WTM/GM/CFD/73/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of Hon'ble Securities Appellate Tribunal order dated September 19, 2019 in the matter of W.S. Industries (India) Limited and the application under Regulation 102 read with Regulation 101 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 seeking waiver of fine imposed by Bombay Stock Exchanges Limited and National Stock Exchanges of India Limited for non-compliance with Regulations 17(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In respect of:

Applicant
W.S. Industries (India) Limited

Background

1. The Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE) had passed orders against the W.S Industries (India) Limited ("Applicant") for having violated the provisions of Regulation 17(1) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR"). The orders were passed against the Applicant for failure to appoint a woman director in the Board of Directors of the Company. The details of the orders passed against the Applicant is given below,-

Quarter Ending	BSE		NSE	
	Order Date	Fine Amount (Rs.)	Order Date	Fine Amount (Rs.)
September 2018	October 31, 2018	5,42,800	November 05, 2018	5,42,800

December 2018	January 31, 2019	5,42,800	January 31, 2019	5,42,800
March 2019	May 02, 2019	171100	May 02, 2019	171100

2. The fines were imposed on Applicant by the stock exchanges under the framework of the *Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities* circular dated May 03, 2018("SOP Circular") issued by SEBI. As per the Annexure – 1 to the Circular, a fine of Rs. 5000/- per day was prescribed for violation of Regulation 17(1) of LODR Regulations.

3. The Applicant preferred an appeal (Appeal No. 8 of 2019) before the Hon'ble Securities Appellate Tribunal ("SAT") against the orders passed by the stock exchanges. SAT vide order dated September 19, 2019 ("SAT Order") directed the Applicant to make representation before SEBI giving the grounds for reduction / waiver of the fine imposed under Regulations 17(1) of the LODR Regulations. SAT also directed SEBI to consider and decide the issues as stated in the representation after giving an opportunity of hearing to the Applicant.

4. An opportunity of personal hearing was granted to the Applicant on February 17, 2020, where the it was represented by Mr. B. Swaminathan, Chief Financial officer and Company Secretary, and Ms. Lakshmi Subramanian, Authorised Representative. The Applicant also submitted written submissions dated October 14, 2019.

Reply of the Applicant

5. The summary of written and oral submissions/replies made by the Applicant is as follows:

i. The company was incorporated on August 23,1961 and is involved in the manufacture of porcelain insulators for application in electrical high voltage manufacturing operations.

ii. From the year 2010, due to escalation in the price of raw material, components and fuel, coupled with severe competition from China, the Company started making severe losses.

iii. The Company's net worth had completely eroded during the period ended September 30, 2014 necessitating the Company to file a reference before the Board of Industrial Finance Reconstruction for determination of the measures to be adopted for revival of the Company.

iv. Due to continuing losses and the erosion of net worth, the Company was unable to repay the financing facilities which it had availed from banks and financial institutions.

v. On December 25, 2015, Ms. Hema Pasupatheeswaran, the only woman director on the Board of Directors of the Company submitted her resignation to the Company.

vi. Even during the 6-month period ended March 31, 2015, and the financial years 2016, 2017 and 2018 the company was making operational losses.

vii. Due to the continuing operational losses and the extant financial position of the Company, the Applicant had not been able to find any suitable candidate as replacement for the woman director who had resigned.

viii. The Company had deposited all the penalties levied by BSE and NSE to the tune of Rs. 25, 13, 400/- under protest to avoid any further action.

ix. BSE and NSE had failed to appreciate that while exercising quasi-judicial powers it is required to give an opportunity of hearing to the Company to rebut the allegations against it and to make submissions and present its case.

x. SEBI circular does not stipulate that the stock exchanges are required to mechanically levy penalty without any application of mind. The exchanges have mechanically imposed the penalty twice over for the same alleged violation without any application of mind.

xi. Regulation 102 read with Regulation 101 of LODR permits SEBI to waive strict enforcement of any fine or penalty or any other action imposed by the Stock Exchanges on account of non-compliance of Regulation 17(1) of LODR by listed entities, due to the factors which are beyond the control of the Company.

xii. The Impugned Orders fail to take into account that even Section 149 of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 which deals with the appointment of woman director provides that any vacancy of a woman director may be filled up within 3 months or the date of next board meeting from the date of such vacancy of woman director.

xiii. The Impugned Orders, by duplicating the penalty/fine, have in effect subjected the Company to double jeopardy.

xiv. The exchanges have failed to appreciate that the Company has been suffering losses for the last few years but is trying to revive the business operations of the Company and the Impugned Orders have serious consequences on the revival of the Company and adversely affect the 8,365 public shareholders of the Company.

xv. In view of the above, the Company requests waiver of penalty imposed by BSE and NSE. In case of non- waiver, Company seeks either a reduction in the penalty imposed or imposition of only one fine by either of the exchanges.

