

**IN THE SPECIAL COURT OF THE JUDGE UNDER THE SECURITIES
AND EXCHANGE BOARD OF INDIA ACT, 1992
SEBI SPECIAL CASE NO. 351 OF 2014
(C.C. No.47/SW of 2013)**

Securities and Exchange Board of India

a statutory body established under the
provisions of the Securities and Exchange
Board of India Act, 1992 having its
Head Office at SEBI Bhavan,
Plot No.C-4A, G Block, Bandra Kurla Complex,
Mumbai- 400 051 through its Assistant
Legal Advisor Shri Dipak S. Langot

Complainant

Versus

Dharmendra S. Thapa,

Adult, Indian Inhabitant having address
at Balu Yadav Colony, Room No.4,
Koldongri, Andheri (East),
Mumbai- 400 069.

Accused

Appearance:-

Ld. SPP Mr. S.G. Mendon for SEBI.

Ld. Adv. Mr. Rahul Arote for accused.

**CORAM : HIS HONOUR JUDGE
SHRI M. G. DESHPANDE
SEBI SPECIAL COURT
(COURT ROOM NO. 22)**

DATE : June 14, 2017

JUDGMENT

1. This is a complaint by Securities and Exchange Board of India(hereinafter referred to as 'SEBI') under Section 24(2) of Securities and Exchange Board of India Act, 1992 (for short “SEBI Act”) read with Section 200 of the Code of Criminal Procedure against accused

Dharmendra S. Thapa who failed to pay the penalty imposed by the Adjudicating Officer and comply with the directions and order of SEBI. Hence, accused is facing the trial.

2. Accused Dharmendra S. Thapa denied the allegations in the complaint. Therefore, charge was framed against him at Exh.9. He pleaded not guilty and claimed to be tried. Hence, trial began. His statement u/s. 313 Cr.P.C. was recorded at Exh.22. His defence is that of total denial. He contended that the case against him is false. The Adjudication Order was not served upon him as he was out of India during the alleged period. In this background, heard the arguments of Ld. SPP Mr. Mendon for the SEBI and Ld.Adv. Shri Rahul Arote for accused. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below:-

POINTS

1. Whether complainant SEBI proves that accused failed to pay penalty of Rs.15,00,000/- imposed by Adjudicating Officer and did not comply his directions committing offence under Section 15HA r/w Section 24(2) of the SEBI Act, 1992 ?

2. What order ?

FINDINGS

In the affirmative

Accused is convicted as per final order.

REASONS

POINT NO. 1 :-

FACTS AND THE BACKGROUND :-

3. Complainant SEBI has been established under Section 3 of SEBI

Act, 1992 to protect the interest of investors in securities, regulate the securities market and empowered to investigate the transactions wherein SEBI has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the interest of the investors or the securities market. With this object and purpose, SEBI conducted investigation into buying, selling and dealing the shares of the Betala Global Securities Ltd. (Hereinafter referred to as “the Company”) for the period between 2.5.2003 to 21.11.2003. In the investigation, it was revealed that accused in collusion with others made substantial synchronized transactions in the scrip, which were in the nature of Circular trades and without any intention to effect transfer of beneficial ownership. Not only this but accused with others aided and abetted in employing manipulative and deceptive devices of trading to create artificial volume and influence the price of the scrip. All that done by accused violated the provisions of Regulation 3 (a), (b) and (c) read with 4(2), (a),(b) and 4(2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. SEBI initiated adjudication proceedings and Adjudicating Officer passed order No. PKB/AO-41/2010 dt.30.3.2010 imposing penalty Rs.15,00,000/- against accused. Accused did not pay the same nor preferred appeal against Adjudication Order before the SAT. In this background, instant complaint was filed. These are the facts and background of the complaint.

DOCUMENTS RELIED UPON BY SEBI:-

Exh.13 - Letter of Authority in the name of Mr. Avinash B. Dhumal

Exh.14 - The copy of general order of Delegation of Powers.

