

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 11.01.2022**

**Date of Decision : 17.01.2022**

**Appeal No. 298 of 2020**

Avenue Supermarts Limited  
Anjaneya CHS Limited,  
Orchard Avenue,  
Opp. Hiranandani Foundation School,  
Powai, Mumbai – 400 076

...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

Mr. Pesi Modi, Senior Advocate with Ms. Gazal Rawal and  
Ms. Khyati Goel, Advocates i/b Cyril Amarchand Mangaldas  
for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Ms. Nidhi Singh  
Ms. Deepti Moha, Ms. Binjal Samani, Ms. Aditi Palnitkar and  
Ms. Moksha Kothari, Advocates i/b Vidhii Partners for the  
Respondent.

**WITH**  
**Appeal No. 299 of 2020**

Ashu Gupta  
Flat No. 1104, Angre House,  
Mazagon Dock Shipbuilders Limited,  
Mazgaon, Near Dockyard Road Station,  
Mumbai- 400 010  
Maharashtra

...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

Mr. Neville Lashkari, Advocate with Ms. Gazal Rawal and Ms. Khyati Goel, Advocates i/b Cyril Amarchand Mangaldas for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Ms. Nidhi Singh Ms. Deepti Moha, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates i/b Vidhii Partners for the Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. Both the appeals are against a common order dated July 31, 2020 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing a penalty for the delay in making the disclosures under Regulation 7(2)(a) & (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations” for convenience) and are being taken up together.

2. The facts leading to the filing of the present appeal is, that an employee of the Company Avenue Supermarts Ltd.

Mr. Vidyadhar D. Vardam, who was a store manager sold 5000 shares of the Company on April 03, 2018 valuing Rs. 67.90 lakhs. Under the relevant Regulations, the employee was required to inform the Company which he failed to do so. Accordingly, a show cause notice dated January 31, 2020 was issued against the employee, as well as against the Company and its Compliance Officer. It was alleged that the employee has violated Regulation 7(2)(a) of the PIT Regulations for not informing the Company about the transactions and the appellants were alleged to have violated Regulation 7(2)(b) of the PIT Regulations for not informing the stock exchange within two trading days of receipt of the disclosure or from becoming aware of such information. The show cause notice alleged that the beneficiary position report which is also called the Benpos report submitted by the Registrar and Share Transfer Agent on April 09, 2018 reveals the transactions made by the employee and, therefore, alleged that the disclosure made by the Company on July 29, 2019 was delayed by 474 days in violation of Regulation 7(2)(b) of the PIT Regulations.

3. The appellants in their reply contended that the employee informed the Company about the transactions on July 29, 2019 and, on the very same day, the Company notified the stock

exchange about the transaction and, therefore, there was no violation of Regulation 7(2)(b) of the PIT Regulations as they became aware of the said transactions only on July 29, 2019.

4. The said explanation did not find favour with the AO who held that the Benpos report was supplied to the appellants on April 09, 2018 and if a search had been made from the Benpos report the transaction made by its employees could have been found out. The AO thus held that the appellants became aware of the transactions from the date when the Benpos report was filed, namely, on April 09, 2018 and the said information was given to the stock exchange belatedly on July 29, 2019. The AO accordingly imposed a penalty of Rs. 3 lakhs on the Company and Rs. 1 lakh on the compliance officer for the aforesaid violation of Regulation 7(2)(b) of the PIT Regulations.

5. We have heard Shri Pesi Modi, the learned senior counsel and Shri Neville Lashkari, the learned counsel for the appellants and Shri Gaurav Joshi, the learned senior counsel for the respondent.

6. Before us it was urged that the obligation of the appellants under Regulation 7(2)(b) of the PIT Regulations arises only if the concerned employee files the required disclosures with the

Company which in the instant case was done by the employee on July 29, 2019 and the said information was supplied on the same date to the stock exchange and, therefore, there was no violation of Regulation 7(2)(b) of the PIT Regulations. It was further urged, that Benpos report is being submitted for a different purpose under the Depositories Act and it is not possible nor expected to analyze from the Benpos report and identify such trades and thereafter report them under Regulation 7(2) of the PIT Regulations. It was contended that the Benpos report is generated by the depositories which are only intended towards maintenance of updating register of members which has relevance for identifying the shareholders of the listed Company and their shareholdings on the record date for the purpose of issuance of dividends, voting rights and bonus shares etc. in terms of Section 88 of the Companies Act, 2013.

