
(2022) 08 SEBI CK 0053

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 432 Of 2022

Kesar Petroproducts Limited

APPELLANT

Vs

Deputy Manager, Listing Compliance

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations. And Disclosure Requirements) Regulations, 2015 — Regulation 17, 17(1), 17(1)(c), 23, 23(9), 31

Citation : (2022) 08 SEBI CK 0053

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

Bench : Full Bench

Advocate : Aarti Sathe, Aasavari Kadam, Saba Sheikh, Manish Chhangani, Samreen Fatima

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the communication dated April 19, 2022 whereby the appellant's application for waiver of fine pursuant to Securities and Exchange Board of India ('SEBI' for short) circular dated January 22, 2020 was partly allowed and fine of Rs. 31,21,100/- was reduced to Rs. 14,57,300/-.

2. The facts leading to the filing of the present appeal is, that the appellant is the public listed company and as part of the corporate governance is required to make all filings and reportings as mandated by SEBI in a timely manner. It is alleged that various compliances were being under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short) within the stipulated period and upto June 2020 no defaults were committed by the appellant at any given point of time.

3. On account unprecedented lockdown being declared by the Government of India due to Covid-19 pandemic the day to day working was paralyzed. There

was severe manpower crunch and accordingly certain compliances as mandated by the LODR Regulations could not be fulfilled in a timely manner.

4. As a result of non-compliance of the LODR Regulations within the stipulated period a total fine of Rs. 31,21,100/- became outstanding and payable by the appellant.

5. The appellant through various letters, e-mails gave justification and eventually by e-mail dated November 11, 2021 requested for waiver of the fine / penalty in view of SEBI Circular dated January 22, 2020.

6. The respondent duly considered the waiver application of the appellant as well the SEBI Circular dated January 22, 2020 and thereafter the respondent reduced the fine from Rs. 31,21,100/- to Rs. 14,57,300/-.

7. The appellant being aggrieved by the aforesaid order has filed the present appeal.

8. We have heard Ms. Aarti Sathe, the learned counsel for the appellant and Shri Manish Chhangani, the learned counsel for the respondent.

9. The contention of the appellant is that even the remaining amount of Rs. 14,57,300/- was also required to be waived in view of the ensuing Covid-19 pandemic during that period and non-compliance of LODR Regulations could have been waived for the reasons stated in the waiver application.

10. The violations are Regulations 17(1), 23(9) and 31 of the LODR Regulation. For non-compliance of Regulation 17(1) for the quarter ended December 2020, a fine of Rs. 5,42,800/- has been imposed and under the same Regulation for the quarter ended March 2021 a fine of Rs. 5,31,000/- has been imposed. For violation of Regulation 23(9) a fine of Rs. 9,14,500/- has been imposed and for Regulation 31 a fine of Rs. 2360/- and Rs. 49,560/- has been imposed.

11. A fine of Rs. 5,42,800/- and Rs. 5,31,100/- has been imposed for non-compliance of Regulation 17(1) for the quarter ended December 2020 and March 2021. In this regard we find that as per Regulation 17(1)(c) of the LODR Regulations the composition of the Board of directors of the top 2000 listed entities was not less than six directors. The appellant being amongst top 2000 listed entities was required to have a minimum six directors with effect from April 1, 2020. For facility, Regulation 17(1)(c) is extracted here under:-

"17(1)(c) the Board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors. Explanation:- The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year."

12. Two more directors were required to be appointed on or before April 1, 2020. Before any effort could be made to appoint two directors, the lockdown was imposed by the Government of India in March 2020 and all operations of the

Company closed down. The lockdown was eased in September 2020.

13. We find that request of the appellant for waiver was partially considered and for the quarter ended September 2020 the fine was waived but for the quarter ended December 2020 and March 2021 the fine was not waived on the ground that the lockdown restrictions have eased post September 2020.

14. The rationale for ensuring compliance of Regulation 17 of the LODR Regulations is to ensure that the Board of listed entities is properly constituted throughout the financial year so that each member of the Board could contribute in effective management of the Company. In view of the fact that the appellant-company came in the top 2000 listed entities, it was required to have a minimum of six directors on the Board of the Company from April 01, 2020 onwards. Admittedly, requirement of six directors on the Board of the Company was not made between quarter ended December 2020 and March 2021 and that the compliance was achieved by appointment of the Directors in June 2021.

15. We cannot lose sight of the fact that in view of COVID- 19 Pandemic, the Government of India declared a lockdown in March 2020 and for several months there was complete closure of all companies and industries. Work from home was in its infancy stage. There was lack of any industrial or commercial activity. The COVID-19 Pandemic was at its peak in India between May and October 2020. Life had come to a standstill during these months. In spite of the lockdown and the difficulties faced by Companies, the appellants did manage to appoint two directors in June 2021.

16. Considering the aforesaid, we are of the opinion that the appellants have given sufficient explanation and justification for waiver of the fine for non-compliance of Regulation 17(1)(c) of the LODR Regulations, 2015 within the prescribed period. We cannot ignore that the lockdown and the COVID-19 Pandemic impacted the working and existence of many Companies including the appellant.

17. Insofar as the violation of Regulation 23(9) and Regulation 31 is concerned we find that for non-compliance of Regulation 23(9) a fine of Rs. 9,14,500/- was imposed. The main grievance of the appellant is that a fine of Rs. 9,14,500/- ought to have been waived for non-compliance of Regulation 23(9) of the LODR Regulations. It was urged that compliances had to be filed by December 14, 2020 but the same was actually done in June 2021 and therefore there was a delay of six months. It was urged that the impact of the pandemic continued even in the second quarter which multifold the impact and halted all operations of the company. It was urged that the impact of the business had been very pronounced due to the lockdown for four months and that for more than 3 months the factory could not function as only 10% of the staff was allowed to work as the company was not in the essential services sector. Regulation 23 relates to related party transaction and a transaction involving payments made to related party transactions are required to be disclosed to the Stock Exchange

within the stipulated period. We find that noting has been shown as to why related party transaction of the financial year in question could not be disclosed within the stipulated period. The lockdown restriction had eased from October 2020 and nothing prevented the company from making the filings after October 2020. We however find that filings were done as late as on June 2021. Thus, penalty was rightly imposed.

18. Thus, for the reasons stated aforesaid we are satisfied that a case is made out by the appellant for the waiver of the fine imposed by the respondent for violation of Regulation 17(1) of the LODR Regulations.

19. For the reasons stated aforesaid, the appeal is partly allowed. The imposition of fine under Regulation 17(1) amounting to Rs. 5,42,800/- and Rs. 5,31,100/- are set aside. All other fines are affirmed. The balance amount shall be paid as early as possible and thereafter the demat account shall be defreezed.

20. 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.