

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No.16 of 2013 with  
Appeal No.17 of 2013 and  
Appeal No.18 of 2013**

**Date of Decision: 20.3.2013**

**Appeal No.16 of 2013**

Sunday Exports Ltd.  
Sunday House, A.K. Road.,  
Surat – 395008, Gujarat

..... Appellant

Versus

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

..... Respondent

**Appeal No.17 of 2013**

Shri Pravinchandra Dashrathbhai Patel  
Residing at 1101, Surbhi Apartments,  
Pipod-9, Surat – 395007, Gujarat

Shri Fulian Ashvin Reshamwala  
7/2322, Dudhara Sheri, Rampura  
Surat – 395008, Gujarat.

..... Appellants

Versus

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

.....Respondent

**Appeal No.18 of 2013**

1. Shri Rameshchandra Ishwarlal Gandhi
2. Smt. Gitaben Rameshchandra Gandhi
3. Shri Devang Rameshchandra Gandhi
4. Smt. Devanshi Devang Gandhi  
H. No.6/2507-8, Limbu Sheri,  
Mahidharpura Surat – 395 003,  
Gujarat

5. M/s. Riddhi Silk Mills  
Gandhi Colony, A.K. Road,  
Surat – 395008, Gujarat

..... Appellants

Versus

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

.....Respondent

Mr. M.P. Rao, Senior Advocate for the Appellants.

Mr. Prateek Seksaria, Advocate with Mr. Mihir Mody, Mr. Harish Bora and Mr. Akhilesh Singh, Advocates for the Respondent.

CORAM : Jog Singh, Member

Per : Jog Singh (Oral)

On the last date of hearing i.e 8<sup>th</sup> March, 2013 Shri Rao, learned senior counsel for the appellants sought some time to seek instructions from his clients as to the quantum of penalty. Today, Shri Rao appears and fairly submits that his clients are prepared to pay a consolidated amount of `5,00,000/- in all three appeals. This aspect will be looked into at the time of passing of final order in the three appeals after hearing learned counsel for the parties.

2. With the consent of the parties all the three appeals have been heard together as they involve common questions of law and fact. Appeal no.16 of 2013 has been filed by Sunday Exports Limited, a company listed on the Bombay Stock Exchange Ltd. (BSE) against order dated November 01, 2012 imposing a penalty of `2,00,000/- by the learned Adjudicating Officer of the respondent Board under section 15-I(2) of the Securities and Exchange Board of India Act, 1992 (the Act) read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005. In fact a penalty of `1,00,000/ has been imposed under section 15HB of the Securities and Exchange Board of India Act, 1992 and another sum of

`1,00,000/- has also been imposed under section 23A(a) of the Securities Contracts (Regulation) Act, 1956 (for short SCRA).

3. Similarly, Appeal no.17 of 2013 has been preferred by Mr. Pravinchandra Dashrathbhai Patel and Mr. Fulian Ashvin Reshamwala who are the two Whole Time Directors of the company against the impugned order dated November 01, 2012 passed by the learned Adjudicating Officer imposing a penalty of `1,00,000/- on each of them under section 15HB of the Act.

4. Turning to Appeal no.18 of 2013, it is also noted that it also arises out of the same set of investigation and facts. However, in this appeal the appellants are Shri Rameshchandra Ishwarlal Gandhi, Chairman and Managing Director (Appellant no.1) and his wife Smt. Gitaben R. Gandhi (Appellant no.2). Both of them are the promoters of the company. Shri Devang Rameshchandra Gandhi, Director and Compliance Officer is Appellant no.3 and Smt. Devanshi Devang Gandhi, Director is Appellant no. 4. Both of them happen to be the son and daughter-in-law of Shri Rameshchandra Gandhi, respectively. M/s Riddhi Silk Mills is a partnership firm owned by Shri and Smt. Devang Gandhi and it is Appellant No. 5.

5. The Tribunal has heard both the learned counsel for the parties at length and the pleadings and documents have been perused minutely. Brief facts leading to the present appeals are that the Board conducted investigations in the dealings in the scrip of the company for the period from April 15, 2010 to July 21, 2010. The said investigation revealed that the company had not framed the Model Code of Conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under section 12(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (referred to hereinafter as PIT Regulations). It was also noticed that the company approved the unaudited accounts for the quarter ending June 2010 in the meeting held on July 06, 2010 but submitted the said approved quarterly reports to Bombay Stock Exchange Limited vide letter dated July 07, 2010. The letter ultimately reached the Exchange on July 9, 2010. This is contended to be against clause 41(f) of the Listing Agreement read

with Section 21 of the SCRA and clause 2.0 as specified in Schedule II of Code of Corporate Disclosures Practice For Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations. Consequently, adjudication proceedings were initiated against the company.

6. Similarly, the Board initiated proceedings under section 15-I of the Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 against Mr. Pravinchandra Dashrathbhai Patel and Mr. Fulian Ashvin Reshamwala who are admittedly the Whole Time Directors of the said company for their failure in exercising overall supervision in framing the Model Code of Conduct for prevention of Insider Trading. Further, on the same set of investigation, the Board also proceeded against Appellants no.1 to 5 whose names have been mentioned hereinabove and who are appellants in Appeal no.18 of 2013 particularly for violation of clause 1.2 of the Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) and 12(3) of the PIT Regulations warranting imposition of penalty under sections 15G and 15HB of the Act. Allegation was also levelled against them in respect of violation of clause 41(f) of the Listing Agreement read with Section 21 of the SCRA and clause 2.0 as specified in Schedule II of Code of Corporate Disclosures Practice For Prevention of Insider trading.

