BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 03.06.2019
Date of Decision : 10.06.2019

Appeal No. 68 of 2016

Vipul Shah
Y—1102, Sacred Heart Township,
Wanorie, Pune – 411 040.
Maharashtra. ….. Appellant

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. Kunal Katariya, Advocate with Mr. Neerav B. Merchant, Mr. Bharat Merchant, Mr. Kunal Kothary, Advocates i/b Thakordas & Madgavkar for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP & Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal against the order dated December 30, 2015 passed by the Adjudicating Officer (hereinafter referred to as, 'AO') of Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') imposing a penalty of Rs. 4 crores for failure to make disclosures under Regulations 13(3), 13(4A) read

with 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, 'PIT Regulations') and Regulations 29(2), 29(3), 30(2) and 30(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations').

2. The facts leading to the filing of the appeal is, that in the year 1994 Parikh Herbals Pvt. Ltd. was incorporated as a Company. In 2006, the appellant was issued 12,65,150 shares of Rs. 10/- each. The shares of the company were suspended for trading on Bombay Stock Exchange (BSE) and Pune Stock Exchange from 1997 which continued till the year 2012. During this period, it is alleged that the Company suffered heavy losses and, consequently on November 15, 1997 the appellant resigned as a director. On January 13, 2012, the suspension of the company was revoked by the BSE and on July 27, 2012, the Company's name was changed to Safal Herbs Ltd. On August 1, 2012 the shares of the company were split from face value of Rs. 10/- to face value of Re. 1/-.

3. After the revocation of the suspension of trading of the shares of the company, the appellant sold 6,00,000 shares on September 25, 2012, 16,98,000 shares on October 27, 2012 and 29,32,000 shares on December 26, 2012. Since requisite disclosures under Regulations

13(3), 13(4A) and 13(5) of PIT Regulations as well as the disclosures under Regulations 29(2) and 29(3) read with Regulations 30(2) and 30(3) of the SAST Regulation was not made, a show cause notice was issued to the appellant to show cause as to why a penalty should not be imposed under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act').

4. The appellant contested the show cause notice and filed a reply contending that he had never sold the shares and, therefore, was not liable to make any disclosures under the PIT or the SAST Regulations. It was contended that the physical share certificates had been lost or misplaced and were not traceable.

5. Considering the aforesaid stand taken by the appellant, the AO summoned the Registrar and Transfer Agent (RTA) of the Company who submitted that the RTA had received 5,23,000 shares on different dates for transfers and that the transfers were effected after it was approved by the Transfer Committee of the Company. It was also submitted that the transfer was approved only after due compliance of all the requirements including verification of the signatures of the appellant on the share transfer forms from the specimen signatures of the appellant maintained in the Company. The appellant thereafter filed written submissions contending for the first time that the signatures on the share transfer forms were forged. In support of this

contention, the appellant subsequently, filed an opinion of an expert showing that the signatures on the share transfer forms are not his.

6. The AO after considering all aspects of the matter did not accept the contention raised by the appellant and found that the signatures in the share transfer forms were those of the appellant. Since, the sale of shares made by the appellant had exceeded the benchmark limit as prescribed under the PIT Regulations, the penalty of Rs. 4 crores was imposed.

7. We have heard Mr. Kunal Katariya, the learned counsel for the appellant alongwith Mr. Neerav Merchant, Mr. Bharat Merchant, Mr. Kunal Kothary and Mr. Kumar Desai, the learned counsel for the respondent. Before us, the learned counsel for the appellant made the following submissions :-

a. The share transfer form was for transfer of the Rs. 10 share certificate which could not be transferred as in the meanwhile, the shares were split from Rs. 10 to Re. 1/- per share and, consequently, the appellant was entitled to receive the split share of Re. 1/- each and only thereafter the Re. 1/- share certificate could have been transferred through the share transfer form to a third party, which in the instant case, was not done and, therefore, the alleged transfer of shares was wholly illegal.

b. The appellant had never sold the shares and the same had been misplaced / lost.

c. The signatures on the share transfer forms were not that of the appellant and the same are forged. The opinion of the expert provided by the appellant was not considered by the AO and was brushed away casually.

d. The statement was wrongly relied upon and no opportunity was given to the appellant to cross-examine the RTA.

e. These share transfer forms indicate that majority of the shares were transferred to parties who were based in Gujarat whereas the appellant is based at Pune and, thus, it was not possible for the appellant to transfer shares to the parties based in various places in Gujarat.

f. The signatures of the witnesses on the shares transfer forms were different and, thus, leads to a presumption that forgery on large scale was made.

g. The penalty imposed is excessive and disproportionate and, in any case, the mitigating factors specified in the Section 15J have not been considered.

8. On the other hand, the contention of the learned counsel for the respondent is, that the appellant had never stated that his signatures were forged at any time before the AO during the course of hearing. It is only after the closure of the hearing that the appellant in his written

submission took a stand for the first time that his signatures were forged. It was further contended that no complaint was made by the appellant about the loss of shares at any moment of time and that the complaint was made only after a show cause notice was issued which appears to be an afterthought. It was also contended that the penalty imposed was just and fair in the peculiar facts and circumstances of the case.

