(2023) 09 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 92 Of 2023

Jagdish Chandra Sharma APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 04-09-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 2(1)(d), 2(1)(g), 2(1)(n), 4, 4(1)
Securities And Exchange Board Of India Act, 1992 — Section 12A(d), 12A(e), 15G(i)

Citation : (2023) 09 SEBI CK 0001

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Kunal Katariya, Anil Shah, Shrishti Shashi, Sumit Rai, Manish Chhangani, Samreen Fatima, Sumit Yadav, Abhay Chauhan

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed questioning the veracity and legality of the order dated October 28, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty of Rs. 10 lakhs under Section 15G(i) of the SEBI Act for insider trading in the scrip of the Company known as Sobha Limited ("the Company" for convenience).

2. The facts leading to the filing of the present appeal is, that the investigation was conducted in the scrip of the Company for the period from 01.09.2017 to 30.11.2017, pursuant to which a show cause notice dated 09.05.2022 was issued to the appellant to show cause as to why an enquiry should not be initiated and why penalty should not be imposed under Section 15G(i) of the SEBI Act for the alleged violation. The allegation levelled against the appellant was that the Company made corporate announcement on 06.10.2017 regarding an update on

the real estate operation of the Company for the quarter ended 30.09.2017 on the Bombay Stock Exchange and the National Stock Exchange of India Limited. The corporate announcement revealed that the Company during its second quarter had achieved a new sales volume which was up by 5.6% as compared to the preceding quarter. It was also alleged that the real estate operational update was also part of the financial results of the Company for the quarter ended 30.09.2017. It was alleged that the appellant being a Vice Chairman and Managing Director of the Company and also a Member of the Audit Committee was an insider as per the SEBI (Prohibition of Insider Trading Regulations), 2015 ("PIT Regulations" for convenience) and had inside information inspite of which he bought 3,000 shares of the Company on 06.10.2017 which was violative of Regulation 4 of the PIT Regulations.

3. The appellant filed its reply and admitted that he was an insider in terms of the definition of the term 'insider' as defined under Regulation 2(1)(g) of the PIT Regulations. The appellant also admitted that he had bought shares during the Unpublished Price Sensitive Information ("UPSI") period but contended that he had taken pre-clearance from the Compliance Officer and also made the necessary disclosures regarding its purchases under the PIT Regulations and, therefore, he has not committed any violation of the PIT Regulations or of the SEBI Act. The appellant further contended that he has not sold the shares which he has purchased and therefore cannot be found guilty of the charge of trading while in possession of inside information.

4. The AO after considering the material evidence on record held that the real estate operation update was an UPSI as per Regulation 2(1)(n) of the PIT Regulations. The appellant was also an insider as per Regulation 2(1)(g) of the PIT Regulations. The AO also found that he was also a connected person in terms of Regulation 2(1)(d) of the PIT Regulations. The AO came to the conclusion that the purchases made by the appellant was motivated by the real estate operational data which information he had prior to the announcement and based on this UPSI he traded and therefore obtaining necessary pre-clearance and meeting requisite disclosure was not sufficient to prove his innocence. The AO came to the conclusion that since the appellant has access to the price sensitive information the trades executed by him during the UPSI period was violative of Regulation 4 of the PIT Regulation and, consequently, imposed a penalty of Rs. 10 lakhs.

5. We have heard Shri Kunal Katariya, the learned counsel for the appellant and Shri Sumit Rai, the learned counsel for the respondent.

6. It was urged that the real estate operational data was not a price sensitive information and, therefore, trades executed pursuant to this information could not be said to be a price sensitive information and, therefore, the appellant cannot be termed as an insider trading while in possession of the price sensitive information. It was also urged that pre-clearance was taken and requisite disclosures were made and, therefore, the appellant cannot be charged for

violating Regulation 4 of the PIT Regulations.

7. Having heard the learned counsel for the parties, we find that the appellant was Vice Chairman and Managing Director of the Company at the relevant moment of time. He was also a Member of the Audit Committee and was aware of the affairs of the Company. The corporate announcement regarding update on the real estate operation of the Company was announced on 06.10.2017 but the appellant in his capacity of being the Vice Chairman and Managing Director was obviously aware prior to the announcement of the sales volume and total sales value of the Company. This increase in the sales volume was a price sensitive information and the appellant was privy to this information. Thus, the appellant was not only a 'connected person' but was also an 'insider' in terms of the Regulation 2(1)(g) of the PIT Regulations.

8. The corporate announcement regarding update on the real estate operation of the Company was a price sensitive information. UPSI has been defined under Regulation 2(1)(n) which means any information that is not generally available and which upon becoming generally available is likely the materially affect the price of the securities. In the instant case, the real estate operational update were part of the financial results for the quarter ended 30.09.2017. It was a price sensitive information and upon announcement it had a material impact in as much as the price of the scrip increased.

9. The appellant was in possession of this price sensitive information and had traded in the scrip during the period in question. In our opinion, obtaining necessary pre clearance and making requisite disclosures were not enough to show that his trades were not motivated by UPSI. Regulation 4 of the PIT Regulations prohibits any insider from trading in securities while in possession of UPSI. The proviso to Regulation 4 of the PIT Regulations gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. In the instant case, the appellant is an insider and, therefore, it was upon him to prove that the trades were not motivated by UPSI. We find that no plausible explanation has been given in this regard.

10. Consequently, we are of the opinion, that the appellant had traded in the scrip of the Company while in possession of UPSI and had violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations.

11. In view of the aforesaid, we do not find any error in the impugned order. The appeal fails and 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.