Securities Appellate Tribunal

Mr. Amit Arora vs Sebi on 7 November, 2019

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 31.07.2019
Date of Decision : 07.11.2019

Appeal No. 174 of 2018

1. Jubilant Stock Holding Pvt. Ltd.
Plot No. 1-A, Sector 16A,
Noida - 201 301, Uttar Pradesh, India.

2. Mr. Shyam Sunder Bhartia
19, Friends Colony (W),
New Delhi - 110 003.

Presently residing at 27,
Claymore Road # 04-02,
The Claymore,
Singapore - 229 544.

3. Mr. Hari Shankar Bhartia
2, Amrita Shergill Marg,
New Delhi - 110 003. ..... Appellants

Versus

Securities Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. ... Respondent

Mr. Pesi Modi, Senior Advocate with Mr. Neville Lashkari,
Mr. Yogesh Chande, Ms. Preeti Kapany, Advocates i/b Shardul
Amarchand Mangaldas & Co. for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody,
Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

2

With
Appeal No. 157 of 2018

Mr. Amit Arora
Tower 1, Unit 001, Close North,
Nirvana Country, Gurgaon,
Haryana - 122 018. ..... Appellant

Versus

Securities Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. ... Respondent

Mr. Neville Lashkari, Advocate with Mr. Yogesh Chande, Ms. Preeti Kapany, Advocates i/b Shardul Amarchand Mangaldas & Co. for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody, Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 175 of 2018

Jubilant Life Sciences Ltd.
Bhartiagram, Gajraula,
Distt. Amroha, 244 223,
Uttar Pradesh, India ..... Appellant

Versus

Securities Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. ... Respondent

3

Mr. Kumar Desai, Advocate with Mr. Yogesh Chande, Ms. Preeti Kapany, Advocates i/b Shardul Amarchand Mangaldas & Co. for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody, Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer

Dr. C. K. G. Nair, Member Justice M. T. Joshi, Judicial Member Per : Justice M. T. Joshi, Judicial Member

1. All the present three appeals have arisen out of the same order passed by the Adjudicating Officer (hereinafter referred to as, 'AO') of Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') on January 31, 2018. Therefore, they are being decided by a common order. The issue relates to the delayed disclosure of material informations as required under Clause 36 of Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, "SCRA") and trading in the scrip of appellant Jubilant Life Sciences Ltd. (hereinafter referred to as, 'Jubilant Life Sciences') by two of the appellants, namely, Jubilant Stock Holding Pvt. Ltd. (hereinafter referred to as, 'Jubilant Stock Holding') and appellant Mr. Amit Arora while in possession of Unpublished Price Sensitive Informations (UPSI).

2. Jubilant Stock Holding is a promoter company of appellant Jubilant Life Sciences. Appellant Shyam Sunder Bhartia and appellant Hari Shankar Bhartia, during the relevant period were authorized signatories and directors of Jubilant Stock Holding, as well as Chairman and Co-Chairman respectively Jubilant Life Sciences. Appellant Amit Arora was a Vice President of appellant Jubilant Life Sciences during the relevant period. Appellant Jubilant Life Sciences has various subsidiaries which are located all over the world.

3. The order would show that five instances between February 21, 2013 to February 28, 2014 were under the scanner. Briefly, those can be stated as under :

Canada Warning :

4. On January 25, 2013, US Food and Drugs Administration (FDA) had issued a warning letter to one of the manufacturing facility of appellant Jubilant Life Science's another subsidiary - Jubilant HollisterStier General Partnership (JHSGP), located in Canada. It was warned by the said letter that significant violations of good manufacturing practices were noticed. This warning was received at Canada office of JHSGP on February 22, 2013. It was sent by the Vice President of Canada facility to the CEO of Spokane in USA on February 23, 2013. The said CEO vide an e-mail dated February 24, 2013 sent the same to the head office of the appellant Jubilant Life Sciences; to the Chairman and also to appellant Amit Arora. It is alleged that though the appellant Jubilant Life Sciences was served with the warning on February 22, 2013, ultimately, the announcement of such information to the BSE Ltd. (hereinafter referred to as, 'BSE') was made only on February 27, 2013 at 12:19 hrs. in violation of Clause 36 of the Listing Agreement.

