

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 53 of 2011

Date of Decision: 29.6.2011

Indasia Holdings Limited
C/o Kross Border Trust Services Limited,
St. Louis Business Centre,
Cnr Desroches & St. Louis Streets
Port Louis, Mauritius. 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. Devanshu Desai, Advocate with Ms. Dhvani Mehta, Advocate for the Appellant.

Dr. Poornima Advani, Advocate with Mr. Angshuman Kaushik, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S.S.N. Moorthy, Member

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

This order will dispose of two Appeals no.53 and 66 of 2011 which involve identical questions of law and fact and have been filed by the same appellant. Since arguments have been addressed in Appeal no.53 of 2011, the facts are being taken from this case. Counsel for the parties agree that the decision in this appeal shall govern the other appeal as well.

2. The Securities and Exchange Board of India (for short the Board) investigated the conversion of Global Depository Receipts (GDRs) issued by Pentamedia Graphics Ltd. and the subsequent sale of the equity shares in the Indian stock market during the period from January, 2003 to August, 2003. The focus of the investigations was to ascertain whether certain entities including the appellant who were involved in the conversion of GDRs and subsequent sale of shares had an ulterior motive including price manipulation of the scrip. Appellant was among the few overseas corporate bodies which had received major credits in their demat accounts on account of GDR conversion. The appellant is a limited company registered in Mauritius and it holds a Category I Global Business License on the basis of which it trades in the securities market in India through Global

Depository Receipts. The investigating officer issued summons to the appellant on November 26, 2007 requiring it to furnish the following information:-

- “1. Holdings/transactions in the equity shares/GDRs of PGL
2. Date-wise transactions in equity shares
3. Details of allotment/acquisition of GDRs including terms and conditions of the issue/counterparty details
4. Reasons for selling substantial portion of holdings during May 2003 – September 2003.
5. Bank and demat statements.”

Admittedly, the appellant received the summons and sent a reply on December 7, 2007 which reads as under:-

“We are in receipt of the letter dated 26 November 2007 in relation to the summons to furnish information to the Investigation Authority for the above Company.

Please note that we are currently compiling the necessary information and shall provide you with the necessary information in due course.”

Since the information had not been furnished, as many as four more summonses were issued to the appellant on January 9, 2008, January 25, 2008, February 14, 2008 and March 3, 2008 requiring it to comply with the same. The summons issued on January 25, 2008 required the appellant to furnish the following information in addition to the information already sought as per summons dated November 26, 2007:-

- “1. Copy of Memorandum and Articles of Association, Certificate of Incorporation, Overseas Auditors’ Certificate, Off-shore Certificate, Tax Residence Certificate
2. Details of purchase/sales of equity shares of PGL.
3. Details of acquisition of GDRs.
4. Computation of profits/loss made in the scrip
5. Reason for sale of substantial portion of the GDRs.
6. It had been observed that GDRs had been converted into shares immediately upon acquisition and the shares so converted had been sold in the Indian markets. An explanation of such trading pattern was sought.
7. Bank statements for the Financial Year 2002-03 and 2003-04 highlighting the payment received/made for the trades done.”

Admittedly, no information was furnished by the appellant. The investigating officer felt hampered during the course of the investigations on account of non co-operation from the appellant and other overseas corporate bodies and submitted his report to the whole time member pointing out that material information sought from the appellant and others had not been furnished. The report was considered by the whole time member on July 7, 2008 and he felt that linkages and flow of funds/securities could not be established during

the course of the investigations since the appellant and other overseas corporate bodies had failed to furnish the necessary information. It was decided to initiate adjudicating proceedings against the appellant and others. Accordingly, a show cause notice dated May 19, 2009 was issued to the appellant alleging violation of Section 11C of the Securities and Exchange Board of India Act, 1992 (for short the Act). It was pointed out that the aforesaid 5 summonses had been issued and despite the letter dated December 7, 2007 from the appellant informing the Board that the former was in the process of compiling the necessary information, no information was provided by the appellant. The appellant did not file any reply to the show cause notice. However, in response thereto it furnished some information to the Board by its letter of June 9, 2009 making reference to the show cause notice. Apart from the fact that the information now furnished by the appellant was belated and was received after the conclusion of the investigations and only after the show cause notice had been served on the appellant, it was also incomplete and inadequate. Admittedly, bank account and demat account statements had not been furnished. Even the details of allotment/acquisition of GDRs including the terms and conditions of the issue had been withheld. On a consideration of the material on the record, the adjudicating officer came to the conclusion that the appellant had violated section 11C of the Act and by his order dated January 31, 2011 imposed a monetary penalty of ₹ 20 lacs on the appellant. Hence this appeal.

3. We have heard the learned counsel for the parties who have taken us through the record. At the outset, the learned counsel for the appellant stated that the appellant had not received 3 summons dated January 25, 2008, February 14, 2008 and March 3, 2008. As already noticed above, additional information was sought from the appellant through the summons issued on January 25, 2008. The appellant states in the memorandum of appeal that the information that it was called upon to provide had been varied by the Board and it required some time to collect the same. We wonder how the appellant came to know that some additional/different information had been sought from it when it did not receive the summons dated January 25, 2008. It is obvious that the appellant is not telling the truth. Be that as it may, the appellant responded to the show cause notice by its letter dated June 9, 2009 by which some information had been furnished. It did not mention in that letter that some of the summons referred to in the show cause notice had not been received by it. This was the first response which the appellant gave after the

receipt of the show cause notice and since it did not take the plea then we are not willing to accept the ispe dixit of the appellant now for the first time. When confronted with this factual background, the learned counsel for the appellant contended that we should proceed on the assumption that the appellant had received the summons. It is, thus, clear that despite the receipt of summons on 5 occasions, the appellant withheld the information from the Board which seriously hampered the investigations and the linkages and flow of funds and securities could not be conclusively established. This is, indeed, a serious violation committed by the appellant for which adjudication proceedings were initiated against it. Section 15 A of the Act provides that any person who is required under the Act to furnish any document, return or report to the Board or furnish any information fails to do so shall be liable to a penalty of ₹ 1 lac for each day during which such failure continues or ₹ 1 crore whichever is less. Information was first sought from the appellant in December, 2007 and only a part of it was furnished in June, 2009 and that too after the closure of investigations and the issuance of show cause notice. We are satisfied that the appellant wilfully non-cooperated with the investigating officer and failed to furnish the necessary information which has adversely affected the investigations. In this background, the argument of the learned counsel for the appellant that the penalty of ₹ 20 lacs imposed on the appellant is highly excessive cannot be accepted. It must be understood that the Board as a market regulator cannot perform its duties in accordance with law if the market players do not cooperate with it. Non furnishing of information and documents has also been made a criminal offence under section 11C of the Act. It is, indeed, a very serious wrong doing as we do not know what else would have come out in the investigations if the appellant had cooperated and furnished the required information. This being so, we cannot find any fault with the impugned order.

4. Before concluding, we may take note of another contention advanced on behalf of the learned counsel for the appellant. It is urged that the appellant is based in Mauritius and the information was required to be furnished to the investigating officer in Mumbai and the time allowed for furnishing the information each time was insufficient. We are unable to accept this contention because all the summons had been received by the appellant and in response to the first summons it had responded way back on December 7, 2007 that it was compiling the necessary information which would be

provided to the Board in due course. The investigations concluded some time in the first week of July 2008. Surely, the appellant had enough time from December 2007 till July 2008 to furnish the information. It did not do so and furnished only a part of it when it received the show cause notice.

In the result, there is no merit in the appeals and they stand dismissed with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

29.6.2011

Prepared and compared by
RHN