(2023) 04 SEBI CK 0071

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 367 Of 2023, Appeal No.339 Of 2023

Karuturi Subrahmany Chowdary And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 24-04-2023

Acts Referred:

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

Citation : (2023) 04 SEBI CK 0071

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

Bench : Division Bench

Advocate : Kunal Katariya, Anil Shah, Mamta Chaoji, Pradeep Sancheti, Manish Chhangani, Samreen Fatima, Sumit Yadav

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

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

2. The appellants have filed the present appeal challenging the order dated December 29, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing penalties under Section 15G and Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') for insider trading.

3. The facts leading to the filing of the present appeal is, that the appellants are connected to Apex Frozen Foods Ltd. in different capacities. The appellant nos. 1 is a promoter and whole time director of the company, the appellant nos. 2 is the

promoter of the company, appellant nos. 3 is the key managerial person and designated person and appellant nos. 4 is the accounts manager in the company.

4. SEBI conducted an investigation in the scrip of Apex Frozen Foods Ltd. to ascertain whether entities have traded in the scrip of the company while in possession of UPSI thereby violating the provisions of the SEBI Act and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992) and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations, 2015). During investigation, it was found that the company made a profit of Rs. 2204.32 lakh in the quarter ended September 2017 and in the quarter ended December 2017, the company made a profit of Rs. 1883.79 lakh.

5. The investigation led to an observation that the promoters / directors / key managerial person by virtue of their position in the company had information with respect to the positive outcome of the financial results before the end of the quarter and were, thus, privy to the unpublished price sensitive information (hereinafter referred to as 'UPSI') and while in possession of price sensitive information, the appellants had traded in the shares of the company and made unlawful gains. The AO came to the conclusion that the appellants were insiders as defined under the PIT Regulations and they traded in the scrip of the company while in possession of the UPSI thereby violating Section 12A(d) and (e) of the SEBI Act read with Regulation 4(1) and 4(2) of the PIT Regulations, 2015. The AO came to the conclusion that the appellants were in possession of UPSI and were insiders and had traded while in possession of UPSI during the UPSI period and consequently imposed the penalties under Section 15G and 15HB of the SEBI Act.

6. We have heard Mr. Kunal Katariya, the learned counsel with Mr. Anil Shah, Ms. Mamta Chaoji, the learned counsel for the appellants and Mr. Pradeep Sancheti, the learned senior counsel with Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, the learned counsel for the respondent.

7. At the outset, the learned counsel for the appellants fairly conceded that the appellants are insiders given the evidence which has come on record. The appellants had traded in the scrip of the company while in possession of UPSI. The only contention raised was that as per the evidence, the AO has himself calculated that the appellant nos. 1 made unlawful gain of Rs. 1,00,000/-, appellant nos. 2 made unlawful gain of Rs. 2,69,146/-, appellant nos. 3 made unlawful gain of Rs. 8,57,076/- and appellant nos. 4 made unlawful gain of Rs. 1,11,148/-. It was contended that in view of the aforesaid unlawful gains calculated by the AO, the imposition of penalty imposed under Section 15G of the SEBI Act was harsh and excessive and, therefore, the quantum of penalty should be reduced.

8. Having heard the learned counsel for the parties, we find that the AO was

justified in imposing the penalty as depicted in the impugned order. In this regard, Section 15G of the SEBI Act states as follows :-

"15G. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher]."

9. A perusal of the aforesaid indicates that the penalty for insider trading is a minimum of Rs. 10 lakh which will extend to Rs. 25 crore or three times the amount of profits made out of the insider trading whichever is higher. In the instant case, the AO has imposed a penalty of Rs. 10 lakh each on appellant nos. 1, 2 and 4 and Rs. 17,14,000/- on appellant nos. 3. The quantum of penalty was in consonance with the provisions of Section 15G of the SEBI Act. The AO has rightly quantified the penalty in which, we do not find any manifest error.

10. In view of the aforesaid, the appeal fails and is dismissed with no order as to costs.

11. 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.