5. Not only this, while in possession of this information awaiting disclosure to BSE, appellant Amit Arora sold 830 shares of appellant Jubilant Life Sciences on February 25, 2013 in violation of Regulation 3 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, 'PIT Regulations').

China Announcement

6. On May 28, 2013, Ministry of Commerce of China announced provisional duties at the rate of 24.6% against the products concerning appellant Jubilant Life Sciences, and 57.4% against other Indian producers However, appellant made the announcement to the stock exchanges only on July 25, 2013 i.e., after a period of two months, in violation of Clause 36 of the Listing Agreement. It was alleged that the decision of the Ministry of Commerce of China was expected to have an impact on the business of the Jubilant Life Sciences. Washington Warning :

7. A warning letter was issued by FDA to the facilities of appellant Jubilant Life Sciences another subsidiary namely Jubilant HollisterStier, LLC (JHS) at Spokane, Washington State, U.S. dated November 27, 2013. It was received by the CEO of that subsidiary on December 1, 2013. Eventually, he sent an e-mail of the same on December 3, 2013 to the appellant Jubilant Life Sciences as well as appellant Amit Arora. It was warned by the said letter that until all corrections have been completed, FDA may withhold approval of new applications etc. This material information was received on December 1, 2013 by the appellant Jubilant Life Sciences, yet the announcement was made on December 5, 2013 at 11:05 hrs. to BSE and thus, violated Clause 36 of the Listing Agreement.

Canada Acceptance Letter :

8. On February 21, 2014, FDA had announced that upon inspection of the pharmaceutical manufacturing facility of the appellant Jubilant Life Sciences classified it as 'acceptable'. It was received by the CEO on February 25, 2014 and was received by corporate office of the appellant Jubilant Life Sciences as well as by the appellant, Amit Arora on February 25, 2014 vide an e-mail from the CEO. It is alleged that belated announcement of the same was made on February 27, 2014 to BSE in violation of Clause 36 of the Listing Agreement.

Not only this, while in possession of this information, appellant Amit Arora on February 26, 2014 purchased 450 shares of the appellant Jubilant Life Sciences in violation of Regulation 3 of the PIT Regulations.

Memorandum of Understanding of Sale of Hospital Business :

9. Appellant Shyam Sunder Bhartia and Hari Shankar Bhartia during the relevant period were authorized signatories and directors of appellant Jubilant Stock Holding. They were Chairman and Co- Chairman of the appellant Jubilant Life Sciences. Jubilant First Trust Healthcare (not before us) an unlisted entity is a subsidiary of Jubilant Life Sciences. This Jubilant First Trust Healthcare (hereinafter referred to as, 'Jubilant First Trust') entered into a Memorandum of Understanding (MOU) for sale of one of its hospital on December 24, 2013 with Narayana Hrudalaya Pvt. Ltd. (NHPL). This transaction was discussed in the board meeting of Jubilant Life Sciences on January 31, 2014. The factum of MOU was not disclosed to the exchanges. Ultimately, business transfer agreement and share purchase agreement was signed on March 3, 2014. Money received was also passed on the same day and this transaction was intimated to BSE by the appellant company on the very same day on March 3, 2014.

10. However, just two days before the said announcement i.e. on February 28, 2014, appellant Jubilant Stock Holding had purchased 1.25 lacs shares of appellant Jubilant Life Sciences, for Rs. 1.55 crores at National Stock Exchange of India Ltd. (NSE) and disclosed the purchase of the same under Regulation 3 and 3A of the PIT Regulations. Therefore, it was alleged that though the appellant Shyam Sunder Bhartia and Hari Shankar Bhartia as well as Jubilant Stock Holding were holding the unpublished information about the MOU, they had purchased the shares as detailed above in violation of Regulation 3 and 3A of the PIT Regulations.

