

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 18.8.2020
Date of Decision: 10.09.2020

Appeal No.520 of 2019

Sandeep Batra
5th Floor, Vraj,
10th Road, JVPD,
Juhu, Mumbai – 400049. ... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra East, Mumbai – 400051. ...Respondent

Mr. Darius J. Khambata, Senior Advocate with Mr. Sandeep Parekh, Mr. Tushar Hathiramani and Mr. Sandeep Batra, Advocates i/b Finsec Law Advisors for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Abhiraj Arora and Mr. Vivek Shah, Advocates 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: Dr. C.K.G. Nair, Member

1. This appeal has been filed aggrieved by the order of the Adjudicating Officer of Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) dated

September 12, 2019 whereby the Appellant has been held liable for violation of Regulation 12(2) read with Clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading under Schedule II (“Corporate Disclosure Code”) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘PFUTP Regulations, 1992’) and a penalty of Rs.2 lakhs has been imposed on the Appellant.

2. The controversy surrounding this appeal is squarely covered by our order dated 8th July, 2020 in Appeal No.583 of 2019 in the matter of ICICI Bank vs. SEBI. The present appeal is also impugning the same order of the AO of SEBI dated 12th September, 2019.

3. In the appeal of ICICI Bank, in our order we held that the Binding Agreement entered into by the ICICI Bank with the dominant shareholders of the Bank of Rajasthan (BoR) at 4.30 a.m. on 18th May, 2010 was a material and price sensitive information liable to be disclosed immediately to the exchanges under the relevant Regulations. However, because of 8 years delay in issuing the Show Cause Notice (SCN) on an event

known to SEBI and the consequent laches we held that monetary penalty of Rs.10 lakhs imposed on the appellant Bank could not be justified. Accordingly, we converted the monetary penalty imposed on the appellant Bank to that of a warning. Therefore, on merit we upheld the impugned order passed by the Adjudicating Officer of SEBI but on laches the monetary penalty was set aside and converted into a warning.

4. It is the stand of the learned Senior Counsel Shri Darius J. Khambata appearing on behalf of the Appellant that while the basic facts remain the same, there are some distinguishing facts with regard to the Appellant herein vis-a-viz that of the appellant Bank in Appeal No.583 of 2019. The Appellant herein was only an employee, the Compliance Officer of the Bank, who was under the overall direction and control of the Board of Directors of the Bank. Hence, when the senior management of the Bank, after legal consultation, came to the conclusion that the information relating to the Binding Agreement was liable to be disclosed only after the approval by the Board of Directors of the Bank, the Compliance Officer who is an intermediate level official could not have disclosed it.

Moreover, it was also contended that the Appellant herein came to know of the information relating to the said Agreement only around 1 p.m. on 18th May, 2010, when he was informed by the Senior Management that the Board of Directors of the Bank was scheduled to meet to discuss the said issue in the Binding Agreement at 6 p.m. on that day. Therefore, the Appellant was not privy to the Binding Agreement for quite late in the day. In any case, the Appellant was told by the Senior Management that the disclosure is liable to be made after the Board approval. Therefore, the Appellant is not at fault in not disclosing the information at that point of time and soon after the Board meeting was over the said information was duly disclosed to the exchanges.

5. It was further contended by the Shri Darius Khambata, learned Senior Counsel for the Appellant, that this Tribunal had set aside the monetary penalty imposed on the Bank in Appeal No.583 of 2019 because of laches and consequent prejudice caused to the Appellant Bank on account of inordinate delay in the proceedings. However, the prejudice caused to the Appellant herein being an employee of a Company/Bank is much more as

any adverse order passed by the Regulator on an employee has serious consequences on his/her career progress. On the other hand, if an order was passed within a reasonable period of time, say within 2 to 3 years of the alleged violation in 2010, the impact of that Order would have been over long ago because it is only a minor penalty of Rs.2 lakhs imposed on the Appellant for a technical violation. However, since the show cause notice was issued only in 2018 it immediately impacted the career of the Appellant as around the same time the Appellant was being considered for promotion to the level of an Executive Director in the Bank. However, when the information relating to the show cause notice and the impugned order and the Appellant's application for settlement before SEBI etc. were filed before the Reserve Bank of India (RBI), which has to finally approve appointment at the level of Executive Director in Banks, the RBI categorically stated that the Appellant has to wait for a cooling period of one year after a decision on his settlement application for his promotion. In the process the prejudice caused to the Appellant has already impacted the Appellant as the impugned order has

become a stumbling block for his career progress, and that too after ten years of a technical violation. If the impugned order had been issued well in time such a grave prejudice would not have been caused to the Appellant as the required cooling off would have over long time ago.

