
(2020) 03 SEBI CK 0003

In the Securities Appellate Tribunal Mumbai

Case No : ??Miscellaneous Application No. 649 Of 2019, Appeal No. 316 Of 2018

Oasis Securities Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Securities Contracts (Regulation) Act, 1956 — Section 21, 23A, 23E, 36
Securities And Exchange Board Of India Act, 1992 — Section 11

Citation : (2020) 03 SEBI CK 0003

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Joby Mathew, Pradeep Sancheti, Abhiraj Arora, Vivek Shah

Final Decision : Partly Allowed

Judgement

Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the order of the Adjudicating Officer (â??AOâ?? for short) of Securities and Exchange Board of India

(â??SEBIâ?? for short) dated June 25, 2018. By the said order a total penalty of Rs. 30 lakh has been imposed on the appellants for violation of

provisions of Clause 36, 41 and 50 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (â??SCRAâ??

for short).

2. Appellant No. 1, Oasis Securities Ltd. (â??Oasisâ?? for short) at the relevant time was a stock broker and a Company listed on the Bombay Stock

Exchange Ltd. (â??BSEâ?? for short). Appellant No. 2 and 3 are the promoters of Appellant No. 1, Oasis and were also the Directors at the

relevant time. In 2010 appellants entered into an agreement with a sister

concern named Ikab Securities and Investment Ltd. (â??IKABâ?? for short) to consolidate the stock broking and depository participants business and thereby transferred the said business of the appellants to IKAB as a going concern on a slump sale basis. The decision of the Board of Directors to sell its stock broking and depository participants business was taken in November 2008. The shareholders approval for the same was taken on December 20, 2008. During April and June 2010 Appellant No. 1, Oasis, took the approval of the National Stock Exchange of India Ltd. (â??NSEâ?? for short) and BSE for the sale / transfer of the broking and depository participants business.

3. On October 30, 2012 SEBI sought certain details from Appellant No. 1, Oasis. Based on further information collected by SEBI over a period of time a show cause notice dated January 1, 2018 was issued to the appellants alleging violations of Clauses 36, 41 and 50 of the Listing Agreement read with Section 21 of the SCRA and calling upon why an enquiry should not be initiated against them and penalty not imposed under Section 23A and 23E of the SCRA. The show cause notice specifically alleged non-compliance of Section 36 of the Listing Agreement in Appellant No. 1â??s sale of its broking and depository participants business. While discontinuation and sale of these businesses were material events for Appellant No. 1, Oasis, adequate disclosure of the same was not made. Rather, it was alleged that only selective / partial disclosure was made without even mentioning the name of the transferee entity, IKAB nor affiliation of the transferee entity that it is a group company of Oasis. In addition, material facts relating to the amount of sale consideration for the transfer, mode of receipt of the sale consideration, amount of profits / losses realized on account of the transfer, etc. were also not adequately disclosed.

4. It was further alleged that the appellants were non-compliant with Clause 41 of the Listing Agreement on account of inadequate disclosure relating to variations in profit or exceptional / extraordinary items. It was also held that the appellant was non-compliant with Accounting Standards [AS-3, AS-18 and AS-24] mandated under Clause 50 of the Listing Agreement because of the non-disclosure in the financial statement for the relevant year relating to discontinuation of its key business operations, non-disclosure of related party transactions, incorrect accounting of interest paid /

miscellaneous income and cash flow statements etc. After receiving the replies and after providing an opportunity of hearing etc. the impugned order

has been passed imposing a penalty of Rs. 20 lakh under Section 23A and 23E of SCRA on Appellant No. 1, Oasis and Rs. 5 lakh each on Appellant

Nos. 2 and 3 under Section 23A of the SCRA.

5. It is the contention of the learned counsel Shri Somasekhar Sundaresan appearing on behalf of the appellants that all the relevant information was in

public domain since 2008 as transfer of the business was the result of considerable preparatory exercise and the only information not disclosed was

regarding the General Body decision. It was also contended that even the identity of the transferee entity, IKAB, was also known to SEBI at relevant

times.

6. Given that all relevant information was available to SEBI the show cause notice was issued with a delay of 8 to 10 years alleging disclosure

violation. On this ground alone the impugned order should fail since SEBI issued a show cause notice only in 2018 with an inordinate delay on an issue

which they were fully aware of atleast in the year 2010 if not earlier. The learned counsel also relied on the decision of this Tribunal in Ashok Shivilal

Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019) which quashed the impugned

orders therein purely on the basis of inordinate delay in issuing show cause notice and in passing the impugned orders therein. It was also submitted

that an appeal filed by SEBI against the said order was dismissed by the Apex Court on November 15, 2019, copy of which was also produced on

record.