11. Various defenses were raised before the AO in relation to the above facts by appellant companies and appellant Shyam Sunder Bhartia and Hari Shankar Bhartia jointly and appellant Amit Arora separately. Out of various defenses, only in one case of Canada warning, the explanation of the appellant Jubilant Life Sciences, that the company being a conglomerate of various subsidiaries had to collate the information, decisions were to be required at various level and then to disclose the same to BSE was accepted as regards Canada warning case. However, as regards the Washington warning, this plea was not accepted by the AO on the ground that similar type of exercise was already undertaken in the past by the appellant Jubilant Life Sciences about Canada Warning and, therefore, the same defense of taking time would not be available. In rest of all the episodes all the appellants were held liable for violation of relevant regulations. In the circumstances, in exercise of powers conferred under Section 23I(2) of SCRA and Section 15I(2) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act'). Penalty in the following manner was imposed upon the appellants :-

Name of the Noticee	Amount of Penalty	Penalty Provisions and Violations
Jubilant Life Sciences Ltd.	Rs. 10,00,000/- (Rupees Ten Lakh Only)	Under Section 23A(a) of the SCRA for violation of clause 36 of Listing Agreement read with Section 21 of the SCRA.
Jubilant Stock Holding Pvt. Ltd.	Rs. 10,00,000/- (Rupees Ten Lakh Only)	Under Section 15G of the SEBI Act for violation of regulation 3A of the PIT Regulations.
Mr. Shyam Sunder Bhartia	Rs. 10,00,000/- (Rupees Ten Lakh Only)	Under Section 15G of the SEBI Act for violation of regulation 3(i) of the PIT Regulations.
Mr. Hari Shankar Bhartia	Rs. 10,00,000/- (Rupees Ten Lakh Only)	Under Section 15G of the SEBI Act for violation of regulation 3(i) of the PIT Regulations.
Mr. Amit Arora	Rs. 10,00,000/- (Rupees Ten Lakh Only)	Under Section 15G of the SEBI Act for violation of regulation 3(i) of the PIT Regulations.

12. Aggrieved by the above order, the present three appeals are filed as described (supra). In Appeal

No. 174 of 2018, the order of the AO regarding issue of MOU of sale of hospital business is challenged by the appellant Jubilant Stock Holding and two of its directors as detailed (supra). In Appeal No. 175 of 2018, Jubilant Life Sciences had challenged the order of the AO as regard the belated disclosures in the case of China Announcement, Washington warning and Canada Acceptance Letter. In Appeal No. 157 of 2018, appellant Amit Arora had challenged the imposition of penalty levied by the AO on the count of trading in the scrip of appellant Jubilant Life Sciences on two occasions while holding UPSI.

13. In the circumstances, we propose to deal with the cases of appellant companies and its directors i.e. Appeal Nos. 174 of 2018 and 175 of 2018 qua the incidents jointly and the case of appellant Amit Arora, the then Vice President of the appellant Jubilant Life Sciences separately.

Washington Warning :

14. For facility, sub-clause 7 of the Clause 36 of the Listing Agreement is reproduced hereunder :-

> "7. Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;
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> i. Issue of any class of securities.
> ii. Acquisition, merger, de-merger, amalgamation,
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> restructuring, scheme of arrangement, spin off or selling divisions of the company, etc. iii. Change in market lot of the company's shares, sub-
>
> division of equity shares of company. iv. Voluntary delisting by the company from the stock exchange(s).
>
> v. Forfeiture of shares.
> vi. Any action, which will result in alteration in, the terms
>
> regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.
>
> vii. Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.
>
> viii. Cancellation of dividend/rights/bonus, etc. The above information should be made public immediately."

