

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 157 of 2012

Date of Hearing: 20.08.2013

Date of Decision: 03.09.2013

Amit Bhagvatprasad Barot
1 Vevekanand Society,
Ambika Nagar, Highway,
Kalol, Gujarat- 382 721

....Appellant

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.
2. India Star (Mauritius) Limited
Level 3, Alexander House,
35, Cyber City, Ebene,
Mauritius
3. HSBC Securities &
Capital Market (India) Private Limited
52/60, Mahatma Gandhi Road,
Fort, Mumbai 400 001
4. Mr. Ravi Pratap Singh
701, Horseshoe Trall,
Franklin Lakes, NJ 07417
U.S.A.

....Respondents

Mr. P. N. Modi, Senior Advocate with Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Amrita Joshi, Advocate for Respondent No. 1

Mr. Janak Dwarkadas, Senior Advocate with Mr. Rohan Rajadhyaksha and Ms. Neelima Kumar, Advocates for the Respondent Nos. 2 and 4.

Mr. Zal Andhyarujina, Advocate for Respondent No. 3.

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

Per : Justice J.P. Devadhar

1. When an investor in shares files complaint before Securities and Exchange Board of India (“SEBI” for short) alleging fraud and misrepresentation in the letter of offer made by “Acquirer” under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“SAST Regulations 1997” for short) and the said complaint is rejected without considering allegations made in the complaint, whether appeal against such rejection is maintainable under Section 15T of the Securities and Exchange Board of India) Act, 1992 (“SEBI Act” for short) is the basic question that falls for consideration in this appeal. According to appellant rejection of his complaint by SEBI vide communication dated 8th June, 2012 constitutes an order which prejudicially affects his interests as an investor and hence appeal against rejection order dated 8th June, 2012 is maintainable.

2. Appellant as a trader had inter alia held certain shares of Global Offshore Services Limited, formerly known as Garware Offshore Services Limited (“target company” for convenience).

3. On 7th November, 2007 respondent no. 2 incorporated in Mauritius (“Acquirer” for convenience) made a public announcement under Regulation 10 of SAST Regulations 1997, stating that Acquirer holds 12.02% shares of target company and due to conversion of

optionally convertible debentures, became eligible to acquire additional 9.54% of equity shares of target company. Thus total shareholding of Acquirer in the target company became 21.56% (12.02%+9.54%). As per regulation 10 of SAST Regulations 1997 it was mandatory for an Acquirer acquiring shares and voting rights over 15% of paid up share capital of target company to make public announcement and acquire shares from public in accordance with the said regulations. Accordingly by letter of offer dated 12th March, 2008 respondent no. 2 offered to purchase shares of target company at ₹ 230 per share during the offer period commencing from 19th March, 2008 and closing on 7th April, 2008.

4. Admittedly, during the offer period appellant did not offer to sell shares of target company held by him to Acquirer.

5. Three years later, appellant filed Appeal No. 201 of 2011 before this Tribunal, interalia seeking order directing SEBI to order Manager to public offer and the Acquirer to make fresh offer as material facts were suppressed in the letter of offer dated 12th March, 2008 and if those facts were disclosed as required under SAST Regulations 1997, appellant would have offered to sell shares of target company during the offer period specified in letter of offer dated 12th March, 2008. On 4th January, 2012 said appeal was dismissed as withdrawn with liberty to seek appropriate remedy before SEBI.

6. Accordingly, on 16th January, 2012 appellant filed a complaint before SEBI interalia on ground that in the letter of offer dated 12th

March, 2008 Acquirer (respondent no. 2) and Manager (respondent no. 3) had failed to disclose material information with regard to the background of Acquirer and past experience of its Director Mr. Ravi Pratap Singh, as contemplated under the standard letter of offer forming part of SEBI circular dated 3rd August, 2004.

