BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 96/2002

In the matter of:

P. C. Surana	**Appellant**
Vs.	
Poonam A. Bamba, Adjudicating Officer	**Respondent**

Present:

Shri T. N. Tripathi,	
Advocate,	**for Appellant**
Shri Ananta Barua,	
Jt. Legal Adviser, SEBI	
Shri Santosh Shukla,	
Asstt. Legal Adviser, SEBI	**for Respondent**

ORDER

Magnum Intermediates Ltd., is a public limited company (the company). Its shares are listed on OTC Exchange of India. The company is jointly promoted by Shri G. P. Aggarwal, Shri P. C. Surana and Shri Bansidhar Poddar. The company, as has been stated in the appeal, to meet partly the fund requirements for the proposed expansion, issued 25,00,000 equity shares on preferential basis to "promoters" (Shri G. P. Aggarwal and relatives, Shri P. C. Surana and relatives) and "others" in March 1999. Out of the said 25 lakh shares issued, 16,70,000 shares were alloted to the promoters and the remaining 8,30,000 shares to others. The shares of face value of Rs.10/- each were issued at a price of Rs.12/- per share i.e. with a premium of Rs.2/- per share. As a result of allotment of 16,70,000 shares to the promoters, their voting capital in the company increased from 52% to 59.15% i.e. by 7.15%. On knowing about the said acquisition of shares by the company's promoters, the Respondent sought details thereof. Based on the information so collected the Respondent

officer was appointed. The adjudicating officer on concluding the enquiry, held the promoters guilty of violating regulation 11(1) and imposed a penalty of five lakhs rupees on the promoters who acquired the shares. Shri P.C. Surana, one of the promoters, claiming to be aggrieved by the said order, preferred the present appeal.

Shri T. N. Tripathi, learned Counsel appearing for the Appellant referred to the activities of the company, the details of the share issue made so far, the financial constraints the company was facing and the circumstances necessitating to make the preferential allotment. He submitted that in the then prevailing circumstances, there was no other alternative but to make the preferential allotment to raise the equity capital to comply with the Industrial Development Bank's requirement for funding the company's expansion project. He submitted that the preferential offer was not made with the intent to give an opportunity to the allottees to substantially acquire the shares, that the sole intention was to part finance the substantial expansion of the company, that by subscribing to the shares, the promoters have not benefitted in any way and the investors have not lost any money by not getting these shares because the shares had never quoted above its par value, that there were no malafide intentions on the part of the promoters as the shares were acquired at Rs.12/- which was more than the market price, that in fact funding the company by preferential allotment was in the best interest of the company's other share holders.

Learned Counsel submitted that as a result of acquiring shares in the company's preferential issue, the promoters' holding in the company's voting capital raised from 52% to 59.15%. In this context he referred to regulation 11(1) and submitted that even though the quantum of shares acquired by the promoters in the instant case was in excess of the prescribed limit, by virtue of the exemption

company and also the resolution passed by the shareholders in the Extra Ordinary General Meeting of the members of the company held on 19.2.1999, that by the general resolution "approval of the members was given to the Board to issue and allot for cash 25,00,000 equity shares of Rs.10/- each of the company at a premium of Rs.2/- per share to the promoters and others on preferential basis." In this context he referred to the conditions provided in regulation 3 (1) (c) required to be complied with to avail exemption, and submitted that the Appellant has complied with the requirement of clause (i) by sending the relevant Board resolution to OTC Exchange India, that the Respondent has not disputed the compliance. He referred to clause (ii) of regulation 3 (1) (c) and submitted that as per the said clause "full disclosures of the identity of the class of the proposed allottee(s) is made, and if any of the proposed allottee(s) is to be allotted such number of shares as would increase his holding to 5 per cent or more of the post issued capital, then in such cases the price at which the allotment is proposed, the identity of such person (s), the purpose of and reason for such allotment, consequential changes, if any, in the board of directors of the company, and in voting rights, the shareholding pattern of the company and whether such allotment would result in change in control over the company are disclosed in the notice of the general meeting called for the purpose of consideration of the preferential allotment". Learned Counsel referred to the resolution passed in the company's general body of members held on 19.2.1999 and also to the explanatory statement pursuant to section 173(2) of the Companies Act, 1956 issued along with the notice calling the said general meeting. He submitted that in the said explanatory statement the company had clearly stated the reason and the purpose of making the preferential allotment, the nature and quantum of securities offered, its price and also the identity of the class of the proposed allottees. He submitted that the Appellant having thus complied with the requirements of

