Securities Appellate Tribunal

Mr. G. Bala Reddy And Others vs Sebi on 12 July, 2019

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 13.06.2019
Date of Decision : 12.07.2019

Appeal No. 509 of 2015

1. Mr. G. Bala Reddy
   Plot No. 139, Vivekanadnagar Colony,
   Kukatpally,
   Hyderabad- 500 072

2. Mrs. G. Velangini Mary
   Plot No. 139, Vivekanadnagar Colony,
   Kukatpally,
   Hyderabad- 500 072

3. Mrs. Mary Ashwini
   H. No. 12-2-790/53
   Ayodhya Nagar Colony
   Mehdipatnam,
   Hyderabad- 500 028

4. Mrs. Sravanthi Yakkanti
   Plot No. 595, Vivekananda Nagar Colony,
   Kakatpally,
   Hyderabad- 500 072

5. Sahasra Investments Pvt. Ltd.
   Plot No. 838, Vivekanadnagar Colony,
   Kukatpally,
   Hyderabad- 500 072

6. BRG Energy Ltd.
   Plot No. 838, Vivekanadnagar Colony,
   Kukatpally,
   Hyderabad- 500 072

7. Mr. Anthony Pratap Reddy Gali
   H. No. 12-2-790/53
   Ayodhya Nagar Colony Mehdipatnam,
   Hyderabad- 500 028 ...Appellants

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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. Darius J. Khambatta, Senior Advocate with Mr. Pesi Modi, Senior Advocate, Mr. Joby Mathew, Mr. Neville Lashkari, Mr. Nikhil Shah and Mr. Tushar Hathiramani, Advocates i/b Joby Mathew & Associates for the Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Saurabh Pakale, Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b The Law Point 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. Appellants being aggrieved by the order of the Adjudicating Officer ("AO" for short) of the Securities and Exchange Board of India ("SEBI" for short) dated October 15, 2015 have filed the present appeal wherein the following penalties were imposed namely:-

> "a) Shri G. Bala Reddy, G Velangini Mary, Mary Ashwini and Sravanthi Yakkanti violated Regulation 3 and 4 of the PIT Regulations, 1992 read with sections 12A(d) and 12A(e) of the SEBI Act. Further, Sahasra Investments Pvt. Ltd. and BRG Energy Ltd. violated Regulation 3, 3A and 4 of the PIT Regulations, 1992 and sections 12A(d) and section 12A(e) of the SEBI Act, 1992. In addition to the same, Shri G Bala Reddy, G Velangini Mary, APRG, Sravanthi, Mary Ashwini and BRG have violated Regulations 3(c) and (d) of the PFUTP Regulations read alongside section 12A(b) and (c) of the SEBI Act. For the aforesaid violations, I impose a penalty of ` 40,00,00,000/- (Rupees Forty Crore Only) under section 15G and 15HA of the SEBI Act, 1992 on the aforenamed noticees, to be paid jointly and severally by them.

b) Further, Bala Reddy, Mary Ashwini and Sravanthi Yakkanti submitted misleading information to SEBI regarding their relationship with certain entities, and for the same I impose a penalty of ` 20,00,000/-

(Rupees Twenty Lakh Only) on Bala Reddy, Mary Ashwini and Sravanthi Yakkanti each, under section 15A(a) of the SEBI Act.

c) Shri G. Bala Reddy and G Velangini Mary also violated Regulation 8A(1) and (2) of the Takeover Regulations, 1997, Regulations, which attracts penalty under section 15HB of the SEBI Act. For the same, I impose a penalty of ` 26,00,000/- (Rupees Twenty Six Lakh Only) on Bala Reddy and ` 12,00,000/-

(Rupees Twelve Lakh Only) on G Velangini Mary."