15. It is the case of the appellants that Jubilant Life Sciences had 48 subsidiaries located at various places in the world. The subsidiaries involved in Canada warning, Washington warning had very minor contribution in the total operation of the Jubilant Life Sciences. Therefore, not only the warnings received by the subsidiaries were insignificant and technical in nature, the subsidiaries themselves were insignificant in terms of consolidated revenue of the appellant Jubilant Life

Sciences. The price movement after disclosure would not show that it had adversely affected the price of the shares. The information, therefore, was not a price sensitive information. It was alternatively submitted that a conscious decision was required to be taken as regard their disclosure with BSE. Therefore, in the circumstances, a period of a day or two had elapsed from receipt of the information and the disclosure of the same to BSE. Clause 36 of the Listing Agreement requires that the price sensitive information shall be disclosed immediately, meaning that the disclosure needs to be made within reasonable time considering the nature and importance of event.

16. As already detailed, the AO accepted the explanation of time spent in decision taking process as regards the first of the warning i.e. Canada Warning. As regard the Washington warning, the AO, however, concluded that same explanation would not be acceptable. It was reasoned by the AO that the said process of decision making was already undertaken by the appellants and its authorities as regards the earlier Canada warning in the past. Therefore, according to the AO the repetition of the process was not required in disclosing Washington warning. Therefore, the explanation in this regard, according to the AO was unacceptable.

17. The appellant further pleaded that taking into consideration the small contribution of the concerned subsidiaries in the coffer of the appellant Jubilant Life Sciences, the information was not price sensitive information. However, only by way of abundant precaution the informations were disclosed to the stock exchanges and hence the AO ought not to have held appellant Jubilant Life Sciences guilty of violation of the Regulations. AO in this regard reasoned that all the three informations were price sensitive informations and, therefore, they were required to be disclosed to BSE immediately. The AO further reasoned that the very fact that all these incidents were reported by the appellant to BSE, would show that the informations were price sensitive informations.

18. In our view, the AO, however, failed to notice that Canada warning letter episode has arisen in the month of February 2013 while the Washington warning letter was received in the US on December 1, 2013 on Sunday. The said information was sent via e-mail to the appellant on December 3, 2013 at 8:10 A.M. Thereupon, on December 5, 2013 at 11:05 A.M., the disclosure was made to the stock exchanges. A period of ten months had passed between these two warning letters.

19. Considering the fact that the appellant Jubilant Life Sciences is a conglomerate of 48 subsidiaries wherein at various level the action is required to be taken in myriad of cases day to day, it cannot be expected that an automatic decision would be taken in similar matter after ten months, by recollecting earlier old similar incident. In the circumstances, in our view the disclosure was made at the earliest opportune moment by the appellant of the Washington warning also. Therefore, the order of the AO in this regard will have to be set aside qua the appellant company Jubilant Life Sciences. China Announcement :

20. The Ministry of Commerce of China had announced a provisional duty of 24.6% against a product of appellant Jubilant Life Sciences on May 28, 2013. The disclosure of the same was made by the appellant Jubilant Life Sciences to the stock exchanges on July 25, 2013.

21. The appellants replied to the show cause notice of SEBI that the announcement of Ministry of Commerce China was available in the public domain. Further, the imposition of the provisional duty was not expected to have a bearing on the performance of the appellant Jubilant Life Sciences. It was not price sensitive information. Since the export of the product Pyridine to China to a large extent was for consumption in the domestic market, the appellant company, in fact, was not covered under the levy of anti dumping duties. Further, as the price of the product had increased by around 25% in the Chinese market due to strong demand, the imposition of provisional duties did not have any negative impact on Jubilant Life Sciences in the financial year 2013-14. In the circumstances, the appellant Jubilant Life Sciences was of the view that the information was not required to be disclosed. However, as some requests were made for clarification from the market on the impact of the notice, by way of abundant caution, the management suo moto decided to issue the clarification on July 25, 2013. In the circumstances, it was submitted that there is no violation of Clause 36 of the Listing Agreement read with Section 21 of the SCRA.