acquisition of shares by Shri Surana was not disclosed in the notice as he was already holding more than 5% shares, as disclosure of the acquisition of shares by those already holding more than 5% shares is not a requirement of clause (ii), that non disclosure of shares allotted to Shri Ratanlal Lath is not an issue covered in the show cause notice, as the scope of the show cause notice is with reference to acquisition of 16,70,000 shares by the promoters and not the acquisition of shares by others. He submitted that there was no change in the Board of directors or in the control over the company as a result of the allotment and as such there was nothing to disclose thereon, that an affirmative statement that there was no change in the Board of Directors and management was not made as it was of no consequence, that in any case at best the omission to make such a disclosure was purely a technical one. He further submitted that, the position of the promoters, board of directors and even the control over the management remained unchanged, that therefore it can not be held that the provisions of regulation 3 (1) (c) (ii) were not complied with.

Learned Counsel submitted that since the Appellant has not contravened the provisions of regulation 11, imposition of penalty for failure to comply with the requirements of the regulation did not arise and therefore, adjudicating officer's order imposing penalty of rupees five lakhs can not be sustained. Shri Tripathi referred to section 15 J of the Act and submitted that none of the parameters stated in the said section did apply to the Appellant. He submitted that the Appellant has not benefitted or gained in any way by acquiring shares in the preferential allotment made by the companay and investors have not lost any money by not getting these shares because the shares have never been quoted above the price at which the shares were acquired in the preferential allotment made. He further submitted that the Appellant had not contravened the Act, or the rules and the regulations made

rupees as compounding/adjudication fee, the learned Counsel submitted that the Appellant had not made any such commitment or willingness to pay rupees five lakhs in the adjudication proceedings before the adjudicating officer, that the submission made by the Appellant before the Chairman, of the Securities and Exchange Board of India can not be considered as a submission/admission before the adjudicating officer. He submitted that even though the Respondent had admitted the Appellant's version that it has not made any gain or caused any loss to any investors still it has imposed penalty on the Appellant. Shri Tripathi submitted that the impugned order is based on an erroneous understanding that the acquisition attracted regulation 11(1) ignoring the fact that it is an exempted acquisition under regulation 3(1)(c).

Shri Ananta Barua, learned representative of the Respondent submitted that exemption from compliance of the provisions of regulation 11 is available only if the acquisition is an exempted acquisition under regulation 3, that in the present case even though the Appellant is claiming exemption under regulation 3 (1) (c) it is not available to the Appellant having failed to comply with the preconditions set out in the said regulation.

Learned representative submitted that the Appellant alongwith other acquirers as mentioned in the impugned order had acquired shares of the company on 11.3.1999 by preferential allotment violating the provisions of regulation 11(1). He submitted that the Appellant was allotted 6,83,000 shares and as a result of the same his shareholding in the company's capital increased from 6.17% to 16.73%, that the Appellant is a "promoter", that under the category "other than promoters" included Shri Ratanlal Lath who was allotted 4,80,000 shares i.e. 9.58% of the

of shares were being allotted as was to increase their share holding to 5% or more (b) consequential changes, if any, in the board of directors of the company and in voting rights, the shareholding pattern of the company and whether such allotment would result in change in control over the company.

Learned representative submitted that it is an admitted fact that the shareholding of the promoters prior to the acquisition exceeded 15 per cent of the voting capital of the company and after the acquisition the shareholding of the Appellant and other acquirers increased by 7.63%. He submitted that since the acquisition exceeded 5% of the post issued capital, public announcement was required to be made under regulation 11(1) before acquiring the shares. He submitted that since the Appellant had failed to fulfill the condition stipulated in clause (ii) of regulation 3 (1) (c) by not making full disclosures in the notice as required, the exemption was not available to the Appellant and consequently regulation 11(1) attracted and failure to comply with the requirements of the said regulation 11(1) in turn attracted the penalty under section 15 H (ii) provided for such default. Shri Barua submitted that this Tribunal in Arya Holdings Ltd. V Sri Sai Ram (2001) 31 SCL 549) had held the need for strictly complying with the requirements of regulation 3(1) (c) to avail exemption.

