BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 12.06.2014

Appeal No. 119 of 2014

Hybrid Financial Services Limited
(Formerly known as Mafatlal
Finance Company Ltd.)
Unit No. 17, "A" Wing, 2nd Floor,
Raj Indl Com. Premises Coop. Society Ltd.
Military Road, Marol,
Andheri- 400 093 …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. K. Chandramouli, Director for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. Whether the Adjudication Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) by his order dated March 25, 2014 is justified in imposing penalty of ₹ 8 lacs for the delay in making disclosures under Regulation 8(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("SAST Regulations, 1997" for short) is the question raised in this appeal.

2. Delay in making disclosures under Regulation 8(3) of SAST Regulations, 1997 for the period from 1998 till the year 2007 is set out in para 4 of the impugned order as follows:-

Sr. No.	Regulation/Sub-regulation	Due Date of Compliance	Actual Date of Compliance	Delay (days)
1.	8(3)	30.04.1998	07.05.2007	3,294
2.	8(3)	30.04.1999	07.05.2007	2,969
3.	8(3)	30.04.2000	07.05.2007	2,563
4.	8(3)	30.04.2001	07.05.2007	2,198
5.	8(3)	30.04.2002	07.05.2007	1,833
6.	8(3)	30.04.2003	07.05.2007	1,468
7.	8(3)	30.04.2004	07.05.2007	1,102
8.	8(3)	30.04.2005	07.05.2007	737
9.	8(3)	30.04.2006	10.10.2006	163
10	8(3)	30.04.2007	07.05.2007	7

3. Mr. K. Chandramouli, Director of the appellant company has fairly stated that there has been delay in making disclosures for all the years set out above. However, he submitted that in the facts and circumstances of the present case imposition of penalty of ₹ 8 lacs is unjustified because firstly, delay in making disclosures has not prejudicially affected the investors as the information was always available due to reports of shareholding pattern filed with the Exchange in compliance with Clause 35 of the listing agreement. Secondly, since SEBI in the case of M/s. Kamalakshi Finance Corporation Ltd. has levied penalty of ₹ 50,000/- for violation of Regulation 8(3) of SAST Regulations, 1997 for the years 2001 to 2011 and has levied penalty of ₹ 1 lac on Gupta Carpet International Ltd. for failing to comply with Regulation 6(2), 6(4) and 8(3) of SAST Regulations, 1997 for the years 1998 to 2011 there is no reason for imposing penalty of ₹ 8 lac on the appellant.

Thirdly, it is submitted that the delayed disclosure occurred due to incorrect, flawed and mistaken understanding and interpretation of the regulations and hence lenient view be taken.

4. We see not merit in the above contentions. Argument of the appellant that delay has not prejudicially affected the investors because the information was always available due to reports of shareholding pattern filed with the Exchanges in compliance with Clause 35 of the listing agreement has no merit, because, obligation to make disclosure under Regulation 8(3) of SAST Regulations, 1997 is independent of the obligation under Clause 35 of the listing agreement. Similarly, argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory.

5. Arguments of the appellant that the delay in making disclosures occurred due to the incorrect, flawed and mistaken understanding and interpretation of Regulation 8(3) of SAST Regulations, 1997 is also without any merit because plain reading of Regulation 8(3) of SAST

Regulations, 1997 makes it clear that the obligation to make disclosure by persons holding 15% and more shares is not only when there is change in shareholding but also when there is no change in the shareholding. Therefore, even if, there was no change in the shareholdings it was obligatory on the part of the appellant to make disclosures in each of the financial years. Since disclosures have not been made in all the years set out hereinabove, it is evident that penalty imposable at the rate of ₹ 1 lac per day would be ₹ 1 crore for each year and therefore imposition of penalty of ₹ 8 lac for all the 10 years in question which effectively comes to less than ₹1 lac per year, cannot be said to be unreasonable or arbitrary or excessive.

6. Reliance was placed by the Director of the appellant company on a decision of the Apex Court in the case of Price Waterhouse Coopers Pvt. Ltd. vs. Commissioner of Income Tax (Civil Appeal No. 6924 of 2012 decided on September 25, 2012). That decision has no bearing on the facts of present case because firstly, that decision relates to imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961 whereas in the present case penalty is imposable under Section 15A(b) of the SEBI Act, 1992 for violating Regulation 8(3) of SAST Regulations, 1997. Secondly, penalty under Section 271(1)(c) is imposable where the assesse has concealed the particulars of his Income Tax or furnished inaccurate particulars of Income Tax. In the case before the Apex Court findings of fact recorded is that the assesse has neither concealed its income nor furnished inaccurate particulars of income and hence it was

held that the penalty was not imposable. In the present case, admittedly appellant has violated Regulation 8(3) of SAST Regulations, 1997 for which penalty under Section 15A(b) of SEBI Act, 1992 at the rate of ₹ 1 lac per day would come to ₹ 1 crore per year for 9 years and ₹ 7 lacs for the 10th year. However, the AO after considering all mitigating factors has imposed penalty of ₹ 8 lacs for all years which cannot be said to be perverse or unreasonable.

7. For all the aforesaid reasons, we see no reason to entertain the present appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

12.06.2014
Prepared & Compared By: PK