(2022) 12 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 14 Of 2022

Uday Agarwal APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 2(1)(g), 4(1), 9(1)
Securities And Exchange Board Of India Act, 1992 — Section 15G, 15G(iii), 15HB

Citation : (2022) 12 SEBI CK 0002

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

Bench : Division Bench

Advocate : Vinay Chauhan, Harish Khedkar, Gaurav Joshi, Abhiraj Arora, Shourya Tanay

Final Decision : Partly Allowed

Judgement

Meera Swarup, Technical Member

1. The present appeal has been filed by Mr. Uday Agarwal (Appellant) being aggrieved by the Order No. Order/PM/GD/2021-22/14253 dated November 23, 2021 passed by the Adjudicating Officer ("AO") of the respondent, Securities and Exchange Board of India ("SEBI") imposing a penalty of Rs. 15,00,000/- under Section 15G and Rs. 10,00,000/- under Section 15HB of the SEBI Act, 1992 for violation of Regulation 4(1) and Clauses 4,6 and 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations" for short).

2. Based on an examination conducted by the Respondent in the dealings in the scrip of L&T Finance Holdings Ltd. ("Company" for short) during the period April 15, 2018 to October 15, 2018, adjudication proceedings were initiated against the Appellant for alleged violation of PIT Regulations. A show cause notice (SCN)

was issued to the Appellant on April 16, 2021 for the alleged violation of Regulation 4(1) and Clauses 4,6 and 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of PIT Regulations. It was alleged that the Appellant being an insider and a designated person traded in the scrip of L&T Finance Holdings Ltd. when in possession of Unpublished Price Sensitive Information ("UPSI" for short). The Appellant traded in the scrip of L&T Finance Holdings Ltd. in F&O segment during quarters ending June 2018 and September 2018 during the period when the trading window was closed. Further, the Appellant did not take pre-clearance to trade as required under Clause 6 of the Minimum Standards for Code of Conduct to Regulate Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of PIT Regulations and traded repeatedly in scrip of L&T Finance Holdings Ltd. during quarters ending June 2018, September 2018 and December 2018. The Appellant also entered into contra trades in the scrip of L&T Finance Holdings Ltd. in F&O segment during the four quarters of 2018.

3. The Appellant denied the allegations given in the SCN in his reply dated October 27, 2021. He stated that during the investigation period he was working at a junior level as Team Manager looking after Rural Business MIS of the Company. The Company had created a common email group consisting of various employees belonging to multiple departments for the purpose of preparation of financial results. The appellant was part of the group and emails were marked to him also by virtue of handling the preparation of MIS pertaining to Rural Business. He was not concerned with information of other departments. He had been informed during January 2018 by the Company that he had been made "Designated Person" and due to sheer ignorance and inexperience he did not understand the implications of being made a "Designated Person" including those regarding disclosures and restrictions on trading. He was under the impression that embargo on trading in the scrip of the Company was only on cash segment and did not extend to Futures & Options (F&O) segment. As soon as he became aware about the restrictions on F&O segment, he stopped trading in the scrip of the Company and post 2018 all his trading was in full compliance with the applicable provisions of PIT Regulations. Further, after being advised by the Company, on the directions of the Respondent, the Appellant had deposited an amount of Rs. 1,92,375/- in the Investor Protection and Education Fund being the alleged profit arising from the execution of contra trades during the year 2018. The Appellant was given the opportunity of personal hearing wherein he reiterated the points made in his written reply to the SCN.

4. After considering the facts and circumstances of the case, the AO vide his order dated November 23, 2021 held that the Appellant had violated provisions contained in Regulation 4(1) and Clauses 4,6 and 10 of the Minimum Standards for Code of Conduct to Regulate Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of PIT Regulations.

5. We have heard Shri Vinay Chauhan assisted by Shri Harish Khedkar, the learned counsel for the Appellant and Shri Gaurav Joshi, the learned senior counsel along with Shri Abhiraj Arora and Shri Shourya Tanay, the learned counsel for the Respondent.

6. The Appellant has admitted that he was part of the common email group created by the Company for the purpose of preparation of financial results including for the quarter ended June 30, 2018. As part of the group, he was getting emails regarding preparation of financial results and was therefore in possession of and had access to UPSI and can be termed as “Insider” under Regulation 2(1)(g) of PIT Regulations. Further, the Appellant admitted to trading in the scrip of the Company during the UPSI period in violation of Regulation 4(1) of PIT Regulations. He admitted to trading during trading window closure period, trading without obtaining pre-clearance and entering into contra trades during 2018, thereby violating Clause 4,6 and 10 of the Minimum Standards for Code of Conduct to Regulate Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of PIT Regulations.

7. Thus, the findings of the AO in the impugned order dated November 23, 2021 stand affirmed. The only question that remains is whether the monetary penalty of Rs. 15 lakh and Rs. 10 lakh imposed under Section 15G and 15HB of the SEBI Act, 1992, respectively, is justified. In this regard Sections 15G and 15HB of the SEBI Act, 1992 are extracted hereunder:-

“Penalty for insider trading.

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 anybody 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.”

Section 15HB of the SEBI Act provides as under:

“Penalty for contravention where no separate penalty has been provided.

15HB. 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.”

8. Having affirmed violation of Regulation 4(1) of the PIT Regulations, 2015, the AO is justified in imposing monetary penalty for Insider Trading under Section 15G of SEBI Act, 1992. However, as noted by the AO in the impugned order that loss suffered by the investors could not be quantified and the violation committed is not repetitive and considering the fact that the Appellant has already deposited an amount of Rs. 1,92,275/- in the "Investor Protection & Education Fund" of SEBI, in our opinion, imposition of minimum penalty of Rs. 10 lakh is justified instead of Rs. 15 lakh as a penalty for insider trading as laid in Section 15G(iii) of SEBI Act, 1992.

9. As far as imposition of monetary penalty of Rs. 10 lakh under Section 15HB of SEBI Act, 1992 for violation of the Code of Conduct is concerned, the Appellant has cited the order passed by this Tribunal in the matter of Snehlata R. Tiwari vs SEBI in Appeal no. 175 of 2020 decided on April 28, 2021. Hon'ble Supreme Court in SEBI vs Snehlata R. Tiwari in Civil Appeal No. 4652 of 2021 dismissed the appeal. For sake of ease the relevant extract of this Tribunal"s order in the said case are extracted below:-

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

"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."

"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."

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:-

"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."

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."

10. In our opinion, this case is squarely covered under the above mentioned order and accordingly the impugned order imposing a penalty of Rs. 10 lakh under Section 15HB of the SEBI Act cannot be sustained.

11. In the light of the aforesaid, while affirming the violation of the provisions of regulation 4(1) and clauses 4,6 and 10 of the Minimum Standards for Code of Conduct to Regulate Monitor and Report Trading by Insiders specified in Schedule B read with (r/w) regulation 9(1) of PIT Regulations by the Appellant, the penalty of Rs. 15 lakh imposed under Section 15G is reduced to Rs. 10 lakh. Penalty of Rs. 10 lakh imposed under Section 15HB is set aside. The appeal is partly allowed.

12. 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.

