BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 06.01.2023
Date of Decision: 19.01.2023

Misc. Application No.902 of 2022
And
Appeal No.524 of 2022

1. Mr. Veerendra Kumar Singh ...Appellants
2. Ms. Alka Singh
   135, Krishi Apartment, D-Block,
   Vikas Puri, New Delhi – 110018.

Versus

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

Mr. Anilendra Pandey, Advocate with Mr. Ajay H. Saravde, Advocate for the Appellant.

Mr. Vyom Shah, Advocate with Mr. Manish Chhangani Ms. Samreen Fatima and Mr. Sumit Yadav, Advocates i/b. The Law Point for the Respondent.

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CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. Appeal No.524 of 2022 has been filed against the order of the Adjudicating Officer (hereinafter referred to as 'AO') dated 29th April, 2022 imposing a penalty of Rs.10 lakhs upon the appellants to be paid jointly and severally with other noticees for violation of Regulation 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover)

Regulations, 1997 (hereinafter referred to as the 'SAST Regulations')

2. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') conducted an investigation into the trading in dealing in the scrip of M/s. Camson Bio Technologies Ltd. (hereinafter referred to as the 'Company') In the investigation it was observed that certain notices acting in concert failed to make a public disclosure of offer for acquisition of shares in violation of Regulation 11(1) read with Regulation 14(1) of the SAST Regulations. Accordingly, adjudication proceedings was initiated and show cause notice dated 18th September, 2017 was issued to show cause why an inquiry should not be initiated against the noticees including the appellant and why penalty should not be imposed under Section 15H of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').

3. The show cause notice alleged that the appellants along with the other noticees were persons acting in concert ('PACs' for short) in terms of Regulation 2(e) of the SAST Regulations in view of the inter-se relationship between them as depicted in the impugned order. It was also alleged that the total shareholding of the PACs as on June, 2009 was 37.51% of the total share capital of the Company. It is alleged that on 16th July, 2009, one of the noticees, M/s. Sanatan Herbals and Naturals Ltd. acquired 9,25,200 shares from Mr. Ram Yadav and 3,35,200 shares from Mr. Veerendra Kumar i.e. the appellant and that another noticee M/s. Camson Farm Produce P. Ltd. acquired 8,10,540 shares. As a result of this acquisition it was alleged that the total shareholding of the PACs at the end of September, 2009 rose to 47.73% of the total share capital of the Company leading to an increase of 10.22% in the shareholding of the PACs. It was also alleged that at the end of December, 2010 the total

shareholding of the PACs was 31.77% of the total share capital of the Company and on 14th March, 2011, M/s. Shashtika Hotels and Resorts P. Ltd. as well as noticee Mr. Dhirendra Kumar were allotted 9,90,000 shares as a result of conversion of warrants and, consequently, the total shareholding of the PACs rose to 39.04% which was an increase of 7.27% of the total shareholding. The show cause notice alleged that both the acquisitions made on 16th July, 2009 and 14th March, 2011 were in excess of 5% of the shares/voting rights which triggered the requirement of making an open offer under Regulation 11(1) read with Regulation 14(1) of the SAST Regulations. Since there was a failure to make a public announcement under Regulations 11(1) read with Regulation 14(1) of the SAST Regulations the noticees were directed to show cause why appropriate penalty should not be imposed.

4. The AO after considering the replies and the material evidence on record found that by the acquisition of shares on 16th July, 2009 and 14th March, 2011 there was an increase of 5% of the shares/voting rights of the PACs which triggered the obligation to make an open offer under Regulation 11(1) read with Regulation 14(1) of the SAST Regulations which the appellant including the noticees failed to do so. The AO accordingly imposed a penalty of Rs.20 lakhs for the two acquisitions to be paid jointly and severally by the noticees including the appellant.

5. The WTM held that the acquisition of the shares in July, 2009 and March, 2011 triggered the obligation under Regulation 11(1) to make an open offer as it exceeded 5% of the voting rights of the PACs. Further, all the noticees including the appellant were interconnected with each other therefore were PACs. Insofar as the appellants are concerned, the AO held that the appellants are husband and wife and the

appellant Mr. Veerendra Kumar is the brother of the Managing Director and, therefore, there is a relationship between the appellants and other noticees and are therefore deemed to be PACs.

6. The AO further held that the appellants as noticees were required to make the public announcement in terms of Regulation 11(1) subsequent to the increase in the shareholding of the acquirer and since the appellants are acquirers under Regulation 2(1)(e) the appellants were under an obligation under Regulation 11(1) of the SAST Regulations.