7. Grievance of appellant in the complaint inter alia was that under regulation 16(v) of SAST Regulations 1997, it was mandatory for Acquirer, which is a company, to disclose identity of its promoters and of the persons having control over it and the group, if any, to whom Acquirer company belongs. Similarly, under Clauses 4.1.5 and 4.1.8 of standard letter of offer in SEBI circular dated 8th March, 2004, it was mandatory for Acquirer (respondent no. 2) to disclose in letter of offer, identity of its promoters and/or persons having control over it and the group, if any, to which Acquirer belongs to and details of experience, qualifications, date of appointment of Board of Directors. However, in this case, Acquirer and Manager to public offer have withheld following material information:-

a) In letter of offer dated 12th March, 2008 it is disclosed that Acquirer is a wholly owned subsidiary of IndiaStar Fund L.P a limited partnership under laws of Cayman Islands. However, fact that Sycamore Ventures was apparently in control of IndiaStar Fund and that IndiaStar Fund was a trademark owned by Sycamore Management Corporation has not been disclosed, which

was mandatorily required to be disclosed under SAST Regulations, 1997 and circular of SEBI dated 8th March, 2004.

b) In letter of offer dated 12th March, 2008, while giving details of experience about its Director Ravi Pratap Singh (respondent no. 4) as required under Clause 4.1.8 of the standard letter of offer in the SEBI circular dated 8th March, 2004, association of respondent no. 4 with Sera Nova Inc as Chief Financial Officer (“CFO”), Dahava Resources Ltd. as President and Silverline Technologies Ltd. as Co. Chief Executive Officer (“Co CEO”) has been completely suppressed.

c) It was stated that sometime in August 2011 appellant came to know that prior to public offer, in case of Sera Nova Inc, summary judgment had been passed by a Court in USA against Sera Nova Inc on account of its failure to make proper disclosures to US Securities and Exchange Commission and that respondent no. 4 was a promoter of Sera Nova Inc which was acquired by Silverline Technologies Ltd. in which respondent no. 4 was Co CEO & Silverline Technologies Ltd. was facing huge financial difficulties/claims of more than \$ 18 million from various parties including Indian Banks.

d) As regards Dahava Resources Ltd. is concerned it was stated that prior to public offer, Canadian regulator

had passed an order suspending all trading in Securities of Dahava Resources Ltd. since it had failed to comply with mandatory filing/disclosure requirements.

e) Portfolio of Sycamore Ventures included investments in Indian infrastructure companies in oil and gas and target company is also in oil and gas business. Failure to disclose these facts which ought to have been disclosed and if these facts were disclosed would have affected the appellants' decision on whether to tender his shares in the open offer or not.

8. In the impugned communication dated 8th June, 2012 which is a common order in respect of 15 complaints, grievance of appellant set out herein above are recorded at para 1(e) & 1(f) and are dealt with in para 3(e) by recording as follows:

“e. With regard to 1(e) and 1(f) above, it is disclosed at Para 3(g) of the Letter of Offer that the Acquirer is a privately held limited liability company and is a wholly owned subsidiary of indiaSTAR Fund, L.P., a limited partnership. Further, the fact regarding association of Mr. Ravi Pratap Singh, one of the directors of the board of directors of the target company with Sycamore Venture has been disclosed at Para 3(f) of the Letter of Offer.”

9. Challenging aforesaid communication dated 8th June, 2012, present appeal is filed.

10. Preliminary objection is raised by respondents regarding maintainability of appeal against communication dated 8th June, 2012. It

is contended that SEBI has out sourced the job of sorting investor complaints so that the same can be dealt effectively with concerned department within SEBI. Replies given by SEBI to investor complaints cannot and ought not to be treated as orders passed by SEBI entitling investor to file appeal under Section 15T of SEBI Act. Relying on Supreme Court decision in case of *Adi Pherozshah Gandhi vs. H.M. Seervai* reported in 1970(2) SCC 484 it is contended that Appellant who is dissatisfied with the result of his complaint cannot be said to be a 'person aggrieved' under Section 15T of SEBI Act. Relying on decision of this Tribunal in case of *M.Z. Khan vs SEBI* reported in (2010) 98 SCL 47 (SAT-Mum) it is contended that inaction of SEBI to investigate on the basis of appellant's complaint is not an appealable order under Section 15T of SEBI Act. It is further contended that complaint/ appeal suffers from gross delay and that appellant who held 4200 equity shares of the target company on the date of public announcement had sold almost all those shares after offer period was over and thereafter had purchased large number of shares of target company in May-June 2011. However, in the complaint it is wrongly alleged that before, during and after the open offer he had 1560 equity shares of the target company and having missed the bus, appellant by making false complaint seeks fresh letter of offer with a view sell 1560 shares of target company at ₹ 230/- per share as against the prevailing market rate of share at ₹ 75/- to ₹ 80/- per share.