- Exh.15** - Adjudication Order No.PKB/AO-41/2010 dt. March 30,2010.
- Exh.16** - Corrigendum dt. 31.3.2010 to Adjudication Order
- Exh.17** - Letter of Legal Officer, SEBI to accused accompanied by the Adjudication Order.
- Exh.18** - Registered Post Acknowledgment Due addressed to the accused and signed by Dolly Thapa on 7.4.2010 as a token of acceptance.
- Exh.19** - Letter dt.20.8.2010 of intimation to the accused about launching of prosecution.
- Exh.20** - Registered Post acknowledgment Due dt.25.8.2010 signed by Dolly Thapa

DOCUMENTS FILED BY ACCUSED IN DEFENCE:-

- Exh.24** - Copy of passport of accused, filed by accused as a documentary evidence in defence.

ORAL EVIDENCE:-

4. SEBI relied on the evidence of following witness:-

C.W.1 Shri Avinash Balkrishna Dhumal

EVIDENCE IN DEFENCE:-

Accused Dharmendra S.Thapa (D.W.1) examined himself as an evidence in defence.

5. SEBI has to prove that :-

- (i) Adjudication order was passed against the accused,
- (ii) It was communicated to the accused, and,
- (iii) Accused neither paid the adjudicated penalty within 45 days nor preferred an appeal before the SAT against Adjudication Order.

In order to prove its case, C.W.1 Mr. Avinash B.Dhumal clearly deposed the background and the facts in which SEBI carried out the investigation. He further specifically deposed that copies of Adjudication Order (Exh.15.) and corrigendum (Exh.16) were sent to the accused by R.P.A.D. vide Exh.17 and Exh.18. Reminder cum intimation letter (Exh.19) was also sent to the accused by R.P.A.D. (Exh.20). However, accused did not respond the same and failed to pay the penalty.

6. Exh.15 and Exh.16 are the Adjudication Order and Corrigendum dt. 30.3.2010 and 31.3.2010 respectively. Careful reading thereof indicates that accused was given an opportunity to participate the adjudication proceedings to justify how the proceedings initiated by the SEBI were illegal. However, accused did not avail said opportunities and the Adjudicating Officer passed a reasoned order (Exh.15) holding the accused liable to pay the penalty.

7. It is material to note that SEBI communicated said order (Exh.15) to the accused by R.P.A.D. and a letter (Exh.17). By another letter (Exh.19) SEBI further communicated accused that prosecution was being launched against him due to his failure to pay the penalty. Address of the accused mentioned in the entire correspondence is, "Mr. Dharmendra S. Thapa, Balu Yadav Colony, Room No.4, Koldongri, Andheri(E), Mumbai- 400 069." One Dolly Thapa received said correspondence firstly on 7.4.2010 and thereafter on 25.8.2010. Exh. 24 is the copy of passport of accused produced by him as evidence in defence. His Address in the passport is the same i.e. Room No.4, Ballu Yadav Chawl, Koldongri, Sahar Road Lane No.1, Andheri(E), Mumbai-400 069, where SEBI made correspondence by Registered Post and sent

the Adjudication Order to the accused vide Exh.18 and Exh.20. Registered Post Acknowledgment Due (Exh.18 and Exh.20) indicate that one Mrs. Dolly Thapa received said correspondence of SEBI and signed the R.P.A.D. as a token of acceptance thereof. Therefore it is proved that the communication of Adjudication Order and the Corrigendum thereof was made to the accused at his registered address and the copy of Passport (Exh.24) relied upon by accused proves the same.

8. Accused contended that during the period when Adjudication Proceedings were allegedly conducted, he was in Indonesia. Therefore, he had no knowledge thereof to participate the same. Admittedly, since accused allegedly got the knowledge of Adjudication Order, he neither approached the Adjudicating Officer nor preferred its appeal before the SAT based on such contention. Even he could have preferred the appeal before the SAT with application for condonation of delay, when he appeared in this case. However, he opted to remain silent.

