BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 189 of 2011

Date of decision: 18.11.2011

1. Mr. Jogeshwar Rijumal Karachiwala
2. Mr. Prabhudas Rijumal Karachiwala
3. Mr. Avinash Purushottam Karachiwala
4. Mr. Tarun Purushottam Karachiwala
5. Mr. Monish Jogeshwar Karachiwala
6. Mr. Vikram Parameshwar Karachiwala
7. Mr. Nikhil Prabhudas Karachiwala

Satha Colony, Station Road,
Ahmednagar – 414 001. …Appellants

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. R. S. Loona, Advocate with Mr. Abhishek Borgikar, Advocate for Appellants.
Dr. Poornima Advani, Advocate with Mr. Ajay Khaire, Ms. Amrita Joshi, Advocates 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)

M/s Drillco Metal Carbide Limited (for short the company) is a public limited company whose shares are listed on the Bombay Stock Exchange Limited Mumbai and Pune Stock Exchange. Its total paid up share capital at the relevant time was 21,94,375 equity shares of ` 10/- each. The company allotted on September 29, 2000, 6,30,800 equity shares representing 28.75 per cent of its total paid up capital to the appellants on preferential basis as co-promoters after complying with the provisions of Section 81(1A) of the Companies Act, 1956. Since the acquisition by the appellants had crossed the threshold limit prescribed in Regulations 10, 11 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter called the takeover code) they were required to make a public announcement to acquire further shares. However,

preferential allotment was exempt from the provisions of the takeover code as it then stood under Regulation 3(1)(c) thereof subject to the fulfillment of two conditions. The first condition was that the company sent a copy of its board resolution in respect of the proposed preferential allotment to all the stock exchanges on which the shares of the company were listed and the second condition was that full disclosures had to be made to the shareholders as specified in Regulation 3(1)(c) proviso (ii) as it then stood. Regulation 3(4) of the takeover code as it then stood required the acquirers to submit a report to the Securities and Exchange Board of India (for short Sebi) within 21 days of the date of acquisition. It is the admitted position of the parties before us that a copy of the board resolution of the proposed preferential allotment had been sent to all the concerned stock exchanges. It is also not in dispute that full disclosures as specified in the second proviso to Regulation 3(1)(c) had been made to the shareholders. What was not done by the appellants was that as acquirers they had not submitted a report to Sebi within 21 days of the allotment which was only meant to cross check whether the exemption had been properly granted. The fact that this report was not submitted is admitted by the appellants. It is, thus, clear that Regulation 3(4) of the takeover code as it then stood had been violated.

2. In terms of Regulation 7(1) of the takeover code as it then stood in the year 2000, the acquirers who acquired shares or voting rights in a company in excess of 5 per cent were required to disclose their aggregate shareholding or voting rights to the company. It is again the admitted position of the parties before us that this disclosure had also not been made by the appellants to the company.

3. Sebi discovered the aforesaid two violations only in the year 2010 when an open offer had been made by one Rahul Timbadia to the shareholders of the company. It was then that it decided to initiate adjudication proceedings against the appellants. The adjudicating officer after holding an enquiry found the appellants guilty of the aforesaid two non disclosures and by his order dated August 26, 2011 imposed a monetary penalty of ` 5 lacs on all of them collectively making them liable jointly and severally. It is against this order that the present appeal has been filed.

4. We have heard the learned counsel for the parties and they have taken us through the impugned order and the record. The fact that the appellant did not submit a report to Sebi within 21 days of acquiring the shares of the company on preferential basis is not in dispute. The appellants also admit that they failed to disclose their acquisitions to the company in terms of Regulation 7(1) of the takeover code as it then stood. It is also the admitted position of the parties that the shares that were allotted to the appellants had never been listed on any stock exchange and that the trading in the scrip of the company had been suspended since January 7, 2002 which suspension is still continuing. The company is a sick company. This apart, we are of the view that the default committed by the appellants did not, in the circumstances of this case, have any adverse effect on the market and that the imposition of the penalty of ` 5 lacs is highly excessive. The maximum penalty that could be levied as per the provisions of Section 15A(a) of the Securities and Exchange Board of India Act, 1992 as they then stood was ` 1.5 lacs for each default and this is not a case in which the maximum penalty was called for. Even a token penalty could have served the purpose. In this view of the matter, we reduce the penalty to ` 50,000/- in regard to both the defaults. The impugned order stands modified accordingly.

The appeal is disposed of as above. The appellants will now deposit the penalty amount within 60 days from today. No costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

18.11.2011
Prepared & Compared by
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