2. The facts leading to the filing of the appeal is, that on March 18, 2009 ICSA (India) Limited (hereinafter referred to as "the Company") made a corporate announcement at National Stock Exchange of India Limited ("NSE") and BSE Limited ("BSE") to the effect that the company had secured work orders for a total contract value of ` 464.17 crore from Bihar State Electricity Board (hereinafter referred to as "BSEB"), Maharashtra State Electricity Distribution Co. Ltd. ("Mahavitaran" and M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. (hereinafter referred to as "MPPKVVCL"). Investigation made by SEBI indicated that certain entities bought a large number of shares in February 2009 a few days prior to the announcement made by the company. It was found that Sravanthi Yakkanti (hereinafter referred to as "Sravanthi"), Appellant No. 4 and Mary Ashwini (hereinafter referred to as "Mary") Appellant No. 3 had bought 3,93,683 shares at the rate of ` 74.99 paisa per share and 11,92,000 shares at the rate of ` 75 per share respectively. Investigation further revealed that all the appellants were somehow related in one way or the other and indulged in insider trading based on the unpublished price sensitive information ("UPSI"). Accordingly, a show cause notice was issued to show cause as to why a penalty should not be imposed for utilizing the UPSI under Regulation 2(ha) read with Regulation 2(k) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations" for short). The show cause notice further indicated that the appellants gave misleading information with regard to the relationship between the appellants. Further, some of the appellants did not declare the shares pledged by them. In short, the show cause notice stated:-

> "i) You have funded the purchase of shares by Sravanthi and Mary who are connected to you and trade while in possession of price sensitive information. Thus act of yours are alleged to be violation of sections 12A(d) and 12A(e) of the SEBI Act, 1992 read with Regulation 3 and 4 of the PIT Regulations, 1992. Further you were the beneficiary of the funds received from the sale proceeds of the shares acquired through insider trading. Such act of you are alleged to be in violation of sections 12(A)(b) and 12A(c) of the SEBI Act read with Regulation 3(c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short).

ii) You gave misleading information with regard to the relationship with the entities who traded in the scrip and those who were the beneficiaries of the funds received from the sale proceeds of the shares acquired through alleged insider trading.

iii) You have given misleading declaration with regard to shares pledged by you and thus violated Regulation 8A(1) and (2) of the SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 1997 ("Takeover Regulations, 1997" for short)."

3. The appellants contested the show cause notice and submitted their replies denying the allegations and contended that they have not violated any provisions of the SEBI Act, the Takeover Regulations, the PIT Regulations, etc. The AO after considering the replies of the appellants and, after giving them an opportunity of hearing found that the appellants were guilty of insider trading, etc. and consequently, imposed a penalty which is reflected in the preceding paragraphs.

4. We have heard Shri D. J. Khambatta alongwith Shri Pesi Modi, learned senior counsels assisted by Shri Joby Mathew advocate for the appellants and Shri Gaurav Joshi the learned senior counsel assisted by Shri Saurabh Pakale advocate on behalf of the respondent at length.

5. The basic point which has been urged before this Tribunal is, that the appellants have not violated the provisions of the PIT Regulations, 1992 read with section 12A of the SEBI Act. It was contended that the work orders which the company had procured was in the ordinary course of business and, in any case, when the shares were purchased, the company had not bagged the contract and was only found to be the lowest price bidder (L1). It was thus contended, that being the lowest price bidder did not mean that the contract was issued in favour of the company nor being (L1) could be considered as a price sensitive information.

6. In order to understand the import of the submissions it would be necessary to give a few facts and the findings given by the AO.

7. Appellant No. 1 is the Promoter, Chairman and Managing Director of the company as well as the Promoter, Chairman and Director of Appellant Nos. 5 and 6. Appellant No. 2 is a Promoter of the company and wife of Appellant No. 1 and is Promoter and Managing director in Appellant No. 6 and Promoter and Director in Appellant No. 5. Appellant No. 3 is the wife of Appellant No. 7. Appellant No. 4 is an employee of the company, Appellant Nos. 5 and 6 are companies promoted by Appellant No. 1 in which Appellant Nos. 1 & 2 are also Directors. Appellant No. 7 is the husband of Appellant No. 3 and is also a cousin of Appellant No. 2.

8. The AO after considering the evidence have found that the aforesaid appellants are connected persons and are a homogeneous group. The AO further found that a non-resident investor Jeff Fineberg had 16,00,000 shares of the company which amounted to 3.42% of the paid up capital of the company and had contacted Appellant No. 1 for sale of his shares. Appellant No. 1 instead of buying the shares directly from this non-resident investor purchased these shares through a circuitous route. The Appellant No. 1 arranged for a bulk purchase of 15,85,683 shares through Appellant Nos. 3 and 4. Appellant No. 1 provided funds to Appellant Nos. 3 and 4 to purchase the shares. The funds were given from Appellant Nos. 5 and 6 in which Appellant No. 1 is a Promoter and Director.

