
(2020) 01 SEBI CK 0023

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 597 Of 2019, Appeal No.554 Of 2019

Rushabh Jitendra Shah

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 12(1), 13(4), 13(4A), 13(5)
Securities And Exchange Board Of India(Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 29(2), 29(3)
Securities And Exchange Board Of India Act, 1992 — Section 15A(b), 15HB, 15J

Citation : (2020) 01 SEBI CK 0023

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Aseem Naphade, Deepak Jamsandekar, Abhiraj Arora

Final Decision : Dismissed

Judgement

Dr. C.K.G. Nair, Member

Misc. Application No. 597 of 2019:-

1. There is a delay of 109 days in filing the appeal. For the reasons stated in the Misc. Application, the delay in filing the appeal is condoned. The

Misc. Application is allowed.

Appeal No. 554 of 2019:-

1. This appeal has been filed to challenge the order dated April 30, 2019 passed by the Adjudicating Officer (â??AOâ?? for short) of Securities and

Exchange Board of India (â??SEBIâ?? for short). By the said order penalty of Rs. 20 lakh has been imposed under Section 15A(b) of SEBI Act for

violation of Regulations 13(4), 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (â??PIT Regulationâ?? for short)

and Rs. 5 lakh under the provisions of Section 15HB of the SEBI Act for violation of the Model Code of Conduct prescribed by Regulation 12(1)

(Schedule 1 Part A, para 4.2 of PIT Regulations).

2. The appellant is the Managing Director of M/s. Aadi Industries (â?? Companyâ??). A number of transfers between the appellant and one Minesh

D. Shah (another noticee in the same matter) in the shares of the Company between January 2013 to June 2014 having not being disclosed to the

Stock Exchange resulted in the violation of the stated provisions of the PIT Regulations and Model Code of Conduct prescribed by Regulation 12(1) of

the PIT Regulations and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 (â??SAST

Regulationsâ?? for short). Accordingly, a show cause notice was issued on June 4, 2018 directing the appellant (and other noticee) to show cause as

to why penalty under Section 15A(b) and Section 15HB of the SEBI Act should not be imposed.

3. The appellantâ??s contention was that a loan was taken from Minesh D. Shah on account of the losses of the Company and consequently, the

said shares were transferred. It was also stated that after the issuance of the impugned order, a settlement application was also filed before SEBI

which was returned on account of deficiencies.

4. The learned counsel Shri. Aseem Naphade appearing on behalf of the appellant submitted that the alleged violation was unintentional; since it is

multiple share transactions between the same two parties and that too in small quantities on different dates it should be treated as one offence and not

a repetitive offence; an e-mail was sent to Bombay Stock Exchange on July 27, 2018 making the required disclosure though the said e-mail was not

submitted to SEBI and in any case since the impugned order specifically states that the losses caused on account of the alleged non-disclosure cannot

be quantified nor the gain accrued to the appellant also cannot be quantified and the default is not repetitive in nature and is at best only a continuing

offence the penalty of Rs. 25 lakh imposed on the appellant is too harsh and disproportionate.

5. The learned counsel for the appellant also relied on a decision of the Supreme Court in *Adjudicating Officer, SEBI vs Bhavesh Pabari*, (2019) 5

SCC 90 to support the contention that the offence is not a repetitive one and

factors under Section 15J by SEBI Act are not exhaustive. Further, the learned counsel for the appellant also relied on Narmada Chematur Petrochemicals Ltd. vs. Adjudicating & Enquiry Officer, SEBI 2005 SCC OnLine SAT 74 wherein for a similar offence of a first time nature penalty was reduced from Rs. 75,000/- to Rs. 10,000/- etc.

6. The learned counsel Shri Abhiraj Arora, appearing on behalf of the respondent SEBI on the other hand contended that the violation by the appellant is repetitive as every transaction under question had to be disclosed. There were 28 transactions to be disclosed under PIT Regulations, 17 under SAST Regulations and 11 under the Code of Conduct and therefore collectively there are 66 violations. Moreover, the penalty imposable for each violation ranges from Rs. 1 lakh to Rs. 1 crore and therefore the total penalty of Rs. 25 lakh imposed on the appellant is far from being disproportionate or harsh.

7. Having heard the learned counsel for the parties and having perused the documents we find no merit in the appeal. Records clearly indicate that there are number of non-disclosures from the side of the appellant. Appellant was the Managing Director of the Company whose shares had been transferred. The submission that the appellant had committed only a single violation cannot be accepted as on each occasion when the shares were transferred as detailed in the show cause notice as well as in the impugned order the appellant was liable to make the disclosures which are admittedly not done. Given the number of times the violations have been committed we find no error in the impugned order for finding the violation repetitive in nature. Further, the submission that an e-mail was sent on July 27, 2018 after 4 years of the transactions disclosing the transactions is also an afterthought and admittedly not produced before the AO of SEBI.

8. Given these factors we do not find any justifiable reason to interfere with the impugned order. The penalty of Rs. 25 lakh imposed is not too harsh and disproportionate in the given circumstances and the provisions governing imposition of penalties for the stated violations. The judgments relied on by the appellant is distinguishable on facts.

9. In the result, the appeal is dismissed with no order on costs.