BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 10.06.2014
Date of decision : 10.06.2014

Misc. Application No. 42 of 2014
And
Appeal No. 59 of 2014

Motorol Enterprises Ltd.
19, Kalpana Society,
Race Course Circle,
Baroda – 390 007. ….. 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

With

Misc. Application No. 43 of 2014
And
Appeal No. 60 of 2014

Motorol Enterprises Ltd.
19, Kalpana Society,
Race Course Circle,
Baroda – 390 007. ….. 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. Rahul Totala, Advocate with Mr. Kunal Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Manish Acharya, Advocate for the Respondent.

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

Per : Jog Singh (Oral)

In these two appeals, the appellant, namely, M/s. Motorol Enterprises Ltd., is a company registered under the Companies Act, 1956 and has its registered office at Vadodara (Gujarat). The two appeals have been preferred against impugned orders dated March 25, 2011 and May 9, 2005 imposing a penalty of ₹ 20 lac and ₹ 5 lac on appellant for violation of provisions of Sections 15C, 15A(a) of SEBI Act, 1992 in appeal no. 59 of 2014 and penalty of ₹ 2 lac under Section 15C of SEBI Act in appeal no. 60 of 2014. Two miscellaneous applications no. 42 of 2014 and 43 of 2014 have also been preferred for condonation of delay of 1036 days and 3182 days in the two appeals respectively. Both the learned counsel for the parties have been heard on the question of delay and for the reasons stated in the miscellaneous applications, as well as in the interest of justice, the delay is condoned by allowing two miscellaneous applications in question and consequently both the appeals have been heard on merit.

2. Since a common question of law and fact is involved, with the consent of both the learned counsel for the parties, the appeals have been heard and are being disposed of by this common order.

3. First, we may deal with the facts of appeal no. 60 of 2014 as it relates to older impugned order dated May 9, 2005. On July 30, 2004 SEBI found that 80 complaints of investors were pending redressal with the company for more than preceding 6 months. Accordingly, SEBI called

upon the appellant vide letter dated September 3, 2004 to do the needful expeditiously. On appellants failure to do so a show cause notice dated December 7, 2004 as per the provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to the appellants for taking appropriate action as per law.

4. The appellant filed reply dated December 21, 2004 stating therein that the company not in a position to make regular payment of fees to its R & T agents and hence it led to accumulation of investors' grievances. It was also stated that needful would be done within four weeks by resolving the pending investors' complaints but nothing seems to have been done by the appellant. The appellant was called upon to attend a hearing before the adjudicating officer on January 17, 2005. Since nobody turned up on behalf of the company, further opportunities were granted on January 28, 2005, March 16, 2005 and April 13, 2005. The appellant did not bother to appear and as such violation of provisions of Section 15C of SEBI Act was established on the basis of material brought on the record of learned adjudicating officer and a penalty of ₹ 2 lac was imposed on the appellant for the said violation. The said amount was required to pay within 45 days from the date of receipt of the impugned order dated May 9, 2005 which has been challenged in present appeal no. 60 of 2014 after a lapse of 3182 days.

5. Turning to the facts of appeal no. 59 of 2014, SEBI found that there were 114 investors' complaints pending against appellant as on September 2008. These grievances were largely pertaining to non-receipt of shares after transfer, non-receipt of dividend by investors etc. By letter dated September 25, 2008, SEBI called upon the appellant to redress the

grievances of these investors within 30 days and submitted a status report. No heed was paid by the appellant and as such reminders dated November 24, 2008 and February 13, 2009 were sent to the appellant to do the needful within a period of one week from the date of receipt of reminders. Again, the appellant showed an adamant attitude and as such a letter dated March 23, 2009 has been issued advising the appellant to redress the pending grievances within one months. On failure of the appellant to comply with the letters and repeated advices by SEBI to redress the investors' grievances, adjudication proceedings as per law were initiated as per law for the alleged contravention of provisions of Section 15C and 15A(a) of SEBI Act, 1992. A show cause notice dated October 6, 2009 was issued under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. The appellant failed either to file reply to the said show cause notice or to appear before the adjudicating officer despite several opportunities. The learned AO, therefore, analyzed the nature of the complaints on the basis of available material and proceeded ex-parte against the appellant and imposed a penalty of ₹ 20 lac for violation of provisions of 15C and ₹ 5 lac for violation of 15A(a) of SEBI Act, 1992 on the appellant. This is how the appeal no. 59 has been preferred by the appellant after lapse of 1036 days.