9. Appellant No. 3 after purchasing the shares pledged these shares in favour of Cholamandalam DBS from whom the Appellant No. 1 had availed corporate finance facility. By pledging these shares, Appellant No. 3 stood as a guarantor to the facility availed by Appellant No. 1. Similarly, shares purchased by Appellant No. 4 were transferred to Appellant No. 7 who pledged these shares to IDBI Bank Ltd. but subsequently transferred a large portion of the shares in off-market in favour of Appellant No. 2. Appellant No. 3 also transferred the shares to her husband Appellant No. 7 in off-market and later on Appellant No. 7 sold it in the off-market. The proceeds eventually came in the hands of Appellant Nos. 1 & 2.

10. The AO found that Appellant Nos. 3 and 4 traded in large quantities of the shares of the company simply on the request of Appellant No. 1. The AO further found that the Appellant Nos. 3

and 4 had bought the shares from the funds arranged by Appellant No. 1 and, on the sale of the shares, the proceeds were transferred by them to the entities connected to Appellant No. 1. The AO found that Appellant No. 7 acted as a conduit for routing the funds arising out of the sale of the shares of the company and that Appellant Nos. 1 and 2 were the ultimate beneficiaries of the sale proceeds.

11. The AO consequently found that the appellants are connected persons as per section 2(c) of the PIT Regulations, 1992. It was further found that the appellants were insiders within the meaning of 2(e) of the PIT Regulations, 1992. The AO further found that the company's lowest price bid was a price sensitive information as per Regulation 2(ha)(iv) of the PIT Regulations, 1992 and was also a price sensitive information as per Regulation 2(a) of the PIT Regulations, 1992. The AO found that the appellants have violated Regulations 3 and 4 of the PIT Regulations, 1992 and section 12A(d), 12A(e) of the SEBI Act as well as Regulations 3(c) and

(d) of the PFUTP Regulations, 2003.

12. The aforesaid findings have not been disputed by the leaned senior counsel appearing for the appellants. What was contested is, that being the lowest bidder of a contract in the usual course of business does not amount to a price sensitive information and, in any case, the lowest price bid being in the public domain cannot be an unpublished price sensitive information under the PIT Regulations, 1992.

13. In order to examine this aspect we need to consider what is "price sensitive information" and what is "unpublished" price sensitive information. In this regard, Regulation 2(ha) defines price sensitive information as:

> "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 :--
>
> (i) ......
> (ii) ......
> (iii)
> (iv) any major expansion plans or execution of new projects.
> (v) ......
> (vi) ......
> (vii) ......"
>
> A perusal of the aforesaid definition indicates that any information which relates directly or indirectly to a company and which if published is likely to affect the price of the securities then such information would be deemed to be a price sensitive

> information. Further clause (iv) of the explanation to Regulation 2(ha) of the PIT Regulations, 1992 provides that execution of new projects would be deemed to be a price sensitive information.

14. Regulations 2(k) defines "unpublished" as:

> "2(k) "unpublished" means information which is not published by the company or its agents and is not specific in nature."

A perusal of the aforesaid definition clearly indicates that an information which is not published by the company or its agents is an unpublished price sensitive information.

15. In Shri E. Sudhir Reddy v/s SEBI in Appeal No. 138 of 2011 decided on 16.12.2011 this Tribunal held that tendering process is a long drawn procedure involving various stages and it would be difficult to lay down any parameter namely, at what stage the information in a tendering process would become price sensitive for the purpose of Insider Trading Regulations and that such information would depend on the facts and circumstances of each case.

16. In Gujarat NRE Mineral Resources Ltd. v/s SEBI in Appeal No. 207 of 2010 decided on 18.11.2011 this Tribunal held that a decision taken by a listed investment company to dispose of a part of its investment was not a price sensitive information in the facts and circumstances of that case.

