BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 69 of 2011

Date of decision : 16.11.2011

M/s. Helios and Matheson Information
Technology Limited
C/o. Corporate Law Chambers India,
44A, Nariman Bhavan,
Nariman Point,
Mumbai – 400 021. …… Appellant

Versus

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

Mr. P.N. Modi, Advocate with Mr. Vinay Chauhan and Mr. Anant Upadhyay, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh, 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

Whether the appellant made a misleading announcement or failed to disclose price sensitive information to the investors when it sought to acquire three companies to expand its business operations is the short question that arises for our consideration in this appeal filed under Section 15T of the Securities and Exchange Board of India Act, 1992. Facts giving rise to this appeal which lie in a narrow compass may first be stated.

2. The appellant, a public limited company whose shares are listed on the Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. is in the business of information technology services with its corporate head quarters at Chennai and subsidiaries and offices in USA, Singapore and Bangalore. The appellant was looking for expanding its operations and on a proposal received from M/s.Pricewaterhouse

Coopers Pvt. Ltd. in or around February 2005, it agreed to acquire three companies namely, vMoksha Technologies Inc USA, vMoksha Technologies Pte Singapore and vMoksha Technologies Pvt. Ltd., Bangalore (collectively referred to hereinafter as vMoksha entities). A preliminary term-sheet setting out the terms of acquisition was signed in April, 2005 between the appellant on the one hand and vMoksha entities along with Mr. Tapan Garg, Mrs. Madhuri Garg, Mr. Rajeev Sawhney, Mrs. Poonam Sawhney and Mr. Pawan Kumar on the other and they shall collectively be referred to hereinafter as the sellers. The appellant made a disclosure to the stock exchanges on April 12, 2005 stating that it had signed an agreement to acquire 100 per cent of vMoksha entities subject to standard closing conditions. Subsequently, on May 2, 2005 the appellant informed the stock exchanges that a meeting of its board of directors would be held on May 9, 2005 to consider the signing of share purchase agreement (for short SPA) for acquiring vMoksha entities and for fixing a date for holding an extra-ordinary general meeting of its shareholders to give effect to the same. Thereafter on May 9, 2005 the appellant informed the stock exchanges that its board of directors in their meeting held on that very day had authorised its managing director to sign the SPA and to do all other acts necessary for the acquisition and that he had also been authorised to convene an extra-ordinary general meeting of the shareholders for obtaining their approval. These disclosures were made to the stock exchanges as per the requirement of the listing agreement. On May 11, 2005, the SPA was signed between the appellant and the vMoksha entities and the former issued a press release on the same day and the stock exchanges were informed on May 12, 2005 regarding the same. The relevant part of the press release is reproduced hereunder for facility of reference:

> “Chennai, May 11, 2005; Helios & Matheson Information Technology Ltd. today announced that it has completed the acquisition of all three vMoksha companies, vMoksha Technologies Inc, USA, vMoksha Technologies Pte Limited, Singapure and vMoksha Technologies Private Limited, Bangalore.
>
> “The acquisition of the 3 vMoksha companies is complete and we are working towards a seamless integration,” said Mr. V. Ramachandiran, Chairman, Helios & Matheson. “By this transaction, we are investing cash-19 mn dollars, and therefore it is a big statement about our commitment and seriousness to build scale, capabilities and international presence.”

> The Share Purchase Agreement was signed today by Helios & Matheson and vMoksha's officials after completion of all procedural formalities. The all-cash deal was closed at USD 19 million and includes earn-out for achieving targeted financial milestones over a two-year period. vMoksha is a business that has 510 employees and global presence with offices in USA, Europe, Singapore and India.
>
> Helios & Matheson earlier signed an agreement in April 2005 with vMoksha to acquire all the three companies. With the completion of the acquisition, all 3 vMoksha entities now become wholly owned subsidiaries of Helios & Matheson. Pawan Kumar, founder of vMoksha and former head of IBM in India, will continue as CEO post acquisition."

