

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 39 of 2014

Date of Decision : 29.04.2014

G Suresh
19-A, Bharathipark Cross Road No. 1,
Saibabamission,
Coimbatore – 641 011. ...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. S.K. Jain, Practicing Company Secretary for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for
the Respondent.

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

Per : Jog Singh

1. This Appeal has been filed under Section 15T of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') against the impugned order dated December 17, 2013 passed by Adjudicating Officer of the Securities and Exchange Board of India ('SEBI') imposing a penalty of Rs. 5,00,000/- on the Appellant under Section 15A(b) of SEBI Act. The appellant has been found guilty of violating the provisions of Regulations 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT

Regulations’) and Regulation 7(1) read with Regulation 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (‘SAST Regulations’).

2. The Appellant is Managing Director of CG-Vak Software and Exports Ltd. (‘the Company’). Shares of the Company are listed on the both Bombay Stock Exchange (BSE) and Coimbatore Stock Exchange (‘CSE’). The Respondent received an examination report from the BSE which, inter alia, revealed that the Appellant had failed to make disclosures to the stock exchanges, within the stipulated time, as required under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and also failed to make disclosures to the stock exchanges and the Company, within the stipulated time, as required under Regulation 7(1) read with Regulation 7(2) of the SAST Regulations.

3. We have heard learned counsel for the parties at length and have perused the pleadings in judgments brought before us by the learned counsel for the parties. There are two violations for which appellant has been sought to be punished. Firstly, Regulations 13(4) and 13(5) of the PIT Regulations of 1992 and secondly; that of Regulations 7(1) and 7(2) of the SAST Regulations of 1997.

4. At the outset, we would reproduce the relevant Regulations, necessary for present adjudication:-

“Regulation 13 – Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock

exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.”*

5. Dealing with the violations relating to PIT Regulations, it is noted from the record that the appellant acquired 25708 shares of the Company on March 19, 2010 and duly informed the Company as well as Stock Exchange within the prescribed period of two working days of acquisition and hence there was no violation of any Regulation. The Appellant, however, again acquired 27,985 shares of the Company on September 27, 2010 and also made necessary disclosure to the Company about this acquisition but failed to do so in case of Stock Exchange.

6. The only ground taken by the appellant is that there was delay of 31 days in making the disclosure to the Stock Exchange as he was travelling abroad. After hearing Shri S.K. Jain, Practicing Company Secretary on behalf of the Appellant, we are not inclined to interfere with the impugned order in as much as Respondent has already taken a

lenient view by imposing a penalty of Rs. 5 lakh on the Appellant under Section 15A(b) of the SEBI Act. It is not disputed that the penalty imposable on the Appellant for the said violation is Rs. 1 lakh per day till the disclosure is made. Viewed from this angle, a penalty of Rs. 31 lakh could have been imposed by the Respondent but they have not done so and imposed a token penalty of Rs. 5 lakh.

7. Next, turning to the violation of SAST Regulations it is contended that the Appellant had acquired 6884 shares on September 14, 2009 by which the Appellant's total shareholding in the Company exceeded 10% i.e. became 10.13%. The Appellant has thereafter acquired 6702 shares on March 30, 2010 by which the total shareholding of the Appellant in the said Company increased from 13.9% to 14.04% i.e. more than 14%. The Appellant was therefore under Regulation 7(1) read with 7(2) of the SAST Regulations was required to make a disclosure within two working days of the said acquisitions which the Appellant failed and neglected to do. The only reason given for not making the disclosure by the Appellant is that since the Appellant together with the person acting in concert with him already held more than 15% of the share capital of the Company and therefore no disclosure under Regulation 7(1) read with 7(2) under SAST Regulations was required to be made is untenable. Relevant provisions of Regulation 7(1) and 7(2) of the SAST Regulations of 1997 are reproduced hereinbelow for the sake of convenience:-

“Regulation 7 - Acquisition of 5 per cent and more shares or voting rights of a company.

7(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

[1A - Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall make disclosure of such acquisition as well as the aggregate of his pre and post-acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights.]

Regulation 7(2) – The disclosures mentioned in sub-regulation (1) and [1A] shall be made within four working days of-

- (a) The receipt of intimation of allotment of shares;
or*
- (b) The acquisition of shares or voting rights, as the case may be.”*

8. In this connection it may be noted that Regulations 7(1) and 7(2) fall in Chapter II of the said Regulations which deals with the disclosures of shareholding and control in the listed company whereas Regulations 10 & 11 fall under chapter III which deals with substantial acquisitions of shares or voting rights in an acquisition of control over a listed company where the limits are prescribed and acquisition of control over a listed company under Regulation 10 and 11 and under Regulation 12, matter relating to making of a public announcement to make an open offer and to make an open offer in accordance with the Regulations.

9. A conjoint reading of Regulation 7(1) and 7(2) read with definition of acquirer as prescribed in Regulation 2(e)(1) make it abundantly clear that an acquirer who acquires shares or voting rights which taken together with the shares or voting rights, if any, held by such acquirer would entitle such acquirer more than 5% or 10% or 14% or 54% or 75% shares or voting rights in a company, to disclose at every stage shareholding or voting rights held by him in the company to the company and the Stock Exchange where the shares are listed within two working days of the acquisitions limits prescribed.

10. The breach of Regulations 7(1) and 7(2) would render the acquirer liable to a penalty under Section 15A(b) of SEBI Act. However, the wordings of Regulation 10 require an acquirer who has acquired shares or voting rights which taken together with the shares or voting rights, if any, held by him or person acting in concert with him, would entitle the acquirer to exercises 15% or more voting rights in a company to make a public announcement to make an open offer in accordance with the regulations. A breach of Regulation 10 would make an acquirer liable to penalty under 15H of SEBI Act. Apart from this, an order under Section 11 and 11B of the SEBI Act directing the Appellant to make a public announcement to make an open offer in accordance with the SAST Regulations can also be issued depending upon the facts and circumstances of a given case.

11. It may be mentioned that the disclosure requirements under Regulation 7 of SAST Regulations require every acquirer alone to

make a declaration of his holding, if any, together with the shares acquired by him. Regulation 7(1) does not require the acquirer to aggregate the shares acquired and/or held by him together with shares of any other person including person acting in concert with him. The question of the Appellant holding shares along with person acting in concert with him aggregating to more than 15% is irrelevant for the purpose of making declarations under Regulations 7(1) read with Regulation 7(2). If an acquirer acquires shares when acting in concert with others which acquisition exceeds the limit prescribed, declarations have to be made by the acquirer and person acting in concert as well. True and timely disclosures by an acquirer of shares in a company or an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company.

12. We, therefore, do not find any 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