

**IN THE SPECIAL COURT OF THE JUDGE UNDER THE SECURITIES  
AND EXCHANGE BOARD OF INDIA ACT, 1992 AT BOMBAY**

**ORDER BELOW EXHIBIT 31**

**IN**

**SEBI SPECIAL CASE NO.62 of 2014**

Jyotsna S.Shah

.. Applicant  
(Org.Accused No.6)

**V e r s u s**

Securities and Exchange Board of India

.. Complainant.

Ld. Advocate Mr.Akshit Jain for Accused.

Ld. SPP Ms.Sabiha Ansari for SEBI.

**CORAM : HIS HONOUR SPECIAL JUDGE  
SHRI. M.M.UMAR  
SEBI SPECIAL COURT  
(Court Room No. 22)**

**DATE : 9th October, 2019.**

**ORDER**

The accused no.6 Jyotsna Shah has moved present application under Section 227 of the Code of Criminal Procedure, for discharge from the case filed by Securities and Exchange Board of India (SEBI) under Section 24(1) and 27 of the SEBI Act. The complainant SEBI has resisted aforesaid application by filing reply at Exhibit 37.

2. Read the application and reply. Heard to learned advocate for applicant/accused so also, learned SPP for SEBI.

3. Mr.Akshit Jain the learned advocate for accused has submitted

that the accused was the Director of accused no.1 Company Sawaca Communications Limited. It is submitted that SEBI has issued notice dated 26/10/2003 calling upon the accused no.1 company and its Director to show cause as to why the suitable directions under section 11(4) r/w.11B of the SEBI Act should not be issued against them.

Mr.Jain has submitted that the SEBI has filed the present complaint against the applicant under Section 24(1) and 27 of the SEBI Act, 1992 alleging the violation of the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Security Markets) Regulation 1995. Mr.Jain has submitted that the complaint is filed in the month of November 2003 and since then the matter is delayed and therefore serious prejudice is caused to the applicant accused, hence on this count also the accused may be discharged from the case.

It is submitted that the SEBI issued a Show Cause notice on dated 26/10/2003 to the accused no.1 Company and its directors to show cause as to why the suitable action under Section 11(4) with Section 11B of the SEBI Act should not be taken against them and the applicant opted for consent and High Power Advisory committee constituted by SEBI considered the consent terms proposed by the applicant and recommended the case for settlement. According to Mr.Jain the applicant was required to pay the penalty of Rs.10,000/- towards the settlement and the applicant accused remitted a sum of Rs.10,000/- towards the settlement agreement vide demand draft no.156458 dated 11/12/2008 drawn on Indian Overseas Bank payable at Mumbai. So, also the applicant had undergone voluntary debarment for two years from the date of consent order. It is submitted that since the applicant has remitted a sum of Rs.10,000/- and has also gone

voluntary debarment for two years as stated above it is requested that the application be allowed and accused be discharged.

4. Per contra, learned SPP has submitted that the application is not maintainable as the complaint has been filed by SEBI under Section 24(1) of SEBI Act as the accused violated the provisions of Regulation 4 of SEBI (pfutp) 1995 and the accused persons are liable to be punished under Section 24(1) of the SEBI Act. It is also submitted that accused no.2 to 6 are the directors of accused no.1 Company and they are persons incharge of and responsible to the conduct of the business of the accused no.1 Company and liable to be punished under Section 27 of the SEBI Act. The learned SPP has submitted that the applicant accused has no case for discharge. Lastly, it is requested to reject the application.

5. I have duly considered the above submissions of both the sides, so also I have gone carefully through the case record. First of all it is necessary to mention here that SEBI has filed present complaint in the month of November 2003 and the trial of the case is yet not commenced. But it cannot be a ground for the discharge to the accused. Therefore, the contention of the learned advocate for the accused is that as the alleged transaction involved in the case is 18 years old can be considered as a ground for discharge appears devoid of substance and it is rejected. It appears that the present complaint has been filed by the SEBI against the accused for violation of Regulation 4 of SEBI(Prohibition of Fraudulent and Unfair Trade Practices) Regulation 1995 and not only on the basis of Show Cause notice issued by SEBI to him. Therefore, mere contention of the applicant that he opted for

consent and that through a consent order dated 20/4/2007, he has paid the settlement charges and that the criminal liability doesnot exist, appears not sufficient, cogent and on the basis of payment of the settlement charges, the accused cannot claim the discharge in the present case as there is no exoneration of accused in the matter on merits. It is well settled that the powers of SEBI to launch the prosecution are independent of the powers to impose the penalties. Powers to launch the prosecution are unhibited and the prosecution launched by SEBI cannot be terminated only on the ground that the accused remitted the amount towards the settlement charges in civil proceeding. Hence in view of the matter considering the grounds on which the present discharge application is filed, I do not find any cogent and reasonable ground to consider the request of accused to discharge him from the present case. It appears that there is sufficient material exists on record to frame the charge against the accused. Hence in view of the matter the application for discharge needs to be rejected. In the result, following order :-

### **ORDER**

1. Application Exhibit 31 is rejected.
2. Application Exhibit 31 is disposed of accordingly.

**Date : 09.10.2019**

**(M.M.UMAR)**  
**SEBI Special Judge**  
**City Civil & Sessions Court,**  
**Gr. Bombay.**

**Dictated on : 09.10.2019**

**Typed on : 09.10.2019**

**Signed by HHJ. : 16.10.2019**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE	TIME	NAME OF STENOGRAPHER
18.10.2019	3.00 p.m.	Mrs. Jyoti Mane
Name of the Judge		HHJ Shri MM Umar (CR No.22)
Date of Pronouncement of Judgment/Order.		09.10.2019
Judgment/order signed by P.O on		16.10.2019
Judgment/order uploaded on		18.10.2019