

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Date : 07.09.2017**

**Appeal No. 438 of 2015**

Mega Resources Limited,  
10, Clive Row, Kolkata 700 001. ...Appellant

Versus

Securities & Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai 400 051. ...Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Neerav B. Merchant and  
Ravity Urilumuri, Advocates i/b Khaitan and Co. for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Rajdeep Lahini and Mihir  
Gupte, Advocates i/b Singhania Legal Services for the Respondent.

**With  
Appeal No. 439 of 2015**

1. Hooghly Mills Project Limited  
2. Hooghly Stocks and Bonds Project Limited  
70, Garden Reach Road,  
Kolkata – 700 043. ....Appellants

Versus

Securities & Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai 400 051. ....Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Neerav B. Merchant and  
Ravity Urilumuri, Advocates i/b. Khaitan and Co. for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Rajdeep Lahini and Mihir  
Gupte, Advocates i/b. Singhania Legal Services for the Respondent.

**CORAM : Justice J. P. Devadhar, Presiding Officer  
Jog Singh, Member  
Dr. C.K.G. Nair, Member.**

**Per : Shri Jog Singh, Member (Oral)**

1. Since the dispute in these two appeals relates to imposition of penalty for violating the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997, [hereinafter referred to as ‘SAST Regulations’] both these appeals are heard together and disposed of by this common decision with the consent of all the parties involved.

2. In Appeal no. 438 of 2015, the Adjudicating Officer of Securities Exchange Board of India [hereinafter referred to as ‘SEBI’] by his order dated August 13, 2014 has imposed a penalty of Rs. 2,00,000/- on the appellant under section 15A(b) of Securities and Exchange Board of India Act, 1992 (SEBI Act for short) and Rs.50,00,000/- under Section 15H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

3. In Appeal no. 439 of 2015, the Adjudicating Officer of SEBI by his order dated August 13, 2014 has imposed penalty of Rs.50,00,000 on the appellants, namely Hooghly Mills Project Limited and Hooghly Stocks & Bonds Pvt. Ltd., under section 15H(ii) of SEBI Act for failure to comply with the provisions of Regulation 11(2) read with Regulation 14(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

4. The facts of Appeal No. 438 of 2015 have been taken as the lead case. The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, Securities and Exchange Board of India [hereinafter referred to as “SEBI”] imposing a

penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

5. Brief facts of the case are that Waverly Investments Limited [“the Company/” “WIL”], originally incorporated under the Indian Companies Act, 1913, was a listed public company, which was delisted from the official list of the Calcutta Stock Exchange w.e.f. 08.11.2013.

6. Till 1986 the Company was controlled by McLeod & Co. Ltd. and its other group companies, namely - McLeod & Co. Ltd., Gielle Investments Limited, Bajoria Properties Limited, Devenport & Co. Pvt. Ltd., Presidency Exports & Industries Limited and members of Bajoria family – namely – Shobha Bajoria, Rekha Bajoria and Devendra Bajoria, which also formed the Promoter Group. In the year 1986, McLeod Group and their companies were managed and controlled by Mr. C.L. Bajoria, Mr. S. L. Bajoria, Mr. B. P. Bajoria and their sons, namely - Mr. K. K. Bajoria, Mr. Rajendra Prasad Bajoria and Mr. Devendra Prasad Bajoria.

7. An agreement was entered into by and between (i) The Kevin Jute Co. Ltd. and Hasimara Industries Ltd., jointly and/or severally called ‘The Vendors’, (ii) The Hooghly Mills Co. Ltd. called ‘The Purchaser’ and (iii) The Company called the ‘Confirming Party’ for sale of assets of the company along with the land. The Hooghly Group of Late A. K. Bajoria negotiated with Mr. Rajendra Prasad Bajoria and Mr. Devendra Prasad Bajoria who were sons of Mr. CL Bajoria, for purchase of shares of the Company and they entered into an oral agreement/arrangement with AK

Bajoria for transfer of their entire shareholding which was held by them in companies and individuals at Rs. 4/- and Rs. 4.50 per share. It is stated by the appellant that the transaction contemplated in the oral agreement took place in the year 1986 and 2001.

