
(2020) 02 SEBI CK 0031

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 345 Of 2019

Radford Global Limited

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 11C(3), 11(2)(i), 15A(a)
Securities Contracts (Regulation) Act, 1956 — Section 21, 23E

Citation : (2020) 02 SEBI CK 0031

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Jaikishan Lakhwani, Vishal Kanade, Kaushal Parsekar

Final Decision : Partly Allowed

Judgement

Dr. C. K. G. Nair, Member

1. Vide the order impugned in this appeal issued by the Adjudicating Officer (â?? AOâ?? for convenience) of the Securities and Exchange Board of

India (â??SEBIâ?? for convenience) on February 26, 2019 a total penalty of Rs. 30 lakh has been imposed on the appellant. Out of this Rs. 10 lakh has

been imposed under Section 15A(a) of the SEBI Act, 1992 for violation of Sections 11(2)(i) and 11C(3) of the SEBI Act and Rs. 20 lakh has been

imposed under Section 23E of Securities Contracts (Regulation) Act, 1956 (â?? SCRAâ?? for convenience) for violation of Section 21 of the SCRA

read with Clause 43 of the Listing Agreement. Aggrieved by these directions this appeal has been filed.

2. The appellant Radford Global Limited (â??RGLâ??) is a company listed on the Bombay Stock Exchange Limited (â??BSEâ?? for convenience).

SEBI conducted an investigation covering the period from February 27, 2012 to March 24, 2014 relating to the company. During the investigation

SEBI issued a summons to the appellant under Section 11(2)(i) and 11C(3) of SEBI Act, 1992 seeking production of certain information and

documents. However the appellant failed to produce some of the material called for and not appeared before the AO. Hence an adjudication

procedure under Section 15A(a) of SEBI Act was initiated against the appellant. Further it was also noticed during the investigation that the appellant

made a preferential allotment on February 16, 2012 and the proceeds of the said issue were partly utilized for purposes other than what was disclosed

in its objectives. Variations in this utilization had to be disclosed to the Stock Exchange on a quarterly basis, which was not done. Therefore,

adjudication proceedings was also initiated under Section 23E of SCRA alleging violation of Section 21 of SCRA read with Clause 43 of the Listing

Agreement.

3. Following appointment of an AO on November 16, 2017 a show cause notice dated December 27, 2017 was issued to the appellant for the alleged

violations as stated in the aforesaid paragraph. In the show cause notice it was alleged that despite SEBI summons and reminders dated July 26, 2017,

August 23 and 24, 2017 the company has failed to furnish complete information. Similarly, it was alleged that proceeds of the preferential allotment

were found to be transferred to various entities in the form of loans and advances, advance against property etc. After giving time to file reply to the

show cause notice, opportunity of hearing, inspection of documents etc. the impugned order has been passed on February 26, 2019.

4. It is the contention of the learned counsel for the appellant Shri Jaikishan Lakhwani, that whatever documents available with the appellant were

provided to SEBI in response to the notice of summons as well as seeking information. Further it was contended that though the period of preferential

allotment was during 2012 the AO had asked documents much prior to the same, even as old as 20 years, which were not available to the appellant

particularly when the appellant had a completely new management in position. In any case, it was contended that the AO has gone beyond the scope

of the investigation by seeking information and copies of the documents much prior to February 27, 2012, which was beyond the investigation period.

Therefore, in short it is the contention of the appellant that all information sought in respect of 8 queries as in annexure to summons dated July 26,

2017 was provided and information relating to queries 9 and 10 could not be provided because those were not available with the appellant as these

documents were relating to 1990s. It was further contended that information sought subsequently were also obtained from the R&T Agent and given to the AO.