On receipt of information regarding execution of the SPA, BSE as per its usual practice flashed the information on its website on May 12, 2005 itself for the benefit of the investors and this is how it reads:

> " Corporate Announcement
> Scrip Code:532347 Company: Helios & Matheson-$
> May 12, 2005
> Subject : Helios & Matheson companies acquisition of 3 vMoksha companies
>
> Helios & Matheson Information Technology Ltd. has announced that it has completed that the acquisition of all three vMoksha Companies, vMoksha technologies Inc., USA, vMoksha Technologies Pte Ltd, Singapore and vMoksha Technologies Pvt. Ltd. Bangalore.
>
> "The acquisition of the 3 vMoksha Companies is complete and we are working towards a seamless integration," said Mr. V. Ramachandiran, Chairman of the company. 'By this transaction, we are investing cash – 19 mn dollars, and therefore it is a big statement about our commitment and seriousness to build scale, capabilities and international presence".
>
> Announcement: The Share Purchase Agreement was signed on May 11, 2005 by Company's and vMoksha's officials after completion of all procedural formalities. The all-cash deal was closed at USD 19 million and includes earn-out for achieving targeted financial milestones over a two-year period, vMoksha is a business that has 510 employees and global presence with offices in USA, Europe, Singapore and India.
>
> "We are looking at an aggressive growth to USD 100 mn revenue in the next 24 months and also at attaining a critical mass of 2000 employees by 2006. We plan to enhance our international competitive position through both organic growth and strategic acquisitions. With the completion of the vMoksha deal, we are well positioned to achieve our strategic goals." said Mr. G.K. Muralikrishna, Managing Director of the Company."

As per the SPA, the appellant was to pay a consideration of ₹ 1877.77 per share to the sellers for acquiring the vMoksha entities.

3. Apart from executing the SPA on May 11, 2005, the parties executed two other agreements as well on the same day. A share subscription agreement (SSA) and an

Escrow agreement were also executed between them. As per the SSA, the sellers were to subscribe to redeemable preference shares of the appellant company to be redeemed for cash at the expiry of eighteen months from the date of the subscription agreement. The subscription price was to be paid by the sellers to the appellant company simultaneously on receipt of funds from the latter to the former under the SPA. According to the Escrow agreement, M/s. Pricewaterhouse Coopers Pvt. Ltd. and Khaitan & Co. were to be the escrow agents and were to keep in their custody, inter alia, various documents like the share transfer deeds, share certificates of vMoksha companies held by the sellers. It is not in dispute that pursuant to the execution of these agreements, the sellers had deposited the share certificates along with the signed transfer deeds and resignation letters of the directors of vMoksha entities. Since the approval of Foreign Investment Promotion Board (FIPB) was required by the sellers for subscribing to the redeemable preference shares, the appellant made an application on May 20, 2005 seeking that approval which was received only on June 30, 2005. Immediately on receipt of the approval from FIPB, the appellant received on June 30, 2005 an amount of ₹ 63,04,14,007.00 from the sellers towards application money for issuing redeemable preference shares and the appellant also paid the consideration amount of ₹ 63,04,14,007.00 to the sellers as contemplated under the SPA. After the appellant had paid the consideration to the sellers and the sellers too had invested in the appellant-company and deposited the application money for subscribing to the redeemable preference shares, the only thing that remained was the convening of a meeting of the board of directors of the vMoksha entities for the purpose of approving the transfer of shares in favour of the appellant that were lying with the escrow agents, acceptance of the resignations tendered by the directors of vMoksha entities and induction of the representatives of the appellant on the board of directors of vMoksha entities. It appears that inter se disputes had by then arisen between Pawan Kumar and Rajeev Sawhaney, the two sellers as a result whereof the board meetings of the vMoksha entities could not be convened. It is the case of the appellant that the sellers kept promising to complete the formalities but there was considerable delay resulting in value erosion and ultimately the sellers by their letter dated January 28, 2006 wrote to the escrow agents requesting them for the release of documents deposited with them so that the disputes between Pawan Kumar and Rajeev Sawhney could be settled. It was then that the escrow agents emailed the request of the sellers to the appellant seeking permission from the appellant whether to release the documents lying with them. The appellant by its letter dated February 6, 2006 communicated its objection to the release of the documents to the sellers and specifically instructed the escrow agents not to release the documents. According to the appellant, the sellers had gone back on their commitment as per the SPA and, therefore, it invoked the arbitration clause and the dispute between them is pending before the arbitrator(s). The appellant then informed the stock exchanges on February 13, 2006 as under:

