BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 18.07.2019
Date of Decision : 07.08.2019

Appeal No. 358 of 2015

M/s New Delhi Television Limited
207 Okhla Industrial Estate,
Phase-III,
New Delhi- 110 201 India …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

Ms. Fereshte Sethna, Advocate with Mr. Adhiraj Malhotra, Ms. Divya Hirawat, Mr. Shreyas Taparia and Mr. Lokesh Aidasani, Advocates i/b DMD Advocates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Anupam Surve, Mr. Abhiraj Arora and Mr. Vivek Shah, Advocates i/b ELP for the Respondent.

WITH
Appeal No. 150 of 2018

1. New Delhi Television Limited
   "NDTV"
   207 Okhla Industrial Estate,
   Phase-III,
   New Delhi- 110 201 India

2. Dr. Prannoy Roy
   B-207, Greater Kailash-I,
   Delhi- 110 048

3. Ms. Radhika Roy
B-207, Greater Kailash-I,
Delhi- 110 048

4. Vikramaditya Chandra
Sanjovik Khasra No. 382/2,
Mandi Road, Next to Tata Sky,
P.O. Mehrauli,
New Delhi-110 030

5. Mr. Anoop Singh Juneja
184, SP Mukherjee Park,
New Delhi- 110 018 …Appellants

Versus

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

Ms. Fereshte Sethna, Advocate with Mr. Adhiraj Malhotra, Ms. Divya Hirawat, Mr. Shreyas Taparia and Mr. Lokesh Aidasani, Advocates i/b DMD Advocates for Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Anupam Surve, Mr. Abhiraj Arora and Mr. Vivek Shah, Advocates i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala

1. Even though different orders have been passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) the

issue involved is more or less the same and is also interlinked and therefore both the appeals are being decided together.

2. Appeal No. 358 of 2015 has been filed against the order dated June 04, 2015 passed by the AO of SEBI imposing a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) for violation of Section 23A of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for convenience) and ₹ 1,75,00,000/- (Rupees Once Crore Seventy Five Lakhs only) for violation of Section 23E of the SCRA for failure to comply with Clause 36 of the Listing Agreement. Appeal No. 150 of 2018 has been filed against the order dated March 16, 2018 passed by the AO imposing penalties under Section 15A(b) of the SEBI Act, 1992 ("SEBI Act" for convenience) as well as under Section 23A(a) and Section 23E of the SCRA for violation of Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations ("PIT Regulations" for convenience) read with Clauses 2.1 and 7.0(ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II read with Regulation 12(2) of PIT Regulations as well as violation of Clause 36 of the Listing Agreement.

3. The facts leading to the filing of Appeal No. 358 of 2015 is, that on September 30, 2009 the appellant filed the return of income for the Assessment Year 2009-2010 under Section 139(1) of the Income Tax Act, 1961 ("IT Act" for convenience) declaring a loss of ₹ 64.83 crores. The appellants' return was selected for scrutiny pursuant to which a draft assessment order dated March 31, 2013 was framed under Section 143(3) read with Section 144C(1) of the IT Act wherein the total income was computed at ₹ 641.08 crores. Aggrieved by the draft assessment order, the appellant filed objections before the Disputes Resolution Panel ("DRP" for convenience) under Section 144C(10) of the IT Act. The DRP by an order dated December 31, 2013 confirmed the addition of ₹ 642.54 crores and, in addition thereto, enhanced the assessment by a further amount of ₹ 254.75 crores. Based on the aforesaid, a final order assessment order under Section 144C(13) of the IT Act was passed by the AO on February 21, 2014 whereunder the income of the appellant was determined at ₹ 838.33 crores. Thus a demand of ₹ 450 crore was raised.

4. The said final assessment order dated February 21, 2014 was received by the appellant on February 27, 2014. It is alleged that they consulted a tax lawyer who opined that the

alleged tax demand was illegal and advised the appellant to institute an appeal. It was further contended that the management of the appellant also discussed the implication of the final assessment order and took a conscious decision for not making any disclosure about the final assessment order and the demand initiated thereto to the Stock Exchange under Clause 36 of the Listing Agreement. It was contended that the appellant filed an appeal before the Income Tax Appellate Tribunal ("ITAT") and an interim order dated March 21, 2014 was passed by which the balance demand was stayed till April 21, 2014 subject to payment of ₹ 5 crores before March 31, 2014.

