BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 9.9.2015

Miscellaneous Application No.259 of 2015
And
Appeal No. 378 of 2015

Indivar Traders Pvt. Ltd.
312/3 Sarda Chamber no.1,
31, K.N. Road, Mumbai – 400 009 …… Appellant

Versus

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

Ms. Rinku Valanju, Advocate for the Appellants.

Dr. Poornima Advani, Advocate with Ms. Savshi Chopra, Advocate i/b The Law Point for the Respondent.

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

Per: Justice J.P. Devadhar

Miscellaneous Application no.259 of 2015

There is delay of 29 days in filing the appeal. For the reasons stated in the Miscellaneous Application the delay is condoned. Miscellaneous Application is disposed of accordingly.

Appeal no.378 of 2015

1. Appellant is aggrieved by the order passed by the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India (SEBI for short) on 24th April, 2015 whereby penalty of Rs. 2 lac is imposed under section 15A(a) of Securities and Exchange Board of India Act, 1992 (SEBI Act for short) for

violating section 11C(3) of SEBI Act and penalty of Rs. 2 lac is imposed under section 15A(a) of the SEBI Act for violating section 11C(5) of SEBI Act.

2. Appellant is a private limited company and its main business is trading in materials and invest in shares and securities of other companies. Appellant was allotted 14,29,000 convertible equity warrants of Rs.10/- each for Rs.1,42,90,000 on 22.2.2010 constituting 3.85% of the issued capital of the target company namely Mahan Industries Ltd (MIL for short).

3. Admittedly by a summons dated 22.2.2013 issued under section 11C(3) of SEBI Act the appellant was called upon to furnish certain information as more particularly set out in the summons to the investigating authority. In partial compliance of the summons dated 22.2.2013, the appellant by its letter dated 4th March, 2013 furnished few particulars but failed and neglected to furnish the remaining particulars.

4. As a result summons dated March 8, 2013 was issued under section 11C(5) of the SEBI Act calling upon the appellant to appear in person before the investigating authority on March 13, 2013 to answer questions in respect of the investigation relating to buying, selling or dealing in the shares of MIL Ltd. However, the appellant failed to appear before the investigating authority on the due date.

5. Since the appellant failed to furnish all the information sought for as per summons issued under section 11C(3) and failed and neglected to appear before the investigating authority pursuant to the summons issued under Section 11C(5), a show cause notice was issued on 1.10.2014 and after hearing the appellant the impugned order is passed on 24th April, 2015 imposing penalty of Rs.2 lac each for violating section 11C(3) and section 11C(5) of SEBI Act. Challenging the aforesaid order present appeal is filed.

6. Ms. Valanju, learned counsel appearing on behalf of the appellant submitted as follows:-

a) Shareholding of the appellant in MIL was below 5% at all times and therefore non submission of complete information by the appellant had no adverse effect on the securities market or general investors. Hence imposition of penalty on account of failure to furnish above information is wholly unjustified.

b) There was no intension to cause delay or hamper the investigation on part of the appellant. The documents called for were not relevant for the purpose of the investigation carried out by SEBI and since SEBI has failed to demonstrate as to how failure on part of appellant to furnish documents that were called for have hampered the investigation process or adversely affected the interests of investors, SEBI is not justified in imposing penalty on the appellant.

c) In any event the appellant had substantially clarified and explained that there had been technical and operational reasons including change in the management which has caused delay in furnishing documents. As the appellant had fully cooperated with the investigation and had furnished necessary information after issuance of the show cause notice, the Adjudicating Officer is not justified in imposing penalty on the appellant.

d) Seeking irrelevant information generally for the sake of it, serves no purpose. The appellant had complied substantially with all the requirements of SEBI and hence the proceedings initiated against the appellant lacked substance and bonafides.

e) Investigation in the present case, related to the shares of MIL acquired in the year 2010 whereas, show cause notice was issued to the appellant in October, 2014, which is more than 4 years from the date of acquisition of shares. In such a case, where there is inordinate delay in initiating the proceedings, the Adjudicating Officer is not justified in imposing penalty on the appellant and the impugned order has caused great prejudice to the appellant.

