BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 19.03.2014

Appeal No. 178 of 2013

Usha (India) Limited
Village Gujartola,
Amethi Road,
Gauriganj,
District Sultanpur- 227 409 …Appellant

Versus

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

Mr. B. V. Dhoria, Advocate for the Appellant.

Mr. Chirag Balsara, Advocate with Mr. Pratham V. Masurekar, Advocate for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge ex-parte adjudication order passed by the Adjudicating Officer of Securities and Exchange Board of India ("SEBI" for short) against the appellant on April 18, 2013.

2. By the aforesaid order penalty of ₹ 26,33,000/- (Rupees Twenty Six Lacs Thirty Three Thousand Only) is imposed upon appellant for not redressing various investor grievances received by SEBI and forwarded to the appellant from time to time since 2005.

3. Mr. Dhoria, learned counsel appearing on behalf of appellant submitted that the reasons for alleged non-compliance of investor grievances were inter alia on account of appellant company being a defunct company with huge financial losses as a result of which workers of the appellant company took over management of the company in the year 2002 by removing the erstwhile Directors of the company. Moreover, sometime in December 2006, Indian Bank with a view to recover its dues payable by appellant, took possession of premises at 12/1, Mathura Road together with the factory as also plant and machinery standing thereon under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sold the same in auction on January 23, 2007. As a result the auction purchaser is in possession of all records of the company lying in the aforesaid premises. In these circumstances, it is submitted by counsel for appellant that alleged grievances of investors could not be redressed by the appellant company.

4. Mr. Dhoria, further submitted that the appellant company was never served with any letter/notice in respect of alleged investor grievances, because, neither the employee/workers controlling the management of the company nor the auction purchaser who is in possession of the factory premises have forwarded letter/notice if any, received from SEBI to the current Directors of the appellant company and, therefore, impugned order which is passed ex-parte is liable to be quashed and set aside.

5. We see no merit in the above contentions.

6. On perusal of the impugned order, it is seen that by a letter dated April 23, 2005, SEBI had forwarded list of 35 investor grievances and called upon the appellant to resolve grievances of investors within 30 days from date of receipt of that letter. Since no action was taken, SEBI issued another letter on August 21, 2007 calling upon appellant to resolve investor grievances which by then had increased from 35 grievances to 224 grievances. Since no action was taken SEBI once again issued another notice on October 29, 2010 calling upon the appellant to redress 338 investor grievances within the time stipulated therein. Since no action was taken, SEBI issued another letter/reminder on February 21, 2011 advising the appellant to resolve the grievances and to submit the action taken report within 30 days from the date of receipt of reminder letter. Thus, it is evident that since 2005 no action has been taken by appellant to redress grievances of investors inspite of repeated letters addressed by SEBI in that behalf.

7. In these circumstances, show cause notice dated October 30, 2012 was issued to the appellant with a view to take action against the appellant for non-compliance of investor grievances. The said show cause notice was, however, returned undelivered with the remark “firm closed”. Thereupon, fresh notice was issued on December 6, 2012 fixing personal hearing on December 20, 2012. The said notice was duly served and proof of service is available on the record of SEBI. As there was no response, yet another notice was issued on January 3, 2013

fixing personal hearing on January 10, 2013. Since none appeared on the appointed day impugned order has been passed imposing penalty upon the appellant.

8. From aforesaid facts, it is clear that investor grievances have not been attended to since 2005 till date inspite of various letters addressed by SEBI from time to time.

9. Contention that the appellant company has been taken over by the employees of the appellant company in the year 2002 and that the factory premises along with plant and machinery are in possession of the auction purchaser since 2007 does not in any way absolve the company from its obligation to redress the investor grievances. So long as the company exists as a juristic person it is obliged to redress grievances of the investors from time to time. Failure to redress investor grievances inspite of repeated letters/reminders issued by SEBI from time to time would entail penal consequences.

10. Argument that the appellant company has not received any notice/letter/reminder from SEBI is totally vague and bereft of any merit, because, firstly in the impugned order it is specifically recorded that SEBI has proof of service of notice and authenticity of that proof has not been disputed. Secondly, argument of appellant that the letter/notice of SEBI, if any, received by the workers manning the company/auction purchaser have not been forwarded to the current Directors of the company contradicts their first argument that no notice has been served upon the company. Once persons manning the

appellant company have received letters/notices issued by SEBI at the premises of the company then the service is complete and it would not be open to the appellant to contend that notices/letters addressed by SEBI have not been received by the appellant. Moreover, there is nothing on record to show that the workers manning the company/ auction purchaser have denied to have received any notices/letters from SEBI. Therefore, argument of appellant that notices/letters have not been received by appellant cannot be accepted.

11. It is interesting to note that the appellant while contending that various notices/letters/reminders issued by SEBI have not been received by the appellant claims to have received the impugned order. If impugned order sent at the address of the company is received by appellant, there is no reason as to why other notices/letters addressed by SEBI at the very same address should not be received by the appellant.

12. In any event, even after receipt of the impugned order dated April 18, 2013, no effort has been made to redress even a single investor grievance till date. Even before us no request is coming from the counsel for appellant seeking time to redress investor grievances. In fact, in ground 'O' of the memorandum of appeal, it is stated as follows:

> *O. For that the Appellant Company has been management less and three has been serious mess in the affairs of the Appellant Company since 2002 onwards. Hence, it seems that due to above said reasons the Appellant Company bonafidely may not be able to look into alleged grievances of the investors though it was never made aware about such grievances.*
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> *(emphasis supplied)*

13. In these circumstances, we see no reason to interfere with the order passed by the Adjudicating Officer of SEBI, on April 18, 2013.

14. Accordingly, the appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

19.03.2014
Prepared & Compared By: PK