8. In 1986, the Meenakshi Projects Limited and Hooghly Mills Company Limited which were both promoted and controlled by A. K. Bajoria group, acquired 1,26,146 equity shares of the Company, which amounted to 50.46% of the paid up share capital of the Company. The aforesaid shares were acquired from various entities forming part of the McLeod Group, pursuant to an understanding/arrangement. Consequent to the purchase, the A. K. Bajoria group became the main promotor group in the Company. The Appellant is part of the AK Bajoria group. However, about 25000 shares of the Company were still retained by the McLeod Group, which were sold to the Appellant by Presidency Exports and Industries Limited (controlled by the McLeod group) at Rs. 4/- per share through off market transactions due to non-trading/suspension of shares at the Calcutta Stock Exchange Limited. Acquisition of 25000 shares of the Company resulted in the shareholding of A. K. Bajoria group being increased from 50.46% to 60.46%.

9. SEBI observed that the Appellant being one of the promoters/promoter Group of the Company had acquired 25,000 equity shares (10%) on February 12, 2001 and due to the said acquisition promoter/promoter group shareholding increased from 50.46% to 60.46%, without making an open offer, which was in violation of regulation 11(1) read with 14(1) of the SAST Regulations. SEBI also noticed that the Appellant had failed to make disclosure under regulation 7(1) read with 7(2) of the SAST Regulations. Accordingly, SEBI issued show cause

notice dated 16.05.2014 to the Appellant, being one of the promoters of the Company, to show cause as to why an enquiry should not be held against the Appellant in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15-I of SEBI Act and penalty be not imposed under Section 15A (b) and 15(H)(ii) of the SEBI Act for the alleged violation of regulations 7(1) read with regulation 7(2), 11(1) read with regulation 14(1) of the SAST Regulations.

10. In response to the said SCN dated May 16, 2014, the appellant vide letter dated June 14, 2014 submitted that the violation was unintentional and had occurred due to lack of proper interpretation of the erstwhile regulations. The appellant also requested SEBI not to levy any penalty as the violation was technical in nature and without any mala fide intention as there was no change in control. The respondent after considering the reply to the SCN and the submissions of the authorized representative of the Appellant in the personal hearing, passed the impugned order dated 13.08.2014 imposing a penalty of Rs. 2 lac under Section 15 A(b) of the SEBI Act and Rs. 50 lac under Section 15(H)(ii) of the SEBI Act on the appellant.

11. Facts of Appeal No. 439 of 2015 are different from Appeal No. 438 of 2015 to the following limited extent. On 12th February, 2001, the A. K. Bajoria group acquired 25,000 equity shares of the Company increasing its shareholding in the Company from 50.46% to 60.46%. Subsequently, on 15th April 2009, the appellants in Appeal 439/2015 (both companies controlled by the A. K. Bajoria Group) purchased 20,000 equity shares and 12,300 equity shares equivalent to 4% and 2.46% of the paid up share capital, respectively of the Company. These transactions were off market

transactions due to non-trading/suspension of trading at the Calcutta Stock Exchange Limited. After such acquisition, the holding of A. K. Bajoria group went up to 66.92%. SEBI observed that the Appellants being the part of the promoters/promoter Group of the Company had acquired 20,000 equity shares (4%) and 12,300 equity shares (2.46%) of the company on 15th April, 2009 and due to the said acquisitions, the promoter/promoter group shareholding increased from 60.46% to 66.92%, without making an open offer, which was in violation of regulation 11(2) read with 14(1) of the SAST Regulations.

12. We shall now deal with the Appellant's submissions in brief. The Appellant submits that Franktech Enterprises Pvt. Ltd. and Goodfaith Commercial Pvt. Ltd. were interested in acquiring 20% shares of the Company. Necessary disclosures were made by them with the Respondent. At the time of filing the open offer document with the Respondent by Franktech Enterprises Pvt. Ltd. and Goodfaith Commercial Pvt. Ltd., the acquisition of shares by the Appellant in 2001 was incorrectly mentioned as acquired from a Non Promoter.

13. It is submitted by the appellant that at the time of sale of shares, the McLeod Group was a declared promoter of the Company. Upon acquisition of shares by the A. K. Bajoria group led companies in 1986, the A.K. Bajoria Group became the new promoter of the Company. At the time of the impugned transfer of shares in 2001, the A. K. Bajoria Group, comprised of the three following companies : Hooghly Mills Projects Limited, Meenakshi Projects Limited, Mega Resources Limited.

