

**IN THE SPECIAL COURT OF THE JUDGE UNDER THE SECURITIES
AND EXCHANGE BOARD OF INDIA ACT, 1992
SEBI SPECIAL CASE NO. 9 OF 2013
(Old C.C. No. 87 of 2010)**

Securities and Exchange Board of India
a statutory body established under the
provisions of the Securities and Exchange
Board of India Act, 1992, having its Head
Office at Plot No. C4-A, 'G' Block, Bandra Kurla
Complex, Bandra (East), Mumbai - 400 051.
(Through its Authorised Officer Mr. Avinash
Dhumal, Assistant General Manager)

... **Complainant**

VERSUS

Mr. Sachin Suresh Patil
Age 29 years
2/3 Gopal Bhuvan Wadi
Kaksaheb Gadgil Marg
Prabhadevi, Mumbai- 400 025

... **Accused**

Ld. SPP Mr. Modi, for SEBI.
Ld. Adv. Mr. Sangram Bapat for accused.

**CORAM : HIS HONOUR JUDGE
SHRI M. G. DESHPANDE
SEBI SPECIAL COURT
(COURT ROOM NO. 22)**

DATE : 26th December 2016

JUDGMENT

(Dictated and pronounced in an open court).

1. This is a complaint by Securities and Exchange Board of India,

Copy applied on 28/12/16
Probable date
Copy ready on
Copy despatched on
delivered 28/12/16

04656
Certified copy supplied on
Payment of court charges
vide Receipt No. _____
Dated 28/12/16

Assistant Superintendent
City Civil and Sessions Court
Cs. Bombay



hereinafter referred to as 'SEBI', under section 24(2) of the Securities and Exchange Board of India Act, 1992, hereinafter referred to as "SEBI Act" read with section 200 of the Criminal Procedure Code against accused Sachin Patil who failed to pay the penalty imposed by the Adjudicating Officer and comply with his directions or orders. Hence accused is facing the trial.

2. Accused Sachin Patil denied the allegations in the complaint. Hence my Learned Predecessor framed charged against him vide Exh.2. Accused pleaded not guilty. Hence trial began. The statement of accused under section 313 Cr. P. C. was recorded at Exh.20. His defence is that of total denial. In this background heard arguments of Ld. SPP Mr.Modi, for SEBI and Ld. Adv. Mr.Sangram Bapat for the accused at length. Also carefully read the written argument of Ld. Adv. Shri Bapat. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below:-

POINTS

1. Whether complainant SEBI proves that accused failed to pay the penalty Rs.2,00,000/- imposed by Adjudicating Officer and did not comply his directions and thereby committed offence under section 24(2) of the SEBI Act, 1992 ?

2. What order ?

FINDINGS

In the affirmative.

Accused is convicted
as per final order.



M. M. J.
26-12-16

REASONSPOINT NO. 1 :-FACTS AND BACKGROUND :-

3. Complainant SEBI has been established under section 3 of the SEBI Act to protect the interest of investors in securities, regulate the security markets and empowered to investigate into the transactions wherein SEBI has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the interest of investors or the Securities Market. With this object and purpose SEBI conducted investigation into the dealing in the scrip of Robinson Worldwide Trade Ltd., hereinafter referred to as 'RWTL' for the period from 30/03/04 to 30/07/04 wherein accused was given opportunity of hearing, submitting information and producing documents if any with him. Accused failed to comply the same and violated provisions of the SEBI Act. Adjudication proceedings were initiated against him presided over by the Adjudicating Officer who passed Adjudication order imposing penalty of Rs.2,00,000/- on accused. Accused did not pay the same nor preferred any appeal against it before the Securities Appellate Tribunal, hereinafter referred to as 'SAT'. Hence this complaint. These are the facts and background of the complaint.

DOCUMENTS RELIED UPON BY THE SEBI :-

- | | |
|--------|--|
| Exh.9 | Letter of authority in favour of Mr. Avinash B Dhumal, AGM by SEBI |
| Exh.10 | Delegation of powers |

MJD
26/12/16



- Exh. 12 (colly) Adjudication Order dated 30.3.2007
Letter of SEBI Officer dt.2.4.2007 with the copy of Adjudication Order forwarded to the accused.
RPAD showing the delivery of Adjudication Order to accused.
- Exh.13 (colly) Reminder dt.15.6.2007 to accused by hand delivery acknowledged by Suresh Bhagwan Patil at the address of the accused
- Exh.14 Another reminder dt 4.7.2007 to the accused by hand delivery showing the acceptance thereof by Sau Suhasini S. Patil.
- Exh.15 (colly) Third & Fourth reminders dt. 11.3.2008 and 26.3.2008 respectively to the accused by hand delivery at the address of the accused

DOCUMENTS RELIED UPON BY ACCUSED

- Exh.24 Identity card of the accused at the relevant time
- Exh.32 Notices of BSE for expulsion of DPS Shares and Securities Pvt.Ltd.
- Exh.33 Copy of Form showing the details of the staff of Share Bazar Staff Union
- Exh.34 Copy of certificate stating appointment of Shri Vilas Salaskar as Chief Secretary of Share Bazar Staff Union.