7. It was also contended that the appellant-Company has 7700 employees which are scattered in 214 stores across 11 states in the country and it is impossible to scrutinize the Benpos report with regard to the changes in their shareholdings on a weekly basis especially when the appellant-Company has 158722 shareholders. It was contended that the Benpos report which is almost 205 pages and being bulky, it was not expected

to sift through the same for the purpose of identifying each employees shareholding changes in the previous week and report such transactions under Regulation 7(2)(b) of the PIT Regulations.

8. It was contended that the disclosures are required to be made by the employee in Form C and within 48 hours the Company is required to notify the stock exchange within two trading days. It was thus contended that Form C was received by the Company on July 29, 2019 and on the same date it was intimated to the stock exchange.

9. In order to deal with the aforesaid issue, it would be appropriate to refer to Regulation 7(2)(a) & (b) of the PIT Regulations which are extracted hereunder:-

*“7(2) Continual Disclosures.*

*(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value*

*in excess of ten lakh rupees or such other value as may be specified;*

*(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.*

*Explanation. - It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).”*

10. Under 7(2)(a) every promoter, employee and director is required to disclose such securities acquired or disposed of within two trading days of such transaction to the Company if the value exceeds 10 lakhs. Under Regulation 7(2)(b) every Company shall notify the particulars of such trading to the stock exchange within two trading days of receipt of the disclosure or becoming aware of such information. In our opinion, the burden lies upon the Company to notify the particulars of such transaction to the stock exchange within two trading days from the receipt of the disclosure from the promoter, employee and

director under Regulation 7(2)(a) or becoming aware of such information. The words “becoming aware of such information” does not mean the information given by the promoter, employee or director under Regulation 7(2)(a) but takes into its fold such information received from any other source. The intention of the provision is, that the moment the Company becomes aware of such transaction it triggers the disclosure requirement under Regulation 7(2)(b) of the PIT Regulations. Thus, it is not necessary that the information is required to be given to the Company in Form C from the promoter, employee or director under Regulation 7(2)(a) of the PIT Regulation. In our opinion, the information can come from any other source and not necessary in the prescribed Form C.

11. We are of the opinion, that reliance made by the AO on Benpos report is incorrect. In the first instance, the data provided in the Benpos report has a limited information and is for a different purpose under the Depositories Act and cannot be treated as a source for disclosure requirement under the PIT Regulations. Further, the Benpos report does not disclose Permanent Account Number (PAN) of the employee and only discloses the depository participant identity (DP ID) and through the DP ID it is not possible to collate or locate the

transaction made by the employee. Further, the Benpos report being too bulky, it is not possible for the Company to search for such transactions on a weekly basis of shares which are liquid and where huge transactions are made on a daily basis. Therefore, in our opinion, it is not practical for the Company to scan the Benpos report for the purpose of making a possible disclosure under Regulation 7(2)(b) of the PIT Regulations. Therefore, in our view, reliance on Benpos report is patently erroneous. It has been brought to our notice that in a similar matter in the case of ITC Ltd. the AO found that the Benpos report cannot be relied upon for the purpose of making a disclosure by the Company under Regulation 7(2)(b) of the PIT Regulations.

12. However, we find that the appellants became aware of the said transaction made by the employee when an Email dated July 02, 2019 was sent by SEBI not only to the employee but to the compliance officer informing them as to whether they are aware of such transactions or not. The Company replied on the next date i.e. on July 03, 2019 intimating that the employee has not informed of such transaction. However, this does not exonerate the appellants from not proceeding within the stipulated period in making the disclosure under 7(2)(b). We

find that no steps were taken by the Company asking for such information from the employee and only when the employee submitted the information in Form-C on July 29, 2019 that the appellants galvanized itself and notified the stock exchange about the said transaction on the same date. In our opinion, the appellants became aware of the transaction when SEBI informed the appellants through their Email on July 02, 2019. It became apparent that the Company was thus required to make the necessary disclosure within two trading days from July 02, 2019 but delayed notifying the same to the stock exchange till July 29, 2019. Thus, in our opinion, the appellants had violated the provisions of Regulation 7(2)(b) of the PIT Regulations.

13. In view of the finding given by us even though we do not agree with the finding arrived at by the AO nonetheless, we are of the opinion that on a different basis the appellants have violated the provision of Regulation 7(2)(b) of the PIT Regulations and consequently, we uphold the quantum of penalty awarded by the AO. The appeals fail and are dismissed with no order as to costs.

14. The present matters were 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

17.01.2022  
PK