BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Misc. Application No. 161 of 2014
And
Appeal No. 353 of 2014

Date of decision: 13.11.2014

Gurmeet Singh Dhingra
72, Tagore Park,
New Delhi – 110 009. ….. 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. Deepak Shah, Advocate for the Appellant.

Mr. Suhail Nathani, Advocate with Mr. Yogesh Chande, Mr. Tomu Francis, Advocates for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
A. S. Lamba, Member

Per : Justice J. P. Devadhar (Oral)

Misc. Application No. 161 of 2014 :

By this miscellaneous application appellant seeks condonation of 10 days delay in filing the appeal. For the reasons stated in the miscellaneous application, delay is condoned. Miscellaneous application is disposed of accordingly.

Appeal No. 353 of 2014 :

1. Appellant is aggrieved by the adjudication order passed by the adjudicating officer of SEBI on July 8, 2014 whereby penalty of ₹ 5 lac is imposed on the appellant under Section 15A(b) of SEBI Act for allegedly

violating regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short).

2. Facts relevant for the present appeal are that SEBI conducted investigation in respect of trading activity in the shares of Trinity League India Ltd. ('Trinity' for short) formerly known as Dr. Wellmans Homeopathic Laboratory Ltd. ('Dr. Wellmans' for short). Appellant is a Director of Trinity and was the Managing Director of Dr. Wellmans.

3. Investigation carried out by SEBI revealed that appellant holding 8,29,900 shares of Trinity had increased his shareholding by acquiring additional 2,49,300 shares of Trinity on September 28, 2009. As a result, shareholding of the appellant in Trinity increased from 16.37% to 21.30%. As the increase in the appellant's shareholding was more than 5%, appellant was required to make necessary disclosures as prescribed under regulation 13(3) read with Regulation 13(5) of PIT Regulations. However, it was noticed that the appellant had failed to make such disclosures.

4. Similarly, it was noticed that the appellant had sold shares of Trinity on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 which resulted in decrease in his shareholding by more than 2% on all four occasions which again required the appellant to make necessary disclosures as prescribed under the above mentioned PIT Regulations. However, it was noticed that no such disclosures have been made.

5. On completion of aforesaid investigation, a show cause notice was issued to the appellant to show cause as to why penalty should not be imposed on the appellant for committing aforesaid violations.

6. Appellant filed his reply to the show cause notice wherein it was stated that the appellant had complied with the above regulations and since the company, in turn, failed to disclose the same to the stock exchanges within the stipulated time, company had filed consent proceedings and on receiving consent order, company paid the amount quantified under the consent order. Accordingly, it was stated that no order be passed against the appellant. Thereupon, personal hearing was also granted to the appellant.

7. After considering the reply and also the oral submissions made, the adjudicating officer by the impugned order rejected the contentions raised by the appellant and imposed penalty of ₹ 5 lac on the appellant. Challenging that order present appeal is filed.

8. Mr. Shah, learned counsel appearing on behalf of appellant submitted as follows :

a) Appellant had discharged his primary onus of disclosure to the company and the stock exchange as per Regulation 13(4) of the PIT Regulations. Thereafter it was the obligation of the company to transmit that disclosure to the stock exchanges. Since the company had belatedly complied with regulation 13(6), company had initiated consent proceedings and on receiving the consent order, company had settled the matter by paying the amount quantified in the consent order. Once the matter is settled under the consent proceedings, SEBI is not justified in initiating proceedings and imposing penalty against the appellant on the ground that disclosures have not been made under regulation 13(3) of the PIT Regulations.

b) When disclosure is made under regulation 13(4) which is more onerous than the obligation to make disclosure under regulation 13(3), it is futile to insist on making disclosures under regulations 13(3) and it must be held that on making disclosure under regulation 13(4) the requirement of making disclosure under regulation 13(3) is complied with.

