

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of Decision : 22.02.2018

Appeal No. 3 of 2018

HRB Floriculture Limited
A-28, Ramnagar, Shastri Nagar,
Jaipur – 302016.

...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. Ajit N. Jakhadi, Advocate with Mr. Amol Chile and Mr. Arun Chile,
Advocates for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP &
Partners for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

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 November 27, 2017. By the said order penalty of Rs. 13 Lakh under Section 15A(b) of Securities and Exchange Board of India, 1992 ('SEBI Act' for short) and penalty of Rs. 7 Lakh under Section 23H of Securities Contracts (Regulation) Act, 1956 ('SCRA' for short) has been imposed on the appellant.

2. Basic charge held against the appellant is, firstly, that the annual disclosures for the period from March 1998 to March 2011 required to be

made within 30 days from the end of each financial year under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('1997 Regulations' for short) have been made belatedly on January 30, 2012. Similarly, quarterly disclosures for the quarter ended June 2006 to September 2011 required to be made within 21 days from the end of each quarter under clause 35 of the erstwhile Listing Agreement have been made belatedly on January 30, 2012.

3. Shri Ajit Jakhadi, Learned Counsel appearing on behalf of the appellant submitted that penalty imposed against the appellant in the present case is wholly unjustified for the following reasons:-

- (a) Trading in the shares of the appellant company were suspended during the period from 2002 to 2012 on account of non-payment of listing fees. At the time of seeking revocation of suspension aforesaid obligations were complied with. Hence, imposition of penalty was not warranted in the present case.
- (b) The shareholding of the persons referred to in regulation 8(3) of 1997 Regulations has been constant and there has been no change whatsoever and hence disclosure under regulation 8(3) was not warranted.
- (c) Similarly, non-filing of quarterly disclosures under clause 35 was inconsequential, because, there being insignificant transfer of shares during the period June 2006 to September 2011, non-filing of quarterly disclosure during the aforesaid

period had no bearing on the interest of investors or other stakeholders of the company.

- (d) Net worth of the company was only Rs. 40,27,080/- as on June 30, 2017 and it is only Rs. 24,66,877/- as on September 30, 2017. Since 2001 till date only 100 shares have been traded in the market at BSE Ltd. These mitigating factors set out in Section 15J of the SEBI Act have not been taken into consideration in the impugned order.
- (e) In similar cases nominal penalty of Rs. 1 Lakh / Rs. 2 Lakh have been imposed, whereas, penalty of Rs. 20 Lakh is imposed on the appellant which is totally disproportionate, exorbitant and excessive. Accordingly, Counsel for the appellant submitted that penalty imposed on the appellant deserves to be quashed and set aside.

4. We see no merit in the above contentions.

5. As rightly held by the AO, the issues raised in this appeal are squarely covered by various decisions of this Tribunal. In the case of Ashok Jain vs SEBI (Appeal No. 79 of 2016 decided on June 9, 2014) this Tribunal has held that disclosure obligations under the 1997 Regulations have to be complied with within the stipulated time, irrespective of the fact that there is trading in the scrip or not. Similarly, this Tribunal in the case of Komal Nahata vs SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) has held that penalty for non-compliance of 1997 Regulations is not dependent upon the investors actually suffering on account of such non-disclosure or not. Therefore, fact that the trading in the shares of appellant company were suspended during the years 2002 to 2012 and the fact that there was no

change in the shareholding pattern cannot be a ground for escaping penalty for non-compliance of disclosure obligations.

6. A listed company is mandatorily required not only to pay listing fees regularly but also required to comply with the annual and quarterly disclosure obligations contained in the 1997 Regulations and clause 35 of the listing agreement. Fact that the trading in the scrip of the appellant company was suspended in the year 2002 for non-payment of listing fees did not absolve the appellant from its obligation to comply with the annual and quarterly disclosure obligations contained in regulation 8(3) of 1997 Regulations and clause 35 of the listing agreement. Therefore, the appellant who apart from being guilty of not paying listing fees is also guilty of violating regulation 8(3) of the 1997 Regulations and clause 35 of the listing agreement deserves imposition of penalty prescribed under the SEBI Act and SCRA.

7. Argument of the appellant that various mitigating factors including the mitigating factors set out in Section 15J of the SEBI Act have not been considered by the AO and in similar cases nominal penalty has been imposed is without any merit. This Tribunal in the case of Abhimanyu Exports Ltd. vs SEBI (Appeal No. 261 of 2017 decided on October 30, 2017) has held that failure to make annual disclosures under regulation 8(3) of 1997 Regulations for 12 years constitute 12 violations and penalty under Section 15A(b) of SEBI Act for each violation being upto Rs. 1 Crore, the penalty imposable for violating regulation 8(3) would be Rs. 12 Crore. In that case, this Tribunal has upheld the penalty of Rs. 10 Lakh imposed on the appellant therein.

8. In the present case apart from violating regulation 8(3) for 12 years the appellant has also violated clause 35 of the listing agreement for the quarter ended June 2006 to September 2011. Thus, the penalty imposable on the appellant for violating regulation 8(3) of 1997 Regulations for 12 years was upto Rs. 12 Crore and penalty imposable under Section 23H of SCRA for violating the erstwhile clause 35 of the listing agreement for several quarters would run into several crores of rupees. However, after considering all mitigating factors the AO has imposed penalty of Rs. 13 Lakh for violating regulation 8(3) for 12 years and Rs. 7 Lakh for violating clause 35 of the listing agreement for the quarter ended June 2006 to September 2011, which cannot be said to be unreasonable, excessive or harsh. Fact that in some cases, SEBI has erroneously shown undue leniency towards the violators who have consistently violated the disclosure obligations for several years cannot be a ground to hold that in all cases undue leniency must be shown to the entities who have consistently violated securities laws for several years.

9. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

22.02.2018

Prepared and compared by:msb