> “Dear Sir,
>
> We wish to inform you that Helios & Matheson has initiated arbitration proceedings and has appointed its arbitrator viz Hon. Justice Shri N. V. Balasubramanian, Retd Judge, high Court, Madras on Friday, February 10, 2006. This is in response to certain information received from the Escrow Agents, PricewaterhouseCoopers Private Ltd and Khaitan & Co., to the Share Purchase Agreement, which we had entered into with the Sellers, vMoksha Mauritius, on May 11, 2005 for 100% acquisition of the 3 vMoksha entities in India, Singapore and USA. We believe that the current proceedings will in no way impact our investment, or revenue and profit guidance for Financial year 2005-2006.
> Yours faithfully
> For Helios & Matheson information Technology Ltd.,
> Sd/-
> K.M. Kumar
> Company Secretary”

4. The Securities and Exchange Board of India (for short SEBI) felt that the disclosures made by the appellant in its press release dated May 11, 2005 and the disclosures made to the stock exchanges on May 12, 2005 regarding the acquisition of vMoksha entities by the appellant contained misstatements and it withheld price sensitive information from the investors who were thereby misled. According to SEBI, the appellant had violated regulations 3(a), 3(d) and 4(2)(k) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in Schedule II to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. These regulations shall be referred to hereinafter as FUTP and PIT regulations respectively. SEBI decided to initiate adjudication proceedings against the appellant and appointed an

adjudicating officer who served a show cause notice dated March 18, 2008 on the appellant levelling three charges against it. Since one of the charges was not established during the course of the enquiry, it is not necessary for us to refer to the same. The two charges which have been held established read as under:

> "It is alleged that you had failed to make announcements/disclosure with regard to the following price sensitive information:
>
> i. The complete terms and conditions of the deal to acquire vMoksha. You had not stated the entire facts in the press release dated May 11, 2005 and disclosure dated May 12, 2005, that the sellers would subscribe to preference shares as subsequent leg of the deal. It appears from the announcements of your company that you were purchasing a company by paying cash from your general reserves. However, the deal was structured in such a way that sellers would subscribe to redeemable preference shares of your company for an equivalent amount of the sale price and the sellers would in turn wire back the same amount to you towards subscription to preference shares. The issue of preference shares, which is allegedly willfully withheld from shareholders, for the specific purpose of buying the company from the sellers negates all connotations of a "cash deal.
>
> ii. It has been alleged in the disclosure dated May 12, 2005 you had informed that all the procedural formalities for acquisition of the 3 vMoksha companies were completed. However as per Clause 4 the SPA, it has been observed that the completion shall take place on a date to be mutually agreed upon by both the parties on compliance of certain other clauses in the agreement but such date would not be later than 120 days from the signing of the SPA. It has been alleged that you had prima facie, misled investors by stating that the deal was complete whereas the deal was not complete in entirety and was still subject to compliance of certain conditions."

A reading of the aforesaid two charges makes it clear that these are based on the press release issued by the appellant on May 11, 2005 a copy of which was sent to the stock exchanges on the following day. A copy of the press release is Exhibit E on the record and the corporate announcement that was flashed by BSE on its website is Exhibit F before us. What has been flashed on the website is the relevant extract from the press release and the two are almost the same except that a few other matters not relevant to the present controversy were omitted by BSE.

5. The appellant claims that it did not receive the aforesaid show cause notice from the adjudicating officer and that it came to know of the proceedings only when it received the letter dated April 23, 2009 providing the appellant an opportunity of personal hearing in the matter. The appellant then informed the adjudicating officer that it had not received

the show cause notice and asked for copy of the same. A copy of the show cause notice was then furnished to the appellant which filed its comprehensive reply on July 3, 2009 denying the allegations. It also filed its written submissions on June 28, 2010 at the time of personal hearing. On a consideration of the material collected by the adjudicating officer during the course of the enquiry conducted by him and taking note of the submissions made by the appellant, he found that the two charges referred to above stood established. In paragraph 39 of his order, he recorded a finding in the following words holding that the information furnished by the appellant was inaccurate and incomplete:

> "From the above discussion, I find that the information given by the Noticee is not accurate and is incomplete. The payment may be made by Noticee in cash and the preference shares may be redeemed in cash but at the time of making the announcement, the deal was not an all cash deal because calling it a cash deal would make the investors presume that no other conditions stand attached to the deal. However, that is not the situation in the present case. Even if the subscription to the preference shares was insisted to protect the interest of investors, it does not render the incomplete and inaccurate disclosures complete and correct."

