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(2023) 04 SEBI CK 0008

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 133, 227 Of 2023, Appeal No. 212 Of 2022

Barduar Tea & Timber Company Ltd And Others — APPELLANT

Vs

Calcutta Stock Exchange And Others — RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:
Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 27(2), 31(b), 33

Citation : (2023) 04 SEBI CK 0008

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. There is a delay of 147 days in the filing of the appeal. For the reasons stated in the application, the delay is condoned. Misc. Application is allowed.

2. The appellants have filed the present appeal for the quashing of the fines as depicted in Exhibit - 'D' to the memo of appeal imposed by the Calcutta Stock Exchange (hereinafter referred to as 'CSE') as well as the email dated July 11, 2022 and order dated September 28, 2022.

3. The facts leading to the filing of the present appeal is, that the appellant no. 1 is a public limited company listed on CSE. The appellant received an email on January 7, 2022 from the CSE intimating them that they are non-compliant listed entity and are required to ensure compliance and pay the fines as per the SEBI Circular dated January 22, 2020 failing which the stock exchange would issue notice to the promoters of the company to ensure compliance of the requirements and pay the fines.

4. Subsequently, an email dated July 11, 2022 was received by the appellants

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intimating that the appellant had not complied with the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations') and were therefore required to pay the fines as per the SEBI circular. The stock exchange informed that for non-compliance of the Regulation 27(2), Regulation 33 and Regulation 31(b) of the LODR Regulations the following fines are required to be paid, namely :-

27(2)

Rs. 266000

Dec_Fine_2122

33

Rs. 715000

Dec_Fine_2122

31b

Rs. 266000

Dec_Fine_2122

33

Rs. 190000

March_Fine_2122

27(2)

Rs. 86000

March_Fine_2122

31b

Rs. 86000

March_Fine_2122

5. The appellants further alleged that they received various emails intimating the freezing of the demat accounts of the promoters by some order dated September 28, 2022 which was never served upon them. The appellants accordingly prayed for the quashing of the fines and so called order dated September 28, 2022 and email dated July 11, 2022 contending that as per the circular dated January 22, 2020, the stock exchange is required to issue a show cause notice and thereafter pass an order imposing a fine which in the instant case has not been done till date and, therefore, in the absence of any quantification of the fine the entire proceedings initiated by the respondent which has led to the freezing of the demat account should be quashed.

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6. We have heard the learned counsel for the parties.

7. The circular dated January 22, 2020 issued by SEBI directed the stock exchange to take action by imposition of fine in case of non-compliance with the Listing Regulations and fines to be imposed would be as per the uniform structure depicted in annexure I to the circular. It is not necessary to go into the modalities of the procedure provided by SEBI in its circular dated January 22, 2020 as we are satisfied that in the present case the appellants were given sufficient notice to comply with the Listing Regulations. On January 7, 2022, the appellants were informed that they were non-compliant with the LODR Regulations and, therefore, they are liable to pay the fines as per circular dated January 22, 2020. We find that necessary compliance was made by the appellants but the fines as depicted in the circular dated January 22, 2020 was not paid. The stock exchange by email dated July 11, 2022 intimated the quantum of the fines that was required to be paid for two consecutive quarters for non-compliance of Regulations 27(2), 33 and 31(b) of the LODR. This email, in our opinion, is to be treated as a show cause notice cum order. Since the amount was not paid, the action taken by the stock exchange was also reflected in its website which factor was made known to the appellants.

8. The quantum of fine as depicted in the email dated July 11, 2022 has not been disputed by the appellants. The appellants have also not disputed the non-compliance made by them of Regulations 27(2), 33 and 31(b) of the LODR Regulations. Consequently, the imposition of fine imposed by the CSE is justified. The order dated September 28, 2022 is only a communication to the Depository to freeze the demat account of the promoters since fines were not paid.

9. We find from the reply of the respondent that the appellants are entitled to seek waiver of the penalty under the circular dated January 22, 2020 which fact was uploaded by the respondent stock exchange on its website on November 18, 2022.

10. In view of the aforesaid, we do not find any error in the impugned order / orders. The appeal fails and is dismissed. It is however open to the appellants to apply for waiver of the fine under the SEBI circular dated January 22, 2020.

11. 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.

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