(2020) 10 SEBI CK 0126

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.297 Of 2020

Rajeev Vasant Sheth And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 38 Rule 5, Order 38 Rule 6, Order 38 Rule 7, Order 38 Rule 8, Order 38 Rule 9, Order 38 Rule 10, Order 38 Rule 11, Order 38 Rule 12, Order 38 Rule13
Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 10
Securities And Exchange Board Of India Act, 1992 — Section 11(1), 11(4)(d), 11B(1)

Citation : (2020) 10 SEBI CK 0126

Hon'ble Judges : Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Ankit Lohia, Ryna Karani, Rafique A. Dada, Anubhav Ghosh, Ravishekhar Pandey

Final Decision : Dismissed

Judgement

Table-11,,

Name,PAN Number,Unlawful loss avoided (in Rs.)

Rajeev Vasant Sheth,AAFPS7760Q,"1,26,59,481.50

Aarti Sheth,AAGPS3762H,"2,09,930.40

Divya Sheth,AAHPS8431L,"9,62,060.70

their promoter shareholding for infusing funds into the company and there was genuine reasons for the actions of the appellants as held by this,,

Tribunal in the matter of Abhijit Rajan vs. SEBI (Appeal No. 232 of 2016 decided on 08.11. 2019).,,

6. It was further contended by the learned counsel for the appellants that a

similar impounding direction was passed in the matter of Dr. Udayant,,

Malhoutra vs. SEBI (Appeal No. 145 of 2020 decided on 27.06.2020) which was quashed and set aside by this Tribunal. Though, SEBI has",,

challenged the said order before the Apex Court no stay has been granted and, therefore, as on date the ruling of this Tribunal is the law. Therefore,",,

given that the aforesaid orders of this Tribunal are in place it was incumbent on SEBI not to pass an ex-parte impounding order in the present matter.,,

7. The learned senior counsel Shri Dada, representing SEBI, however, submitted that the impugned order has been passed with adequate reasons. It is",,

on the record that company has gone into liquidation and the endeavor of the appellants was to become unsecured creditors by lending funds to the,,

company as under liquidation promoter shareholders come last in the order of waterfall. There is sufficient evidence to show that the appellants?,,

gained from using the advance information relating to adverse profitability of the company and, therefore, trading while in possession of UPSI.",,

Moreover, the appellants have violated code of conduct for insider since it is an admitted fact that they did not pre-clear the trades. There is",,

investigation by multiple agencies in the matter. Therefore, given the fact that the Company has gone under liquidation and there are only a few shares",,

left with appellant no. 1 it was imperative for SEBI to secure the amount of loss averted by the appellants by trading as insiders while in possession of,,

UPSI. Therefore, the learned counsel submitted that if the appellants cooperate and provide all the relevant information a final order will be passed at",,

the earliest possible time and this Tribunal may not interfere with the impugned order. In any case, it was urged that the interest of the investors need",,

to be protected.,,

8. Having heard the learned counsel for the parties at reasonable length, we proceed to dispose of the appeal at the stage of admission itself without",,

calling for reply/rejoinder etc. as this matter is squarely covered by our orders in Abhijit Rajan (supra) and Dr. Udayant Malhoutra (supra. The,,

relevant paragraph in our Order of Abhijit Rajan (supra) is reproduced below:-,,

â??13(2) Further, even if it is assumed that the information was is a price sensitive information, still the appellant cannot be blamed of",,

insider trading for the reasons that he did not trade â??on the basis of the informationâ?. The appellant was able to show his dire need to,, infuse fund in the entity under the master restructuring agreement to implement a CDR package as detailed supra. He was even required to,,

sell his agricultural land and flat details of which are already given hereinabove. In these circumstances he sold the shares. In the case of,,

Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of,,

UPSI as they had a necessity to sell the shares. Similar is the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided,,

by this Tribunal.â??,,

In the present appeal before us, however, since all the facts are yet to be analysed by the respondent SEBI upon hearing the appellant, we do not",,

propose to make any comment on the merit of the case at this stage.,,

9. The relevant paragraphs in the Order of Dr. Udayant Malhoutra (supra) are reproduced below: -,,

â??9. We find that the only reason directing the appellant to deposit the alleged notional gain / loss in an Escrow Account is based on the finding given,,

in paragraph 22 of the impugned order, namely, that â??it is possible that the entity may divert the notional gainâ? and that if an interim order is",,

not passed it would defeat the effective implementation of the disgorgement, if any, to be passed on merits after adjudication. In our",,

opinion, the reasoning given by the WTM justifying its action to pass an ex-parte interim order is patently erroneous and cannot be",,

sustained. On one hand, we find that only a show cause notice has been issued and the matter has not been adjudicated on merits but the",,

appellant, on the other hand, has been directed to deposit the possible disgorgement amount in advance. We are of the opinion that no",,

amount towards disgorgement can be directed to be deposited in advance unless it is adjudicated and quantified unless there is some,,

evidence to show and justify the action taken. An order of the like nature can only be passed during the pendency of the proceedings and,,

such orders cannot be passed at the time of initiation of the proceedings. Further, no order of the like nature can be passed without",,

recording its satisfaction and cannot be based on the basis of possibility.,,

10. In this regard, we may refer to the provisions of Order 38 Rule 5 to 13 of the Code of Civil Procedure, 1908 which lays down the",,

parameters for attachment before judgment. The said principles are fully applicable in the instant case. The object of attachment before,,

judgment is to prevent any attempt on the part of the appellant to defeat the realization of the final order on disgorgement that may be,,

passed against the appellant. But this principle applies only when it is found that the appellant is about to dispose of the property in,,

question. Further, this principle can only be applied when there is evidence to show that the appellant has acted, or is about to act with the",,

intent to obstruct or delay the adjudication of the proceedings that may be passed against him. We are of the opinion that there is no finding,,

that the appellant will remove the property or will dispose of all the property or that he would obstruct the proceedings or that he would,,

delay the proceedings pursuant to the show cause notice. In the absence of any such finding, the ex-parte interim order cannot be sustained",,

especially when the trades were of 2016 and from 2016 till the date of the impugned order there is no evidence to show that the appellant,,

was trying to divert the alleged notional gain/loss.,,

11. As held in North End Foods Marketing Pvt. Ltd. (supra) there is no real urgency in the matter to pass an ex-parte interim order,,

especially during the pandemic period. There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases,,

SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters. In the instant,,

case, we do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the",,

prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (â??PIT",,

Regulationsâ?? for short) without considering the balance of convenience or irreparable injury.,,

12. In the light of the aforesaid, the impugned order cannot be sustained and the same is quashed at the admission stage itself without",,

calling for a counter affidavit except the show cause notice. The appeal is allowed. The Misc. Application No. 154 of 2020 and Misc.,,

Application No. 155 of 2020 are accordingly disposed off. We further direct that the appellant to file a reply to the show cause notice within,, four weeks from today. The respondent will decide the matter finally after giving an opportunity of hearing to the appellant either through,,

physical hearing or through video conference within six months thereafter. During the interim period, in order to safeguard the interests of",,

the respondent and more particularly the interest of the investors in the securities market and also to protect the integrity of the securities,,

market, we direct the appellant to give an undertaking to the respondent within four weeks from today that he will not alienate 50% of his",,

total shareholdings of the company DTL held as on date, as stated by the learned counsel for the appellant. In the circumstances of the case",,

parties shall bear their own costs.â??,,

10. Accordingly, we quash and set aside the impugned Order, except as a Show Cause Notice (SCN), upon deposit of the amounts as specified",,

below. Appellants are directed to file a reply to the SCN within four weeks from today. The respondent will decide the matter finally after giving an,,

opportunity of hearing to the appellant either through physical hearing or through video conference within six months thereafter. In the interim, in order",,

to safeguard the interests of the investors in the securities market and also to protect the integrity of the securities market, we further direct the",,

appellants to deposit the specified amounts, as given in Table 11 of the impugned Order and as reproduced in para 1 of this Order, in an interest",,

bearing Escrow account with SEBI within four weeks from today. No orders on costs.,,

11. 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 Presiding Officer 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.,,

