IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 2 OF 2004

IN

SEBI APPEAL NO.17 OF 2000

The Securities & Exchange Board
Of India ..... Appellants

Vs.
Sangeeta Jayesh Valia ..... Respondent

Mr. Kumar Desai i/b M/s. Maneksha & Sethna
for Appellants.
Mr. J.P. Yagnik for Respondent

CORAM : R. M. LODHA AND
A.V. MOHTA, J.J.

DATED : 5TH DECEMBER, 2003

ORAL JUDGEMENT (PER A.V. MOHTA, J.)

1. The present appeal is under Section 15Z of the Security and Exchange Board of India Act 1992, (for short "SEBI Act") against the reversal common order dt 30.11.2002 u/sec 15 T r/w 29 of the SEBI Act, passed by the Securities Appellate Tribunal, in appeal no. 17 and 18 of 2000, whereby, the orders dated 24.7.2000, passed by the Adjudicating Officer

under Section 15-I of the SEBI Act, imposing penalty of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) for violation of 3(4), SEBI substantial acquisition of shares and take over) Regulation 1997. (for short take over regulations 1997) and section 15A (b) of SEBI Act, against the Respondent, (original appellant), were set-aside. Thereby appeals filed by the Respondent herein, were allowed. Therefore, the appellants herein (original respondents) preferred two separate appeals against the impugned common order.

2. The Appellants Securities & Exchange Board of India for short (SEBI), is a statutory body constituted under the provisions of the SEBI Act. It can sue and be sued by that name. Being a person aggrieved and affected by the impugned oder it has preferred this appeal.

3. The issue around which the controversy revolve is, whether, penalty imposed by SEBI against the acquirer, for delay in filing report, from the date of acquisition of shares, is valid and legal.

4. The Respondent herein, alleged to be an individual and housewife. The Respondent had acquired 6,98,500, equity shares and 11,76,895, Cumulative convertible Preference (CCP) Shares of Vasparr Fischer Limited (VEL), respectively. Both the acquisitions were made on the same date i.e. 6.1.1999, in pursuance of an interse transfer amongst promoters. The Respondent's holding after the said acquisition, constituted 17.41% in the equity share capital and 29.08% in the CCP share capital. The Respondent after acquisition of those shares had submitted the report to SEBI

on 21.12.1999, which was beyond the specified period of 21 days. The Appellants therefore, on 4.1.2000 appointed an Adjudicating Officer, to conduct an inquiry against the Respondent, as there was delay of 328 days in submitting the report to SEBI and as same was in contravention of section 15A(b) of SEBI Act and 3(4) of taking over regulation 1997.

5. Therefore, two separate show cause notices, dated 25.1.2000, for the two acquisitions, namely of equity and CCP shares, each, were issued and served on the Respondent by the Adjudicating Officer The Respondent by its reply dated 4/2/2000 to the show cause notices, resisted the action and expressed her ignorance of laws and regulations, being a housewife, which resulted in the delay in submitting the said report.

6. The Adjudicating Officer had conducted two parallel inquiries, as per two separate show cause notices. The Adjudicating Officer heard both the parties on 20th April, 2000 and after taking into account all the facts, documents and defence, available on record, by two separate orders dated 24.7.2000, had imposed minimum penalty, in each case, of Rs.500/- per day, for 328 days delay with an upper ceiling of Rs.1,50,000, in both the cases.

7. The Respondent therefore, preferred two appeals, before the Securities Appellate Tribunal, Mumbai under section 29 r/w 15J of SEBI Act on 29.8.2000, against the above orders. The said appeals were contested by the present Appellant. After hearing both the parties, by the common impugned order dated 30.11.2000, in appeal no.17 of 2000 in the matter of equity shares and appeal No.18 of 2000 in the matter of CCP,

the Appellate Authority had allowed the Respondent's appeals and orders of levying penalty passed by the Adjudicating Officer, were set-aside.

8. The Appellants, SEBI, therefore, has preferred the present SEBI Appeal 2 of 2001 in SEBI Case No.17 of 2000 and SEBI Appeal No.3 of 2000 in SEBI Appeal No.18 of 2000 in the High Court of Judicature, Bombay on 29.1.2001, under Section 15Z of the SEBI Act. Both the appeals were admitted however there was no interim orders in both the matters.