17. In Anil Harish v/s SEBI in Appeal No. 217 of 2011 decided on 22.06.2012 this Tribunal held that a company which is in the business of infrastructure projects, bags an order in the normal course of its business, such information was not necessarily a price sensitive information. The Tribunal further held that whether the information is price sensitive or not and on what date it became price sensitive would depend on the facts and circumstances of the case.

18. In Piramal Enterprises Limited in Appeal No. 466 of 2016 decided on 15.05.2019 it was held by this Tribunal that in the absence of any direct or clinching evidence a reasonable benefit of doubt should be extended to the company instead of mechanically imposing a penalty.

19. It was urged that L1 became known on various dates and, such information came in the public domain. It was thus urged that it was not an unpublished price sensitive information. In our opinion, this contention is patently misconceived and cannot be accepted. The definition of "unpublished" as defined under Regulation 2(k) has a definite connotation under Insider Trading Regulations and has to be construed strictly. Regulation 2(k) defines "unpublished" to mean information which has not been published by the company or its agent and is not specific in nature. Admittedly, the bagging of the contract was announced by the company only on the stock exchange platform on March 18, 2019. Prior to that the company had not published nor made any corporate announcements of this information. The opening of the bids by a third party does not amount to an information being published by the company or its agent under Regulation 2(k). Thus, the contention that the opening of the bids in which the company was found to be the lowest bidder

came in the public domain is incorrect and cannot be construed as being published.

20. The Appellant No. 1 had specific information about the company's bid being the lowest. Being L1, the company through Appellant No. 1 was called for further negotiation. It has come on record that in two out of three contracts, the Board approved the L1 after negotiation around the time when the shares were purchased. Thus, being L1 coupled with the fact that the bids were approved by the Board was a price sensitive information in so far as Appellant No. 1 is concerned in relation to its shareholders and investors and it was thus incumbent upon him not to deal in the scrips of the company and not to purchase the shares of the company given by a non-resident investor. The Appellant No. 1 admits that he purchased the shares through a circuitous measure by funding the amount to Appellant Nos. 3 and 4 from the Appellant Nos. 5 and 6 in which he was a Promoter. The Appellant No. 1 eventually benefitted from the sale of these shares. The Appellant No. 1 was thus an insider and it was incumbent upon him not to deal in the scrip of the company so long as the information about the contract remained unpublished. Thus, in the facts and circumstances of this case, even though the contract was not awarded nor the letter of intent was given at the time of purchase of the shares, nonetheless, being L1, the same was a price sensitive information in so far as the Appellant No. 1 was concerned. Since the Appellant No. 1 traded in these scrips through Appellant Nos. 3 and 4 he is guilty of insider trading. Similarly, in the same fashion, the other appellants are also guilty of insider trading.

21. The learned senior counsel submitted that a tenderer does not have any right for award of a contract even where he is found to be L1. In support of his submission, he has placed reliance on the decision of the Supreme Court in Air India Ltd. v/s Cochin International Airport Ltd. and Ors. (2000) 2 SCC 617, Food Corporation of India v/s M/s Kamdhenu Cattle Feed Industries (1993) 1 SCC 71 and Trilochan Mishra, Etc. v/s State of Orissa and Ors. (1971) 3 SCC 153.

22. There is no quarrel with the aforesaid proposition of law but the same is not applicable in the instant case. An L1 may not get the contract. The contract specifically says so. However, in the instant case, we find that L1 became a price sensitive information and therefore the Appellant No. 1 could not have traded in the scrips of the company through a circuitous method.

23. The learned senior counsel contended that Appellant Nos. 3 and 4 are not promoters of the company nor were part of the promoter group of the company and therefore the shares pledged by them as collateral for the loans availed by them could not have been disclosed under Regulation 8A of the Takeover Regulations, 1997. It was contended that the requirement of disclosure under Regulation 8A of the Takeover Regulations, 1997 is on the promoter or the promoter group. The learned senior counsel urged that in the light of the aforesaid the imposition of penalty for non disclosure under Regulation 8A was wholly illegal and without any authority of law.

24. Regulation 8A(1) and (2) of the Takeover Regulations, 1997 provides as under:

> "8A. Disclosure of pledged shares. (1) A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and

> Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.
>
> (2) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company."