7. Further, on merits the learned counsel for the appellant contended that all the material on record show that the proposed transfer, regulatory

compliance, board approval and eventual transfer were available in public domain and hence all material information was disclosed as required under

Clause 36 of the Listing Agreement. Moreover, notice for shareholders meeting was issued to be held on December 20, 2008. Therefore substantial

compliance has been made and hence allegations cannot be made with inordinate and unexplained delay on an issue which SEBI was fully aware of

and in any case given the undue and unexplained delay in initiating proceedings no penalty should have been imposed on a matter where substantial

compliance have been made.

8. As regards alleged violation of Clause 41 of the Listing Agreement it was contended by the learned counsel that small variations in reported profits around Rs. 30 lakh attributable to bonafide error in treating an item as an expenses etc. should not be used to invoke penalty provisions particularly when the appellant is currently an RBI regulated NBFC.

9. As regards allegations of violation of Clause 50 and the various Accounting Standards (3, 18 and 24) it is the contention of the appellant that SEBI has no power to adjudicate on these matters. In any case, it was contended that the financial statements of the appellant are fully in compliance with the accounting standards as evidenced by the audit reports issued and published in respect of the Appellant No. 1, Oasis accounts. There is no allegation of any fraud or manipulation or market abuse. Bonafide interpretations of the accounting standard, even though some minor errors might have crept in, are not amenable to penal regulatory interventions by SEBI. It was further contended that the impugned order does not even provide a breakup of the amounts of penalty on account of the alleged violations of Clauses 36, 41 and that of the Accounting Standards in terms of Clause 50.

10. In brief, the learned counsel for the appellant submits that substantial compliance of Clause 36 and 50 have been made by the appellants and minor non-compliance in the form of the GBM disclosure (relating to Clause 36) or issue of a mistake in minor heads of accounts (Clause 41) or differential interpretations of certain Accounting Standards under Clause 50 where SEBI's jurisdiction itself is doubtful cannot lead to imposition of penalties and that too after an inordinate and unexplained delay of about 8 to 10 years.

11. We have also heard learned Senior Counsel Shri Pradeep Sancheti appearing on behalf of respondent SEBI. He contended that the appellant did not raise the issue of delay before the AO and hence cannot raise it at this stage of appeal. In any case the appellant was not inconvenienced or prejudiced in any manner by the alleged delay because the documents were all available with them. In support of his contention that since the appellant did not raise the issue of delay before the AO the same cannot be raised at the stage of appeal, learned senior counsel also relied on paragraph 35 of the Apex Court judgment in the matter of Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) 5

SCC 90. As regard the violations upheld in the impugned order, the learned senior counsel contended that the violations are supported by facts which are all on record.

12. Since the initial contention of the learned counsel for the appellants is on inordinate delay in issuing the show cause notice, we propose to deal with the same in the facts of this matter. From the records the following dates are noted since the chronology of events is important in deciding the factum of delay.

â?¢ October 30, 2012Â Â Â Â Â Â Â SEBI wrote to the Chairman, Audit Committee of the appellant company seeking number of information on the subject â??examination in the matter of Oasisâ??. The said information was sought under the relevant sub-section of section 11 of SEBI Act and advising appellant to furnish the information at the earliest, but not later than the 15 days from the date of the letter.

â?¢ November 16, 2012Â Â Â Part reply by the appellant.

â?¢ December 17, 2012Â Â Â Another letter to the Chairman, Audit Committee of the appellant referring to October 30, 2012 letter of SEBI and the November 16, 2012 reply by the appellant and seeking part of the information which was not furnished and / or seeking further details. The appellant advised to furnish the said information / details within five working days from December 17, 2012.

â?¢ December 22, 2012Â Â Â Reply by the appellant to the letter of SEBI dated December 17, 2012, informing that the concerned person is out of town and seeking time till January 31, 2012 (must be 2013).

â?¢ January 31, 2013Â Â Â Â Â Â Â Letter from the appellant to SEBI with respect to latterâ??s letter dated December 17, 2012 seeking some more time to respond to queries. Since the appellantâ??s group company M/s. IKAB is in the process of closing down its business due to which the appellant being unable to satisfactorily work on SEBIâ??s queries and promising to respond to the queries at the earliest.

