
(2021) 07 SEBI CK 0212

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 647 Of 2019, Appeal No. 585 Of 2019

RSC International Ltd

APPELLANT

Vs

BSE Limited And Others

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirement) Regulations, 2015 — Regulation 6, 6(1)

Citation : (2021) 07 SEBI CK 0212

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

Bench : Division Bench

Advocate : Kamal Agrawal, Sagar Divekar, Pradeep Sancheti, Abhiraj Arora, Karthik Narayan, Rashi Dalmia

Final Decision : Dismissed

Judgement

M. T. Joshi, J

Aggrieved by the order of the respondent Nos.1 BSE Ltd. (hereinafter referred to as "BSE") dated October 9, 2019 refusing to waive the

penalty levied for non-appointment of the company secretary and the key managerial person for two quarters of 2018-19, the present appeal is

preferred.

1. Regulation 6(1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015 (hereinafter

referred to as "LODR Regulations") provides that each listed company shall have a company secretary as its compliance officer. Respondent

No. 1 BSE noted that for complete quarter of December 2018 and for a partial period of next quarter i.e. March 2019 of the financial year, the

appellant failed to appoint any company secretary. Therefore, respectively fine of

Rs. 1,08,560/- and Rs. 1,06,200/- was imposed, as per the standard operating procedure. The appellant made a representation for waiver of the same, in the light of the respondent no. 2's circular dated May 3, 2018 which provided an opportunity to make a representation against such order.

The relevant committee of the respondent SEBI considered the representation and refused to accept it. Hence, the present appeal.

2. We have heard Mr. Kamal Agrawal, Authorised Representative for the appellant and Mr. Sagar Divekar, the learned counsel for respondent nos. 1

BSE and Mr. Pradeep Sancheti, the learned senior counsel with Mr. Abhiraj Arora, Mr. Karthik Narayan, Ms. Rashi Dalmia, the learned counsel for respondent nos. SEBI through video conference.

3. It is not in dispute that the penalty can be levied as per the relevant provision of regulations for non-compliance of the Regulation 6 of the LODR

Regulations. The issue is only as to whether the present case was fit for waiver of the penalty. The appellant submitted that it tried to appoint the company secretary but no favourable response was received by it from anybody. Further, the appellant is a very small company whose annual

turnover is from Rs. 6 lac to Rs. 22 lac for immediately preceding three financial years and, therefore, no company secretary would have otherwise

likely to join such a small company. On this ground, the appellant submitted that the penalty be waived.

4. While passing of the impugned order, respondent BSE concluded that it was not impossible for the company to appoint a company secretary.

Further, the turnover of the company cannot be a ground for non-appointment of the company secretary as per the Regulations and, therefore, the representation was not accepted.

5. The authorized representative for the appellant submitted that the documents filed in the appeal would show that there was shortage of company

secretary in India. He referred to the various documents filed on the record whereby representation were made to the Government of India as well

the respondent no. 2. On the other hand, the learned counsel of the respondent submitted that the original order of imposing penalty would show that

hundreds of companies were similarly penalized for non-compliance of the Regulations. It is not possible to accept the representation as it does not fall

within the ambit of uniform carved out policy. Hence, it is submitted that the

appeal be dismissed.

6. Considering the rival submissions of the parties, in our view, there is no merit in the appeal. The admitted facts are that since 2nd July 2019 the

appellant has appointed the company secretary and therefore penalty for partial period of the relevant financial quarter was levied. The relevant

provisions of LODR Regulations would show that the listed company is required to appoint a qualified company secretary as the compliance officer.

The obligations of the compliance officer are also enumerated. It is an important and mandatory requirement from the listed entity. There were no

exceptional grounds for waiving the penalty and, therefore, the impugned order can not be faulted. The appeal is therefore dismissed without any order

as to costs.

7. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a

certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally

signed copy sent by fax and/or email.