

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On : 16.12.2013

Date of Decision : 15.01.2014

Appeal No. 113 of 2013

1. Mr. Giriraj Kishore Agarwal
3A/1601, Green Acre,
Lokhandwala Complex,
Andheri (West),
Mumbai- 401 101.
2. Golden Steel Industries Pvt. Ltd.
(formerly known as Shreeji Herbal Ltd.)
6, Golden View, Sukhwal Imperial,
Morwadi, Pimpri,
Pune- 411 018.
3. Handful Investrade Private Limited
E-109, Crystal Plaza,
New Link Road,
Near Oshiwara Police Station
Andheri (West),
Mumbai- 400 053

...Appellants

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. Vinay Chauhan, Advocate with Mr. K.C. Jacob, Advocate for Appellants.

Mr. Shyam Mehta, Senior 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 : Jog Singh

1. The present appeal is preferred by three appellants namely, Mr. Giriraj Kishor Agarwal; (Appellant No. 1), Golden Steel Industries Pvt. Ltd. (formerly known as Shreeji Herbal Ltd.); (Appellant No. 2), Handful Investrade Private Limited; (Appellant No. 3) against the impugned order dated February 4, 2013 passed by the respondent imposing penalty of ₹ 12,57,500 on each of the appellants under section 15H(ii) of Securities and Exchange Board of India Act, 1992 for violation of the provisions of regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations).

2. Briefly stated the facts of the case are that the respondent conducted investigation into certain dealings in the scrip of M/s. Axon InfoTech Ltd. (AIL/Target Company) for the period between March 17, 2006 to September 19, 2006. During the investigation it was revealed that some eight entities acting in concert with each other had acquired 32.02% shares/voting rights of the Target Company on April 5, 2006 without making a public announcement as required in terms of regulation 10 of the Takeover Regulations, 1997. Said eight entities are as under:

- (i) Mr. Giriraj Kishore Agarwal (hereinafter referred to as 'GKA'),
- (ii) M/s. Kushal Software Ltd (KSL), (Presently M/s. Octant Industries Ltd.)
- (iii) M/s. Kushagra Software Ltd. (Kushagra), (Presently M/s. Concurrent (India) Infrastructure Ltd.),
- (iv) M/s. Shreeji Herbal Ltd. (SHL) (Presently M/s. Golden Steel Industries Pvt. Ltd.),

- (v) M/s. Handful Investrade Pvt. Ltd. (HPL),
- (vi) Ms. Sheetal Kadam (SK),
- (vii) M/s. VRP Financial Services Pvt. Ltd. (VRP Financial) and
- (viii) M/s. Keystone Stone Finance Pvt. Ltd.

3. The alleged violation by the above said eight entities was that they crossed the threshold limit of 15% on April 5, 2006 in acquiring shareholding/voting rights of AIL/Target Company without making a public announcement thereby attracting a penalty under section 15H(ii) of the SEBI Act, 1992. Accordingly, an Adjudicating Officer (AO) was appointed by the respondent under section 15I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to enquire into and adjudge under section 15H(ii) of the SEBI Act, the alleged violations of the Takeover Regulation, 1997 by the appellants. The AO issued a show cause notice dated 5, 2010 (SCN) to the appellants to show cause as to why appropriate action should not be taken against them as per law.

4. The learned AO conducted the enquiry as per law and in consonance with the principles of natural justice by duly affording the opportunity to file reply to each of the appellants, and also granting them the opportunity to inspect the relevant documents as well as an opportunity of personal hearing. Thus, after considering the material brought on record and duly taking into consideration the submissions made by the appellants, the learned AO came to the conclusion that the appellants had violated the provisions of regulation 10 of the Takeover

Regulations, 1997 and imposed a monetary penalty of ₹ 1,00,60,000 (One crore sixty thousand) on all the eight entities, including the three appellants, in effect imposing a penalty of ₹12,57,500 (Rupees twelve lakh fifty seven thousand and five hundred only) on each of them. The main case of the appellants before this Tribunal is that the respondent have not established by cogent and convincing evidence that the appellants had acquired the shares of the Target Company with a “common objective”.

