(2020) 01 SEBI CK 0013

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.18, 19 Of 2019

Technojet Consultants Limited And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Citation : (2020) 01 SEBI CK 0013

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

Bench : Division Bench

Advocate : Nirman Sharma, Pratyusha Panchagni, Vishal Kanade, Chirag Bhavsar, Eram Quraishi, Harshad Vyas

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Both the appeals are against a common issue and are being decided together. For facility, the facts stated in Appeal No. 18 of 2019 are being taken

into consideration. On the basis of a complaint, Securities and Exchange Board of India (â??SEBIâ?? for short) investigated the affairs of Sharepro

Services (I) Private Limited (â??Shareproâ?? for short) who was registered with SEBI as a Registrar and Transfer Agent. The complaints were

with regard to the transfer of dividends belonging to rightful investors to the persons related to the management of Sharepro, etc. SEBI by an order

dated March 22, 2016 restrained Sharepro from buying, selling or dealing in the securities market, etc. pending investigation and passing of a final

order. In addition to the aforesaid, SEBI also passed orders against other companies which is extracted herein below:-

â??11. Companies who are clients of Sharepro are directed to conduct a thorough audit of the records and systems of Sharepro with respect to

dividends paid and transfer of securities to determine whether dividends have been paid to actual / beneficial holders and whether securities have been

transferred as per the provisions of law. This audit should cover the dividends paid / transfers effected within the preceding at least 10 years. The

audit directed above shall be completed by the companies within a period of three months from the date of this order and thereafter a report shall be

submitted to SEBI by the companies in that regard. Further, within a period of six months from the date of this order, the companies shall take

appropriate action, in cases where violations are observed, in accordance with the provisions of law and inform SEBI accordingly.

12. Companies who are clients of Sharepro are also advised to carry out / switchover their activities related to a registrar to an issue and share

transfer agent, either in-house or through another registrar to an issue or share transfer agent registered with SEBI. Sharepro shall provide the

requisite cooperation to these companies for the purpose.â??

2. Based on the aforesaid directions the appellant vide letter dated August 26, 2016 applied for waiver of conducting an audit of records of Sharepro

on the ground that the Company had only 25 shareholders and that only a couple of transactions had taken place in the last 10 years and that the

Company had not declared any dividend for last 10 financial years. On this basis, the appellant requested SEBI to reconsider and waive the direction

for conducting auditing of records.

3. Instead of considering the application and passing orders on it, Adjudicating Officer (â??AOâ?? for short) issued a show cause notice to show

cause as to why penalty should not be imposed for not complying with the directions issued by the Whole Time Member (â??WTMâ?? for short) by

its order dated March 22, 2016. The AO after considering the reply passed the impugned order imposing a penalty of Rs. 1 lakh holding that since the

appellant did not comply with the orders of the WTM the penalty was justified.

4. The appellant being aggrieved by the said order has filed the present appeal.

5. Similar order was passed by the AO in Appeal No. 19 of 2019.

6. Having heard Shri Nirman Sharma, the learned counsel for the appellant and Shri Vishal Kanade, the learned counsel for the respondent SEBI and,

from a perusal of the affidavit filed by the respondent we find that admittedly no orders were passed by the respondent on the application of the

appellant seeking waiver of the directions issued by the WTM. We are of the opinion that once an application has been filed seeking waiver of the

audit of records for whatever reasons it was incumbent upon SEBI to atleast consider and pass appropriate orders. In our opinion, without passing any

order on the appellantâ??s application for waiver of audit of records, the initiation of the adjudication proceedings is violative of principles of natural

justice.

7. Thus, on this short ground the impugned orders passed by the AO cannot be sustained and are quashed. Both the appeals are allowed. It will be

open to SEBI to proceed afresh for non-compliance of the order dated March 22, 2016 passed by the WTM only after disposal of the waiver

application for conducting audit of records filed by the appellant. No orders on costs.