Promoter and promoter group is defined under Regulation 2(h) of the Takeover Regulations as under:

> 2.(h) promoter means--
>
> (a) any person who is in control of the target company;

(b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later; and includes any person belonging to the promoter group as mentioned in Explanation I: Provided that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.

Explanation I. For the purpose of this clause, "promoter group" shall include:

(a) in case promoter is a body corporate-

(i) a subsidiary or holding company of that body corporate;

(ii) any company in which the promoter holds 10 % or more of the equity capital or which holds 10 % or more of the equity capital of the promoter;

(iii) any company in which a group of individuals or companies or combinations thereof who holds 20 % or more of the equity capital in that company also holds 20 % or more of the equity capital of the target company; and

(b) in case the promoter is an individual-

(i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;

(ii) any company in which 10 % or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;

(iii) any company in which a company specified in (i) above, holds 10 % or more, of the share capital; and Page 9 of 75

(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 per cent of the total.

Explanation II-

Financial Institutions, Scheduled Banks, Foreign Institutional Investors (FIIs) and Mutual Funds shall not be deemed to be a promoter or promoter group merely by virtue of their shareholding:

Provided that the Financial Institutions, Scheduled Banks and Foreign Institutional Investors (FIIs) shall be treated as promoters or promoter group for the subsidiaries or companies promoted by them or mutual funds sponsored by them;]"

From a perusal of the definition of promoter and promoter group it is apparently clear that Appellant Nos. 3 and 4 do not fall in the category of promoter or promoter group. Regulation 8A specifically requires a promoter or every person forming part of the promoter group of the company to disclose the details of the pledging of their shares of the company. The mandate under Regulation 8A for disclosure is upon the promoter or every person forming part of the promoter group. Since the Appellant Nos. 3 and 4 admittedly are not promoters of the company nor are part of the promoter group, they cannot be held liable for violation of Regulation 8A of the Takeover Regulations.

25. However, in the instant case, Appellant Nos. 1 and 2 who are admittedly promoters of the company have been held liable for non-disclosure under Regulation 8A of the Takeover Regulations on the ground that Appellant Nos. 3 & 4 had traded on the instructions of Appellant No. 1 and that Appellant No. 1 had funded the said trades through his other companies coupled with the fact that eventually the sale proceeds of these shares were eventually received by Appellant No. 1. Be that as it may. The fact remains that the shares which were purchased were not in the name of Appellant Nos. 1 and 2. If the shares were purchased in the name of Appellant Nos. 1 and 2 then it would have become the responsibility of Appellant Nos. 1 and 2, as promoters of the company, to make the necessary disclosures under Regulation 8A. Since the shares were initially purchased by Appellant Nos. 3 and 4 inspite of the instructions from Appellant No. 1 and inspite of the funding of the purchase of shares by Appellant No. 1, nonetheless, the requirement of law is, that only a promoter or every person forming part of the promoters group of the company is required to make necessary disclosure under Regulation 8A. There cannot be any deemed promoter or "related to the promoter". Since Appellant Nos. 3 and 4 were not promoters and were not part of the promoter group the imposition of penalty under Regulation 8A upon the Appellant Nos. 1 and 2 cannot be sustained.

26. Appellant No. 1 has been charged for providing misleading information in respect of his relationship with the other entities, namely, the appellants. The information provided by Appellant No. 1 was that he does not have any relationship with Appellant Nos. 3 and 4 and was not covered within the list of "relatives" set out in Scheduled 1A of the Companies Act, 1956. The AO found that Appellant No. 1 gave misleading information to SEBI in respect of his connection with other entities and thereby imposed a penalty for submitting misleading information to SEBI under section 15A(a)

of the SEBI Act.

27. In this regard, the learned senior counsel submitted that the information sought by SEBI by letter dated September 15, 2010 was duly supplied by Appellant No. 1 vide its letter dated September 24, 2010. The learned senior counsel asserted that the relationship of Appellant No. 1 with the other entities as depicted in the letter dated September 15, 2010 was given, taking into consideration the provisions of "relatives" set out in Scheduled 1A of the Companies Act, 1956. It was asserted that no false or misleading information was supplied and that the information supplied was in accordance with the Companies Act, 1956.

