

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Misc. Application No. 95 of 2014  
And  
Appeal No. 237 of 2014**

**Date of decision: 02.09.2014**

1. Mr. Rishiraj Agarwal  
703/704, Shiv Parvati Co-operative  
Housing Society, Near Versova  
Telephone Exchange, S. V. Road,  
Andheri (West), Mumbai – 400 053.
2. M/s. Anarcon Resources Pvt. Ltd.  
32 Ezra Street, Todi Mension,  
Room No. 1060, 10<sup>th</sup> Floor,  
Kolkata – 700 001.
3. M/s. Shri Hanuman Investments Pvt. Ltd.  
32 Ezra Street, Todi Mension,  
Room No. 1060, 10<sup>th</sup> Floor,  
Kolkata – 700 001.
4. Mrs. Sangeeta Agarwal  
703/704, Shiv Parvati Co-operative  
Housing Society, Near Versova  
Telephone Exchange, S. V. Road,  
Andheri (West), Mumbai – 400 053.
5. Mrs. Lalita Agarwal  
703/704, Shiv Parvati Co-operative  
Housing Society, Near Versova  
Telephone Exchange, S. V. Road,  
Andheri (West), Mumbai – 400 053.
6. Mr. Ashok Agarwal  
703/704, Shiv Parvati Co-operative  
Housing Society, Near Versova  
Telephone Exchange, S. V. Road,  
Andheri (West), Mumbai – 400 053. .... Appellants

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400 051. .... Respondent

Mr. Ramesh Mishra, Practicing Company Secretary for the Appellants.

Mr. Mihir Mody, Advocate for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer  
A. S. Lamba, Member

Per : Justice J. P. Devadhar (Oral)

**Misc. Application No. 95 of 2014 :**

1. This miscellaneous application is filed seeking condonation of delay of 15 days in filing this appeal. For the reasons stated in miscellaneous application, delay is condoned. Miscellaneous application stands disposed of accordingly.

**Appeal No. 237 of 2014 :**

2. Appellants are aggrieved by the adjudication order dated April 30, 2014 whereby penalty of ₹ 4 lac has been imposed upon appellants jointly and severally for violating Regulation 30(2) read with 30(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations, 2011 for short).

3. Counsel for appellants fairly state that due date for making disclosures to the stock exchange in respect of open offer made by the appellants was April 12, 2012, however, disclosures, were actually made on May 14, 2012. As a result there is delay of 31 days in making the disclosures. Counsel for appellants submitted that for the aforesaid imposition of penalty of ₹ 4 lac is arbitrary and excessive, because, appellants had made disclosures to the target company i.e. Greenerth Resources and Projects Ltd. within the stipulated time, however, very same disclosures were inadvertently forwarded to the target company instead of forwarding it to the stock exchange and the promoters were under the

wrong impression that the disclosures were duly filed with the stock exchange.

4. Obligation to make disclosures under Regulation 30(2) is mandatory and under Regulation 30(3) the promoters are obliged to make disclosure to the stock exchanges where the shares of the target company are listed and also to the target company. Even though it is claimed that the disclosures intended to be sent to the stock exchange were inadvertently sent to the target company, fact remains that there is delay in making disclosures to the stock exchange.

5. Once it is submitted that there is a delay in making disclosures to the stock exchange as contemplated under Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011 penalty is imposable upon the appellants under Section 15A(b) of Securities and Exchange Board of India Act, 1992 irrespective of the fact that disclosures have been made to the target company within the stipulated time.

6. Even though in the present case, penalty imposable upon appellants under Section 15A(b) of SEBI Act @ ₹ 1 lac per day comes to ₹ 31 lac, adjudicating officer after taking into consideration all mitigating factors has imposed penalty of ₹ 4 lac jointly and severally on all the appellants. Since the joint and several liability on all of the six appellants is only ₹ 4 lac, it is apparent that the penalty on each appellant is less than ₹ 1 lac. In these circumstances, penalty of ₹ 4 lac imposed upon appellants jointly and severally cannot be said to be arbitrary, unreasonable or excessive.

7. For all the aforesaid reasons, we see no reason to interfere with the order impugned in the appeal. Accordingly, the appeal is hereby dismissed with no order as to costs.

Sd/-  
Justice J. P. Devadhar  
Presiding Officer

Sd/-  
A. S. Lamba  
Member

02.09.2014  
Prepared & Compared by  
PTM