

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 133 of 2011

Date of decision: 30.8.2011

Noida Trading Co. Pvt. Ltd.
21/4656, Ansari Road,
Darya Ganj,
New Delhi – 110 002.

.....Appellant

Versus

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

... Respondent

Mr. Piyush Chhajed, Practicing Chartered Accountant for the Appellant.
Mr. Vikram Nankani, Advocate with Mr. Madhur Baya, Advocate 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)

Since we are inclined to remand the case to the adjudicating officer, it is not necessary for us to notice the facts in detail nor the contentions advanced by the counsel on both sides. The appellant is a private limited company which is stated to be a part of the promoter group of Natura Hue Chem Limited (for short the target company). The appellant is said to have sold 2,00,000 shares of the target company in July, 2003 thereby reducing the promoters' shareholding in the target company and since it failed to notify the details of the sales to the stock exchange where the shares of the target company are listed, it is stated to have violated regulation 7(1A) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code). A notice dated November 6, 2006 was issued to the appellant alleging the aforesaid violation and calling upon it to show cause why suitable penalty be not imposed on it. The appellant filed a reply dated March 13, 2007 denying that it sold/purchased any shares of the target company during the financial year 2002-03.

Subsequently, by its letter dated December 4, 2008, the appellant informed the adjudicating officer that it had not sold any shares of the target company during the financial years 2002-03 and 2003-04. One of the directors of the appellant-company went on to file an affidavit before the adjudicating officer stating that the appellant-company had never been allotted any shares of the target company. This affidavit is false because it is the appellant's own case before us that 2,00,000 shares were allotted to it by the target company in the promoters quota on June 18, 1996. It appears that the target company had filed with the stock exchange its shareholding pattern for the quarter ending June, 2003 in which the name of the appellant was also shown as one of its promoters and in the statement for the subsequent quarter ending September 30, 2003, the name of the appellant was missing. Since the name of the appellant was missing in the subsequent statement, the adjudicating officer concluded that the 2,00,000 shares allotted to the appellant were sold during this period and since this transaction was not notified to the stock exchange, the appellant violated regulation 7(1A) of the takeover code. We cannot agree with this conclusion. The appellant is not bound by the disclosures made by the target company to the stock exchange and those disclosures do not justify a conclusion that the shares had been sold during that period. The target company could have made a wrong statement to the stock exchange or could have made a bona fide error in reporting its shareholding pattern. There is no other material on the record regarding sale of shares. This apart, we have on record the updated balance-sheets of the appellant-company as on March 31, 1997 and March 31, 1998. The case of the appellant before us is that it sold 2,00,000 shares on January 23, 1998. When we look at the two balance-sheets now produced before us, the plea of the appellant appears to be correct. If the shares were sold in January, 1998, then the charge that it violated regulation 7(1A) when it sold the shares in July, 2003 cannot stand. The learned counsel appearing for the respondent-Board points out that the balance-sheet as on March 31, 1998 has been placed before us for the first time and was never produced before the adjudicating officer. He also contends that the authenticity of the balance-sheet now produced before us has to be verified from the office of the Registrar of Companies. In these circumstances, we are unable to uphold the finding that the appellant violated regulation 7(1A) of the takeover

code as alleged and taking note of the fact that a director of the appellant-company had filed a false affidavit, we are reluctant to accept its stand either. Lest there is any miscarriage of justice, we set aside the impugned order and remand the case to the adjudicating officer for proceeding afresh in the matter. He will now issue a fresh show-cause notice to the appellant and after affording an opportunity of hearing, proceed to pass an order in accordance with law. Since the matter is quite old, the adjudicating officer is directed to proceed expeditiously. No costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

30.8.2011
Prepared and compared by-ddg