BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 58 of 2008

Date of decision: 1.5.2008

Blue Blends Finance Limited
Mr. Anand Arya
Mrs. Indu Arya …… Appellants

Versus

Securities and Exchange Board of India …… Respondent

Mr. T. N. Tripathi Advocate for Appellants.
Mr. Mihir Modi Advocate with Pushkar Bavare Advocate for the Respondent.

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

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

The Premier Synthetic Ltd. (hereinafter called the company) is a public limited company incorporated under the provisions of the Companies Act, 1956 whose shares were listed on the Bombay Stock Exchange (BSE). Trading in the scrip of the company stands suspended with effect from September 10, 2001. The three appellants before us are the promoters of the company and they inter se executed trades in the scrip of the company on March 27 and March 31, 2006. The total shares traded among them were 16,11,054 which constitute 44.22 per cent of the share/voting capital of the company. Since the trades in issue were inter se transfer of shares among the promoters of the company, the provisions of Regulations 10, 11 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) did not apply in view of the provisions of Regulation 3(1)(e)(iii) of the takeover code. The appellants were, however, obliged to comply with the other provisions of the takeover code which got triggered as a result of their inter se trading. Regulation 3 (3) of the takeover code required them to inform the BSE so

that the latter could notify the details of the proposed transactions at least four working days in advance of the date of the proposed acquisition. It is the admitted case of the appellants that they did not comply with this provision and did not send the requisite information to BSE. The violation of Regulation 3 (3) of the takeover code, thus, stands established. The appellants, therefore, violated the provisions of Section 15 A(b) of the Securities and Exchange Board of India Act, 1992 (for short the Act). Section 15 A of the Act provides that any person who fails to furnish any information within the time specified therefor in the regulations shall be liable to a penalty of Rs 1 lac for each day during which such failure continues or Rs.1 crore whichever is less. In the case before us the appellants were required to inform the BSE of their proposed transactions/ acquisitions at least four days prior to date of the transactions. This was not done but the appellants did comply with Regulations 7 (1) of the takeover code and informed BSE of the acquisitions on the dates of the transactions. In other words, the appellant informed the BSE about the transactions on March 27, 2006 and March 31, 2006. The delay that was caused in not complying with Regulation 3 (3) of the takeover code, thus, works out to only four days. In view of the provisions of Section 15 A of the Act, the maximum penalty that could be levied on the appellants for the default committed by them could be Rs. 4 lacs. Section 15 J of the Act enjoins upon the adjudicating officer to take note of the factors like the amount of disproportionate gain or unfair advantage wherever quantifiable made as a result of the default. He is also required to take into account the loss, if any, caused to an investor or a group of investors as a result of the default and whether the nature of the default was repetitive. Having examined these factors, the adjudicating officer by his order dated March 3, 2008 levied a monetary penalty of Rs.1 lac on the appellants making them liable jointly and severally for the same. It is against this order that the present appeal has been filed.

We have heard the learned counsel for the parties. The fact that the appellants violated Regulation 3 (3) of the takeover code is not in dispute. The only

question is as to the amount of penalty that should be levied in the facts and circumstances of the case. As observed by the Supreme Court in Chairman, SEBI v. Shriram Mutual Fund and another AIR 2006 SC 2287 that there is nothing in the Act which requires that mens rea must be proved before penalty could be imposed under the provisions of the Act and, therefore, once the contravention is established, then the penalty must follow. In the instant case the trading in the scrip of the company has been suspended since September 2001 and the trades that were executed by the appellants were inter se among them as promoters of the company. In these circumstances the default could not result in any disproportionate gain or unfair advantage to the appellants nor could it cause loss to any investor. There is nothing to suggest that the default is repetitive in nature nor is it a threat to the integrity of the securities market. In this view of the matter, we are of the opinion that the amount of the penalty imposed by the adjudicating officer is on the higher side. We are of the view that the ends of justice would be adequately met if the penalty is reduced to Rs.10,000/- and the appellants are made liable to pay the same jointly and severally. The impugned order stands modified accordingly.

The appeal stands disposed of as above with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

1.05.2008
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