

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 22.3.2021

Appeal No.263 of 2019

Sanjay Jethalal Soni
36, Malay Bungalows, Science City Road,
Sola, Ahmedabad-380001- Gujarat ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4, "G" Block,
Bandra Kurla Complex,
Bandra (E), Mumbai 400051. ...Respondent

Mr. Nishant Upadhyay, Advocate i/b. Ms. Jyoti Pandey,
Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr.
Chirag Bhavsar and Ms. Vidhi Shah, Advocates i/b. MDP
& Partners 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, Presiding Officer (Oral)

1. We have heard Mr. Nishant Upadhyay, Advocate for the Appellant and Mr. Kumar Desai, Advocate assisted by Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Vidhi Shah, Advocates for Respondent.

2. The present appeal has been filed against the order dated 22nd January, 2019 passed by the Adjudicating Officer imposing a penalty of Rs.15 lakhs upon the appellant under section 15A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') for failure to furnish information/documents under section 11C(2) and 11C(3) of the SEBI Act.
3. The facts leading to the filing of the appeal is, that the investigating authority issued an email dated 6th April, 2016 asking for following information.
 1. *Nature of your occupation/business and details of your annual returns for last 2 financial years.*
 2. *What was the basis or reasoning behind circulation of such SMS?*
 3. *Kindly mention the name of person/source through which such news was received by you and details of consideration received by you.*
 4. *Your relationships/connections whether personal, financial or otherwise, with the promoters or directors of the company viz. Timbor Home Limited.*
 5. *Details of your trading in the captioned scrip as well as other scrips.*

6. *Your relationship with the following:*

- a. Anant Sureshchandra Maloo*
- b. Maloo Building Materials P. Ltd.*
- c. Manan Vidhyapati Patel*
- d. Abhijeet Dwarkadas Daga*

4. It transpires that the appellant vide email dated 12th April, 2016 furnished the following information.

“This is in respect to your letter received wrt trading in the matter of TIMBOR HOME LIMITED I would like to state that we are not connected or known to any of the persons or directors or promoters of the company. We had received some information that the company was expanding and opening new showrooms and some research analysts had also suggested in the business new channels. We and our clients had bought the stocks and all our targets had been achieved and all our clients exited from the stock.

And would provide you the financial details and the trading details of the 2 years shortly.”

5. Thereafter, the investigating authority issued summons dated 28th April, 2016, 12th May, 2016, 10th August, 2016 and 22nd August, 2016 requiring the appellant to furnish the aforesaid information and in addition to the above asked for certain more

information and documents which are extracted hereunder.

1. *Nature of your occupation/business and details of your annual returns for last 2 financial years.*
2. *What was the basis or reasoning behind circulation of such SMS?*
3. *Kindly mention the name of person/source through which such news was received by you and details of consideration received by you for circulation of such SMS (Supported by appropriate evidences/proof).*
4. *Number of persons to whom such SMS was being sent by you.*
5. *Are you registered with SEBI as Research Analyst or in any other capacity?*
6. *Your relationships/connections whether personal, financial or otherwise, with the promoters or directors of the company viz. Timbor Home Limited.*
7. *Details of your trading in the captioned scrip as well as other scrips.*
8. *Your relationship with the following:*
 - a. *Anant Sureshchandra Maloo*
 - b. *Maloo Building Materials P. Ltd.*
 - c. *Manan Vidhyapati Patel*
 - d. *Abhijeet Dwarkadas Daga*

6. The aforesaid summonses were not replied by the appellant and, consequently, adjudication proceedings

were initiated against the appellant for the purpose of imposing penalty under section 15A of the SEBI Act.

7. The appellant appeared and filed his reply and, thereafter, the impugned order was passed imposing a penalty of Rs.15 lakhs.
8. The contention of the learned counsel for the appellant is that whatever information was sought for by the respondent vide email dated 6th April, 2016 was duly provided by the appellant vide emailed dated 12th April, 2016 and since the same information was sought by the investigating authority vide their subsequent summons the appellant did not think it fit to reply since the relevant information had already been provided.
9. It was also alleged that the appellant cannot be compelled to provide documents and in support of his submissions has relied upon Article 20(3) of the Constitution of India.
10. Having heard the learned counsel for the appellant at some length, we find that there has been a complete failure on the part of the appellant to provide the

information under section 11C(2) and 11C(3) of the SEBI Act. Consequently, penalty was rightly imposed under section 15A of the SEBI Act. In this regard provision of section 15 A is extracted hereunder.

“Penalty for failure to furnish information, return, etc.—

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”

11. A perusal of the aforesaid provisions makes it clear that in the event there is a failure to furnish relevant information and documents then the authority could impose. The appellant in the instant case argued that a reply was given vide email dated 12th April, 2016. We find from a reading of the said email that the reply was totally evasive and did not answer or provide the documents as sought by the respondent. Further, we find from the subsequent summons that additional

information and documents sought for was never given. Consequently, we are of the opinion that “failure to furnish information” would include within its ambit partial information or incomplete information or incorrect information supplied by the appellant.

12. The contention that the appellant cannot be compelled to furnish information and documents in view of the mandate given in Article 20(3) of the Constitution of India is patently misconceived. The said provision has no application in the instant case. An analysis of Article 20(3) would show three things, namely, that the protection is available only to a person accused of an offence. Secondly, the protection is against compulsion to a witness and lastly, this protection avails against himself. In our opinion, none of these ingredients exists. The appellant has only been asked to provide certain information and documents. The contention raise is rejected.

13. In the light of the aforesaid, we do not find any error in the impugned order. The appeal fails and is dismissed with no order as to costs.
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

Dr. C.K.G. Nair
Member

Justice M.T. Joshi
Judicial Member

22.3.2021
RHN