9. His own evidence in defence speaks volumes. He admits his acquaintance with Mr. Mahesh Mestry being his childhood friend. He clearly admits how after the Graduation he joined the service and started working with said Mr. Mahesh Mestry, who was dealing with shares. He was serving with Mr. Mestry as such upto 2005. Alleged transactions involved in the complaint relate to Mr. Mahesh Mestry and this fact was adjudicated in the adjudication proceedings. He admitted that his registered address is Room No.4, Ballu Yadav Chawl, Koldongri, Sahara Road Lane No.1, Andheri(E), Mumbai – 400 069. Therefore, it is an admitted fact that accused was working with Mr. Mahesh Mestry who was dealing with the share transactions and the same need not be

proved as per Section 58 of The Indian Evidence Act.

10. Adjudication Order (Exh.15) indicates that dealings and transactions of shares were made by accused through his D' Mat Account, though accused denied having any D'Mat Account as such. Therefore, it is proved that Adjudication Order and intimation for launching prosecution were sent to the accused at his registered address where he resides even today. It is the contention of the accused that he had no knowledge of Adjudication proceedings and Adjudication Order (Exh.15). I carefully examined this contention. It is material to note that R.P.A.D. (Exh. 18 dt.7.4.2010 and Exh.20 dt. 25.8.2010) indicate the signatures of Dolly Thapa being recipient and as a token of acceptance. In his evidence, accused clearly admitted that Mrs. Dolly Thapa is the wife of his brother. Burden to prove this fact is on the accused who has not discharged the same by examining his sister-in-law Mrs. Dolly Thapa.

11. Admittedly, the accused has a joint family wherein he, his brother and sister-in-law Dolly Thapa jointly reside at the address mentioned in the passport (Exh.24). Admittedly, there is nothing before the Court to hold that there was/is any enmity between accused, his brother and sister-in-law Dolly Thapa. Though for the sake of consideration, it is assumed that accused was out of India when the adjudication proceedings were conducted against him, yet the fact is proved beyond the reasonable doubt that the Adjudication Order and intimation for launching the prosecution were communicated to the accused at his address and his sister-in-law Mrs. Dolly Thapa received the same. Therefore, accused cannot say that he had no knowledge of the adjudication order passed against him. Even after his return to India, he

could have preferred the appeal before the SAT and even applied the SEBI to re-think on Adjudication Order (Exh.15) by noting his alleged absence from India. Accused did nothing. Therefore, it has to be presumed that Adjudication Order and the Letter of Intimation were delivered to the accused on his correct registered address and he had knowledge thereof. Failure of accused to discharge the burden cast on him to prove that his sister-in-law did not tell him anything, also proves the same.

12. There were three options with the accused when Adjudication Order (Exh. 15) was passed against him.

- (a) Deposit the penalty amount adjudicated against him within 45 days,
- (b) Prefer an appeal before the SAT against the Adjudication Order, being competent forum having exclusive jurisdiction provided under the SEBI Act, 1992, and,
- (c) Even till date he could have preferred Appeal before the SAT by applying for condonation of delay.

Admittedly accused did not avail any of the above three remedies. It is an admitted fact that accused neither paid the penalty nor preferred appeal against Adjudication Order (Exh.15). Object of SEBI Act, 1992 is to provide for the establishment of a Board to protect the interest of the investors in securities, to promote the development of, and to regulate the securities market, and, for matters connected therewith or incidental thereto. By not paying the penalty, accused frustrated the same. Acquittal of accused would amount putting premium on his illegal acts.

