BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.54 of 2013

Date of Decision: 10.5.2013

Kanel Industries Ltd.
(Formerly Known as Kanel Oil &
Export Industries Ltd.)
203, 2nd Floor, Abhijeet-1,
Near Mithakhali Six Road, Ellisbridge,
Ahmedabad – 380006. …… Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Prakash Shah, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Akhilesh Singh, Advocate for Respondent.

CORAM : Jog Singh, Member
A.S. Lamba, Member

Per : Jog Singh (Oral)

The appellant is a public limited company incorporated under the Companies Act, 1956. From 1992 onwards it was carrying on the business of commercial trading and distribution mainly in castor oil. Somehow, it became a sick industrial unit in 2003. The trading of shares which were listed on various exchanges like Bombay Stock Exchange, Ahmedabad Stock Exchange, Calcutta Stock Exchange and Jaipur Stock Exchange. Trading in the shares remained suspended from January 2003 onwards. Somehow, the said trading in shares has resumed from October, 2011 at BSE. The appellant also approached BIFR for its revival and rehabilitation but its application was rejected. The High Court, however, on appeal remanded the matter to BIFR. It is noted from the record that on January 19, 2010, on remand by the Hon'ble High Court of Delhi, BIFR has appointed IDBI as Official Assignee to inspect the unit and submit the report.

Further records in this case are not available. The issue in the present case pertains to indifferent attitude and delay shown by the appellant in redressing the grievances of about 64 investors. On noticing this aspect, respondent SEBI issued notice to the appellant on 16th February, 2010 under Rule 4(1) of the Adjudication Rules as to why an enquiry should not be conducted against the company and penalty should not be imposed under sections 15C and 15A(a) of the Securities and Exchange Board of India Act, 1992 (SEBI Act). The reply was, however, filed by the appellant on 9th June, 2011. Personal hearing was also afforded to the appellant. After affording reasonable opportunity of hearing to the appellant, SEBI came to the conclusion that the appellant was liable to pay a monetary penalty of ` 5,00,000/- of violation of Sections 15C and 15A(a) of the SEBI Act. This was done by the Adjudicating Officer under section 15 I of the SEBI Act read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

2. Both the parties have been heard in the matter at length and the pleadings brought on record have been perused minutely. The case of the appellant is that it has redressed the grievances of all the investors even before the impugned order was passed by the learned Adjudicating Officer. The learned counsel for the appellant Shri Prakash Shah, further submits that out of 64, complaints 32 pertain to dividend which was about ` 3,800/-. Similarly, there were other minor grievances of the remaining investors. It is submitted on behalf of the appellant that due to acute shortage of staff and infrastructure, the grievances could not be redressed in time as required by SEBI in its notices. However, despite the difficulties faced by the appellant company, the grievances were resolved in the year 2011 itself. All these factors are stated to have been ignored by the Adjudicating Officer in the impugned order dated 6th December, 2012.

3. On the other hand, Shri Prateek Seksaria, learned counsel for SEBI submits that it is not the question of delay involved in the matter, rather it is a question of non compliance with the orders issued by SEBI under section 15C of the SEBI Act read with other relevant provisions within the time limit. It is submitted on behalf of SEBI that it is a serious matter and such violators should not go unpunished.

4. After hearing both the learned counsel for the parties we are of the considered opinion that the redressal grievance mechanism envisaged under SEBI Act is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it by the Parliament in the SEBI Act, 1992. Section 11 of the SEBI Act categorically says that one of the most important objects of SEBI is to protect the interest of investors and would, undoubtedly include timely redressal of grievances of investors. There can be no dispute with this proposition of law. However, in the present case we note that the company was admittedly been a sick industrial company. It had financial constraints. Its inability to appoint a full time company secretary is also evident from the record even fees to the share transfer agent, NSDL and CDSL could not be arranged. According, to our considered view these are important factors which should have motivated the Adjudicating Officer to impose a lesser penalty in the matter. Therefore, in the peculiarity of the facts and circumstances of the case, we uphold the order dated December 6, 2012 in principle but reduce the said penalty to ` 2,00,000/- i.e. ` 1,00,000/- in respect of violation of section 15C and ` 1,00,000/- in respect of Section 15A(a) of the SEBI Act. With this modification of penalty, the impugned order is upheld and the appeal is dismissed. However, the appellant shall pay the said amount of ` 2,00,000/- within two months from the date of receipt of the copy of this order. No costs.

Sd/-
Jog Singh
Member &
Presiding Officer (*Offg*.)

Sd/-
A.S. Lamba
Member

10.5.2013
Prepared and compared by
RHN