

Sebi Vs. Dagger Forst Tools Ltd.

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Nov-24-2006

Judge : V Chopra

Appellant : Sebi

Respondent : Dagger Forst Tools Ltd.

Judgement :

1.1 The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an investigation into the dealings in the scrip of Dagger Forst Tools Ltd (hereinafter referred to as "DFTL") for the period November 06, 2000 to October 31, 2001.

1.2 The company, DFTL is a Yash Birla Group company. Scimitar Investment and Trading Company Pvt. Ltd. (since amalgamated with Godavari Corporation Ltd.) is one of the promoter group companies of DFTL as the same was also an investment company of the Yash Birla Group. Investigation revealed that, Scimitar Investment and Trading Company Pvt. Ltd (hereinafter referred to in short as 'Scimitar') was holding total 2,40,800 shares i.e. 5.17% of total share capital of DFTL. However, as per the shareholding pattern filed by DFTL as on March 31, 2001 & June 30, 2001, Scimitar was shown to be holding only 44,000 shares. Further, from November, 2000 to October, 2001 the person acting in concert, Shri Sharad Rathi has net purchased 2,20,818 shares constituting 4.74% of the total share capital of DFTL. Again these holdings by the person acting in concert were

not shown in the submitted shareholding patterns by DFTL to BSE as required under the Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers Regulations, 1997 (hereinafter referred to in short as Takeover Regulations.) Accordingly, DFTL failed to disclose the holding of Scimitar and person acting in concert Mr Sharad Rathi to the Stock Exchanges in terms of Regulation 7(3) & Regulation 8(3) of Takeover Regulations. 2.1 A show cause notice dated December 30, 2005 was issued to the DFTL to show cause as to why appropriate action under Section 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 should not be passed against DFTL for the violations of the provisions of Regulation 7(3) & 8(3) of Takeovers Regulations. Along with the said show cause notice, the statements of Shri Arun Singhi, Director, Scimitar, Shri G.L. Lath, Joint President and Company Secretary of DFTL, Shri Suraj Saraogi, Director of Keynote, Shri. L. R. Daga, Joint President, Zenith Ltd. and Shri Sharad Rathi, were forwarded to DFTL. In response to the said show cause notice, DFTL submitted its reply dated July 24, 2006.

3.1 They stated that Section 11(4) was inserted in the SEBI Act, 1992 with effect from October 29, 2002 whereas the alleged violation pertains to the period November 6, 2000 to October 31, 2001. Hence the said section has no retrospective effect and the same cannot have application in the matter.

3.2 They stated that they had no role to play in the affairs of Scimitar and its management decision and none of the directors of Scimitar were on Board of DFTL. All the activities of Scimitar were independent of their activities and vice versa. They further stated that they are not aware of the role of Shri. Sharad Rathi in any aspect.

3.3 They stated that Scimitar had disclosed its shareholding of 44000 equity shares constituting 0.95% of their equity capital to the Stock Exchange on September 30, 2000. Further purchase of shares was not disclosed to them by Scimitar. Hence they continued to disclose the same shareholding of 0.95% in the subsequent disclosures.

3.4 With regard to the violation of 8(3), they submitted that the requisite disclosures under Regulation 8(3) of Takeover Regulations had been filed vide

their letter dated March 28, 2003. The said disclosure was for the year 1998, 1999, 2000, 2001 & 2002 and the same was filed by them under SEBI Regularisation Scheme, 2002. Hence, they stated that the violation if any, has already been regularised by them by paying the amount of Rs 70,000/- .

3.5 They denied the findings of investigation that they were in possession of the information regarding activities of Scimitar in their scrip and subsequent change in its shareholdings. They stated that Yash Birla Group consists of various companies and all companies are board managed companies and work independently. At the relevant period, they had no role to play in the affairs of Scimitar.

4.1 In their reply dated July 24, 2006, they requested for an opportunity of personal hearing. Accordingly, DFTL was advised to attend personal hearing on September 29, 2006. DFTL vide letter dated September 07, 2006 requested for an adjournment on the ground that the counsel briefed in the matter has expressed his difficulty in attending the matter. Another opportunity of personal hearing was granted on October 12, 2006. Vide letter dated October 09, 2006 DFTL again requested adjournment of hearing for the reason that one Shri G.L Lath who is the concerned officer was not available. Since sufficient opportunity for personal hearing had already been given to DFTL, I decided to proceed with the matter to pass an order on merits.

