IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 26TH DAY OF AUGUST, 2024

CORAM : Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 112 of 2018

Between

1. Mr. Amish Rameshchandra Desai
   15, Omkrishnakunj, M. G. Road,
   3, Kandivali (West), Mumbai – 400 067.

2. Mr. Bhrugesh Pankaj Mehta
   1006, Devani Pol Khambat
   22, Cambay, Anand – 388 620.

3. Mr. Bhupendra M. Soni
   B-9, Bhagwan Nagar Soc.
   Opp: Govind Vadi Isanpur,
   Ahmedabad – 382 443.

4. Ms. Palak Premal Trivedi
   9/1198, Nani Chipwad, Balaji Road,
   Surat – 395 003.

5. Ms. Pinal Rajeshbhai Mehta
   7/A, Deepmala Apartment, Nr. Maniyasa
   Maninagar, Ahmedabad – 380 008.

6. Mr. Premal Yogendra Trivedi
   7/A, Deepal Apartment, Nr. Maniyasa
   Maninagar, Ahmedabad – 380 008.

Surat – 395 003.

7. Mr. Rajesh Rajnikant Mehta
   7/A, Deepal Apartment, Nr. Maniyasa
   Maninagar, Ahmedabad – 380 008.
   Surat – 395 003.

8. Mr. Sawan Ajit Joshi
   D-104, Sparsh Arishta,
   B/hd. Swaminarayan Park, Vasna,
   Gujarat.

9. Mr. Shirish Rameshbhai Desai
   15, Omrishnakunj, M. G. Road,
   3, Kandivali (West),
   Mumbai – 400 067.

10. Mr. Shiv Navinchandra Raval
    C-5, Shivji Flats, Juna Wadaj,
    Ahmedabad – 380 013.

11. Mr. Jayesh N. Kavi
    10, Allied Apartment
    Opp: L. G. Hospital, Maninagar,
    Ahmedabad – 380 008. …. Appellants

By Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Ms. Hiral Shah, Mr. Kush Khandelwal, Advocates i/b R. V. Legal for the Appellants.

And

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

By Mr. Vishal Kanade, Advocate with Mr. Manish Chhangani, Mr. Sumit Yadav, Mr. Abhay Chauhan, Mr. Atul Kumar Agrawal, Mr. D Kalyan Reddy, Advocates i/b The Law Point for the Respondent.

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED JANUARY 31, 2018 (EX-A) PASSED BY ADJUDICATING OFFICER, SEBI.

THIS APPEAL COMING ON FOR HEARING THIS 26th DAY OF AUGUST 2024, THIS TRIBUNAL PASSED THE FOLLOWING:

O R D E R

[Per : Justice P. S. Dinesh Kumar, Presiding Officer (Oral)]

This appeal was filed by 11 out of 12 noticees who have suffered an order of penalty passed by the AO[1] of the SEBI[2] vide order dated January 31, 2018 imposing penalty of Rs. 3,50,000/- on all 12 noticees. By order dated September 4, 2019, this Tribunal remanded the matter to the file of the AO, SEBI for fresh disposal in accordance with law. SEBI challenged the said order in CA No. 9440 of 2019. By order dated February 13, 2024, the Hon'ble

[1] AO – Adjudicating Officer

[2] SEBI – Securities and Exchange Board of India

Supreme Court of India has allowed the appeal and directed this Tribunal to decide the matter afresh on merits.

2. We have heard Mr. J. J. Bhatt, learned advocate alongwith Ms. Rinku Valanju, Ms. Hiral Shah, Mr. Kush Khandelwal, learned advocates for the appellants and Mr. Vishal Kanade, learned advocate with Mr. Manish Chhangani, Mr. Sumit Yadav, Mr. Abhay Chauhan, Mr. Atul Kumar Agrawal, Mr. D Kalyan Reddy, learned advocates for the SEBI.

3. It was contended by the learned advocate for the appellants that :-

- The company, namely, JESL[3] was managed by one Mr. Saurin Kavi. Noticees No. 1 to 11 are related to him in the following manner :-

Sr. No. in AO's Order	***Name of the Noticee***	***Age (Yrs.)***	***Relationship with Mr. Saurin Kavi***
1	*Amish Rameshchandra Desai*	*47*	*Brother-in-Law*
2	*Bhrugesh Pankaj Mehta*	*34*	*Saurin's Father-in-Law's Brother's son*
3	*Bhupendra M. Soni*	*56*	*Saurin's Uncle Brother-in-Law*
4	*Palak Premal Trivedi*	*49*	*Sister*
5	*Pinal Rajeshbhai Mehta*	*41*	*Brother-in-Law*
6	*Premal Yogenda Trivedi*	*50*	*Brother-in-Law*
7	*Rajesh Rajnikant Mehta*	*67*	*Father-in-Law*
8	*Sawan Ajit Joshi*	*39*	*Son of Sister of Saurin's Father*
9	*Shirish Rameshbhai Desai*	*42*	*Brother of Sr. No. 1 – Brother of Brother-in-Law*

[3] JESL – Jay Energies and S. Energies Ltd.