22. The learned counsel for the appellants made submissions on the similar lines. It is however, to be noted that a levy of 24.6% on a particular product of the appellant Jubilant Life Sciences on the import by China would definitely have a bearing on the performance of the appellant company. The justification of the appellants that the prices of the product has risen in an equal manner in China by 25% or that the larger part of the product was consumed in China, is the subjective assessment of the appellant Jubilant Life Sciences. Further, the argument that larger part of the product was being consumed in China and, therefore, said operation was not liable for levy is a vague reply. The appellants could have very well added the facts and figures of price rise in China as well as consumption of product in China alongwith the disclosure at the relevant time. The very fact as stated by the appellants that it had received requests for clarification from the market would show that the information was price sensitive. Therefore, the reasoning of the AO in this regard will have to be upheld.

Canada Acceptance Letter :

23. Next issue is of Canada Acceptance Letter. On February 21, 2014 US FDA classified JHSGP manufacturing facility in Canada as "acceptable". It was received there by the CEO at Spokane on February 25, 2014. He informed the appellant Jubilant Life Sciences vide e-mail dated February 25, 2014 at 8:15 P.M. The same was disclosed by the appellant company on February 27, 2014 at 7:47 P.M. IST.

24. Besides submitting the 7% contribution in revenue by JHSGP to the appellant Jubilant Life Sciences consolidated revenue was not material, it was also submitted that it could not have any material impact on the appellant Jubilant Life Sciences present or future operations. It was further submitted that some time was required to the appellant company to understand and to determine the materiality of the said letter. Since the appellant Jubilant Life Sciences received the letter on February 25, 2014 after the closure of the business hours, the same was taken up for consideration on February 26, 2014 and was disclosed on February 27, 2014 at 7:47 P.M. i.e. after one working day from the working day on which the appellant Jubilant Life Sciences had received the communication. It was, therefore, submitted that there was inherent time lag in the communication

of the information and taking decision on account of hierarchical line of reporting and differences of the time zone.

25. The AO reasoned that when the appellant Jubilant Life Sciences had already earlier taken a decision of disclosure of the warning letter, the withdrawal cum acceptance letter thereafter did not require any examination at various hands. Therefore, according to AO, it could have been disclosed immediately upon receipt of the same.

However, for the reasons already forwarded as regard the Washington warning, the reasoning of the AO in this regard cannot be sustained. The appeal, therefore, will have to be allowed to that extent. Memorandum of Understanding of Sale of Hospital Business :

26. As already noted, it is an admitted fact that the appellants Shyam Sunder Bhartia and Hari Shankar Bhartia in Appeal No. 174 of 2018 were having the knowledge of existence of MOU dated December 24, 2013 for sale of one of the hospital of appellant Jubilant Life Sciences subsidiary to NHPL. It is already noted that they were also authorized signatories and directors of the Appellant Nos. 2 Jubilant Stock Holding. While in possession of this information Appellant Nos. 2 Jubilant Stock Holding had on February 28, 2014 purchased 1.25 lacs shares of appellant Jubilant Life Sciences, for Rs. 1.55 Crores from the market. Thereafter, on March 3, 2014, the sale of the hospital took place. In the circumstances, it was alleged that these appellants in Appeal No. 174 of 2018 had violated Regulations 3 and 3A of the PIT Regulations.

The issue, is as to whether the MOU would be unpublished price sensitive information. The learned counsel for the appellants submitted that MOU is nothing but a proposal and counter proposal consolidated in one document. Further, he took us through the various clauses of the MOU from the copy filed on record to buttress his arguments that a concrete agreement upon the acceptance of the proposals was yet to take birth. He further submits that after execution of the MOU the trading window was not closed and the same is not objected by SEBI, which would definitely show that the MOU was not UPSI.

He additionally submitted that the transaction was insignificant in terms of the total revenue, net worth, etc. of Jubilant Life Sciences and the purchase of the share was part of pre-determined plan to have a gradual acquisition of shares within the limits prescribed by the applicable regulations. The copies of resolutions in this regard are filed on record.