11. We see no merit in above preliminary objections raised on behalf of respondent.

12. When a complaint is filed by an investor, alleging that in public offer, Acquirer has made fraudulent misrepresentation and thus contravened SAST Regulations, 1997 framed by SEBI and the said complaint is rejected without considering allegations made in the complaint, then the said investor would be a person aggrieved entitled to file appeal under Section 15T of SEBI Act. If there is fraudulent misrepresentation by Acquirer, then failure on part of SEBI to consider alleged fraudulent misrepresentation of Acquirer would cause serious prejudice to the investor and in such a case, investor would be a 'person aggrieved' entitled to file appeal under Section 15T of SEBI Act.

13. SEBI is established under the SEBI Act, 1992 with a view to protect interests of investors in securities and to promote the development of, and to regulate the securities market. Regulations have been framed by SEBI under the SEBI Act with a view to protect interest of investors. Under SAST Regulations, 1997 framed by SEBI, certain disclosures are required to be made by an 'Acquirer' seeking to acquire shares of target company so that shareholders of target company are well informed about the credentials of Acquirer and its Directors. On basis of disclosures made by an Acquirer under said Regulations, shareholders of target company (investors) are entitled to decide as to whether to continue to be with target company or not. There can be no dispute that compliance of regulations is mandatory and it is duty of

SEBI to enforce compliance of these regulations. Where a complaint filed by an investor is rejected without considering allegations in complaint, then, it would be open to investor to file an appeal under Section 15T of SEBI Act alleging that SEBI has failed to protect interests of investor.

14. Fact that hundreds of investor complaints are received every day and hence SEBI is required to outsource job of sorting investor complaints, cannot be a ground to hold that once a complaint is rejected by SEBI, the issue attains finality. Under Section 15T of the SEBI Act, any person aggrieved by order of SEBI is entitled to file an appeal. Thus, an investor whose complaint is arbitrarily rejected without considering claims made in complaint would be a 'person aggrieved' entitled to file appeal under Section 15T of the SEBI Act.

15. Reliance placed by counsel for respondent no. 1 on decision of Apex Court in case of *Adi Pheroze Shah Gandhi (supra)* in support of above contention is misplaced. In that case, challenging decision of State Bar Council acquitting an advocate from charges of professional misconduct, Advocate General of the State had filed an appeal before Bar Council of India. Question was, whether Advocate General was a person aggrieved by order passed by State Bar Council. In that context, Apex Court held that Advocate General was not interested in the dispute either in his personal capacity or in his capacity as an Advocate General, his duty under the Advocates Act comes to an end once the hearing is over and therefore the Advocate General cannot be

considered to be a party interested or a 'person aggrieved'. The Apex Court further held in such a case Advocate General is not in the nature of a party having independent rights which he can claim are injured by the decision. In the present case, Regulations are framed to protect interests of the investor, it is investor who has filed the complaint and it is investor who is seriously prejudiced by impugned decision. Therefore, decision of Apex Court in case of *Adi Pherooshah Gandhi* (supra) is wholly distinguishable on facts and has no relevance to facts of present case.

16. Similarly, decision of this Tribunal in case of *M.Z. Khan* (supra) does not support argument advanced on behalf of SEBI. In that case there was no order passed by SEBI which could be challenged by way of appeal. In the present case by an order dated 8th June, 2012 complaint filed by appellant has been rejected and appellant is aggrieved by that decision. Therefore, decision of this Tribunal in case of *M.Z. Khan* (supra) has no relevance in the present case.

17. Argument that complaint/appeal suffers from gross delay is also without merit, because firstly, the complaint has not been rejected on ground of delay. Secondly, according to appellant he came to know about fraudulent misrepresentation in August 2011 and immediately thereafter appellant moved this Tribunal by filing Appeal No. 201 of 2011 which was disposed of on 4th January, 2012 with liberty to move SEBI. Accordingly complaint was filed on 16th January, 2012 and the same was rejected on 8th June, 2012. Present appeal has been filed on

25th June, 2012. Thus, there is no delay either in filing complaint or in filing appeal against order dated 8th June, 2012. In these circumstances, preliminary objection raised regarding maintainability of appeal cannot be sustained.