5.1 I have carefully considered the show cause notice, reply of DFTL and other materials on record.

5.2 At the very outset, I find that DFTL has taken a stand in its reply that provisions of Section 11 (4) cannot be applied with retrospective effect when there is no such express mention in the statute. I feel that the provisions of Section 11 (4) inserted into SEBI Act, 1992 with effect from 29.10.02 is only an explanation or elucidation of the powers vested in SEBI under Section 11 of SEBI Act. Consequently, the power to take action under Section 11 (4) was already vested with SEBI under Section 11 of the SEBI Act. As a result, the action taken pursuant to the Show Cause Notice issued under Section 11 (4) would be valid. Hence, I am proceeding in the matter on the basis of the materials on record.

5.3 I find that Scimitar was an investment company of Yash Birla Group and it got amalgamated with another group company, in the name of Godavari Corporation Ltd. on December 05, 2002. It was also registered with RBI as NBFC. It had investments in various Yash Birla Group companies as part of promoter holding. It was one of the promoter group companies of DFTL and was holding 44,000 shares or 0.95% of DFTL's total share capital, as on September 30, 2000. Scimitar was observed to have done substantial trading in DFTL scrip during the period, November 06, 2000 to January 19, 2001, a period which saw a sudden and substantial jump in both volume and price of the scrip. It has purchased a gross total of 199,800 shares and net purchase of 196,700 shares at BSE during the above period which was approximately 46.15% gross market purchase volume and 78.74% of the net market purchase volume. I have also noted that Shri Sharad Rathi was acting in concert with Scimitar.

5.4 I find that Scimitar which had a shareholding of 44,000 equity shares constituting 0.95% of total share capital of DFTL, as on September 30, 2000 has net purchased further 196,800 shares by January 22, 2001 and its total holding rose to 2,40,800 shares i.e. 5.17% of total share capital of DFTL. However, as per the shareholding pattern filed by DFTL as on March 31, 2001 & June 30, 2001, Scimitar was shown to be holding only 44,000 shares. Further, from November, 2000 to October, 2001 the person acting in concert, Shri Sharad Rathi has net purchased 2,20,818 shares constituting 4.74% of the total share capital of DFTL. Again these holdings by the person acting in concert were not shown in the submitted shareholding patterns by DFTL to BSE as required under the provisions Takeovers Regulations, 1997.

5.5 DFTL being a closely held company of Yash Birla Group through its various group entities, can reasonably be believed to be in possession of the information regarding activities of the aforesaid promoter group entities in its scrip in the market and subsequent change in their share-holding along with that of any person acting in concert. However, DFTL in its reply submitted that it could not file the disclosure under Regulation 7(3) of Takeover Regulations due to the failure on the part of Scimitar. DFTL further submitted that none of the directors of Scimitar were on the Board of DFTL and activities of Scimitar were independent of their

activities and vice versa. I have also noted that action against Scimitar had been initiated and pending. As per Regulation 7(3) of Takeover Regulations, DFTL has to file the disclosure within seven days of receipt of information from the acquirer i.e Scimitar. Since, Scimitar has not disclosed its share holding to DFTL in terms of Regulation 7(1) of Takeover Regulations, I do not find this a fit case to take action against DFTL in terms of Regulation 7(3) of Takeover Regulations.

5.6 Further, I have considered the submission of DFTL to the effect that they had made requisite disclosures under Regulation 8(3) of Takeover Regulations for the year 1998, 1999, 2000, 2001 & 2002 under SEBI Regularisation Scheme, 2002 by paying the amount of Rs 70,000/- so as to get it regularised.

6.1 In view of the above facts and circumstances, I don't find any reason to issue any directions against M/s Dagger Forst Tools Limited either as prescribed under Regulations 44 and 45 of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997 or as per Section 11(4) and 11 B of Securities and Exchange Board of India Act, 1992. Therefore, I, in exercise of the powers conferred upon me in terms of Section 19 read with Section 11 and 11 B of Securities and Exchange Board of India Act, 1992, I hereby dispose of the show cause notice issued to M/s Dagger Forst Tools, on the aforesaid terms.

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