
(2022) 07 SEBI CK 0086

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1322 Of 2021, Appeal No. 750 Of 2021

V. B. Industries Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 11(2)(i)

Citation : (2022) 07 SEBI CK 0086

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

Bench : Full Bench

Advocate : Vinay Chauhan, KC Jacob, Harish Khedekar, Dhvani Asher, Gaurav Joshi, Chirag Shah, Daksha Kasekar

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

Misc. Application No. 1322 of 2021

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

Appeal No. 750 of 2021

2. The present appeal has been filed against the order dated July 08, 2021 passed by the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) restraining the appellants from accessing the securities market and further prohibiting them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of one year. The appellants were further imposed with penalties of different amounts totaling Rs. 67 lakhs.

3. The appellant is a trading company and deals in investment in infrastructure

development, investment in shares/ securities and also renders consultancy and advisory services on various financial products.

4. The facts leading to the filing of the present appeal is, that on June 09, 2017 the Ministry of Corporate Affairs issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the SEBI Act and its Regulations. Based on the said letter, SEBI issued an order dated August 07, 2017 placing trading restrictions on the appellant-company and its Directors. This order was challenged by the appellants in Appeal No. 251 of 2017 which was disposed of by an order dated September 11, 2017 directing the appellant to make an appropriate representation. Subsequently, based on further investigation, SEBI passed an interim order dated November 09, 2017 which included a direction to conduct a Forensic Audit with regard to the affairs of the Company. The said order was subsequently confirmed by an order dated October 05, 2018.

5. Based on the Audit Report a show cause notice was issued. The broad charges in the show cause notice are as under:-

(a) Violation of LODR due to misrepresentation including financials and misuse of funds/ books of accounts.

(b) Non- furnishing of information to the Forensic Auditor.

(c) Violation of other provisions of LODR Regulations and;

(d) Violation of PFUTP Regulations.

6. The WTM after considering the replies of the appellants and the material evidence on record concluded that the appellants misrepresented its financials and violated the accounting standards. The WTM also found that various provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" for convenience) was not complied with during the three financial years and there were lapses on the part of the Company in not making the disclosures within the stipulated period. The WTM further found that non-furnishing of information to the Forensic Auditor was violative of Section 11(2)(i) of the SEBI Act. The WTM further found that there was no violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations, 2003" for convenience) as there was no misappropriation of the funds nor the Company or its Directors had played a fraud upon the investors nor was there any disproportionate gain or unfair advantage nor any specific loss was incurred by any investor. The WTM accordingly, for the above violation, debarred the appellants from accessing the securities market for a period of one year and imposed different amounts of penalties on the appellants.

7. We have heard Shri Vinay Chauhan, the learned counsel for the appellants and Shri Gaurav Joshi, the learned senior counsel for the respondent.

8. The learned counsel for the appellants fairly conceded that the Company had made certain lapses and failed to comply with the LODR Regulations within the stipulated period. The learned counsel however contended that the lapse committed by the Company was not intentional but such lapses occurred on account of procedural and technical issues. The learned counsel also contended that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the WTM has given a clear finding that there is no violation of the PFUTP Regulations and that there is no diversion of the funds nor there is any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor. In the absence of any specific loss being caused to anyone it was contended that the penalty imposed in the given circumstances was totally disproportionate to the alleged violation apart from being harsh and excessive.

9. On the other hand, the learned senior counsel for the respondent contended that the violation was grave and, consequently, the directions and the penalties imposed by the WTM were just and proper.

10. Upon a perusal of the findings, we find that a clear finding has been given that there is no misappropriation of the funds of the Company nor there is any manipulation in the price of the scrip. Further, no fraud has been played by the Company and its Directors to its investors and shareholders. Further, finding given is, that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellants nor any specific loss was caused to any investor.

11. Thus, in the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of fund, we are of the opinion that the directions of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive.

12. In the instant case, the appellants were debarred from accessing the securities market for a period of one year w.e.f. July 08, 2021 this period of debarment has already been undergone by the appellants. Consequently, no further orders are required to be passed on this score. In so far as the penalty is concerned, we are of the opinion, that the quantum is harsh and excessive and does not commensurate with the alleged violation of non-disclosure under the LODR Regulations. Since no disproportionate gain was caused to any person nor caused any loss to any investor nor caused any unfair advantage to the Company or its Directors we are of the opinion that the penalty should be reduced by 75% meaning thereby that a penalty of 25% of the penalty imposed by the WTM would be just and proper in the circumstances of the case.

13. Accordingly, while affirming the violation committed by the appellants, we reduce the penalty to 25% of the penalty imposed by the WTM. The appeal is partly allowed. In the circumstances of the case, parties shall bear their own

costs.

14. 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.