
(2023) 06 SEBI CK 0027

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 918, 919, 920 Of 2022

Securecloud Technologies Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 4(2)(f), 16(1)(b)(vi), 23(2), 30
Securities Contracts Regulation Act, 1956 — Section 23A, 23A(a), 23E
Securities And Exchange Board Of India Act, 1992 — Section 15HB

Citation : (2023) 06 SEBI CK 0027

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Shruti Rajan, Anubhav Ghosh, Vivek Shah, Pradeep Sancheti, Harshvardhan Melanta, K. Ashar, Anubhav Ghosh, Vivek Shah

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. All these appeals are against a common order dated September 14, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing penalties under Section 23E of Securities Contracts Regulation Act, 1956 ("SCRA" for convenience) and Section 15HB of the SEBI Act, 1992 for violation of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" for convenience).

2. The facts leading to the filing of the present appeal is, that the Practicing Company Secretary M/s. P. Sriram & Associates of the Company M/s Securecloud Technologies Limited observed in the certificate of compliance that the Company had entered into certain related party transactions without taking prior approval of the Audit Committee and Board as required under the LODR Regulations and

that two Independent Directors continued to remain as Independent Directors inspite of appointment of their relatives in the Company/ overseas subsidiary which was also violative of the LODR Regulations.

3. Based on these observations which were found in the annual report of the Company for the Financial Year 2018-2019 SEBI conducted an investigation and issued a show cause notice to show cause why penalty should not be imposed for non-compliance of the various provisions of the LODR Regulations. The charges, in brief, against the appellants is:-

a) Not following due process of approval of related party transactions.

b) Independence of Independent Directors.

c) Non-disclosure of the forensic audit being initiated against the Company which is a material event under Regulation 30 of the LODR Regulations requiring disclosure which the Company and Company Secretary failed to do so.

4. The AO after considering the replies and the material evidence on record found the appellants guilty of the aforesaid charges and accordingly imposed a penalty of Rs. 25 lakhs under Section 23E of the SCRA against the Company and Rs. 10 lakh each on the two Independent Directors and Rs. 4 lakhs on the Company Secretary.

5. We have heard Ms. Shruti Rajan, the learned counsel, Shri Anubhav Ghosh, the learned counsel for the appellants and Shri Pradeep Sancheti, the learned senior counsel for the respondent.

6. Regulation 23(2) of the LODR Regulation provides as under:-

"All related party transactions shall require prior approval of the audit committee."

7. A perusal of the aforesaid provision indicates that related party transactions requires prior approval of the audit committee. In the instant case, there is a specific finding that certain related party transactions were not placed before the audit committee. The Company in its reply has admitted that it had inadvertently missed to take prior approval of certain related party transactions from the audit committee. In view of this admission, the violation stands affirmed. The contention that these transactions were subsequently ratified cannot justify the initial violation which was committed at that point of time.

8. With regard to independence of independent directors in the Company is concerned, Regulation 16 (1)(b)(vi) and Regulation 4(2)(f) of the LODR Regulations provides as under:-

"Regulation 16(1)(b)(vi) of SEBI LODR Regulations, 2015

16. (1) For the purpose of this chapter, unless the context otherwise requires-

(b)"independent director" means a non-executive director, other than a nominee director of the listed entity:

(vi) who, neither himself, nor whose relative(s) — (A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Regulation 4(2)(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities

(iii) Other responsibilities:

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

9. The aforesaid provision places a bar on appointment of a relative of an independent director in the Company. In the instant case, at the time when the independent directors were appointed no such relative of the independent directors were employed and, consequently, there was no breach of Regulation 16(1)(b)(vi) of the LODR Regulations. However, we find that during their tenure as independent directors one son of one independent director and husband of another independent director were appointed in the subsidiary of the Company. Such appointment of an immediate relative of the independent director was violative of Regulation 16(1)(b)(vi) and there was also a conflict of interest. The said provision disqualifies any person whose relative is an employee of a listed entity or its holding, subsidiary or associate company. Independence of an independent director is a continuing requirement for compliance by listed companies and the same is ensured by yearly declaration which is required to be made by independent directors during their period of appointment. The fact that the independent directors were subsequently re-designated as non-independent directors came too late in the day. We find that these independent directors were re-designated after 4 years from the date of the event and therefore the directors violated the provisions.

10. A forensic auditor was appointed to conduct a forensic audit in the Company. Admittedly, the appointment of a forensic auditor was not disclosed as per Regulation 30 of the LODR Regulations. In our opinion, appointment of a forensic auditor is a material event as per Clause 17 of Para A of Part A of Schedule III of the LODR Regulations.

11. Considering the aforesaid, we find that the Company and the Company Secretary failed to disclose this event under Regulation 30 of the LODR Regulations. Under Regulation 6, the Compliance Officer is responsible for ensuring conformity with the regulatory provisions applicable to a listed company and, therefore, the Company Secretary failed to discharge his duties.

12. In view of the aforesaid, we find that the appellants had committed violations of various provisions of the LODR Regulations. The said violations are however not that serious warranting imposition of high penalties. In the instant case, the

Company has been penalized under Section 23E of the SCRA. In *Suzlon Energy Ltd. & Anr. vs. SEBI* Appeal No. 201 of 2018 decided on May 3, 2021 this Tribunal has held that Section 23E of the SCRA is not the charging provision for imposition of penalty for violation of the Listing Agreement and that the correct provision is Section 23A(a) of the SCRA.

13. In view of the aforesaid, we find that penalty under Section 23A is from a minimum of Rs. 1 lakh to a maximum of Rs. 1 crore and under Section 23E of the SCRA a penalty is up to a maximum of Rs. 25 crores.

14. Considering the aforesaid and the violations committed by the Company, we are of the opinion, that the imposition of penalty amounting to Rs. 25 lakhs is excessive and arbitrary in the facts and circumstances of the given case. This Tribunal by an interim order dated 22.11.2022 had directed the said Company to deposit a sum of Rs. 10 lakhs which they have done. Considering the aforesaid, we are of the opinion, that for the violation committed by the Company noticee no. 1 the penalty of Rs. 25 lakhs is reduced to 10 lakhs.

15. In so far as the two independent directors are concerned i.e. noticees no. 2 and 3 the imposition of penalty of Rs. 10 lakhs each in the given circumstances is high and excessive. We find that the relatives of the independent directors were not appointed in the Company but in an overseas subsidiary Company. Further, the Company re-designated the independent directors as non-independent directors though at a belated stage.

Considering the aforesaid, in the given circumstances the penalty is reduced to Rs. 5 lakhs each.

16. For the Company Secretary a penalty of Rs. 4 lakhs has been imposed for violation of Regulation 6(2)(a) i.e. for not disclosing the appointment of the forensic auditor. Considering the facts and circumstances that the Company and its directors have been penalized the imposition of penalty against the Company Secretary should be the minimum penalty. We, consequently reduce the penalty of Rs. 4 lakhs to Rs. 1 lakh.

17. Considering the aforesaid, the appeals are partly allowed and the impugned order is modified accordingly.

18. 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.