9. First and foremost thing in the background of the facts referred above, is to see the relevant provisions of laws. The Parliament has exclusive authority to make laws on the subject i.e. "Stock Exchanges & Futures markets", in view of the Entry 48 in the list I (Union List) in the Seventh Schedule, of the Constitution of India. The Securities Contract Regulations Act 1956, is the existing legislative measures, for regulation of Stock Exchanges, the said Act has been enacted to prevent undesirable transactions in the securities market by regulating the business of dealing therein & by providing, for certain other measures connected therewith. Therefore, the whole purpose of the act is to regulate the business of such Securities. The role of Stock Exchanges in the countrie's economy is well-known. Therefore, their power and authorities to regulate, the related markets is the need of the time.

10. The developing securities market, in the international scenario, including the growth of the capital market, necessitated the comprehensive legislation for setting up the Statutory Board to promote orderly and healthy growth of the

securities market. The Securities and Exchange Board of India ordinance 1992 was, therefore, promulgated on 13.1.1992 and ultimately the SEBI Act has been enacted and notified on 14.4.1992. The statement of objects and reasons appended to the bill, as relevant, is reproduced as under :-

> " The capital market has witnessed tremendous growth, in recent times, characterized particularly by the increasing participation of the public Investors confidence in the capital market can be sustained largely by ensuring investors' protection. With this end in view, Government decided to vest SEBI immediately with statutory powers required to deal effectively with all matters relating to capital market."

11. The SEBI Act, provides for the establishment of board and to protect the interest of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto. The Securities and Exchange Board of India (SEBI) is established by section 3 of the SEBI Act. The powers and functions of the board has been provided under section 11 of the Act. The relevant extract of the said section is as follows:

> Section 11. "(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for –

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) Calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self-regulatory organizations in the securities market;

(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;

(m) performing such other functions as may be prescribed.

12. The other essential provisions are provided in Chapter VIA of the SEBI Act, titled as “Penalties and Adjudication”. Section 15A, 15J (prior to amendment dt.29.10.2002) as referred by both the parties, are reproduced as under :

15A **Penalty for failure to furnish information, return** , etc – If any person, who is required under this Act or any rules or regulations made thereunder :-

15 (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to (“a penalty not exceeding one lakh and fifty thousand rupees for each such failure.

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to (“a penalty not exceeding five thousand rupees for every day during which such failure continues.”

(c) to maintain books of account or records, fails domination the same he shall be liable to (a penalty not exceeding ten thousand rupees for every day during which the failure continues.”

15J. **Factors to be taken into account by the Adjudicating Officer :**

While adjudging the quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely :-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default,

(b) the amount of loss caused to an investor or group of investors as a result of the default.

(c) The repetitive nature of the default.

13. It is very clear that above functions are provided to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market, by appropriate and suitable rules, regulations, directions and orders. Those statutory functions and duties are in the interest of the public at large and to achieve the purpose and object of the Act, including of investors and the capital market. These powers and authorities which are provided to such regulatory agency, is to prevent or minimize various frauds, scams, apart from regulations of securities market. This is also essential to gain the public confidence and regulating economy of the developing countries like India. The SEBI therefore, in order to protect the public and capital market, as regulator, has issued and published various guide-lines, regulations, rules, notification, circulars etc. Under the

power conferred by Section 30 of the SEBI Act. The reference may be made to the concerned regulations for the purpose of the issues raised in the present appeals. These are, Securities and Exchange Board of India (substantial acquisition of shares and take overs) regulations, 1997.

14. The relevant extract of Take-over regulations, 1997, are as follows:

Clause 3 : Applicability of the regulation.

3(1) Nothing contained in regulation 10, 11, and 12 of these regulations shall apply to :--------

3(e) inter se transfer of shares amongst –

3(iii) (a) Indian promoters and foreign collaborators who are shareholders;

(b) Promoters ;----------

(3) In respect of acquisition under clauses (c) , (e), (h) and (i) of sub-regulation (1), the stock exchange where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance from the date of the proposed acquisition, in case of acquisition exceeding (5) per cent of the voting share capital of the company.

15. It may be mentioned here that a committee chaired by Hon'ble Justice P.N. Bhagwati, has made various recommendations and suggestions, for the take over

regulation 1994/1997 in question, which are referred by the Adjudicating Officer in its order dated 24.7.2000, in following paras,

2.4 Bhagwati Committee Report Also, in this context to set out the intention behind the regulations, the following extract from the Report of the Committee on Substantial Acquisition of Shares and Takeovers Under the Chairmanship of Justice P.N. Bhagwati is given below."