Shri Barua submitted that the Appellant had agreed before the Chairman of the Securities and Exchange Board of India in a proceeding initiated under the Takeover Code that he was ready to pay Rs. 5 lakhs as compounding/adjudication fee for violating the provisions of the Takeover Code and it was in that context to enable the Appellant to pay such amount, adjudication was ordered and the Appellant can not at this stage of the proceeding go back on the said statement. In

Learned representative submitted that the Appellant's allegation that the adjudicating officer has not taken into consideration the provisions of section 15J of the Act is not correct, as the adjudicating officer in the order has referred to the said section and stated that after taking into account all the relevant facts, it was decided to impose a penalty of rupees five lakhs.

I have carefully considered the submissions from the parties, facts available on record and the provisions of law.

Respondent's contention that the adjudication order is made with the consent of the Appellant and, therefore, the present appeal is not maintainable, is not correct. There is no indication in the order to the effect that the order was passed with the consent of the parties. The willingness to remit five lakh rupees stated to have been expressed by the Appellant before a different authority in a different proceeding can not be borrowed to the proceeding before the adjudicating officer. Adjudication proceeding by itself is a separate proceeding. Adjudicating officer has also not gone by the statement of the Appellant before the Chairman, for the purpose of imposition of penalty. She has independently examined the charges and decided the quantum of penalty. In my view the Appellant is entitled to file the present appeal as it is directed against the self contained order made by the adjudicating officer by which he is stated to be aggrieved.

It is not in dispute that the Appellant and other acquirers referred to in the impugned order are promoters of the company and as a result of acquiring shares in the preferential allotment made by the company, their shareholding in the company's capital increased from 52% to 59.15% i.e. by 7.15% as against the 5% bench mark

acquisition of shares in certain circumstances or acquisition of control over a company. Specific requirements, relating to this requirement have been spelt out in several regulations under the said chapter. In the instant case the relevant regulation –say the triggering regulation - is the one applicable to further acquisition of shares i.e. regulation 11. Regulation 11 has two limbs as could be seen therefrom. The said regulation is as follows:

> 11. Consolidation of holdings.—(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than 75% of the share or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.
> (2), No acquirer who, together with persons acting in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with regulations."

In the present case the applicable sub regulation is (1), as the Appellant alongwith the other promoters were already holding 52% of the voting capital of the company and their further acquisition was 7.15%.

Takeover Regulation provides exemptions to certain type of acquisitions. The exempted category of acquisition has been stated in regulation 3. Some of these exemptions are automatic and some of them are subject to fulfillment of certain specific conditions. The acquisitions falling under any one of the exempted category appearing under regulation 3 are out of the purview of Chapter III. One of such exemptions is preferential allotments as provided under regulation 3(1)(c). The said exemption is not automatic. To avail the exemption certain pre requirements have to

(ii) Full disclosures of the identity of the class of the proposed allottee(s) is made, and if any of the proposed allottee(s) is to be allotted such number of shares as would increase his holding to 5% or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes if any, in the board of directors of the company, and in voting rights, the shareholding pattern of the companay and whether such allotment would result in change in control over the company are disclosed in the notice of the General Meeting called for the purpose of consideration of the preferential allotment"

It is thus clear from the provisions of regulation 3(1)(c) that an acquisition pursuant to a preferential allotment simplicitor will not be eligible for exemption unless the requirements stipulated in clauses (i) & (ii) are complied with. In this context it is pertinent to mention that since the law specifically provides that the exemption is subject to compliance of certain requirements specified therein, to avail such exemption, it is absolutely necessary to fully comply with the specified requirements. The regulation does not provide for any relaxation from compliance of the specified requirements. It is therefore necessary to examine whether the requirements of clauses (i) and (ii) of regulation 3(1)(c) have been fully complied with.

The preferential allotment was made pursuant to a resolution passed under section 81(1A) of the Companies Act. This is an admitted fact. It is also not the case that the Appellant has failed to comply with the requirement of clause (i) of regultion 3(1)(c). The dispute is as to whether the Appellant has complied with the disclosure requirements as per sub clause (ii) of regultion 3(1)(c). Appellant claims he has fulfilled the requirements. Respondent refutes the said version.

