BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 38 of 2013
And
Appeal No. 39 of 2013

Date of decision: 18.04.2013

Appeal No. 38 of 2013

K. Nirmala ……Appellant
Flat No. 201, Sindhoor Apartments,
Gayatri Nagar, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Appeal No. 39 of 2013

K. Nirupama
B-2-293/82/L/281, MLA Colony,
Banjara Hills, Road No. 12,
Hyderabad 500 034,
Andhra Pradesh. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Deepak Dhane, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Akhilesh Singh, Advocates for the Respondent.

CORAM : Jog Singh, Member

Per : Jog Singh, Member (Oral)

With the consent of learned counsel for the parties both the appeals have been heard together and are being disposed of by this common order.

2. Appeal no. 38 of 2013 is taken as leading case for the fact purposes. The appellants are promoters and the shareholders of the company in question i.e. Shriniwas Power & Infrastructure Limited which is listed on Bombay Stock Exchange Ltd. (BSE). The respondent found some irregularity pertaining to the matter of pledges of large number of shares by the two appellants and as such after issuing show cause notices to both of them in the adjudicating proceedings conducted under Section 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by the Adjudicating Officer) Rules, 1995. By order dated November 30, 2012, the learned adjudicating officer came to the conclusion that it was a fit case where penalty of ₹ 3,25,000/- should be imposed on the appellant in appeal no. 38 of 2013 and penalty of ₹ 3,00,000/- on the appellant in appeal no. 39 of 2013 under Section 15A(b) of SEBI Act for violation of the provisions of Regulations 8(A)(2) and 8(A)(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short SAST Regulations) read with Regulation 35 of SAST Regulations, 2011, Regulation 29(2) read with 29(3) and Regulation 31(2) read with 31(3) of SAST Regulations, 2011. They were also found guilty of Regulation 13(3) read with Regulation 13(5) and Regulation 13(4A) read with Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short PIT Regulations).

3. Shri Deepak Dhane, learned counsel for the appellants has argued that the appellants did not play any fraud on the investors and there was no intention to do so. Similarly, learned counsel for the appellants submits that no undue gain has accrued to the two appellants by virtue of the non- disclosure of the pledges in question. In nutshell, the submission is that no loss was caused to any of the investors by such

inadvertent mistake. They have also stated in the appeal that they will not repeat this unintentional mistake or irregularity in future. On the other hand, Mr. Kumar Desai and Mr. Mihir Mody, learned counsel for the respondent submit that the pledges in question were not only created but later on invoked also to raise money for unknown purposes. In the process, the general public was deprived of an opportunity of either remaining in the company or to exit or even to invest or not to invest therein. It is submitted by the learned counsel for the respondent that general investing public must be informed as per the requirement of law and if it is not done, it has a demoralising effect on the shareholders and the general public. Apart from the aforesaid phenomenon, creation of pledges and invocation of pledges clearly amount to price sensitive information. As such this information is mandatorily required to be disseminated to the people at large.

4. We have heard both the learned counsel for the parties and considered the material available on record. The Tribunal, prima-facie, agrees with the submissions advanced by both the learned counsel for the respondent that the information regarding pledges in question and their revocation was required by law to be disclosed. That having not been done by the appellants, the findings of the learned adjudicating officer cannot be faulted with. In this connection, it may be persistently noted that this Tribunal in Appeal no. 66 of 2003 in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, by its order dated November 15, 2006, under somewhat similar circumstances, has observed that “the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It is with this end in view that the

Regulations require the making of disclosures on pre-acquisition and post-acquisition stages and the requirement in Regulation 7 at post acquisition stage is one among them. As observed, the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature."

5. Keeping in view of the above factual and legal position, the Tribunal is not inclined to interfere with the orders passed by the learned adjudicating officer in these two matters. There is no legal infirmity whatsoever, attached with the said orders. However, keeping in view the totality of facts and circumstance of the matter and the sincere apologetic approach of the appellants, reflected in the pleadings and arguments, in both the cases the penalty shall stand modified and reduced to 50 per cent of the penalty imposed by the learned adjudicating officer of SEBI in each case. With this modification, the impugned orders are upheld. The appellants shall pay the said 50 per cent amount within a period of sixty days from today to the respondent. In case this amount is not paid within the stipulated period of sixty days, the original order regarding imposition of penalty in question would automatically get revived.

In the result, the appeals stand disposed of in terms of the above directions. No costs.

Sd/-
Jog Singh
Member

18.04.2013
Prepared & Compared by
ptm