BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 17.06.2014

Appeal No. 145 of 2014

IndiaNivesh Capitals Limited
(erstwhile known as Jupiter
Enterprises Limited)
1/1A, Ram Krishana Samadhi Road,
5th Floor, Kankurga,
Kolkata- 700 054
West Bengal …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

Ms. Ritu Soni, Advocate with Mr. Ram Kumar Pugaliya, Chartered Accountant and Ms. Harsha Gupta, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis, Advocate for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on March 20, 2014, whereby penalty of ₹ 7 lac has been imposed upon the appellant under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act, 1992" for short) for the delay in making disclosures under regulation 13(2A) read with regulation 13(6) of the Securities and Exchange Board of India

(Prevention of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for short).

2. It is not in dispute that the appellant on becoming part of the promoter group of IndiaNivesh Capitals Limited (“INCL” for short) on May 14, 2012 on account of acquiring control of INCL, was obliged to file disclosures to the company and to the Stock Exchange under regulation 13(2A) read with regulation 13(6) of PIT Regulations, 1992 within the period specified therein. Admittedly, disclosures have been made after delay of 16 months and 6 days. Inspite of above delay, counsel for the appellant submitted that in the facts of present case, imposition of penalty of ₹ 7 lacs under Section 15A(b) of the SEBI Act, 1992 is arbitrary and unreasonably excessive for the following reasons:-

a) Delay in making disclosures did neither result in disproportionate gain nor unfair advantage to the appellant and there being no loss caused to the investors as a result of such non disclosure, AO is not justified in imposing penalty of ₹ 7 lacs.

b) Since explanation to regulation 13 of the PIT Regulations, 1992 provides that the expression ‘promoter’ and ‘promoter group’ under regulation 13(2A) shall have the same meaning as assigned to them in terms of regulations framed under Clause (h) of sub-section (2) of section 11 of the SEBI Act, 1992 there was confusion in the mind of the appellant regarding the disclosure requirements and

hence the delay in making disclosures. As soon as the confusion was removed, the appellant has made disclosures and therefore, in the facts of present case, imposition of penalty of ₹ 7 lac us unjustified.

3. We see no merit in the aforesaid contentions of the appellant. Argument of that there being no disproportionate gain or unfair advantage derived by the appellant and there being no loss caused to the investors as a result of failure on part of the appellant to make disclosures, AO was not justified in imposing penalty is without any merit, because, obligation to make disclosures under regulation 13(2A) of PIT Regulations, 1992 is not restricted to cases where there is disproportionate gain or unfair advantage and where loss is caused to the investors as a result of failure to make disclosures. In other words, irrespective of disproportionate gain or unfair advantage derived or any loss caused to the investors, obligation to make disclosures under regulation 13(2A) of the PIT Regulations, 1992 have to be complied with. No doubt, that these factors would be relevant while determining quantum of penalty. In the present case, penalty imposable upon the appellant for failure to make disclosures under regulation 13(2A) read with regulation 13(6) of PIT Regulations, 1992 as per section 15A(b) of SEBI Act, 1992 at the rate of ₹ 1 lac per day would come to more than ₹ 1 crore for the delay of 16 months and 6 days. However, the AO after taking into consideration all mitigating factors has imposed penalty of ₹7 lacs as against penalty imposable at ₹ 1 crore, which cannot be said to be arbitrary or unreasonably excessive.

4. Similarly, argument of the appellant based on the explanation to regulation 13 of PIT Regulations, 1992 is also without any merit, because, firstly no such contention was raised before the AO and secondly, explanation to regulation 13 of PIT Regulations, 1992 does not deal with the disclosure requirements and therefore, argument of the appellant that because of the said explanation appellant was confused is without any merit. Thus, the appellant having failed to comply with the disclosure requirements cannot escape penalty for the violations committed by the appellant.

5. For all the aforesaid reasons, decision of the AO in imposing penalty of ₹ 7 lac as against the penalty of ₹1 crore imposable against the appellant cannot be said to be a decision taken by ignoring mitigating factors set out in Section 15J of SEBI Act, 1992 and accordingly, we see no reason to interfere with the order passed by the AO. In the result, the appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

17.06.2014
Prepared & Compared By: PK