
(2019) 12 SEBI CK 0015

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 458 Of 2019, Appeal No.380 Of 2019

Sweta Virendra Shah

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 04-12-2019

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 15I, 15J

Citation : (2019) 12 SEBI CK 0015

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

Bench : Division Bench

Advocate : Jinendra D. Parikh, Chirag Bhavsar, Eram Quraishi

Final Decision : Partly Allowed

Judgement

M.T. Joshi, J

1. Aggrieved by the imposition of penalty of Rs.2 lakh for violation of provisions of Regulation 9(1) read with Schedule B of the Securities and

Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") the present appeal is preferred.

2. Appellant Swetha was working as Accounts Manager with Kushal Tradelink Ltd. (hereinafter referred to as the "Company") from 1st

February, 2016. She was a Designated Employee under the PIT Regulations. It was found that she had entered into opposite transactions (contra

trade) i.e. sell or buy shares of the Company during the six months period following the prior transaction. Further, she had traded twice in the scrip of

the Company during the period when the trading window remained closed in

violation of the provisions of the Code of Conduct as prescribed under Regulation 9(1) read with Schedule B of the PIT Regulations.

3. It is an admitted fact that while the trading window remained closed from October 19, 2016 to November 16, 2016 the appellant had purchased 200 shares of the Company. Similarly, when the trading window was closed for the period between December 21, 2016 to January 7, 2017 she again purchased 150 shares of the Company.

4. The appellant submitted before the Adjudicating Officer that she had joined the Company in February, 2016 and was made permanent in April, 2017. Her scope of working was restricted to the compliance of direct taxes. She had no access to any financial data which was price sensitive. The

total quantum of transaction executed by her was below the threshold limit as prescribed under the Code of Internal Procedures and Conduct for

Prohibition of Insider Trading. The contra trade was executed only with investment motive and not for any speculation. She further submitted that as

she had not carried any of the transactions with any speculative intention the proceedings may be dropped. Alternatively, she submitted that she may

be directed to contribute in Investor Education Protection Fund the profit earned by her.

5. The Adjudicating Officer found that the submission of the appellant are against the provisions of the model Code of Conduct as well as the PIT

Regulations as the issue of threshold limit is irrelevant to the present issue. Therefore taking into consideration the provisions of Section 15HB and 15J

of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and finding that the amount of disproportionate

gain or unfair advantage cannot be quantified, imposed a penalty of Rs.2 lakhs. Hence the present appeal.

6. Learned counsel for the appellant submitted that the appellant was a newly appointed officer during that period.

She was unaware of the Model Code of Conduct. The trades entered into by her are very miniscule and hence he submitted that the appeal may be allowed.

7. On the other hand, learned counsel for the respondent submits that the violation of the provisions is clearly established. The appellant was

Designated Officer during the period and, therefore, as per the PIT Regulations

alongwith the Model Code of Conduct there cannot be any escape from the liability.

8. Having heard both the sides, in our view though the appellant is found to have violated the provisions as detailed above considering the miniscule transactions carried by her and finding that she was a new entrant in the Company, the penalty imposed upon her is rather disproportionate.

9. Section 15J of the SEBI Act provides as under:-

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely :â?

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

Â (c) the repetitive nature of the default.

10. The Adjudicating Officer had observed that disproportionate gain or unfair advantage made by the appellant cannot be quantified. Similarly, the

loss suffered by the investor as a result of the appellantâ??s default cannot also be quantified. Taking into consideration all these facts, in our view

instead of penalty of Rs.2 lakhs imposed by the respondent penalty of Rs.1 lakh would be just and sufficient.

11. The appeal is therefore partly allowed without any order as to costs. The penalty imposed by the Adjudicating Officer at Rs.2 lakhs is reduced to

Rs.1 lakh. Misc. Application for stay is disposed of.