

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 26.02.2020

Date of Decision : 04.03.2020

Appeal No. 310 of 2019

Mr. Gadde Butchi Tirupati Rao
F. No. 101, Sharma Residency,
D. No. 54-20/3-23, Beside Gurudwara,
Guru Nanak Nagar, Vijayawada,
Andhra Pradesh- 520 008 ...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

Ms. Poonam D. Gadkari, Advocate with Ms. Sakhi Shah,
Advocate i/b Juris Matrix Partners LLP for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Vivek Shah and
Mr. Abhiraj Arora, Advocates i/b ELP for the Respondent.

WITH
Misc. Application No. 472 of 2019
And
Appeal No. 392 of 2019

Ravindra Deshpande
Flat No. 2A, Vaishnavi Kunj,
Opposite Sri Raghvendra Swami Temple,
Barkthpura,
Hyderabad- 500 027 ...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. Ranit Basu, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Vivek Shah and Mr. Abhiraj Arora, Advocates i/b ELP 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

1. Two appeals have been filed against the common order dated January 28, 2019 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) and consequently, both the appeals are being decided together.

2. In Appeal No. 310 of 2019 a penalty of ₹ 12 lakhs has been imposed upon the appellant for violating Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience) and Regulation 12 read with Clause 1.2 of Schedule I of Part A of Model Code of Conduct under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for convenience). The appellant contends that he was appointed as a Director in the company Exelon Infrastructure Limited on October 25, 2006

and continued in that capacity till July 10, 2008. In the Annual General Meeting (“AGM” for convenience) held on September 29, 2008 the members did not approve his re-appointment as a Director in the company and consequently from that date he was not a Director in the company.

3. It is alleged that SEBI conducted investigation in the scrip of the company for the period December 09, 2010 to January 20, 2012 during the period when the appellant was not a Director. However, a show cause notice was issued to the appellant along with other noticees and, after considering their replies, the AO passed the impugned order imposing a penalty of ₹ 12 lakhs for violation of PIT Regulations and the Model Code of Conduct.

4. The submission of the learned counsel for the appellant is, that the findings of the AO is based on the entries found on the website of the Registrar of Companies (“RoC” for convenience) which indicated that the appellant resigned only on October 27, 2011 based on an alleged resignation letter. This resignation letter has been vehemently disputed by the appellant contending that the signatures are forged.

5. The learned counsel for the respondent submitted that the appellant was found to be a Director during the period of the investigation during which period the violation of law was found and since the appellant was a Director during that period in question, the appellant was penalized. The contention of the respondent that the appellant was a Director till October 12, 2011 is only on the basis of the entries indicated of the website of the RoC.

6. In our view, the order of the AO in so far as the appellant in Appeal No. 310 of 2019 is concerned cannot be sustained. The minutes of the AGM of the company dated September 29, 2008 was disclosed on the website of the Stock Exchange indicating that the members did not approve the re-appointment of the appellant as a Director in the company. This fact has not been considered inspite of noting this fact in the impugned order. Further, the appellant has denied his signatures in the alleged resignation letter of 2011. No finding has been given by the AO on this allegation.

7. In the light of the aforesaid, we find that in the absence of any other additional evidence to show that the appellant continued to remain as a Director even after the minutes of the

AGM dated September 29, 2008, the penalization of the appellant on the basis of the entries on the website in the RoC records cannot be sustained. The impugned order to that extent is quashed.

8. In Appeal No. 392 of 2019 there is an application for condoning a delay of 80 days in the filing of the appeal. For the reasons stated in the application, the delay is condoned. The application is allowed. In so far as Appeal No. 392 of 2019 is concerned the appellant has been penalized ₹ 2 lakhs for violating Regulation 12 read with Clause 1.2 of Schedule I of Part A of Model Code of Conduct under the PIT Regulations, 1992 and ₹ 4 lakhs for failure to make disclosures under Regulation 13(2), 13(4) and 13(5) of the PIT Regulations, 1992.

9. The contention of the appellant is that he was appointed as an Additional Director for a period of 6 and ½ months from July 20, 2011 to February 07, 2012.

10. Having heard the learned counsel for the appellant and the respondent and upon perusal of the impugned order, we find that the appellant was penalized ₹ 2 lakhs for violating the Model Code of Conduct prescribed under Schedule I of Part A under the PIT Regulations, 1992. The Model Code of Conduct

under Schedule I was required to be adopted by the company which had not been done from the very inception of the PIT Regulations, 1992. No notice was ever given by the respondent at any stage during the period when the appellant was the Director. This violation was only noticed by the respondent in 2013 when the company vide letter dated December 31, 2013 submitted that the Model Code of Conduct is in the process of finalization. At that time admittedly the appellant was not a Director. Penalizing the appellant on the ground that it was his moral responsibility to inform the company to adopt the Model Code of Conduct prescribed under Schedule I of the PIT Regulations, 1992 no sooner he was appointed as an Additional Director is too farfetched. Penalizing the appellant on this ground cannot be accepted. Considering that the appellant only remained as an Additional Director for a period of 6 and ½ months, the imposition of penalty of ₹ 2 lakhs for violation of Regulation 12 read with Clause 1.2 of Schedule I of Part A of Model Code of Conduct under the PIT Regulations, 1992 cannot be sustained.

11. In so far as non-disclosure under Regulation 13 of the PIT Regulations, 1992 is concerned the appellant admits that there has been a violation of the provision in as much as no disclosures were made and has only prayed that the penalty is

excessive which may be reduced. Considering the fact that a penalty of ₹ 1 lakh for every days delay is prescribed, we are of the opinion that the penalty of ₹ 4 lakhs in the given case is just and proper which needs no modification.

12. In view of the aforesaid, the impugned order in so far as it relates to the appellant in Appeal No. 310 of 2019 is quashed and the appeal is allowed. In so far as Appeal No. 392 of 2019 is concerned the appeal is partly allowed. The imposition of ₹ 2 lakhs under Regulation 12(1) read with Clause 1.2 of Schedule I of Part A of Model Code of Conduct under the PIT Regulations, 1992 is quashed. The imposition of penalty of ₹ 4 lakhs under Regulation 13(2), 13(4) and 13(5) of PIT Regulations, 1992 is sustained. 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