13. Scope of Section 24(2) of SEBI Act, 1992 and the compass of inquiry of trial is limited where the Court has to examine whether accused failed to pay the penalty imposed by the Adjudicating Officer or fails to comply with the directions of or the orders. It is proved that accused failed to pay the penalty vide Adjudication Order (Exh.15). On the contrary, failure of the accused to pay the penalty is an admitted fact which needs not be proved as per Section 58 of The Indian Evidence Act. Hard earned money of the persons who invested in the shares are involved in the transactions made by the accused. Affected persons got cheated due to the fake transactions made by the accused. Economy of the Nation is based on the investments made by people and transacted in the shares. When the investors get affected certainly the economy of the Nation gets affected. SEBI is specially established to control such illegal acts of the persons like accused.

14. Learned Advocate Shri Arote for the accused cross-examined and argued how during the pendency of the adjudication proceedings opportunity was not given to the accused. In my opinion, this Court is not competent to entertain such grievances when accused failed to prefer appeal before the SAT which is the specific Forum for the same. Learned Advocate Mr. Arote further argued that delivery to Mrs. Dolly Thapa is against the provisions of Cr.P.C. I carefully examined this argument, Notification of Government Of India, Ministry of Finance(Department of Economic Affairs), New Delhi, dt.10.7.1995 prescribes Rules for holding inquiry by Adjudicating Officer. Rule 7 prescribes 3 modes of delivery. Same is the answer to this argument of Ld.Adv. Shri Arote. It is therefore proved that accused failed to pay the penalty as per the Adjudication Order (Exh.15). Hence offence under Section 24(2) of SEBI Act, 1992 is proved against accused. Accused

needs to be convicted. Hence, Point No.1 is answered in the affirmative. It is now 11.45 a.m. and accused needs to be heard on the question of sentence. Hence, I am taking pause. Accused is taken in judicial custody.

Time: 11.45 a.m.
Date : 14.6.2017

(M. G. Deshpande)
Judge, SEBI Special Court,
City Civil & Sessions Court,
Gr. Bombay

Time : 1.30 p.m.

15. Now, it is 1.30 p.m. Accused and his Learned Advocate Shri Arote heard at length on the question of sentence. Both of them submitted that accused alone is the bread winner of his family. He is young and married. The responsibility of his wife and son is on his shoulder. His salary is meager and not sufficient to maintain his family. In this situation, they prayed for leniency. The object and purpose of SEBI Act, 1992 while penalizing the accused under Section 24(2) of SEBI Act is to recover money of investors and distribute the same amongst them. In this background, if the accused is sentenced to imprisonment, purpose of SEBI Act, 1992 will not be achieved. Considering the situation of the family of the accused as submitted by him, I am of the opinion that only sentence of fine will suffice the purpose and object of SEBI Act, 1992. This will be a lesson to the accused and in future he

will not indulge in such illegal share trading. Hence, following order is passed:-

ORDER

1. Accused Dharmendra S. Thapa is convicted under Section 24(2) of Securities and Exchange Board of India Act, 1992 and sentenced to pay fine Rs.1,00,000/- (Rupees One Lakh Only), out of which Rs.90,000/-(Rupees Ninety Thousand) be awarded to the complainant Securities and Exchange Board of India (SEBI) as the compensation. In default thereof accused shall undergo simple imprisonment for one month.
2. Accused shall surrender his bail.
3. Copy of the judgment is given to the accused forthwith free of cost. Accused shall acknowledge the same.

(M. G. Deshpande)
Judge, SEBI Special Court,
City Civil & Sessions Court,
Gr. Bombay

Date : 14.6.2017

Dictated on : 14.6.2017
Transcribed on : 14.6.2017
Draft submitted on: 14.6.2017
Final submitted on: 14.6.2017
Signed by HHJ on : 14.6.2017

Certified to be true and correct copy of the original signed order
16.6.2017(1.00 p.m.)

DATE AND TIME

B.S.Parab

Name of the Judge (With Court Room
No.)

HHJ Shri M.G.Deshpande
C.R.No.22

..12.. J-SEBI Spl. Case No.351/2014 Exh. 27

Date of pronouncement of Judgment/Order	14.6.2017
Judgment/Order signed by P.O. on	14.6.2017
Judgment/Order uploaded on	16.6.2017