The Approach of the Committee "The Committee was of the view that the Regulations for Substantial Acquisition of Shares and Takeovers should operate principally to ensure fair and equal treatment of all shareholders in relation to Substantial Acquisition of Shares and Takeovers while on the one hand the Regulation should not impose conditions, which are too onerous to fulfil and hence make substantial acquisition and takeovers difficult, at the same time, they should ensure that such processes donor take place in clandestine manner without protecting the interest of the shareholders.

The Committee also recognized that the process of take – overs is complex and is interrelated to the dynamics of the market place. There should be a set of general Principles which should guide the interpretation and operation of the Regulations, especially in circumstances which are not explicitly covered by the Regulations. These principles are –

i) Equality of treatment and opportunity to all shareholders.

ii) Protection of interests of shareholders.

iii) Fair and truthful disclosure of all material information by the Acquirer in all Public announcements and offer documents.

iv) No information to be furnished by the Acquirer and other parties to an offer exclusively to any one group of shareholders.

v) Availability of sufficient time to shareholders for making informed decisions.

It was brought to the notice of the Committee that the cases in which exemptions have been granted broadly fell into one of the following two categories.

acquisition through preferential issue for consolidation of holdings by foreign collaborators, Indian promoters and also consequent induction of foreign collaborators for technology transfer etc, acquisition by way of transfer of shares inter se among group companies, promoters, state level financial institutions and promoters in joint and assisted sector projects, foreign collaborators and Indian promoters, split in family and consequential regrouping of shareholding among branches of the family and corporate restructuring plans.

The Committee therefore recommended that

In order to ensure transparency in the transaction and assist in the monitoring, all the exempted transactions should be subject to reporting requirements to the

concerned stock exchange in advance of the proposed acquisition and to SEBI.

2.5 Therefore, it is provided that those transactions are subject to compliance of reporting requirements to SEBI and to stock exchange as well.

2.6 In the light of what is stated above, sub-regulation (4) of Regulation 3 of the said Regulations lays down that :

"In respect of acquisitions under clauses (a) (b) (e) and (i) of sub-regulations (1), the Acquirer shall, within 21 days of the date of acquisition, submit a report supporting document to the Board giving all details in respect of acquisition which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15% or more of the voting rights in a company".

2.7 For the purpose of ensuring compliance of such reporting system, a coercive provision of law, viz. clause (b) of section 15A of the Securities and Exchange Board of India Act, 1992 has been enacted prescribing penalty for failure to furnish information, return, etc, within the specified time by any person as required under the Securities and Exchange Board of India, 1992, rules and regulations. Clause (b) of Section 15A, the penal provision is as under :

"If any person who is required under this act or any rules or regulations made thereunder.

(b) To file any return or furnish any information, books or other documents within the time specified therefore in the regulations.

(c) Fails to file return or furnish the same within the time specified therefore in the regulations.

He shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues."

15A. It is clear from the above scheme and provisions, specially regulation 3(i) (e) (iii), and 3(4), of take over regulations 1997, that a person who acquires shares or voting rights, in the target company and / or acquisition or agreed to acquire control over the target company, either by himself or with any person acting in concert, with the acquirer, in respect of acquisition, shall within 21 days from the date of acquisition, submit the report, alongwith supporting documents to the board giving all details in respect of acquisition with such person to exercise 15% or more of the voting rights in a company.

16. This mandate of submitting the appropriate reports and documents, giving all details, in respect of acquisition, within 21 days in also mandate of section 15 A (b) of the SEBI Act, as referred above, The Section 15A contemplates that any person, who is required under this Act or rules or any regulations made thereunder to furnish any documents return or report to the board or file any return or furnish any

information, books or other documents within the specified time and / or maintain books of accounts or records, failing which, such person is liable to pay the penalty as provided under the said section. Therefore, this section provides penalty for failure to furnish information return etc. This section further contemplates, a legal obligation to furnish necessary information, with all details, in the prescribed form as provided under the Act or any rules and regulations made thereunder. The relevant regulations, 3(4), as reproduced above, also provides that "acquirer" or a person like respondent in question, should submit or furnish or file, all details in respect of their acquisition, within specified time of 21 days, in the format of report, alongwith documents. It is a clear mandate of the said provisions and scheme. It may be mentioned here that even section 15A of SEBI Act cannot be read in isolation, and must be read with concerned rules and regulations.

