

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 14.06.2022

Date of Decision : 16.06.2022

Appeal No. 69 of 2022

TTL Enterprises Ltd.
(formerly known as Trupti Twisters Ltd.)
304, 3rd Floor, Shoppers Plaza – 5,
Nr. 5 Govt. Society, Opp. Municipal Market,
C G Road, Navrangpura,
Ahmedabad : 380 009.

....Appellant

Versus

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

... Respondent

Mr. Keyur Bakshi, Director of the company for the Appellant.

Mr. Vyom Shah, Advocate with Mr. Sharvil Kala, Advocate i/b Khare
Legal Chambers for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellant challenging the order dated December 31, 2021 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 2 lacs for violating Clause 7(4) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations').

2. The facts leading to the filing of the present appeal is, that the appellant was listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') in the year 1993. In January 1998, the company had been suspended and the suspension was revoked by BSE on October 24, 2017. During this period of suspension, the company had not appointed any Share Transfer Agent (hereinafter referred to as 'STA') but during the course of revival of the company, as a part of the procedure, the appellant appointed M/s. Accurate Securities and Registry Pvt. Ltd. (hereinafter referred to as 'ASRPL') as the STA on May 26, 2017 and thereafter entered into a bipartite agreement on July 3, 2017.

3. It transpires that SEBI conducted an inspection during December 17, 2018 to December 19, 2018 at the premises of the STA, based on which a show cause notice was issued to the appellant to

show as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HB of the Securities and Exchange Board of India Act, 1992 for the alleged violation. The show cause notice alleged that the STA, namely, ASRPL did not receive the previous records from the erstwhile STA and the appellant had not executed a tripartite agreement with the erstwhile STA and ASRPL and, therefore, violated Regulation 7(4) of the LODR Regulations and Clause 20 of the Code of Conduct as specified in Schedule III of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as 'RTI/STA Regulations').

4. The appellant contested the matter and denied the allegation contending that Regulation 7(4) of the LODR Regulations was not applicable since there was no previous STA and that the company had appointed ASRPL as its STA for first time in May 2017. It was, thus, contended that the question of execution of a tripartite agreement did not arise. It was also contended that an agreement was executed with the STA in accordance with the provisions of Rule 4(1)(b) of the erstwhile Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Rules, 1993 read with Regulation 9A(1)(b) of the RTI/STA Regulations. It was also contended that

Clause 20 of the Code of Conduct as specified in Schedule III of the RTI/STA Regulations was not applicable.

5. The AO after considering the material evidence on record found that Clause 20 of the Code of Conduct as specified in Schedule III of the RTI/STA Regulations is not applicable upon the appellant and that the said clause is applicable upon the Registrar to an Issue (hereinafter referred to as 'RTI') and, therefore, exonerated the appellant from the said charge. The AO however found that the appellant has not entered into an agreement with the STA in the manner specified by SEBI under Regulation 7(4) of the LODR Regulations and, consequently, on this ground imposed a penalty of Rs. 2 lacs.

6. We have heard Mr. Keyur Bakshi, Director of the company for the appellant and Mr. Vyom Shah, the learned counsel with Mr. Sharvil Kala, the learned counsel for the respondent.

7. For facility, Regulation 7(4) of the LODR Regulations is extracted hereunder :-

“7(4). In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity,

in the manner as specified by the Board from time to time:

Provided that in case the existing share transfer facility is managed in-house, the agreement referred above shall be entered into between the listed entity and the new share transfer agent.”

8. A perusal of the aforesaid provision provides that if there is a change or appointment of a new STA, in that event, a listed company is required to enter into a tripartite agreement between the existing STA, the new STA and the listed company in the manner as specified by the Board from time to time. The proviso to Regulation 7(4) of the LODR Regulations further provides that in case the existing share transfer facility is managed in-house, then the agreement is required to be entered between the listed entity and the new STA.

9. It was, thus, contended that even if there was no erstwhile STA, nonetheless, the appellant being a listed company is required to enter into an agreement with the new STA.

10. There is no dispute with regard to the aforesaid proposition as culled out from the proviso to Regulation 7(4) of the LODR Regulations but the question is which agreement is required to be entered and the manner as specified by the Board from time to time.

11. Admittedly, a bipartite agreement has been entered by the appellant with the STA under the RTI/STA Regulations. Regulation 7(4) of the LODR Regulations does not clearly indicate that the agreement to be entered under Regulation 7(4) with the STA is different from the agreement entered with the STA under the RTI/STA Regulations. Thus, there is a grey area as Regulation 7(4) of the LODR Regulations does not specify that the agreement under Regulation 7(4) is different and distinct from the agreement that is to be entered and executed under the RTI/STA Regulations.

12. The AO in the paragraph no. 14 of the impugned order holds that the appellant has not entered into an agreement in the manner specified by SEBI under Regulation 7(4) of the LODR Regulations. We have carefully perused Regulation 7 and 7(4) of the LODR Regulations and we do not find any provision which provides a format for a listed company to enter into an agreement with the STA under Regulation 7(4) of the LODR Regulations. We are constrained to observe that no format has been specified under the LODR Regulations by SEBI.

13. Reliance has been made on a letter dated November 28, 2016 issued by SEBI to the Chairman, Registrars Association of India, wherein a format has been enclosed which according to SEBI is

required to be executed between the listed company and the STA under Regulation 7(4) of the LODR Regulations. There is nothing on record to suggest that this letter of SEBI dated November 28, 2016 has the force of law or is a circular and therefore it has the force of law. Assuming that this letter of November 28, 2016 is treated as a circular and therefore has the force of law, we are of the opinion that this letter was addressed to the Chairman of the Registrars Association of India. There is nothing on record to suggest that this letter was circulated and was made known to the listed companies. Unless and until the listed company is made aware that certain agreement is required to be executed under Regulation 7(4) of the LODR Regulations, the appellant cannot be charged for violating the said provision. There is nothing on record to indicate that the appellant was aware of the letter dated November 28, 2016 nor there is any evidence to indicate that the Chairman, Registrars Association of India had circulated the format of the agreement to be executed under Regulation 7(4) of the LODR Regulations to all the listed companies including the appellant. In the absence of such evidence, the appellant cannot be held to have violated the provisions of the Regulation 7(4) of the LODR Regulations.

14. In the result, the impugned order cannot be sustained and is quashed. The appeal is allowed with no order as to costs. We however direct the appellant to enter into an agreement with the STA as per the prescribed format provided in the letter of SEBI dated November 28, 2016 within six weeks from today failing which it would be open to SEBI to initiate appropriate action against the appellant.

15. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

16.06.2022
PTM