f) The AO ignored the fact that the appellant is an investor and not a SEBI registered intermediary or promoter/promoter group entity. The AO should have

applied much needed due diligence and skill in undertaking fair assessment of facts and ensure the interests of appellant who is a common investor and that such adverse acts lacking skill and scrutiny could turn into a mitigating factor towards building much needed investor confidence, which today is a mission placed on top agenda of the apex regulator SEBI.

g) Adjudicating Officer erred in not taking a practical view but taking a hyper technical view when admittedly the relevant information was duly provided though belatedly to the respondent.

7. We see no merit in the above contentions.

8. Admittedly, appellant had failed to furnish all particulars sought for in the summons dated 22.2.2013 issued under Section 11C(3) of SEBI Act. Obligation to furnish documents called for by issuing summons under section 11C(3) is mandatory and failure to furnish documents called for thereunder, renders the person liable for penalty under section 15A(a) of SEBI Act. Penalty imposable under section 15A(a) for non compliance of summons issued under section 11C(3) is not less than one lac rupees but may extend to one lac rupees for each day during which such failure continues subject to a maximum of Rs. One crore. At the rate of rupees one lac per day from the date of non compliance till the date of furnishing documents pursuant to the show cause notice issued after completing the investigation would be more than a crore of rupees. Thus, as against the penalty of Rs. One crore imposable under section 15A(a), the AO has imposed penalty of Rs.2 lac which cannot be said to unreasonable or excessively harsh.

9. Argument of the appellant that the failure to furnish documents were on account of change in the management is unsustainable because admittedly the change in the management took place in July, 2013 whereas the summons in question calling for documents were issued in February/March, 2013. In such a case appellant is not justified in contending that the documents could not be furnished on account of change in management. Argument of the appellant that

the documents called for were not relevant for the purpose of investigation and failure to furnish those documents have neither affected the securities market nor the investors is wholly unsustainable. It is the prerogative of the investigating authority to call for such documents as is deemed fit and it is not open to the appellant to question the relevancy of the documents called for. Similarly, the appellant who has violated the mandate of Section 11C(3) of SEBI Act cannot escape the penal liability on ground that neither the securities market nor the investors have suffered on account of non compliance of the obligation under section 11C(3). In the present case, investigation has been closed on account of failure to furnish documents called for from the appellant. In such a case, it cannot be presumed that failure to furnish documents has neither affected the securities market nor affected the investors. Very fact that the appellant has failed to comply with the requisition contained in the summons issued under section 11C(3) is sufficient to impose penalty under Section 11C(3) of SEBI Act. Appellant who is guilty of not furnishing documents called for, cannot plead on one hand that the delay in furnishing documents was on account of technical and operational reasons and on the other hand plead that the delay in taking action has caused prejudice to the appellant.

10. Similarly failure to appear before the investigating authority pursuant to the summons issued under section 11C(5) is in gross violation of the SEBI Act and amounts to scuttling the investigation to the detriment of the investors. In such a case, irrespective of any finding as to whether the securities market or the investors have suffered or not, the person guilty of failing to comply with the summons issued under section 11C(5) of SEBI Act is liable to pay penalty under section 15A(a) of SEBI Act. It is not in dispute that the penalty imposable under section 15A(a) for violating Section 11C(5) in the present case would be Rs. One crore. As against the penalty of Rs. One crore imposable under section 15A(a) for violating Section 11C(5), the AO has imposed penalty of Rs.2 lac which in the

facts and circumstances set out hereinabove cannot be said to be excessive or unreasonable.

11. For all the aforesaid reasons we confirm the penalty of Rs. Two lac each imposed under section 15A(a) for violating section 11C(3) and 11C(5) of SEBI Act respectively and accordingly dismiss the appeal with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

9.9.2015
Prepared and compared by
RHN