4. SEBI has examined in all 3 witnesses being Mr. Avinash Dhumal(CW-1), Mr. Mitrajeet Dey (CW-2) and Mr. Manish Bundel (CW-

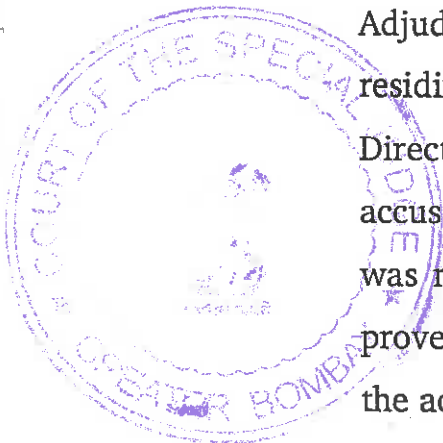
MWR
26-12-16

3). On the other hand, accused in his defence examined himself being D.W.1, Mr. Vilas Madhukar Salaskar(DW 2), Mr. Santosh Ramesh Patil (DW.3) and Mr. Dilip Namdev Varkhade (D.W.4)

ARGUMENTS

5. It is the argument of Ld. SPP Mr. Modi that Adjudication Order was passed against the accused by giving him full opportunity. Same was communicated to him by RPAD and hand delivery on his address. Accused did not prefer any appeal before the SAT nor paid the penalty despite many reminders. It is the accused who dragged the SEBI in the battle of litigation which is proved by the complainant SEBI. It is for the accused to show with cogent proof that he paid the penalty directed by the Adjudicating Officer.

6. On the other hand, Ld. Adv. for accused Shri Bapat submitted that accused had no knowledge of the proceedings initiated by the Adjudicating Officer and even the passing of Adjudication Order against him. He did not receive any communication of said order, hence no knowledge thereof. Therefore, the complaint is unqualified. When the Adjudication Order was contended as served upon the accused, he was not residing at the given address. He further argued that if his employer, Directors of the Company had misused the position and account of the accused, they and not the accused are responsible for the offence. There was no communication of Adjudication Order to the accused in order to prove his guilt u/s. 24(2) of SEBI Act, 1992. With this, he prayed to acquit the accused.



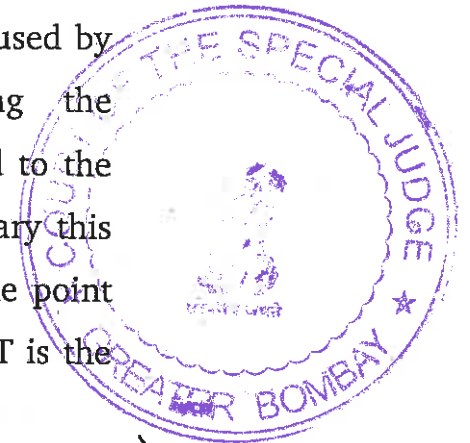
M.Y.R.
26-12-16

7. I have carefully examined the arguments advanced by the Ld Counsels for both the parties.

Initially SEBI has to prove that :

- (i) Adjudication order was passed against the accused,
- (ii) It was communicated to the accused, and,
- (iii) Accused neither paid the adjudicated penalty within 45 days nor preferred an appeal before the SAT against Adjudication Order.

In order to prove its case, complainant SEBI examined CW-1 Mr. Avinash Dhumal. In his evidence he elaborately stated the background of the SEBI and the investigation against the accused when SEBI noticed illegal trading by the accused. He further specifically deposed how every time opportunity was given to accused to appear and defend investigation and state on the adjudication proceedings, and, further failure of the accused to avail the same. CW-2 Mr. Mitrajeet Dey has specifically deposed how he was Assistant to the Adjudicating Officer and dispatched letter and correspondence (Exh.12 colly) to the address of the accused by RPAD. CW-3 Mr. Manish Bundel deposed about sending the correspondence to the accused by hand delivery. Nothing helpful to the accused come forward by their cross examination. On the contrary this Court cannot take the cognizance of the cross examination on the point how the adjudication proceedings were ex-parte etc. when the SAT is the specific forum for the same and accused never approached there.