â?¢ February 22, 2013Â Â Â Â Â Letter from SEBI to Chairman of the appellant referring to various correspondences between SEBI and the appellant starting October 30, 2012 and directing to furnish the information sought within 10 days from the date of this letter. Also highlighting the consequences of further details and non-cooperation in providing the details

sought.

¶ March 4, 2013 Appellant's reply giving part of the information sought and seeking an appointment to understand

the exactness of the remaining information sought as it was not clear to the appellant.

¶ July 29, 2013 Appellant Shri Anil Kumar Bagri's meeting with Assistant General Manager (AGM) of SEBI.

¶ July 31, 2013 Anil Bagri's e-mail to the AGM of SEBI reiterating the detailed informationsought during their

meeting on July 29, 2013 and seekin some more time to submit the information.

¶ July 31, 2013 E-mail reply by AGM of SEBI elaborating on the details sought and also stating that the information

should be given in an excel format.

¶ August 21, 2013 Reply from the appellant to the e- mail dated July 31, 2013 submitting presumably the relevant information.

¶ September 6, 2013 Letter from AGM of SEBI to the Chairman of the appellant articulating the incompleteness of the information

furnished and seeking the remaining information and details within 10 days.

¶ September 17, 2013 E-mail from AGM of SEBI to the appellant explaining the differences between the information provided by the

appellant and seeking the remaining information by October 5, 2013.

¶ December 7, 2013 Reply from appellant, again giving part of the information stating that detailed information relating to two years

(2008-09 and 2009-10) are not available in excel format etc.

¶ April 3, 2014 Letter from SEBI seeking further clarifications and additional information and directing the

appellant to provide the same within 15 days from the date of the receipt of this letter.

¶ April 25, 2014 Appellant's letter furnishing purportedly the information sought.

¶ May 19, 2014 E-mail from SEBI to appellant Anil Kumar Bagri seeking further clarifications on the information

provided seeking the sai clarifications within 7 days.

¶ May 26, 2014 Reply from appellant stating that since

he was travelling requesting two weeks more time to furnish the reply.

â?¢ May 27, 2014 Â Â Â Â Â Â Â Â Â Â E-mail from SEBI seeking the reply latest by June 4, 2014.

â?¢ Multiple dates Â Â Â Â Â Â Â Â Â Â Various further correspondences seeking details / clarifications etc.

â?¢ May 19, 2015 Â Â Â Â Â Â Â Â Â Â A detailed letter from SEBI to the Chairman of the appellant Oasis seeking the reply within 15 days.

â?¢ July 15, 2015 Â Â Â Â Â Â Â Â Â Â Reply by the appellant, after seeking extension of time vide their letter dated June 11 and June 15,

2015 wherein the appellant has raised the issue of inordinate delay in the investigation as the statements pertained to 2008-09

and 2010-11 as well as providing detailed information as sought.

â?¢ April 20, 2016 Â Appointment of the AO.

â?¢ May 18, 2017 Â Appointment of a new AO on account of transfer of the earlier AO.

â?¢ January 1, 2018 Â Show cause notice.

â?¢ March 19, 2018 Â Reply to the show cause notice.

â?¢ May 28 to June 4, 2018 Â Â Â Â Â Â Â Â Â Â Various correspondences appellant and SEBI. between

13. Given the above chronology of events, we are of the considered view that laches are not solely on the side of the SEBI since SEBI had been

asking for information from October 2012 which the appellants finally provided fully only in July 2015. A perusal of the details in the correspondences

between the appellants and SEBI would show that appellants were furnishing only part information / details sought by SEBI and on many occasions

the appellants had sought extra time in furnishing the information. Therefore, the delay could be considered only from July 2015 till the issue of show

cause notice. Here, we note that there was change in the AO due to internal human resources management. Moreover, we also note that within six

months of issue of the show cause notice the impugned order has been passed. Given these facts, we are unable to set aside the impugned order on

account of laches as the facts in this case is distinguishable to that in Ashok

Shivlal Rupani (supra).

