

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 89 of 2007

Date of decision: 13.3.2008

P.K. Tayal Appellant

Versus

Securities and Exchange Board of India Respondent

Present: Shri Pradeep Sancheti Advocate with Shri Jai Advocate for the Appellant.

Dr. Poornima Advani Advocate with Ms. Sejal Shah Advocate for the Respondent.

Coram: Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer

This Appeal under section 15 T of the Securities and Exchange Board of India Act, 1992 (for short the Act) is directed against the order dated December 8, 2006 passed by the Adjudicating Officer levying a monetary penalty of Rs. one lac on the appellant and others acting in concert with him for violating the provisions of Regulations 7(1) and 7(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter called the takeover code). Regulation 7(1) at the relevant time required that any acquirer who acquired in any manner whatsoever shares which, taken together with shares, if any, held by him would entitle him to more than 5% shares in a company, shall disclose the aggregate of his shareholding in that company to the company. The disclosure referred to in Regulation 7(1) was, at the relevant time, required to be made within 4 days of the acquisition of shares. Facts leading to this appeal lie in a narrow compass and these may now be noticed.

Bangur Finance Limited, one of the promoters of the Bank of Rajasthan Ltd. (hereinafter referred to as the Bank) had pledged 7,37,490 equity shares of

the Bank with the appellant's Krishna group as collateral security. Since the shares were in physical form, blank transfer deeds were handed over to the appellant at the time of creation of the pledge. Bangur Finance Ltd. defaulted in the repayment of the loan. Since the transfer deeds were getting time barred, the shares were transferred on 22.8.1997 in the name of the appellant as nominee of the Krishna group. These shares constituted 4.11% of the total share capital of the Bank. Friends and relatives of the appellant acting in concert with him acquired on 10.9.1998, 1,01,710 shares of the Bank which constituted 0.57% of its paid up capital. It is also the admitted case of the parties that the appellant acquired another 3,38,950 shares of the Bank on 10.9.1998 which constituted 1.89% of its paid up capital. Thus, the appellant and persons acting in concert with him acquired more than 5% shares of the total share capital of the Bank as on 10.9.1998. The appellant has not mentioned the dates of acquisition in the Memorandum of Appeal but these dates were given to us by his learned counsel at the time of arguments. Having acquired more than 5% shares of the Bank as on 10.9.1998, the appellant and the persons acting in concert with him were required to disclose their holdings to the Bank within 4 days thereof. Instead of disclosing the acquisitions within four days, the disclosures were made by the appellant as per his letter dated 15.2.1999 addressed to the Managing Director of the Bank. There was, thus, a delay of 155 days in making the necessary disclosures. The Securities and Exchange Board of India (hereinafter called the Board) initiated adjudication proceedings under section 15 A (b) of the Act read with Regulations 3(4), 7(1) and 7(2) of the takeover code. By two separate orders both dated January 28, 2002 an Adjudicating Officer was appointed to enquire into the alleged violation of Regulation 3(4) under one order and the alleged violation of Regulations 7(1) and 7(2) under the other. A notice dated February 6, 2002 was issued by him to the appellant calling upon the latter to show cause why action be not taken against him by way of levy of penalty for violating Regulations 3(4), 7(1) and 7(2) of the takeover code. The appellant filed his reply denying that he

had violated the aforesaid Regulations. On a consideration of the material collected during the course of the enquiry, the Adjudicating Officer found that the Appellant and persons acting in concert with him had violated Regulation 3(4)(c) of the takeover code as it then stood. Regulation 3(4)(c) at the relevant time provided that the acquirer of preferential shares allotted in pursuance of a resolution passed under section 81 (1-A) of the Companies Act, 1956 should, within 21 days of the date of acquisition, submit a report alongwith supporting documents to the Board. Since this report had not been submitted by the appellant and persons acting in concert with him, Regulation 3(4)(c) of the takeover code was held to have been violated. By his order dated 18.2.02 the Adjudicating Officer levied a penalty of Rs. one lac on the appellant and the persons acting in concert with him. There was no mention of the violation of Regulation 7 of the takeover code in this order. On receipt of a copy of this order, the appellant addressed a communication dated March 4, 2002 to the Board alongwith a pay order for Rs. one lac towards the penalty imposed. The appellant also informed the Board through this communication that he and others acting in concert with him had not been found to have violated Regulation 7 of the takeover code. This is what the appellant stated in this letter:

“However, in second matter Adjudicating Officer is of the view that since Acquirer has not violated Regulation 7 of the Regulations consequent to the acquisition of pledged shares constituting 4.11%, no penalties can be imposed, therefore no order is necessary in this regard.”