The company in its extra ordinary general meeting held on 19.2.1999 passed a special resolution according approval to issue 25,00,000 equity shares of Rs.10/-

support of the contention that the company had made requisite disclosures in the said notice in terms of sub clause (ii) of regulation 3 (1) (c). Let us have a look at the text of the said explanatory statement as extracted below:

> "The cost of the substantial expansion at the existing plants of the company at Tarapur and new project at Nashik is estimated at Rs.1565 lakhs and is to be financed as under:-
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> | | |
> |---|---|
> | Equity Shares Capital | Rs. 300 lakhs |
> | Internal Accruals | Rs. 190 lakhs |
> | Loan from Financial Institution and Bank | Rs.1075 lakhs |
> | | Rs. 1565 lakhs |
>
> Due to uncertain conditions prevailing in capital market, it was not possible to raise funds through any public or rights issue.
> In view of the above, your Board of Directors recommend that 25 lakhs equity shares of Rs.10/- each of the company be offered to the promoters and others by way of preferential allotment at a premium Rs.2/- per share aggregating to Rs.300 lakhs.
> The proposed issue is subject to your consent and the guidelines issued by SEBI in this regard.
> The Directors of the Company may be deemed to be concerned or interested in the said resolution to the extent of the Equity Shares that may be offered to them."

In this context the following observation made by the Respondent is to be noted:

> "It is osberved that the company in the said notice, has disclosed the price at which The allotment was proposed i.e. at a premium of Rs.2/-. Further though the said notice does not clearly mention that preferential issue is being made to raise money for a particular purpose, however, a disclosure in the Explanatory Statement that the cost of the substantial expansion of the existing plants of the company at Tarapur and new project at Nashik is to be financed to the extent of Rs.300 lacs from equity share capital. Therefore, it can be reasonably be treated as disclosure of the purpose of such allotment of equity on preferential basis.
> Further, it is seen that the said notice of EGM <u>did not disclose</u> –
>
> (a) the identity of such persons to whom such number of shares were being allotted as was to increase their shareholdings to 5% or more;
> (b) consequential changes, if any, in the board of directors of the company in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company.

> Admittedly the shareholding of the acquirers Shri P.C.Surana, the promoter and Shri Ratanlal Lath (shown under the head "Other than Promoters') had

> allotment of more than 5% shares of the company has been made to Shri Ratanlal Lath, whose name appears under the head "Other than Promoter" in Annexure 'C' to letter of Magnum Intermediates Ltd dated 25.11.99 (signed by Shri P.C.Surana as Director of MIL) which provides details of allotment giving categories of shareholders, number of shares held before allotment and after allotment under preferential issue. From the same, it is seen that shares have also been allotted to about 12 persons in the category "others" who are inter alia, Ratanlal Lath (9.58%), Ashok Kumar Sanghi (2.40%), Mr.Chiranjilal P. Vyas (2.00% approx), Shri Ashwin C. Vyas, T.V. Gopalakrishhan, etc. These persons are named under the head "other than Promoters" i.e. are non promoters and shareholders could not have known about such persons. In view of the above, it is evident that the disclosure that the shares shall be allotted to "Promoters and Others" does not in any way inform the shareholders about the identity of the individual to whom 5% or more of the share capital of the company is being allotted.
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> Further a specific disclosure to the effect whether such allotment would result in change in Board of Directors, its shareholding pattern and whether it will result in change in control over the company was required to be made and not made. It is seen that consequent to impugned acquisition, voting rights, shareholding pattern has changed. Therefore, the acquirer's contention that the promoters, board of directors and even the control over management remaining the same, such non disclosures of names has not affected or violated any of the provisions is untenable and cannot be accepted.
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> In view of the above findings, that the requisite disclosures are specified under clause (ii) of proviso to clause (c) to regulation 3(1) have not been made, the abovesaid acquisition is not exempt under the said regulation. Thus, the abovesaid acquisition of more than 5% of the post issue capital not being exempt, the Acquirers for such acquisition already admittedly holding 52% have trigged the provision of sub regulation (1) of regulation 11. Therefore, a public announcement was required to be made. No such public announcement was made. The acquirers have therefore, violated provisions of sub regulation (1) of regualtion11."