5. As per Clause 41 of the Listing Agreement it is alleged that the audited financial results for the financial year 2013-2014 was uploaded on the appellants' website in which the appellant made the disclosure in relation to the alleged tax liability of 450 crores. Based on the aforesaid disclosure the Stock Exchange asked for necessary clarification, based on which the appellant disclosed the information to National Stock Exchange of India Limited ("NSE" for convenience) vide letter dated May 26, 2014 and to BSE Limited ("BSE" for convenience) vide letter dated May 29, 2014.

6. In the light of the aforesaid, a show cause notice dated February 12, 2015 was issued calling upon the appellant to show cause why penalty should not be imposed under Section 23A and 23E of the SCRA for violation of Clause 36 of the Listing Agreement. The AO after calling for the reply and after giving an opportunity of hearing found that the appellant had violated provision of Clause 36 of the Listing Agreement by belatedly disclosing the tax demand raised by the Assessing Officer pursuant to the assessment order. The AO found that for the violation of Clause 36 of the Listing Agreement monetary penalty was attracted under Section 23A and 23E of the SCRA and accordingly imposed a penalty totaling ₹ 2 crores.

7. We have heard Ms. Fereshte Sethna, the learned counsel assisted by Shri Adhiraj Malhotra the learned counsel for the appellant and Shri Kevic Setalvad the learned senior counsel assisted by Shri Anupam Surve, Advocate on behalf of the respondent.

8. A preliminary objection was raised by the learned counsel for the appellant that in view of Regulation 16(2) of the Securities and Exchange Board of India (Settlement of

Administrative and Civil Proceedings) Regulations, 2014, the settlement order should have been placed by SEBI before the Tribunal for appropriate orders. Since the said order was not placed, SEBI should not be given an audience nor can they be heard in these proceedings. It was contended that under the aforesaid regulations the appellant had filed an application for settlement of specified proceedings which was rejected by SEBI, against which the Writ Petition has been filed which is pending consideration. In order to deal with this preliminary submission it would be appropriate to extract paragraph 16 of the Regulations of 2014 which is as under:-

> ***"Settlement of the proceedings pending before the Tribunal or any court.***
>
> ***16.*** *(1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall mutatis mutandis apply to an application for settlement of any proceeding pending before the Tribunal or any court.*
>
> *(2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders."*

From a perusal of the aforesaid, it is apparently clear that there is no such mandate on the part of SEBI to produce the order of settlement before the Tribunal. In fact, if an application for settlement was filed by the appellant before SEBI, it is appellant

who should bring this fact and produce the order before the Tribunal. Consequently, the objection raised by the learned counsel for the appellant is devoid of merit and is rejected.

9. In this regard, the learned counsel on an earlier occasion had prayed for adjournment of the proceedings on the ground that the rejection order was challenged in the High Court which was pending. This Tribunal directed the appellant to obtain an interim order from the High Court. Since no interim order was obtained inspite of several opportunities we have proceeded to hear the matter on merits.

10. On merits, it was contended that an absurd demand was raised by the Assessing Officer and such high-pitched assessment was not only illegal but was passed without any application of mind. It was contended that the management of the company took legal advice from a tax lawyer who advised them to file an appeal based on which the appeal was filed and an interim order was obtained wherein the tax demand was stayed subject to certain conditions. It was contended that it was not necessary for the appellant to immediately intimate the Stock Exchange with regard to the development and the outcome of the assessment order and that the appellant was

allowed a reasonable time and opportunity to arrange its affairs and take remedial action before the Appellate Authority/ Court before making the disclosure under Clause 36 of the Listing Agreement. It was thus contended, that the word "immediately" as stipulated in Clause 36 of the Listing Agreement does not mean that information with regard to the tax demand should be made public instantly and that a reasonable period should be allowed to be given in view of the Guidance Note on Clause 36 of the Listing Agreement issued by the Stock Exchange. It was further contended that under Clause 41 of the Listing Agreement the audited financial results are required to be filed within sixty days from the end of the financial year and accordingly submitted that a reasonable period under Clause 36 has to be allowed to the company/appellants to disclose the material information under Clause 36 of the Listing Agreement. It was thus contended that the information was given belatedly on May 08, 2014 when the audited financial results were uploaded, hence there was a substantial compliance of Clause 36 of the Listing Agreement. It was further contended that the quantum of penalty was also arbitrary, excessive and had been imposed without considering the factors contemplated under 15J of the SCRA read with Rule 5 of Securities Contracts

(Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005.

