

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 19.11.2013

Appeal No. 112 of 2013

Alacrity Securities Limited
101, Hari Darshan, B-Wing,
1st Floor, Bhogilal Fadia Road,
Kandivali (West),
Mumbai-400 067.

...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. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Pratham V. Masurekar, Advocate for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. This appeal challenges the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on May 3, 2013, whereby penalty of ₹ three lakh has been imposed upon appellant for violating regulation 8A (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“Takeover Regulations, 1997” for short).

2. Appellant is a registered stock broker and is also one of the promoters of Odyssey Corporation Limited (“Odyssey” for short).

3. In the ordinary course of business as a stock broker, one of the appellant's clients agreed to transfer equity shares of Odyssey towards dues owed by that client to the appellant. Accordingly, those shares kept in the client beneficiary account were transferred to the demat account of the appellant.

4. Thereafter, appellant pledged those shares with Canara Bank for raising finance. It is relevant to note that 50,000 and 27,000 shares of Odyssey pledged by appellant on February 18, 2011 and September 20, 2011 respectively got doubled to 1,54,000 shares due to stock split from ₹ 10 to ₹ 5 on record date, i.e., on December 26, 2011.

5. Since appellant who was also one of the promoters of Odyssey failed to disclose pledging of Odyssey shares to the company/stock exchanges as contemplated under Takeover Regulations, 1997, show cause notice was issued on February 25, 2013 calling upon appellant to show cause as to why action should not be taken against appellant for violating Takeover Regulations, 1997.

6. Appellant in its reply to show cause notice denied to have violated Takeover Regulations, 1997. Personal hearing was then granted to the appellant. Thereafter, by impugned order dated May 3, 2013 penalty of ₹ three lakh has been imposed upon the appellant for violating regulation 8A (2) of the Takeover Regulations, 1997. Challenging aforesaid order, present appeal is filed.

7. Mr. Vinay Chauhan, learned counsel appearing on behalf of appellant fairly submitted that failure to disclose pledging of Odyssey shares by appellant who is one of the promoters of Odyssey may technically amount to violating regulation 8A(2) of Takeover Regulations, 1997. However, counsel for appellant submitted that for the following reasons excessive and disproportionate penalty imposed upon appellant be reduced to such extent as this Tribunal deems fit and proper.

- a) Pledging of 1,54,000 shares by appellant constituted barely 0.40% of the total equity share capital of Odyssey which is negligible.
- b) 1,54,000 shares 'pledged' by appellant amounted to less than 1% of the total holding of the promoters which is again negligible.
- c) Appellant considered that pledged shares belonged to the client of the appellant and that the appellant had only kept control over such shares for purpose of pledging the same for raising finance. Since pledged shares belonged to client, appellant had not disclosed the same to the company/stock exchanges. Whenever appellant pledged its own shares, appellant had disclosed the same as required under Takeover Regulations, 1997. It is only because 1,54,000 shares were not considered as appellant's shares, disclosures were not made and hence imposition of penalty is unjustified.

- d) It was a matter of coincidence that appellant happened to be promoter of a company whose shares were pledged by appellant and hence imposition of such harsh penalty is unjustified.
- e) There are no allegations of malafides against appellant. Appellant has been regularly pledging shares of various companies where the clients are unable to pay their dues on time and therefore in the facts of present case, imposition of penalty is unjustified.

8. Relying on a decision of this Tribunal in Appeal No. 38 of 2013 (K. Nirmala vs. SEBI) decided on 18.04.2013, counsel for appellant submitted that penalty imposed upon appellant being harsh, excessive and disproportionate to the offence allegedly committed by appellant, this Tribunal may reduce the penalty to the extent as it deems fit.

9. We see no merit in the above contentions.

10. Regulation 8A inserted to the Takeover Regulations, 1997 with effect from 28.01.2009 reads thus:-

“8A. (1) A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.

(2) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him,

inform the details of such pledge of shares to that company.

(3) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.