27. On the other hand, Shri Mustafa Doctor, the learned senior counsel for SEBI pointed out specific clauses in the MOU. He submitted that these clauses would show that definite agreement of binding offers had reached between the parties and, thus, whether it was a concluded contract or not, it was definitely unpublished price sensitive information.

Further the said offer was to remain valid for a period of 60 days from the execution of MOU. Additionally, the minutes of the meeting would show that the company came to a decision that the healthcare being specialized service business would not fit in to the medium strategy of the company and, therefore, it was desirable to exit the business as the sale would also generate funds to the tune

of Rs. 44 crores.

28. On the other hand, Shri Pesi Modi, the learned senior counsel for the appellants took us through the copy of the MOU to show that it was merely an understanding and not an agreement between the parties to sell the hospital. He points towards the covering letter of the MOU at page No. 133 wherein it is noted that the proposed purchase may be either through slump sale or other appropriate type of transactions. Clause 4.2 of the MOU would show the confirmation of 'intent to sale' for INR 440 million. The binding offer was only to the extent that for the period of 60 days, appellant Jubilant Life Sciences would not sell or offer for sale the hospital to any other person if the Narayana Hrudayala agrees to pay the maximum consideration. However, the appellant Jubilant Life Sciences reserved the right to terminate the offer. Further, the proposed price was subject to the completion of due diligence and actual consideration Narayana Hrudayala would be willing to pay. There was also a confidentiality clause. It was also agreed vide the MOU that the offer shall end on 60th day on announcement of the same. However, if both the parties agree, the offer was to terminate on any other date. Clause No. 13 provided as under :-

> " 13. Definitive Agreement :
>
> If the Parties mutually agree to the Price/Consideration as per this Binding offer, after due diligence, a definitive agreement on such terms as may be agreed between the parties shall be executed. The Parties shall provide usual and customary representation and warrants as to capacity, power, authority etc. to enter into the definitive agreement."

29. On the basis of these conditions, Shri P. N. Modi submits that MOU was not transfer or sale. It was not enforceable. It was merely an offer. The price was yet to be agreed subject to the conditions as detailed above. The offer was confidential. In the circumstances, had the Jubilant Life Sciences disclosed the MOU to the exchanges and thereafter the offer failed, then the appellant Jubilant Life Sciences would have been blamed for creating false market for the appellant Jubilant Life Sciences.

30. Upon hearing both sides, in our view, though the MOU when executed cannot be termed as a price sensitive information, the deeper scrutiny of the clauses of the MOU would show that it had become as price sensitive information definitely some time before February 28, 2014 when 1.25 lacs shares for Rs. 1.55 crores were purchased by appellant Jubilant Stock Holding of the appellant Jubilant Life Sciences. It is to be noted that the MOU was binding on the subsidiary of appellant Jubilant Life Sciences. As regards the ceiling on the price, there was a binding offer to that extent. The ultimate agreement to transfer the hospital was to take effect after due diligence is carried by NGHP. When actual transfer was effected on March 2, 2014, it can easily be concluded that the due diligence was carried out some time before it and the decision regarding the transfer was taken between the parties. March 2, 2014 was Monday and appellant Jubilant Stock Holding purchased the shares of appellant Jubilant Life Sciences on February 28, 2014 i.e. on Thursday. Thus, only one working day was left for actual execution of the transfer deed. In the circumstances, as the transfer had become certain, the purchase of shares could not have been made by appellant Jubilant Stock Holding. This however, is depending on the issue as to whether the sale itself was a price sensitive

information or not.

The definition of the price sensitive information is found in Regulation 2(ha) of the PIT Regulations which runs as under :-

> "2(ha). "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.
>
> Explanation. - The following shall be deemed to be price sensitive information :-
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> (i) periodical financial results of the company;
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> (ii) intended declaration of dividends (both interim and final);
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> (iii) issue of securities or buy-back of securities;
>
> (iv) any major expansion plans or execution of new projects;
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> (v) amalgamation, mergers or takeovers;
>
> (vi) disposal of the whole or substantial part of the undertaking;
>
> (vii) and significant changes in policies, plans or operations of the company;"

31. Clause (vi) of the above definition would show that disposal of the whole or substantial part of the undertaking can be termed as price sensitive information as well as any information likely to be materially affect the price of the securities of the company.