On a perusal of the notice of general meeting it is seen that the Appellant had identified the class of the proposed allottees as "promoters and others." From the factual position discussed in the show cause notice it is seen that out of the 25,00,000 shares allotted 16,70,000 shares were allotted to the promoters and the remaining 8,30,000 shares to the public. Since the proposal was to allot 16,70,000 shares specifically to promoters and there was no identifiable specific class among "others" I do not consider that by identifying the proposed allottees as "promoters and others"and the disclosure made accordingly in the notice, is not adequate as the

to who are the bulk allottees. The argument that it is a one time disclosure requirement, in my view is not correct. The purpose of the disclosure is to benefit the other shareholders, and denial of the details of further acquisition by such a shareholder can not serve the purpose. While interpreting the scope of the regulation, its object has to be kept in mind. The Appellant has admitted that another person namely Shri Rattanlal Lath had acquired 9.58% shares and his identity was also required to be disclosed. The Appellant's argument that since the scope of adjudication is limited to acquisition of 16,70,000 shares by the promoters, the shares allotted to Rattanlal Lath is beyond the scope of the adjudication and as such allotment made to him need not be disclosed in the notice is not correct. In this context it is to be noted that it is not the Respondent's case that the said Rattanlal Lath was a person acting in concert with the Appellant and other promoters. He is a different entity. His acquisition was only 9.58% so that regulation 10 and 11 did not reach the acquisition. It is also not the charge that he acquired control over the company. The charge is that the Appellant and other promoters by acquiring 7.15% shares were required to comply with the requirements of regulation 11(1) and it was in the said context the applicability of regulation 3(1) (c) comes into. It is true that the adjudication is confined to the acquisition of shares by the Appellant and the other promoters. But for the purpose of disclosure under sub clause (ii), it is not the status of the acquirer that matters, it is his holding that matters. Therefore, for the purpose of disclosure under regulation 3(1) (c) (ii) one can not exclude the shares allotted to other persons. In my view identity of such person whose holding would increase to 5% or more of the post issued capital as a result of the allotment was required to be disclosed in the notice. This has not been done. It is also seen that as a result of the acquisition of further shares the promoters' voting rights changed, and the shareholding pattern also changed. But it was not disclosed in the notice. It was

Now coming to the requisite disclosure by the Appellant in the notice of the General meeting called for the purpose of consideration of the preferential allotment, by the Appellant's own admission disclosures on certain aspects such as changes in voting rights and change in share holding pattern were not furnished. Disclosure of the specified information in the notice is very important from the point view of the public share holders, as the particulars so furnished would help them to take an informed decision about the future of their investments in the company. Failure to disclose full details on the specific aspects provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. Since the requirements of clause (ii) of regulation 3(1)(c) have not been complied with fully, the exemption under regulation 3(1)(c) is not available to the acquisition by the Appellant. Once it is held that the acquisition do not have the benefit of exemption as provided under the said regulation, the acquirer is required to comply with the requirement of making a public offer in terms of regulation 11, and failure to do so would attract the provisions of section 15H(ii). The need for strict compliance of the conditions provided in regulation 3(1) (c) to avail exemption from the scope of Chapter III of the Takeover Regulations, has been clearly stated by this Tribunal in Arya Holdings (supra).

For the reasons stated above it is clear that the Appellant has failed to fulfill the requirements of regulation 3 (1) (c) and therefore, the acquisition in question is not exempted from the purview of regulation 11(1).

With reference to the dispute on the quantum of penalty imposed by the adjudicating officer it is to be noted that section 15H(ii) provides penalty for failure to make public announcement required to be made as per regulation 11 etc.

In terms of section 15 I if on enquiry the adjudicating officer is satisfied that the person has failed to comply with the provisions of section 15H etc. he may impose such penalty as he thinks fit in accordance with the provisions of the relevant section.

Appellant had referred to section 15J alleging failure on the part of the Respondent to take into consideration the factors to be taken into account by the adjudicating officer. Section 15J provides guidelines. According to the said section 15J:

> "While adjudging quantum of penalty under Section 15J, 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."

