BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 24.12.2013
Date of Decision: 15.01.2014

Appeal No. 201 of 2013

Ambaji Papers Pvt. Ltd.
204, MBK Building,
Near Indore Namkeen,
Central Avenue,
Nagpur – 440 008. …… Appellant

Versus

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

AND

Appeal No. 202 of 2013

Inco Infrastructure Pvt. Ltd.
C/o Sanjay Lute Bhandara Road,
Nagpur – 440 008. …… Appellant

Versus

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

AND

Appeal No. 203 of 2013

Kanhaiya Mining & Minerals Pvt. Ltd.
Plot No. 36, Hiwari Nagar,
Besides Patil Floor Mill,

Nagpur – 440 008. …… Appellant

Versus

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

AND

Appeal No. 204 of 2013

Ramji Agri Business Pvt. Ltd.
First Floor, Adyalaale Layout
Near Gas Godown, Tahsil Road,
Umred – 441 203. …… Appellant

Versus

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

AND

Appeal No. 205 of 2013

Runicha Alloys & Steel Pvt. Ltd.
42, Tulsi Nagar Colony, Shanti Nagar,
Nagpur – 440 002. …… Appellant

Versus

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

Mr. Vinay Chauhan, Advocate for the Appellants.

Mr. Kumar Desai, Advocate with Ms. Khushboo J. Tatia, Advocate for the Respondent.

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

Per : Jog Singh

In this bunch of five appeals, the appellants have challenged the same impugned order dated September 30, 2013 by which each of the appellants is imposed a monetary penalty of ₹ 5 lac for the alleged violations of the provisions of Regulations 7(1) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as well as Regulations 13(1), 13(3) and 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

2. With the consent of both learned counsel for the parties, all the five appeals are being heard together and are being disposed of by this common order. However, for factual purposes, Appeal no. 201 of 2013 is treated as the leading case.

3. The common allegation in all the cases against the appellants levelled by the respondent was that they marginally crossed the limit prescribed by the regulations in respect of their shareholding in Murli Industries Limited (MIL), i.e. the company in question.

4 MIL is a public limited company incorporated under the Companies Act, 1956, having its registered office at Nagpur. It is, interalia, engaged in the production and marketing of various agro based products and is listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). On April 30, 2005, the board of directors approved the issuance of

60 lacs preferential warrants to certain proposed allottees, including the five appellants. This information was conveyed to the two stock exchanges by the MIL. After obtaining approval of the shareholders in the EGM held on May 25, 2005, MIL allotted 5 lacs warrants to each of the appellants. MIL again informed BSE regarding the approval of allotment as well as conversion of shares. On conversion of shares the appellant came to acquire 5.22 per cent shareholding i.e. 0.22 per cent more than the limitation prescribed by the regulations.

5. We have heard both the learned counsel for the parties at length and perused the appeals as well as documents annexed therewith. The sole case of the respondent against the appellant is that it failed to inform the stock exchanges about its acquisition of shares thereby depriving the public of the information regarding acquisition of shares to the tune of 5.22 per cent instead of 5%. The admitted position which emerges from a minute perusal of the impugned order as well as the appeals and facts as brought out on record is that on each and every stage of allotment of warrants till their conversion into shares, the MIL duly kept the stock exchanges informed. All these developments have also been displayed on the website of BSE from time to time. The decision of the board of directors of MIL to allot 5 lac preferential warrants and their conversion was duly approved by the shareholders.

6. Thus, the public at large as well as the shareholders had due knowledge of the acquisition of number of shares by the appellants. This information also duly includes the exact percentage of decrease in promoter’s shareholding and the corresponding increase in the public shareholding. No one was deprived of this important information.

Therefore, the charge levelled against the appellants to this extent is superfluous. Indeed the underlying objective of regulation 7 of the SAST Regulations read with Regulation 13 of the PIT Regulation had already been achieved in as much as the company kept the stock exchanges as well as shareholders and the public at large duly informed about the developments of allotment of preferential warrants and their conversion into shares to the appellants.

7. In this respect, following datewise details from the BSE website have been brought on record by the appellant :-

14 Nov 2006

Murli Agro Board to consider interim dividend

Murli Agro Products Ltd has informed BSE that a meeting of the Board of Directors of the Company will be held on November 20, 2006, inter alia, to consider the following:

1. Payment of Interim Dividend

2. Allotment of Shares to the Share Warrant Holders.

3. To fix the date of Extra Ordinary General Meeting.

4. To consider the issue of shares to other than existing share holders U/s 81(1A).

16 Nov 2006

Murli Agro - Updates

Murli Agro Products Ltd. had informed BSE that the Company had issued 25 lacs share warrant on June 08, 2005 to the members and now the Company wants to convert the share warrant in to equity share of the Company. Hence after issue of equity share there will be increase in the Equity Share Capital of the Company by Rs 2,50,000/-.

20 Nov 2006

Murli Agro Board approves interim dividend

Murli Agro Products Ltd has informed BSE that the Board of Directors of the Company at its meeting held November 20, 2006, has transacted the following :

1. Considered and decided to pay 20% Interim Dividend

2. Considered and decided to allot the Shares on receipt of payment from the Share Warrant Holders.

3. Fixed the date of Extra Ordinary General Meeting and EOGM will be held on December 15, 2006. …

06 Dec 2006

Murli Agro – Board Meeting on Dec 15, 2006

Murli Agro Products Ltd has informed BSE that a meeting of the Board of Directors of the Company will be to consider the following :

1. Conversion of share warrant in to shares of the Company.

2. Overview in the overall status of the Company.

Murli Agro – Outcome of Board Meeting 18 Dec 2006

Murli Agro Products Ltd has informed BSE that the Board of Directors of the Company at its meeting held on December 15, 2006, has transacted the following :

1. Board approved the Allotment of shares against the Share warrant. After issue of this shared the Capital of the Company will be increased to Rs 9,64,00,000/-, the Rs.2.50 Crores will credited to the Capital Account and the Rs.24.50 Crores will credited to Share Premium Account. After this issue the Promoters holding will reduce by 19% i.e. from 74.90 to 55.35% and Public holding increased by 19% that is 25.10% to 44.65%.

2. Board discussed and noted the Status of Cement Project and Paper Expansion.

3. Board noted the Change in name from the "Murli Agro Products Ltd" to Murli Industries Ltd" as per Certificate of Change in Name issued by the ROC vide letter dated November 27, 2006.

8. Having said so, we would like to pertinently note that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well. To this extent, the appellants, though

inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected. Therefore, we feel that for this lapse a penalty of ₹ 1 lac on each of the appellants would suffice to meet the ends of justice.

9. Accordingly, the impugned order in each case is upheld with a modification of the penalty to ₹ 1 lac per appellant, to be paid within a period of two months from the date of receipt of copy of this order failing which the respondent would be at liberty to recover the same with interest by taking appropriate steps as per law. Ordered accordingly.

The appeals, thus, stand partly allowed. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

15.01.2014
Prepared & Compared by
PTM