He further found that the deal was yet to be completed after complying with clauses 2.2.1 and 2.2.2 of SPA and that the appellant had wrongly stated in the press release that the deal was complete. This is what he has said in this regard:

> "In view of the above, it is very clear that the deal was to be completed after complying with Clauses 2.2.1 & 2.2.2 of the agreement. The clause 2.2.1 provides about payment of consideration, which happened on June 30, 2005 only as per the own submission of the Noticee. I find that the clause 4 of the SPA clearly states that the completion of the Agreement would be on a date mutually agreed between the parties and shall not be later than 120 days from the date of signing of SPA. Moreover a deal can not be termed as completed without exchange of consideration."

The adjudicating officer while rejecting the contention of the appellant that the deal was complete and that very few obligations were left by the parties to be carried out, he observed in paragraph 50 of the order as under:

> "From the above, I find that the Noticee has claimed that very few obligations were left only for the parties to perform, which is not correct. The biggest obligation to be completed was on the part of the Noticee i.e. the payment of consideration which happened only on June 30, 2005. In such a case, how could the deal be said to be completed when the SPA in clause 4 gives conditions precedent to the completion which includes payment by the Noticee to the sellers. Hence I find that the Noticee had made a incorrect disclosure on

> May 12, 2005 by calling that the deal of acquisition of vMoksha was complete."

Again, while observing that wrong and incomplete disclosures had been made by the appellant in the press release, the adjudicating officer held that this act operated as fraud and deceit upon persons connected with the securities market and he recorded his findings in the following words:

> "In view of the aforesaid, I find that by making wrongful and incomplete disclosures the Noticee has engaged in such an act, practice, course of business which would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities of the Noticee which are listed on the stock exchange. The announcements by the Noticee in question is definitely misleading and contains information in a distorted manner and which may influence the decision of the investors and hence is in contravention of the law. The Code of Corporate Disclosure Practices for Prevention of Insider Trading as stated in schedule II read with Regulation 12(2) of PIT Regulations requires that price sensitive information should be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis. The Listing Agreement also requires the companies to immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information.
>
> Therefore, I find that the Noticee stands in violation of provisions of Regulations 3(a), 3(d) and 4(2)(k) of PFUTP Regulations and clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading of Schedule II read with Regulation 12(2) of PIT Regulations."

Accordingly, by his order dated January 31, 2011 he imposed a monetary penalty of ₹ 25 lacs on the appellant for violating regulations 3(1), 3(d) and 4(2)(k) of the FUTP regulations. He further imposed a penalty of ₹ 25 lacs for violating clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading of Schedule II read with regulation 12(2) of PIT regulations. It is against this order that the present appeal has been filed.

6. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. As already noticed above, the charge regarding violation of the FUTP regulations is primarily based on the findings recorded by the adjudicating officer that the disclosures made by the appellant in the press release dated May 11, 2005 were inaccurate and incomplete. The adjudicating officer has found that the appellant had not disclosed that the sellers would be subscribing to the preference shares as subsequent

leg of the deal and that this information had been “willfully withheld”. He has also found that the appellant had misled the investors by stating that the deal was complete whereas the deal was not complete in entirety and that it was a cash deal when in fact it was not. Let us now examine whether the adjudicating officer was right in recording these findings. The fact that the sellers would be subscribing to the preference shares and that the appellant company would be issuing those shares to them had not been mentioned in the press release. The requirement of making necessary disclosures to the stock exchanges and through them to the investors is contained in clause 36 of the listing agreement that is executed between the stock exchange(s) and the issuer company. This agreement is executed by every listed company with the stock exchange(s) where its securities are listed and it has a statutory force. There is a format prescribed by SEBI which is contained in its manuals and every listing agreement has to be in that format. The relevant part of clause 36 requiring the necessary disclosures to be made from time to time reads thus:

> “Listing Agreement
>
> Clause 36 – “……….. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:
>
> (1) to (6) ……………………..………………….
>
> (7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to,
> (i) Issue of any class of securities.
> (ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.
> (iii) to (viii) …………………….……………….
> The above information should be made public immediately.”

