

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 30.08.2022

Date of Decision : 02.09.2022

Appeal No. 95 of 2020

Man Industries (India) Ltd.
Man House, 101, S.V. Road,
Opp. Pawan Hans,
Vile Parle (West),
Mumbai- 400 056.

..... 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 Ms. Ashmita Goradia,
Mr. Harsh Kesharia, Advocates for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva,
Mr. Ravishekhar Pandey, Ms. Shefali Shankar, Advocates i/b. MDP
& Partners for Respondent

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated October 30, 2019 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing a penalty of Rs. 5 lakhs under Section 15A(b) of the SEBI Act, 1992 for violation of Regulation 7(2)(b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations, 2015” for convenience).

2. The AO after considering the material evidence on record found that Jagdishchandra Jhamaklal Mansukhani who was a promoter sold 5,99,666 shares of the scrip of the Company on BSE Limited (“BSE”) and National Stock Exchange of India Limited (“NSE”) which was worth Rs. 6.2 crores during the period May 24, 2017 to January 15, 2018. The AO also found that on 17 days when the trades were executed the appellant had violated the provision of 7(2)(b) of the PIT Regulations as the sale of the securities was above Rs. 10 lakhs and, therefore, required disclosure by the Company under Regulation 7(2)(a) of the PIT Regulations. Since, the Company failed to disclose, a penalty of Rs. 5 lakhs was imposed. The AO relied upon the Benpos Report, based on which the AO held

that the appellant had violated Regulation 7(2)(b) of the PIT Regulations.

3. Against the aforesaid order, the appeal was filed which was dismissed by this Tribunal on April 8, 2022. Thereafter, a review application was filed which was allowed by an order dated July 6, 2022 and the appeal was restored to its original number.

4. We have heard Mr. Kunal Katariya, the learned counsel with Ms. Ashmita Goradia, Mr. Harsh Kesharia, the learned counsel for the appellant and Ms. Anubha Rastogi, the learned counsel with Mr. Nishit Dhruva, Mr. Ravishekhar Pandey, Ms. Shefali Shankar, the learned counsel for the respondent.

5. The ground urged is, that there was serious dispute and differences between the two promoter groups, namely, between Jagdishchandra Jhamaklal Mansukhani (“JCM”) and Ramesh Chandra Jhamaklal Mansukhani (“RCM”) and the shares sold by JCM were not disclosed to the Company. It was contended that the Company was not aware of the sale made by JCM of the scrips of the Company and, therefore, in the absence of any knowledge, the Company/ the appellant being unaware could not make the disclosure.

6. In order to deal with the aforesaid issue, it would be appropriate to refer to Regulation 7(2)(a) & (b) of the PIT Regulations which are extracted hereunder:-

“7(2) Continual Disclosures.

- (a). *Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;*
- (b). *Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.*

Explanation. - It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).”

7. This Tribunal in *Avenue Supermarts Limited vs. SEBI (Appeal No. 298 of 2020 decided on 17.01.2022)* analysed Regulation 7(2)(a) & (b) of the PIT Regulations and held as under:-

“10. Under 7(2)(a) every promoter, employee and director is required to disclose such securities acquired or disposed of within two trading days of such transaction to the Company if the value exceeds 10 lakhs. Under Regulation 7(2)(b) every Company shall notify the particulars of such trading to the stock exchange within two trading days of receipt of the disclosure or becoming aware of such information. In our opinion, the burden lies upon the Company to notify the particulars of such transaction to the stock exchange within two trading days from the receipt of the disclosure from the promoter, employee and director under Regulation 7(2)(a) or becoming aware of such information. The words “becoming aware of such information” does not mean the information given by the promoter, employee or director under Regulation 7(2)(a) but takes into its fold such information received from any other source. The intention of the provision is, that the moment the Company becomes aware of such transaction it triggers the disclosure requirement under Regulation 7(2)(b) of the PIT Regulations. Thus, it is not necessary that the information is required to be given to the Company in Form C from the promoter, employee or director under Regulation 7(2)(a) of the PIT Regulation. In our opinion, the information can come from any other source and not necessary in the prescribed Form C.”

8. This Tribunal held that it is not necessary that the information is required to be given to the Company in Form C from the promoter and that such information can come from any other source and it is not necessary that the information has to come only under prescribed Form C.

9. In the instant case, we find that the appellant had received information about the sale made by the JCM of the scrip of the company by the letter dated July 30, 2018 issued by BSE which annexed the details of the trades executed by JCM. Further, we find that a similar email was also issued by NSE on September 12, 2018.

10. The AO considered the Benpos report which is incorrect and cannot be taken into consideration as relevant information which is required to be filed under Regulation 7(2) is not given. In *Avenue Supermarts Limited (supra)*, this Tribunal held that reliance by the AO on Benpos report is incorrect. This Tribunal in paragraph no. 11 held as under :-

“11. We are of the opinion, that reliance made by the AO on Benpos report is incorrect. In the first instance, the data provided in the Benpos report has a limited information and is for a different purpose under the Depositories Act and cannot be treated as a source for disclosure requirement under the PIT Regulations. Further, the Benpos report does not disclose Permanent Account Number (PAN) of the employee and only discloses the depository participant identity (DP ID) and through the DP ID it is not possible to collate or locate the transaction made by the employee. Further, the Benpos report being too bulky, it is not possible for the Company to search for such transactions on a weekly basis of shares which are liquid and where huge transactions are made on a daily basis. Therefore, in our opinion, it is not practical for the Company to scan the Benpos report for the purpose of making a possible disclosure under Regulation 7(2)(b) of the PIT

Regulations. Therefore, in our view, reliance on Benpos report is patently erroneous. It has been brought to our notice that in a similar matter in the case of ITC Ltd. the AO found that the Benpos report cannot be relied upon for the purpose of making a disclosure by the Company under Regulation 7(2)(b) of the PIT Regulations.”

11. The AO in the matter of ITC Ltd. also came to the same conclusion in its order dated April 22, 2021.

12. Even though, the AO has taken the Benpos report in penalizing the appellant for violation of Regulation 7(2)(b) of the PIT Regulations, we are satisfied that the appellant was aware of the sale of the scrip of the company by JCM through email / letters written by BSE and NSE and, therefore, the appellant was required to disclose to the Stock Exchange under Regulation 7(2)(b) of the PIT Regulations within two trading days of the receipt of this information. Since the same was not done, the penalty was rightly imposed for violation of Regulation 7(2)(b) of the PIT Regulations.

13. For the reasons stated aforesaid, the appeal lacks merit and is dismissed.

14. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on

the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

02.09.2022
PTM