The Appellant had contented that the adjudicating officer has not taken into consideration, while imposing the penalty, the fact that the promoters have not benefitted in any way by acquiring the shares offered to them by way of preferential allotment, that the investors have also not been put to any loss as the company's shares have never been quoted above the price at which the promoters purchased them, that there was no default on the part of the company or the promoters earlier.

The Appellant's contention that the adjudicating officer has not noted the requirements of regulation 15J and decided the quantum of penalty is baseless, is evident from the order itself. The adjudicating officer has stated in the order:

> "Before arriving at the quantum of penalty, besides the objective behind the said Regulations, as discussed above, factors as prescribed in section 15J of the said Act and sub-rule (2) of rule 5 of SEBI Rules, the nature of violation, how such violation has affected the interest of the shareholders, and mitigating factors, if any are also need to be taken into account."

approved by the IDBI under which Rs.300 Lacs were required to be financed through Equity Issue;

(ii) that promoters have not benefited in any way by allotment of the shares and investors have not lost any money by not getting these shares because the shares have never quoted above this price.

(iii) There was no malafide intention on the part of the promoter as the shares were acquired at Rs.12/- which was more than the market price and it could not result into any gains to the promoters. Rather, it was in the best interest of the company's other shareholders.

(iv) that the company has not contravened the provisions of Regulation 11 of the SEBI (Substantial Acquisition of Share and Takeovers) Regulations, 1997 leading to contravention of section 15H (ii) of SEBI Act,1992 in the matter;

(v) that unfortunately after completing the expansion, company made heavy losses and the company is already registered as sick unit with BIFR.

Further section 15J and sub Rule (2) of Rule 5 of the said Act and SEBI Rules respectively, mandate that while adjudging the quantum of penalty the Adjudicating Officer shall have due regard to the following factors:-

(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; and

(c) the repetitive nature of the default.

I take note of the Acquirers' submissions for non imposition of penalty as mentioned in para 6.3.1 above and factors as applicable as mentioned in para 6.3.2. It may be mentioned that special treatment by way of exemption from making public offer was given to preferential allotment, only after taking into account that such issue of capital helps infusion of funds and is as per SEBI (Disclosure and Investors Protection) Guidelines, 2000. Thus Acquirers' contention that such preferential allotment was for part financing of substantial expansion of the company and was not for the benefit of the promoters, cannot be a mitigating factor. Further, the other reason given for consideration of non imposition of penalty is that company has made heavy losses, does not in any manner lessen the liability of the Acquirers. Further, so far as contention that the company is already registered with BIFR as sick unit is concerned, Acquirers' have not submitted any document in support thereof. However, in any view of the matter, that subsequent event, does not in any way reduce the liability of Acquirers under the said Regulations. As noted above that complete disclosures, which are pre-requisite for qualifying for exemption under clause (c) of sub regulation (1) of regulation 3 were not made. Such non disclosures deprived shareholders of complete information before taking a decision to approve such preferential allotment. More important that the Acquirers admitted having contravened the said regulation. After taking into account all relevant facts, I am satisfied that this is a fit case which deserves maximum penalty as prescribed under clause (ii) of Section 15H.

In view of the above, I hereby, impose a penalty of Rs.5,00,000/- only (Rupees Five Lacs) on the Acquirers."

at a premium of Rs.2/- per share and that the said price was higher than the market price. In that context a public offer to purchase shares at such a premium from the existing share holders would have been certainly beneficial to the shareholders and by not making the public offer, the shareholders were denied of that benefit. Therefore, the Appellant's version that investors have not lost anything, is not correct. The adjudicating officer has stated that she has taken into consideration all relevant facts, and on satisfying that it was a fit case warranting maximum penalty prescribed under section 15H(ii), she imposed five lakhs rupees as penalty. It is to be noted that the liability to pay the penalty is on the Appellant and not on the company and as such the submission that the company is "sick" is of no consequence, as far as the Appellant's obligiation to pay the penalty is concerned.

In the light of the facts and circumstances of the case, in my view the charge against the Appellant has been established and quantum of penalty imposed is also justified. Therefore, I do not consider it necessary to interfere in the decision taken by the adjudicating officer.

For the reasons discussed above, the order is to be sustained.

Appeal dismissed.

Sd/-

(C. ACHUTHAN)
PRESIDING OFFICER

Place: Mumbai
Date: May 14 , 2003.