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(2021) 01 SEBI CK 0016

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 586, 587, 588, 589 Of 2020, Appeal No. 30, 31 Of 2021

Anita Jajodia And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 21-01-2021

Acts Referred:
- Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 13(4A), 13(5)
- Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 7(2)(a), 12
- Securities And Exchange Board Of India Act, 1992 — Section 15A(b), 15J

Citation : (2021) 01 SEBI CK 0016

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Rinku Valanju, Pratham Masurekar, Aditya Shah, Nidhi Singh, Kinjal Bhatt, Drashti Jani, Vidhii Partners

Final Decision : Partly Allowed/ Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

Misc. Application nos.587 of 2020 and 589 of 2020

For the reasons stated in the application, the delay in filing the appeals are condoned.

Both the Misc. Applications are allowed.

Misc. Application no.586 of 2020 and Appeal no.30 of 2021 and Misc. Application no.588 of 2020 and Appeal no.31 of 2021.

1. Two appeals have been preferred against the order dated 23rd September, 2020 passed by the Adjudicating

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Officer (â??AOâ?? for short) imposing a penalty of Rs.3 lakhs on one promoter, Rs.1 lakh on another promoter and Rs.5 lakh on the Company for

violation of Regulation 13(4A) and 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter

referred to as â??PIT Regulations, 1992â??) and Regulation 7(2)(a) of the Securities and Exchange Board of India (Prohibition of Insider Trading)

Regulations, 2015 (hereinafter referred to as â??PIT Regulations, 2015â??) and Regulation 13(5) of the PIT Regulations, 1992 read with Regulation

12 of the PIT Regulations, 2015. The penalty has been imposed for not making the disclosure as required under the aforesaid provisions within the

stipulated period.

2. Securities and Exchange Board of India (hereinafter referred to as â?? SEBIâ??) conducted an investigation in the scrip of Jaisukh Dealers Ltd.

for the period from 11th February, 2014 to 5th July, 2016 and on an analysis of the disclosure data obtained from the BSE Ltd. it was observed that

certain transactions of the appellant were not disclosed or were disclosed belatedly under the relevant PIT Regulations. Accordingly, after six years

from the date of the impugned transactions of one of the promoter Ms. Anita Jajodia a show cause notice dated 21st January, 2020 was issued to

show cause why an inquiry should not be held and penalty should not be imposed under section 15A(b) of the Securities and Exchange Board of India

Act, 1992 (hereinafter referred to as â??SEBI Actâ??).

3. The allegation is that one of the promoters purchased 65,000 shares on 11th February, 2014 in two transactions which apparently were not disclosed

within the stipulated period. On 27th March, 2014 the said appellant Ms. Anita Jajodia sold shares and again failed to make necessary disclosures. The

second promoter Ms. Sabita Jajodia sold shares on 29th October, 2015 and failed to make the necessary disclosures. In so far as the Company is

concerned there was a delayed disclosure to the BSE Ltd with regard to the transactions made by the promoters Anita and Sabita. The disclosure was

required to be made within two days but the Company made the disclosure belatedly.

4. Admittedly, there is no disclosure made by the promoters and the Company made belated disclosures. In the light of this admitted facts, the AO

found that there was violation of the PIT Regulations, 1992 and PIT Regulations,

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1995 and, accordingly, imposed a sum of Rs.3 lakhs for the three alleged violations by the promoter Anita, Rs.1 lakh for the one violation by the promoter Sabita and Rs.5 lakh upon the Company for delayed disclosure on 9 occasions.

5. We have heard Ms. Rinku Valanju, Advocate assisted by Mr. Pratham Masurekar and Mr. Aditya Shah, Advocates for the Appellant and Ms. Nidhi Singh, Advocate assisted by Ms. Kinjal Bhatt and Ms. Drashti Jani, Advocates for the Respondent.

6. The contention of the learned counsel for the appellant is, that there is an undue delay on the part of the respondent in initiating the proceedings. Even though the promoters failed to make the disclosure the same was reflected in the quarterly report filed by the Company and, in any case, the Company had made delayed disclosure on the stock exchange platform. Therefore, it was urged that the fact that there was a delay in the disclosure or failure to make disclosure was a known fact to the stock exchange and, thus, failure on the part of the respondent to initiate proceedings within a reasonable period was fatal as in the meantime much water has flown and valuable rights have accrued. Not only this, initiating proceeding after six years causes prejudice. The matter has reached finality and such old and stale issues should not be raised for the sake of penalising an error made several years ago.

7. In this regard, the learned counsel for the respondent submitted that pursuant to the investigation being made in the scrip of the Company the alleged violation was discovered after analysing the data retrieved from BSE. It was therefore contended that there was no undue delay in initiating the proceedings.

8. Having heard the learned counsel for the parties, we are of the opinion that there has been an undue delay on the part of the respondent in initiating proceedings. The alleged violation was known to the stock exchange and nothing was brought to the notice of the respondent by the stock exchange about the alleged violation. No steps were initiated by the stock exchange to book the appellants. The mere fact that during investigation these discrepancies came to light does not entitle the respondent to initiate separate proceedings for the alleged violations.

9. Considering the aforesaid, we are of the opinion that in the instant case this

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undue delay causes prejudice as in the meanwhile vital rights have

accrued upon the appellants. The appellants have a right to arrange their affairs and keep their house in order in whatever fashion. It does not permit

the respondent to upset the apple cart by issuing the show cause notice for an alleged violation made six years ago.

10. Considering the aforesaid, we feel that it is not a fit case where the proceedings can be quashed for this undue delay especially when the alleged

violation is admitted by the appellants. We are of the opinion that in the peculiar facts of the present case undue delay is a mitigating factor which has

to be considered while imposing a penalty under section 15J of the SEBI Act.

11. The minimum penalty prescribed under section 15A(b) of the SEBI Act is Rs.1 lakh. Considering the aforesaid and the inordinate delay in issuing

the show cause notice and in the peculiar facts and circumstances of the case a penalty of Rs.1 lakh each on the appellants would be just and proper.

12. We accordingly while affirming the impugned order reduce the penalty directing each of the appellant to pay a sum of Rs.1 lakh to the respondent

within four weeks from today. The appeals are partly allowed. Misc. Application nos.586 and 588 of 2020 are also accordingly disposed of. In the

circumstances of the case, parties shall bear their own costs.

13. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally

signed copy sent by fax and/or email.

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