32. The appellant submits that the sale of hospital for Rs. 44 crores by the subsidiary of appellant Jubilant Life Sciences was not a disposal of substantial part of the undertaking of appellant Jubilant Life Sciences. The table to substantiate this submission to buttress the arguments could be found in the paragraph No. 14 of the reply to the show cause notice. It would show that the fixed assets of JFTH i.e. the subsidiary of Jubilant Life Sciences are 0.07% of the appellant Jubilant Life Sciences. The revenue for the financial year 2013-14 of this subsidiary was 0.33% of the appellant Jubilant Life Sciences revenues. It was, therefore, submitted that the sale of the hospital was not disposal of the substantial part of the undertaking and could not have impacted the price of the scrip at all. It was further submitted that the shares were purchased as a part of strategy to acquire less than 5% of the shares (4.98% in the present case) as permitted by Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as, "SAST Regulations"). The shares were not sold thereafter which would show that the appellant has not purchased the shares "on the basis of the information" but merely as a part of the overall strategy.

33. It is to be noted that the sale of hospital of the subsidiary of appellant Jubilant Life Sciences was definitely an important information which would have affected the prices of the Jubilant Life Sciences to some extent. While the revenue from JFTH to the appellant Jubilant Life Sciences was Rs. 188.68 for the financial year 2013-14, the hospital was sold for Rs. 44 crores. Further, the fact that the actual transfer was disclosed by appellant Jubilant Life Sciences would show that it was a price sensitive information. The arguments of the appellant, therefore, on this count fails.

34. As regards, the fact that the appellant Jubilant Stock Holding thereafter did not sell the shares cannot be a sole factor to absolve the appellant on this count. The reliance was placed by the appellant before the AO on two judgments of this Tribunal - i) Mrs. Chandrakala vs. SEBI in Appeal No. 209 of 2011 decided on January 31, 2012 (Annexure 'E'); ii) Mr. Manoj Gaur vs. SEBI in Appeal No. 64 of 2012 decided on October 3, 2012 (Annexure 'E1').

35. Reading of the reasoning recorded in these two cases however would show that non-selling of the shares by the appellants therein was one of the factors out of many factors considered by this Tribunal to absolve the appellants, therein from the similar charge.

In the present case what we find that the MOU was executed long back on December 24, 2013, the shares were purchased on February 28, 2014 while the actual transfer was effected on March 3, 2014 when the MOU had practically ripened into the transfer as detailed (supra). The submissions of the appellant therefore, in this regard cannot be accepted and the reasoning of the AO needs no interference on this ground.

36. To conclude, in Appeal No. 175 of 2018, we find that the appellants have committed violation of Clause 36 of the Listing Agreement only as regard the China warning. Appeal No. 174 of 2018 will have to be dismissed.

37. In Appeal No. 157 of 2018, appellant Amit Arora during the relevant time was the Vice President of Jubilant Life Sciences. On February 24, 2013, he as Vice President received the communication about the Canada warning. He sold 830 shares of the Jubilant Life Sciences on February 25, 2013 and thereafter the said information was disclosed to the stock exchange on February 27, 2013.

38. Similarly, the Canada Acceptance Letter was communicated to the appellant on February 25, 2014. On February 26, 2014, he purchased 450 shares of appellant Jubilant Life Sciences and the acceptance letter was disclosed to the stock exchanges on February 28, 2014. It was, therefore, alleged that the appellant being the insider had traded in the shares of appellant Jubilant Life Sciences when he was in possession of the unpublished price sensitive information. Rule 3 of the PIT Regulations as stood amended in the year 2002 is extracted hereunder :-

> "3. No insider shall -
>
> (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or"