11. In support of her submissions, the learned counsel for the appellant has placed reliance on ***[2008] 173 Taxman 468 (Delhi) High Court of Delhi Soul_* v Deputy Commissioner of Income-tax, AIR 1979 SC 1666 M/s. Concord of India Insurance Co. Ltd., v Smt. Nirmala Devi and Others, 2003 SCC OnLine SAT 3 Sundaram Finance Ltd. & Ors. v Securities and Exchange Board of India, Almondz Global Securities Ltd. v Securities and Exchange Board of India (Appeal No. 222 of 2015 decided on 13.05.2016) and 1969(2) SCC 627 M/s. Hindustan Steel Ltd. v State of Orissa.***

12. At the outset, we may indicate that the stand of the appellant before SEBI was that they took a conscious decision not to disclose the information under Clause 36 of the Listing Agreement. In the memorandum of appeal, the same stand has been taken. For facility, the relevant portion of the memorandum of appeal is extracted hereunder. Under the heading "points to be considered", paragraph (b) is extracted hereunder:

> *"(b) The SEBI failed to appreciate that the Appellant had bonafide and reasonable*

> *basis pursuant to which it took the view that no disclosure of the Tax Demand was required and the same was not material."*

Further relevant portion of paragraph 5(e)(iv) is extracted hereinunder:

> *"5(e)(iv). Accordingly, as required under Clause 36 of the Listing Agreement, the management came to a bonafide, informed and practicable decision that the Appellant company was not required to disclose the Assessment Order under Clause 36."*

The learned counsel before us, however, argued that the disclosure was made belatedly.

13. On the other hand, the learned counsel for the respondent contended that the order passed by the AO does not suffer from any manifest error of law in as much as the appellant had clearly violated the provision of Clause 36 of the Listing Agreement and since necessary disclosure was not made, appropriate penalty was imposed which requires no interference.

14. We have heard the learned counsel for the parties at some length. Before proceeding further, it would be appropriate

to refer to Clause 36 of the Listing Agreement which is extracted hereunder:

> *"Apart from complying with all specific requirements, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to stock exchange(s) on request such information concerning the Issuer as the stock exchange(s) may reasonably require. The material events may be events such as:*
>
> *a. Change in the general character or nature of business.*
>
> *b. Disruption of operations due to natural calamity.*
>
> *c. Commencement of Commercial Production/Commercial Operations*
>
> *d. Developments with respect to pricing/realisation arising out of change in the regulatory framework*

e. *Litigation /dispute with a material impact*

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

f. *Revision in Ratings*

g. *Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;*

- *Issue of any class of securities.*
- *Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.*
- *Change in market lot of the company's shares, sub-division of equity shares of the company.*
- *Voluntary delisting by the company from the stock exchange(s).*
- *Forfeiture of shares.*

- *Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*
- *Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.*
- *Cancellation of dividend/rights/bonus, etc.*

The above information should be made public immediately.

On a perusal of the aforesaid, Sub-Clause (e) of Clause 36 of the Listing Agreement indicates that the company will **promptly** (the emphasis is ours) after the event inform the Stock Exchange of the developments with respect to any dispute resulting from an assessment which can reasonably be accepted to have a **material impact** (emphasis is ours). The said information is required to be made public **immediately** (emphasis is ours). Such information is required to be intimated to the Stock Exchange immediately. The aforesaid provision makes it apparently clear that the information which will have a **"material impact"** on present or future operations or profitability or financials of the company is required to be

reported "**promptly"** and "**immediately"** should be made public.

