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(2022) 10 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 690 Of 2021

GM Breweries Limited APPELLANT

Vs

NSE Limited And Others RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 17, 17(1), 23(9)

Citation : (2022) 10 SEBI CK 0002

Hon'ble Judges : M. T. Joshi, J;Meera Swarup Technical Member

Bench : Division Bench

Advocate : Ramesh Chandra Mishra, Loknath Mishra, Pradeep Sancheti, Rashid Boatwalla, Samiksha Rajput, Sagar Divekar, Abhimanyu Mhapankar, Manish Chhangani, Ravi Shekar Pandey, Samreen Fatima

Final Decision : Partly Allowed

Judgement

M. T. Joshi, J

1. Aggrieved by the decision of Respondent No. 1 dated October 14, 2021 and Respondent No. 2 dated August 06, 2021 refusing to waive the penalty imposed for the same violations the present appeal is preferred.

As provided by Regulation 17(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter called as "LODR") the appellant was required to appoint independent woman director. It failed to appoint such a director for a quarter ended June 30, 2020 to a quarter ended December 31, 2020. Respondent No. 1 had imposed a penalty of Rs. 18,10,000/- on computation of days of non-compliance as can be found in Annexure-2 in the impugned order. The application for review of the penalty and waiver of the same was rejected by Respondent No. 1. So far as respondent No. 2 is concerned it has waived the penalty for the first quarter of default but refused to waive the penalty for rest of the period.

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2. Another violation committed by the appellant was of Regulation 23(9) of the LODR Regulations regarding the disclosure of related party transactions. Respondent no. 1 waived the penalty to Rs. 5 lakhs till February 17, 2021 in view of the pandemic broken due to COVID-19. Respondent no. 2 BSE granted complete waiver in this regard. Aggrieved by the non-grant of complete waiver by the respondents the present common appeal is preferred.

3. Heard Shri Ramesh Chandra Mishra, FCS for the Appellant and Shri Pradeep Sancheti, the learned Senior counsel for Respondent No. 1, Shri Sagar Divekar, the learned counsel for Respondent No. 2 and Shri Manish Chhangani, the learned counsel for Respondent No. 3.

4. As regards non-appointment of independent woman director the appellant submitted that appointment was to be made w.e.f April 01, 2020. However, from the first week of March 2020 COVID 19 Pandemic broke and the city of Mumbai was worst affected. The Company had planned to issue statutory notices to the stock exchanges for the Board meeting normally scheduled during first week of April 2020 for the adoption of audited accounts and in that meeting itself appointment of an independent director was also scheduled. It was also scheduled that the Board would meet during the last week of March 2020 to interview various prospective candidates for the post. However, the total lockdown imposed by the Government of India as well as the Government of Maharashtra. Thereafter, stricter lockdown was imposed. After the Pandemic situation subsided in the October the appellant was in great difficulty shortlisted two candidates. However, as per the Maharashtra State Excise Regulations under which the Companies/ Industries is governed, every fresh appointment to the Companies Board has to be approved by the State Excise Authority. Only after the prior approval of the appointment by this authority the appointment can be made. Process of police verification report is to be obtained for the proposed candidates and the same was to be sent to the state excise department. In this situation, the company sent a letter dated October 21, 2020 to the state authority to which few queries were raised by the authority. Thus, the pandemic as well as statutory requirement as detailed above cause the delay.

5. Respondent No. 1 observed that no documentary evidence was supplied by the appellant to show the efforts taken by towards the appointment of a woman independent director.

Upon seeking details of the same the appellant vide email dated March 18, 2021 and March 22, 2021 informed that all the communication with the state excise department were handled by its branch and no formal communication was received from the excise department. The respondent no. 1 also noted that the appellant has conducted three meeting of board of directors between June / October 2020 when the composition of the board was not proper. As regards the pandemic, the respondent no. 1 noted that the appellant was made aware of the requirement of appointment in the month of January 2020 by publishing the list of the top 2000 entities including the appellant required to make the

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appointment. On January 14, 2020 email was sent to the appellant specifically more than two months earlier to the nationwide lockdown on account of COVID 19 pandemic. In the circumstances, the respondent no. 1 rejected the request for waiver of the fine in this regard. The reply of respondent no. 2 shows that it has waived the fine for the quarter ended September 2020 and not further.

6. Upon hearing both the sides, in our view, partial waiver of the penalty in this regard is required to be granted to the appellant from the penalty levied by respondent no. 1 NSE on the line of the same granted by respondent no. 2 BSE. The rest waiver cannot be granted for the following reasons:-

The appellant was made aware by respondent no. 1 NSE on January 15, 2020 to comply with the Regulation 17 of the LODR Regulations. There is nothing on record to show that the appellant has started any process for the same. In view of the breaking of the pandemic, we are of the view that for one quarter as detailed supra the waiver is required to be granted. The appellant has submitted that, in view of the compliances to be made with the state excise authorities, the appointment could not have been made without prior approval of the said authorities. The submissions are vague. No Rules or Regulations in this regard are pointed out either in the reply filed by the appellant with the respondents or before the Tribunal. Whatever documents are filed those are in regard to the change of partner and not regard to composition of a incorporated company.

7. In so far as non-compliance of Regulation 23(9) of the LODR Regulations is concerned, the record would show that except a remuneration to the Director and Key Managerial Personnel for the half year ended September 2020 no other related party transactions was carried by the appellant. The remuneration was a regular exercise. The appellant therefore submitted that it was under the bonafide relief that no disclosure was required to be filed and has assured that in future the company would make timely disclosure even if nil. It is to be noted that respondent no. 2 BSE has granted complete waiver from payment of discount. The similar treatment is to be given as regard the waiver of fine on discount imposed by respondent no. 1 NSE.

8. In the result, the following order:-

ORDER

The appeal is hereby partly allowed without any orders as to costs. Partial waiver of penalty for non-compliance of Regulation 17(1) of LODR Regulations for the quarter ended September 2020 is hereby granted from the penalty imposed by respondent No. 1 NSE. Further the order of respondent No. 1 NSE imposing penalty for non-compliance of Regulation 23(9) of LODR Regulations is hereby set aside and instead complete waiver on payment of fine on discount is hereby granted. Rest of the prayers are dismissed. The appeal is hereby disposed of on the above terms without any order as to costs.

9. This order will be digitally signed by the Private Secretary on behalf of the

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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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