7. In the above circumstances, the Board appointed Shri P.K. Kuriachen as the learned Adjudicating Officer in the whole matter by order dated May 03, 2012. He issued two show cause notices dated May 30, 2012 to the appellants in Appeals no. 16 and 17 of 2013 respectively to show cause as to why an inquiry should not be held against them as per law for the alleged violations. In the matter of Appeal no.18 of 2013 separate show cause notices dated June 21 and 22, 2012 were issued to Appellants no.3, 4 and 5; and to Appellants no. 1 and 2 respectively. From the record it appears that appellant in Appeal no.16 of 2013 filed its reply dated June 12, 2012 to the show cause notice in question. However, the two appellants in Appeal no.17 in 2013 did not appear to have filed their reply. Similarly, five appellants in Appeal no.18 of 2013 also filed their replies vide letters

dated August 21 and 22, 2012 in response to the said show cause notice. Opportunity of personal hearing was also afforded to the appellants and the same was availed by them.

8. After a careful consideration of the reply, written submissions and after affording an opportunity of personal hearing which was attended by authorised representatives of the appellant, the learned Adjudicating Officer came to the conclusion that the appellants in Appeal no.16 of 2013 have violated the provisions of clause 1.2 of the code of conduct specified under Part A of Schedule I read with Regulations 12(1) and 12(3) of the PIT Regulations and clause 41(f) of the Listing Agreement in question. The learned Adjudicating Officer also found them guilty of violation Section 21 of the SCRA and clause 2.0 as specified in Schedule II of Code of Corporate Disclosures Practice For Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations. He accordingly passed the impugned order dated November 1, 2012 imposing penalty in question.

9. Similarly, in Appeal no.17 of 2013, the learned Adjudicating Officer held that the appellants therein violated the provisions of clause 1.2 of the code of conduct specified under Part A of Schedule I read with Regulations 12(1) and 12(3) of the PIT Regulations. Turning to Appeal no.18 of 2013 it is noted that the learned Adjudicating Officer held Appellants no.1, 3 and 4 guilty of violating clause 1.2 of the Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) and 12(3) of the PIT Regulations. The learned Adjudicating Officer also found that a profit of `3015/- was earned by Appellant no.2 and a profit of `1,07,868/- was earned by Appellant no.5 by purchasing/selling shares under the unpublished price sensitive information period. The learned Adjudicating Officer, however, gave benefit of doubt in the matter of violation of section 12A(a), (b) and (c) of the Act read with Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 in respect of Appellant no.3 Shri Devang Rameshchandra Gandhi and M/s. Riddhi Silk Mills Appellant no.5. All other allegations were proved against all the appellants.

10. After hearing the learned counsel for the parties Shri M.P. Rao, learned senior counsel for the Appellant and Shri Prateek Seksaria and Shri Mihir Mody counsel for the Respondent, and perusing the impugned orders and other connected documents of the appeal the Tribunal is convinced that there is no legal infirmity in holding of enquiry by the Shri P.K. Kuriachen, the learned Adjudicating Officer. He has conducted the enquiry and proceeded against the appellants in a just and fair manner by affording reasonable opportunity of being heard and producing the documents and reply in support of their case.

11. It is noted that the requirement of framing a Code of Conduct for prevention of insider trading by the companies is a mandate of law and nobody can be allowed to violate the same. Similarly, the requirement of communicating the decisions of the Board of the company to the Stock Exchange promptly is an important check on the unscrupulous persons who may utilise the information for their personal gains in an improper and illegal manner and thereby jeopardizing the interest of bonafide investors. In the present case, the requirement of conveying the Board's important decisions to the Stock Exchange within 15 minutes is a crucial provision binding on the company and the same is having an underlying object which can only be achieved by quick communication of the said decision by the company to the Stock Exchange. The appellant can have very well conveyed the said decision by way of fax or e-mail etc. within 15 minutes so as to avert the possibility of being misused the sensitive information in question. In view of this, the three impugned orders are upheld.

12. However, taking into consideration the totality of facts and circumstances and also the mitigating factors explained by the learned senior counsel for the appellant in the matter, the Tribunal is inclined to take a lenient view in the matter of quantum of penalty. It is submitted by Shri Rao that the Company Secretary who had since long been associated with the company unfortunately fell sick as he suffered from cancer in January, 2009. He unfortunately expired on 5.1.2011 and in the circumstance there was nobody to guide the appellants properly. Similarly it is stated by the learned counsel for the appellants that the company as well as the other Directors including the Managing Directors have been very prompt in intimating the outcome of the board meetings in all preceding years and they

have never defaulted in the matter and this is the first instance of this kind. Keeping in view the facts and circumstances of the case penalty imposed on the appellant in Appeal no. 16 of 2013 is reduced to `1,00,000/-. Similarly, penalty imposed on the two appellants in Appeal no.17 of 2013 is also reduced to `1,00,000/-. However, penalty in respect of the five appellants in Appeal no.18 of 2013 is reduced to `5,00,000/-. Therefore, in all, the appellants are required and directed to pay an amount of `7,00,000/- as penalty under the three impugned orders within a period of two months from the date of receipt of a copy of this order. The three appeals accordingly stand dismissed with the above said reduction of monetary penalty only. No costs.

Sd/-  
Jog Singh  
Member

20.3.2013

Prepared and compared by  
RHN