14. Therefore, the Appellant submits that the impugned transfer/acquisition of shares in 2001 is an inter se transfer of shares between different corporates in the promoter group. Consequently, there

was no requirement of making an open offer under Regulation 11 read with 14 or disclosures under Regulation 7 of the SAST Regulations, 1997.

15. The appellant contends that no prejudice was ever caused to the other shareholders of the company or any one else as there had been no trade of shares of the Company at the Calcutta Stock Exchange since January 01, 1999. As the shares of the Company were suspended from trading on the CSE no open offer could be made or could be directed to be made. It is submitted by the Appellant that the Company having been delisted w.e.f. November 8, 2013, SEBI has no jurisdiction to issue the impugned show cause notice. It is further submitted that on the date of adjudication and passing of the impugned order by the Respondent, the Company was no longer a listed Company and, therefore, was outside the purview of the Respondent.

16. The Appellant further submits that the Adjudicating Officer has erred gravely in interpreting and exercising the application of Section 15H(ii) (failure to make a public announcement to acquire shares at a minimum price), which is to be read with the provisions of Section 15J of the SEBI Act. It is submitted by the appellant that the Adjudicating Officer, while quantifying the penalty, has to exercise discretion after considering the factors provided in Section 15J of the SEBI Act.

17. The appellant has, therefore, prayed for quashing and setting aside of the impugned order dated August 13, 2014.

18. Per contra, the respondent submits that the appellant has not produced any evidence of the alleged oral agreement of 1986. It is also submitted by SEBI that the schedule at Exhibit-C to the appeal is inaccurate as the date of said acquisition is shown in the schedule as 16.04.2001

whereas the appellant has admitted in the reply dated 14.06.2014 to SCN that the said shares were purchased on 12.02.2001. The respondent submits that prior to acquisition of shares on 12.02.2001, the appellant was not the promoter of the Company but only a part of the A. K. Bajoria group of companies which controlled the Company and the companies forming part of the Bajoria Group which held shares of the Company were shown as promoters of the Company. The appellant became promoter of the Target Company upon acquisition of shares on 12.02.2001 and, therefore, the said acquisition by the appellant was not an inter se transfer of shares between different entities forming part of promoter group, as claimed by the appellant. The respondent, therefore, submits that the appellant is not entitled to any exemption from making any open offer as it has not complied with any condition pursuant to which any exemption would be available.

19. It is further denied by the respondent that the appellant had been wrongly mentioned as a non-promoter in the Open Offer document of 2011. The respondent submits that although the appellant was aware of the fact that it was shown as non-promoter in the said offer document of 2011, the appellant took no steps to rectify the said alleged error. The said contention of the appellant in this regard is, therefore, clearly an after-thought.

20. The respondent submits that since the appellant has violated the statutory provisions of the regulations, the penalty has to follow. In support of their contention, the respondents rel on the judgment of the Hon'ble Supreme Court in the case of **SEBI Vs. Shri Ram Mutual Fund [AIR 2006 SC 2287]** wherein it has been held that once the violation of the statutory regulations is established, imposition of penalty becomes sine qua

non of violation and the intention of parties committing such violation becomes totally irrelevant.

21. The shares of the Company (WIL) were suspended from trading on the Calcutta Stock Exchange since 1999, i.e., after the takeover of the Company by A. K. Bajoria Group and the same was due to non-payment of the listing fees by A. K. Bajoria group, which is apparent from the letter dated January 09, 2012 received by the Company from the CSE whereby the CSE had called upon the Company WIL to pay the listing fees.

22. The respondent submits that the Adjudicating Officer has appropriately imposed the penalty of Rs. 2,00,000/- under Section 15A(b) and Rs. 50,00,000/- under Section 15H(ii) of the SEBI Act, 1992, which is commensurate with the violations of the provisions of the SAST Regulations, 1997. It is submitted that the provisions relating to making of an open offer and disclosures are mandatory provisions and penalty is leviable once it is shown that there has been a failure to make disclosure or when there is breach of the Regulation 11(1). The respondent rel on the decision of this Tribunal in **Komal Nahata Vs. SEBI [Appeal No. 5/2014]** **decided on 27.01.2014** wherein it is held that the “argument that no investor has suffered on account of non disclosure and that the Adjudicating Officer has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992, is without any merit because the penalty for non compliance of SAST Regulations, 1997 is not dependent upon the investors actually suffering on account of such non disclosures.

