(2021) 05 SEBI CK 0083

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 449 Of 2018

Gauravi Parikh APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 17-05-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 12(2)
Securities Contracts (Regulation) Act, 1956 — Section 21

Citation : (2021) 05 SEBI CK 0083

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

Bench : Division Bench

Advocate : Vinay Chouhan, K. C. Jacob, Joby Mathew, Anshuman Sugla, Arihant Agarwal, Tanya Gupta, Karan Bhosale, Anubhav Ghosh, Ravishekhar Pandey

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellant who is the director in the company against the order dated October 27, 2017 passed by the

Adjudicating Officer (hereinafter referred to as â??AOâ??) of Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??)

imposing a penalty of Rs. 30 lac to be paid by the appellant and other noticees jointly and severally.

2. The facts leading to the filing of the present appeal is, that SEBI started investigation pursuant to a complaint received from the Economic Offence

Wing (EOW) in respect of a default committed by the company Plethico Pharmaceuticals Ltd. in redeeming the Foreign Currency Convertible Bonds

(FCCBs) and failure of the company and its directors in disclosing the default to the stock exchange. Based on the investigation, it was, prima-facie, found that the company, its directors and its compliance officer had violated Clause 21 and Clause 36 of the Listing Agreement read with Section 21

of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') and Clause 2.1 and 7(ii) of the Code of Corporate Disclosure

Practices as well as provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to

as â??PIT Regulationsâ??) and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1992

(hereinafter referred to as â??SAST Regulationsâ??). Accordingly, a show cause notice was issued to seven noticees, namely, the appellant and the

other directors and the compliance officers.

3. The AO after considering the matter found that the appellants, namely, the company and its directors had violated Clause 2.1 and 7(ii) of the Code

of Corporate Disclosure Practices under Schedule II read with Regulation 12(2) of the PIT Regulations and on that score imposed a penalty of Rs. 15

lac. Another Rs. 15 lac was imposed for violation of Clause 21 and Clause 36(7) of the Listing Agreement read with Section 21 of the SCRA.

4. Number of charges were levelled for the violations of the Listing Agreement, but the appellant has confined the arguments on two grounds, namely,

on the findings that the appellant had failed to disclose the raising of the money through FCCBs on October 22, 2007 to the stock exchange and the

appellant had failed to disclose to the stock exchanges the redemption of the FCCBs which was due on October 23, 2012.

5. We have heard Mr. Vinay Chouhan, the learned counsel alongwith Mr. K. C. Jacob, Mr. Joby Mathew, Mr. Anshuman Sugla, Mr. Arihant

Agarwal, Ms. Tanya Gupta, the learned counsel for the appellant and Mr. Karan Bhosale, the learned counsel alogwith Mr. Anubhav Ghosh, Mr.

Ravishekhar Pandey, the learned counsel for the respondent through video conference.

6. On the question as to whether the appellant had failed to disclose the raising of the money through FCCBs on October 22, 2007 to the stock

exchanges is concerned, it was contended that though the necessary disclosure with regard to the receiving of the funds into the accounts of the

company through FCCBs was not disclosed on October 22, 2007 in so many words, nonetheless, the issuance of the FCCBs was duly announced to the stock exchange on October 16, 2007 to the effect that the company had successfully priced an offering of USD 75 million for issue of FCCBs and

further made a disclosure on October 25, 2007 that it had issued USD 75 million zero coupon FCCBs and, therefore, adequate disclosure was made.

This submission in our opinion is incorrect. In the first instance, we find that the disclosure on October 16, 2007 was only with regard to the fact that

the company was going to issue FCCBs and thereby raising some funds but the actual funds so received through issuance of FCCBs was not

disclosed. This was a relevant information and was also a price sensitive information and, therefore, it was required to be disclosed on an immediate

basis under Clause 36 of the Listing Agreement. We further find that the letter dated October 25, 2007 was not sent to the stock exchange but was

sent to SEBI which is not sufficient compliance of making a disclosure on the stock exchange platform under Clause 36 of the Listing Agreement.

Thus, the fact of non-disclosure of raising of the money through FCCBs on October 22, 2007 stands proved.