18. The question then to be considered is, whether there is any merit in the contention of appellant that his complaint has been rejected without considering claims made in the complaint. Grievance of appellant in the complaint was, firstly, failure to disclose that Sycamore Ventures was in apparent control over Acquirer was in violation of Regulation 16(v) of SAST Regulations, 1997 and Clause 4.1.5 of the standard letter of offer framed by SEBI vide its circular dated 8th March 2004. Secondly, failure to disclose association of Ravi Pratap Singh, Director of the Acquirer with Sera Nova Inc as CFO, Dahava Resources Ltd. as President and Silverline Technologies Ltd. as Co CEO was in violation of Clause 4.1.8 of standard letter of offer framed by SEBI vide its circular dated 8th March, 2004.

19. As regards first grievance of appellant is concerned, impugned order merely records that in para 3(g) of letter offer it is disclosed that Acquirer is a privately held limited liability company and is a wholly owned subsidiary of IndiaStar Fund L.P a limited partnership. This reasoning does not answer grievance of appellant that IndiaStar Fund L.P was controlled by Sycamore Ventures which was mandatorily required to be disclosed under SAST Regulations, 1997 and SEBI circular dated 8th March, 2004. Whether Sycamore Ventures apparently

controlled IndiaStar Fund L.P and whether failure to disclose same has caused prejudice to appellant was a question ought to have been considered while disposing of complaint filed by appellant. Fact that respondent no. 4 was a partner with Sycamore Ventures has been disclosed does not meet allegation of appellant that Sycamore Ventures apparently controlled IndiaStar Fund L.P has been suppressed in gross violation of SAST Regulations and SEBI circular dated 8th March, 2004. Thus, it is evident that complaint has been rejected without considering first grievance of appellant raised in his complaint.

20. Similarly, second grievance of appellant that association of respondent No. 4 with Sera Nova Inc, Dahava Resources Ltd. & Silverline Technologies Ltd. has been deliberately suppressed has also not been considered while rejecting complaint of appellant. Whether Clause 4.1.8 of standard letter of offer contemplates giving details of each and every past experience of Directors of Acquirer and whether in the present case failure to disclose association of respondent No. 4 with aforesaid three companies have in fact caused prejudice to appellant ought to have been considered in the impugned order. Therefore, in facts of present case, rejecting complaint of the appellant by SEBI without considering grievances of appellant set out in the complaint, is wholly unjustified.

21. Counsel on both sides have extensively argued before us in support of their respective contentions. When a complaint is rejected without considering alleged violation set out in the complaint, in our

opinion, it would not be proper for us to pass order on merits of complaint. It is for SEBI to consider as to whether there is any merit in the complaint and even if there is some merit in the complaint, what should be the remedy that may be granted in such a case where violations are claimed to have been noticed after almost three years from date of public offer coming to an end. Whether, complainant is a bonafide complainant and whether he has approached SEBI with clean hands is a question to be considered by SEBI while disposing of complaint. After considering merits and demerits of the complaint it is for SEBI to decide as to whether punitive action should be taken against Acquirer/Manager or not. Without considering violations alleged in the complaint, SEBI is not justified in contending that this Tribunal has no power or jurisdiction to order/direct SEBI to initiate investigation or take punitive action against Acquirer/Manager/its Directors. We make it clear that we are not suggesting that SEBI must take punitive action against respondent nos. 2 to 4. We are only holding that when complaint is filed alleging violation of Regulations framed by SEBI, it is obligatory on part of SEBI to consider the said complaint and pass appropriate orders as it deems fit. In the present case complaint filed by appellant has been rejected without considering allegations set out in the complaint which has resulted in miscarriage of justice.

22. For all the aforesaid reasons we set aside impugned order dated 8th June, 2012 and direct SEBI to reconsider complaint of appellant dated 16th January, 2012 afresh and pass appropriate orders as it deems

fit. We make it clear that we have not expressed any opinion on merits of the case.

23. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
A S Lamba
Member

03.09.2013
Prepared & Compared By: Pk