(2022) 11 SEBI CK 0005

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 787, 788, 789, 790 Of 2022

HPC Biosciences Limited And Others — APPELLANT

Vs

Adjudicating Officer And Others — RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:
Companies Act, 1956 — Section 56(1), 56(3), 67, 67(3), 67(3)(a), 67(3)(b)
Securities And Exchange Board Of India Act, 1992 15HB

Citation : (2022) 11 SEBI CK 0005

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

Bench : Division Bench

Advocate : Prakash Shah, CA Kushal Shah, Akash Rebello, Ravishekhar Pandey, Shefali Shankar

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. These four appeals are against a common order dated April 22, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty of Rs. 10 lakhs each for violation of Section 56(1), 56(3) and 67 of the Companies Act, 1956.

2. The facts leading to the filing of the present appeal is, that SEBI while carrying out inspection of Guiness Corporate Advisors Private Limited in August 2014 noticed certain violations relating to issue of securities by the appellant-company, based on which, an inspection report was submitted on February 16, 2015. Thereafter, ex-parte ad-interim order was passed against the company on June 29, 2015 and confirmatory order on August 25, 2016. The appellant- company was subsequently advised to refund the amount to the investors in terms of SEBI Circular dated December 31, 2015 and May 03, 2016 which allowed the companies to avoid penal action provided the investors surrender the securities

and get the refund amount.

3. Since the amount was not refunded, a common show cause notice dated December 02, 2021 was issued to show cause why an enquiry should not be held and penalty should not be imposed against them under Section 15HB of the SEBI Act.

4. The charge against the company and its directors is, that the company had issued preferential allotment to 191 entities in 4 tranches from December 28, 2012 to January 03, 2013 allotting 39,50,000 shares. As per the first proviso to Section 67(3) of the Companies Act, the Company could only issue preferential shares to 49 allottees. This proviso was breached by the Company as they made allotments to more than 49 persons, namely, 191 entities. The AO after considering the replies and the material evidence on record came to the conclusion that the allotment of preferential shares to 191 entities in 4 tranches violated the first proviso to Section 67(3) of the Companies Act, 1956 and accordingly imposed a penalty of Rs. 10 lakhs on each of the noticees.

5. We have heard Mr. Prakash Shah, the learned counsel for the appellants and Mr. Akash Rebello, the learned counsel for the respondent.

6. One of the contention raised by the appellant is, that there has been an undue delay in the issuance of the show cause notice. It was urged that the allotment was made in December 2012 whereas the show cause notice was issued on December 02, 2021 almost after 9 years from the date of issuance of the allotment of shares. It was thus contended that there has been an undue delay in the initiation of the proceedings and on this short ground the impugned order should be quashed.

7. In this regard, we are of the opinion that after due investigation, a report was submitted in February 2015 and thereafter in 2017 the company was advised to refund the amount in terms of SEBI Circulars dated December 31, 2015 and May 03, 2016. Ample opportunity was given to the company to refund the amount and when the same was not done the show cause notice was issued in 2021.

8. Considering the aforesaid, we are of the opinion that there has been no undue delay in the issuance of the show cause notice. The contention so raised is patently erroneous.

9. Admittedly, the appellant has violated the provisions of Section 67(3) of the Companies Act, 1956 in as much as it had issued preferential allotment to more than 49 persons. The Supreme Court in Sahara India Real Estate Corporation Limited And Ors. vs. Securities and Exchange Board of India And Anr. (2013) 1 SCC held that even if the issue which satisfy the requirement of Sections 67(3) (a) and (b) of the Companies Act would be treated as an issue to the public if it is made to 50 or more persons. In the instant case, the company had issued preferential shares to more than 50 persons and therefore was in violation of the first proviso to Section 67(3).

10. The learned counsel for the appellant has relied upon a decision of an order dated October 19, 2022 passed by the AO in the matter of Trinity Tradelink Limited wherein similar circumstances preferential shares were issued to 978 allottees. The AO found that the said allotment was in violation of the first proviso to Section 67(3) and accordingly imposed a penalty of Rs. 1 lakh each on the company and its directors totaling Rs. 4 lakhs. It was contended by the learned counsel that in similar circumstances a consistent approach should be taken by the respondent and the penalty should be reduced. In this regard, the learned counsel for the respondent took instructions and submitted that the decision in the matter of Trinity Tradelink Limited was distinguishable as in the said case the gravity of offence was less than in the present appeal.

11. We have perused the order passed by the AO in the matter of Trinity Tradelink Limited and we find that the charge was that the said company had allotted shares to 978 allottees aggregating to approximate Rs. 25.99 crores in violation of Section 67(3) of the Companies Act as well as provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations, 2009"). We find that the matter is identical and in fact the company in Trinity Tradelink Limited had issued more shares to more allottees than the present appellant-company.

12. In our view the respondent should adopt a consistent approach in the matter of awarding penalties.

13. Considering the aforesaid, in view of the facts and circumstances of the present case, we affirm the violation committed by the appellants and however we reduce the penalty from Rs. 40 lakhs to Rs. 8 lakhs to be payable by the appellants. The appeals are partly allowed.

14. 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.