(2021) 08 SEBI CK 0124

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 75 Of 2020, Appeal No. 78 Of 2020

Jagdish Kumar Arora APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 06-08-2021

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 Act, 1992 — Section 15A(b)

Citation : (2021) 08 SEBI CK 0124

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

Bench : Division Bench

Advocate : V. M. Singh, Bhumika Batra, Megha Diddi, Mayuresh D. Nagle, Abhiraj Arora, Rashi Dalmia, Karthik Narayan

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. There is a delay of 87 days in the filing of the appeal. For the reasons stated in the application, the delay is condoned. The Misc. Application is

allowed.

2. The present appeal has been filed against the order dated September 27, 2019 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. 10 lac for violation of

Regulations 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 Regulationsâ??).

3. A show cause notice dated June 29, 2018 was issued alleging that the

appellant being a promoter had purchased shares of the company from

September 16, 2011 to February 25, 2013 and that there was a delay in disclosing the acquisition of shares which ranged from one day to 39 days. It

was alleged that Regulation 13(4A) and 13(5) of the PIT Regulations requires that if there is a change in the shareholding exceeding Rs. 5 lac in value

or 25000 shares or 1% of the total shareholding or the voting rights of the company, then a disclosure in Form D of such change is required to be filed

in the company as well as in the stock exchange within two days of the receipt of allotment of shares or acquisition of shares as the case may be. It

was contended that there was a delay in the disclosure made by the appellant and, therefore, the appellant was directed to show cause as to why an

appropriate 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??) for violation of Regulations 13(4A) and 13(5) of the PIT Regulations.

4. The appellant filed a reply contending that the alleged acquisition is five years old and at that moment of time the mode of sending the disclosure

was by registered post and that the delay is attributable to the delay of the Department of Post. It was contended that on account of lapse of time, the

appellant is not in a position to provide the postal receipts and, therefore, is not in a position to intimate as to when Form D was sent by registered post.

It was contended that by a letter dated November 24, 2011, the appellant had in any case informed the stock exchange that the promoters and

promoter group were in the process of increasing their shareholding while keeping it less than 25% of the equity capital and, therefore, contended that

there was no ulterior motive of the appellant in not disclosing the acquisition within the stipulated period and, in fact, the stock exchange was made

aware from the very beginning about the intention of the appellant to purchase the shares. It was contended that on account of an inordinate delay the

proceedings should be dropped.

5. The AO after considering the material evidence on record held that there is no delay in the initiation of the proceedings and that the delay / passage

of time has no bearing on the ability of the appellant to present the correct picture. The AO further held that there was a statutory obligation to

disclose the acquisition of the shareholding in a prescribed manner which has not been done. The AO in paragraph No. 23 found that the violation was

venial in nature. But contended that since there was a statutory violation of the regulations and even though no undue profits or gains were made by

the appellants, nonetheless, imposed a penalty of Rs. 10 lac.

6. The appellant being aggrieved by the said order has filed the present appeal.

7. We have heard Mr. V. M. Singh, the learned counsel with Ms. Bhumika Batra, Ms. Megha Diddi, the learned counsel for the appellant and Mr.

Mayuresh D. Nagle, the learned counsel with Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, the learned counsel for the respondent.

8. Having heard the learned counsel for the parties, we find that the fact that the appellant had intimated the stock exchange vide letter dated

November 24, 2011 and, in any case, the alleged delays were known to the stock exchange in 2011 from the very beginning. The violation, if any, was

known from day one. Thus, in our opinion, there is an inordinate delay in the issuance of the show cause notice on June 29, 2018 i.e. more than six

years after the date of the event. This delay in the initiation of the proceedings has caused prejudice to the appellant since the proof of sending the

information by registered post was no longer made available to him on account of passage of time. The fact that the information in the requisite Form

D was sent is not disputed by the respondent.

9. The contention that the intimation to the stock exchange was given belatedly is erroneous in as much as the stock exchange had provided the date

when it had received the Form D. The respondent should have taken into consideration the time taken by the postal department to deliver the letter

from the date of dispatch which period should have been excluded. The appellant is a resident of Bhopal and the information is required to be sent to

Mumbai. A letter which is sent by the registered post will take some time anywhere between two days to a week at least in the delivery of the

service. This aspect has not been considered by the respondent and, therefore, compliance of the regulations within two days from the date of

acquisition becomes unrealistic especially for those investors who are residing outside Mumbai.

10. The AO itself has found that the violation is venial in nature. Venial means not very serious and the action which is pardonable or forgivable. Thus,

imposition of a penalty of Rs. 10 lac in the circumstances of the case appears to be too harsh and excessive.

11. In view of the aforesaid, we are of the opinion that in the absence of any proof of the date of dispatch being filed by the appellant, the presumption

that there has been a delay in the disclosure is obvious. But we are also of the opinion that the imposition of the penalty is excessive in the instant

case. We find from the impugned order that the company had also delayed in making the disclosure to the stock exchange has been penalized for a

sum of Rs. 2 lac. Considering the fact that the AO has also found that neither there was any undue profit made by the appellant nor was there any

disproportionate gain or unfair advantage caused to the appellant nor any loss was caused to the investors we are of the opinion that a token penalty of

Rs. 2 lac would be just and appropriate.

12. In view of the aforesaid, while affirming the violation of Regulations 13(4A) and 13(5) of the PIT Regulations, we reduce the penalty from Rs. 10

lac to Rs. 2 lac which shall be paid by the appellant within four weeks from today. In the facts and circumstances of the case, the appeal is partly

allowed with no order as to 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.