14. Coming to the merits of the matter, we cannot agree with the submissions of the learned counsel for the appellant that all material facts were in

fact disclosed. It is an admitted position that details of the general body decision and details relating to the transfer of the broking business such as the

name of the transferee entity, consideration of the transfer and its details, etc. were not disclosed as held in the impugned order. Those were all

material facts to be disclosed particularly given the fact that at the relevant time the broking and depository business of the appellant was the

predominant business of the appellant. Only in its disclosure to BSE on July 14, 2010 appellant informed the name of the transferee entity and its

affiliation to the appellant and even that disclosure was made after five weeks from the date of effecting the transfer on Jun 7, 2010. Therefore, given

these undisputed facts we find no deficiency in the impugned order that the appellant did not make full disclosure of the transfer of its business to a

group company as required under Clause 36 of the Listing Agreement. The reach of Clause 36 is clear from the provision itself which reads as

follows :-

“The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance / operations of

the company as well as price sensitive information”.

Given the wide nature of this clause, it is evident that complete details relating to sale / transfer of its broking and depository business had to be

disclosed to the exchange immediately; which clearly was not done.

15. As regards the contentions relating to non-compliance of accounting standards that it is not the mandate of SEBI cannot be accepted given the

language of Clause 50 of the Listing Agreement which reads as follows :-

“the company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI)

from time to time”.

It is to be reiterated that the Listing Agreement is the result of Section 21 of SCRA which reads as follows: -

“21. Conditions for Listing.-Where securities are listed on the application of any person in any recognized stock exchange, such person

shall comply with the conditions of the listing agreement with that stock exchangeâ??.

16. From a reading of Section 21 of the SCRA as above which states that â??such person shall comply with the conditions of the listing agreementâ?

and the language of Clause 50 of the Listing Agreement that â??the company will mandatorily comply with the accounting standards issued by

ICAIâ?, we do not find any merit in the appellantsâ?? submission that SEBI does not have any mandate / jurisdiction on ensuring that accounting

standards are followed in compliance with the listing obligations.

17. Violation relating to clause 41 of the Listing Agreement is in terms of variation of around Rs. 30 lacs as reported between the unaudited quarterly results and the annual results are concerned.

There is no allegation that the results are not disclosed. Hence the alleged violation is in terms of only some variations which are about 10% of the reported net profits for the financial year 2010-

11. The explanation furnished by the appellants is in terms of mistakes committed in terms of minor heads /sub-heads. Given that, there is no allegation of non reporting and, therefore, the appellants had complied with the mandatory requirement of Clause 41 we give benefit of doubt to the appellants in

terms of the explanation provided and do not intend to impose any penalty on this ground.

18. Given the above reasons, we do not agree with the contention of the appellants as regards inordinate delay in the proceedings since we note that

the appellants are also partly responsible for the delay in completing the investigation by not providing all the details / information sought by SEBI from

October 2012 till July 2015. As explained in the aforesaid paragraphs, the contention of the appellants that substantive compliance of Clause 36 of the

Listing Agreement has been made cannot be accepted since important / material information relating to transferee entity (IKAB), a related party, its

affiliation to the appellants as a group entity, the detailed consideration of the transactions, etc. were either not disclosed or disclosed after

considerable time. Therefore, the finding in the impugned order that the appellants have violated the true spirit of Clause 36 cannot be faulted.

Similarly, the submission that Clause 50 is not violated because SEBI has no mandate on the accounting standards has no merit. A reading of Clause

50 makes it clear that the stated accounting standards have to be mandatorily followed by a listed entity. Accordingly, we uphold the finding in the

impugned order that the appellants have violated Clause 36 and Clause 50, alongwith the stated accounting standards.

19. While upholding the impugned order partially, we are also of the considered view that the penalty imposed on the appellants needs to be reduced.

Therefore, taking into account all the facts particularly that some of the disclosures were made by the appellants and, therefore, it is a case of partial

disclosure rather than non-disclosure; delay on the part of the respondent in completing the proceedings and the benefit of doubt given to the appellants

on one of the alleged violations, we reduce the penalty imposed on the appellant No. 1 from Rs. 20 lacs to Rs. 10 lacs and on appellant Nos. 2 and 3

from Rs. 5 lacs each to Rs. 3 lacs each thereby reducing the total amount of penalty from Rs. 30 lacs to Rs. 16 lacs. The appellants are directed to

pay the penalty amount within four weeks from the date of this order.

20. The appeal is partly allowed with no order as to costs. Consequently, Misc. Application No. 649 of 2019 has become infructuous and is disposed

of as such.