On receipt of the aforesaid letter, the Adjudicating Officer issued another notice dated 13.3.2002 calling upon the appellant to show cause why action be not taken against him for violating Regulation 7 of the takeover code. In response to this show cause notice the appellant sent his short reply on March 28, 2002 and it would be relevant to reproduce the same here for facility of reference:

“With reference to your notice no.PMD/4137/2002 dated 13th March, 2002 regarding alleged violation of not furnishing report as required under Regulation 7. **In this regard we submit that we are agreeable for adjudication as per your order dated 28th January, 2002.**

We have clarified in our earlier letter dated March 4, 2002 that pledged shares were transferred prior to acquisition of the 1.89% shares by us. The details in this regard was not submitted only due to the bonafide belief that Regulation 7 is not applicable on the said transfer because pledge shares are not directly related to us and we have to return these shares on repayment of our loans.

We had informed The Bank of Rajasthan Ltd. and SEBI about our holdings in bank vide our letter dated 15th February, 1999 but this fact was not brought to the notice of SEBI in our earlier replies only due to omission.

It is thus submitted that in view of the above conclusions, it is clear that there was no willful default on the part of Tayal Group and it was only under the bonafide belief that the alleged default was committed by Tayal Group. It is further submitted that the default of non-compliance of the provisions of Regulation 7 has not brought any gain or unfair advantage to the Tayal Group.”(emphasis supplied)

The Adjudicating Officer after hearing the appellant and considering the reply filed by him and other material on the record and taking note of the provisions of section 15 J of the Act found that there was no material available to quantify the disproportionate gain or unfair advantage accrued to the acquirers as a result of the said default. By his order dated December 8, 2006 he imposed a penalty of Rs. one lac on the appellant and persons acting in concert with him for the delay in complying with the provisions of Regulation 7 of the takeover code. Hence this appeal.

We have heard the learned counsel for the parties at length. Mr. Pradeep Sancheti Advocate for the appellant raised the following four contentions for our consideration:

- i) The Adjudicating Officer had been appointed only to enquire into the non-disclosure of the pledged shares which constituted 4.11% of the total issued and paid-up capital of the Bank and since this acquisition by itself did not trigger Regulation 7 of the takeover code, the impugned order cannot be sustained.
- ii) The first show cause notice dated 6.2.2002 alleged the violation of Regulations 3 (4), 7(1) and 7(2) of the takeover code and the Adjudicating Officer in his order dated 18.2.2002 found only the violation of Regulation

3(4) of the takeover code and since there was no mention of the violation of Regulation 7, the appellant must be deemed to have been absolved of that allegation. Since the appellant had been absolved, he could not be proceeded again for the same violation by issuing the second show cause notice on 13.3.2002.

- iii) The pledged shares which were transferred in the name of the appellant on 22.8.1997 cannot be said to have been acquired by him and, therefore, he was under no obligation to disclose those shares to the Bank. The beneficial ownership of these shares, according to the appellant, remained with the pledgor.
- iv) The Explanation that was added to Regulation 7 of the takeover code on 9.9.2002 which requires a pledgee to make disclosure of the pledged shares to the target company (Bank) would not apply to the present acquisition as it does not operate retrospectively and the acquisition, if any, had taken place prior to its introduction.

We shall now deal with the contentions of the appellant in the order in which they have been noticed above. As regards the first contention, we find no merit in it. We have perused the order dated January 28, 2002 by which the adjudicating officer had been appointed. It clearly refers to the alleged violation of Sub-regulations (1) & (2) of Regulation 7 of the takeover code and this is what he was required to enquire into. He has recorded findings that the said provisions had been violated by the appellant and the persons acting in concert with him. This finding of the Adjudicating Officer cannot be faulted with because the appellant himself in his reply to the show cause notice dated 13.3.2002 had admitted the violation though, according to him, it was not willful. The violation occurred when the appellant and persons acting in concert with him acquired 1.89% and another 0.57% shares of the Bank on 10.9.1998 and did not make the disclosures within four days. It is this default which was clearly understood by

both – the appellant and the Adjudicating Officer that triggered the takeover code. In this view of the matter we have no hesitation in rejecting the first contention.