A reading of the aforesaid clause makes it clear that a company has to immediately inform the stock exchange(s) of the events which would have a bearing on its performance/operations as well as price sensitive information. Sub-clause 7(i) of clause 36 requires the issuer company to inform the stock exchange(s) regarding issue of any class of securities. Since the appellant was to issue redeemable preference shares to the sellers, it was necessary for it to disclose this information. Not having done so, it clearly violated this clause of the listing agreement. Moreover, we are of the view that information regarding issue of securities by a company is “price sensitive information” as defined in regulation 2(ha) of the PIT regulations and it was necessary for the appellant to inform the stock exchange(s) about it so that it becomes public. Price sensitive information when published is likely to materially affect the price of the securities of a company and it is for this reason that clause 36 of the listing agreement mandates that such information should be made public at the earliest. This is also the requirement of clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in schedule II to the PIT regulations which provides that “price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis”. Disclosure of such information prevents insider trading. It is pertinent to mention that PIT regulations prohibit a person from trading when he is in possession of unpublished price sensitive information. Non-disclosure of price sensitive information is, thus, viewed seriously. Since the information regarding issue of preference shares by the appellant to the sellers, being price sensitive, had not been disclosed in the press release on May 11, 2005, we are in agreement with the adjudicating officer that the appellant violated clause 36 of the listing agreement and also the aforesaid clause 2.1 of Schedule II to the PIT regulations. However we are unable to agree with the adjudicating officer that the deal was not a cash deal. We have gone through the press release issued by the appellant on May 11, 2005 and we do not think that it creates an impression that the acquisition was being made by the appellant by paying cash from its general reserves as is alleged in the show cause notice. The deal was a cash deal and we say so because the consideration that was paid by the appellant to the sellers for the acquisition was by way of cash which had been remitted by wire transfer through normal banking channels and simultaneously the amount which the sellers gave to the appellants as application money for the redeemable preference shares had also been transferred in a similar manner. It is in this context that the deal is said to be a cash deal. It is nobody’s case that the acquisition was on swap basis. Acquisitions and mergers of companies do take place where instead of paying cash, the shares of the companies are swapped among the shareholders. That is not the case here. The learned counsel for the respondent Board brought to our notice clause 2.2.3 of the SPA which provides that if prior approval from FIPB could not be obtained the parties had agreed to mutually amend the SPA for acquiring the vMoksha entities on a stock swap basis. It is with reference to this clause that the learned counsel for the Board strenuously argued that the deal in the present case was not a cash deal. We are unable to agree with him. It is common ground between the parties that FIPB approval had been obtained on June 30, 2005 where upon on the same day sale consideration was remitted to the sellers and simultaneously the sellers remitted the application money for the issue of redeemable preference shares through wire transfer and it was cash that was transferred through normal banking channels.

7. In view of our discussion above, we hold that the first charge regarding the appellant not disclosing the second leg of the deal in the press release regarding issue of redeemable preference shares to the sellers stands established and the other part of the charge that the deal in question was not a cash deal fails.

8. This brings us to the second charge levelled against the appellant. It is alleged that it misled the investors by stating that the deal was complete when it was not complete in its entirety. The adjudicating officer has found that the appellant had misled the investors in this regard thereby violating the provisions of regulations 3(a), 3(d) and 4(2)(k) of the FUTP regulations. We are clearly of the view that the adjudicating officer was wrong in holding that this charge stood established. It is common case of the parties that on May 11, 2005 three agreements had been executed between the appellant and the sellers namely, SPA, SSA and the Escrow agreement. It is also not in dispute that the sellers had executed share transfer deeds in favour of the appellant and those transfer deeds along with the share certificates held by them with regard to vMoksha entities were delivered to the Escrow agents. The resignation letters of the directors of vMoksha entities had also been handed over to these agents. Clause 2.2.1 of the SPA required the appellant to pay to the sellers consideration for the acquisition of vMoksha entities computed at the rate of ₹ 1887.77 per share and this was to be remitted by wire transfer through normal banking channels and payment to the other individual sellers was to be made by bank draft. It was also provided in this clause that on obtaining the