23. The respondent, therefore, prays that the appeal be dismissed with cost.

24. Heard the Learned counsel for both the parties at length and perused the pleadings along with the documents produced by the parties.

25. Before dealing with the issues raised in these Appeals, the relevant provisions of the SAST Regulations, 1997 are reproduced herein below :

*“7. 1 [(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*7. (2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

*(a) the receipt of intimation of allotment of shares; or*

*(b) the acquisition of shares or voting rights, as the case may be.*

*11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 1 [15 per cent or more but less than 2 [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 3 [5% of the voting rights], 4 [ with post acquisition shareholding or voting rights not exceeding fifty five per cent.,] 5 [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

*11(2)No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [or with] persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations.*

*14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to*

*acquire shares or voting rights exceeding the respective percentage specified therein.”*

26. Firstly, we deal with the contention of the appellant that the action of the respondent is without jurisdiction. In this context, the Appellant has contended that since the company was delisted from the CSE, SEBI does not have jurisdiction over the appellant. In this connection it is pertinent to note that on Appellant's own showing, the Company was listed on the Calcutta Stock Exchange on February 12, 2001, when the appellant acquired the said shares. Since the Company was listed on the Calcutta Stock Exchange on February 12, 2001, the appellant was obliged to comply with the mandatory provisions of Regulation 11(1) read with 14(1) of the SAST Regulations and to make an open offer and disclosures under Regulations 7(1) and 7(2) of the SAST Regulations, 1997.

It is pertinent to note that the Appellant admits that the company WIL was delisted from the CSE w.e.f. November 08, 2013. In other words, it is the submission of the Appellant that the company WIL was listed on the CSE on February 12, 2001 when the appellant acquired 25000 shares. Therefore, the appellant had to mandatorily comply with the statutory provisions of Regulation 11(1) read with Regulation 14(1), to make an open offer and disclosure under Regulation 7(1) and 7(2) of the SAST Regulations, 1997. The Appellant having failed to comply with the statutory provisions of the Regulations, becomes liable to pay the penalty. As stated hereinabove, the appellant admits that the Promotor Group of which Appellant is a part, had failed to pay the listing fees from 1989-2012. The appellant also admits that the violation of the statutory provisions was due to lack of proper interpretation of the erstwhile regulations. The

appellant cannot take advantage of its own wrong as a crutch. 29. We, therefore, hold that SEBI indubitably has jurisdiction in the present matter.

30. Next, we turn to the contention of the appellant that the said acquisition was an inter se transfer amongst the promoters and, therefore, exempted from the provisions of Regulations 7(1) read with 7(2) and 11(1) read with 14(1) of the SAST Regulations, 1997. It is pertinent to note that prior to the acquisition in 2001, the Appellant was not a promoter of the Company but a part of the A. K. Bajoria Group of companies which controlled the Company. The companies forming part of the Bajoria Group which held shares of Target Company were shown as Promoters of Target Company. It, therefore, follows that the Appellant, not being a shareholder of the Company prior to the said acquisition, could not be a promoter of the Company. The appellant became a promotor of the Company only after the acquisition of 25000 equity shares in question. Therefore, in our considered opinion, the said acquisition by the Appellant cannot be termed as an ‘inter se’ transfer of shares between different entities forming part of promoter group and therefore cannot be said to be exempt from the requirement of making a mandatory open offer.

31. In any event, the exemption claimed by the appellant on the basis of inter se transfer amongst promoters under Regulation 3(1)(e) of the SAST Regulation, 1997, is not an automatic exemption but is subject to conditions. One such condition is that both the transferor and the transferee have to hold at least 5% of the shares in the Company for at least three years prior to the proposed acquisition. It is a fact that the appellant was not even a shareholder of the Company prior to the said acquisition. It is noted from Exhibit-C to the appeal, viz., particulars of share transfers made by the Appellant on 12.02.2001, that the appellant was not a shareholder of the

Company before the said date. Therefore, it follows that the Appellant could not have held shares in the Company for three years prior to the Acquisition. Consequently, the provision of Regulation 3(1)(e)(iii) of SAST Regulation 1997 cannot said to have been complied with.

