# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No.14 of 2013**

**Date of decision:18/06/2013**

Lohia Polyester Ltd.
506, ITC Majura Gate,
Ring Road, Surat – 395 002,
Gujarat. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Mr. J.J. Bhatt, Advocate with Mr. Pratham Masurekar, Advocate for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Akhilesh Singh, Advocate for the Respondent

CORAM : Jog Singh, Member & Presiding Officer (*Offg.*)
A.S. Lamba, Member

Per : Jog Singh (Oral)

1. The present Appeal has been preferred by the Appellant challenging the impugned Order dated November 20, 2012 passed by the learned Adjudicating Officer imposing penalty of Rs.50,000/- on the Appellant under Section 15A(a) and a penalty of Rs.4,50,000/-under Section 15C of the Securities and Exchange Board of India Act, 1992. This was done under the powers conferred upon him by Section 15-I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules in question.

2. Briefly stated, the Respondent noticed that the Appellant had failed to furnish the required details under the Authentication for SEBI

Complaints Redress System (SCORES) within the stipulated time. Basically, the SCORES facilitates online movement of complaints to the listed companies and online uploading of Action Taken Reports (ATRs) by the concerned companies. Many investors' grievances were still pending consideration as on December 22, 2011. In view of this, SEBI repeatedly wrote letters in December, 2011, January, 2012, and February, 2012 calling upon the Appellant to do the needful in the matter of redressal of the said grievances of various investors. Nothing seems to have been done by the Appellant as such the Respondent initiated adjudication proceedings under the SEBI Act by issuing appropriate notice to the Appellant on June 15, 2012. The hearing before the Adjudicating Officer was attended by one Mr. Sanjay Kumar Lohia who is the Director of the Appellant Company and he made oral submissions in addition to the written submissions. After considering the material on record, the learned Adjudicating Officer held the Appellant guilty of allegations levelled against him in the notice and as such imposed the punishment after duly taking into consideration the factors mentioned in Section 15J of the SEBI Act. Thus, there is no flaw in the procedure followed by the learned Adjudicating Officer.

3. The learned counsel for the Appellant, Mr. J.J. Bhatt, however, submits that the company is not having any operation for the last about 13-14 years. Its business activity and financial conditions are totally bleak. The financial institutions (IDBI, State Bank of India) have since auctioned the assets including the plants, factories of the Appellant and there is nothing substantial left with the Appellant. Mr. Pawan Kumar Lohia is attending to the routine working and correspondence including handling of in-house share transfer work, investors' grievances and

other statutory duties. There are no employees to assist him. The company is still kept alive as there are about 27,000 shareholders who may be having the hope and expectation that the company may revive one day.

4. In this background, it is submitted by Shri Bhatt that there were some complaints by the investors out of which most of them were frivolous in nature. Still the Appellant tried to dispose of the same but due to factors beyond the control of the Appellant, some of the grievances could not be resolved. They were however resolved on intervention by the Respondent and as on date there is not a single complaint which needs to be addressed by the Appellant. It is also pointed out by the learned counsel for the Appellant that some of the complaints were pertaining to dividends or procedure for seeking duplicate share certificates, etc. In this connection, it is pointed out that as the Company is already in financial bad shape and there is no manufacturing activity, there is no question of paying any dividend to any of the shareholders and all of them are very well aware of this fact.

5. On the other hand, Shri Mihir Mody, learned counsel for the Respondent, submits that there is clear admission by the Appellant in the Appeal itself that they have committed a default in respect of the redressal of the grievances of investors. It is one of the important duties cast upon the SEBI to see that there is speedy redressal of grievances of investors. For this purpose, they have introduced a system called “SCORES”. The Appellant has failed to upload and do the needful as regards the complaints of various investors.

6. We have heard the learned counsel for the parties and have perused the Appeal. We note that there was a default by the Appellant in redressing the grievances on time. There cannot be dispute that timely redressal of the investors' grievances is an important aspect of the capital market. However, at the same time, we cannot be oblivious of the fact that the Appellant Company is almost a defunct company for the last almost one and half decades and there are no employees to take care of the residuary and remnants of the factory. All the assets including the plants and factory etc. have already been disposed of by the financial institutions and the Company is kept alive for the namesake. In this background too, the Appellant has tried its level best to redress grievances of the investors and has replied/solved almost all the grievances pending as on date. In view of this backdrop, we are inclined to reduce the penalty of Rs.5,00,000/- to a token amount of Rs.1,00,000/- by upholding the order passed by the learned Adjudicating Officer.

7. With the abovesaid modification of the impugned order, the Appeal stands dismissed with a direction to the Appellant to pay Rs.1 lac to the Respondent within a period of two months from today. No costs.

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

Sd/-
A.S. Lamba
Member

18/06/2013
Prepared and compared by-ddg