

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Misc. Application No.140 of 2014

And

Appeal No.299 of 2014

Date of decision : 14/10/2014

Shri Virendrakumar Jayantilal Patel
8, Siddhi Vinayak Row House,
Nr. Mukharji Over Bridge, Satellite,
Ahmedabad – 380 015.

... Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.

... Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju, and Mr. Pratham Masurekar,
Advocates for the Appellant.

Mr. Suhail Nathani, Advocate and Mr. Yogesh Chande, Advocate for the
Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. The appellant is aggrieved by the adjudication order passed by the Securities and Exchange Board of India (SEBI) on 30th May, 2014 whereby penalty of Rs.5 lac is imposed upon the appellant under Section 15A(b) of Securities and Exchange Board of India Act, 1992 (“SEBI Act, 1992” for short) for violating regulation 13(3) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for short) and regulation 29(2) of Securities and Exchange Board of India

(Substantial Acquisition of Shares & Takeovers) Regulations, 2011 ("Takeover Regulations, 2011" for short).

2. Facts relevant for the present appeal are that on 2nd May, 2013 appellant sold 64,770 shares of Parichay Investments Limited ("the target company" for convenience) which represented 5.4% of the total shareholding of the target company and therefore under regulation 13(3) of PIT Regulations, 1992 and regulation 29(2) of Takeover Regulations, 2011, appellant was required to make disclosures. As the appellant failed to make disclosures, show-cause notice was issued and after considering the reply as also the arguments advanced at the personal hearing, impugned order is passed on 30th May, 2014 imposing penalty of Rs.5 lac under Section 15A(b) of SEBI Act, 1992.

3. Counsel for the appellant fairly stated that on sale of 64,770 shares of the target company on 2nd May, 2013 which constituted 5.4% of the shareholding of the target company, provisions of regulation 13(3) of PIT Regulations, 1992 and regulation 29(2) of Takeover Regulations, 2011 got triggered and appellant was required to make disclosures under those provisions. However, inadvertently, disclosures were not made. But, immediately on receiving the show-cause notice, appellant made requisite disclosures. Thus, there is delay of about 10 months in making the disclosures.

4. Counsel for the appellant further submitted that in the facts of present case, imposition of penalty of Rs.5 lac on the appellant is exorbitant and unreasonable for the following reasons:

- (a) Shares sold by appellant on 2nd May, 2013 were reported on Bombay Stock Exchange (BSE)'s website in the bulk deal data. Moreover, the target company had also made shareholding pattern related disclosures under the Listing Agreement to BSE which was also publicly available on the BSE's website. The appellant being a lay investor was not aware of the obligation to make disclosures and therefore in the facts of the present case, for the inadvertent error penalty of Rs.5 lac imposed upon the appellant is unjustified.
- (b) Failure on part of the appellant to make disclosures was not with a view to take undue advantage in any manner whatsoever and the failure to make disclosures being only technical, unintentional and inadvertent, in the interest of justice penalty imposed against the appellant be quashed and set aside.
- (c) No loss is caused to any investor on account of delay in making the disclosures and hence imposition of penalty is unjustified.
- (d) Appellant being a blind person, the adjudicating officer ought to have taken a lenient view and ought not to have imposed penalty upon the appellant.
- (e) By the impugned transaction, appellant has already suffered loss of about Rs.5 lac and in such a case imposing penalty of Rs.5 lac is improper and wholly unjustified.

5. We see no merit in the above contentions.

6. Admittedly, appellant is a retail investor in the stock market and used to trade/invest in various scrips from time to time. During the period from

March to May, 2012, appellant had inter alia purchased 1.24 lac shares of the target company and after holding those shares for nearly 14 months, appellant sold 64,770 shares on 2nd May, 2013. It is not in dispute that sale of 64,770 shares constituted 5.4% of the total share capital issued by the target company and, therefore, appellant was required to make disclosures under the respective regulations. It is also not in dispute that disclosures were made after issuance of show-cause notice i.e. belatedly after about 10 months delay.

7. Penalty for delay in making disclosures under Section 15A(b) of SEBI Act, 1992 is Rs.1 lac for each day during which such failure continues or Rs.1 crore whichever is lower. Penalty calculated at the rate of Rs.1 lac per day, in the present case, exceeds Rs.1 crore. Thus, as against penalty of Rs.1 crore imposable under Section 15A(b) of SEBI Act, 1992, adjudicating officer after considering all mitigating factors has imposed penalty of Rs.5 lac which cannot be said to be excessively harsh or unreasonable.

8. Argument that requisite particulars of sale in question were available on the website of the Stock Exchange and therefore for failure to make disclosures within the stipulated time penalty ought not to have been imposed, is without any merit, because, obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.

9. Contention that the adjudicating officer ought to have sympathetically considered the fact that appellant is a blind person is also without any merit, because, firstly it is not in dispute that as a blind person appellant has been dealing in shares in the stock market and in fact on the date of on which transaction in question took place appellant was a blind person. When a person dealing in shares in the stock market violates any of the regulatory provisions, then that person whether blind or not, cannot escape penal liability. Secondly, appellant was not a novice in the stock market and has been regularly dealing in the shares of various companies and his investment in the shares of Parichay Investments Ltd. during the year 2012-2013 was about Rs.50 lac. Thirdly, after taking all mitigating factors, including the fact that the appellant is a blind person, the adjudicating officer has imposed penalty of Rs.5 lac as against penalty of Rs.1 crore imposable under SEBI Act, 1992, which cannot be said to be harsh or unreasonable.

10. For all aforesaid reasons, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member