32. Another such condition is that a notification/report under regulation 3(3) of the SAST Regulation, 1997 is mandatorily required to be made to the stock exchange in question. It is a matter of fact that no such notification was made to the Calcutta Stock Exchange by the Appellant, as mandated, 4 days prior to the proposed inter se acquisition of shares between promoters. Thirdly, no disclosures were made by the Appellant under Regulation 7(1) and 7(2) of the SAST Regulations, 1997 as required under explanation to the Regulation 3(1)(e) of the SAST Regulation, 1997. Fourth, a report was required to be filed within 21 days of the said acquisition with SEBI. Since no such report has been filed with SEBI, the said condition under Regulation 3(4) of the SAST Regulation 1997 has also not been complied with amongst others. Consequently, the appellant can seek no exemption from the applicability of Regulation 11 of the SAST Regulation, 1997.

33. Even assuming that the Appellant was a Promoter of the Company and had acquired the said shares as Promoter of the Company, the appellant having not complied with the aforesaid conditions, was not entitled to be exempted from making an Open Offer. As held by this Tribunal in **Prem Chand Shah Vs. SEBI [Appeal No 192 of 2010] decided on 21.02.2011**, even where an acquirer is exempted from making an Open Offer, the said exemption would not exempt the acquirer from making the necessary declaration under Regulation 7(1) and 7(2) of the SAST Regulation, 1997, as disclosures under the latter are mandatory.

34. Further, in the reply dated June 14, 2014 to the SCN dated May 16, 2014 the appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor This argument of the appellant, therefore, fails in our opinion.

35. Moreover, we agree with SEBI when it rightly puts forth the logic that when there is an inter se transfer of shares amongst promoters, there is no question of the total promoter holding changing whatsoever. As a consequence of an inter-se transfer among shareholders, the total shareholding must remain the same. Whereas, in the case in hand, through the acquisition of shares in question, by the Appellant, the promoter holding increased from 50.46% to 60.46%. Hence, no matter the perspective from which the facts of the present case are perceived, the inference is always the same viz., that the said acquisition of shares by the Appellant was not in any manner an inter se transfer of shares amongst Promoters, as contended by the Appellant.

36. Lastly, the Learned Counsel for the Appellant, Mr. Zal, while arguing on the issue of proportionality in the matter of imposition of penalty, drew our attention towards the amendment dated October 29, 2002 by which Section 15(H)(ii) of the SEBI Act, 1992, was amended and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs. Five Lakh to Rs. Twenty Five crore. It is argued that since the violation in Appeal 438/2015 was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

37. Before dealing with this contention raised by the Appellant, we feel it appropriate to reproduce the amended as well as the unamended provisions of SEBI Act relied upon by Mr. Zal, the Learned Counsel for appellant.

**SEBI Act, 1992 [Before Amendment]**

**“15H. Penalty for non-disclosure of acquisition of shares and takeovers** - If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(ii) make a public announcement to acquire shares at a minimum price;

he shall be liable to **a penalty not exceeding five lakh rupees.**”

**SEBI (Amendment) Act, 2002 (w.e.f. 29.10.2002)**

**“15H. Penalty for non-disclosure of acquisition of shares and take-overs.**-If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(ii) make a public announcement to acquire shares at a minimum price;

*he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”*

38. It is true that the maximum monetary penalty imposable for non disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. Five Lakh and by the amendment dated October 29, 2002 it is up to Rs. Twenty Five Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. Twenty Five Crore, we find that the penalty of Rs. Fifty Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down.

39. We are not oblivious of the fact that the amendment effected in the SEBI Act on October 29, 2002 in Section 15 H(ii) is a substantive provision and cannot be given retrospective effect but because of the continuity of the obligation to make disclosure and public announcement on the part of the appellant, we have no option but to dismiss this appeal. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the

continuity of the obligation to make disclosure and public announcement, the penalty of Rs. Fifty Lakh is upheld and the appeal is dismissed.

40. So far as Appeal 439/2015 is concerned, admittedly, the violation was committed in April 2009, i.e., long after the amendment dated October 29, 2002 had come into existence. We do not feel it appropriate to exercise our discretion to reduce the penalty of Rs. Fifty Lakh as against Rs. Twenty Five Crore, which is the maximum penalty imposable under Section 15H(ii) of the SEBI (Amendment) Act, 2002.

41. For the reasons stated hereinabove, both the appeals are hereby dismissed with no order as to costs.

Sd/-  
Justice J. P. Devadhar  
Presiding Officer

Sd/-  
Jog Singh  
Member

Sd/-  
Dr. C.K.G. Nair  
Member

07.09.2017  
Prepared & Compared by  
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