7. We have heard Mr. Anilendra Pandey, Advocate assisted by Mr. Ajay H. Saravde, Advocate for the Appellant and Mr. Vyom Shah, Advocate assisted by Mr. Manish Chhangani, Ms. Samreen Fatima and Mr. Sumit Yadav, Advocates for the Respondent.

8. Before we proceed further, it would be appropriate to refer to certain provisions of the SAST Regulations

namely Regulation 2(1)(b), 2(1)(e), 3(1)(e), and Regulation 11.

"2(1) In these regulations, unless the context otherwise requires:-

(a) …….

(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;"

……

(e) "person acting in concert" comprises, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:

(i) a company, its holding company, or subsidiary of such company or

company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub account(s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.

Provided that sub-clause (ix) shall not apply a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of

the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paidup capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid up capital of the latter company.

Note: For the purposes of this clause `associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
(b) family trusts and Hindu Undivided Families."

Regulation 3(1)(e)

Applicability of the regulation.

"3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:

……….

(e) inter se transfer of shares amongst—

(i) group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;

(ii) relatives within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(iii) (a) Qualifying Indian promoters and foreign collaborators who are shareholders;

(b) Qualifying promoters:

Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.

Explanation.— For the purpose of the exemption under sub-clause (iii) the term qualifying promoter means—

(i) any person who is directly or indirectly in control of the company; or

(ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the

shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later; and includes,

(a) where the 6 qualifying promoter is an individual,—

(1) a relative of the qualifying promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(2) any firm or company, directly or indirectly, controlled by the qualifying promoter or a relative of the qualifying promoter or a firm or Hindu undivided family in which the qualifying promoter or his relative is a partner or a coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of the qualifying promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);

(b) where the qualifying promoter is a body corporate,—

(1) a subsidiary or holding company of that body; or

(2) any firm or company, directly or indirectly, controlled by the qualifying promoter of that body corporate or by his relative or a firm or Hindu undivided family in which the qualifying promoter or his relative is a partner or coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of such qualifying promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);

(iv) the acquirer and persons acting in concert with him, where such transfer of shares takes place three years after the date of closure of the public offer made by them under these regulations.

Explanation.—(1) The exemption under sub-clauses (iii) and (iv) shall not be available if inter se transfer of shares is at a price exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of regulation 20.

(2) The benefit of availing exemption under this clause, from applicability of the regulations for increasing shareholding or inter se transfer of shareholding shall be subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8;"

Regulation 11

*"**Consolidation of holdings**.*

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15per cent or more but less than fifty five per cent.(55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling

him to exercise more than [5%]]of the voting rights, [in any financial year ending on 31st March], unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2) No acquirer, who together with persons acting in concert with him holds, fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of subrule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy five per cent. (75%), the words and figures ninety per cent. (90%) were substituted.

[Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional

shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy-back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]

(2A) Where an acquirer who (together with persons acting in concert with him) holds fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the shares or voting rights in a target company, is desirous of consolidating his holding while ensuring that the public shareholding in the target company does not fall below the minimum level permitted by the Listing Agreement, he may do so only by making a public announcement in accordance with these regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of subrule (2) of rule 19 of the Securities

Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy five per cent. (75%), the words and figures ninety per cent. (90%) were substituted.

[(3) Notwithstanding anything contained in Regulations10, 11 and 12, in case of disinvestment of a Public Sector Undertaking , an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:-

(i) both the acquirer and the seller are the same at all the stages of acquisition, and

(ii) disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of Regulation 18 and in the first public announcement.]

Explanation:- For the purposes of Regulation 10 and Regulation 11, acquisition shall mean and include,-

(a) direct acquisition in a listed company to which the Regulations apply;

(b) indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad."

9. The chart shown by the AO in paragraph 5(a) of the impugned order indicates that Mr. Veerendra Kumar, and Mrs. Alka Singh, who are the appellants, are the promoters with the other noticees including M/s. Santan Herbals and Naturals Ltd. The show cause notice alleges that the promoter M/s. Santan Herbals and Naturals Ltd. had acquired 3,35,200 shares on 16th July, 2009 from the appellant Mr. Veerendra Kumar. Both of them are promoters. Under Regulation 3(1)(e), Regulation 11 is not applicable where there is transfer of shares amongst promoters. Thus, at the outset it is clear that the acquisition of 3,35,200 shares by M/s. Santan Herbals and Naturals Ltd. who was promoter from Mr. Virendra Kumar who is another promoter cannot be included for the purpose of considering the increase in the shareholding or percentage of voting rights under Regulations 11(1) of

the SAST Regulations. On this short ground the impugned order cannot be sustained insofar as the appellant Mr. Veerendra Kumar is concerned.