28. Having perused the letter dated September 15, 2010 given by SEBI and the reply dated September 24, 2010 given by the appellant we find that the information sought was the relationship of the appellant with the other entities. A perusal of the said letter would indicate that the information sought was as to what was the relationship of the appellant with other entities, namely, whether they were relatives or not. Information was supplied by the appellant in accordance with the provisions of the Companies Act, 1956. The letter of SEBI does not explicitly states that the appellant was required to furnish the information with regard to his professional or working relationship with the other entities. Thus, even though the Appellant No. 1 may have professional or working relationship with the other entities, we are of the opinion that since there was no explicit clarity in the information sought the reply given by the appellant, being in accordance with the provisions of the Companies Act, 1956, was not misleading. SEBI ought to have been more professional and should have asked clear cut information which is explicit and is not vague. Consequently, we are of the opinion that the imposition of penalty in so far as providing misleading information cannot be sustained.

29. A penalty of ` 40,00,00,000/- (Rupees Forty Crore Only) has been imposed upon the appellants for insider trading violating Regulations 3 and 4 of the PIT Regulations, 1992 read with section 12A(d) and (e) of the SEBI Act, 1992. Further direction is that the said penalty would be paid by the appellants jointly and severally.

30. It was urged by the learned senior counsel that the quantum of penalty is arbitrary in as much as there is no discussion by the AO as to how this figure of ` 40,00,00,000/- (Rupees Forty Crore Only) has been arrived at.

31. There is no doubt that the mechanics of imposition of penalty of ` 40,00,00,000/- (Rupees Forty Crore Only) has not been disclosed in the impugned order but we find that on this ground the amount of penalty cannot be set aside for the following reasons:

> (i) The AO has found that Appellant No. 3 had made a profit of ` 11,23,88,739/- and Appellant No. 7 made a profit of ` 2,81,16,267/-. The total profit thus comes to ` 14,05,05,006/-. Under section 15G and 15HA of the SEBI Act, 1992 a penalty upto a maximum of twenty five crore rupees or three times the amount of profits whichever is higher can be imposed.

(ii) For facility, section 15G and 15HA as it stood at the relevant point is extracted hereunder:

"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 unpublished price-sensitive information, shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.]"

"15HA. Penalty for fraudulent and unfair trade practices:-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-

five crore rupees or three times the amount of profits made out of such practices, whichever is higher]."

(iii) In the instant case, the profits earned through insider trading was ` 14,05,05,006/-. Three times the profit amounts to ` 42,15,15,018 which is more than the penalty awarded by the AO. Thus, we do not find any error in the quantum of penalty imposed by the AO.

32. It was urged that the direction to pay penalty jointly and severally by the appellants is arbitrary. It was urged that if the Appellant No. 7 had only made a profit of ` 2,81,16,267/- then the penalty should be accordingly quantified to a maximum of three times the profit instead of directing the said appellant to pay the entire amount of penalty of ` 40,00,00,000/- (Rupees Forty Crore Only).

33. The submission of the learned senior counsel appears to be attractive in the first instance but on a closer scrutiny we find that the contention cannot be accepted. Admittedly, the appellants have been found to be connected persons under section 2(c) of the PIT Regulations and were also found to be deemed to be connected persons under section 2(h). The appellants were also found to be insiders under section 2(e) of the PIT Regulations and were found to have traded in the shares having knowledge of the price sensitive information. Consequently, all the appellants being

connected persons have been held to be equally liable to pay the amount of penalty jointly and severally. We thus do not find any error in this regard.

34. For the reasons stated aforesaid the appeal is partly allowed. The order of the AO imposing a penalty of ` 40,00,00,000/- (Rupees Forty Crore Only) under section 15G and section 15HA of the SEBI Act against the appellants for violation of Regulation 3 and 4 of the PIT Regulations read with section 12A(d) and (e) of the SEBI Act is affirmed. The imposition of penalty of ` 20 lakhs (Rupees Twenty Lakhs Only) under section 15A(a) of the SEBI Act for submitting misleading information to SEBI and penalty of ` 38 lakhs (Rupees Thirty Eight Lakhs Only) upon Appellant Nos. 1 and 2 for violation of Regulation 8A(1) and (2) of the Takeover Regulations, 1997 are quashed. In view of the partial success, 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 12.07.2019 Prepared & Compared By: PK