BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 06.09.2013
Date of Decision: 22.10.2013

Appeal No. 51 of 2013

1. Rich Capital & Financial Services Limited
   (Now known as Rich Universe Network Ltd)
   7/125, C-2, IInd Floor, Swaroop Nagar,
   Kanpur- 208 002.

2. Mr. Shashwat Agarwal
   A-11-A, Ansal Villas, Satbari, Chatarpur,
   New Delhi- 110 074. …Appellants

Versus

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

Mr. Tatwesh Agarwal, Advocate for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Pratham Masurekar, Advocates for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per : Jog Singh

1. There are two Appellants in the present Appeal and have challenged the impugned order dated January 15, 2013 by which a penalty of ` 25 lac has been imposed on Appellant No. 1 i.e., Rich Universe Network Limited (the "Company") and `15 lac on Appellant No. 2 who happens to be the Chairman and Managing Director of Appellant No. 1.

2. The Appellant No. 1 is a company registered under the Companies Act, 1956 having its registered office at Kanpur. It is listed on Bombay

Stock Exchange (BSE), Delhi Stock Exchange (DSE) and Uttar Pradesh Stock Exchange (UPSE).

3. We have heard the learned counsel for the parties for sometime and we have perused the pleadings as well as written arguments submitted by both the parties. The main issue which requires consideration in the present appeal is that whether Appellants can defy, with impunity, the statutory summons issued by the Investigating Officer/Adjudicating Officer of the Respondent requiring them to produce records or appear in person for unearthing the truth and taking the investigation or inquiry to its logical conclusion and that whether the penalty in question is justified or not.

4. From the pleadings and written submissions filed by both the parties it appears that, on a reference from the Bombay Stock Exchange (BSE), the Respondent Board conducted investigation into certain alleged irregularities in the trading in shares of Rich Universe Network Ltd. i.e., the company i.e., Appellant no. 1 for the period between February 1, 2010 to September 24, 2010. The Respondent prima facie noticed that a group of entities was indulging in circular trading thereby creating artificial volume in the scrip of the company i.e., Appellant No. 1. Such an artificial increase in the trading of the shares also influenced their price.

5. The Respondent had initially issued letter dated June 9, 2010 to the Appellant No. 1. By letter dated October 17, 2010, Appellant No. 1 provided certain information relating to few periods in the year 2009. The matter did not rest here and the Respondent specifically issued summons

dated August 1, 2011 as per the statutory provisions to the Appellants requiring specific information relating to a different period pertaining to the year 2010. The Respondent contends that Appellants did not provide any information pursuant to summons dated August 1, 2011and continued to insist on getting a certified copy of the order passed by the Respondent Board under Section 11C(1) of the SEBI Act, 1992 for conducting the investigation in question. An uncertified copy of the same was, however, provided to the Appellants by the Respondent along with dated November 14, 2011. The Appellants, however, continued steadfastly to get a certified copy of the order and made this a ground for not submitting the required information as summoned by the Respondent.

6. From the records we note that the summons dated August 1, 2011 issued by the Respondent required the Appellant No. 1 and 2 to furnish mainly following information and documents:

> "a. Name, address, PAN of the promoters/directors of the Noticee No. 1.
> b. Details of Persons Acting in Concerts during the investigation period.
> c. Details of Shareholding pattern of the Noticee No. 1, top 50 shareholder and their percentage etc.
> d. Details of Corporate developments or announcements and implementation of such announcements.
> e. Details of loan and finance availed by the promoter of the Noticee No. 1 or pledge etc.
> f. Details of market and off market transactions in the shares of the Noticee No. 1 by its promoters-detectors/associates/PAC etc.
> g. Copy of agenda minutes of the Noticee No. 1 during the period of investigations.
> h. Details of the disclosures if any, made by the promoters/ detector/person etc. under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992.
>
> i. Details of preclearance taken by the director/promoters

etc. while dealing in the shares of Noticee No. 1.

j. Copy of the Annual Report of the Noticee No. 1 for the financial years 2007-08 and 2010-11.

k. Confirmation by Noticee No. 1 and its promoters/director etc. about the relation/connection with 20 entities as indicated in the annexures of summon."