17. The provisions of penalty in failure to furnish any documents, return or report or any information or books, within the specified period as per the regulations as contemplated under section 15A (a), (b) (c) & are in the form of mandatory provisions. These compliances therefore, in our opinion, are essential to serve the purpose and object of the Act, as referred above. The provisions of penalty for non-compliance of the said mandate of the Act is definitely with an object to have an effective deterrent to ensure better compliances of the provisions of such laws, which is in the in the interest of public at large, investors and essential to regulate and control such markets, through the regulatory authority, like SEBI.

18. The Appellants therefore, while assailing the order, passed by Securities Appellate Tribunal dated 30.11.2000, contended that the said impugned order is unsustainable and the interpretation, of section 15A (a) or Section 15A(b) as given by the aforesaid Appellate Authority is not correct. The appellant further contended that the order passed by the Adjudicating Officer dated 24.7.2000 is correct fair and reasonable and be maintained. It was further contended that Section 15A (a) is applicable to complete failure i.e. default in furnishing documents, report, return to SEBI, whereas section 15 (a) (b) is meant to cover the cases where time is prescribed under the Act and / or Regulation and there is delay in filing any return or furnishing any information books or other documents within the specified time. Section 15A (c) is meant to cover cases where there is total failure to maintain books of accounts or records etc. The object of levy of such high penalties was inter alia to act as an effective deterrent to ensure better compliance of the provisions of law. Therefore, the penalties of the nature prescribed under Chapter VI A of the SEBI Act, 1992 are essentially deterrent in nature. It is further contended that the word “report” is used in Section 15A (a) where as word “return”

is used in section 15A (b) is not of any great relevance or consequence as the word “report” and “return” means more or less the same thing and have been used interchangeably in the Regulations. What is required to be furnished whether it is “report” or “return” or necessary “information” whether the same is submitted in the form of “report” or “return” is not material, what is relevant is the submission of necessary information. The supply of information leads to transparency and assist in monitoring such transactions through the SEBI. In the circumstances of the case, therefore, as there was admittedly delay of 328 days in filing the report, the penalty as levied was proper and correct and therefore, contended that the order passed by the Securities Appellate Tribunal, be set-aside and the order passed by the Adjudicating Officer be maintained.

19. The respondent on the other hand supported the order passed by the Securities Appellate Tribunal and relied upon the following cases. **1) The Commissioner of Income-Tax, Gujarat, vs. M/s. A. Raman and Co, reported in AIR 1968 SC 49., 2) Nasiruddin Vs. State Transport reported in AIR 1976 SC 331, 3) Jitender Tyagi, vs. Delhi Administration and another, reported AIR 1990 SC487, 4) Mahavirprasaed vs. M.S. Yagnik reported in AIR 1960 BOM 191, 5) M/s.**

Motibhai Fulabhai Patel and Co. Vs. V.R. Prasad, Collector of central Excise, Baroda and others reported in AIR 1970 SC 829, 6) Madanlal Sharma Vs. Smt. Santosh Sharma reported in 1976 MLJ 229, 7) Dwarkadas Mulji and others vs. Shantilal Laxmidas Gandhi and another reported in 1980 MLJ17. Respondent's contention was that the plain and unambiguous words in statute, must be given ordinary meaning and sense; court would not alter the words; penal provision's interpretation cannot be extended by reading words which are not there; expression is presumed to be used in the same sense through our Act; every word used in a statute must be presumed to have been inserted with purpose.

19. The next submission of the Respondent in the appeal, based on the impugned orders, passed by the Securities Appellate Tribunal, was that, since there is a specific provision in clause (a) of Section 15 A of the SEBI Act, providing for one time penalty, in case of each failure to furnish any report to the Board, and rule 3 (4) of take over regulations, 1997 also requited to submit the report to the Board. Therefore, clause section 15 A (b) could not have been invoked by the Appellant / SEBI.

21. It was further contended by the Respondent that two clauses are made to meet different requirements, that clause (a) takes care of matters exclusively dealing with the Board, clause (b) is in exclusion of the matter dealing with Board. Respondent further supported the impugned orders on the ground that failure to file report or submit the report, could not be under clause (b), as report, contemplated was submitted by the Respondent, to the Board and as specific provisions and penalties are provided for failure to furnish any report to the Board, therefore, the appellant's action in terms of clause (b) of the said section 15 A, cannot be considered legal.