5. Learned counsel for the appellants, Shri. Vinay Chauhan, has strenuously argued before us that the element of a “common objective” as enshrined under regulation 2(1)(e) of the Takeover Regulations, 1997 which defines the concept of “persons acting in concert” (PAC), is a prerequisite to bringing certain persons under the definition of “PAC”. The factum of acquisition of shares in question on April 3rd and 4th, 2006 is not denied by the appellants; the only submission is that mere acquisition of such shares would not prove a “common objective”. Therefore, the provisions of section 10 are not attracted as the appellants have acted individually in the matter of acquisition of shares in question which taken together would constitute 33.02%, but not individually.

6. On the other hand, Shri. Shyam Mehta, learned senior counsel for the respondent with Shri. Mihir Mody, submits that there is sufficient material on record annexed with the appeal itself which goes a long way to prove that the appellants had acted in concert with each other in acquiring the shares in question with a common objective. In this

connection Shri. Shyam Mehta has drawn our attention towards specific findings contained in various paragraphs of the impugned order which establish a relationship among the eight entities, including the three appellants, to bring them under the provisions of section 2(i)(e) read with regulation 10 of the Takeover Regulations, 1997.

7. We have heard both the learned counsel for the parties at length and have minutely perused the pleadings and judgments relied upon by the parties in support of their respective case. An admitted position emerges that during the investigation period between March-September 2006, the share capital of the Target Company was ₹1,00,000,00 (Rupees one crore) divided into ten lac equity shares of ₹10 each. However, the paid up capital was ₹ 66,00,000 i.e. (Rupees sixty six lac) divided into 6,60,000 i.e. (Rupees six lac sixty thousand) equity shares of ₹10 each. As per the records provided by National Securities Depository Limited and Central Depository Services Limited (NSDL & CDSL), as on April 3, 2006, one Mr. Dhiren Shukla transferred 30,000 shares of the Target Company to each of the six entities out of the eight entities, namely, Shreeji Herbal Ltd.; Handful Investrade Pvt. Ltd.; Kushagra Software Ltd.; Kushal Software Ltd. (Now know as Octant Industries Ltd.); and Ms. Sheetal Kadam. Thus, in all 1,50,000 shares were transferred in an off market transaction by Dhiren Shukla to these six entities on April 3, 2006.

8. Similarly, the remaining two entities, namely, VRP Financial Services and Keystone Stock Finance Pvt. Ltd. acquired 31,200 and

30,000 shares of AIL in the off market from the same person, namely, Shri. Dhiren Shukla on April 4, 2006. This is the manner in which all the eight entities came to acquire 2,11,200 shares of AIL as on the eve of April 4, 2006, which constitutes 32.02% of the total share of the AIL triggering the provisions of regulation 10 regarding public announcement of such an acquisition to the shareholders at large. This having not been done, the appellants have undoubtedly violated the provisions of law and they have been rightly held guilty of the same by the learned AO by imposing the monetary penalty in question on all the eight entities, including three appellants.

9. The element of “common objective” is clearly established by the learned AO in the impugned order. It is evident from the records that the same person namely, Shri. Dhiren Shukla, sold shares to all the eight entities including the three appellants before us at the rate of ₹ 2 each in the off market. It is vividly brought on record that at that time the price of the scrip of AIL in the market was in the range of ₹ 67 to ₹ 70. Therefore, transfer of bulk shares, that too at the same rate of ₹ 2 per share and in almost equal numbers to all the eight entities within two days is a clear indicator of the appellants having acted in concert with each other to acquire the shares/voting rights of AIL. The factual details of commonality of management and control of these eight entities are convincingly proved by the learned AO in para 12 of the impugned order in the following manner:-

- i) During the period of investigation, it was observed that the telephone number 022-26354911 of AIL is

registered under the name Handful Investrade Pvt. Ltd. Address of Handful Investrade Pvt. Ltd. was that of AIL.