10	*Shiv Navinchandra Raval*	*40*	*Son of Sister of Saurin's Father*
11	*Jayesh N. Kavi*	*61*	*Uncle*

- Noticees / appellants had no knowledge about the manner in which Mr. Saurin Kavi was handling the matter. They also did not know that certain shares of the company were transferred in their favour. Transfer of shares might have been done by forging their signatures;

- For the first time, they learnt about the investigation initiated by the SEBI during 2014 when they received summons to appear before the IO[4];

- Noticees were shocked to receive the summons and approached Mr. Saurin Kavi and handed over the summons to him with a request to do the needful in the matter;

- The noticees were under the impression that Mr. Saurin Kavi had attended to the matter by appearing before the IO;

- Subsequently, appellants received notices to appear before the AO. They again approached Mr. Saurin Kavi and requested him to attend to the matter. In turn, Mr. Saurin Kavi gave a

[4] IO – Investigating Officer

letter to each of the noticees confirming that the noticees had no knowledge about the SEBI proceedings;

- Whilst the matter was pending before this Tribunal, the WTM[5] had also initiated proceedings for violation of Regulation 10 of the SAST Regulations, 1997[6];

- The WTM has exonerated all noticees, namely, Noticees No. 1 to 11;

- It is held in ***Mr. Ashwin Bhandari vs. SEBI***[7]**,** that once the noticees are exonerated by the WTM, the imposition of penalty by the AO is not sustainable.

4. Learned advocate for the appellants further submitted that noticee No. 11 had no knowledge about the submission of the Form-D by the company. Therefore, noticee No. 11 must not be penalized under Section 15A(b) of the SEBI Act.

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[5] WTM – Whole Time Member

[6] SAST Regulations – Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

[7] Mr. Ashwin Bhandari vs. SEBI (Appeal No. 61 of 2018 dated March 21, 2018)

5. In substance, the main contentions urged by the learned advocate are that noticees No. 1 to 11 are innocent victims. Mr. Saurin Kavi, was the managing director, and he was handling all the affairs of the company. He had transferred the shares in the name of noticees No. 1 to 11 without their knowledge. He had submitted the Form-D as required under Regulation 13(3) of the PIT Regulations, 1992 without bringing to the knowledge of noticee No. 11. The WTM has exonerated noticees No. 1 to 11, therefore, imposition of penalty by the AO is unsustainable in law.

6. In reply, Shri Vishal Kanade, learned advocate for the SEBI submitted that Section 11C(2) and 11C(3) of the SEBI Act[8] mandates that any person mentioned therein, when called upon to produce to the investigating authority is duty bound to produce all the books, registers and other documents or records of the company as the case may be. Failure to do so, attracts penalty under Section 15-A(a) of the SEBI Act.

7. With regard to the submission of Form-D in compliance with Regulation 13(3) of the PIT Regulations, 1992[9], Shri Kanade submitted that noticee No. 11 (Jayesh Kavi) had transferred / sold

[8] SEBI Act – Securities and Exchange Board of India Act, 1992
[9] PIT Regulations – SEBI (Prohibition of Insider Trading) Regulations, 1992

2,50,000 shares, which accounted for 3.68% of shares of JESL to Mr. Saurin Kavi on July 30, 2010. On account of the said transfer, the shareholding of Jayesh Kavi in JESL had come down from 6.62% to 2.94%, which he was required to disclose as per Regulation 13(3) of the PIT Regulations, 1992.

8. We have carefully considered the rival submissions and perused the records.

9. Appellants' case is that shares were transferred in their name without their knowledge.

10. The Investigating Officer had issued summons. Noticees did not respond to the summons but now contend that they had handed over the summons to Mr. Saurin Kavi. Similarly, with regard to the adjudication proceedings, their case is that they handed over the notices received by the AO to Mr. Saurin Kavi to do the needful. They have produced a copy of the letter written by Mr. Saurin Kavi dated September 4, 2017 and it reads thus :-

CONSENT LETTER

> *"I Saurin J. Kavi, having address at 10, Allied Apartmet, Prerna Park, Opp. L. G. Hospital, Maninagar, Ahmedabad do hereby confirm the facts that Mr. Amish Rameshbhai Desai has no knowledge*

about the SEBI proceedings in the matter of Jay Energy and S. Energies Ltd. and I take all responsibility for the same on his behalf. "

11. It was submitted by Shri Kanade, that after receipt of summons issued by the IO, the noticees did not appear before the IO. The only defense urged is that they had handed over the summons to Mr. Saurin Kavi and they were under the impression that Mr. Saurin Kavi had attended to the matter. As per Section 15A(a), if any person who is required under the SEBI Act or Regulations, fails to furnish any document or return the same, he shall be liable for imposition of penalty of not less than Rs. 1 Lakh which may extend upto Rs. 1 Lakh each day. In the light of the undisputed facts, the AO has imposed a penalty of Rs. 3,50,000/- on all the noticees. In case of appellant No. 11, penalty of Rs. 3,00,000/- has been levied for violation of Regulation 13(3) of the PIT Regulations.