22. At the outset, there cannot be any debate, so far, as the legal principles, reflected, from the authorities cited by the learned Counsel for the Respondent. However, it is now settled and reiterated by the Hon'ble Supreme Court, time and again, that, "statute as is well-known must be read in the text and context thereof, "the construction of a statute will depend on the purport and object for which the same had been used; The purpose and object of the Act must be given its full effect and the entire statute must be read as a whole "Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-

vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter"; A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word". No part of a statute and no word of a statute can be construed in isolation".

23. While considering the submission of the Respondent, it is essential to take into consideration the basic laws of interpretation, as reproduced above. Therefore, the Respondent's contention is not correct, that , The words "Board" and "report" in section 15A 9a) be read together with clause 3(4) regulation 1997 which also provides words "report" & "Board" and, therefore, as admittedly report was submitted to the Board, section 15A (a) would be applicable not Section 15 A (b) and, therefore, issuance of show cause notice and action of imposing penalty, under section 15A (b), by the Appellant SEBI, was bad and illegal. It is also not possible to accept the contention of the Respondent and / as also observed by the SAT, that section 15 A (a) provides furnishing of report to the Board and, therefore, also in present case, as report was furnished to the

Board. Section 15A(a) (b), could not be made applicable or invoked, by Appellant SEBI.

24. The words “report” and information” are not defined under the Act and regulations. The plain & ordinary meaning of the words “report” and “information” cannot be overlooked & are reproduced below:

The Dictionary meaning of word “report” as per Webster Illustrated Contemporary Dictionary ? Encyclopadia Edition 1978 **report**- To make or given an account of, relate as information obtained by investigation. 2. To bear back or repeat to another as an answer. 3. To complain about, esp. to the authorities. 4. To state thre result of consideration concerning the committee reported the bill. 5. To make a report. 6. To act as a reporter. 7. To present oneself as for duty. And

As per **Oxford Dictionary** (5th Edition) “ “ **report”** means 1. Common talk. 2. account given or opinion formally expressed after investigation or consideration or collateral of information, description or epitome or reproduction of scene or speech or law case esp. for newspaper publication, House of commons debate on bill when reported periodical statement on public work. 3. Sound of explosion.

As per Webster dictionary 1959 Edition "**Information**" means : 1. Knowledge communicated or received concerning a particular fact or circumstance, news information concerning a crime. 2. any knowledge gained through communication research instruction etc. 4. an office or employee for distributing information to the public. a. an official criminal charge presented usually by the prosecuting officers by the state. 6. (in communication theory) an indication of the number of possible chances of messages expressible as the value of some monotonic base. 7. Computer Technol any data that can be coded for processing by a computer or a similar device."

As per Oxford dictionary 9th Edition, 1995. "**Information"** means: 1 a. something told knowledge. b. items of knowledge, news, (the latest information of the crisis.) 2. Law a charge or complaint lodged with a Court or magistrate. 3 a. the act of informing or telling. B. an instance of this. 4 (in information theory) a mathematical quantity expressing the probability of occurrence of a particular sequence of symbols etc.

The words “report” & “information” have an extending force & does not limit the meaning of the term, as sought to be construed by Respondent. According to us, in the contextual reading, to submit the “report” would mean & include “information” and or vice-versa, all details, with documents, as per the scheme of the 3(4) regulations 1997 and even otherwise also.

25. The word “information” under section 15A (b) of the SEBI Act must be read in the context and reference to the other provisions read with take over regulation 1997. We are of the view that the word “information” in the context of the scheme of the provisions, and to achieve the purpose of the act, means and includes, facts and detail documents of acquisitions, by the acquirer, which should be submitted in the standardized format of report. Therefore, the authority cited by the Respondent (The Commissioner of Income Tax vx. M/s. A./Raman & Co. reported in AIR SC 1968) is of no help to the respondent to pursue us otherwise.

26. Furthermore, as per Section 15A 9a), it can not read or interpreted to means that it applies only to the Board and section 15A (b) applies or refer only to the other authorities excluding the “board”. It may be mentioned here that even section 15A (b) no where

specified or provided that the report or such filing or furnishing of information should only to board & not to other authorities that board. According to us board is not specifically excluded form the perview of Section 15A(b). Even if word “board” is issing from section 15A (b) it cannot be read to overlook the related requisite regulations where it provides to file or submit report, in specified time, to the board. It is not possible to accept that the board falls within the ambit of section 15A 9a) only and not under section 15A (b). In the given circumstances, even as per relevant or concerned regulations, “board” may include delegated officers, inspecting officers or such other officers, before whom information or particular, requires to furnish or submit or file.