6. Learned counsel for the appellant, Shri Rahul Totala, vehemently argued that the two orders are required to be quashed and set aside in as much as the complaints in question have since been redressed. It is stated by the appellant in para 5(v) of the appeal that there were four directors in the company, namely, Mr. Chandrakant Gandhi Mr. S. K. Gandhi, Mr. Rinki S. Gandhi and Mr. Mahesh Thakar. Mr. Suryakant Patel resigned from the board of directors on June 22, 1987. Mr. Rinki Gandhi was

appointed on the board of directors on December 30, 1987. He also resigned from the board of directors on March 1, 2005 and tendered his resignation to the company but company failed to file Form 32 with the concerned Registrar of Companies and hence, the name of Rinki Gandhi still appears as a director of the company on the MCA records. Mr. Mahesh Thakar resigned from the board of direction on June 5, 2006. The founder director Mr. Chandrakant Gandhi expired on October 10, 2006 and Mr. Shashikant Gandhi expired on October 15, 2007. After 2007, the company has not appointed any director as it was not carrying on any business activities. There was no director in the management of the company who could have taken the decision to challenge the impugned order and it was only when Mr. Rinki Gandhi informed the appellant to resolve the investors' grievances that the appellant came to know about the impugned orders. The appellant, thereafter, has resolved all the pending investors' grievances.

7. Learned counsel for the appellant further says that respondent vide order dated December 15, 2010 also restrained the appellant company alongwith its abovesaid four directors from accessing the securities market and prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, either all the pending investors' grievances against the company are resolved. It is submitted by learned counsel for the appellant that on December 13, 2013 all the complaints in question were resolved, therefore, SEBI vide order dated December 17, 2013 revoked order dated December 15, 2010 regarding debarment of appellant and its directors under the provisions of Section 19 read with Sections 11(4) (b) and 11B of the SEBI Act, 1992. It is, therefore, contended that the two

impugned orders should also be withdrawn by the respondent and alternatively be quashed by this Tribunal.

8. Per contra, Shri Kumar Desai, learned counsel for the respondent has emphatically argued that the two orders in question do not require any interference by this Tribunal in as much as the appellant has displayed total indifference towards almost about 200 complaints of investors for years together. SEBI has repeatedly advised by issuing letters and reminders to do the needful to the appellant but to no purpose. The appellant has shown a callous attitude in dealing with the investors' grievances and in responding the letters and show cause notices. Nobody appeared on behalf of the appellant when SEBI instituted adjudication proceedings against the appellant. The learned adjudicating officer was, therefore, constrained to proceed ex-parte and decide the matter on the basis of available records. Many opportunities of personal hearing were granted to the appellant but it failed to avail of the same. Therefore, the appellant does not deserve any relief from this Tribunal in the two appeals.

9. After hearing learned counsel for the appellant and perusing the pleadings and documents brought on record, we note that when first order was passed on May 9, 2005 there were about 80 complaints by the investors pending. When second order was passed on March 25, 2011 there were 114 complaints pending. In this connection, we note that speedy redressal of grievances is an important task assigned to the SEBI by law. If investors do not get the reply or their dues on time or do not get their shares demated etc. expeditiously, it leads to frustration and they may be discouraged to invest any more in the scrip of the company or even in other shares. This may, therefore, adversely affect the growth of capital market. Section 15C

of the SEBI Act enjoins upon SEBI to levy penalty on listed company which has failed to redress investors' grievances within the specified time prescribed by the Board. Undoubtedly, it is to be done after affording reasonable opportunity to the company which has been duly done in the present two appeals. Keeping in view the seriousness of the matter, a penalty of ₹ 1 lac for each day during which such failure to redress investors' grievances continues has been prescribed by law which can be levied upon the defaulter company subject to a maximum of ₹ 1 crore. In the present case, admittedly, the default to redress investors' grievances in question has continued for years together. This is a blatant violation of law and the regulators' orders in this regard.

10. 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.

11. We may also note 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

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.

12. 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.

13. Argument of the appellant that it was a sick company and had only few employees and, therefore, investors' grievances could not be redressed does not impress us, because, obligation under the SEBI Act to comply with investors' grievances is made mandatory and for non compliance stringent penalty of ₹ 1 lac per day is prescribed. Therefore, irrespective of being a sick company and irrespective of their being only few employees, appellant was obliged to redress investors' grievances from time to time.

14. Moreover, above argument is a dishonest one as can be seen from the conduct of the appellants / its directors. As soon as SEBI passed an order on December 15, 2010 restraining appellants and its directors from entering the capital market till redressal of investors' grievances pending since 2004, appellant took steps to redress all investors' grievances immediately and applied for revoking the debarment order dated December 15, 2010. Accordingly, by order dated December 17, 2013 the debarment order was revoked. Thus, it is clear that the appellant took steps to redress investor grievances only after the directors of the appellants were debarred from entering the capital market. In these circumstances, decision of Ld. AO in imposing penalty under impugned orders cannot be faulted with. Fact that the appellant has redressed investors' grievances after the appellant and its directors were debarred from entering capital market and thereupon the whole time member of SEBI has recalled the debarment order does not absolve the appellant from paying penalty for not redressing the investors' grievances during the period from 2004 till 2010.

15. For all the aforesaid reasons, we see no merit in these two appeals and the same are hereby dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

10.06.2014
Prepared & Compared by
PTM