BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

In the matter of:

Appeal No.87/2002

Rukmani Metals and Gaseous Ltd. Appellant

Vs.

Chairman, Securities & Exchange Board of India Respondent

Appearance

Shri Dinesh Agnani

Advocate for Appellant

Shri Vinay Chauhan

Legal Officer, SEBI for Respondent

ORDER

The present appeal arises against the order passed by the Adjudicating Officer on 18.7.2002, against the Appellant, imposing monetary penalty of one lakh rupees holding the Appellant guilty of non compliance of the requirements of reporting in terms of regulation 8(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the Takeover Code). The Respondent vide order dated 26.3.2002 had appointed an Adjudicating

Officer to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (SEBI Act) the contravention of regulation 8(3) of the Takeover Code, allegedly committed by the Appellant with reference to the financial year ended on 31.3.2001.

According to regulation 8(3):

> "Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March, 31 as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosure to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March."

Sub-regulation (1) referred in sub-regulation (3) reads as under:

"(1) Every person, including a person mentioned in regulation 6 who holds more than fifteen percent shares or voting rights in any company, shall, within 21 days from the financial year ending on March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March."

For failure to comply with the requirements of regulation 8(3), penalty has been provided in regulation 15A(b) as under:

15.A. If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) …….

(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.

In terms of section 15 I, the Respondent is empowered to appoint, an Adjudicating Officer for the purpose of adjudging under section 15A and imposing penalty as per the provisions specified in the section. The Adjudicating Officer so appointed , after following the prescribed procedure, and on satisfying that the person has failed to comply with the provisions of any of the sections specified in the section, is empowered to impose penalty.

The Adjudicating Officer, appointed by the Respondent in the instant case after holding the inquiry came to the conclusion that the Appellant had failed to comply with the requirements of regulation 8(3) in as much as the disclosure was made involving a delay of 63 days. Based on the said conclusion monetary penalty of one lakh rupees was imposed on the Appellant.

When the appeal was taken up for consideration, the learned Counsel appearing for the Appellant submitted that the Appellant had furnished the particulars required under regulation 8(3) to the stock exchanges in the other returns/reports, submitted to the exchange, that not making specific disclosure under regulation 8(3) was not intentional with a view to suppress the information, that there was nothing to gain by suppressing the factual information which the Appellant had already furnished to the exchange, though not under regulation 8(3).

Learned Counsel submitted that the Adjudicating Officer passed the order on 18.7.2002 and the Appellant filed the Appeal on 30.9.2002. He submitted that on 19.9.2002, the Respondent notified the "SEBI Regularization Scheme, 2002" (the Scheme), as a one time measure, enabling the persons who had failed to comply with the requirements of regulation 6 and the requirements of sub regulations (1) (2) and (3) of regulation 8, to regularise the default by paying certain lumpsum amount to SEBI as specified in the Scheme during the currency of the Scheme. The amount payable for the failure under regulation 8(3) for each year was ten thousand rupees and the Scheme was in operation with reference to the failures under regulation 8(3) upto 31.1.2003 and it was further extended by 2 months. He submitted that the Appellant in the said context approached SEBI to avail of the benefit of the said Scheme, but the Appellant was not allowed on the ground that the benefit was not available to cases where penalty under the SEBI Act

had already been imposed. He submitted that the Scheme was also available to the cases where the proceedings under the SEBI Act were in progress. In this context he referred to this Tribunal's decision in Zee Telefilms Ltd vs. Adjudicating Officer, SEBI (2003)42 SCL 484 and submitted that the Tribunal had held in the said case that the benefit of the Regularization Scheme was also available to the cases pending in appeal before the Tribunal as the appeal proceeding is a continuation of the adjudication initiated and decided by SEBI. Since the matter was pending in appeal the Respondent was not prepared to accept the lumpsum payment. He submitted that for the reason that the appeal could not be disposed of during the currency of the Scheme, the Appellant should not be denied of the benefit otherwise available to it and the Appellant should not be put to undue hardship. Learned Counsel submitted that the Appellant is willing to pay the lumpsum amount, which it was required to pay as per the scheme. He submitted that the penalty imposed by the Respondent be reduced to be in tune with the amount payable under the Regularization Scheme and appropriate order be passed.