- ii) The telephone number of KSL 022-2674065 was registered under the name GKA i. e. Mr. Giriraj Kishore Agrawal from the same address as that of KSL.
- iii) Dhiren Shukla acted as an interim compliance officer for AIL. GKA, the promoter director of Kushagra Software Ltd., Shreeji Herbal Ltd, Handful Investrade, acted as authorized investment adviser for KSL.
- iv) From the balance sheet of KSL for the year 2006-07, it was observed that unquoted investments were made by the AIL in Shreeji Herbal Pvt. Ltd. and Handful Investrade Pvt. Ltd. which were promoted by the GKA.
- v) From the above, it is cleared that AIL and KSL were related to Mr. Dhiren Shukla, promoter and director of AIL acted as director of KSL as observed from the annual reports of KSL from the year 2004-05 and 2005-06.
- vii) It is also cleared from the details above and information available on record that Mr. Dhiren Shukla Mr. Ravindra Bhaskar Deshmukh, GKA , Mr. Pradeep Dhanuka, M/s. 5X Investment and Kushagra Software Ltd. are connected /related entities.
- viii) It is also observed from off market details/transfer took place among Dhiren Shukla , Vikas Kadam , Sheetal Kadam, Kushal Software Ltd., Kushagra Software Ltd. Shreeji Herbal Ltd., Handful Investrade Ltd., Ms. Sheetal Kadam, VRP Financial Services Ltd., and Keystone Stock Finance Pvt. Ltd. that they are connected/related entities.
- ix) In addition to above Handful and AIL share the same office address.

10. Furthermore, a relationship between the three appellants and the remaining entities is also reflected in the records. Annexure 11 annexed

with the show cause noticed dated February 5, 2011 issued by the respondents to the appellants specifically mentions precise details of such a relationship among all of them as well as between AIL and Kushal Software (Now known as Octant Industries Ltd) in the following manner:

- a. As far as Mr. Dharendra R. Shukla is concerned, he is the Promoter and director during investigation period. Also acted as compliance officer of Axon Infotech Ltd. (AIL). From the Annual Report of Kushal Software Ltd. [KSL] for 2004-05 and 2005-06, it was observed that Mr. Dhiren Shukla was a director of the company. Transferred shares off market to KSL. Kushagra Software Ltd., Shreeji herbal Ltd., Handful Investrade Pvt. Ltd., Ms. Sheetal Kadam, VRP Financial Services Pvt. Ltd., and Keystone Stock Finance P. Ltd. Received shares off market from VRP Financial Services Pvt. Ltd., and Kushagra Software Ltd.
- b. Similarly, Mr. Ravindra Bhaskar Deshmukh, was a director of AIL during the period of investigation as per reply given by the company. Represented AIL at BSE regarding the proposal of amalgamation of KSL with AIL. Was a director of KSL during the period of investigation. Person placing buy/sell orders on behalf of KSL as per reply of the company.

c. Mr. Giriraj Kishor Agarwal, is an important link and some of the crucial facts showing connections are:-

- i) *Telephone numbers 26354910, 26354911 on the letterhead of AIL are registered in the name of Handful Investrade, an entity promoted by Giriraj Kishor Agarwal.*
- ii) *Investment Advisor of KSL.*
- iii) *Telephone number 26740651 on the letter head of KSL is registered in the name of Giriraj Kishor Agarwal*
- iv) *Signed on behalf of KSL in the capacity of director on KYC form of KSL at Anagram Stockbroking Ltd.*
- v) *Signed on behalf of KSL in the capacity of whole time director on KYC form of KSL at Pilot Credit Capital Ltd.*

Further, Mr. Raj Kishor Agarwal, director of KSL, shares the address of Handful Investrade P. Ltd. along with Mr. Giriraj Kishor Agarwal as per the KYC form with Pilot Credit Capital Ltd., submitted on behalf of KSL.

d. Mr. Pradeep Dhanuka has been a Director of AIL and a Director of VRP Financial Services Pvt. Ltd., of whom KSL was a client as stated by VRP Financial Services Pvt. Ltd.

e. As far as M/s 5X Investment is concerned it is promoted by Tanu Agarwal, wife of Mr. Giriraj Kishor Agarwal. It has the same address as that of AIL at Unit No. 26, Meera CHS, Link Road Extn, Andheri (W), Mumbai-400 053 and the same telephone number as that of AIL i.e., 26354910.