FIPB approval the sellers would subscribe to redeemable preference shares on their making payment of the application money. All this had been done by the sellers and the appellant on June 30, 2005. In other words, the sellers and the appellant had performed their respective parts of the contract and the only thing that remained was that sellers had to formally accept the resignation letters of their directors which had already been submitted and they were also to formally approve the transfer of shares in the name of the appellant for which all the relevant and necessary documents had been executed. The SPA specifically provides that sellers "cannot rescind this agreement … and shall only take all steps to honor the terms and conditions agreed in this Share Purchase Agreement." However, the appellant could at its option waive or postpone any condition precedent mentioned in SPA. The adjudicating officer holds that the deal was incomplete as between the appellant and the sellers because by then (date of executing SPA) the consideration for acquiring the vMoksha entities had not been paid to the sellers. He has referred to clause 2.2.1. of the SPA in this regard. We cannot agree with him. We have already noticed that both clauses 2.2.1 and 2.2.2 had been complied with by the parties and, therefore, the deal was complete. Merely because the consideration was not paid by the appellant on May 11, 2005 when the SPA was executed did not make the deal incomplete. In our view the adjudicating officer has totally misdirected himself in this regard. Section 20 of the Sale of Goods Act provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of price or the time of delivery of the goods or both is postponed. In the present case, the deal was that the sale consideration by the appellant was to be paid simultaneously when the sellers invested an equal amount towards redeemable preference shares of the appellant company. Since FIPB approval came on June 30, 2005, the consideration was paid on that day. As already noticed, the sellers had committed themselves for the transfer of the shares of vMoksha entities in favour of the appellant when they deposited with the Escrow agent not only the share certificates but also the transfer deeds duly executed in favour of the appellant alongwith their resignation letters. It is by now well settled that in the case of transfer of shares held in the physical form, the transfer is complete the moment blank transfer deeds are executed by the sellers and delivered to the purchaser. Reference in this regard be made to a Division Bench judgment of the Madras High Court in Commissioner of Income-tax vs. M. Ramaswamy (1985) 151 ITR 122 wherein it has been held that as between the transferor and the transferee, the transaction of sale of shares is complete when the blank share transfer forms are executed by the transferor and merely because the company has not recognised the transfer and made entries in the share registers, the transfer cannot be said to be incomplete. The learned Judges of the Madras High Court relied upon a judgment of the Supreme Court in Vasudev Ramchandra Shelat vs. Pranlal Jayanand Thakkar and Ors. AIR 1974 SC 1728 wherein it was held that ownership of shares stood transferred from the assessee to the purchaser upon the execution of blank transfer deeds notwithstanding the fact that the transfer of shares had not been registered in the company's books. It was held that if a transferor has transferred the right to get the share certificates from the company in the name of the transferee, then, as between the transferor and the transferee, the transfer is complete though the transferee cannot exercise his rights as a shareholder vis-a-vis the company until the transfer of shares is recorded in the register of shareholders in the company. In the present case, when the share certificates along with the transfer deeds were executed by the sellers, the deal regarding the transfer of the shares as between the sellers and the appellant was complete and the adjudicating officer in our view was in error in holding otherwise. It is true that the sellers did not formally accept the resignations of the directors of vMoksha entities and did not approve the transfer of shares but this, in our view, did not make the deal incomplete but only gave a right to the appellant to have the shares transferred in terms of the SPA.

9. The matter can be looked at from another angle as well. The word sale in its popular sense or in common parlance has a wider import that what it has in its legal sense. In its popular sense, sale is said to take place when the bargain is settled between the parties though property in the goods may not pass at that stage. Similarly, when the appellant said in the press release that "The acquisition of the 3 vMoksha companies is complete……." it meant that the bargain had been struck and in that sense the acquisition was complete because the sellers do not have an exit route except by committing breach

of the contract. The word "complete" in the press release has to be understood in this sense. When persons doing commerce use these terms in their popular sense, their statements cannot be said to be misleading warranting penal action. For these reasons, we hold that the second charge is not established.

In the result, the appeal is partly allowed and the findings of the adjudicating officer on the second charge are set aside so also the penalty of ₹ 25 lacs imposed on this count. The findings on the first charge in so far as they relate to the deal in question not being a cash deal are also set aside. The other finding on the first charge relating to non-disclosure of price sensitive information by the appellant is upheld. Consequently, the penalty imposed for the violation is reduced to ₹ 15 lacs. There is no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

16.11.11
Prepared and compared by
ddg/RHN