BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 22.10.2020

Misc. Application No. 341 of 2020
(Delay Application)
And
Misc. Application 305 of 2020
(Interim Relief)
And
Appeal No. 291 of 2020

Jiger Dilip Shah
3, Rajhans Building, Teenbhatti,
Walkeshwar,
Mumbai-400 006 …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. Prachi Pandya, Advocate i/b Corporate Attorneys for the Appellant.

Mr. Abhishek Khare, Advocate i/b Khare Legal Chambers 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 questioning the legality and validity of the order dated June 25, 2019 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty of Rs. 2 lakhs for the violation of Regulation 13(4A) and 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations" for convenience) read with Regulation 29(2) of the SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 2011 ("SAST Regulations, 2011" for convenience). The appellant has also challenged the Recovery Notices Nos. 2889 and 2949 issued by the Recovery Officer.

2. There is a delay of 382 days in filing the appeal and accordingly an application for condoning the delay has been filed.

3. We have heard Ms. Prachi Pandya, learned counsel for the appellant and Mr. Abhishek Khare, learned counsel for the respondent through video conference.

4. The contention raised by the learned counsel for the appellant is, that the impugned order was never served upon the

appellant and that he came to know of the impugned order for the first time when Recovery Notice dated July 09, 2020 was received on July 10, 2020. This fact has been seriously opposed by the respondent contending that the impugned order dated June 25, 2019 was served on July 01, 2019. In support of this fact, the respondent have annexed the acknowledgement card which shows the receipt of the impugned order by the appellant himself. In rejoinder, the appellant has disputed the signatures in the acknowledgment card and contended that the signatures are not of the appellant.

5. In the light of the aforesaid, we have compared the signatures in the acknowledgement card with the signatures given in the memorandum of the appeal and we find that there is a distinction in the handwriting. Accordingly, we give the benefit to the appellant and condone the delay. The application is accordingly allowed.

6. On merits we find that the show cause notice was duly served and the appellant sought time to file a reply but did not do so. Subsequently, the appellant failed to appear on the date fixed for hearing. The AO, after considering the material evidence on record, found that the appellant had sold 15,000

shares on December 18, 2012 and further sold 1,85,000 shares on August 18, 2013 and, on both the occasion, the appellant failed to make the disclosure to the stock exchange as well as to the company under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and under Regulation 29(2) of the SAST Regulations.

7. This aforesaid selling of the shares has not been disputed by the appellant and only contended that the appellant was not a promoter and was only a director and therefore the aforesaid provisions have no application. We find from the perusal of the impugned order that the appellant was named as a promoter and finds place in the relevant records which fact has not been controverted by the appellant since no reply has been filed.

8. In the light of the aforesaid, we find that the appellant was under an obligation to make the relevant disclosures to the stock exchange as well as to the company under Regulation 13(4A) and 13(5) of the PIT Regulations. Since the disclosure was not made there has been a violation and the AO was therefore justified in imposing a penalty of Rs. 2 lakhs. We do not find any error in the impugned order. The appeal fails and is

dismissed. The application for interim relief is accordingly disposed of.

9. 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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Date: 2020.10.22 18:33:25 +05'30'

Dr. C.K.G. Nair
Member

Justice M. T. Joshi
Judicial Member

22.10.2020
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