27. The information whenever necessary must be submitted or furnishes directly to the board or through such officers, as per the requirement of the relevant regulations. There cannot be any dispute, that maintenance of records, documents and furnishing of information to the board is the basic need of SEBI Act and its regulations, for all related and connected purposes, to achieve the positive object of the policy. It is very clear that section 15A 9a) (b) (c), is charging section for penalty in case of non compliances, as provided under the various rules and regulations.

28. We are of the view that information, report, return, required to be submitted or furnished to the Board, in the standardized format, includes, information and all details with documents, by the “acquirer” within fixed and specified period, as contemplated under clause 3(4) of takeover Regulations 1997, is the scheme of the provisions. Thus, the reading or interpretation as sought by the Respondent, cannot be accepted by selecting or isolating the words “report” or “Board” from Section 15A 9a) or s 3(4) & Take over Regulation 1997, that itself could lead to defeat and frustrate the scheme and or object of the act or regulations, and make the provision unworkable.

29. It is clear from the provisions referred above, that it is an obligation and duty of the acquirer to provide and furnish detail information with documents through the format of report as prescribed. This format further makes it clear that general information about the acquisition of shares must be submitted to Board by acquirer with details including details of “promoter” and “target Company” etc. The format is always for the convenience of acquirer such other person, so that maximum detail information can be submitted and or called by the appropriate authorities. It is clear that the purpose of collection of this information is to take appropriate recommendations or decisions on such acquisition. Therefore, scheme of the regulations

in such cases would be defeated, if such acquirer after acquisition allow to take it's own time, to file such details of the Board.

30. We find substance in the submission of the appellant that section 15A 9a) deals with the situation where there is complete failure in furnishing documents, report, return, etc. to SEBI whereas Section 15A 9b) is attracted where there is delay in filing any return or furnishing any information, books or other documents within specified time. Because the expression 'report' has not been used in 15A9b) – the expression that is used in 15A(a) – would not distinguish the two provisions itself. The area of operation of the two provisions 15A(a) and 15A (b) is different for the reason that 15A (a) is invokable where there is total failure in furnishing requisite information while 15A(b) comes into play where though there is compliance by furnishing necessary information but the compliance is made belatedly. Section 15A(a) & 15A(b) are, thus, attracted in the different situation as noticed above.

31. We are of the view that the interpretation put by the Securities Appellate Tribunal as well as, the learned Cunsel for the Respondent, is not correct.

32. It is well settled that if the power to act in the authority exists in a fact situation, such exercise of power is not vitiated by the reference to

wrong provision of law. Mention of wrong provision of law shall not render the exercise of power by the authority bad in law if the source of power can be traced in some other provision. The present is a case where the authority has exercised the power under section 15A(b) and that cannot be faulted for the reasons we have indicated above.

33. It may be mentioned here that the Adjudicating Officer in fact, after considering the bonafide and genuineness of the statement of Respondent levied a minimum penalty of Rs.500/- per day for the delay of 328 days with upper ceiling of Rs.1,50,000/-. The penalty was to be paid within 45 dasy of the receipt of the said order. We are of the view that Adjudicating Officer had in fact taken into consideration all other factors as contemplated under section 15J of the SEBI Act, while adjudging the quantum of the penalty under section 15A(b). We see no reason to accept the contentions of the Respondent that factors as contemplated under section 15J of SEBI Act, were not taken into consideration by Adjudicating Officer, while awarding the penalty as acquirer/Respondent failed to submit the detail information and documents in standardized format of report in time as contemplated & under Regulation 3(4) and section 15 A(b) of the SEBI Act.

34.For the reasons stated above, the common order passed by the Securities Appellate Tribunal dated 30.11.2000 in S.B.A. No.17/2000 and 18/2000 is set-aside. The Appeal No.2 is allowed and the order passed by the Adjudicating Officer dated 24.7.2000 is restored and maintained.

35. We, therefore, allow the present appeal with no order as to costs

(R.M. LODHA, J)

(A.V. MOHTA, J)