15. In this regard, Clause 6 and 7 of the Guidance Note of the Clause 36 of the Listing Agreement issued by the Stock Exchange is extracted hereunder:

> *6. Disclosure relating to Litigation/dispute/regulatory action with a material impact:*
>
> - *The Listed entity shall keep the Exchange informed of any litigation/dispute developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials. The Listed entity may consider the impact of such disclosure on legal/court proceedings while making the disclosures and make the disclosure accordingly. If, Listed Entity is of the opinion that making any such disclosure is not in the interest of the Listed Entity, disclosure may be limited to the extent of stating the occurrence of the event.*

- *The Listed Entity shall keep the Exchanges informed of cessation/conclusion/settlement of the above said litigation/dispute along with the concluding order or concluding settlement information.*

7. *(i) Litigation/dispute/regulatory action with a material impact:*

   - *The listed entity shall notify the Exchange upon it or its key management personnel or its promoter/ ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication arbitration of dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have a material impact.*
     - *Brief details of litigation viz. name(s)of the court /tribunal /agency where litigation is filed, brief details of dispute/litigation;*
     - *Expected financial implications, if any, like compensation, penalty etc;*

7.(ii) Periodically the litigation is concluded or dispute is resolved:-

- *The details of any material change in the status and/ or any material development in relation to such proceedings;*
- *In the event of settlement of the proceedings, details of such settlement including material terms of the settlement, compensation/ penalty paid (if any) and impact of such settlement on the financial position of the listed company.*

16. The said Guidance Note indicates that the listed company is required to consider the impact of such disclosure on legal/ court proceedings while making the disclosure and if the listed entity is of the opinion that making any such disclosure was not in the interest of the listed entity then such disclosure may be limited to the extent of stating the occurrence of the event. Thus, a discretion was given to the Company to decide whether full disclosure should be made to the Exchange and where such information was not in the interest of the listed entity, then limited disclosure should be made. Further, the Guidance Note clearly indicates that the listed entity was required to notify the

Stock Exchange where such assessment, etc. had a material impact and shall continue to inform the Stock Exchange till the cessation/conclusion/settlement of the event/dispute.

17. In the light of the above, we find that the assessment order and the demand raised pursuant thereto is a **"material event"** and had a **"material impact"** on the profitability / financials of the company. It has come on record that the networth of the company was ₹ 365 crores and a demand of ₹ 450 crores was made in the assessment order. Such demand which eats away the networth of the company is in our opinion a material event and the assessment order had a **"material impact"** which the company was required to report to the Exchange **"promptly"** and which was required to be made public **"immediately".**

18. We also find that in the instant case a conscious decision was taken by the management of the company not to disclose the said information under Clause 36 of the Listing Agreement. In fact, when clarification was sought by the Stock Exchanges it is only then the information was provided at a belated stage on May 26, 2014 and May 29, 2014 after more than 3 months of the final assessment order dated February 21, 2014. Thus, we

are of the opinion, there was gross failure on the part of the appellant in not making the disclosure under Clause 36 of the Listing Agreement. The contention that the information was supplied belatedly is misconceived and an afterthought. No such stand was taken before SEBI and the appellant cannot be allowed to change its stand at this stage. Further, the financial statements, which includes this information about the tax demand, filed on May 08, 2014 under Clause 41 of the Listing Agreement, does not amount to compliance of Clause 36 of the Listing Agreement. Clause 41 and Clause 36 of the Listing Agreement operate in different circumstances and in different areas. Financial statements under Clause 41 are required to be disclosed sixty days after the end of the financial year whereas material events are required to be constantly disclosed **"immediately"** as and when the event occurs during the financial year. Further, when an action under the Listing Agreement is required to be done in a particular manner and in a particular way, then the same is required to be done in that way and not in any other manner.

19. If a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of

Taylor vs Taylor (1875) 1 Ch D 426 **and in** ***Nazir Ahmad v/s King Emperor AIR 1936 PC 253 (2)*** and again by the Supreme Court **in** ***Ramchandra Keshav Adke & Ors. v/s Govind Joti Chavare and Ors. (1975) 1 SCC 915.*** It was again reiterated by the Supreme Court in ***Shiv Kumar Chadha v/s Municipal Corporation of Delhi and Ors. (1993) 3 SCC 161, Deepak Babaria and Anr. v/s State of Gujarat and Ors. (2014) 3 SCC 502*** and in ***Dharani Sugars and Chemicals Ltd. v/s Union of India & Ors. (2019) 5 SCC 480***

20. Clause 36 of the Listing Agreement read with the Guidance Note make it apparently clear that the company is required to intimate the Stock Exchange with regard to the material events immediately, which information is required to be made to the public immediately. The word **"immediately"** has to be construed accordingly. It was urged that the word **"immediately"** should be construed liberally and not literally and, thus, contended that a reasonable time has to be given to make appropriate disclosure under Clause 36 of the Listing Agreement. In support of the submissions, the learned counsel has placed reliance upon a decision in ***Rosali V. vs. Taico Bank and Ors. (2009) 17 SCC 690*** where the Supreme Court held that the word immediately should mean within a reasonable time and

further held that is a well-settled principle of interpretation of a statute that where literal meaning leads to anomaly and absurdity, it should be avoided.