10. The AO has held that the appellants alongwith others on account of their interse connection are deemed to be persons acting in concert. This finding is patently erroneous and contrary to various decisions of this Tribunal, the Bombay High Court and Supreme Court.

11. In ***Daiichi Sankyo Company Limited v. Jayaram Chigurupati and Ors. (2010) 7 SCC 499***, the Supreme Court explained the concept of persons acting in concert under Regulation 2(1)(e) and held as follows:-

> *"48. To begin with, the concept of "person acting in concert" under Regulation 2(1)(e)(1) is based on a target company on the one side, and on the other side two or more persons coming together with the shared common objective or purpose of substantial acquisition of shares, etc. of the target company. Unless there is a target company, substantial acquisition of whose shares, etc. is the common objective or purpose of two or more persons coming together there can be no "persons acting in concert". For, dehors the target company the idea of "persons acting in*

concert" is as irrelevant as a cheat with no one as victim of his deception. Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert".

49. The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares, etc. of a certain target company. There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares, etc. of the target company. For, dehors the element of the shared common objective or purpose the idea of "person acting in concert" is as meaningless as a criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine

qua non for the relationship of "persons acting in concert" to come into being.

55. Regulation 2(1)(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with Regulation 2(1)(e)(1) which states that person acting in concert comprises of persons who in furtherance of a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the target company or to acquire control over the target company.

57. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company. For example, there is no hardand-fast rule that every foreign institutional investor (FII) would share with the sub-account(s) the common objective of acquiring substantial stakes or control in some target company. Whether in a given case an FII and its sub-account(s) have a common objective of making investment in India to earn profits in unit holders or whether they have a common objective of acquiring substantial stakes or control in some target company would depend on the facts of each case. In the former case Regulation 2(1)(e)(2)(v) would not apply whereas in the latter case the said sub-regulation would apply. The above illustration brings out the true purport of the

expression "unless the contrary is established" which expression finds place in Regulation 2(1)(e)(2)."

12. The Supreme Court in brief held that two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of a substantial acquisition of shares of a target company they would not comprise persons acting in concert. The Supreme Court further held that there can be no persons acting in concert unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares of the target company.

13. In ***K.K. Modi vs. Securities Appellate Tribunal (2003) 113 Com. Cases 418 Bom.,*** the Bombay High Court observed that a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters

of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares of voting rights for gaining control over the target company with the acquirer.

14. In ***SEBI vs. Sunil Kumar Khaitan and Ors. 2022 SCC Online SC 862***, the Supreme Court further reiterated the position relating to persons acting in concert holding:

> *"41. The expression 'person acting in concert' as defined in clause (e) to Section 2(1) is again broad and expansive. The expression 'person acting in concert' as per sub-clause (1) to Clause (e) includes a person, who for a common object or for purpose of substantial acquisition of shares, voting rights, gaining control over the company, pursuant to an agreement or understanding formal or informal, directly or indirectly, cooperate by acquiring or agreeing to acquire shares or voting rights in a target company or to take control over a target company. Sub-clause 2 to clause (e) to Section 2(1) incorporates legal fiction as it states that the persons enumerated in clauses (i) to (x) shall be deemed to be persons acting in concert with other persons in the same category. The note to sub-clause (e) to Clause 2(1) explains the expression 'associate' as a relative of the person within the meaning of Section 6 of the Companies Act, 1956,*

family trust and Hindu Undivided Families. However, the presumption raised vide sub-clause (2) to Regulation 2(1)(e) is qualified and subject to - 'unless the contrary is established'. Therefore, if the contrary is established, the presumption raised vide clauses (i) to (x) may not apply in enterity or only apply in part limited to specific shareholder(s) or the persons mentioned in clauses (i) to (x) who in concert acquire shares or voting rights of a target company. The factual matrix is determinative as clause (e) vide sub-clause (1) to Regulation 2(1) of the Takeover Regulations 1997 lays down a derivative or spin-off rule of interpretation, and even when the presumption under sub-clause (2) arises, the adjudicator will not apply the presumption when the fact to the contrary are established. The presumption is to be looked as "the bats of law, flitting in the sunlight but disappearing in the sunshine of fact".