8. Exh. 12 (colly) is the Adjudication order dt. 30/03/07 vide No. BS/AO-10/2007. Careful reading thereof clearly indicates that right from the beginning and thereafter time to time accused was given opportunity to participate the adjudication proceedings and justify how the proceedings were illegal. However accused did not avail those opportunities and purposely opted to remain away therefrom for the reasons best known to him. In this background the adjudicating officer appears to have passed a reasoned order holding the accused liable to pay the penalty.

9. It is material to note that Exh. 12 (colly) to Exh.16 (colly, clearly prove that Adjudication Order was communicated and delivered to the accused by RPAD and hand deliveries at his address, "Sachin Patil., 2/3, Gopal Bhuvan Wadi, Kakasaheb Gadgil Marg, Prabhadevi, Mumbai - 400 025. RPAD and Acknowledgments of hand delivery indicate that Shri Suresh, the father and Sau. Suhasini S.Patil accepted the same and also put their signatures as token of acceptance. It is material to note that accused has not disputed his address where the communication was delivered. However, he contended that at the relevant time when communication was made, he was not residing at the said address but residing with his cousin Mr. Santosh Ramesh Patil at Kalwa, Thane (West). It is material to note that everywhere including the identity card (Exh.24) relied upon by the accused, PR Bond furnished in this Court indicate the same address of the accused even in his evidence accused himself has mentioned the same address on which the SEBI made communication.

M.H.J.
26-12-16

10. Section 27 of The General Clauses Act, 1897 read with Section 114 of The Indian Evidence Act raise presumption in favour of the complainant that whatever communication including the Adjudication Order made by them to the accused was deemed to have been delivered to him and he received the same. Section 27 of The General Clauses Act has perfect application and 'unless the contrary is proved' the court may presume the existence of the delivery and knowledge of the contents of delivery to the accused.

11. Notification of Government of India, Ministry of Finance (Department of Economic Affairs), New Delhi, dt. 10/07/95 prescribes Rules for holding inquiry by Adjudicating Officer. Rule 7 thereof provides service of notices and orders. It prescribes 3 modes, viz.,

- (a) by delivering or tendering it to the person or his duty authorized agent;
- (b) By sending it to the person by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or,
- (c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons.



MJWL
26-12-16

12. Oral evidence of CW-1 to CW-3 coupled with documents Exhs. 12 (colly) to 16 (Colly) clearly prove the compliance of Rule 6 and Rule 7(a) and (b) of the Notification. Accused in order to rebut the presumption, examined himself and three other witnesses. It is his contention that his Directors cheated him and he was residing at Kalwa, Thane(West) when the SEBI allegedly communicated the Adjudication Order. For that he examined his brother with whom he allegedly resided at Kalwa. It is material to note that there is no document to show that his brother Mr. Santosh Patil (DW2) was/is residing at the given address of Kalwa Thane. Except his bare words, even accused could not produce any concrete evidence to show that for long period after 2003 he was residing with his said brother at Kalwa Thane and once again resumed his address mentioned in the correspondence of SEBI. At present also the accused is residing at the same address where the SEBI had sent correspondence, Adjudication Order and many reminders vide Exhs. 12 to 16 (colly). This fact is evident from the address in his evidence as D.W.-1.

13. In his defence the accused further examined Vilas M.Salaskar (DW 2) being the Chief Secretary of Share Bazar Staff Union. It is material to note that he specifically deposed that in 2005 accused approached them alleging that his Company ie. DPS Shares and Securities Pvt Ltd. has made illegal share trading in his name. It is therefore, clear that accused was quite aware of the fact of illegal trading of shares in his name. He had not filed any written complaint to the Stock Exchange, SEBI or even to the Police Authorities alleging such fraudulent activities of his Directors.



M.M.A.
26/12/16

Though he examined many witnesses in his defence, yet nothing has come forward to rebut the presumption under Section 27 read with Section 114 of The Indian Evidence Act. All the witnesses and contentions raised by the accused prima facie indicate a feigned story only to avoid the prosecution and the judgment. Accused is estopped from contending that he did not receive anything and his Directors cheated him, as stated by him in the statement under section 313 Cr. P. C. In this way it is proved that there was an adjudication order against accused and the same was duly communicated him.

