
(2023) 01 SEBI CK 0011

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 1044 Of 2022

IFGL Refractories Limited

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 4(1)(e)
Securities Contracts (Regulation) Act, 1956 — Section 23E

Citation : (2023) 01 SEBI CK 0011

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

Bench : Division Bench

Advocate : Nitin Jain, S. K. Singhi, Ankur Singhi, S. K. Singhi, Sumit Rai, Ravishekhar Pandey, Nishit Dhruva Shefali Shankar

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) dated October 18, 2022 imposing a penalty of Rs. 5 lakhs for violation of Section 23E of the Securities Contracts (Regulation) Act, 1956 ("SCR Act" for convenience).
2. The facts leading to the filing of the present appeal is, that the SEBI conducted an examination of the appellant-Company to ascertain whether they were in non-compliance of SEBI Circular dated October 18, 2019 and the provisions of the SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015 ("LODR Regulations" for convenience).
3. Based on the investigation a show cause notice dated June 23, 2022 was issued calling upon the appellant to show cause as to why an enquiry should not be held and penalty should not be imposed under Section 23E of the SCR Act read with Clause 2(i) of the Listing Agreement for the violations specified in the

show cause notice.

4. The show cause notice basically alleged that the appellant had violated the provisions of the SEBI Circular dated October 18, 2019 along with Clause 6 C (I) of the SEBI Circular and Regulation 4(1)(e) of the LODR Regulations.

5. The AO after considering the reply and the material evidence on record held that the appellant had violated SEBI's Circular dated October 18, 2019 and Regulation 4(1)(e) of the LODR Regulations and accordingly imposed a penalty of Rs. 5 lakhs under Section 23E of the SCR Act.

6. We have heard Shri Nitin Jain, the learned counsel for the appellant and Shri Sumit Rai, the learned counsel for the respondent.

7. Before we proceed further it would be necessary to extract the provision of the 23E of the SCR Act is which extracted hereunder:-

"Penalty for failure to comply with 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 be less than five lakh rupees but which may extend to twenty-five crore rupees".

8. A perusal of the aforesaid provision indicates that a penalty can be imposed where the company fails to comply with the listing conditions or delisting conditions. In *Suzlon Energy Ltd. & Anr. vs. SEBI* in Appeal No. 201 of 2018 dated May 03, 2021 this Tribunal had held that penalty under 23E of the SCR Act cannot be imposed for the violation of the listing conditions in as much as Section 23E applies for non-compliance of listing conditions or delisting conditions of a Company to be listed on the stock exchange and has nothing to do with the violation of the listing agreement. This judgement has not been set aside by a higher Court and is therefore binding on the sub-ordinate authorities, namely, the AO of SEBI in the instant case.

9. In the instant case, the violation, if any, committed by the appellant is of the Circular and has nothing to do with the violation of the listing agreement or the listing conditions under 23E of the SCR Act. The imposition of penalty under Section 23E is patently erroneous, perverse and has been passed without any application of mind.

10. In this regard, we find that the appellant had placed reliance upon the decision of this Tribunal in *Suzlon's* case which was duly considered by the AO in paragraph 10 of the impugned order, inspite of which the AO has observed that upon a plain reading of the Section if the Company fails to comply with the listing conditions or delisting conditions the Company would be liable for monetary penalty under this Section and since the appellant has failed to comply with the listing conditions the appellant would be squarely liable under Section 23E of the SCR Act for imposition of penalty. Such finding given by the AO is in complete

disregard to the decision given by this Tribunal in Suzlon's case. In effect what the AO is trying to state is that the principles of law evolved in Suzlon's case given by this Tribunal is not in accordance with the plain reading of Section 23E of the SCR Act and, therefore, the decision of the Tribunal is incorrect. The AO further goes on to say that the order of the Tribunal in Suzlon's case has been appealed by SEBI before the Supreme Court and the same is pending.

11. We may add that the decision of this Tribunal in Suzlon (supra) is binding on the AO and is required to be followed. The mere fact that SEBI has filed an appeal before the Supreme Court is not sufficient for the AO not to give effect to the order of the Tribunal in Suzlon's case. While disposing off quasi-judicial matters, the AO is bound by the decision of the appellate Tribunal. The principle of judicial discipline requires that the order of the Tribunal should be followed unreservedly by the AO. Non-compliance of orders of the Tribunal has resulted in undue harassment to the litigant. In this regard, the Supreme Court in *Union Of India And Ors. vs. Kamlakshi Finance Corporation Ltd.* 1992 Supp (1) Supreme Court Cases 648 held:

"The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department in itself an objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

12. In view of the aforesaid decision of the Supreme Court such findings given by the AO in paragraph 10 is a clear case of disrespect to the orders of this Tribunal in utter defiance. The principle of judicial discipline requires that the order of the Tribunal should be followed unreservedly by the AO which in the instant case has not been followed.

13. We also find that the respondents are repeatedly issuing such directions in other matters knowing fully well that the decision in Suzlon's case has not been set aside but they continued to impose penalties.

14. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed on payment of cost of Rs. 50,000/- to be deposited by the respondent before the Registrar of this Tribunal within four weeks from today.

15. 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.