5. As regards the second charge of non-disclosure of variations in utilization of the funds/ proceeds from the preferential allotment it was submitted by

the learned counsel for the appellant that funds were raised for acquisition of immovable property and for its development as per the objective of the

preferential allotment. Since the entire amount of Rs. 13.65 crore was not immediately needed for this purpose as acquisition of property and its

development would take some time, in the interim surplus funds were given as loans to various entities. These loans were fully returned along with

interest which also was utilized by the appellant for the stated purpose and as such there is no misutilization of the funds raised through the preferential

allotment.

6. We have also heard the learned counsel for the respondent SEBI, Shri Vishal Kanade, who reiterated the findings in the impugned order and

contended that investigation suffered on account of appellant's non-cooperation.

7. The relevant questions to be considered are whether the appellant has violated provisions of Section 11C(3) of the SEBI Act by its non-compliance

of summons issued by SEBI and whether Clause 43 of the Listing Agreement has been violated by not disclosing to the Stock Exchange the alleged

variations between the projected utilization of funds and the actual utilization of funds raised through the preferential allotment. These Sections are

produced for convenience below:-

Relevant provisions of SEBI Act:

11C. (3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish

such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this

behalf as it may consider necessary if the furnishing of such information or the

production of such books, or registers, or other documents,
or record is relevant or necessary for the purposes of its investigation.

Relevant provisions of Listing Agreement:

43 (1) The company agrees that it will furnish on a quarterly basis a statement to the BSE indicating the variations between projected

utilisation of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the

explanatory statement to the notice for the general meeting for considering preferential issue of securities and the actual utilisation of funds

and/ or actual profitability.â??

8. It is an admitted fact that part of the information sought vide the summons was not furnished by the appellant to SEBI. These details are at

paragraph 16, page 22 to 25 of the impugned order. We are of the considered view that the stand taken by the appellant that the documents are old

and therefore could not be produced cannot be supported as most of the documents not submitted relate to share allotment and related documents

which are expected to be available to the appellant company. Moreover, the impugned order in paragraph 19 has clearly articulated how non-

submission of certain information by the appellant has hampered the investigation into market manipulation by some entities such as Manisha Jayesh

Shah and Artiben S. Kansara etc. At the same time, we note that investigation was relating to the period 2012-2014 and documents were sought in

2017 for periods much prior to 2012. Therefore, though the appellant may be charged with non-submission of full information the submission of the

appellant that the management of the appellant was new etc. has to be given some weightage while imposing the penalty. Given this and the facts of

the matter, we are of the view that the amount of penalty at the rate of Rs. 10 lakh on this violation is on the higher side particularly when the

appellant did provide part of the information readily available with them.

9. As regards non-reporting of the variations relating to the proceeds/ funds raised through preferential allotment it is an admitted fact that, during the

interim, part of the funds were loaned out to various entities. Even if these funds have come back subsequently and in some cases with interest the

matter needed to be disclosed to the Stock Exchange in terms of the requirements of Section 21 of SCRA and Clause 43 of the Listing Agreement

which has not been done. Further, we note from paragraph 23 of the impugned order that the claim of the appellant that in all cases they received interest on the loans given to other parties is not correct as in four out of eight instances no interest has been received and in one instance in fact even the full amount of principal also was not received (in place of an advance against property of Rs. 1.75 crore appellant has received only Rs. 1.71 crore). In any case from the same paragraph we note that 41% of the allotment proceeds were invested in shares and another 45.31% was loaned out to seven entities out of which three did not pay any interest and in one instance of advance against the property instead of getting the property only part of the advance was returned. So the contention in the impugned order that the proceeds were not used according to the objective specified cannot be faulted and the same was not reported is an admitted fact. Given these facts imposition of penalty of Rs. 20 lakh cannot be said to be arbitrary or harsh.

10. In the result, we reduce the penalty amount imposed under Section 15A(a) of SEBI Act from Rs. 10 lakh to Rs. 5 lakh and retain the penalty amount imposed under Section 23E of SCRA at Rs. 20 lakh.

11. Appeal is partly allowed with no orders on costs. Appellant is directed to pay the penalty within four weeks from today.