

(2020) 01 SEBI CK 0015

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 7 Of 2020, Appeal No. 501 Of 2019

Ajay Anand And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Securities And Exchange Board of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 3(2), 13(1)
Securities And Exchange Board of India Act, 1992 — Section 15H, 15H(ii)
Companies Act, 1956 — Section 433, 434

Citation : (2020) 01 SEBI CK 0015

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M. T. Joshi, J

Bench : Division Bench

Advocate : Ankit Madhwani, Ankit Parekh, Abhiraj Arora

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellants against the order dated July 10, 2019 passed by the Adjudicating Officer (â??AOâ?? for short)

of the Securities and Exchange Board of India (â??SEBIâ?? for short) imposing a penalty of Rs. 10 lakh under Section 15H(ii) of the SEBI Act,

1992 for not making a public announcement under Regulation 13(1) which triggered the acquisition under Regulation 3(2) of the SEBI (Substantial

Acquisition of Shares and Takeovers) Regulations, 2011 (â??SAST Regulations, 2011â?? for short)

2. The facts leading to the filing of the present appeal is, that the appellants are the founder promoters and executive directors of the Company known

as Faze Three Ltd. The said Company had issued Foreign Currency Convertible Bonds (FCCBs) listed at Luxemburg stock exchange in December

2006 which were convertible into equity shares of the Company on or before December 2011 at the option of the bond holders. The said bonds were not converted till December 2011 and, as a result of this default, certain FCCB holders filed a winding up Petition against the Company under Section 433 and 434 of the Companies Act, 1956 before the Board of Industrial and Financial Reconstructions (BIFR). During the pendency of the winding up Petition the Company filed a revival scheme before the BIFR which was opposed by these FCCB holders. During the pendency of the revival scheme the FCCB holders and the Company agreed to settle the matter and executed a settlement agreement wherein the Company agreed to redeem the FCCB holders for an amount of USD 6.25 million before March 2017.

3. For the aforesaid purpose the Company allotted 81,00,000 shares to non-promoters and 30,11,203 warrants to promoters / promoter group entities.

In February 2017 the warrants were converted into shares and these shares were issued and allotted on February 15, 2017. As a result of this

allotment, the shareholding of the promoters increased from 32.66% to 41.33% which triggered the threshold limit of 5% as prescribed under

Regulation 3(2) of the SAST Regulations, 2011. Since no public announcement was made the Regulation 3(2) of the SAST Regulations, 2011 was

violated and the penalty was imposed.

4. We have heard Shri Ankit Madhwani, authorized representative of the appellant and Shri Abhiraj Arora, the learned counsel for the respondent.

The authorized representative contended that admittedly no public announcement was made and there was a violation of Regulation 3(2) of the SAST

Regulations, 2011. The authorized representative however contended that there was no intention of acquisition of the Company for which penalty for

the alleged violation could have been imposed but in the instant case the threshold limit of 5% was triggered on account of dilution of the warrants

which was converted into shares in order to pay the FCCB holders. It was further contended that the Company was in distress and had become sick

and efforts were being made to infuse capital and revive the Company. Consequently, the issuance of the equity shares was made in order to pay off

the FCCB holders. The authorized representative contended that considering the aforesaid circumstances the quantum of penalty was wholly

unwarranted and should be set aside.

5. Having heard the authorized representative for the appellants and the learned counsel for the respondent we find that admittedly no public

announcement was made by the appellants under Regulation 13(1) for the triggered acquisition under Regulation 3(2) of the SAST Regulations, 2011.

Therefore for such violation the penalty for non-disclosure of acquisition of shares under Section 15H(ii) becomes applicable.

6. The AO found that though the shareholding prescribed in law was triggered by the conversion of the warrants into shares there was no change in

the control of the Company. Further when the acquisition was triggered the Company was going through restructuring of its capital and capital infusion

to address financial distress of the Company. These factors were duly considered by the AO under 15J while considering the quantum of penalty.

7. In the instant case a penalty of Rs. 10 lakh has been imposed which is the minimum penalty prescribed under Section 15 H. In our view the AO

considered all the factors and considering the financial distress of the Company etc. has only imposed the minimum penalty which we do not find it

erroneous or excessive. Consequently, the appeal lacks merit and is dismissed.

8. We direct the appellants to pay the entire amount within six weeks from today. Any amount paid under protest shall be adjusted.

9. In view of the disposal of the appeal, Misc. Application No. 7 of 2020 seeking stay on recovery proceedings become infructuous and is disposed of

as such.