

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 20.12.2016

**Misc. Application No. 319 of 2016
And
Appeal No. 391 of 2016**

Acalta Trading Co. Ltd.
P-1, Hide Lane, Ninth Floor,
Kolkata – 700 073.

...Appellant

Versus

Securities and Exchange Board of India
L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata – 700 017.

...Respondent

WITH

**Misc. Application No. 320 of 2016
And
Appeal No. 392 of 2016**

Abhinav Commercial Ltd.
40, Jai Bibi Road Ghushari,
Howrah – 711 107.

...Appellant

Versus

Securities and Exchange Board of India
L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata – 700 017.

...Respondent

Ms. Vaneesa Agrawal, Advocate with Ms. Surbhi Purohit, Advocate i/b
Suvan Law Advisors for the Appellant in Appeal Nos. 391 and 392 of 2016.

Mr. Durgesh Khanapurkar, Advocate with Mr. Tapasvini Shah, Advocate
i/b Juris Corp for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Jog Singh (Oral)

**Misc. Application Nos. 319 of 2016 in Appeal No. 391 of 2016 and
Misc. Application No. 320 of 2016 in Appeal No. 392 of 2016:-**

Two Miscellaneous Applications Nos. 319 of 2016 and 320 of 2016, have been filed for condonation of 70 days delay in filing the two appeals in question. For the reasons stated in these miscellaneous applications, the delay is condoned, the Miscellaneous Applications are, accordingly, allowed.

Appeal Nos. 391 of 2016 and 392 of 2016:-

1. These two appeals no. 391 of 2016 and 392 of 2016 have been filed against the impugned orders passed by the Adjudicating Officer of Securities and Exchange Board of India ('SEBI' for short) dated December 30, 2015 and December 23, 2015 respectively imposing a penalty of ₹ 1,50,000/- under Section 15 HB of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) for violating SEBI circular for non-submission of SCORES authentication to SEBI, meant for the speedy and timely disposal of investors' complaints.

2. Since both these appeals involve a common question of law and fact, with the consent of the parties, we have heard these appeals together and are being disposed of by this common order by taking Appeal No. 391 of 2016 as the lead case.

3. Relevant facts are that by Circular dated April 17, 2013 SEBI called upon all listed companies to obtain SEBI Complaints Redressal System (SCORES) authentication within the stipulated time period as prescribed by SEBI and also redress pending investor grievances, if any, within the stipulated time period. In fact, first such Circular was issued on June 3, 2011 and reinforced by Circular dated August 13, 2012 and finally Circular dated

April 17, 2013. As the appellant failed to obtain the SCORES authentication within the time stipulated in the Circular dated April 17, 2013, a letter was sent to the appellant on December 2, 2013 calling upon the appellant to submit the requisite information regarding SCORES authentication by December 18, 2013. Since the appellant failed to submit the requisite information, a show cause notice was issued to the appellant on March 6, 2015 calling upon the appellant to show cause as to why an inquiry be not held and penalty be not imposed under Section 15 HB of SEBI Act as many investors' complaints had remained without any heed for year together.

4. By the impugned order the appellant is found to be guilty of violating the provisions of the Circulars read with that of the SEBI Act, 1992. Accordingly, penalty of ₹ 1,50,000/- is imposed on the appellant under Section 15 HB of the SEBI Act. Challenging the aforesaid order present appeal is filed.

5. Learned counsel for the appellant Ms. Vaneesa Agrawal, however, while submitting that there is a delay in obtaining SCORES authentication and consequential redressal of investors' grievances states that the company had obtained SCORES authentication before receiving show cause notice in question and secondly; the delay was due to inadvertence and there was no intention to harm the interest of the shareholders of the company. Counsel for the appellant, therefore, submitted that the penalty of ₹ 1,50,000/- imposed against the appellant be waived off.

6. Learned counsel for the appellant relied upon the decision of this Tribunal in case of Rakan Steels Limited vs Securities and Exchange Board of India (Appeal No. 379 of 2014 decided on 10.04.2015) and Order of SEBI in case of Golden Proteins Ltd. passed by Adjudicating Officer of

SEBI dated January 15, 2015. This Tribunal has consistently held that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed within a time bound framework, it leads to frustration among the investors' who may not be motivated to further invest in the capital market. Hence the importance of complaints redressal system initiated by SEBI in June, 2011 cannot be undermined and its sanctity has to be maintained by all the listed companies. At the outset, we note that the judgments have been cited by the Appellant decided in the facts and peculiarity of these matters and, therefore, do not help the case of the appellant at all.