Explanation.- For the purposes of sub-regulations (1), (2) and (3) the term “promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.

(4) The company shall disclose the information received under sub-regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year,-

(a) aggregate number of pledged shares of a promoter or every person forming part of promoter group taken together with shares already pledged during that quarter by such promoter or persons exceeds twenty five thousand; or

(b) aggregate of total pledged shares of the promoter or every person forming part of promoter group along with the shares already pledged during that quarter by such promoter or persons exceeds one per cent of total shareholding or voting rights of the company,- whichever is lower.)”

Thus, as per regulation 8A(2) and 8A(4) of Takeover Regulations, 1997 it was mandatory for every promoter to disclose to the company all details relating to the pledging of shares of that company held by promoter and that company was required to inform the same to all stock exchanges.

11. As rightly contended by counsel for respondent, obligation to make disclosure under regulation 8A of the Takeover Regulations, 1997 is not dependent upon the quantity of shares held/ pledged. Therefore, irrespective of the fact that pledging of 1,54,000 shares constituted 0.40%

of the total equity share capital of Odyssey, failure on the part of appellant to disclose such pledging would constitute violation of regulation 8A(2) of the Takeover Regulations, 1997. Argument that appellant was not owner of pledged shares has been found to be false on the basis of evidence on record which clearly shows that the client had authorized the appellant to liquidate/ close out all or any of the client's position for non-payment of margin or other amount. In view of the aforesaid authorization appellant got transferred shares from the client's beneficial account to the demat account of the appellant and thereafter pledged the said shares with Canara Bank to raise fund. Moreover, the appellant had not followed procedure prescribed under the Depositories Act, 1996 and Regulations made thereunder in relation to pledging of the shares in question. In any event, admittedly appellant had pledged the shares which were in the demat account of the appellant. Therefore, argument that the appellant considered that the pledged shares belonged to its client was totally false. Argument that it was only a matter of coincidence that appellant happened to be promoter of a company whose shares were pledged by appellant does not merit consideration because, obligation to make disclosure of pledged shares arises under regulation 8A(2) only when pledging is made by promoters of the company and in the present case, appellant was one of the promoters of the company whose shares were pledged by appellant. Similarly, whether there are allegations mala-fides against appellant or not makes no difference for imposition of penalty once regulation 8A (2) of Takeover Regulations, 1997 is found to have been violated.

12. Reliance was placed by counsel for appellant on a decision of this Tribunal in case of K. Nirmala (supra). That decision is distinguishable on facts. In that case it was held that failure to disclose pledging of shares was an inadvertent mistake and while upholding the decision of SEBI, this Tribunal looking to the totality of facts and circumstances deemed it fit to reduce the penalty imposed therein by 50%. In the present case, appellant had falsely pleaded before AO that the pledged shares were not beneficially owned by the appellant. As noted earlier, the above plea of appellant is totally false and in fact appellant was beneficial owner of pledged shares. Moreover, appellant had not followed procedure prescribed under Depositories Act and the Regulations made thereunder in relation to pledging of shares. Hence reliance placed on decision of this Tribunal in case of K. Nirmala (supra) is totally misplaced.

13. Moreover, it is relevant to note that under section 15A(b) of the SEBI Act, 1992, penal liability for failure to furnish any information within the time prescribed under the regulations framed by SEBI is one lakh rupees for each day during which such failure continuous or one crore rupees, whichever is less. In the present case 50,000 shares were pledged by appellant on February 18, 2011 and 27,000 shares were pledged on September 28, 2011. If penalty at rupees one lakh per day is computed then the total penalty on the basis of number of days during which violation of regulation 8A (2) of Takeover Regulations, 1997 continued, would exceed rupees one crore. However, looking to the facts of present case, AO has taken a lenient view and imposed penalty of ₹

three lakh only. In these circumstances, imposition of ₹three lakh penalty against appellant cannot be said to be arbitrary, excessive or disproportionate.

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

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

19.11.2013
Prepared & Compared By: Pk