(2022) 07 SEBI CK 0087

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.425 Of 2021

Alok Todi And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Securities And Exchange Board Of India (Insider Trading) Regulations, 1992 — Regulation 13, 13(4A), 13(5)
Securities And Exchange Board Of India Act, 1992 — Section 15A(b)

Citation : (2022) 07 SEBI CK 0087

Hon'ble Judges : M. T. Joshi, J;Meera Swarup, Member

Bench : Division Bench

Advocate : Ramesh Chandra Mishra, Loknath Mishra, Abhiraj Arora, Anshu Mehta, Shourya Tanay, Harshvardhan Nankani

Final Decision : Dismissed

Judgement

Meera Swarup, Technical Member

1. The present appeal is filed challenging the Order No. Order/GR/KG/2020-21/11083-11094 dated March 24, 2021 of Adjudicating Officer (?AO? for short) of the Securities and Exchange Board of India Act, 1992 (?SEBI Act? for short), the respondent. Vide his order, the AO imposed a monetary penalty of Rs. 12,00,000/- (Rupees Twelve Lakhs only) to be paid jointly and severally by the appellants (Noticee nos. 1 to 9 and 11 to 13) under Section 15A(b) of the SEBI Act, 1992 for violation of Regulation 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (?PIT Regulations, 1992? for short).

2. The facts of the case are as follows. SEBI conducted a detailed investigation for the period of February 28, 2013 to May 10, 2013 on reference made by Bombay Stock Exchange Limited (?BSE? for short) that prima facie there were misutilization of funds received against issue of equity shares on preferential basis by several companies including Dwitiya Trading Limited (?DTL? for short).

The appellants were promoters of DTL which was listed on the Calcutta Stock Exchange (?CSE? for short). DTL was listed on the BSE on August 25, 2014. On investigation, SEBI found the shareholding of all the promoters of DTL had reduced by more than 1% from quarter ending March 2013 to June 2013. The promoter?s holding reduced from 28.80% at quarter ended March 2013 to 0.85% for quarter ended June 2013. A common show cause (SCN) dated November 11, 2020 was issued to the appellants alleging that the promoters of DTL (Appellants) had failed to disclose the change in shareholding of the Company and had thus violated Regulation 13(4A) of PIT Regulations, 1992.

3. The appellants denied the allegations made in the show cause notice contending that reduction in shareholding by more than 1% from quarter ending March 2013 to June 2013 was due to increase in the equity share of DTL by preferential allotment made to non-promoters in May 2013 and not because the appellants acquired or sold their shares. The number of shares held by the appellants remained the same though their percentage of shareholding decreased by more than 1% as the Company allotted preferential shares to non-promoters. Three appellants, Banwarilal Mahansaria (HUF) (Noticee no. 12), Shyamlal Agarwal (Noticee no. 13) and Abhisek Bhowsinka (Noticee no. 14), further contended that they sold the entire stock of shares held by them in June 2013 but by then their shareholding had already reduced to less than 1%. The appellants contended that Regulation 13(4A) of PIT Regulations, 1992 was not applicable to them as not a single share was allotted to them. They also submitted that as the notice of the Extra-ordinary General Meeting of DTL held on February 23, 2013 for allotment of preferential shares was sent to each and every shareholder of the Company, all the shareholders were aware of allotment of 48,00,000 shares to non-promoters and so adequate disclosure was there.

4. Personal hearing was held on March 17, 2021. Opportunity of being heard was availed by Noticee nos. 9, 11, 12 and 13 wherein they reiterated the arguments made in their written submissions.

5. The AO after considering the material evidence on record and the submissions made by the appellants concluded that due to the preferential allotment of shares to the non-promoters the percentage shareholding of the appellants in DTL decreased by more than 1% during the period March 2013 to June 2013 resulting in an identical decrease in their listing rights. This triggered disclosure requirements by the appellants under Regulation 13(4A) of the PIT Regulations, 1992. Recognizing that the change in percentage of shareholding of the appellants was brought about by the preferential allotment of shares to the non-promoters and not due to any action on part of the appellants, the AO ruled that there was no exemption available under the PIT Regulations from making the relevant disclosures. Regulation 13(4A) of the PIT Regulations, 1992 specifically mandates the promoters of a listed Company to disclose their change in shareholding or voting rights. The AO relied on the SAT?s judgment dated October 14, 2014 in the matter of Shri Virendrakumar Jayantilal Patel vs SEBI,

Appeal no. 299 of 2014 that "obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation". Holding that Regulation 13 provides for a continual disclosure of shareholding and if the shareholding falls below the threshold provided in the Regulation then it is incumbent for the person to make necessary disclosures and admittedly, the appellants being promoters of DTL failed to make the mandatory disclosures. Accordingly the AO held the appellants liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulation 13(4A) read with 13(5) of PIT Regulations and imposed a monetary penalty of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) on the appellants to be paid jointly and severally.

6. We have heard Shri Ramesh Chandra Mishra, FCS assisted by Shri Loknath Mishra, the learned counsel for the appellant and Shri Abhiraj Arora, the learned counsel assisted by Ms. Anshu Mehta, Shri Shourya Tanay and Shri Harshvardhan Nankani, the learned counsel for the appellants.

7. The learned counsel for the appellants contended that the shareholding pattern of the appellants, the promoters of DTL, changed on account of the corporate action of preferential allotment of shares to non-promoters and not due to the promoters acquiring or selling the shares. The respondent?s investigation did not reveal any disproportionate gains or unfair advantage made by the appellants or any loss suffered by any investor. Adequate disclosures were made to the shareholders of DTL through the notice of allotment of preferential shares. The learned counsel contended that the penalty for procedural lapse on account of corporate action was imposed without considering the financial position of the appellants who have been suffering from financial losses due to lockdown.

8. On the other hand, the learned counsel for the respondent supported the decision of the AO contending that the appellants have admittedly violated Regulation 13(4A) of the PIT Regulations by not disclosing the fact of change in the promoter?s shareholding in DTL by more than 1%.

9. Having heard the learned counsel for the parties and having perused the impugned order we find that admittedly the appellants being the promoters of DTL did not disclose the change in their shareholding as required under Regulation 13(4A) of the PIT Regulations which reads as follows:-

"a promoter of a listed company, shall disclose to the company and the stock exchange where the securities are listed, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower."

The Regulation 13(4A) of the PIT Regulations thus places an obligation on the promoters to disclose to the Company and the Stock Exchange, where the securities are listed, any change from the last disclosure in the shareholding listing rights if the change exceeds Rs. 5 lakh in value of 25,000 shares on 1% of total shareholding of voting rights, whichever is lower. Therefore, as promoters, it was incumbent upon the appellants to disclose the change in their shareholding to the Calcutta Stock Exchange which they failed to do. That the appellants were promoters of DTL and that the shareholding of the promoters of DTL went down by more than 1% consequent to issue of preferential shares is not in dispute.

10. As far as the quantum of penalty is concerned, the minimum penalty under Section 15A(b) of SEBI Act is Rs. 1 lakh. The AO has imposed a penalty of Rs. 12 lakh on the twelve appellants to be paid jointly and severally which cannot be said to be excessively harsh.

11. For all the reasons stated above, we see no merit in the appeal. The appeal is dismissed with no order as to costs.

12. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order.

Certified copy of this order is also available from the Registry on payment of usual charges.