21. As per Black's Law Dictionary-eighth edition, the word "immediate" means occurring without delay, instant. As per Black's Law Dictionary-sixth edition, the term "immediately" means without interval of time, without delay, straightaway, or without any delay or lapse of time. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time.' and imply prompt, vigorous action, without any delay.

22. In Wharton's Law Lexicon the term "immediately" in the statute, means within a reasonable time. In Words and Phrases, the word "immediately" when used in a statute, is not synonymous with "then and there".

23. Thus in a strict sense the word "immediately" means at once, forthwith, instantaneously or instantly and is also defined as meaning promptly, quickly, without delay, without interval or without lapse of time. However, in a broader relative sense, the term "immediately" means within a reasonable time, necessarily

exclude all mesne time and is often construed to mean as soon as an act can be performed within a reasonable time.

24. A Full Bench of the Karnataka High Court in Keshava v. Ramchandra AIR 1981 Kant. 97, while interpreting the word "immediately" occurring in Article 134A of the Constitution of India, pointed out that the object of Article 134A was to avoid unnecessary delay and that it was precisely for this reason that the word "immediately" had been used to convey a sense of urgency.

25. Black's Law Dictionary sixth edition defines the word "prompt" and "promptly" as under:

> "Prompt": to act immediately, responding on the instant.
>
> "Promptly": adverbial form of the word "prompt", which means ready and quick to act as occasion demands. The meaning of the word depends largely on the facts in each case, for what is "prompt" in one situation may not be considered such under other circumstances or conditions. To do something "promptly" is to do it without delay and with reasonable speed."

In ***Rao Mahmood Ahmad Khan through their L.R. v/s Ranbir Singh and Ors. 1995 Supp (4) SCC 275*** the Supreme Court held:

> *"The word 'immediately' connotes and implies that the deposit should be made without undue delay and within such convenient time as is reasonably requisite for doing the thing same day with all convenient speed excluding the possibility of rendering the other associated corresponding act and performance of duty nugatory. The word 'immediately' therefore, connotes proximity in time to comply and proximity in taking steps to resell on failure to comply with the requirement of deposit as first condition that is to take place within relatively short interval of time and without any other intervening recurrence. The meaning of the word 'forthwith' is synonymous with the word 'immediately' which means with all reasonable quickness and within a reasonably prompt time."*

26. In the light of the aforesaid and considering the importance of disclosure under Clause 36 of the Listing Agreement, in our opinion, information was required to be

given to the Stock Exchange at the earliest without any undue delay.

27. Assuming for a minute that a reasonable time should be allowed to make the necessary disclosure under Clause 36 of the Listing Agreement, we find that in the instant case, no disclosure was made at all and the disclosure, if any, was made belatedly on May 08, 2014 purportedly under Clause 41 of the Listing Agreement. Assuming that information was provided, we are of the opinion there had been an inordinate delay in disseminating the information. The assessment order was passed on February 21, 2014. An interim order was passed on March 21, 2014 and no effort was made to disclose the information even after obtaining an interim order. The information was made belatedly after more than 3 months which cannot be construed to be a reasonable period. Thus we are of the opinion, that the appellant had violated Clause 36 of the Listing Agreement and was liable for imposition of penalty.

28. The penalty has been imposed under Section 23A and 23E of the SCRA. For facility, the said provision is extracted hereunder:

Penalty for failure to furnish information, return, etc.-

"23A. Any person, who is required under this Act or any rules made thereunder,

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees] for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.-

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [liable to a penalty which shall not less than five lakh rupees but which may extend to twenty-five crore rupees].”

29. Under Section 23A, a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) has been imposed for failure to furnish the information within the time specified. In the instant case, there has been a gross failure to furnish the information and, in our opinion, there was a total non-disclosure on the part of the appellant in furnishing the information. A penalty of a maximum of ₹ 1 crore could have been imposed for such failure but the AO considering all aspects of the matter has imposed a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) which is just and fair and, is neither arbitrary, nor is unreasonable. We thus do not find any error in the quantum of penalty.