15. The contention that once a person acting in concert with the acquirer is forever considered to be persons acting in concert is not correct. It is not that once a PAC is always a PAC. It is not a permanent relationship. It is the intent and action with that particular person as to whether that person is acting in concert with the acquirer. The mere fact that the appellants and other noticees are inter-connected in some way or the other is meaningless for the purpose

of coming to the conclusion that the appellants and other noticees were acting in concert in the absence of a finding that the appellants and other noticees shared a common objective or purpose of substantial acquisition of shares of the target company as held in by Supreme Court in Daiichi Sankyo Ltd. (supra) the element of shared common objective or purpose is sine qua non for the relationship of "persons acting in concert" to come into being.

16. In the instant case, in spite of objection being raised that there was no common intention or meeting of minds, the Adjudicating Officer has brushed aside the contention on the sole ground that the appellants are interconnected with the other noticees and are therefore deemed to be PACs.

17. We also find that there is an undue delay in the issuance of the show cause notice. The transaction in question is of the year 2009 and 2011. The show cause notice was issued on 18th September, 2017 after eight

years from the date of the first transaction. The AO while considering the delay in paragraph 21 of the impugned order observed that "much time has passed after the alleged violation for issuance of the show cause notice in the matter", however proceeded to decide the matter by simply holding that the noticees have not suffered any prejudice. In our opinion, the word "prejudice" has been loosely used to get away from the laches.

18. This Tribunal in a large number of appeals have set aside the orders only on the ground of delay. In one such case namely, ***Ashok Shivlal Rupani vs. SEBI appeal no.417 of 2018 decided on August 22, 2019***. This Tribunal held:

> *"6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information*

was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.

7. In Mr. Rakesh Kathotia v. SEBI (Appeal No.07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India v. Citedal Fine Pharmaceuticals, Madras, [(1989) 3 SCC 483: AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) 12 SCC 670, State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd. (2007) 11 SCC 363 and Joint Collector Ranga Reddy Dist. v. D.

Narsing Rao (2015) 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI v. Bhavesh Pabari 2019 SCC OnLine SC 294 held:

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

8. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.

9. As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed."

19. SEBI carried this matter to the Supreme Court in Civil Appeal no.8444-8445 of 2019 which was dismissed by judgment dated November 15, 2019.

Thus, the order passed by this Tribunal became binding upon SEBI which they have chosen to ignore completely.

20. The learned counsel for the respondent informed the Tribunal that pursuant to the impugned order the penalty imposed under the impugned order has already been paid by some noticees and, consequently no amount can be recovered from the appellants.

21. In view of the aforesaid, the impugned order of the AO insofar as it relates to the appellant cannot be sustained and is quashed. The appeal no.524 of 2022 is allowed. Misc. application no.902 of 2022 is accordingly disposed of.

22. Appeal no.525 of 2022 Veerendra Kumar Singh has been filed against the separate order dated 31st May, 2022 passed by the AO imposing a penalty of Rs.4 lakhs for violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

23. In this regard, the only contention raised by the learned counsel for the appellant was that the penalty imposed was harsh and excessive and in the facts and circumstances of the case the penalty should be reduced.

24. We find that the appellant was allotted 3,35,000 shares upon conversion of warrants which amounted to 2.45% of the total shareholding of the Company. After conversion the appellant, Mr. Veerendra Kumar Singh transferred 3,35,000 shares to M/s. Sanatan Herbals and Naturals Ltd. The conversion of warrants into shares and thereafter the transfer of shares to M/s. Sanatan Herbals and Naturals Ltd. in both cases crossed the threshold limit of 25000 shares as well as 1% of the total shareholding of the Company prescribed under Regulation 13(4) of the PIT Regulations and, consequently, it triggered the requirement to make a disclosure under Regulation

13(4) of the Regulations of the Company as well as to the stock exchange.

25. We find that admittedly the appellant failed to make the disclosures of the above two transactions to the Company as well as to the stock exchange under Regulation 13(4) of the PIT Regulations read with Regulation 12(2) of the PIT Regulations and was consequently liable for penalty.

26. For the same transactions, proceedings were also initiated by the WTM and, by an order dated 22nd June, 2021, the WTM found that the appellant had violated the PIT Regulation and, accordingly issued directions under 11 and 11B of the SEBI Act. That order has not been challenged and has become final and, consequently, the finding given by the WTM has become binding upon the appellants. In view of the aforesaid, we do not find any error in the order of the AO in the violation committed under the PIT Regulations.

27. We also find that the AO has taken the factors contemplated under Section 15J based on which the penalty has been imposed which we do not find to be arbitrary or excessive. The appeal fails and is dismissed. Misc. application no.903 of 2022 is accordingly disposed of.

28. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

19.1.2023
RHN