The second contention raised on behalf of the appellant is equally untenable and cannot be accepted. It is true that in the show cause notice dated 6.2.2002 the violation of Regulations 3(4) and 7(1) & 7(2) of the takeover code had been alleged but the Adjudicating Officer in his order dated 18.2.2002 dealt with only the violation of Regulation 3(4). There is nothing in this order or on the record which could indicate that he had absolved the appellant for the violation of Regulations 7(1) and 7(2). It appears that since the Adjudicating Officer had been appointed by two separate orders to enquire into these violations, he passed two separate orders. Be that as it may, the appellant in his reply to the second show cause notice had specifically agreed to the adjudication proceedings as per the order dated January 28, 2002 and having agreed to the proceedings, he cannot be heard to say that those proceedings could not be conducted against him.

This brings us to the third contention raised by the appellant. It is the admitted case of the parties before us that shares of the Bank pledged by Bangur Finance Limited with the Krishna group were transferred in the name of the appellant as its nominee on 22.8.1997. Did the appellant become the beneficial owner of these shares and acquired all the rights of a shareholder is the question which needs to be answered. The argument of the learned counsel for the appellant is that when the pledge was created, the appellant as a pledgee had only some limited rights in the pledged shares in so far as they were necessary to secure the debt and the general property in those shares remained with the pledgor and that even the limited rights were to revert to the pledgor on discharge of the debt. He cited *Balkrishan Gupta & others vs. Swadeshi Polytex Ltd. & another* (1985) 2 SCC 167 in support of his contention. There is no quarrel with the proposition laid down by their Lordships in *Balkrishan Gupta's* case but the facts therein are different from those with which we are faced. In *Balkrishan Gupta's* case the pledged shares had not been transferred in the name of the pledgee and

the pledge was continuing. It was then that their Lordships held that the pledgee had only limited rights in the pledged shares and the general property remained with the pledgor. In the case before us, the pledged shares were transferred in the name of the appellant and, therefore, he became a shareholder of the Bank qua those shares which gave him the right to receive dividend, the right to attend meetings and vote on resolutions, the right to receive bonus/rights shares etc. The moment the shares were transferred in the name of the appellant, his name came to be registered in the records of the Bank as the owner thereof and we are of the view that the beneficial ownership in those shares passed on to him with the transfer. Till such time the shares were transferred, the appellant as a pledgee, undoubtedly, had limited rights in those shares. If the shares had not been transferred and the pledge had continued, the dictum laid down in Balkrishan Gupta's case (supra) would have squarely applied but this is not the position. We cannot, therefore, accept the contention of the learned counsel for the appellant that his client had not acquired the shares so as to attract the provisions of Regulation 7 of the takeover code.

The only contention that remains to be examined is the one pertaining to the Explanation added to Regulation 7 of the takeover code. Admittedly, this Explanation came to be inserted with effect from 9.9.2002 and it requires even a pledgee to disclose the pledged shares in his possession. This was not the requirement prior thereto. Since the pledge in the instant case was created prior to 9.9.2002 on the basis of which the pledged shares were transferred in the name of the appellant on 22.8.1997, this Explanation has no applicability. Moreover, we have held that the appellant had acquired the shares when those were transferred in his name, and, therefore, he ceased to be a pledgee and for this reason as well, the Explanation would not be attracted.

In view of the above discussion we do not find substance in any of the contentions raised on behalf of the appellant. This apart, the appellant in his reply to the show cause notice dated 13.3.2002 has admitted his default, though

according to him, it was not willful. Again, when we look to the admitted facts of the case, it is clear that as on 10.9.1998 the appellant and persons acting in concert with him had acquired 6.57% of the shares of the Bank and this triggered Regulation 7 of the takeover code. The appellant was required to disclose his shareholding to the Bank within four days of the acquisition and since there was a delay of 155 days in making the necessary disclosure, he violated Regulation 7 of the takeover code. Since the violation is established, the penalty must follow as observed by the Supreme Court in *Chairman SEBI vs. Shriram Mutual Fund* and another AIR 2006 SC 2287. At the relevant time the maximum penalty which the adjudicating officer could have levied on the appellant under section 15 A (b) of the Act was upto Rs. five thousand for every day during which the default continued. In the instant case there is a delay of 155 days. Adjudicating Officer has levied a penalty of Rs. one lac only. It is more than reasonable and does not call for any interference by us in appeal.

In the result, the appeal fails and the same is dismissed leaving the parties to bear their own costs.

Sd/-
Justice N.K.Sodhi.
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

13.03 .2008
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