

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Misc. Application No. 20 of 2014
And
Appeal No. 24 of 2014**

Date of Decision : 27.02.2014

Dhaval Janardhan Nanavati
12 Om Satyadeep CHS Ltd
Gulmohar Cross Road No. 7,
Vile Parle West
Mumbai 400 049.

...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. Kamalesh Kumar, Chartered Accountant for the Appellant.

Mr. Tomu Francis, Advocate with Ms. Shubhra Sharma, Advocate for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer

Per : Justice J.P. Devadhar (Oral)

1. Delay condoned by consent of both parties. Miscellaneous Application No. 20 of 2014 is disposed of accordingly.

2. Learned counsel on both sides request that the appeal be heard and disposed of on merits at the admission stage itself. Accordingly, appeal is taken up for hearing on merits at the stage of admission.

3. Appellant is aggrieved by impugned Adjudication Order dated November 27, 2013 whereby penalty of Rs. 1 lakh has been imposed upon appellant under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short).

4. Relevant facts are that appellant had held 7,51,000 shares of Organic Coatings Ltd. ('OCL' for short) which represented 9.79% of the total share capital of OCL on quarter ended September, 2012. On October 5, 2012 appellant sold entire 7,51,000 shares of OCL. It is not in dispute that since sale of shares effected by appellant on October 5, 2012 being in excess of 2% of the total shareholding, appellant under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short) was required to disclose to the company in Form C within two working days of sale of shares regarding the change in shareholding or voting rights in the company. Although October 6 & 7, 2012 were holidays and October 8, 2012 was the first working day after October 5, 2012, under PIT Regulations appellant was required to disclose the transactions to the company latest by October 9, 2012. It is not in dispute that on October 8, 2012 appellant had prepared disclosure letter, however, filed that letter with the company on October 12, 2012. It is relevant to note that above declaration was not in compliance of PIT Regulations but was in compliance with Regulation 29(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations' for short). Even if above disclosure is to be treated as disclosure made under PIT Regulations, since such disclosure was made beyond time prescribed under Regulation 13(3) & 13(5), it is apparent that appellant violated PIT Regulations.

5. Argument that the appellant after resigning as director of OCL has been working outside India and that the notices issued by SEBI were not

received by appellant do not enhance the case of the appellant, because, it is not in dispute that appellant has not made any declaration within two days of selling OCL shares on October 5, 2012 as required under PIT Regulations.

6. Penalty under Section 15A (b) of SEBI Act for non-compliance of disclosure requirements specified under PIT Regulations is Rupees One lakh per day or Rupees One crore whichever is less. In the present case, admittedly no disclosure has been made under PIT Regulations. Even if disclosure made under SAST Regulations could be treated as disclosure made under PIT Regulations, such disclosure being not made within the time prescribed under PIT Regulations, appellant cannot escape penal liability.

7. Penalty of Rs. 1 lakh imposed upon appellant cannot be said to be unreasonable or harsh, because, in the present case, declaration has not at all been made under PIT Regulations till date and even if declaration made under SAST Regulations could be considered as declaration made under PIT Regulations, even then there being three days delay, instead of imposing penalty of Rs. 3 lakh (at the rate of Rupees One lakh per day), adjudicating officer after considering all relevant facts has imposed penalty of Rs. 1 lakh only, which is reasonable.

8. In these circumstances, no fault can be found with the decision of adjudicating officer. Accordingly, appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

27.02.2014
Prepared and compared by:
msb