BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved:15.2.2021
Date of Decision:23.2.2021

Appeal No.341 of 2019

Le Waterina Resorts & Hotels Ltd.
1507, VRP Chattaram,
Chennai-Bangalore National Highway,
Sriperumbudur, Kancepuram Dist. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No.C4-A,
G Block, Near Bank of India,
Bandra Kurla Complex, Mumbai-400051. …Respondent

Mr. Rohit Gupta, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No.342 of 2019

Mrs. Rinku Jalan
Active Acres, Flat No.13E,
Tower 6B, 54/10, D C Dey Road,
Kolkata-700 015. ...Appellants

Versus

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

Mr. Rohit Gupta, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No.343 of 2019

Sanjay Jalan
Flat No.102, "Avatara",
Wheat Croft Road,
Nungambakkam,
Chennai-600034. ...Appellant

Versus

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

Mr. Rohit Gupta, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No.399 of 2019

Mr. R.K. Jalan
Flat No.102,
E 1, Harrington Court,
#99, Harrington Road,
Chepet, Chennai-600 031. ...Appellant

Versus

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

Mr. Rohit Gupta, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No.400 of 2019

Anila Jalan
Flat No.102,
E 1, Harrington Court,
#99, Harrington Road,
Chetput, Chennai. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,

G Block, Near Bank of India,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra -400051. …Respondent

Mr. Rohit Gupta, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No.540 of 2019

Kamlesh Shantilal Jain
The Lattice, 4th Floor,
No.20, Waddels Road,
Kilpauk, Chennai – 600010. ...Appellant

Versus

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

Mr. Hara Kar, Advocates i/b. Interjuris for the Appellant.

Mr. Akshay Patil, Advocate with Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates i/b. MDP & Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. All the appeals have been filed against a common order and are accordingly being taken up together. The appellants have challenged the order dated 20th March, 2019 passed by the Adjudicating Officer ('AO' for short) imposing penalties for violation of Regulation 7 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations, 1997') and Regulation 13 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'SAST Regulations, 1992').

2. The facts leading to the filing of the present appeal is, that on 13th December, 2010 Mr. R.K. Jalan appellant transferred 17,21,945 shares of Le Waterina Resorts & Hotels Ltd. to his son Mr. Sanjay Jalan. By virtue of this acquisition there was a change in the shareholding pattern of the promoter entities, namely,

Mr. R.K. Jalan and Mr. Sanjay Jalan. This triggered the requirement of making necessary disclosures under the SAST Regulations, 1997 and the PIT Regulations, 1992 which apparently was not made by them. Mr. R.K. Jalan was required to disclose the change in the shareholding under Regulation 7(1A) and 7(2) of the SAST Regulations, 1997 and Regulation 13(3) read with 13(5) of the PIT Regulations, 1992. Similarly, Mr. Sanjay Jalan was also required to make disclosure under Regulation 7(1A) and 7(2) of the SAST Regulations, 1997 and Regulation 13(4) and 13(5) of the PIT Regulations, 1992.

3. Another appellant Anila Jalan was holding 12,35,855 shares on 1st October, 2010 and transferred shares in off market during the investigation period on four occasions and thereby failed to make the disclosure under Regulation 7(1A) and 7(2) of the SAST Regulations, 1997 and Regulation 13(3) of the PIT Regulations, 1992.

4. Similarly Rinku Jalan who is a non-promoter entity acquired shares during the investigation period and also failed to make the necessary disclosure under Regulation 7(1A) and 7(2) of the SAST Regulations, 1997 and Regulation 13(1) and 13(3) of the PIT Regulations, 1992.

5. Another appellant Mr. Kamlesh Shantilal Jain a non-promoter acquired 30,00,000 shares and 20,00,000 shares from Ms. Anila Jalan and Ms. Rinku Jalan during the investigation period and failed to make the necessary disclosures under Regulation 7(1) and 7(2) of the SAST Regulations, 1997 and Regulation 13(1) and 13(3) of the PIT Regulations, 1992.

6. In so far as Le Waterina Resorts and Hotels Limited is concerned the appellant was charged for non-compliance of Regulation 13(6) of the PIT Regulations, 1992 read with Regulation 7(3) of the SAST Regulations, 1997.

7. No plausible defense has been given by the appellants except Mr. Sanjay Jalan who stated that proposed acquisition was duly intimated to the stock exchange under Regulation 3(3) of the SAST Regulations, 1997.

8. The AO after considering the material evidence came to the conclusion that there has been a breach and, therefore, imposed the penalties.

9. We have heard Mr. Rohit Gupta, Advocate assisted by Mr. Hara Kar, Advocate for the appellants and Mr. Akshay Patil, Advocate assisted by Mr. Chirag Bhavsar, Ms. Vidhi Shah and Mr. Harshad Vyas, Advocates for the respondent.

10. Having heard the learned counsel for the parties we find that the AO has not considered the judgment of this Tribunal in ***Ravi Mohan and other connected appeals in appeal no.97 of 2014 decided on 16th December, 2015*** wherein it was held that for violation of Regulation 7(1A) and 7(2) of SAST Regulations,

1997 no penalty could be imposed. In ***Rakesh Kathotia and Others in appeal no.7 of 2016 decided on 27th May, 2019*** this Tribunal held that the decision in Ravi Mohan was duly accepted by SEBI and, therefore, the appellant cannot be penalized for violation of Regulation 7(1A) and 7(2) of SAST Regulations, 1997. In another appeal ***Shilpa Amit Kotia & Ors. vs. SEBI, Appeal no.308 of 2017 decided on 2nd July, 2019*** the same view was taken by this Tribunal and the imposition of penalty was quashed. Since the aforesaid decision has not been considered, we are of the opinion that the impugned order has to be set aside on this short ground itself leaving it open to the AO to pass fresh order after considering the judgment as well as in the light of the observation made hereunder.

11. We find that the appellant Kamlesh Shantilal Jain was never served with a show cause notice. This is admitted by the respondent before this Tribunal. We

are of the opinion that if the show cause notice has not been served the entire proceedings against the said appellant becomes violative of the principles of natural justice and cannot be sustained. The contention that the subsequent summons fixing the date of hearing was duly served on the last known address of the appellant is again erroneous in as much as documentary evidence has been filed to show that the said appellant had sold off his property prior to the issuance of the summons. In view of the aforesaid, we are of the opinion that the proceedings initiated against the appellant Kamlesh Shantilal Jain being ex-parte cannot be sustained.

12. We are further of the opinion that the AO in the instant case has imposed penalty without considering the various factors stipulated under section 15J and should also take into consideration that the violation, if any, is of the year 2010 when the alleged transfers were made and the show cause notice was issued after a gap of seven years in 2017. Delay in our opinion

becomes a mitigating factor for quantifying the penalty under the relevant provisions.

13. In view of the aforesaid, the impugned order cannot be sustained and is quashed. All the appeals are allowed and the matter is remitted to the AO to pass a fresh order after supplying the show cause notice to Kamlesh Shantilal Jain and, thereafter, proceeding in accordance with law and granting all the appellants an opportunity of hearing. Since the matter is remitted it would be open to the appellant to file such evidence and objection in accordance with law. Since the matter is of 2010 we direct the AO to decide the matter within six months from today. We also direct the appellants to appear before the AO on 8th March. 2021.

14. 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 Private Secretary 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

Justice M.T. Joshi
Judicial Member

23.2.2021
RHN

RAJALAKSHMI H NAIR Digitally signed by RAJALAKSHMI H NAIR Date: 2021.02.24 11:11:23 +05'30'