
(2023) 01 SEBI CK 0013

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1634 Of 2022, Appeal No. 1043 Of 2021

G V Films Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 17(8), 48
Securities And Exchange Board Of India Act, 1992 — Section 11(2)(i), 12A

Citation : (2023) 01 SEBI CK 0013

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

Bench : Division Bench

Advocate : Aditya Thanvi, Vyom Shah, Karishma Motla, Aditya Sarangarajan, Mansukhlal Hiralal

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. There is a delay in the filing of the appeal. For the reasons stated in the application, the delay is condoned. The application is allowed.
2. The present appeal has been filed against the order dated 26 th August, 2022 passed by the Whole Time Member ("WTM" for short) restraining the appellants from accessing the securities market and further prohibiting them from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market, in any manner, whatsoever for a period of one year. In addition to the above, the WTM also imposed penalties of different amounts totaling Rs. 54 lakhs.
3. The facts leading to the filing of the present appeal is, that on 9th June, 2017 the Ministry of Corporate Affairs issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the Securities

and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") and its regulations.

4. Based on the said letter, SEBI issued an order dated 7th August, 2017 placing trading restrictions on the appellant Company, its Directors and promoters. The Company made a representation and also filed appeal no.211 of 2017 which was disposed of by this Tribunal by an order of 29th August, 2017 directing SEBI to decide the representation.

5. Subsequently, based on further investigation SEBI passed an ex-parte ad-interim order dated 4th September, 2017 which included a direction for appointment of a forensic auditor to verify misrepresentations including financial and misuse of funds in books of accounts of the Company. A confirmatory order dated 17th January, 2018 was subsequently passed.

6. Based on the forensic audit report and further investigation made by SEBI, a show cause notice was issued. The broad charges in the show cause notice are as follows:

"A. Misrepresentation including of financials and misuse of funds/books of accounts in violation of LODR Regulations, 2015;

B. Non furnishing of information/Noncooperation by the Company with the forensic auditor;

C. Violation of PFUTP Regulations, 2003."

7. The WTM after considering the replies of the appellants and the material evidence on record concluded that the appellant Company misrepresented its financials and violated the accounting standards. The WTM found that various provisions of LODR Regulations were not complied with during the three financial years and there were lapses on the part of the Company in not making the disclosures within the stipulated period. The WTM further found that non-furnishing of information to the forensic auditor was violative of Section 11(2)(i) of the SEBI Act. The WTM further found that there was no violation of Section 12A of the SEBI Act and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") as there was no misappropriation of the funds nor the Company nor its Directors had played a fraud upon the investors nor was there any disproportionate gain or unfair advantage nor any specific loss was incurred by any investor. The WTM accordingly for the above violations debarred the appellant from accessing the securities market for specified periods and imposed different amounts of penalties on the appellants.

8. We have heard Shri Aditya Thanvi, the learned counsel for the appellant and Shri Vyom Shah, the learned counsel for the respondent.

9. On the issue of failure to furnish information to the forensic auditor we find

from the impugned order that a categorical finding has been given that the appellant not only failed to co-operate but also did not furnish the relevant information to the forensic auditor and, thus, hampered the investigation. The contention that necessary information was supplied is bereft of merit as no evidence of any sort has been filed to show that the appellants had furnished the requisite information to the forensic auditor. In view of the aforesaid, we do not find any error in the order passed by the WTM on this score.

10. The WTM has gone into detail and came to the conclusion that there has been misrepresentation including of financials and, consequently, violation of the LODR Regulations. In this regard the WTM found discrepancies in the expenses incurred by related parties of the appellant company incurring expenses on behalf of the Company, misrepresentation with regard to Foreign Currency Convertible Bonds, misrepresentation with regard to litigation expenses, misrepresentation of foreign exchange fluctuation loss etc. The WTM found that the findings given in the forensic audit report were correct and the Company had disclosed incorrect transactions in the books of accounts and thereby violated Regulation 48 of the LODR Regulations, 2015.

11. We thus find that the Company had made certain lapses and failed to comply with the LODR Regulations.

12. We also find that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the WTM has given a clear finding that there was no violation of the PUTP Regulations and there was no diversion of funds nor there was any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor. In the absence of any specific loss being caused to anyone it was contended that the penalty imposed in the given circumstances was totally disproportionate to the alleged violation apart from being harsh and excessive.

13. Admittedly, a clear finding has been given by WTM that there is no misappropriation of funds of the Company nor there is any manipulation in the price of the scrip. The WTM has given a categorical finding that Section 12A of the SEBI Act or PFUTP Regulations have not been violated.

14. In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive. We also find that directions of debarment and imposition of penalties have also been imposed upon the appellants.

15. In the instant case, we find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive.

16. We find that the Appellants no. 3,4,5,6 and 7 were non-executive directors and Appellants no. 8 and 9 were chief financial officers. They were not involved in the day to day affairs and management of the Company and are therefore not concerned with the alleged misrepresentations of the financials. Merely because Appellants no. 3 to 7 were part of the audit committee does not mean that the said appellants were aware of the misrepresentations made by the Company. The imposition of penalty upon them is, thus, wholly erroneous in view of various decisions passed by this Tribunal from time to time. Similarly, we find that Noticee no. 13 worked as CFO w.e.f. 22nd May, 2017 and was not involved in the preparation of the books of account nor involved in the misrepresentation of the financials of the Company for the FY 2016-17. The Annual Report is approved by the Board of Directors and the Noticee no. 13 was only a signatory to the Annual Report. He, thus, cannot be found guilty of the charges. However, Noticee no. 12 was the CFO of the Company for FY 2015-16 and 2016-17 and gave annual certificate in terms of Part B and Schedule II of LODR Regulations, 2015. Such certification was, however, given pursuant to the direction of the Board of Directors. In our view, Noticee no. 12 has violated Regulation 17(8) of LODR Regulations, 2015 but the penalty imposed is excessive. We, however, find that Appellant no. 2 being a director was responsible for the affairs of the Company and was in-charge of the day to day running of the Company.

17. Accordingly, while affirming the violation committed by the Company with regard to noncompliance of the LODR Regulation, we direct that the period undergone towards debarment of the appellants is sufficient for the aforesaid violations and, consequently, the period is reduced to the period underwent by the appellants. In addition to the aforesaid, we reduce the penalty in the following manner:

- (a) Appellant no. 1 – Rs. 20 lakhs;
- (b) Appellant no. 2 – Rs. 5 lakh;
- (c) Appellant no. 8 – Rs. 1 lakh
- (d) Penalties against Appellants no. 3 to 7 and 9 are set aside.

18. 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.