- f. Kushagra Software Ltd. is also promoted by Mr. Giriraj Kishor Agarwal and he was a major shareholder of AIL as on 30.06.06.
- g. Shreeji Herbals Ltd. is promoted by Mr. Giriraj Kishor Agarwal and was a major shareholder of AIL as on 30.06.06. KSL had investments upto ₹ 1,53,98,300 in Shreeji Herbals Ltd., an unlisted company.
- h. As far as Handful Investrade P Ltd. is concerned, it is promoted by Mr. Giriraj Kishor Agarwal, major shareholder of AIL as on 30.06.06 KSL. Had investments upto ₹ 1,54,00,000 in Handful Investrade P Ltd., an unlisted company.
- i. As far as Giriraj Kishor Agarwal HUF is concerned, Mr. Giriraj Kishor Agarwal is the karta of Giriraj Kishor Agarwal HUF.
- j. VRP Financial Services Pvt. Ltd. has been promoted by Mr. Pradeep Dhanuka, director of AIL. VRP Financial Services Pvt. Ltd. stated that KSL was their client. Money was transferred to the A/c of VRP Financial Services P. Ltd from the A/c of Ms. Tanu Agarwal.
- k. As far as Keystone Stock Finance P. Ltd. is concerned, it has the same address as that of AIL at Unit No. 26, Meera CHS, Link Road Extn, Andheri (W), Mumbai-400 053 as per MCA database. Same address as that of VRP Financial Services Pvt. Ltd. at C-201, Bhadrakali

Darshan, Station Road, Bhayander W, Mumbai- 401 101
as per NSDL data.

- l. Vidhata Securities Pvt. Ltd. is having the same address as that of VRP Financial Services Pvt. Ltd. at C-201, Bhadrakali Darshan, Station Road, Bhayander W, Mumbai- 401 101 as per NSDL data.
- m. Mr. Vikas Kashiram Kadam, has transferred shares to VRP Financial Services Pvt. Ltd. off market which has the same address as that of Ms. Sheetal Kadam at Dr. Rane Kutir Dies Compound, Society Road No. 1, Natwar Nagar, Jogeshwari E, Mumbai- 400 060.
- n. Ms. Sheetal Kashiram Kadam has received shares from Mr. Dharendra Shukla and KSL off market. Money was paid to the broker by Ms. Sheetal Kadam from the A/c 1592000009075 of HDFC Bank which is owned by Sanchit portfolio having the same address as of VRP Financial Services Pvt. Ltd. namely C-201, Bhadrakali Darshan, Station Road, Bhayander W, Mumbai-401 101. Money was transferred from the A/c 0471000017151 of HDFC Bank owned by Ms. Tanu Giriraj Kishore Agarwal to A/c 1592000009075. Money was also transferred from the A/c of Ms. Tanu Giriraj Kishore Agarwal to A/c 1592000011223 owned by Shree Krishna Finance Services having the same address as that of Ms. Sheetal Kadam namely Dr. Rane Kutir Dies Compound,

Society Road No. 1, Natwar Nagar, Jogeshwari E,
Mumbai- 400 060.

- o. Mr. Shasvat Garg, is Introduced by Mr. Giriraj Agarwal to Pilot Credit Capital Ltd.

11. The above factual details brought on record are sufficient to fulfill all the ingredients, including “common objective”, of Regulation 2(i) (e) as well as Regulation 10 of the Takeover Regulations, 1997. There is no legal infirmity attached to the impugned order and the same is hereby upheld.

12. Learned counsel for the appellant has relied upon a judgment of this Tribunal dated February 9, 2010 passed in ***Appeal No. 183 of 2009 in the case of Triumph International Finance India Ltd. vs SEBI***. In that case the Tribunal was primarily concerned with the issue of the appellant company being a PAC with Ketan Parekh and whether or not the company was controlled by him. The Tribunal after analyzing the impugned order and facts in that case, held that before a charge of acting in concert is levied, it has to be alleged that the delinquent had a common objective pursuant to an agreement or understanding, formal or informal, with another person for substantial acquisition of shares of the target company. The Tribunal found that this element was missing in that case. The Tribunal, thus, held that merely because the appellant acted as a broker of some of the companies owned or controlled by Ketan Parekh does not make it a ‘person acting in concert’ with those companies. This could, at the most, mean association with those

companies. Close business association between two or more persons does not by itself make it a PAC.

13. The judgment in the case of Triumph International Finance India Ltd. is clearly distinguishable and does not advance the case of the appellants in any manner. In fact, in the case in hand, the learned AO has not proceeded on a mere possibility or probability to prove the charge against the appellants but has done it meticulously through undisputed facts and figures. We have already dealt with the aspect of common objective in paragraph 9, 10 and 11 above in great detail.

14. In view of the above discussion of fact and law, the appeal is bereft of any merit and is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

15.01.2014

Prepared & Compared By: Pk