BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 05.03.2018

Misc. Application No. 42 of 2018
And
Appeal No. 42 of 2018

Mr. Jangoo Dalal
301-Marker Mansion,
623, Lady Jahangir Road,
Dadar, Mumbai 400 014. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051. …… Respondent

Ms. Sakeena Mahadik, Advocate with Mr. Pankaj Uttaradhi, Advocate i/b Visesha Law Services for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Pranav N. Jain, 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)

Misc. Application No. 42 of 2018 :

1. By this misc. application appellant seeks condonation of 6 days delay in filing this appeal. For the reasons stated in the application, delay is condoned. Misc. Application is disposed of accordingly.

Appeal No. 42 of 2018 :

1. This appeal is filed to challenge the order passed by the Adjudicating Officer (‘A. O.’ for short) of Securities and Exchange Board of India

('SEBI' for short) on November 23, 2017. By the said order penalty of Rs. 10 lac is imposed on the appellant under Section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short).

2. At the relevant time the appellant was the non-executive director of Smartlink Network System Ltd. ('company' for convenience) and the appellant was also a 'designated person' of the company in terms of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations' for short).

3. Basic charge levelled and held against the appellant is that the appellant sold 30,000 shares of the company when the trading window was closed without obtaining pre clearance and the same was in gross violation of the PIT Regulations.

4. It is relevant to note that the company itself had instituted an inquiry against the appellant on the very same issue and found that on account of above sale effected during the period when the trading window was closed the appellant had avoided loss of Rs. 1,06,200/- and directed the appellant to deposit the said amount in the Prime Minister's Relief Fund. Accordingly, the appellant has remitted that amount to the Prime Minister's Relief Fund.

5. In relation to the impugned order whereby penalty of Rs. 10 lac is imposed, counsel for the appellant submitted that the sale was effected inadvertently and without any intention to violate the PIT Regulations and, therefore, imposition of penalty is unjustified. We see no merit in the above contention, because, being a non executive director and a 'designated officer', the appellant ought to have known that selling the shares of the company during the period when the trading window was closed without

obtaining the pre clearance was in gross violation of the PIT Regulations. Having violated the PIT Regulations even inadvertently, the appellant cannot escape penal liability.

6. It was contended by counsel for the appellant that the appellant is in the process of filing a consent application and, therefore, time be granted to the appellant. There is no merit in this contention, because, the appellant had already filed a consent application on August 10, 2017 filed and the same has been rejected by SEBI on ground that the violation under the Insider Trading Regulations cannot be compounded. Therefore, the appellant is not justified in seeking time to file another consent application.

7. Counsel for the appellant submitted that the AO has failed to take into consideration the mitigating factors such as, the violation allegedly committed by the appellant was a single violation committed inadvertently and the notional profits made by the appellant have already been remitted to the Prime Minister's Relief Fund. It is further submitted that the above mitigating factors and the mitigating factors set out in Section 15J have not been considered by the A. O., and, therefore, penalty imposed against the appellant deserves to be deleted.

8. We see no merit in the above contention. Fact that part of the loss averted by the appellant as determined by the company has been paid to the Prime Minister's Relief Fund would not preclude SEBI from determining the actual loss averted by the appellant. In the impugned order, the A. O. has found that the loss averted by the appellant was more than Rs. 4.28 lac. The A.O. has accepted the plea of the appellant that he was not in possession of UPSI when 30,000 shares of the company were sold. The A. O. has found the appellant guilty of trading in the shares of the company when the trading window was closed and not procuring pre clearance for

sale of shares when the trading window was closed. Penalty imposable under Section 15HB of SEBI Act for such violations is upto Rs. 1 crore. However, the A. O. after taking all the mitigating factors has imposed penalty of Rs. 10 lac as against the imposable penalty of Rs. 1 crore, which cannot be said to be excessive or unreasonable.

9. For all the aforesaid reasons, we see no merit in the appeal and the same is dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

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

05.03.2018
Prepared & Compared by
PTM