Shri Vinay Chauhan, learned Representative of the Respondent submitted that the charge that the Appellant had failed to comply with the requirements of regulation 8(3) has been established and the Adjudicating Officer had rightly imposed the monetary penalty after taking into consideration all the relevant aspects including the provisions of section 15J and as such the order is to be sustained. He submitted in detail the importance of making disclosures by the concerned parties under the Scheme and the objective of the provisions of regulation 8(3) and section 15A(b). With reference to the Appellant's contention that the Appellant could have been given the benefit of the Scheme, Shri Chauhan submitted that the impugned order was passed by the Adjudicating Officer on 18.7.2002 i.e. before the notification of the Scheme on 19.9.2002, and that since the Appellant had filed an appeal against the said order and the matter being subjudice, the benefit of the Scheme was not automatically applicable to the Appellant. He submitted that the Tribunal's decision in Zee Telefilms (Supra) was pronounced on 29.1.2003, and thereafter the Appellant did not approach the Respondent, though the currency of the Scheme was extended upto 31.3.2003.

I have considered the submission made by the parties. It is seen that the impugned order was passed on 18.7.2002 and the appeal was filed on 30.9.2002. The Scheme was notified on 19.9.2002 and continued to be in operation upto 31.3.2003. This Tribunal had examined the applicability of the Scheme to the appeals filed under section 15T and remaining pending disposal, in the case of Zee Telefilms. In the said case the Tribunal had observed:-

> "The Scheme as originally notified was valid for the period as mentioned below:
>
> a. For a period of 3 months, i.e. from October 1, 2002 to December 31, 2002 for persons referred to in clause (a) of the Scheme.
>
> b. For a period of 4 months, i.e. from October 1, 2002 to January 31, 2003 for companies referred to in clause 2(b) and (c) of the Scheme.
>
> SEBI vide its order dated 31.12.2002 has extended the currency scheme for compliance by person referred at (a) above upto 28.2.2003 and for those referred to at (b) up to 31.3.2003.
>
> Shri Ananta Barua's submission that the scheme is available only to those failures which "were due to over sight or lack of knowledge" has no support in the light of the unqualified eligibility provided in para 2 of the Scheme. The Appellant in terms of para 2 of the Scheme is entitled to avail of the Scheme, provided it does not suffer the disqualification provided in para 3 of the Scheme.
>
> As per para 3 of the Scheme the benefit under the Scheme is not available in cases where penalty under the SEBI Act read with Takeover Regulations, 1997 has already been imposed. But an exception to this has been provided in the following words: "Where such proceedings under the SEBI Act read with Takeover Regulations are in progress persons/companies may avail the benefit of the scheme."
>
> It is clear that in the instant case, the Adjudicating Officer in exercise of the powers available under section 15I of the Act passed the order imposing monetary penalty as provided in section 15 A(b) of the Act and the Appellant filed the present Appeal under section 15T of the Act and the appeal proceedings are in progress. It is in this context one has to see the applicability of the Scheme to the Appellant.

