

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 26 of 2008

Date of decision : 24.9.2008

1. Pavankumar Sanwarmal
2. Resham Resha Pvt. Ltd.
3. Man-Made Fibres Private Limited

.... Appellants

Versus

1. Securities and Exchange Board of India
2. Rajesh Shah
3. Dilip Sheth

.... Respondents

Mr. N. H. Seervai Senior Advocate with Mr. S. H. Merchant and Ms. Chaitra Rao
Advocates for Appellants.

Dr. Mrs. Poornima Advani Advocate with Ms. Sejal Shah Advocate for Respondent
no.1.

None present for Respondents no. 2 and 3.

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

Though the appellants herein were not parties to the proceedings conducted by the Securities and Exchange Board of India (for short the Board) under section 11B of the Securities and Exchange Board of India Act, 1992 which culminated in the passing of the order dated December 10, 2007 against several entities other than the appellants, they have filed the present appeal feeling aggrieved by some observations made against them in paragraphs 5.8 and 5.9 of the said order. Their grievance is that these observations have the potential of adversely affecting them in the civil and criminal proceedings that are pending inter se between them and respondents 2 and 3.

2. The appellants had made a competitive bid to acquire about 25 lac shares of Forbes Gokak Limited (the target company) in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Take Overs)

Regulations, 1997 and it is their case that they appointed Rajesh Shah Respondent no.2 as their consultant to raise funds by way of loans for purchasing the shares. Respondent no.2 is said to have arranged a loan of Rs.2 crore from Dilip Sheth who is respondent no.3 herein subject to the condition that the appellants deposited shares worth Rs.4 crore as collateral security. Appellant no.1 is then said to have instructed the merchant bankers appointed for the takeover bid to transfer his 50,000 shares of Pilani Investments and Industries Limited in the name of Dilip Sheth which were transferred in an off market transaction. It is also the case of the appellants that no consideration whatsoever was received by any of the appellants nor paid by Dilip Sheth in respect of these shares. Since the funds required by the appellants were not arranged either by Rajesh Shah or by Dilip Sheth, they wanted their 50,000 Pilani shares back. It appears that Rajesh Shah and Dilip Sheth have fallen out and the latter is refusing to transfer the shares back to the appellants who have initiated civil and criminal proceedings against them. It is claimed that Dilip Sheth has appropriated the shares towards the payment of debts of Rajesh Shah due to him. There is litigation between Dilip Sheth and Rajesh Shah as well.

3. Now coming to the order dated December 10, 2007. On receipt of an investigation report from the Bombay Stock Exchange, the Board conducted investigations in the trading in the scrip of a company called M/s. Alang Industrial Gases Limited (AIGL) and found that several irregularities were committed during the course of the trading as a result of which several entities mentioned in the order have been debarred from accessing the capital market. The appellants were not party to the proceedings though appellant no.1 had been summoned to appear for the purpose of producing certain documents during the course of the investigations. While dealing with the case of those entities in the context of the shares of AIGL, the learned whole time member of the Board made some observations pertaining to the transfer of 50,000 shares of Pilani Investments Limited. The appellants feel aggrieved by these observations and the learned counsel appearing on their behalf strenuously contends that these may prejudice the cause of the appellants in the pending civil and criminal

proceedings. He further contends that the appellants were not parties to the proceedings before the Board and, therefore, they are not bound by any of the observations made in the order.

4. Having heard the learned senior counsel for the appellants and the learned counsel for the respondent, we dispose of the appeal making it clear that any observation made in paragraphs 5.8 and 5.9 of the order dated December 10, 2007 shall not be binding on the appellants and that the observations shall not prejudice their cause in any pending civil or criminal litigation. Since the appellants challenge the correctness of some of the observations made, it shall be open to them to contend to the contrary in any forum including the civil and criminal proceedings already pending. We, however, make it clear that the order dated December 10, 2007 which has been appealed against by some of the entities against whom it has been passed, remains unaltered and that we have not gone into the merits of that order. No costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

24.9.2008
ddg/-