39. The submissions of the appellants were that trading window was not closed during the period as the information was not a price sensitive information. The trades were insignificant. Further, on February 25, 2013, he sold 830 shares as he required funds for renovation of the new house purchased by him. On February 26, 2014, he purchased the shares in the course of his regular activity of purchasing the scrips of not only of Jubilant Life Sciences but also other blue-chip companies including Reliance Industries, Tata Teleservices, Indian Hotels, TCS, Coal India, HCL Infosystems and Power Grid etc. However, it was not supported by any proof. He also objected on the ground that he did not trade on the basis of the information but in usual course and for the difficulty as detailed above. Therefore, he cannot be penalized under Section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act') which reads as under :-

> "15G. Penalty for insider trading. -- If any insider who, --
>
> (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
>
> (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
>
> (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpub- lished price sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

40. It is to be noted that while having the negative information of slapping of the warning, the appellant sold shares of Jubilant Life Sciences on February 25, 2013. His explanation for the same is that he required funds for renovation of his house is not substantiated by any material on record.

41. It was argued before us that for penalizing a person for insider trading, SEBI has to establish that the appellant has traded "on the basis of" the unpublished price sensitive information as provided by Section 15G of the SEBI Act as quoted above. On the other hand, the AO has relied on the provisions of Regulation 3 of the PIT Regulations as amended in 2002 which provided that only "having possession of" unpublished price sensitive information is sufficient to attract the provisions.

42. Prior to 2002, the Regulation 3 was on the line of the provisions of Section 15G of the SEBI Act, which provided that the insider trading in securities should be "on the basis of" unpublished price sensitive information.

43. It has been now established by the catena of cases that even if the penalty would be imposed only when the trading is done "on the basis of" any unpublished price sensitive information, the person against whom the charges are levelled will have to show that the trading was not done on the basis of

the information but for other reasons, since the explanation would be especially within his own knowledge. In the present case, the appellant provided the explanation which remained uncorroborated.

44. Non-closure of the trading window during the period or non action by SEBI on this count is irrelevant. It is established that the present appellant being a Vice President of Jubilant Life Sciences had sold shares when adverse information reached him and purchased when positive news reached him when both remained to be published.

45. The AO has provided the table of price fluctuation in the scrip to show that the warning letter had adverse impact while the acceptance letter on positive impact had the positive impact on the prices. Besides this, the AO has rightly noted that this factor is irrelevant. In this view of the matter, the appellant would be guilty of insider trading.

46. The AO has imposed penalty of Rs. 10 lacs on each of the appellants Jubilant Life Sciences, Jubilant Stock Holding, Shyam Sunder Bhartia and Hari Shankar Bhartia and Amit Arora equally. The reasoning forwarded by the AO was that though the gains for the violation cannot be estimated, the violations being in the nature of detrimental to the investors, adversely impacting the equilibrium of the fair market.

47. We have found that the appellant in Appeal No. 175 of 2018 Jubilant Life Sciences would be liable for penalty only on one count i.e. for non-disclosure of the China warning immediately. The penalty accordingly is reduced to Rs. 5 lacs.

Appeal No. 174 of 2018 will have to be dismissed for the foregoing reasons.

So far as appellant Amit Arora in Appeal No. 157 of 2018 is concerned, he being a Vice President of the Jubilant Life Sciences, he should not have traded in the scrip of the company while he had on his table unpublished price sensitive information. Therefore, the penalty of Rs. 10 lacs imposed on him is just and sufficient. In these circumstances, the following order :-

ORDER

1. Appeal No. 174 of 2018 is hereby dismissed without any order as to costs.

2. Appeal No. 175 of 2018 is partly allowed to the extent of penalizing the appellants for non-disclosure of announcement of Ministry of Commerce of China. The penalty shall stand reduced to Rs. 5 lacs only.

3. Appeal No. 157 of 2018 is hereby dismissed.

Sd/-

Justice Tarun Agarwala Presiding Officer Sd/-

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

Justice M. T. Joshi Judicial Member 07.11.2019 Prepared & Compared by PTM