

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 28.8.2019

Date of Decision : 4.9.2019

Appeal No.112 of 2018

1. Mr. Amish Rameshchandra Desai
15, Omkrishnakunj, M.G. Road,
3, Kandivali (West), Mumbai – 400067.
2. Mr. Bhrugesh Pankaj Mehta
1006, Devani Pol Khambat,
22, Cambay, Anand – 388 620.
3. Mr. Bhupendra M. Soni
B-9, Bhagwan Nagar Soc.
Opp: Govind Vadi Isanpur
Ahmedabad-382 443.
4. Ms. Palak Premal Trivedi
9/1198, Nani Chipwad, Balaji Road,
Surat – 395 003.
5. Ms. Pinal Rajeshbhai Mehta
7/A, Deepmala Apartment,
Nr. Maniyasa Maninagar,
Ahmedabad-380 008.
6. Mr. Premal Yogendra Trivedi
7/A, Deepak Apartment,
Nr. Maniyasa Maninagar,
Ahmedabad-380 008.
7. Mr. Rajesh Rajnikant Mehta
7/A, Deepak Apartment,
Nr. Maniyasa Maninagar,
Ahmedabad-380 008.

8. Mr. Sawan Ajit Joshi
D-104, Sparsh Arishta
B/hd.Swaminarayan Park,
Vasna, Guj.

9. Mr. Shirish Rameshbhai Desai
15, Omrishnakunj, M.G. Road 3,
Kandivali (West), Mumbai-400 067.

10. Mr. Shiv Navinchandra Raval
C-5, Shivji Flats, Juna Wadaj,
Ahmedabad-380013.

11. Mr. Jayesh N. Kavi
10, Allied Apartment
Opp. L.G. Hospital, Maninagar
Ahmedabad 380 008.

.... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400051.

... Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah, Advocates i/b. R.V. Legal for the Appellants.

Mr. Vishal Kanade, Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b. The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala

1. One Saurin Kavi was Chairman and Managing Director of Jay Energy and S Energy Ltd. Investigation for alleged violations of the provision of Securities and Exchange Board

of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') regarding change of promoters during September, 2010 quarter was investigated and it was found that the appellants were the new promoters replacing the earlier promoters. It was found that 10,34,915 shares were transferred on 1st September, 2010 in favour of the appellants which constituted 15.23% of the share capital of the Company. Thus, necessary disclosures under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') and PIT Regulations were required to be made. Accordingly, summons was issued to the appellant on 11th November, 2014, 13th January, 2015 and reminder letter was issued on 22nd January, 2015. The appellant did not respond to the said summons. Similarly, summons were also sent to the Company and, it is alleged that the Company also did not respond to the queries sought by the respondent. It was also found in the investigation that two promoters namely Mr. Jayesh Kavi and Mr. Saurin Kavi had inter se transferred 2,50,000 shares on 30th July, 2010. Such

transfers were required to be disclosed under Regulation 13(3) of the PIT Regulations for change in the shareholding for which information was sought and no response was given.

2. Consequently, a show cause notice dated 31st October, 2015 was issued to show cause why penalty should not be imposed for violating Regulation 13(3) of the PIT Regulations and Sections 11C(2) and 11C(3) of the SEBI Act for not furnishing information pursuant to the summons. Replies were given and after considering the matter the impugned order was passed imposing a penalty of Rs.3,50,000/- on each of the appellants for violation of Sections 11C(2) and 11C(3) of the SEBI Act and a sum of Rs. 3 lakhs was imposed on one of the appellants Mr. Jayesh Kavi for violation of Regulation 13(3) of the PIT Regulations. The appellants, being aggrieved by the aforesaid order, have filed the present appeal.

