

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

ORDER BELOW EXHIBIT 28

IN

SEBI SPECIAL CASE NO.62 of 2014

Satish Shah

.. Applicant
(Org.Accused no.3)

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 August, 2019.

ORDER

The accused no.3 Satish 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, but he resigned from the Directorship of the accused/company with effect from 1/12/2001. 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 Practices 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 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 issued against them and the applicant opted for consent and High Powered 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.1,00,000/- towards the settlement and the applicant/accused remitted a sum of Rs.1,00,000/- towards the settlement agreement vide demand draft no.157795 dated 26/5/2009 drawn on Indian Overseas Bank payable at Mumbai. 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.1,00,000/- 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 Ms.Rustogi 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 (Prohibition of Fraudulent and Unfair Trade Practices Relating to Security Markets) Regulations, 1995 and the accused persons are liable to be permitted under Section 24(1) and 27 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 the 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 the present complaint was filed in the month of November 2003 and the trial of the case is not commenced till today. 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 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 does not exist, appears not sufficient and 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 the accused in this matter.

6. Mr.Jain submitted that the applicant accused resigned from the Directorship with effect from 1/12/2001 therefore, he is not responsible for the act of the Company or the act of other directors of the company. I am not in agreement with the above submission of Mr.Jain because, there is no documentary evidence on record to establish that the accused resigned from the Directorship with effect from 1/12/2001. Had it been a fact then it was incumbent upon the applicant accused to produce the certified copy of Form no.32 of the Companies Act, submitted to the Registrar of the Companies or audit report. It may be a ground in the fulledged trial of the case but without any documentary proof, the contention of Mr.Jain that the accused is liable to be discharged as he resigned from the directorship appears devoid of substance and it is rejected.

7. 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 uninhibited and the prosecution launched by SEBI cannot be terminated only on the ground that the accused remitted the amount towards the settlement charges. 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 28 is rejected.
2. Application Exhibit 28 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