7. Finding no co-operation from the Appellants, the Respondent was compelled to appoint an Adjudicating Officer by order dated May 8, 2012 under Section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire and adjudge the alleged violation of Section 11C (2), Section 11C (3) of the Act, and if satisfied impose monetary penalty under Section 15A(a) of the said. A Show Cause Notice ("SCN") dated June 12, 2012 was issued to the two Appellants and four other directors, namely, Shri Rajeev Agarwal, Shri Sannjay Gupta, Shri Dhrupesh Shah and Late Shri K. K. Agarwal. After affording due opportunity to the Appellants, the learned Adjudicating Officer has passed impugned order imposing the monetary penalty in question on Appellant Nos. 1 and 2 only. Whereas no charge could be proved against other three directors namely, Shri Rajeev Agarwal, Shri Sannjay Gupta and Shri Dhrupesh Shah. One director, Shri K. K Agarwal, had since expired. Therefore, the proceedings against late Shri K K. Agarwal stood abated.

8. For the sake of convenience, relevant statutory provisions like Sections 11C (1), 11C (2) and 11C (3), 15A (a) and 15I of SEBI Act, 1992 are reproduced herein below:

“11C. (1) Where the Board has reasonable ground to believe that –
(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder, It may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

15A (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to 36[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

15I. Power to adjudicate.- (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 54[15H, 15HA and 15HB] ,the Board shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any

> person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
>
> (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections."

9. Thus, the whole scheme of SEBI Act, 1992 enjoins upon the Regulator to investigate a matter if it is brought to its notice by any of the stock exchanges that the affairs of a company are being conducted in a dubious manner. Such a power can also be exercised by the SEBI suo moto. We note that requisite information and relevant records are pre-requites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins.

10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in section 15A (a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the past of the companies needs to be curbed at the threashold.

12. Learned counsel for Appellants has relied upon certain judgments of Hon'ble Supreme Court in support of his case. We have minutely gone into these judgments and we find that the same are clearly distinguishable. In the matter in hand, the Appellants have shown defiant and adamant

attitude in not responding to the summons by unnecessarily insisting on certified copy of order which was otherwise provided to them by the Respondent. Appellants are neither disputing existence of an order passed under Section 11C (1) of SEBI Act, nor are doubting correctness of a copy of the order supplied to them. Therefore, we are not inclined to interfere with the impugned order in any manner.

13. In the case of Zenith Metaplast (P) Ltd. vs State of Maharashtra, reported in (2009) 10 SCC 388, the Hon'ble Supreme Court has held that the action of the state of Maharashtra of rejecting the Appellant's application for allotment of land had been taken with undue haste and suffered from the vice of arbitrariness. In the present case the impugned order does not suffer from any such infirmities and has been passed after issuing a detailed Show Cause Notice and considering the case put forth by the Appellants.

14. In other cases viz. Victorial Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732; State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568; Kranti Associates (P) Ltd. v. Massood Ahmed Khan (2010) 9 SCC 496; Agricultural Produce Market Committee v. Quasami Janab Ajmatalla Salamulla (2009) 9 SCC 219, the Hon'ble Supreme Court has reiterated the necessity for judicial or quasi judicial order to contain reasons supporting the conclusions arrived at therein. None of these decisions has any application because the impugned order contains clear and cogent reasons in support of its conclusion. The learned Adjudicating Officer has set out and discussed the relevant facts and has discussed and applied the relevant statutory provisions and case-law. These cases, relied

upon by the Appellants do not help them in any manner. Similarly, the case of Makhan Lal Bangal v. Manas Bhunia (2001) 2 SCC 652, deals with the framing of issues in an election petition. The Hon'ble Supreme Court observed that an Election petition is like a civil trial and emphasized the importance of settlement of issues, inter alia, with reference to Order 14 of the Code of Civil Procedure. The decision has no application whatsoever to the present case, which deals not with court proceedings but with quasi-judicial proceedings under specific provisions of the SEBI Act, 1992 and the Rules frames thereunder by the Respondent.

15. In view of the above discussion of law and fact and also keeping in view the adamancy of the Appellants in observing total indifference towards the summons issued by the Respondent, we hold that the present appeal is bereft of any merit and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

22.10.2013
Prepared & Compared By: Pk