3. The appellants contended that they are relatives of Saurin Kavi, Chairman and Managing Director of the Company and are not promoters or part of the promoters group of the Company. The appellants denied that any shares were transferred in their favour to their knowledge and

contended that there has been foul play, wrong doing and misuse of their names, demat accounts, pan card, forging and fabrication of their signature on certain documents which was primarily done by the Managing Director without knowledge of the appellants. It was contended that the appellants at no stage gave any consent to Saurin Kavi to use their names for the purpose of transfer of shares or to treat the appellants as promoters. The appellants further contended that they did not have the financial capacity to buy those shares and some of the appellants were unemployed.

4. It was contended that the appellants received the summons, reminders and accordingly approached Saurin Kavi who advised the appellants that he would look after the proceedings. Since the appellants were unaware of the alleged violations the appellants in good faith gave a letter of authority to Saurin Kavi.

5. It has also come on record that Saurin Kavi did not respond to the summons and reminders and pursuant to the show cause notice the appellants filed a reply contending that they were not involved in any transfer of the shares of the Company and had no knowledge or information. Further the

appellants and that they had authorized Saurin Kavi to provide all information to the authority.

6. It has also come on record from a perusal of the adjudication proceedings dated 18th September, 2017 that Saurin Kavi appeared before the Adjudicating Officer and stated that when SEBI sought information from the appellants in November, 2014 and January, 2015 the said appellants communicated to Saurin Kavi and informed him that they did not have any information as they were not dealing with the matter. Saurin Kavi categorically stated before the Adjudicating Officer that the appellants do not know anything about the proceedings and that Saurin Kavi owns full responsibility for these proceedings.

7. In view of the aforesaid it was apparently clear that Saurin Kavi took upon himself the responsibility of the proceedings that was initiated by SEBI. He also categorically informed SEBI that the appellants have nothing to do in the matter.

8. In spite of the aforesaid admission by Saurin Kavi, the Adjudicating Officer did not accept this submission and held that since the summons were issued to the appellants seeking information the appellants were responsible to ensure

compliance. Since necessary information was not supplied by the appellants there was violation of Sections 11C of the SEBI Act.

9. Having heard the learned counsel for the parties, we are of the opinion that the approach of the Adjudicating Officer was incorrect. When the appellants have come forward alleging that they had nothing to do with the matter and pursuant to the summons have reported to the Managing Director who said that he would do the needful on their behalf and also approached on their behalf before the Adjudicating Officer admitting that he was responsible then it was not open to the Adjudicating Officer to hold that the appellants were still responsible for supplying the information.

10. If the appellants do not have the information they are obviously not in a position to supply the information sought and, therefore, the appellants had approached the Managing Director to provide the requisite information to the Adjudicating Officer. If the same was not done by the Managing Director the liability if any ought to have been fastened upon the Managing Director.

11. At this stage we are also informed that before the impugned order was pronounced the Managing Director Saurin Kavi died on 6th December, 2017.

12. Thus, on this short ground the impugned order cannot be sustained and is quashed. The matter is remitted to the Adjudicating Officer to redecide the matter after considering the submissions and the relevant record. If it is found that there has been interpolation, fabrication of documents etc in the transfer of shares in favour of the appellants then the matter would be closed but if it is found that the appellants had knowledge of the transfer and consequently did not respond to the summons then appropriate order on penalty for violation of Section 11C(2) and 11C(3) of SEBI Act would be awarded.

13. In the light of the aforesaid, since the matter is being remanded back the finding of violation by one of the appellants on Regulation 13(3) is also set aside with a direction that the said alleged violation will again be decided afresh after giving an opportunity of hearing to all the parties concerned.

14. In view of the aforesaid, the impugned order is quashed. The appeal is allowed and the matter is remitted to

the Adjudicating Officer to decide the matter afresh. For the aforesaid purpose the appellants shall appear before the Adjudicating Officer on 26th September, 2019 on which date the appellant shall provide their address, email, mobile number etc to the Adjudicating Officer. It will be open to the appellants to appear personally or through their Advocate. The Adjudicating Officer will proceed thereafter and decide the matter in accordance with law after giving an opportunity of hearing.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M.T. Joshi
Judicial Member

4.9.2019

Prepared and compared by
RHN