

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 125 of 2011

Date of Decision : 26.08.2011

Ranjana R Kothari
962, Poonamallee High Road,
BBC Poornima Apartments,
Flat No. D-55,
Chennai – 600 084.

...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. A.M. Gopikrishnan, Practicing Company Secretary for the Appellant.

Mr. Kersi Dastoor, Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
S.S.N. Moorthy, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

This order will dispose of three connected Appeals no. 125 to 127 of 2011 involving identical questions of law and fact. On the basis of the facts as established on the record which are now admitted by the learned authorised representatives of the appellants, the charge of insider trading stands established against the appellants. The only fault that we can find with the impugned orders of the adjudicating officer is that the penalties imposed on the appellants are too low and do not serve as a deterrent. Ranjeet Kumar Kothari, the appellant in Appeal no. 126 of 2011 is a director of Rasi Electrodes Limited (for short the company) and Ranjana Kothari, the appellant in Appeal no. 125 of 2011 is his wife. P. Kashyap Kothari, the appellant in the third appeal is the nephew (brother's son) of Ranjeet Kumar Kothari and is the son of the chairman-cum-managing director of the company. He is also one of the promoters of the company. The audited financial results of the company were announced on

June 30, 2007 and the period of investigation is from June 8, 2007 to July 20, 2007. A meeting of the board of directors of the company was held on July 25, 2007 for which the notice was sent on July 17, 2007. One of the items on the agenda was to consider the issue of bonus shares. Information in this regard was sent to the Bombay Stock Exchange where the scrip of the company is listed. The financial results of the company and the fact that it was considering the issue of bonus shares were price sensitive information and while this information was unpublished and the appellants were in possession thereof, Ranjana Kothari and P. Kashyap Kothari purchased 31,354 and 11,175 shares of the company respectively. As already noticed above, Ranjeet Kumar Kothari is a director of the company and he passed on this unpublished price sensitive information to his wife on the basis of which she made the purchases. P. Kashyap Kothari himself was in possession of that information. The fact that they purchased the shares during the investigation period when the price sensitive information was unpublished is not in dispute. In these circumstances, the charge of insider trading stands established and we are surprised that the adjudicating officer has imposed a paltry sum of ₹ 3.5 lakhs as penalty on Ranjana Kothari and a sum of ₹ 4 lakhs on Ranjeet Kumar Kothari and ₹ 2 lakhs on P. Kashyap Kothari. Section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter called the 'Act') under which the penalty has been imposed was amended in the year 2002 and the maximum penalty was increased from ₹ 5 lakhs to ₹ 25 crores or three times the amount of profits made by the delinquent whichever is higher. Parliament was of the view that the existing penalties were too low and did not serve as effective deterrents. The adjudicating officer while reproducing the provisions of Section 15G in the impugned order did not bother to impose adequate penalties. Insider trading is the trading of a company's stock by individuals who have access to non-public information about the company. An insider or a related party cannot trade on such information obtained during the performance of the insider's duties as it is a breach of fiduciary relationship. It is indeed, a very serious wrong doing in regard to the securities market as it gives the insider an undue advantage in trading which is not available to the other investors. Law insists that insiders should not trade till non public information comes in the public domain so that there is a level playing field for

all traders / investors in the securities market. We are not happy with the paltry sum of penalties imposed on the appellants in these cases.

2. Before concluding, we may observe that the Securities and Exchange Board of India only initiated adjudication proceedings against the appellants and was satisfied by imposing small amounts of penalties on the delinquents (the appellants herein). The appellants who purchased shares while in possession of the unpublished price sensitive information are still continuing to enjoy the fruits of the ill-gotten gains that they made. It is a different matter that the price of the scrip may have fallen today. The authorised representatives of the appellants inform us that immediately after the issue of bonus shares the price of the scrip did go up from ₹ 18 to ₹ 63 per share. This was a fit case where the Board also should have initiated proceedings under sections 11 and 11B of the Act for issuing appropriate directions to the appellants and other insiders to ensure that they do not take advantage of their wrongdoing. It is only through such directions that they could have been directed to disgorge their ill-gotten gains. Having said this, we leave the matter at that.

In the result, the appeals fail and they stand dismissed with no order as to costs. A copy of this order be sent to the Chairman of the Board for information.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
S.S.N. Moorthy
Member

26.08.2011

Prepared and compared by:

msb