6. The learned Senior Counsel, relying on the judgment of this Tribunal in the matter of M/s New Delhi Television Limited vs. SEBI in Appeal No.358 of 2015 decided on 7th August, 2019, submitted that the Compliance Officer therein was exonerated from imposition of a penalty of Rs.2 lakhs even when there was no prejudice on account of laches. Similarly, reliance was also placed on this Tribunal's order in Appeal No.466 of 2016 and its companion appeal in Piramal Enterprises Limited vs. SEBI decided on 15th May, 2019 and submitted that the Appellants therein were exonerated from any monetary penalty. Accordingly, the learned Senior Counsel submitted that considerable prejudice which has already been caused to the Appellant would be exacerbated if the Appellant is not completely exonerated for at worst a minor technical violation ten years ago which happened on account of instructions

from the Senior Management and not on account of any fault of the Appellant.

7. The learned Senior Counsel for the Respondent, Shri. Mustafa Doctor, on the other hand contended that in the Tribunal's order in the appeal by the ICICI Bank violation has been upheld and that squarely applies to the Compliance Officer also. Moreover, only a very nominal penalty of Rs. 2 lakh has been imposed on the Appellant in the impugned order. As per the ratio of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* laid down by the Apex Court, in Civil Appeal No(s).11311 of 2013 an intervention of this Tribunal on the penalty imposed is required only if it is held that the penalty so imposed is harsh and disproportionate. This is not the instant case. It was further urged that the stand taken by the learned Senior Counsel for the Appellant that the Compliance Officer is under the overall supervision and management of the Board and hence liable to follow their orders always is not correct when it comes to his role in making the mandatory disclosures. His independent role is pre-eminent particularly under sub-Regulation 12(2) of the PIT Regulations where he is supposed to disclose

material and price sensitive events in the company on an immediate and continuous basis without having to take orders from anybody. It was also submitted by the learned Senior Counsel for the Respondent that the submissions made by the learned Senior Counsel for the Appellants that the Appellant became privy to the binding agreement only around 1 p.m. on 18th May, 2010 was not an original stand taken by the Appellant nor there is any evidence relating to the same.

8. In short, the learned Senior Counsel for the Respondent SEBI submitted that there is no ground for any reduction in the penalty from what is in the impugned Order or what is upheld by this Tribunal on merit in the matter of the Bank as facts relating to the Appellant are the same.

9. Having heard the learned Senior Counsel for both the parties and having perused the documents placed before us, we are of the considered opinion that on facts there is not much to distinguish between the position of the Appellant Bank in Appeal no.583 of 2019 and the Appellant in this appeal. While we agree that the Appellant might not be privy to the signing of the

Binding Agreement at 430 am on 18th May, 2010, we are not sure about the contention that he became privy only at 1 pm on that day since no evidence to that effect has been produced. Therefore, on the basis of facts and the position of law on the same we have to affirm the same findings in regard to this appeal as held in Appeal no.583 of 2019. In the matter of NDTV (supra) the Compliance Officer was exonerated from monetary penalty only for alleged disclosure violation under the Listing Agreement, not exonerated under the PIT Regulations, since the former required the prior approval of the Board of Directors. And in the matter of Piramal (supra) the Compliance Officer was not before us in appeal since he/she had settled the matter before SEBI. The onerous role of the Compliance Officer under PIT Regulations is clear from the various tasks assigned to him under the 'Model Code of Conduct for Prevention of Insider Trading for Other Entities' annexed as Schedule I and II to the PIT Regulations.

10. However, we also note from the records produced before us that the Appellant's name has been in the zone of promotion to the post of Executive Director in the

ICICI Bank since May, 2019. Even assuming that the Banking Regulator, RBI, would have taken some time to clear his name finally the Appellant has suffered for about an year which is the same period set out by the RBI as the cooling off requirement for the Appellant to be considered for promotion after a decision by an authority with regard to his consent application which now stands withdrawn for pursuing this appeal before us. Therefore, balancing the prejudice caused to the appellant and the violation committed by him becomes an essential ingredient for dispensing justice in this matter. Afterall, for a one-time lapse of delayed disclosure, the Appellant should not be suffering during his entire career like a life term; such an approach would be far from doing justice to the appellant.

11. Therefore, in the facts and circumstances of the matter we convert the monetary penalty of Rs.2 lakhs imposed on the Appellant to that of a warning. However, we also make it clear that such a warning on a lapse committed in May, 2010 shall not come in the way of career advancement of the Appellant ten years thereafter

as the Appellant has already suffered consequences of the impugned order in his career.

12. Accordingly, the appeal is partly allowed with no order as to costs.

13. 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

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

10.09.2020

RHN