Consideration

6. The SAT vide its Order dated September 19, 2019 had directed the Applicant to file a representation before SEBI under Regulation 101 of LODR giving the grounds for reduction/ waiver of the fine imposed under Regulation 17(1) of LODR. SAT had also directed that the Applicant shall raise as a ground, in the representation, as to whether stock exchanges can impose separate fines for the same violation. The relevant part of the SAT Order reads as:

"7. We accordingly dispose of the matter directing the appellant to file a representation under Regulation 101 of the LODR Regulations before SEBI within four weeks from today giving the grounds for reduction / waiver of the fine imposed under Regulations 17(1) of the LODR Regulations. The appellant will also raise a ground as to whether one set of fine could be imposed for violation of Regulation 17(1) or the Stock Exchanges can impose separate fines for the same violation. Upon receipt of the representation SEBI will consider and decide the issues as stated in the representation after giving an opportunity of hearing within six weeks thereafter"

7. Accordingly, the Applicant has filed a representation dated October 14, 2019 before SEBI under regulation 102 read with regulation 101 of the LODR requesting waiver of the fines imposed by BSE and NSE.

8. I note from the information available on record that the Applicant was listed on both BSE and NSE, and the exchanges had cumulatively levied a fine of Rs. 25,13,400 on the Applicant for failure to appoint a woman director as mandated under Regulation 17(1) of LODR. It is noted from the reply of the Applicant and the submissions made during the oral hearings, that it is an admitted fact that there was a failure on the part of the Applicant

to have a woman director on the Board for the period for which fine has been levied by the exchanges. It is noted that the Applicant is aggrieved by

i. the quantum of fine levied by the exchanges;

ii. the issue of both the exchanges separately imposing fines for non-compliance with Regulation 17(1) of LODR, and

iii. the procedure followed by the stock exchanges for levying fines under the SOP circular without granting an opportunity of hearing.

9. Notification of the LODR in 2015 marked a paradigm shift in the corporate governance framework in the country as the regulations envisaged a uniform code of obligations, in line with the global best practices contained in IOSCO principles, which were applicable to all listed entities. The Regulations put in place a framework where the primary responsibility for monitoring compliance was assigned to the stock exchanges. In terms of Regulation 97 of the LODR Regulations, recognised stock exchanges have been mandated to monitor the compliance, by entities listed on such exchanges, with the provisions of the regulations. Exchanges were simultaneously also empowered to take action on listed entities for non-compliances. Regulation 98 provides that any listed entity which contravenes the provisions of the regulations shall be liable for action by the respective stock exchanges where they are listed in the manner specified in circulars or guidelines issued by SEBI. Regulation 97 and 98 of the LODR read as under,-

"Monitoring of Compliance/Non Compliance & Adequacy/ Accuracy of the disclosures

97. (1) The recognised stock exchange(s) shall monitor compliance by the listed entity with provisions of these regulations.

(2) The recognised stock exchange(s) shall also monitor adequacy/accuracy of the disclosures made by listed entity with respect to provisions of these regulations.

(3) The recognised stock exchange(s) shall submit a report to the Board, with respect to the obligations specified in sub-regulations (1) and (2), in the manner specified by the Board.

(4) The recognised stock exchange(s) shall put in place appropriate framework including adequate manpower and such infrastructure as may be required to comply with the provisions of this regulation.

Liability for contravention of the Act, rules or the regulations.

98. (1) The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the Board:

(a)imposition of fines;

(b)suspension of trading;

(c)freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.

(d)any other action as may be specified by the Board from time to time

(2) The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in circulars or guidelines issued by the Board."

10. Accordingly, in exercise of powers under Section 11A (2) of the SEBI Act, 1992 read with Section 9 and 21 of the Securities Contracts (Regulation) Act, 1956 and regulation 98 of the LODR, SEBI issued the SOP Circular empowering recognised stock exchanges to impose fines for non- compliance with the provisions of the LODR.

