(2021) 04 SEBI CK 0140

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.74 Of 2020, Appeal No.175 Of 2020

Snehlata R. Tiwari APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 28-04-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 9(1)
Securities And Exchange Board Of India Act, 1992 — Section 15HB

Citation : (2021) 04 SEBI CK 0140

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

Bench : Division Bench

Advocate : Snehlata R. Tiwari, Abhiraj Arora, Karthik Narayan, Rashi Dalmia

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal challenging the order dated 20th March, 2019 whereby the Adjudicating Officer has imposed a penalty of

Rs.1 lakh for violation of Regulation 9(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter

referred to as â??PIT Insider Regulationâ??) read with the Schedule B of the Code of Conduct.

2. There is a delay in the filing of the appeal. For the reasons stated in the application, the delay is condoned. The application is allowed.

3. We have heard the appellant in person and Mr. Abiraj Arora, learned counsel for the respondent.

4. The facts leading to the filing of the present appeal is, that Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??)

conducted an investigation in the scrip of Kushal Tradelink Ltd. for possible violation of insider trading under the PIT Regulation, 2015 and Securities

and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter

referred to as â??PFUTP Regulations, 2003â??). During the investigation, it was found that four designated employees of the Company had entered

into transactions during the period when the window was closed and had also entered into contra trades. Accordingly, adjudication proceedings were

initiated against the four designated employees including the appellant.

5. In so far as the appellant is concerned, she was appointed as the Accounts Officers and was accordingly a â??designated personâ??. The charge

against the appellant is, that she entered into opposite transaction (contra trades) ie, sale or purchase of shares of the Company during six months

period following prior transaction and, therefore, it was violative of Regulation 9(1) of the PIT Regulations read with Schedule B of the Code of

Conduct.

6. In the instant case, admittedly the appellant entered into contra trades, namely, she bought 162 shares of the Company and, subsequently, sold 65

shares within a period of six months from the date of two transactions and earned a profit of Rs.348/. This profit is by itself insignificant and is also

admitted by the Adjudicating Officer in para no.22 of the impugned order.

7. The Adjudicating Officer inspite of holding that the profit earned is insignificant went on to hold that since there is a violation of the Code of

Conduct therefore penalty of Rs.1 lakh was imposed under Section 15HB of the Securities and Exchange Board of India Act, 1992.

8. In our opinion, the imposition of penalty of Rs.1 lakh is wholly erroneous and cannot be sustained for the following reasons.

9. In this regard, Regulation 9(1) and Clause 10 of the Schedule B of the Code of Conduct is extracted hereunder:-

â??Regulation 9(1) of SEBI (PIT) Regulations.

(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and

report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum

standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.â??

â??Clause 10 of the Schedule B of the Code of Conduct

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who

is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application

of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra

trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged

for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.â??

10. Regulation 9(1) prescribes that designated persons are required to maintain the minimum standards which is set out in Schedule B of the

Regulations.

11. Schedule B prescribes the minimum standards for Code of Conduct of various officers and designated employees.

Clause 10 of the Code of Conduct provides that a designated person cannot trade or execute contra trades within six months but such restrictions can

be relaxed by the Compliance Officer. Further, if a contra trade is executed inadvertently or otherwise in violation of such restriction in that event the

profit earned from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund

administered by the Board under the Act.

12. Clause 10 of the Code of Conduct is thus clear, namely, if a contra trade is executed inadvertently or otherwise the profits earned from such

trades shall be liable to be disgorged. The provisions of Section 15HB of the SEBI Act in the instant case is thus not applicable in as much as the said

provision only applies when no separate penalty is provided. For facility, Section 15HB of the SEBI Act is extracted hereunder:-

â??15HB. Penalty for contravention where no separate penalty has been provided.-

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for

which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend

to one crore rupees.â??

13. In the instant case, since Clause 10 provides a mechanism for disgorgement of the profit earned. In that case, only the profit earned could have

been disgorged and no separate penalty could have been imposed under Section 15HB.

14. In the light of the aforesaid, the impugned order imposing a penalty of Rs. 1 lakh cannot be sustained and while affirming the violation of

Regulation 9(1) read with Clause 10 of Schedule B of the Code of Conduct, the penalty of Rs.1 lakh is reduced to the profit earned by the appellant

which admittedly in the instant case is Rs.348/. The respondent will recover a sum of Rs.348/ alongwith interest at the rate of eight percent per annum

from the date of passing of the impugned order. It has been brought to our notice that pursuant to impugned order the bank account of the appellant

has been attached. We, accordingly, direct the respondent to recover the aforesaid amount alongwith interest and release the bank account within two

weeks from today. In the circumstances of the case, the appeal is partly allowed with no order as to costs.

15. 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.

