BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 15.09.2020

Appeal No. 273 of 2020

Ms. Shilpa Mahavir Deshlahra
Deshlahara Bunglow, Plot No-157,
Aarey Road, Goregaon West,
Motilal Nagar,
Mumbai-400 104 …Appellant

Versus

The 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

Ms. Rishika Harish, Advocate with Ms. Nirali Mehta, Practicing Company Secretary i/b Mindspright Legal for the Appellant.

Mr. Abhiraj Arora, Advocate i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala (Oral)

1. The present appeal has been filed against the order of the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) dated March 13, 2019 imposing a penalty of Rs. 5 crore (Rupees Five Crore Only) to be paid jointly and severally by the appellant and

other entities for failure to make a public announcement of an open offer for acquiring the shares of the target company and thereby violating Regulation 3(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers), Regulations, 2011 (“SAST Regulations, 2011” for convenience).

2. The facts leading to the filing of the present appeal is, that these violations were noticed based on which a show cause notice was issued and the Whole Time Member (“WTM” for convenience) passed an order dated July 08, 2013 finding that the appellants and other entities who were the promoters group had violated Regulation 3(2) of the SAST Regulations, 2011 and therefore were directed to make a public announcement of an open offer for acquiring the shares of the target company. The appellant along with other entities had filed Appeal No. 169 of 2013 which was dismissed by this Tribunal by judgement dated November 13, 2013.

3. Since the public announcement was not made the present proceedings were initiated for imposition of penalty by the AO and eventually an order dated March 13, 2019 was passed imposing a penalty of Rs. 5 crore (Rupees Five Crore Only).

4. The appellant along with other entities filed Appeal No. 315 of 2019 against the order of the AO dated March 13, 2019 in which an application was made by the appellant for withdrawal of the appeal with liberty to file afresh. This request was granted by this Tribunal and the appellant was permitted to file the appeal afresh, based on which the present appeal has been filed.

5. So far as the other entities were concerned Appeal No. 315 of 2019 was dismissed on merits by this Tribunal by judgement dated March 16, 2020 and the order of the AO dated March 13, 2019 was affirmed.

6. We have heard Ms. Rishika Harish, learned counsel for the appellant and Sri Abhiraj Arora, learned counsel for the respondent through video conference.

7. The learned counsel for the appellant submitted that her father was whole sole incharge of the company that she had nothing to do with the affairs of the company. The appellant was allotted the shares when she was a minor. She further stated that she got married in 2010 and is now staying in Goregaon (West) in Mumbai, Maharashtra and therefore her residential address which was shown at Surat in Gujarat was

changed to Mumbai, Maharashtra. It was also contended that in 2014 the shares were transferred to her brother. The learned counsel thus, contended that proceedings before the AO proceeded *ex-parte* and that she was never served with the summons. It was contended that the AO had sent the summons at her parental address in Surat in Gujarat and no notice whatsoever was ever sent at her marital address ie, Goregaon (West) Mumbai in Maharashtra. It was thus urged that the *ex-parte* proceedings should be set aside only on this short ground.

8. Having heard the learned counsel for the parties, we find that the submission made appeared to be attractive in the first blush but on closer scrutiny we find that the contention so raised is without any merit.

9. We find that when Appeal No. 169 of 2013 was filed against the order of the WTM of SEBI dated July 08, 2013 the appellant had shown her address, namely, the parental address of Surat in Gujarat. No such statement was ever made that she got married and was thus never served with the summons by the WTM. Further, when Appeal No. 315 of 2019 was filed by the appellant and other entities against the impugned order dated March 13, 2019, the appellant was arrayed at serial no. 11 and

she had shown her residential address as 101, Thakkar Palace, GhodDod Road, Surat- 395 001 which is the same address where the summons were sent. This appeal was withdrawn by her and a fresh appeal was filed showing her address at Goregaon in Mumbai. The affidavits filed in the earlier appeal shows the address of Surat in Gujarat. Thus, it does not lie in the mouth of the appellant to suggest that she was unaware of the proceedings initiated by the AO. The aforesaid clearly indicates that the appellant was well aware of the proceedings and is now raising a different stand altogether deliberately for vested reasons. Consequently, we are of the opinion that the stand taken by the appellant is clearly an afterthought and lacks merit.

10. For the reasons stated aforesaid, we do not find any merit and the appeal is dismissed as such being squarely covered by our judgment dated16.3.2020 passed in Appeal No. 315 of 2019 with no order as to costs.

11. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench

and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

TARUN AGARWAL

Digitally signed by TARUN AGARWAL
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Dr. C.K.G. Nair
Member

Justice M. T. Joshi
Judicial Member

15.09.2020
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