

(2022) 03 SEBI CK 0099

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 133 Of 2021

MPF Systems Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 15(2), 16, 16(1)(b)(iv), 17, 17(1)(b), 18, 18(1)(b), 19, 19(1)(c)
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B, 15HA, 15I(3)
Securities Contracts (Regulations) Act, 1956 — Section 23E

Citation : (2022) 03 SEBI CK 0099

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

Bench : Division Bench

Advocate : Pulkit Sharma, Saurabh Bachhawat, Harsh Kesharia, Mustafa Doctor, Nidhi Singh, Deepti Mohan, Binjal Samani, Aditi Palnitkar, Moksha Kothari, Vidhii Partners

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated February 28, 2020 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs. 22 lakhs under Section 15HA of the SEBI Act, 1992 and Section 23E of the Securities Contracts (Regulations) Act, 1956 ('SCRA' for short) for violation of various provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short) especially Regulation 16, 17, 18 and 19. The appellant is also aggrieved by the order dated December 22, 2020 passed by the Whole Time Member ('WTM' for short) whereby the penalty of Rs. 22 lakh was enhanced to Rs. 34 lakh in exercise of the powers under Section 15-I(3) of the SEBI Act, 1992.

2. The facts leading to the filing of the present appeals is, that SEBI forwarded a list of 331 shell companies to the Stock Exchange for initiating necessary action as per SEBI laws and Regulations. On the basis of the examination of the books of accounts of the Company and the observations in the forensic audit report, a show cause notice dated August 9, 2019 was issued by the AO to show cause as to why appropriate penalty should not be issued for violation of the LODR Regulations. For the same violation, the WTM issued a show cause notice dated April 22, 2019 to show cause why appropriate direction under Section 11 and 11B of the SEBI Act should not be issued for violation of the same provisions of the LODR Regulations.

3. The charges against the appellants in the show cause notice was as under:-

- "a. Loan from independent directors;
- b. Verification of Sundry debtors / receivables;
- c. Recording of Sundry creditors as Trade payables;
- d. Proof of other Transaction;
- e. Failure to file Affidavit & Details with respect to employees of the Company."

4. The AO after considering the material evidence on record and after considering the replies found the appellants to be guilty on all the charges leveled in the show cause notice and accordingly imposed a penalty of Rs. 22 lakh.

5. Subsequently, a show cause notice was issued by the WTM under Section 15-I(3) to the appellants to show cause as to why the penalty should not be enhanced on the ground that the AO should have imposed the minimum penalty as prescribed under Section 15HA. The appellants submitted their objections and after considering the replies and after giving them an opportunity of hearing the WTM passed the order dated December 22, 2020 enhancing the penalty from Rs. 22 lakh to Rs. 34 lakh. The aforesaid two orders of the AO dated February 28, 2020 and the order of the WTM dated December 22, 2020 are challenged in this appeal.

6. We have heard Shri Pulkit Sharma, the learned counsel for the appellant and Shri Mustafa Doctor, the learned senior counsel for the respondent.

7. The submissions of the appellants are twofold. That the issuance of notice under Section 15-I(3) by the WTM on the ground that the AO has not imposed the minimum penalty is wholly illegal in as much as the AO has the discretion to impose a penalty below the minimum penalty prescribed under the Act. In support of his submission the appellant has relied upon the decision of the Supreme Court in the matter of Siddharth Chaturvedi vs Securities and Exchange Board of India (2016) 12 SCC 119 and another decision of the Supreme Court in Adjudicating Officer, Securities and Exchange Board of India vs Bhavesh Pabari (2019) 5 SCC 90. The second ground urged is that the WTM while exercising

powers under Section 11 and 11B of the SEBI Act pursuant to the show cause notice dated April 22, 2019 on the same subject has given a categorical finding in its order dated April 20, 2020 holding that the appellants have not violated Regulation 16(1)(b)(iv), 17(1)(b), 18(1)(b) and 19(1)(c) of the LODR Regulations on the charge of the directors providing loan to the Company. It was contended that in view of this finding given by the WTM in the order passed under Section 11 and 11B the penalty issued by the AO ought to have been reduced instead of enhancing it under Section 15-I(3).

8. In the instant case we find that one of the charges leveled against the appellants was in relation to the loan given by the Independent Directors to the Company which was found to be in violation of Regulation 16, 17, 18 and 19 of the LODR Regulations by the AO. On the other hand, the WTM while exercising the powers under Section 11 and 11B in its order dated April 20, 2020 has found that such loan given by the Independent Directors to the Company does not violate the provision of Regulation 16, 17, 18 and 19 of LODR Regulations in view Regulation 15(2) of the LODR Regulations. Thus, on this short ground, the imposition of penalty by the AO cannot be sustained and consequently the enhancement made by the WTM in its order of December 22, 2020 also cannot be sustained and are quashed. The appeal is allowed. The matter is remitted to the AO to decide the matter afresh in the light of the observation made above after given an opportunity of hearing. The AO will consider the order of the WTM dated April 20, 2020 while passing a fresh order. In the circumstances of the case, parties shall bear their own costs.

9. Since we have set aside the order of the WTM enhancing the penalty, it is not necessary to go into the question as to whether the WTM could have initiated the proceedings under Section 15-I(3) on the ground that the AO had imposed a penalty which was lower than the minimum penalty prescribed, nor it is essential for us to go into the question that the AO had the discretion to levy the penalty below the minimum prescribed penalty. Such question is left open and is also open to the appellant to plead before the AO concerned.

10. 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.