

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 35 of 2010

Date of decision: 6.4.2010

1. M/s Norris Medicines Limited
Plot No. 801/P,901/4&5, GIDC Estate,
Ankleshwar 393 002 (Gujarat)

2. Mr. N. J. Patel
Plot No. 801/P,901/4&5, GIDC Estate,
Ankleshwar 393 002 (Gujarat)

.....Appellants

Versus

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

..... Respondent

Ms. Poonam Gadkari, Advocate with Ms. Swathy Ramakrishnan. Advocate for Appellants.

Mr. Shiraz Rustomjee, Advocate with Ms. Daya Gupta, Advocate for the Respondent.

CORAM: Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Challenge in this appeal is to the order dated December 31, 2009 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) holding the appellants guilty of violating Regulations 3 and 6(a) of the (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and restraining them from accessing the securities market for a period of three years. They have also been prohibited from buying, selling and dealing with securities in any manner either directly or indirectly for the same period.

2. The first appellant is a public limited company of which the second appellant is a promoter/ Joint Managing Director. With a view to infuse funds in the coffers of the

company, the latter in its extra ordinary general meeting passed a resolution under Section 81(1A) of the Companies Act, 1956 authorizing the Board of Directors to issue offer and allot equity shares not exceeding 1.8 crores of Rs. 10 each fully paid up on preferential basis/ private placement to Positive Healthcare (Asia) Limited (for short PHAL), a company registered in the United States of America. It is not in dispute that the appellant company allotted 90 lac shares to PHAL on September 21, 2000 and received Rs. 9 crores in its bank account maintained with the Jay Hind Co-operative Bank Limited. On investigations carried out by the Board, it transpired that the appellant company on the very next day i.e. on September 22, 2000 returned the amount to PHAL through its four associate companies/ entities with the result that the preferential allotment made to PHAL was virtually without consideration. The fact that the funds were returned to PHAL in the aforesaid manner is admitted by the appellant company and also by its Joint Managing Director who is now the second appellant before us. In the common reply filed on behalf of the appellants to the show cause notice issued by the Board, they took the stand that the shares allotted to PHAL were issued fraudulently, illegally and without prior authorization. It is also on record that some of the shares allotted on preferential basis had been sold in the market in off market transactions even though there was a lock in period of one year imposing a ban on their transfer. The appellants have admitted even in the grounds of appeal that most of the shares sold in off market transactions have not been retraced. It is obvious that the shares having no underlying value are being held by some of the investors. In view of the admissions made by the appellants, it is clear that the conduct of the appellant company and its directors in issuing the shares on preferential basis without consideration was fraudulent within the meaning of the Regulations and they were guilty of violating Regulations 3 and 6(a) of the Regulations. In this view of the matter, no fault can be found with the findings recorded by the whole time member.

3. The only defence that has been taken by the second appellant is that during the period when the shares were allotted to PHAL, he was on vacation to United States of America and was not looking after the affairs of the company during that period. It is not in dispute that he was present in the Board meeting in which the allotment was

made in favour of PHAL. In any case, even when he was on vacation, he continued to remain the Joint Managing Director of the company and was responsible for all its acts. He is now trying to shift the blame on two other directors who have not come up in appeal and the company has taken no action against them and they all continue to be the Directors of the appellant company. In this background, we cannot accept the plea now sought to be raised and this is no ground for him to escape his liability for the fraudulent allotment of shares to PHAL.

In the result, the appeal fails and the same stands dismissed with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

6.4.2010
pmb

Prepared & Compared By: pmb