c) Regulation 13(4) is a special regulation governing directors and officers of a company to disclose to the stock exchange and the company, if there is change in the shareholding pattern of such directors or officers. Once such disclosure is made under Regulation 13(4), it is not imperative that disclosure under regulation 13(3) too should be made as the former being a special provisions, overrides the later. Issuance of notice to the company for having failed to comply with Regulation 13(6), implies that the requisite disclosure is made by the director / shareholder under regulation 13(4) read with Regulation 13(3) of PIT Regulations. Therefore, compliance of regulation shall also deem to include compliance of regulation 13(3) as well. Hence, SEBI is not justified in imposing penalty on the appellant.

d) By totally disregarding Section 15J of SEBI Act, penalty is imposed under Section 15A(b) of SEBI Act. Since the penalty imposed is excessive and unreasonable, the impugned order be quashed and set aside with such directions as this Tribunal deems fit and proper.

9. We see no merit in the above contentions.

10. Obligation to make disclosure under Regulation 13(3) is independent of the obligation to make disclosure under regulation 13(4) of PIT Regulations. Disclosure under regulation 13(3) is required to be made in Form 'C', whereas, disclosure under Regulation 13(4) has to be made in Form 'D'. Regulation 13(3) gets triggered when the shareholding of any person holding more than 5% shares or voting rights in any listed company undergoes change in the shareholding and such change exceeds 2% of the total shareholding or voting rights in the company. Regulation 13(4) gets triggered when the shareholding of a person who is a director or officer of a listed company undergoes change from the last disclosure made under regulation 13(2) or under 13(4) and such change exceeds ₹ 5 lac in value or 25,000 shares or 1% of total shareholding or voting rights whichever is lower. Thus, it is evident that obligation to make disclosure under regulation 13(3) is independent of the obligation to make disclosure under regulation 13(4).

11. Fact that the expression 'Any person' in regulation 13(3) would include a director or officer of a listed company referred to in regulation 13(4) cannot be a ground to infer that disclosure made under regulation 13(4) would mean complying with the disclosure requirement under regulation 13(3), because, not only the yardstick for triggering respective regulation is different, but also the format of disclosure between the two regulations is different. Therefore, the argument of the appellant that regulation 13(4) is a special regulation and by applying the principle that the special provision must prevail over the general provision contained in regulation 13(3) cannot be accepted, because, the said principle would come in to play only when there is conflict between the two provisions and not otherwise. It is not the case of appellant that regulation 13(3) & 13(4) are in conflict with each other. Moreover, regulation 13(6) makes it clear

that every company shall disclose to all stock exchanges on which the company is listed, the information received, *interalia*, under regulation 13(3) and also regulation 13(4) in the respective formats specified in Schedule III which are distinct and separate. Therefore, when regulations 13(3) and 13(4) require the persons named therein to make separate disclosures in separate format, appellant is not justified in contending that in view of the disclosure made under regulation 13(4), it must be deemed that the appellant had made disclosure under Regulation 13(3). In other words making disclosure under regulation 13(4) will not absolve the appellant from making disclosure under Regulation 13(3) of the broker's regulations.

12. Once it is held that making disclosure under Regulation 13(4) does not absolve each obligation of the appellant to make disclosure under regulation 13(4), then, the fact that appellant had made disclosure under regulation 13(4) to the company and the company on account of its delay in transmitting the said information under Regulation 13(6), had resorted to the consent procedure and, accordingly, had settled the matter does not in any way support the case of the appellant, because, irrespective of making disclosure under regulation 13(4), the appellant was obliged to make disclosure under regulation 13(3) of the broker's regulations. Admittedly, the appellant has not complied with that obligation and hence appellant cannot escape penal liability.

13. As per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of

Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹ 1 lac each day during which such failure continues or ₹ 1 crore whichever is less. Since the appellant has failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹ 1 crore each i.e. ₹ 5 crore in all. As against penalty of ₹ 5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹ 5 lac which cannot be said to be excessive, arbitrary or unreasonable.

14. For all the aforesaid reasons, we see no merit in the appeal.

15. Appeal is, accordingly, dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
A. S. Lamba
Member

13.11.2014
Prepared and compared by:
PTM