12. We find that the underlying objective of SEBI for issuing enquiry letters since November 2014 was to investigate the allegation that the 14 noticees, which include appellant Nos. 1 to 10, had worked as '*persons in concert*' for acquiring 15.23% stake from the erstwhile 10 promoters without making due disclosure as per law.

Subsequently, the respondent issued a SCN in the matter on October 31, 2015 and later, passed the impugned order.

13. The appellant No. 11 was asked to explain the reason for violation of Regulation 13(3) of PIT Regulations, 1992 in respect of reduction of his shareholding in the company JSEL from 6.62% to 2.94%, for which no disclosure was made by him in response to the inquiry letter in November 2014 and subsequently to the show cause notice on October 31, 2015. In the common impugned order dated January 31, 2018, the appellant No. 11 was charged on this ground and levied with penalty of Rs. 3,50,000/- u/s 15A(b), in addition to penalty of Rs. 3,00,000/- for non-compliance to inquiry letters/ SCN/ summons under Section 15A(a) for non-compliance of notice/ summons.

14. With respect to the compliance by the appellants of notice / summons issued by AO, it was submitted by the learned advocate for the appellants that the appellants are relatives of Mr. Saurin Kavi who was CMD of JSEL. Appellants are low-income persons. Noticees did not have any source of making any investment as they were unemployed and having meager source of income. Also, the appellant No. 11, who is the nephew of Mr. Saurin Kavi did not have

any bank account or demat account. It was submitted that no evidence of signing of transfer deeds, transfer of consideration, or distinctive number of shares are brought on record. The appellants have alleged that Mr. Saurin Kavi had access to their KYC documents and suspect their signatures may have been forged and contended that they had no knowledge about such investment in shares of JSEL, which only Mr. Saurin Kavi could explain being the CMD of that company.

15. Appellant's claim seems justified to the extent that they had trusted Saurin Kavi, because, upon receipt of the enquiry letter in November 2014, the appellants were assured by Mr. Saurin Kavi that he would handle the matter. It is another matter that initially Mr. Saurin Kavi did not appear before the AO but later, on following receipt of SCN dated October 31, 2015, when appellants again approached him, he gave written assurances by issuing letters to each of the appellants, in which the appellant's stand is corroborated. Later Mr. Saurin Kavi personally represented before the AO on September 18, 2017.

16. Having heard the learned counsel for the appellants and having perused the consent letter which Saurin Kavi has written to the AO,

we are inclined to hold that noticees No. 1 to 11 trusted Saurin Kavi and handed over the summons and the notices to him to deal with. The letter written by Saurin Kavi dated September 4, 2017, *prima-facie*, shows that he has accepted and declared that the noticees No. 1 to 11 had no knowledge about the SEBI proceedings. However, it cannot be gainsaid that the appellants had no knowledge of the proceedings at all because, it is their admitted case that on receipt of summons, they had handed them over to Saurin Kavi. Thus, to the extent of not furnishing the documents and failing to join investigation, in our view, noticees No. 1 to 11 are liable to some penalty. Though the appellants have made efforts to shift the liability on Saurin Kavi, in our view, they cannot be fully exonerated.

17. Placing reliance on ***Mr. Ashwin Bhandari vs. SEBI (supra)***, learned counsel for the appellants submitted that this Tribunal in similar circumstance has modified the penalty to 'warning'. In reply, Shri Kanade submitted that there is a classic difference between the facts of that case and the facts in the instant case. He pointed out that in ***Mr. Ashwin Bhandari vs. SEBI (supra),*** the appellant had participated in the enquiry proceedings. In the instant case, the appellant's claim to have handed over the summons to Mr. Saurin Kavi. He is right in his submission. In paragraph No. 8, this

Tribunal has recorded that the appellants therein had joined the investigation. Therefore, the said authority does not support appellants' case.

18. On perusal of the Section 15A(a) of the SEBI Act we find that the minimum penalty is Rs. 1 lakh. Keeping in view the above facts, we are inclined to take a lenient view and to modify the order and accordingly, modify the penalty from Rs. 3 lakh to Rs. 1 Lakh against noticees No. 1 to 11 under Section 15A(a) of the SEBI Act.

19. It is not disputed that Form D was filed by JESL and disclosure was made on July 31, 2010 on transfer of 2,50,000 shares by Jayesh Kavi in favour of Saurin Kavi. Here again, the contention urged is that Jayesh Kavi had no knowledge of such transfer. It is recorded by the AO that the Form D had come into effect after amendment of SEBI (PIT Regulations), 2011 with effect from August 16, 2011. Thus, the contention that Form D was filed on July 31, 2010 would only compound the offence. In that view of the matter, we find no error in the order passed by the AO in imposing a penalty of Rs. 3 lakh under Section 15A(b) of the SEBI Act.

20. In the result, the following order :-

O R D E R

(i) The appeal is allowed in part.

(ii) Penalty is reduced to Rs. 1 lakh per noticee No. 1 to 11.

(iii) The order with regard to the violation of PIT Regulations imposing penalty of Rs. 3 lakh on noticee Nos. 11 is sustained.

(iv) Appeal is disposed of. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

26.08.2024
PTM