BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 383 of 2014

Date of Decision : 28.01.2015

Vizwise Commerce Pvt. Ltd.
1111, 11th Floor, New Delhi House,
27 Barakhamba Road, …Appellant
New Delhi – 110 001.

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. Ashok Singh, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Manish Acharya, Advocate i/b Vigil Juris for the Respondent.

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

Per : J.P. Devadhar (Oral)

1. I have gone through the order passed by learned Member Mr. A.S. Lamba. Although I agree with the conclusion drawn therein, I find it difficult to agree with the reasons set out therein. Hence, this separate order.

2. The appellant is aggrieved by the impugned order passed by the Adjudicating Officer of SEBI on August 28, 2014 whereby penalty of Rs. 4 lac is imposed u/s. 15A(b) of the Securities and Exchange Board of India Act, 1992 (‘SEBI Act’ for short) for violating Regulation 29(2) r/w 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (‘SAST Regulations 2011’ for short) and

Regulation 13(3) r/w Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short).

3. Admittedly, appellant was holding 7,21,346 shares of Seasons Textiles Limited ('target company' for short) representing 9.63% paid-up capital of the company. On June 18, 2013 appellant sold 2,50,000 shares of the target company representing 3.34% of the paid-up capital and sold 2,98,000 shares on June 25,2013 representing 3.98% of the paid-up capital of the company. Since disposal of shares on each of the two dates was in excess of 2% of the share capital of the target company appellant was required to make disclosure to the stock exchange and to the target company under Regulation 29(2) r/w Regulation 29(3) of SAST Regulations, 2011 within two working days of the disposal of the shares. Similarly, under Regulation 13(3) r/w Regulation 13(5) of the PIT Regulations appellant holding more than 5% shares of the target company was required to disclose any change in its shareholding within two working days from the date of sale of shares.

4. Admittedly, the appellant has dispatched intimation to the exchange as also the company on June 27, 2013 in respect of both the sell transactions that took place on June 18, 2013 and June 25, 2013. Thus there is delay of six days in making disclosure in respect of first transaction. Although there is some dispute as to the date on which the company got the intimation, the Adjudicating Officer after taking into consideration all mitigating factors has imposed penalty of Rs. 4 lac for the delay in making disclosure under aforesaid provisions.

5. In my opinion, no fault can be found with the decision of the adjudicating officer in holding that the appellant is liable to pay penalty for

the delay in making disclosures. However, looking to the fact that the whole time director of the appellant who was looking after the affairs of the company was suffering from cancer at the relevant time and ultimately died on July 22, 2013, in my opinion, it would be just and proper to reduce the penalty from Rs. 4 lac to Rs. 2 lac.

6. Accordingly, the appeal is partly allowed by reducing the penalty imposed under the impugned order dated August 28, 2014 from Rs. 4 lac to Rs. 2 lac. The appellant is directed to pay the penalty of Rs. 2 lac within a period of four weeks from today.

7. The appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

typed by: msb

Per : A.S. Lamba (Oral)

1. This appeal, heard on January 28, 2015, has been preferred by M/s.Vizwise Commerce Pvt. Ltd. against SEBI's order No.JJ/AM/AO-117/2014 dated August 28, 2014, for imposition of penalty of Rs.4,00,000/- under Section 15A(b) of the Securities and Exchange Board of India Act, 1992, for violation of provisions of Regulation 29(2) r/w Regulation 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (SAST Regulations) and Regulation 13(3) read with Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) - due to delay of 6 days in reporting a transaction for sale of 2,50,000 shares,

representing 3.34% of share capital of Seasons Textiles Limited on 18/6/2013, to concerned stock exchanges and company concerned.

2. Under provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, any acquirer, 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 such target company in such form as may be specified, and such disclosure shall be made within two working days of receipt of intimation of allotment of shares or 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, and requirement under Regulation 13(3) r/w Regulation 13(5) is "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 and that disclosure is to be made within 2 working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights.

3. It may be pointed out that Regulation 29(3) of SAST Regulations is not in consonance with Regulation 29(2), since Regulation 29(2) requires intimation for every acquisition or disposal, but Regulation 29(3) requires

such disclosure "to be made within two days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the target company" and there is no time limit for disclosure of disposal of shares or voting rights, although there is a requirement under Regulation 29(2).

4. From Regulation 13(3) of SEBI (PIT) Regulations, it is seen that opening line of same states – "Any person who holds more than 5% of shares for voting right…..", which does not make much sense, but read with Regulation 13(5)(b) – the acquisition or sale of shares or voting rights – may be constructed to mean "for" in Regulation 13(3) should read "or".

5. In the present case, intimation of disposal of shares or voting rights in target company was required to be intimated under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations to stock exchanges and target company by acquirer i.e. Vizwise Commerce Private Limited, but in absence of any time limit for same, no violation as such can be attributed since the intimation was provided.

6. However, under Regulation 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations, it is seen that sale of shares or voting rights was required to be made to the company, if "for" in Reg.13(3) is read as "or", then the person concerned i.e. Vizwise Commerce Pvt. Limited, did not make the requisite disclosure to target company i.e. Seasons Textiles Limited, within 2 days of sale of 2,50,000 shares, representing 3.34% of share capital of Seasons Textiles on 18/6/2013 and as such can be held violative of provisions of Regulation 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations, 1992.

7. However, it may also be pointed out by Ld. A.O. in para 12 that "……..the required disclosures should have reached the company/stock

exchanges by June 20, 2013 and June 27, 2013, for the transactions carried out on June 18, 2013 and June 25, 2013" and in the opinion of this Tribunal, Regulation 29(2) r/w Regulation 29(3) of SEBI (SAST) Regulations, 2011 and Regulation 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations, requirement of disclosure is within two days of transactions for acquisition to concerned stock exchanges and target company and as per Regulation 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations read with Regulation 13(1) of SEBI (PIT) Regulations – the requirement for acquisition and disposal is within two days to target company only and hence these requirements are of intimation i.e. putting down the same in requisite form and posting the same within 2 days and not for reaching the company/stock exchange within 2 days of occurrence – for which additional time, over and above 2 days, for reaching the intimation by post to target company or stock exchange, as the case may, is permitted.

8. It was also submitted by Ld. Counsel that promoter/director of Appellant was hospitalized during the time when sale took place and requirement of those disclosures arose and ultimately breathed his last on 22/7/2013 and hence keeping this in view and also the fact that delay in disclosure under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations was only 6 days, the penalty imposed by Ld. A.O. is reduced to Rs.2,00,000/-.

Sd/-
A.S. Lamba
Member

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Per Tribunal

1. Appeal is partly allowed by reducing the penalty imposed under the impugned order dated August 28, 2014 from Rs. 4 lac to Rs. 2 lac. The

appellant is directed to pay the penalty of Rs. 2 lac within a period of four weeks from today.

2. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
A.S. Lamba
Member

28/01/2015
Prepared & compared by - msb & ddg