BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 27.08.2019
Date of Decision : 04.09.2019

Appeal No. 84 of 2018

Ms. Gargi Dash
F-3/13, Ground Floor,
DLF Phase-1,
Gurugram- 122 002,
Haryana …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. Ajay Dahiya, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Kaushal Parsekar and Ms. Saloni Vyas, Advocate i/b Legasis Partners for the Respondent.

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

Per: Justice Tarun Agarwala

1. Against the imposition of penalty of ₹ 4 lakhs for violation of Regulation 13(4) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading)

Regulations, 1992 ("PIT Regulations" for short) the present appeal has been filed.

2. The facts leading to the filing of the appeal is that the appellant contended that she was an employee in ING Vyasya Bank Limited and was Head of Retail Finance in Finance and Accounts Division. There was a team of 5 to 6 members under her as subordinates to whom she was giving directions from time to time. Thus, the appellant had the authority to give directions to certain employees of the bank.

3. It transpires that the bank had formulated an employee stock options schemes for its employees which the appellant exercised and accordingly acquired 36,000 (thirty six thousand) shares of the bank between December 05, 2010 and August 05, 2013. Between November 02, 2012 and March 20, 2013 the appellant sold an aggregate of 18,000 shares of the bank on the stock exchange and on three occasions the sale of the shares was more than ₹ 5 lakhs. Since necessary disclosures was not made by the appellant under Regulation 13(4) and Regulation 13(5) of the PIT Regulations a show cause notice was issued and after granting an opportunity of hearing an order of penalty was passed.

4. We have heard Shri Ajay Dahiya the learned counsel for the appellant and Shri Gaurav Joshi the learned senior counsel for the respondent. It was urged by the learned counsel for the appellant that Regulation 13(4) read with Regulation 13(5) of the PIT Regulations is not applicable upon the appellant as she was not a "director" nor a "officer" of a listed company. It was urged that in organizational structure she was a 'C' Grade category employee and was not involved in the corporate functioning of the company and was only involved in the retail functioning of the company. It was urged that the appellant was not in the senior management team and thus was not an officer. It was thus contended that under Regulation 13(4) of the PIT Regulations only a person who is a director or officer was required to disclose to the company as well as to the stock exchange in the prescribed format with regard to the total number of shares or voting rights held and change in the shareholding pattern.

5. In the light of the aforesaid submission it would be necessary to peruse Regulation 13(4) and Regulation 13(5) of the PIT Regulations which is extracted hereunder:

> *"13(4) Any person who is a director or officer of a listed company, shall disclose to the company*

and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A)….

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be."

6. Admittedly, the appellant is not a director but whether the appellant is an "officer" or not the same is required to be considered. The term "officer" has been defined under Regulation 2(g) of the PIT Regulations as under:

"2(g) "officer of a company" means any person as defined in Section 2(30) of the Companies Act, 1956 and includes an auditor of the company."

7. Section 2(30) of the Companies Act, 1956 defines officer as under:

> *"2(30) "officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act."*

The term 'officer' is a term of wide connotation. As stated in HALSBURY'S LAWS OF ENGLAND (4th Edn. Reissue Vol. 7(1), para 669, page 479) any person who is regularly employed as part of their business or occupation in conducting the affairs of the company may be an 'officer' of the company." In ***Re, A Company, (1980) 1 All ER 284 (CA)*** it was found that an officer would includes other persons in a managerial position and does not exclude subordinate officers in lower ranks discharging managerial functions.

8. Thus, the term 'officer' as defined in Section 2(30) of the Companies Act, 1956 would include an employee if he has been vested with the powers of financial control over one or more fields or control for operation of a company and, therefore, such employee would be deemed to be falling under the category of the term 'officer'. According to STROUD'S JUDICIAL

DICTIONARY 'officer' means a person under a contract of service; a servant of a special status holding an appointment to an officer which carries with it an authority to give directions to other servants. Thus, an 'officer' as distinct from a mere employee may be defined as a person who has the power of directing any other person or persons to do anything. On the other hand the function of an employee is only to obey.

9. In view of the aforesaid, we find that the appellant was heading the Retail Finance Department. She had 5 or 6 subordinates working under her to whom she was giving directions. Thus, she was an "officer" as defined under Section 2(30) of the Companies Act, 1956. Since she was an "officer", the appellant was required to comply with Regulation 13(4) read with Regulation 13(5) of the PIT Regulations. Since she failed to comply, penalty was rightly imposed.

10. The decision of this Tribunal in ***Shri Mahendra Pandey Maitri vs. SEBI (Appeal No. 178 of 2011 decided on 22.12.2011)*** is distinguishable and not applicable in the instant case. On the other hand, the decision of this Tribunal in ***Sundaram Finance Limited vs. SEBI (Appeal No. 69 of 2010 decided on 16.09.2010)*** is squarely applicable.

11. We however find that the Adjudicating Officer of SEBI while considering the quantum of monetary penalty found that the amount of disproportionate gain or unfair advantage cannot be quantified nor was there anything to indicate that any investor had suffered any loss as a result of the failure of the appellant to make the disclosure. Thus, in our view the violation, if any, is only technical for which the minimum penalty should have been imposed. Considering the overall scenario and to do complete justice we feel it proper that in the given circumstances a minimum penalty of ₹ 1 lakh would be just and fair. Consequently, the impugned order is affirmed and the quantum of penalty is modified and is reduced from ₹ 4 lakhs to ₹ 1 lakh which the appellant shall deposit within six weeks from today. The appeal is accordingly disposed of in the circumstance of the case. There shall be no order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M. T. Joshi
Judicial Member

04.09.2019
Prepared & Compared By: PK