BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Miscellaneous Application No.8 of 2013
And
Appeal No.20 of 2013

Date of Decision : 17.6.2013

Gujarat Filaments Limited
B-204, Mile Stones Residency,
Vasna Bhayali Road, Vadodara – 390 015,
Gujarat. …… Appellant

Versus

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

Mr. Piyush Luktuke, 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)

With the consent of the parties the appeal and the Miscellaneous Application have been heard and are being disposed of by this order.

Miscellaneous Application No.8 of 2013

There is a delay of about 9 days in filing the appeal. Miscellaneous Application No.8 of 2013 has been moved by the learned counsel for the appellant. After hearing both the learned counsel and for the reasons stated in the Miscellaneous Application, the same is allowed.

Appeal no.20 of 2013

The appellant Company has preferred this appeal under Section 29 read with Section 15T of the SEBI against the impugned order dated October 9, 2012 passed by the adjudicating officer. The company submitted that the said order has been passed in an absolutely arbitrarily, unjust and improper manner and is against the provisions, letter and spirit of SEBI Act. SEBI has identified Company as one of the companies against whom certain investor complaints were long pending for redressal. Company had not furnished the required details under the Authentication for SEBI Complaints Redress System (SCORES). By circular dated August 2, 2011 SEBI has introduced a system of processing of investors' complaints in centralized web based complaints redress system, which is commonly known as 'SCORES'. Under this system a centralized database of all the complaints and their online movement to the concerned intermediaries is monitored. Similarly, online uphold of action taken reports by the concerned entities and its viewing by investors of the action on the complaints and their current status etc. all are displayed. SEBI initiated adjudication proceedings against the Company to inquire and adjudge the alleged violations of the provisions as mentioned under 15C and 15A(a) of the SEBI Act. SEBI has imposed a penalty of Rs.50,000/- under Section 15A(a) and a penalty of Rs.4,50,000/- under Section 15C of the SEBI Act.

2. Briefly stated the facts of the case are that in December 2011 SEBI found that five investors' grievances were pending and not redressed for the preceding five to seven years or so from the commencement of the SCORES. Accordingly, letters dated December 22, 2011, January 21, 2012 and February 10, 2012 were issued by the SEBI to the Company to redress the said complaints. SEBI further sought certain information from the appellant by letters dated October 11, 2011, November 22, 2011 and January 16, 2012 in terms of circular dated June 3, 2011.

On not receiving any satisfactory reply from the appellant, SEBI appointed adjudicating officer on April 16, 2012 to enquire into the whole matter as per law. A show cause notice dated June 15, 2012 was issued and the same was replied to the appellant on July 17, 2012. On July 20, 2012 the appellant was also submitted the authentication as required under SCORES. The adjudicating officer, however, being not convinced with the replies submitted by the appellant and issued a letter dated August 13, 2012 for personal hearing. Admittedly, the appellant did not attend the same instead he sent written submissions on August 22, 2012 stating that he had already redressed the grievances of the complainants. He also gave various details of 15 such complaints, including the five referred to by the SEBI in its earlier letters.

3. Another opportunity of personal hearing on September 20, 2012 was granted. Again, the appellant did not appear and reiterated his submissions made on August 22, 2012. Ultimately, the adjudicating officer concluded the enquiry proceedings against the applicant and by impugned order dated October 9, 2012 imposing a penalty of Rs.50,000/- under Section 15A(a) and a penalty of Rs.4,50,000/- under Section 15C of the SEBI Act, 1992.

4. Challenging the above said impugned order, the appellant submitted that M/s. Gujarat Filaments Ltd. is engaged in the business of manufacturing and processing of various Man made Fibers & Yarns as set out in Clause III A 1 to 5 of the Memorandum of Association of Company and was for that purpose established industrial unit at Halol, Dist. Baroda. The authorised share capital of the Company is Rs.11,00,00,000/-. Paid up capital of the Company is Rs.9,54,09,210/-. After incorporation, the Company has been doing business as mentioned above and regularly depositing its due returns with the Registrar of Companies, Gujarat as per the provisions of the Companies Act, 1956, complying with various clauses of Listing agreement of stock exchanges and redressal of investors' complaints from

time to time. Due to severe financial crises and various legal cases by the parties and financial institutions, the operations of the Company had to be stopped due to the injunctions of Hon'ble High Court Mumbai and Debt Recovery Tribunals of Mumbai & Ahmedabad since June 1999. The Company tried to bring the situation under control and were initially successful. During this period the Company continued to incur huge expenses the bankers did not provide working capital to the Company. The Board of Directors of the Company, thus, arrived at a conclusion that the net worth of the Company might have eroded. The Company is managed by Mr. K. N. Misra, who is stated to be a technocrat, having background in production and research only without any detailed knowledge or exposure to intricacy of accountancy.

5. In nutshell the submission of the appellant is that all the complaints in question had already been resolved before the passing of the impugned order on October 9, 2012. Therefore, the same is not warranted by law or on facts, he, therefore, contended that the said order should be quashed and set aside.

6. Shri Piyush Luktuke, learned counsel for the appellant submits that the remaining four grievances of investors have also since been redressed. This has been brought on record by way of an affidavit dated 29th April, 2013. Original receipts of letters dispatched by the appellant to the investors have also been shown to the Tribunal in this regard.

7. We have heard both the learned counsel for the parties and have perused the pleadings and documents. At the outset we note that the Adjudicating Officer has conducted the proceedings against the appellant as per law. The principles of natural justice have been followed by him. We, therefore, do not find any legal infirmity in the impugned order. However, we also note that the Company is definitely a sick Company and its financial condition is extremely poor. We also note that all the grievances in question have since been redressed by the appellant.

In view of this, we are of the considered opinion that this is a fit case where we should exercise our discretion to reduce the amount of penalty to a token amount by partially modifying the impugned order.

In this background, we dispose of the present appeal by reducing the penalty to Rs.1 lac only but upholding the impugned order passed by the Respondent. It is also made clear that in case any grievance is still remaining, the Respondent would be at liberty to take appropriate action as per law against the appellant. With the above directions, the appeal stands disposed of with liberty as mentioned above. No costs.

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

Sd/-
A.S. Lamba
Member

17.6.2013
Prepared and compared by
RHN