

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 08.03.2018

Appeal No. 247 of 2017

1. Atul Kumar Agarwal
D-6, Arya Nagar Society,
91, I.P. Extension, Patparganj,
Delhi- 110 092
2. Surya Medi Tech Ltd.
205, 2nd Floor, Building No. 949,
Gali No. 3, Naiwala, Karol Bagh,
New Delhi- 110 005
3. Novalty Enterprises Pvt. Ltd.
Flat No. 10/A, Janyug Apartment,
Sector- 14, Extension Rohini,
Delhi- 110 085

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Vedant Singh, Advocate with Mr. Vinay Dubey and Mr. Swanand Tarde, Advocates i/b Vis Legis Law Practice for Appellants.

Mr. Sumit Rai, Advocate with Mr. Pranav Jain and Mr. Chirag Bhavsar, Advocates i/b MDP & Partners for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Adjudicating Officer (“AO” for convenience) of Securities and Exchange Board of India (“SEBI” for convenience) on June 30, 2017. By the said

order penalty of ₹ 4 lac, ₹ 4 lac and ₹ 6 lac is imposed on appellant no. 1, appellant no. 2 and appellant no. 3 respectively for violating the provisions contained in the SEBI (Prohibition of Insider Trading), Regulations, 1992 (“PIT Regulations” for convenience) and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“Takeover Regulations” for convenience).

2. On January 11, 2016 SEBI had issued three independent show cause notices to the appellants thereby calling upon them to show cause as to why penalty should not be imposed on them under Section 15A(b) of SEBI Act, 1992 for failing to make disclosures in relation to purchase/sale of the shares of Ashutosh Paper Mills Limited (“Company” for convenience) in violation of regulation 13(4A) read with regulation 13(5) of the PIT Regulations and in violation of regulation 29(2) read with regulation 29(3) of the Takeover Regulations.

3. In the reply filed on January 21, 2016 appellant no. 1 contended that as a promoter he had gifted 25,000 shares of the company on July 13, 2012 to Mr. Ankush Gupta without any consideration. However, by a letter dated July 14, 2012 Mr. Ankush Gupta declined to accept the gift and accordingly the shares were transferred back on February 08, 2013. In these circumstances, appellant no. 1 submitted that disclosure obligations contained in the PIT Regulations cannot be said to have been violated. Respondent no. 2 in its reply filed on March 01, 2016 submitted that requisite disclosures in relation to purchase/ sale of the shares of the company were made and therefore taking any further action does not arise at all. Appellant no. 3 did not file any reply to the show

cause notice. Personal hearing offered by SEBI to all the appellants, however the same was availed only by appellant nos. 1 & 3. On conclusion of personal hearing, the AO passed the impugned order imposing penalty on the appellants which is challenged in this appeal.

4. Argument advanced by the Counsel that appellant no. 1 had gifted 25000 shares but the same were not accepted is without any merit, because, authentic documents (such as delivery instruction slip sent to 'Depository or the Gift Deed') were not produced before the AO inspite of the specific request made by the AO. In any event, even if the shares were transferred by way of gift disclosure obligations had to be complied with under the PIT Regulations.

5. Argument advanced by Counsel for appellant no.1 that regulation 13(4A) is not applicable to the case of the appellant no. 1 is without any merit, because, in the show cause notice issued to the appellant no. 1 it was specifically stated that the value of 25,000 shares of the company on the date of transfer on July 13, 2012 and on the date of receiving back on February 08, 2013 were more than ₹ 5 lac and therefore the disclosure obligation contained in regulation 13(4A) of the PIT Regulations got triggered. Neither in the reply to the show cause notice, nor before the AO, the appellant no. 1 could demonstrate that the value of 25000 shares were less than ₹ 5 lac on the respective dates. Since the change in the shareholding on both the days exceeded ₹ 5 lac, it is evident that disclosure obligation contained in regulation 13(4A) read with regulation 13(5) of the PIT Regulations were clearly attracted. Penalty imposable

under Section 15A(b) of SEBI Act for such violations is up to ₹ 1 crore. However, the AO after taking into consideration all mitigating factors has imposed penalty of ₹ 4 lac on appellant no. 1 which cannot be said to be unreasonable or excessive.

6. The plea of the appellant no. 2 that requisite disclosures were made to the stock exchange relating to purchase/ sale of the shares of the company is disbelieved by the AO in the absence of any acknowledgement from the stock exchange to that effect. Even before us the appellant no. 2 has not produced any documentary evidence to show that the disclosures were actually made to the stock exchange. In these circumstances, the decision of the AO that the appellant no. 2 had violated regulation 13(3) read with regulation 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the Takeover Regulations cannot be faulted. Penalty imposable for such violations under Section 15A(b) of SEBI act is up to ₹ 1 crore. However, the AO after considering all mitigating factors has imposed penalty of ₹ 4 lac which cannot be said to be unreasonable or excessive.

7. Appellant no. 3 had purchased 4,25,000 shares (6.51% of total shareholding of the company) and 5,56,000 shares (8.53% of total shareholding of the company) on October 15, 2012 and December 18, 2012 respectively. Similarly, the appellant no. 3 had sold 3,70,200 shares (5.6732% of total shareholding of the company) during the period from November 07, 2012 to December 26, 2012. In the absence of any documentary evidence furnished by the appellant no. 3 to demonstrate that the disclosure obligations have been discharged, the AO was

justified in holding that the appellant no. 3 is guilty of violating regulation 13(1), 13(3) read with regulation 13(5) of the PIT Regulations and regulation 29 (1), 29(2) read with regulation 29(3) of the Takeover Regulations. Penalty imposable for such violations under Section 15A(b) of SEBI Act is up to ₹ 1 crore. However, after taking into consideration all mitigating factors, the AO in the facts of present case has imposed penalty of ₹ 6 lac which cannot be said to be unreasonable or excessive.

8. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member