7. We see no merit in the above contentions raised by the Appellant.

8. Appellant company being a listed company was bound to comply with the direction issued by SEBI from time to time. It was obligatory on part of the appellant to redress the investors' grievances within the stipulated time after obtaining SCORES authentication as per the repeated circulars issued by SEBI. In spite of the letter addressed by SEBI on December 2, 2013 in that behalf the appellant had failed to do the needful. It is on record that the appellant had applied for SCORES authentication only on June 12, 2014 and the authentication was granted on June 13, 2014. Various reasons given by the appellant for not complying with the directions of SEBI within the stipulated time and the fact that the investors' grievances have been redressed before the issuance of the show cause notice, do not obliterate the violations of the law committed prior to issuance of the show cause notice.

9. This Tribunal in the case of M/s. Vidarbha Industries Limited vs Securities and Exchange Board of India (Appeal No. 386 of 2014 decided

on 01.12.2014), under somewhat similar circumstances, has observed that “In these circumstances, since the appellant being a listed company, failure on part of the appellant to comply with the SEBI circular dated April 17, 2013 constitutes violation of SEBI circular for which penalty imposable under Section 15 HB of SEBI Act is Rs. 1 lac per day or Rs. 1 crore whichever is less. Thus, in the present case, as against penalty of Rs. 1 crore imposable against the appellant, the AO of SEBI has imposed penalty of Rs. 2 lac which cannot be said to be arbitrary, excessive or unreasonable. Moreover, this Tribunal has held in the case of Motorola Enterprises Ltd. vs Securities and Exchange Board of India (Appeal No. 59 of 2014 decided on 10.06.2014), under somewhat similar circumstances, has observed that “It is also pertinent to note that keeping in view the great importance of speedy redressal of investors’ grievances, SEBI has introduced a SEBI Complaints Redress System, popularly known as ‘SCORES’ for this purpose. With the introduction of SCORES, the whole mechanism for supervising timely redressal of investors’ grievances has been streamlined. The SCORES not only envisages detection of defaulters but also requires the defaulter company to submit status report in a time bound framework as may be prescribed by the SEBI after redressal of grievances in a prescribed the said time frame which may be laid down by the regulator in a given case as per law.

10. It has been further held in M/s. Vidarbha Industries Limited that the respondent has conducted enquiry against the appellant in accordance with the procedure prescribed by the rules and after affording due opportunity to file reply and appear personally to the appellant. The appellant did not redress investors’ grievances inspite of letter dated September 3, 2004. From September 3, 2004 till passing of the 8 impugned order dated May 9, 2005,

penalty at the rate of ₹ 1 lac per day would be more than ₹ 1 crore. However, adjudicating officer has imposed penalty of ₹ 2 lac which cannot be said to be unreasonable or excessive. Even after passing of the impugned order dated May 9, 2005 no steps were taken to redress the investors' grievances. As the investors' grievances increased to 114, fresh letter was issued to the appellant on September 25, 2008 calling upon the appellant to redress investors' grievances. As the appellant failed and neglected to redress investors' grievances, proceedings were initiated and by impugned order dated March 25, 2011 penalty of ₹ 20 lac under Section 15C and penalty of ₹ 2 lac under Section 15A(a) of SEBI Act has been imposed. Penalty at the rate of ₹ 1 lac per day from September 25, 2008 till passing of impugned order dated March 25, 2011 for not redressing 114 investors' grievances would be more than ₹ 1 crore, however, inspite of persistent default on part of appellant, Ld. adjudicating officer has taken a lenient view and imposed penalty of ₹ 20 lac under Section 15C and penalty of ₹ 2 lac 15A(a) of SEBI Act which cannot be said to be unreasonable or excessive."

11. In the facts and circumstances of the present cases, we, therefore, see no reason to interfere with the impugned orders. Accordingly, these appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

20.12.2016
Prepared and compared by:
msb