7. With regard to the second charge that the non-redemption of the FCCBs was not disclosed and was thus, violative of Clause 21 and Clause 36(7)

of the Listing Agreement it was contented that the terms of the FCCBs was amended and the redemption period was extended which fact was

disclosed on the stock exchange platform and, therefore, the question of violation of Clause 21 read with Clause 36(7) of the Listing Agreement does

not arise. In this regard, Clause 21 and Clause 36(7) of the agreement are extracted hereunder :-

â??21. The Company will fix and notify exchange at least twenty-one days in advance of the date on and from which interest on debentures

and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable and will issue simultaneously the

interest warrants and cheques for redemption money or redeemable shares or debentures and bonds, which shall be payable at par at such

centers as may be agreed to between NSE and the Issuer and which shall be collected at par, with collection charges, if any, being borne by

the Issuer, ""in any bank in the country at centers other than the centers agreed to between NSE and the Issuer, so as to reach the holders of

shares, debentures or bonds on or before the date fixed for interest on debentures or bonds or redemption money, as the case may be.â??

â??36. Apart from complying with all specific requirements as above, the Company will keep the Exchanges informed of events, such as

strikes, lock outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of

the event in order to enable the shareholders and the public to appraise the position of the Company Issuer and to avoid the establishment

of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the

Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events which will

have bearing on the performance / operations of the company as well as price sensitive information. The material events may be events such

as:

Â (5) Litigation / dispute with a material impact :. The Company will promptly after the event inform the Exchange of the developments with

respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of

which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

(7) Any other information having bearing on the operational performance of the Â·company as well as price sensitive information which

includes but not restricted to;

(i) Issue of any class of securities.

(vi) Any action which will result in alteration in the terms regarding redemption / cancellation / retirement in whole or in part of any

securities issued by the company

(vii) Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.

The above information should be made public immediately.â??

8. The aforesaid provisions requires that the exchange has to be notified of the redemption amount of the redeemable shares and the simultaneous

issue of interest warrants and cheques of redemption money, etc. In our view, even though the terms of the redemption of those FCCBs were

amended which fact was disclosed to the stock exchange, it was still necessary for the appellant to disclose redemption / non-redemption of the

FCCBs under Clause 21 read with Clause 36(7) of the Listing Agreement. This was an information which was required to be disclosed on an

immediate basis under the Listing Agreement.

9. It was contended that the responsibility of disclosure under the Listing Agreement read with Code of Corporate Disclosures Practice under

Schedule II of the PIT Regulations lies with the compliance officer and whereas the compliance officer has been exonerated, the appellants have

been penalized for which there is no rational basis. It was contended that in view of the decision of this Tribunal in P. G. Electroplast Ltd. & Ors. vs.

SEBI [Appeal No. 281 of 2017 decided on August 2, 2019], the AO was required to show that the appellant was in-charge of the FCCBs and cannot

mechanically impose penalty on all the directors only on the ground that they were directors of the company. Reliance was made on paragraph 20 of

the decision which is extracted hereunder :-

â??20. Further, we are also of the opinion that the direction of the AO to penalize all the directors is wholly unwarranted. Merely because

the appellants are directors does not make them liable. The AO must give a specific finding that all the appellants as Directors were

responsible for the alleged violation and were in charge of the affairs of the Company. In the instant case, there is no shred of evidence to

show that the alleged act was committed by any of the Directors from which a reasonable inference could be drawn that the said Directors

could also be vicariously liable. Vicarious liability can be inferred against a Company and its Directors only if the requisite assertions /

allegations are averred in the Show Cause Notice so as to make the Company and its Directors vicariously liable for the violation of the

provisions of the Act and its Regulations. The assertions / allegations should also include that the Director / Directors were in charge of and

responsible for the business of the Company and by virtue of their position they are liable for penalty. In the instant case, no such

allegations has been made in the SCN.â??

10. In our view, this submission cannot be accepted in as much as we find from a perusal of the annual reports that the appellant was a key

managerial person and apart from being an executive director was also a promoter of company from 2006-2016 and was also a member of the QIP

Issue Committee. Thus the contention that the appellant was not an officer in default and was not involved into day to day affairs cannot be accepted.

The evidence on the record speaks volumes and indicates that the appellant was involved in the day to day affairs of the company.

11. In the light of the aforesaid, we do not find any manifest error in the impugned order. The appeal fails and is dismissed with no order as to costs.

12. 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.

