

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of Hearing : 11.10.2019

Date of Decision : 18.10.2019

Appeal No. 173 of 2018

1. Anjaneya Holdings Pvt. Ltd.
2. N Essence Holdings Ltd.
3. Sansar Exim Pvt. Ltd.
4. Tulja Enterprises Ltd.
5. Chamundeshwari Mercantile Pvt. Ltd.
6. Verve Properties & Investment Pvt. Ltd.
7. Indgenious Finance and Investment Pvt. Ltd.
8. Nitin S. Kasliwal
9. Jyoti N Kasliwal

c/o: S. Kumars Nationwide Ltd.
B2, 5th Floor, Marathon Nextgen,
Off. G. K. Marg, Lower Parel,
Mumbai - 400 013.

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Abhishek Venkatraman, Mr. Joby Mathew, Mr. Nikhil Shah, Mr. Ramesh Gogawat, Mr. Anshuman Sugla, Advocates i/b Joby Mathew & Associates for the Appellants.

Mr. Karan Bhosale, Advocate with Mr. Anubhav Ghosh, Ms. Rashi Dalmia, Advocates i/b The Law Point 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

1. The present appeal has been filed against the order of the Adjudicating Officer (hereinafter referred to as, 'AO') of Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') dated February 15, 2018 imposing penalties individually on each of the appellants totaling a sum of Rs. 50 lacs under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act') for violation of Regulation 29(2), 29(3), 31(1), 31(2) and 31(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as, 'SAST Regulations') and Regulation 13(3), 13(4), 13(4A) and 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, 'PIT Regulations').

2. The facts leading to the filing of the appeal is that SEBI conducted an examination into the shareholding in the shares of the company and observed that the appellants had failed to make the

necessary disclosures regarding creation / invocation / release of certain pledge transactions and off-market transactions / purchase of shares in the company known as S. Kumars Nationwide Ltd. Accordingly, a show cause notice was issued indicating that the appellants being promoters of the company had carried on pledge related transactions and off-market transfers in the scrip without making the necessary disclosures and consequently, violated Regulations 29 and 31 of the SAST Regulations and Regulation 13 of the PIT Regulations.

3. The appellants were accordingly, directed to show cause as to why enquiry should not be held and penalty should not be imposed under Section 15A(b) of the SEBI Act. The AO after considering the replies of the appellants and after considering the submissions passed the impugned order imposing a cumulative penalty of Rs. 50 lacs on the appellants. The appellants being aggrieved by the said order have filed the present appeal.

4. We have heard Shri Somashekhar Sundaresan, the learned counsel for the appellants and Shri Karan Bhosale, the learned counsel for the respondent.

5. The contention of the appellants is that Regulation 29 of the SAST Regulations is not applicable and is only applicable to the

pledgee. It was contended that the appellant is not the pledgee and only the pledger and, therefore, no penalty could be imposed under Regulation 29 of the SAST Regulations. Before dealing with the proposition advanced by the appellants, it would be appropriate to refer to the provisions of Regulation 29 of the SAST Regulations which is extracted hereunder :-

“29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

29(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in the target company in such form as may be specified

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.”*

6. The penalty has been imposed for violation of Regulation 29(2) and 29(3) which provides that an acquirer who holds shares or voting rights entitling them to 5% or more of the shares or voting rights in the target company shall disclose every acquisition or disposal of shares representing 2% or more within two working days. The chart after paragraph 21 of the impugned order indicates the details of the transactions and the alleged violations of every entity / appellants. Admittedly, the disclosure was not made on a number of occasions. What has been argued is that the pledges which were invoked do not fall under Regulation 29(2) or 29(3).

7. The submission of the learned counsel for the appellants is patently misconceived. Whenever a share which is pledge is invoked meaning thereby the shares are sold, the necessary consequence which follows is the reduction in the shareholding of that particular entity. In the instant case, whenever the pledged shares of a particular appellant was invoked, there was a change in the shareholding of that appellants and, consequently, the appellants under Regulation 29(2) read with 29(3) was required to disclose the change in the shareholding within two working days of the revocation of the shares to the stock exchange as well as to the target company. Admittedly, as per the chart indicated after paragraph 21 of the impugned order, no disclosures were made by the appellants

when their pledges were invoked. Thus, there was a clear violation of Regulation 29(2) read with 29(3) of the SAST Regulations.

8. Regulation 29(2) further provides that the disposal of the shares of such target company should represent 2% or more of the shares or voting rights in such target company for triggering the requirement of making the disclosure. A perusal of the chart shows two such transactions of the Appellant No. 1 Anjaneya Holdings Pvt. Ltd. that when their share pledges were invoked on August 28, 2012 and November 2, 2012, the percentage of the shareholding was less than 2% being 1.21% and 1.82% respectively. Thus, for the said two transactions penalty under Section 29(2) and 29(3) could not be invoked to that extent. The said appellant Anjaneya Holdings Pvt. Ltd. is entitled for relief. Other transactions of all the appellants describing violation for non-disclosure under Regulation 29(2) and 29(3) does not suffer from any error and the order of the AO to that extent is maintained.

9. Penalty has also been imposed for violation of Regulation 13(4A) and 13(5) of the PIT Regulations. For facility, the provisions of Regulation 13 of the PIT Regulations is extracted hereunder :-

“13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting

rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.”*

10. The contention of the appellants that there was no requirement of a disclosure under the PIT Regulations as the said Regulations

were not applicable to encumbrances made since there were no such provisions for disclosure of shares which were pledged. The contention of the appellants is patently erroneous in as much as the provisions of Regulation 13 provides for a continual disclosures of the shareholding or voting rights and if the shareholding falls below a certain percentage as provided in the said regulations then it is incumbent for the person to make the necessary disclosures. Thus, whenever the pledging of the shares of the appellants were invoked, the appellants were required to make the necessary disclosures as it involved a change in the shareholding. Thus, the contention of the appellants cannot be accepted.

11. We also find that the Appellant No. 1 had also indulged in off-market transaction which resulted in the change in the shareholding and such change is required to be disclosed under Regulation 13(4A) and 13(5) of the PIT Regulations. Since, the same was not done, the penalty imposed was justified. We also find that when the pledge was revoked, the said revocation also triggered the requirement to make the disclosures under Regulation 31(2) and 31(3) of the SAST Regulations which again was not made by the Appellant No. 1.

12. In the light of the aforesaid, the order of the AO is affirmed with the modification that the penalty of Rs. 15 lacs imposed upon

the Appellant No. 1 for violation of Regulation 29(2) read with 29(3) is reduced to Rs. 10 lacs. All other imposition of penalties against the appellants are affirmed. The appeal is partly allowed to the extent stated aforesaid.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

Sd/-
Justice M. T. Joshi
Judicial Member

18.10.2019
Prepared & Compared by
PTM