14. There were three options with the accused when Adjudication Order (Ext. 14) was passed against him.

- (a) Deposit the penalty amount adjudicated against him within 45 days,
- (b) Prefer an appeal before the SAT against the Adjudication Order, being competent forum having exclusive jurisdiction provided under the SEBI Act, 1992, and,
- (c) Even till date he could have preferred the Appeal before the SAT by applying for condonation of delay.

Admittedly the accused did not avail any of the above three. On the contrary the cross-examination to the SEBI witnesses and his statement under section 313 Cr. P. C. emphasise how he did not receive any process from Adjudicating Officer and how he had no knowledge about the same.

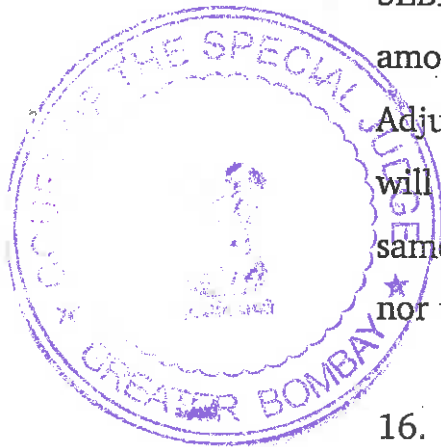


MJR
26-12-16

15. I carefully examined this argument of Ld. Adv. Mr. Bapat for the accused. Careful reading of SEBI Act, 1992 and Rules indicate that all such objections are to be dealt with by the Adjudicating Officer. The Securities Appellate Tribunal (The SAT) is the competent forum having exclusive appellate jurisdiction under section 15T of the SEBI Act to consider all such grievances regarding non service, ex-parte Adjudication Orders etc., while entertaining the first appeal. The Forum to challenge order of the SAT is the Hon'ble Supreme Court as provided under section 15Z of the SEBI Act, 1992 and the same gives finality. When accused has not approached the same, he is debarred to raise such objections in this court. Though I have discussed how notices and Adjudication Order were delivered to the accused and how presumption arises in favour of SEBI, yet this court cannot adjudicate the same. However it is simply discussed to refer the legal position and silence on the part of accused at the relevant time. If this court goes on adjudicating as to whether service of proceedings of Adjudication and whether compliance was made or not by SEBI, so also legality and propriety of Adjudication Order, same will amount inference and usurpation of the exclusive jurisdiction of Adjudicating Officer and the SAT. In that event any order of A.O. and SAT will be circumvented by using the trial in this court as a tool making the same fruitless. This is not the real purport and object of the SEBI Act, 1992 nor this court is permitted to do so.

16. In the aforesaid premises I am of the opinion that there is absolutely no scope for accused who first of all deliberately evaded the adjudication proceedings, allowed them to pass Adjudication Order, then

M.Y.R.
26-12-16

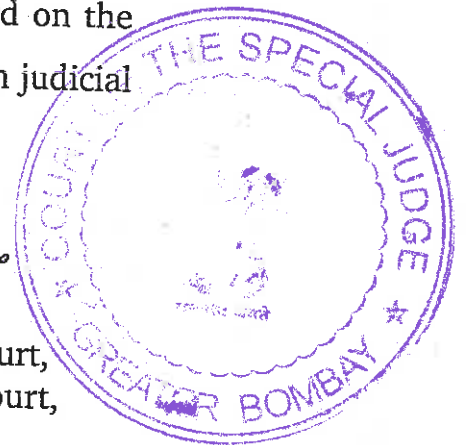


not challenged the same before the SAT though had its knowledge and ultimately raised the battle against it for the first time in the wrong forum i.e. this court and successfully prolonged without leaving a single opportunity. If accused succeeds in such modus operandi, same will frustrate the very object of the SEBI Act, 1992 and the purpose of Section 26-A thereof. Not only this but any order of acquittal in favour of accused will amount putting premium on the illegal acts of the accused, impliedly setting aside Adjudication Order as it in Appeal. Therefore such defence is not tenable.

17. It cannot be ignored that SEBI is the custodian of the rights of the innocent investors and its object is to protect the interests of the investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith. Since long it is now nearabout 9 years accused has been evading the proceedings initiated by SEBI. He ultimately did not deposit the penalty saddled by SEBI. Therefore it is proved that accused failed to pay the penalty as per Adjudication Order (Exh. 12 Colly). Hence offence under section 24(2) of the SEBI Act, 1992 is proved against him. Accused needs to be convicted for the same. It is now 11.45 a.m. and accused needs to be heard on the question of sentence. Hence I am taking pause. Accused is taken in judicial custody.