11. Annexure I to the said circular lays down the fines that are to be imposed on listed entities for violation of various provisions of the LODR. It is noted that listed entities are liable for a fine of Rs. 5,000 per day for non-compliance with the requirement pertaining to composition of the Board including failure to appoint woman directors. It is further noted that apart levying fines, the circular also provides for moving the trading in the scrips of non-compliant entities to the 'Z' Category where trades take place on a 'Trade to Trade' basis and suspending the trading in the scrip.

12. I, therefore, note that imposition of fines by exchanges is only one among the measures prescribed under the circular for dealing with non-compliances with the provision of LODR by listed entities.

13. I also note that as per the regulatory requirements prescribed under both the Companies Act and securities laws, entities which seek to get listed are mandatorily required to seek listing only on any one stock exchange having country wide terminals. Therefore, listing on multiple exchanges is a choice made by the respective companies for reasons which may include additional liquidity, visibility, access to more trading members etc. Once an entity voluntarily lists on multiple exchanges, it would have to also adhere to the additional regulatory requirements such additional listing entails.

14. It is also noted that prior to the notification of LODR in 2015, the corporate governance norms mandated for listed companies by SEBI, were contained in Clause 49 of the equity listing agreement entered into between stock exchanges and companies seeking to get listed. Even under the earlier regime, violation of corporate governance norms would have been a violation of the respective listing agreements entered into between listed entities and individual stock exchanges, and the company would have been liable for action by all the exchanges where the shares of the company are listed.

15. I, also, note that Company in its reply has stated that it was under financial distress from FY 2010-11 onwards and this was the reason for their inability to comply with regulation 17(1) of LODR. In this regard, I note that the SOP circular grants Stock Exchanges discretion from deviating from the actions prescribed therein after recording reasons. This was noted by Hon'ble SAT in the September 19, 2019 order in this matter. The stock exchanges have, however, in this matter rejected the representation made by the Applicant seeking waiver or reduction of the fine. In this regard, on a reading of Regulations 101 and 102 of LODR, I am constrained to note that financial distress is not a condition listed

therein for grant of relaxation or exemption from compliance of any provision of the LODR.

16. In view of the above, especially considering that Regulation 98 of LODR specifically provides that contravention of the provisions of LODR would attract action from the respective stock exchanges, I note that non-compliance with Regulation 17(1) of LODR would attract action from all the stock exchanges where the shares of a company are listed. I, therefore, do not find merits in the representation made by the Applicant for waiver or reduction of the fine imposed by the stock exchanges.

17. Now I proceed to consider the issue of stock exchanges imposing fines on listed entities without providing an opportunity of oral hearing. As stated in para 15, the SOP circular grants discretion to stock exchanges to deviate from the actions prescribed in the circular, after recording reasons in writing. It is noted that the stock exchanges have in this regard jointly come out with a "Policy for Exemption of Fines Levied as Per the Provisions of SEBI SOP Circular" ("Exemption Policy") which lays down the carve outs in relation to the waiver of fines. I note that the policy provides an opportunity to the listed entity to disclose to the exchange the events that prevented/impacted the compliance with provision of LODR. The policy further provides an indicative list of events that may be considered by the stock exchanges for granting waiver or reduction of fine levied under SOP. The carve outs that have been provided include natural calamities, seizure of books by regulatory authorities, impossibility of compliance, court directions and material events that are beyond the control of the company. It is further noted that the notices issued by the stock exchanges intimating the levy of fine to the respective entities also affords an opportunity to them to make representations along with documentary evidence against the fines that have been imposed. In fact, I note from the material available on record that the Applicants had made an application to the stock exchanges requesting waiver of penalty. I note that the Applicant

had mainly cited economic distress as the reason for the failure to comply with Regulation 17(1) of LODR. However, the said request was rejected by the stock exchanges stating that the reasons cited by the Applicant for waiver does not fall within the Exemption Policy jointly formulated by the stock exchanges.

18. It is a well settled principle of administrative law that hearing need not always be an oral hearing. The compliance with the provisions of LODR which are covered under the SOP circular can be established on the basis of documentary evidence. I note that stock exchanges have put in place a framework for dealing with such violations and the process followed provides an opportunity to the listed entities to make a representation, along with supporting documents, laying down the grounds for seeking waiver or reduction of the fine. In view of the above, I don't find merit in the argument raised by the Applicant that process followed by the stock exchanges for imposing fines under SOP circular is not in compliance with the principles of natural justice.

ORDER

19. I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 hereby reject the application dated October 14, 2019 for waiver of fine made by the W.S. Industries (India) Ltd.

DATE: February 28, 2020
PLACE: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA