(2022) 08 SEBI CK 0035

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 345, 346 Of 2022, Appeal No. 189 Of 2022

Telecanor Global Limited And Others — APPELLANT

Vs

BSE Limited — RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 31, 29(2), 29(3), 31A, 34

Citation : (2022) 08 SEBI CK 0035

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

Bench : Full Bench

Advocate : Saurabh Bachhawat, Deepak Dhane, Tomu Francis, Zarnaab Aswad

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.

2. The present appeal has been filed questioning the validity of the order dated 22nd September, 2021 whereby the application for waiver of the fine imposed by BSE Ltd. (hereinafter referred to as 'BSE') was partially rejected.

3. The facts leading to the filing of the present appeal is, that the Company is a listed Company registered under the Companies Act. Vide emails dated 25th June, 2020, 4th September, 2020 and 14th December, 2020, the appellant no.1 received emails from the respondent intimating the appellant regarding non-compliance of Regulations 31, 29(2) and 29(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the 'LODR Regulations') pursuant to which penalties were imposed and required the appellant to deposit the penalty. Since

the appellant did not deposit the fine the respondent accordingly directed the depositories to freeze the demat account of the promoters of the appellant Company no.1 as a result of which the demat account of appellant no.2 was also frozen being a promoter.

4. The records indicate that in December, 2020 the appellant filed an application with BSE seeking reclassification of the promoters under Regulation 31A of the LODR Regulations. In response to the said application, the respondent informed the appellant that the application for reclassification of the promoter would only be considered upon payment of the outstanding fines and requested the appellant Company to make payment of the annual listing fees to enable the respondent to consider the application for reclassification of the promoters.

5. Thereafter, the appellant filed an application for waiver of the fine which was partly acceded to by the impugned order.

6. We have heard Mr. Saurabh Bachhawat, Advocate assisted by Mr. Deepak Dhane, Advocate for the appellants and Mr. Tomu Francis, Advocate assisted by Ms. Zarnaab Aswad, Advocate for the respondent.

7. The only contention raised by the appellant is with regard to the imposition of fine for non-filing of the annual report and consequently, violation of Regulation 34 of the LODR Regulations. It was contended that on account of a technical glitch the appellant Company could not upload the annual report and, accordingly, had informed one employee of the respondent who at the relevant time was looking after the compliance of Regulation 34. It was contended that physical copy of the annual report was filed before BSE which was sufficient compliance of Regulation 34.

8. This request for waiver of fine was not acceded to by the respondent. We find that under waiver policy issued by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') the Company is required to disclose to the respondents the events that prevented the Company from filing of compliance as provided under the LODR Regulations either immediately or as soon as possible. In the instant case, it has been alleged that on account of technical glitch on the respondent's website the annual report could not be uploaded and the same was informed to an employee of the respondent who was at that point of time looking after the compliance relating to Regulation 34 of the LODR Regulations. We find that the request for waiver of fines as provided by the appellant in its application was due to "lack of knowledge, due to some technical and non-professional approaches of some of the agencies and professionals with the Company resulted in delaying the compliance filed by the Company".

9. We find that the reasoning given in the application is different and distinct from the ground urged before us. Further, such reasons does not come within the permissible waiver policy prescribed by SEBI.

10. In view of the aforesaid, the fine for non-filing the annual report and,

consequently, violation of Regulation 34 of the LODR Regulations does not suffer from any error of law.

11. Insofar as appellant no.2 is concerned, the appellant is a promoter and the demat account was rightly frozen on account of non-payment of the fines by the Company. So long as the fines are not paid the respondent were entitled to freeze the demat account of the promoter. Insofar as the application for reclassification of the promoters is concerned, the respondent was justified in not processing the same as we find that the same can only be processed once the outstanding dues are cleared by the Company.

12. In view of the aforesaid, we do not find any error in the impugned order passed by the respondent. The appeal fails and is dismissed with no order as to costs. Misc. application no.345 of 2022 is also disposed of accordingly.

13. 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.