Time : 11.45 a.m.
Date : 26/12/2016

M.G.D.
26/12/16
(M. G. Deshpande)
Judge, SEBI Special Court,
City Civil & Sessions Court,
Gr. Bombay



Resumed at 1.30pm.

18. It is now 1.30pm. When accused and his Ld. Adv. Mr. Bapat submit that they want to say on the proposed sentence and do not required much time for the same. Accused submits that he is the only earning hand and source of survival of his parents who are very old and ailing. He referred the copies of Medical Certificates of Dr. A. K. Dalavi stating how the parents of the accused are old, suffering from various ailments like Asthma, Hypertension, Parkinson, Diabetic. Accused further submits that he is very poor and even unable to pay any fine. He further submits how he is victim of the directors and same was beyond his control as he had no alternative for his bread and butter. Accused referred his written argument and submitted how he is patient of Psoriasis. In this background he submitted to impose minimum sentence as he learned a lesson and got fetched into the vicious activities of white collar criminals. All that what happened was due to his lack of knowledge and need of survival. Therefore he prayed to take most lenient view while sentencing him.

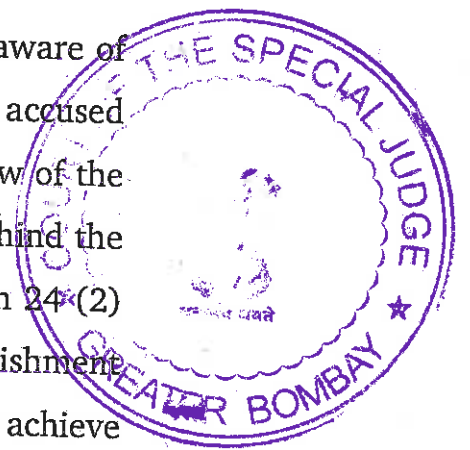
19. I have carefully examined the submission of accused and his Ld. Adv. Mr. Bapat.

20. It is the accused who by his conduct and non-payment frustrated very purpose of section 26-A of SEBI Act, 1992. Here object of SEBI Act, 1992 needs to be referred which reads as "An act to provide for the establishment of Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith and incidental thereto". When this

MJM
26-12-14

object is read with section 26A(1) of SEBI Act; it is proved that accused frustrated the very purpose thereof by illegally dealing in the securities market which is detrimental to the interest of the securities market, hence needs to be penalized for the same. SEBI is the custodian of the rights of investors and securities market.

21. Section 24(2) of the SEBI Act, 1992 provides punishment with imprisonment for a term which shall not be less than one month, but which may extent to ten years, or with fine which may extent to twenty five Crore rupees or with both. Though there is a provision in SEBI Act to punish the accused up to 10 years and also saddle fine upto 25 crores, yet the feasibility needs to be considered. The sentence should be executable. Throughout the trial accused and his Ld. Advocate were submitting as to how the accused was a victim of lack of knowledge and misuse of his name and account by the real accused who are white collar criminals i.e. his directors and further how he had no alternative to continue their job for his survival, bread and butter. I strongly feel that this situation needs to be considered. This case is an example how the poor persons like accused are trapped by share broker agencies and such poor persons are infact the victims thereof. However the purpose of SEBI is make to people aware of such illegal transactions and the same will be achieved only if the accused is convicted. Therefore I am not inclined to saddle any fine in view of the poor condition of accused nor this is a case to send the accused behind the bars upto 10 years simply because there is provision under Section 24(2) as such. At the cost of repetition it has to be noted that the punishment should be executable. Hence following order is passed which will achieve the object of SEBI Act as well as the purpose to sentence the accused.



M. M. W.
26-12-16

ORDER

1. Accused Sachin Suresh Patil is convicted under section 24(2) of SEBI Act, 1992 and sentenced to undergo simple imprisonment for one month.
2. Accused shall surrender his bail.
3. Copy of judgment is forthwith given to the accused free of cost. Accused shall acknowledge the same.

M. G. Deshpande
26/12-16
(M. G. Deshpande)
Judge, SEBI Special Court,
City Civil & Sessions Court,
Gr. Bombay

Date : 26/12/2016

Dictated on : 26/12/2016
Transcribed on : 26/12/2016
Draft submitted on : 26/12/2016
Final submitted on : 26/12/2016
Signed by HHJ on : 26/12/2016

check by Mrs. Sawant

Certified True Copy
Dated this 28th day of Dec 2016

M. G. Deshpande
28/12/16
For Registrar,
City Sessions Court
Gr. Bombay
R



