BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 10.04.2014

Appeal No. 62 of 2014

Gaylord Commercial Company Limited
1/1A, Biplabi Anukul Chandra Street,
5th Floor, Room No. 5G,
Kolkata-700 072 …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. S. K. Jain, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. After hearing counsel on both sides we had pronounced in the open Court that the appeal is dismissed for the reasons to be recorded separately. Accordingly, we propose to record reasons for dismissing the appeal.

2. This appeal is filed to challenge order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on January 15, 2014 whereby penalty of ₹ 2 lac has

been imposed upon the appellant under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act, 1992" for short) as the appellant had failed to make annual disclosures in respect of the holdings of the promoters or persons having control over the appellant company.

3. It is not in dispute that for the year 2007 due date for making disclosure under regulation 8(3) of (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations, 1997" for short) was April 30, 2007, however, disclosure was made on October 12, 2007. Thus, failure to make disclosure as per regulation 8(3) of SAST Regulations, 1997 for the year 2007 continued for 165 days. Similarly, for the year 2008 it is not in dispute that the disclosure was made after two days from the date specified under the above regulation.

4. While admitting above failure in making disclosure as required under regulation 8(3) of SAST Regulations, 1997, counsel for appellant submitted that in the facts of the present case penalty of ₹ 2 lac is not justified for the following reasons:-

a) *Appellant is a small company and never in the past appellant had committed any such violations.*

b) *Delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits.*

c) *There was no malafide intention to conceal any*

information to the detriment of the investors and disclosures have been in fact made, though belatedly.

d) Penalty imposed upon the appellant is arbitrary, unreasonable and excessive.

5. We see no merit in the above contentions.

6. Once violation of regulation 8(3) of SAST Regulations, 1997 on account of failure to make disclosures within the time stipulated therein is established, then, liability to penalty arises under Section 15A(b) of SEBI Act, 1992. Penalty prescribed for such violations under Section 15A(b) of SEBI Act, 1992 is ₹ 1 lac for each day during which such failure continues or ₹ 1 crore whichever is less.

7. In the present case, since the failure to comply with regulation 8(3) of SAST Regulations, 1997 continued for 165 days, penalty at the rate of ₹ 1 lac per day would be ₹ 1.65 crores and as per Section 15A(b) of SEBI Act, 1992 appellant was liable to pay penalty to the extent of ₹ 1 crore. However, the AO after taking into consideration all mitigating factors has imposed penalty of ₹ 2 lac which cannot be said to be unreasonable or excessive. Argument that the appellant is a small company and has not violated any provisions in the past, that the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making

disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time. However, those factors being mitigating factors, AO after considering all those mitigating factors has imposed penalty of ₹ 2 lac as against penalty of ₹ 1 crore imposable upon the appellant, which is fair and reasonable.

8. For all the aforesaid reasons, we see no merit in the appeal and the same is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

10.04.2014
Prepared & Compared By: PK