30. Under Section 23E of the SCRA the penalty is a minimum of ₹ 5 lakh upto a maximum of ₹ 25 crores. We find that in the instant case, the appellant failed to comply with the listing conditions and considering the factors the AO imposed a penalty of ₹ 1,75,00,000/- (Rupees Once Crore Seventy Five Lakhs only). We do not find any reason to hold that the said quantum was unreasonable or arbitrary. In our opinion, considering the material event which was not disclosed we are of the opinion, that the penalty imposed is just and proper in the circumstances of the case.

31. The contention that Rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 was not taken into consideration while adjudging the quantum of penalty is wholly erroneous. The factors contemplated under Rule 5 of the Rules 2005 are the same as factored in Section 23J of the SCRA. These factors were duly considered based on which the authority has not imposed the maximum penalty. Thus, the contention that the factors were not taken into consideration is patently erroneous.

32. Appeal No. 150 of 2018 has been filed by the Company NDTV, its Directors and Compliance Officer. On the basis of a complaint, a show cause notice dated August 20, 2015 was issued to the appellants for non-disclosure of ₹ 450 crores demand raised by the Income Tax Department under Clause 36 of the Listing Agreement as well as delayed disclosure by the Appellant No. 1 under PIT Regulations and non-compliance by all the appellants under Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations ("PIT Regulations" for convenience) Regulations.

33. According to SEBI, the non-disclosure of the tax demand under Clause 36 of the Listing Agreement was also a price sensitive information under the PIT Regulations which the Company was required to disclose the same to both the Stock Exchanges on immediate basis under Clause 36 of the Listing Agreement. The AO after considering the reply and, after giving an opportunity of hearing, found that the non-disclosure of the tax demand was a price sensitive information under Regulation 2(ha) of PIT Regulations and that the appellant had violated Clause 36 of the Listing Agreement and Clauses 2.1,

3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations. The AO further found that the Directors and the Compliance Officer had delayed the disclosure of the sale of the shares made by one of the Director Mr. K.V.L. Narayan Rao. The AO held that the Directors and Compliance Officer failed to make the necessary disclosure to the Stock Exchange under Regulation 13(6) of the PIT Regulations within the stipulated period.

34. On the issue of violation of Clause 36 of the Listing Agreement, we have already held that the appellant had violated Clause 36 of the Listing Agreement in Appeal No. 358 of 2015 which finding is applicable as well in the instant appeal.

35. In so far as violation of Regulation 13(6) and Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations, before dealing with this issue, it would be appropriate to extract the provision of Regulation 13(6) and Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of

Insider Trading read with Regulation 12(2) of PIT Regulations as under:

> ***"Disclosure by company to stock exchanges.***
>
> *Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(l), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.*
>
> ***Clause 2.1** of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*
>
> ***Clause 3.2** of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that this official (designate a senior official such as compliance officer) shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedures.*
>
> ***Clause 7.0(ii)** of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that corporates shall ensure that disclosure to stock exchanges is made promptly.*
>
> ***Regulation 12(2)** of SEBI (PIT) Regulations states that the entities mentioned in sub-*

> *regulation (1), shall abide by the Code of Corporate Disclosure Practices as specified in Schedule II of SEBI (PIT) Regulations."*

36. The Director of the Company Mr. K.V.L. Narayan Rao had sold some shares and intimated the Company under Regulation 13(6). The company was required to disclose the said sale of shares to all the Stock Exchanges in the prescribed form. It was contended by the learned counsel for the appellant that the dispatch of the information was sent by courier within the stipulated period of two days. This fact was disbelieved by the AO as NSE and BSE confirmed to the AO that the disclosure was received on March 27, 2014. The AO accordingly came to a considered opinion, that there was failure on the part of the appellant to disseminate the disclosure within the stipulated period since no proof of delivery of the information that was dispatched was provided by the appellant.

37. In this regard, the word "disclose" becomes important. Black's law Dictionary-sixth edition defines the word "disclose" as under:

> "To bring into view by uncovering; to expose; to make known; to lay bare; to reveal to knowledge; to free from secrecy or ignorance, or make known."

The same Dictionary defines the word “disclosure” as under:

> “Act of disclosing; revelation; the impartion of that which is secret or not fully understood.”