9. Having heard the learned counsel for the parties at some length, we find that the contention raised by the learned counsel for the appellant cannot be accepted. We find that the consistent stand of the appellant was that he had never sold the shares and that the physical shares were misplaced or lost and were not traceable. In order to verify this aspect the Registrar Transfer Agent was called who produced the share transfer forms as well as the original certificates which showed the signatures of the appellant. It was found that the signatures of the appellant matched with the specimen signatures kept with the Company. The contention of the appellant that the expert opinion provided by the appellant with regard to his signatures was not taken into consideration is patently misconceived. The AO considered the expert opinion and found that it was not necessary as there were ample evidence to show that the signatures on the share transfer forms were that of the appellant. We are further of the opinion that no attempt was made by the appellant to get the signatures appended in the share

transfer form compared with the specimen signatures kept with Company. Verifying and comparing the signatures of the appellant on the share transfer forms with the signatures of the appellant on other documents like PAN Card, Passport, Bank signatures are immaterial when specimen signatures of the appellant are kept with the Company. The primary evidence for comparing the signatures is the specimen signatures kept with the Company. If for some reason, the specimen signatures was not available with the Company then only the signatures of the appellant on the PAN Card, Passport etc. would become relevant. In the instant case, no steps were taken by the appellant to verify and compare his signatures with the specimen signatures kept with the Company. Thus, no reliance can be placed on the expert opinion provided by the appellant. For the same reasons, the allegation that no opportunity was given to the appellant to cross-examine the Registrar and Transfer Agent is patently erroneous and an afterthought. No such stand was taken by the appellant before the AO in this regard nor any such application was made to this effect. The fact that the transfers were made at various places in Gujarat is immaterial. What is material is the signature of the appellant on the shares transfer certificates.

10. The contention that the signatures of the witness are different in the share transfer forms cannot be accepted at this stage. Such stand was not taken before the AO nor any ground has been taken before us

in this appeal. Such arguments cannot be made without there being a ground in the appeal.

11. The contention that the physical shares of Rs. 10/- each could not have been transferred unless the split share certificates were given is patently erroneous. The Companies Act did not at any stage prohibit the transfer of pre-split shares to the transferee. The contention raised does not have any merit.

12. Thus, the contention of the appellant that he had never sold the shares cannot be believed in as much as the signatures of the appellant on the share transfer form was duly verified from the specimen signatures kept with the Company. The contention that the signatures on the share transfer forms were forged was rightly disbelieved.

13. The appellant held 1,26,51,500 shares constituting 12.65% of the total paid up capital of the company and off-loaded 52,30,000 shares which constituted 5.23%. Regulation 13(3) required the appellant to make the disclosure with respect to the change in the shareholding, when such change exceeded 2% of the total shareholding in the company. Under Regulation 13(4A) of the PIT Regulations, any person who is a promoter is required to disclose to the company and to the stock exchange the change in the shareholding if such change exceeds Rs. 5 lac in value or 25,000 shares or 1% of the total shareholding or voting rights whichever is lower. Since the appellant

had sold 52,30,000 shares, it exceeded the benchmark limit as prescribed under Regulation 13(4A) of the PIT Regulations. The appellant was required to disclose change in the shareholding within two days from the date of sale which apparently was not done. Under Regulations 29(2) and 29(3) of the SAST Regulation, 2011, the acquirer was required to disclose the disposal of shares representing 2% or more within two days of the sale. The sale made by the appellant resulted in the decrease in his shareholding which exceeded the benchmark limit as prescribed under Regulation 29(2) of the SAST Regulations. Such disclosures were required to be made which was not done. Thus, the appellant had violated the aforesaid Regulations.

14. A penalty of Rs. 4 crore has been imposed under Section 15A of the SEBI Act. The AO while imposing the maximum penalty took into consideration the judgment of the Hon'ble Supreme Court in the matter of **SEBI vs Roofit Industries Ltd. [(2016) 12 SCC 125]** in which it was held that the factors contemplated under Section 15J cannot be taken into consideration once a violation of the Regulations were found.

15. In our opinion, the imposition of a penalty of Rs. 4 crores on the aforesaid ground is not correct. We find that the decision of the Hon'ble Supreme Court in Roofit Industries Ltd. (supra) has been held to be no longer a good law by a larger bench of the Hon'ble Supreme

Court in **Civil Appeal No. 11311 of 2013 Adjudicating Officer, SEBI vs. Bhavesh Pabari decided on February 28, 2019** wherein the Hon'ble Supreme Court has held that Roofit Industries had erroneously and wrongly held that Section 15J would not be applicable.

16. We also find that in a near identical matter of Bhupendra Shah also a promoter in Safal Herbs Ltd. had sold 13.15% of its shareholding in violation of Regulations 13(3), 13(4A), 29(2) and 29(3) of the PIT Regulations and SAST Regulations. In the case of Bhupendra Shah, the AO had imposed a penalty of Rs. 13 lacs whereas in the case of the appellant the maximum penalty of Rs. 4 crores has been imposed. We are thus, of the opinion that the imposition of penalty is grossly disproportionate to the violation committed by the appellant. Further, the factors contemplated under Section 15J have not been considered.

17. For the reasons stated aforesaid, we affirm that part of the order of the AO holding that the appellant had violated the provisions of Regulations 13(3), 13(4A), and 13(5) of the PIT Regulations and Regulations 29(2), 29(3), 30(2) and 30(3) of the SAST Regulations and to that extent the order of the AO is affirmed. We, however, do not agree with the order of the AO imposing a penalty of Rs. 4 crores and to that extent the order of the AO cannot be sustained and is set aside. The appeal is consequently, partly allowed. The matter is remitted to

the AO to re-decide only the quantum of penalty, in the light of the observations made above after giving an opportunity of hearing to the appellant. For this purpose, the appellant shall appear before the AO on June 25, 2019 at 11 A.M. on which date the AO will decide the matter after giving an opportunity of hearing. In the event, for some reason, the matter is not decided on that date, the AO will positively decide the same within four weeks thereafter.

18. In the circumstances of the case, parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

10.06.2019
Prepared & Compared by
PTM