advait Sethna, Advocate on behalf of the Board. In view of the admissions made by the appellant it is clear that he did not comply with the summons and violated section 11C of the Act. No fault can, thus, be found with the impugned order.

4. Mr. S.K. Jain appearing on behalf of the appellant pointed out that the adjudicating officer was not justified in holding that the default committed by the

appellant was repetitive in nature and therefore, the monetary penalty should not have been imposed. We are unable to agree with him. It is the appellant's own case that even in the investigations carried out by the Board in the scrip of Somani Cement Co. Ltd. the appellant had been served with summons and in that case too, he did not respond to them. This being so, it is clear that the violation committed by the appellant is repetitive. Having regard to the nature of the violation, we are not inclined to interfere with the impugned order.

5. In Appeal no. 280 of 2009 the appellant was summoned twice and was required to produce the records pertaining to his trading in Somani Cement Co. Ltd. but he failed to do so. In this case, the adjudicating officer has imposed a penalty of Rs. 1 lac. Since the non-compliance is admitted, we are not inclined to interfere with the order passed by the adjudicating officer.

6. What is contended by the authorised representative of the appellant is that in this case also the penalty should have been Rs. 50,000/-. We don't agree. Apart from the fact that the appellant is committing repetitive defaults, he did not respond to the summons twice. It must be understood that the Board as a market regulator cannot carry out its statutory functions if market players like the appellant can with impunity defy to produce the records in their possession. We don't know what the Board would have discovered, had the appellant complied with the summons. It is a serious irregularity which hinders the investigations. Parliament in its wisdom amended the Act in the year 2002 and provided a stringent penalty for such violations. The penalty could be Rs. 1 lac for each day during which the failure continues or Rs. 1 crore, whichever is less.

In the result, both the appeals fail and they stand dismissed with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

27.1.2010

Prepared and compared by:
msb/-