

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of Decision: 27.01.2014

**Misc. Application No. 3 of 2014
And
Appeal No. 5 of 2014**

Mrs. Komal Nahata
258 Block-B, Lake Town,
Kolkata-700 089

...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

Ms. Sara Sancheti, Advocate for the Appellant.

Mr. Tomu Francis, Advocate with Ms. Shubhra Sharma, 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. There is delay of 3 days in filing the appeal. By Miscellaneous Application, appellant seeks condonation of said delay. For reasons stated in the application, delay is condoned. Miscellaneous Application is disposed of accordingly.

2. Whether Adjudication Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) is justified in imposing penalty

of ₹ 1 lac under Section 15A(b) of the Securities and Exchange Board of India Act, 1992, (“SEBI Act, 1992” for short) on the ground that appellant has violated regulation 7 (1) and regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (“SAST Regulations, 1997” for short) and regulation 13(1) and regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for short) is the question raised in this appeal.

3. Appellant is a house wife. Appellant is a post graduate in commerce and is also engaged in carrying on the profession of consultancy. In addition to consultancy profession, appellant has been advancing short term loan to various companies with a view to earn interest income.

4. Sometime in August 2010 appellant had agreed to advance loan to Gujarat Metallic Coal & Coke Ltd. formerly known as Arvind Chemicals Ltd., (“ACL” for short) by creating lien on 3,75,000 shares of Arvind International Limited held by ACL. In anticipation of getting loan from appellant, ACL transferred 3,75,000 shares of Arvind International Limited to the demat account of appellant on September 13, 2010. Appellant claims to be unaware of such transfer and since the loan transaction did not materialize, said shares were transferred back to ACL on October 26, 2010.

5. On investigation SEBI found that transfer of 3,75,000 shares constituted holding 5.35% shares of Arvind International Ltd. and therefore, appellant was required to make disclosure under SAST Regulations, 1997 and PIT Regulations, 1992. Since no such disclosure

was made, adjudication proceedings were initiated and by a show cause notice dated June 14, 2013 appellant was called upon to show cause as to why inquiry should not be held for imposing penalty under Section 15A(b) of SEBI Act, 1992 for alleged violation of the provisions of regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) and regulation 13(3) read with regulation 13(5) of the PIT Regulations, 1992.

6. Appellant filed its reply to show cause notice refuting allegations made in show cause notice. Thereafter, personal hearing was granted to appellant and by impugned order dated September 30, 2013, AO has imposed penalty of ₹ 1 lac under Section 15A(b) of SEBI Act, 1992 for non compliance of the provisions of regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) and regulation 13(3) read with regulation 13(5) of the PIT Regulations, 1992. Challenging aforesaid order, present appeal is filed.

7. Counsel appearing on behalf of appellant submitted that in anticipation of receiving loan from appellant, ACL instead of creating a lien on the shares of Arvind International, erroneously and without the knowledge of appellant, transferred 3,75,000 shares of Arvind International Ltd. to the demat account of appellant. However, since appellant did not get back her money which was advanced to another borrower, appellant could not advance loan to ACL. Accordingly 3,75,000 shares were transferred back by appellant to the demat account of ACL. Since erroneous transfer of shares was without consideration title in those shares did not pass to the appellant as per the provisions of Sale and Goods Act,

1930 and, therefore, the transfer being incomplete, appellant held those shares as trustee of beneficial owner, namely ACL, till it was transferred back. In such a case erroneous transfer of shares without consideration would not amount to trading in shares and consequently compliance of regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 did not arise. Learned counsel for appellant submitted that entire transaction was erroneous and that appellant did not acquire any shares which were inadvertently credited to her demat account by mistake and the same has been retransferred back to the beneficial owner. There being no commercial transaction on account of no money being paid or received by either of the parties to the transaction, AO was not justified in imposing penalty upon appellant.

8. Learned counsel for appellant further submitted that in the facts of present case SEBI has initiated proceedings after nearly 2 ½ years from the date of erroneous transaction and view of the fact that no investor has suffered on account of erroneous transactions, penalty imposed upon the appellant is unjustified. Counsel for appellant further submitted that mitigating circumstances set out under Section 15J of the SEBI Act, 1992 having not been taken into consideration, it is a fit case for setting aside the penalty imposed upon the appellant.

9. We find it difficult to accept the aforesaid arguments advanced by counsel for appellant.

10. Under regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 any acquirer who acquires shares which (taken together with shares if any held by him) would entitle him to more than five percent or ten percent or fourteen percent or fifty four percent or seventy four percent shares in a company shall disclose at every stage the aggregate of his shareholding in that company to the company and to the stock exchanges where shares of the target company are listed within two days of acquisition of shares or voting rights as the case may be. Similarly, regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 required any person who holds more than 5% shares or voting rights shall disclose to the company, the number of shares held by such persons within 2 days of acquisition of shares and make continual disclosure even when the shareholding falls below 5% within two working days. In the present case, admittedly 3,75,000 shares of Arvind International Limited were transferred to the demat account of the appellant on September 13, 2010. Admittedly, transfer of 3,75,000 shares of Arvind International Limited constituted holding more than 5.35% shares of Arvind International Limited. Since no disclosure was made within 2 days of such acquisition, it was apparent that the appellant has violated regulation 7(1) and regulation 7(2) of SAST Regulations, 1997. Similarly, on effecting retransfer, since disclosures were not made, appellant violated regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992.

11. Argument that appellant being house wife, she was not aware of the consequences of erroneous transfer of shares cannot be accepted because admittedly appellant is a post graduate in commerce and apart from

carrying on the profession of consultancy appellant has been advancing short term loans to various companies. It is only after appellant agreed to advance loan, ACL transferred shares to the demat account of appellant. Unless appellant had furnished her demat account number, ACL could not have transferred shares. Assuming that shares were erroneously transferred no explanation is given as to how the shares remained in the demat account of the appellant for 43 days.

12. Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure. Secondly, penalty under Section 15A(b) for non compliance of the regulation framed by SEBI is ₹ 1 lac for each day during which such failure continues or 1 crore rupees whichever is less. Admittedly, 3,75,000 shares of Arvind International Limited constituted more than 5.35% of the total shares issued by Arvind International Limited and on transfer those shares remained in the demat account of appellant for 43 days. Calculated at the rate of ₹ 1 lac per day for 43 days during which the shares in question were in the demat account of the appellant, penalty imposable under SAST Regulations, 1997 would be ₹ 43 lac and similar penalty is imposable for violating PIT Regulations, 1992.

13. Argument that erroneous transfer was without consideration and did not constitute trade is also without any merit because, for purposes of

SAST Regulations what is relevant is acquisition of shares and once acquisition of shares exceeds the limits prescribed therein, provisions of SAST Regulations are triggered. Moreover, inspite of repeated opportunities appellant has failed to explain as to when she came to know about transfer of shares in her demat account and why it took 43 days to retransfer shares to the beneficial owner. In the circumstances, after taking all mitigating factors including the mitigating factor set out under Section 15J of the SEBI Act, AO has imposed nominal penalty of ₹ 1 lac upon appellant, which cannot be said to be unreasonable or arbitrary.

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

27.01.2014
Prepared & Compared By: Pk