(2022) 07 SEBI CK 0007

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 490, 491, 492, 493, 494, 495, 496 Of 2022, Appeal No. 358, 359, 360, 361, 362, 363, 364 Of 2022

Brijdham Dealcom Pvt. Ltd And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 13(2A), 13(4A), 13(5)

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 12

Citation : (2022) 07 SEBI CK 0007

Hon'ble Judges : Tarun Agarwala Presiding Officer;M. T. Joshi, J;Meera Swarup, Member

Bench : Full Bench

Advocate : Rinku Valanju, Sumit Yadav, Himanshu Agarwal, Vyom Shah, Shefali Shankar, Meghna Arvind

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. All the aforesaid appeals are filed against a common order dated July 21, 2020 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing penalties. Since the issue is common, all the appeals are taken up together.

2. There is a delay in the filing of the appeals. For the reasons stated in the applications and in view of the order of the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) Nos. 3 of 2020 dated March 23, 2020, March 8, 2021, April 27, 2021 and January 10, 2022, the delay is condoned. The Misc. Applications are allowed.

3. Pursuant to an amalgamation / arrangement involving merger of Crescent

Digital Technologies Ltd. and Swift IT Infrastructure and Services Ltd. with PS IT Infrastructure and Services Ltd. on June 5, 2013, 4,25,20,000 equity shares were issued on account of which there was a resultant change in the shareholding pattern of all the eight new promoters, namely, the appellants. Upon verification by SEBI, it was found that the appellants did not make the required disclosure in terms of Regulation 13(2A) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') and Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.

4. Accordingly, a show cause notice was issued alleging as under:-

a. Failed to disclose their shareholding to the company upon becoming a promoter, in terms of Regulation 13(2A) read with Reg. 12 of PIT Regulations 2015,

b. Failed to disclose change in shareholding to the company and the BSE during the investigation period in terms of Regulation 13(4A) read with 13(5) of PIT Regulations and Reg. 12 of PIT Regulations 2015,

c. Made incorrect disclosures to BSE and the company regarding the change in their shareholding during the investigation period under Regulation 13(4A) read with 13(5) of PIT Regulations and Reg. 12 of PIT Regulations 2015 during the investigation period.

5. The AO after considering the material evidence on record found that the appellants had violated the provisions of Regulations 13(2A), 13(4A) and 13(5) of the PIT Regulations and accordingly imposed penalties.

6. We have heard Ms. Rinku Valanju, the learned counsel with Mr. Sumit Yadav, Mr. Himanshu Agarwal, the learned counsel for the appellants and Mr. Vyom Shah, the learned counsel with Ms. Shefali Shankar, Ms. Meghna Arvind, the learned counsel for the respondent and have perused the record.

7. For facility, the provisions of Regulations 13(2A), 13(4A) and 13(5) of the PIT Regulations are extracted hereunder :-

"13(2A). Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group."

"13(4A). Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, 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 under Listing Agreement or under sub-regulation (2A) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.”

“13(5). The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.”

8. Upon hearing the learned counsel for the appellants and upon perusal of the record, we find that admittedly the appellants failed to make disclosures to the stock exchange upon allotment of the shares within the stipulated period. This fact is admitted. Consequently, the imposition of penalties is justified.

9. Similarly, the appellants sold number of shares on several occasions between 2013 and 2014 which resulted in change in the shareholding pattern. Such change is required to be disclosed within two days under Regulation 13(4A) of the PIT Regulations which admittedly was not done and consequently, the appellants violated the provisions of Regulation 13(4A) and 13(5) of the PIT Regulations.

10. The AO has imposed penalties of Rs. 1 lac for each instance of violations under the PIT Regulations. In our opinion, the imposition of Rs. 1 lac each for every instance of violation, in the facts and circumstances of the present case appears to be unjustified and harsh. The violation is of Regulation 13(2A), 13(4A) and consequently, only one penalty could be imposed under each head.

11. While affirming the violation committed by the appellants, we however reduce the penalties to 50% of the amount computed by the AO to be paid by the appellants within four weeks from today. The appeals are partly allowed.

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.