BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 97 of 2009

Date of Decision: 03.12.2009

M/s. Tricon Business Private Limited
Amritdham, Flat No. 202,
P.O. Danesh Sekh Lane, Nityanand Nagar,
Bakultolla,
Howrah. …… Appellant

Versus

The Adjudicating Officer,
Securities and Exchange Board of India
SEBI Bhavan,
Plot No. C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East), Mumbai. …… Respondent

None for the Appellant.

Mr. R.S. Loona with Mr. Abhishek Borgikar, Advocates 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 of three connected Appeals no. 97, 98 and 104 of 2009 in which identical questions of law and fact arise. At the outset, it may be mentioned that the appellants have sent a letter of request in all the three cases seeking an adjournment on the ground that they have filed an application for a consent order before the Securities and Exchange Board of India which is being processed. Having sent these letters, no one is present on their behalf. Even their counsel is not present. We are not inclined to grant the request. Two of the appeals were admitted on July 20, 2009 whereas Appeal no. 104 of 2009 was admitted on July 24, 2009. These appeals came up for regular hearing in the normal course on September 17, 2009 when these were adjourned on the request of the learned counsel for the appellant who wanted time to address arguments. The cases were adjourned to October 12, 2009 on which date they were adjourned on the request of the learned

counsel for the respondent Board. The Appeals were then listed for hearing on November 23, 2009 on which date the learned counsel for the appellant was not available and we adjourned the case for today. As already observed no one is present on behalf of the appellants and merely because the appellants have filed an application for a consent order is no ground for us to adjourn the cases and await the decision on those applications. We do not normally adjourn cases on this ground and there is no reason for us to act differently in these cases. Consequently, the request for adjournment is declined and we are proceeding to dispose of the appeals on merits. The leaned counsel for the respondent Board has taken us through the record and since arguments have been addressed in Appeal no. 97 of 2009, the facts are being taken from this case.

2. The appellant is an investment company incorporated under the provisions of the Companies Act, 1956. Since the price of the shares of M/s. Nageshwar Investment Limited (for short the company) witnessed an enormous rise during the period from April 2005 to November 2005, the Securities and Exchange Board of India (for short the Board) carried out investigations in the trading of this scrip. During the course of the investigations, the investigating officer issued three summons to the appellant to produce documents referred to in the annexure attached thereto, furnish information referred to in the summons and its representative was directed to appear in person so that his statement could be recorded. The summons were issued on August 24, 2006, September 7, 2006 and September 15, 2006. It is not in dispute that all the three summons were received by the appellant and that its representative did not comply with any of the summons. The appellant did not furnish the information asked for nor did it produce the documents referred to in the annexure attached to the summons and its representative failed to appear in person before the investigating officer. The Board, thus, initiated adjudication proceedings against the appellant for its failure to comply with the summons and for violating the provisions of Section 11C of the Securities and Exchange Board of India Act, 1992 (for short the Act). The adjudicating officer issued a notice to the appellant calling upon it to show cause why action be not taken against it for violating the aforesaid provisions of law and why a monetary penalty be not imposed in terms of Section 15A of the Act. The appellant

filed its reply to the show cause notice and it was for the first time in the reply that it took a stand that annexure to the summons was not received alongwith the summons and, therefore, it was unable to produce the documents asked for. The appellant also raised some other grounds as well trying to justify its non compliance with the provisions of Section 11C (3) and (5) of the Act. On a consideration of the material on the record including the reply filed by the appellant, the adjudicating officer by his order dated April 22, 2009 found that the appellant had violated Section 11C (3) and (5) of the Act and imposed a monetary penalty of Rs. 15 lacs under Section 15A of the Act. It is against this order that the present appeal has been filed.

3. Section 11C which was introduced in the Act w.e.f. 29.10.2002 gives statutory powers to the Board to investigate the affairs in regard to any matter pertaining to the securities market particularly when it finds that the transactions in securities had been/ are being dealt with in a manner detrimental to the interest of investors or the securities market. In the instant case, the Board ordered investigations in the trading in the scrip of the company when it witnessed an enormous price rise during the period of investigation. Investigating officer has been given statutory powers to require any intermediary or any person associated with the securities market to furnish such information or produce such books, registers or documents or record before him which he may consider necessary or relevant for the purposes of the investigation. Since the appellant had traded in the scrip of the company, the investigating officer, called upon it to produce the requisite information/ documents/record referred to in the annexure to the summons. Admittedly, the appellant did not comply with the summons. In the reply furnished before the adjudicating officer, the appellant has for the first time taken the plea that the annexure attached to the summons had not been received by it alongwith the summons. It is pertinent to mention that the annexure was attached to all the three summons that were sent to the appellant. Since this plea was raised for the first time in the reply before the adjudicating officer, he rightly rejected the same. At no earlier point of time did the appellant ever inform the investigating officer that it had not received the annexure to the summons. It is clearly an after thought to escape its liability under the Act. The adjudicating officer was justified in not accepting this

plea. The other reason given by the appellant for non compliance with the summons is that it had not been given adequate time to collate, collect and prepare the information sought for. It is true that the appellant was required to furnish the information within a few days of the receipt of summons but the plea now taken by it cannot be accepted. The appellant may be right so far as the first summons is concerned but the same cannot hold good for the subsequent summons. By the time the subsequent summons were issued, the appellant had adequate notice and time to collate and collect the information and documents. Even on receipt of the first summons, the appellant could have sought time and we have no doubt that a reasonable request like this would have been granted but no such request had been made. Again, the information sought pertained to the details such as address, PAN number, copy of the demat account statement and other trade related details which are always available with an investor. It may be mentioned that every time a trade is executed the stock broker is required to issue a contract note to the client which contains the necessary details. It is also pleaded by the appellant that the information sought from it was also available with the stock exchanges and, therefore, the Board could have collected the same from those exchanges. This plea deserves to be noticed only to be rejected. There is a statutory duty cast upon every person associated with the securities market to furnish the necessary information asked for by the investigating officer and this is no explanation to say that the information was also available with the stock exchanges. Some of the information that was sought from the appellant could not be had from the stock exchanges. For instance PAN number could not have then been available with the stock exchange though now it is mandatory for every investor to furnish its PAN number to the stock exchanges. Again, the appellant contends that failure on its part to furnish the information did not hamper the investigations carried on by the investigating officer. This plea too, cannot be accepted. It is not for the appellant to say whether the investigations were hampered. The law provides that every person associated with the securities market must furnish the information. Failure on the part of the appellant to furnish the required information and its failure to appear in person certainly hampered the investigations. Since its representative did not appear in person, its statement could not be recorded

which, if recorded, could have thrown sufficient light on issues connected with the investigations. The Board is a statutory regulator and it will not be able to carry out its statutory functions if persons connected with the securities market are allowed to thwart the investigations. A statutory duty has been cast upon the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. It is, therefore, of utmost importance that persons who are called upon to furnish the required information do so meticulously to help the Board in carrying out its functions. We are, therefore, of the view that non compliance with the summons and non appearance of the representative of the appellant before the investigating officer was, indeed, a serious matter which hampered the investigations. The Act was amended in the year 2002 and penalties leviable for such non compliances were considerably enhanced with a view to make them more deterrent. In this view of the matter, no fault can be found with the impugned order imposing a monetary penalty of Rs. 15 lacs.

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

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

3.12.2009
pmb

Prepared and compared by
Prerana