It is well settled that the appeal proceeding is a continuation of the adjudication, and that this view is supported by the Hon'ble Supreme Court's decision in Hasmat Rai Vs. Raghunath Prasad ((1981) 3 SCC 103). Even the cases where the appeal proceedings are in progress against the order passed by the Respondent are eligible to avail of the benefit under the scheme is clear from the provisions in the scheme itself. As stated earlier it has been stated in para 3 that the Scheme will not be available in cases where penalty under the SEBI Act with Takeover Regulations, 1997 has already been imposed. If the said disqualification was absolute, there was no need to provide for an exemption stating that where such proceedings under the SEBI Act read with Takeover Regulations are in progress, persons/companies may avail the benefit of the scheme. The adjudication by the Adjudicating Officer for the purpose of imposing monetary penalty is a quasi judicial function and on passing the final order in adjudication, the Adjudicating Officer becomes functus officio and there is no scope for any further proceedings in the matter before him or before SEBI. There is no review power with SEBI. The only proceeding under the Act which is possible in a case where an adjudication order has been passed, is appeal proceeding before the Tribunal, in an appeal filed under section 15T by the person aggrieved as a result of the order. The exemption so provided in the Scheme, which is in tune with the well settled principle that the appeal proceeding is a continuation of the adjudication, in my view is referable to the proceedings in progress in an appeal filed against the order passed by the Adjudicating Officer. In this context it is to be noted that the appeal proceeding in an appeal filed under section 15T is also a proceeding under the Act. In that view of the matter, and further that the Scheme is still in operation the Appellant whose appeal is pending in the Tribunal, is entitled to avail of the benefit and that since the Appellant's Counsel has expressed that the penalty if at all leviable should not be more than the amount prescribed under the Scheme merits consideration. I have considered the submission. I do not find any justification to deny the benefit of the Scheme, to the Appellant which it is entitled to avail of. Therefore in my view imposition of penalty of five lakh rupees in this case appear to be unfair and that ten thousand rupees as penalty for each failure as provided in para 5 of the Scheme would be reasonable.

In the light of the facts and circumstances of the case, and taking into consideration the Appellants submissions that it is eligible to avail of the benefit under the SEBI Regularization Scheme, 2002, and the Scheme is still in operation, I am of the view, that the portion in the order levying five lakh rupees as penalty need be modified to be in tune with the amount specified in the Scheme. Accordingly the

> Respondent's direction to the Appellant to pay five lakh rupees is modified to the extent reducing the quantum of penalty to sixty thousand rupees. The impugned order with reference to quantum of penalty levied on the Appellant stands modified to the extent stated above. The Appellant is directed to remit the sum of penalty as per the modified order with in three weeks from the date of this order."

It is noted that the extended currency of the Scheme was over on 31.3.2003. The Scheme is not available today. When the Zee Telefilm's case was decided the Scheme was in operation. It was not because of the Appellant's fault that its appeal did not reach for consideration before 31.3.2003. The fact is that the Appellant was entitled to avail of the Scheme, and that according to its version, it had approached the Respondent but because of the order of the Adjudicating Officer in existence the Appellant was not in a position to automatically avail of the benefit. There is no doubt on the eligibility of the Appellant to avail the benefit of the Scheme during the pendency of the appeal. Since the appeal did not reach for consideration by the Tribunal before 31.3.2003, the Appellant was not in a position to raise the issue and claim the benefit, as in the case of Zee Telefilms. I am of the view that in the light of the factual position explained above, it is felt that the Appellant should not be denied of the benefit of the Scheme which it was otherwise entitled to avail, had the appeal come up for consideration before 31.3.2003. The Appellant has stated his willingness to pay the lumpsum amount required to be paid under the Scheme.

Taking into consideration the circumstances specific to the case the Appellant is directed to pay ten thousand rupees, as it is the amount specified by the Respondent in the Scheme for failure to comply with the disclosure requirement under regulation 8(3).

Accordingly the impugned order is modified to the extent reducing the quantum of penalty to ten thousand rupees. The Appellant is directed to remit the penalty amount as per the modified order within three weeks from today.

The Appeal is disposed of in the above lines.

Sd/-

(C. ACHUTHAN)

PRESIDING OFFICER

Place: Mumbai

Date: August 29 , 2003

Copy to:

1. **The Appellant as above**
2. **The Respondent**

CERTIFIED TRUE COPY

BY ORDER

REGISTRAR

SECURITIES APPELLATE TRIBUNAL

MUMBAI

Date: August 29, 2003