In ***Mega Resources Limited vs. SEBI 2002 SCC OnLine SAT 8*** this Tribunal, while interpreting word “disclose” as used in Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 held:

> *“that regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made. Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters*

> *Encyclopedic Dictionary means - to make known, reveal or uncover- to cause to appear, allow to be seen, lay open to view. According to Blacks Law Dictionary "Disclosure" means- act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."*

38. Thus, disclosure of the information under Regulation 13(6) would only be completed when the said information was received by the Stock Exchange. Reliance placed by the appellant on Section 27 of the General Clauses Act, 1897 is wholly misconceived. Section 27 of the General Clauses Act, 1897 states that there is a presumption of deemed service if the letter is sent at the correct address with requisite postal charges. This deemed service under Clause 27 of the General Clauses Act, 1897 will not apply in the instant case in as much as it was clearly mentioned in the show cause notice that the alleged letters dated December 28, 2013 and December 16, 2014 were

never received by the Stock Exchanges and that the information was only made available to the said Exchanges for the first time on March 27, 2014. Thus, the burden was upon the appellant to prove by necessary evidence that the disclosure sent through a letter by a courier was duly received by the Stock Exchange. Filing of dispatch receipts given by the courier was not sufficient to prove service. What was necessary was the delivery receipt which in the instant case was not produced. In our view, proof of dispatch of courier was not sufficient to disclose that the information was sent within the stipulated period.

39. In the light of the aforesaid, we do not find any error in the finding given by the AO that the appellant company had violated Regulation 13(6) and Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations.

40. We are also of the opinion, that the imposition of penalty of ₹ 10 lakh upon the appellant company for violation of Regulation 13(6) and Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations

does not suffer from any error of law. The penalty awarded is just in the circumstances of the case. Similarly, the imposition of penalty upon the Directors for violating Clause 36 of the Listing Agreement is justified in the circumstances of the case especially when the stand of the appellant was that the decision not to disclose the tax demand was a conscious decision taken by the management of NDTV. Thus, all the Directors cannot escape their liability of the penalty imposed.

41. Clause 'A' of the Guidance Note on Clause 36 of the Listing Agreement provides that the listed company shall determine an authority who would be entitled to make the disclosure. The authority would be the Board of Directors or CEO, etc. as decided by the management of the listed entity. For facility, Clause 'A' of the Guidance Note is extracted hereunder:

> ***"A. Authority for making disclosures:*** *Every Listed Entity shall have a policy determining the authority within the entity that is entitled to take a view on the materiality of an event that qualifies for disclosure under Clause 36 to decide the appropriate time at which such disclosure is to be filed with Exchange and details that may be filed in the best interest of present and potential investors. The authority*

> *could be Board of Directors or CEO or an operating committee of Senior Level Executives or Key Managerial Personnel (as defined under Companies Act, 2013) etc., as decided by the management of the Listed Entity. It may be noted that the onus of ensuring that the information disclosed to the Exchange is duly authorized to be disclosed as such, lies with the listed entity only and the Exchange shall assume that any disclosure received has been duly authorized."*

In the instant case, no such disclosure has been filed to show that a particular authority was nominated for such purpose. On the other hand the stand of the appellants was that a conscious decision was taken by the management not to disclose the material event.

42. We are thus of the view, that the imposition of ₹ 2 lakh upon the Compliance Officer for violation of Clause 36 of the Listing Agreement was unjustified. The Compliance Officer works under the direction of the Board of Directors of the Company. It was not open to the Compliance Officer to comply with Clause 36 of the Listing Agreement. At the end of the day, the Compliance Officer is only an employee of the Company

and works on the dictates and directions of the management of the Company. Thus, when the entire management is being penalized, it was not open to the AO to also book the Compliance Officer for the said fault. We accordingly, hold that the imposition of penalty of ₹ 2 lakh on the Compliance Officer cannot be sustained and, to that extent, the order cannot be sustained. The Compliance Officer was however liable to comply with the disclosure under Regulation 13(6) and Clauses 2.1, 3.2 and 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations and, to that extent, the penalty imposed by the AO is affirmed.

43. For the reasons stated aforesaid, the Appeal No. 358 of 2015 is dismissed and Appeal No. 150 of 2018 is allowed in part to the extent stated aforesaid.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

07.08.2019
Prepared & Compared By: PK