

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 25.01.2019

Appeal No. 247 of 2018

Yogesh K. Kaji
901, Natraj, Near Madhu Park,
11th Road, Khar West, Mumbai - 400 052. 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. Advait Sethna, Advocate with Ms. Ruju R. Thakker, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate i/b Desai & Diwanji for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. This appeal has been filed challenging the order of the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) dated May 15, 2018. By the said order the appellant has been prohibited from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of one year from the date of the order.

2. The order impugned in this appeal arises in the matter of Classic Diamonds (India) Ltd. ('the company' for short). An investigation by SEBI revealed violation of some provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations ('Takeover Regulations' for short). It is held in the impugned order that

several entities, including the appellant herein, who were part of the promoters and promoter group entities of the company and who were holding shares of the company in the range of 55% to 75% during September 30, 2005 to December 31, 2009 had acquired additional shares / voting rights in the company on several occasions without making the required public announcement in terms of Regulation 11(2) of Takeover Regulations. It is also stated in the impugned order that since the company in question is in the process of winding up, instead of a direction for open offer, the appellant has been restrained from accessing the securities market directly or indirectly for a period of one year. Accordingly, under the Regulation 44 of the Takeover Regulations, 1997 read with Regulation 35 of the Takeover Regulations, 2011, the impugned order has been passed restraining the appellant for a period of one year.

3. Shri Advait Sethna, the learned counsel for the appellant submits that vide an earlier order of SEBI dated September 22, 2017 in the same matter the appellant was restrained from the securities market for a period of one year from the date of that order. Thereafter, from September 23, 2017 the demat account of the appellant as well as that of his wife were frozen. On November 15, 2017, this Appellate Tribunal quashed the said order of SEBI dated September 22, 2017 qua the appellant on the ground that the appellant was not provided an opportunity of being heard before passing the Order. After issuing a fresh show cause notice and providing an opportunity of being heard, the order impugned in this appeal was passed by SEBI on May 15, 2018.

4. The basic contention of the learned counsel for the appellant is that since the freezing of his demat account as well as the demat account jointly with his wife, he did not deal in the securities market from September 23,

2017. Initially, for a period of two months from September 23, 2017 till November 15, 2017, the restraint order was in operation. Even after, quashing the said order by this Appellate Tribunal on November 15, 2017, the appellant restrained from dealing in the securities market till May 15, 2018 and from May 15, 2018 the impugned Order became operational and till date he did not dealt in the securities market. Accordingly, taking all these three periods into account, he has already undergone a total ban of one year and four months upto January 25, 2019. He further pleaded that if the ban is not removed forthwith he would be restrained for a total period of 18 months instead of 12 months as held in the impugned Order. He also submits that the appellant was only an independent director of the company and was not a promoter though he was wrongly disclosed as a promoter in some of the documents filed by the company.

5. In order to substantiate the submission that the appellant did not deal in the securities market since September 23, 2017, the appellant filed an affidavit attaching copies of the statements received from the Central Depository Services Ltd. ('CDSL') regarding the appellant and his wife for the period April 1, 2017 to December 11, 2018 and from September 25, 2017 to December 6, 2018 respectively. These statements are not disputed by the counsel for Respondent, SEBI, on instructions.

6. Given the above facts, while upholding the impugned order on merit we are of the view that the period of prohibition of 8½ months that the appellant has already undergone subsequent to the impugned Order is sufficient to meet the ends of justice.

7. In the light of the aforesaid the appeal is partly allowed. The restraint order prohibiting the appellant from buying, selling or dealing in securities either directly or indirectly or being associated with the securities market in

any manner whatsoever, for a period of one year from the date of the impugned order is modified and reduced till January 31, 2019.

8. In the circumstances of the case, parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

25.01.2019
Prepared & Compared by
PTM