

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 191 of 2015

Date of decision: 16.10.2015

Govind Rubber Limited
418-422, "CREATIVE",
Sitaram Milk Compound,
N.M. Joshi Marg,
Lower Parel,
Mumbai – 400 011.

...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

Dr. S.K. Jain, Practicing Company Secretary for the Appellant.

Mr. Tomu Francis, Advocate for the Respondent.

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

Per : Jog Singh

1. The Appellant has approached this Tribunal by way of this appeal impugning order dated February 6, 2015 passed by the Learned Adjudicating officer (AO) of Securities and Exchange Board of India (SEBI) imposing a penalty of Rs. 2,00,000/- on the Appellant under the provisions of Section 15C of the SEBI Act, 1992 for non redressal of investor grievances within the prescribed time period under the SEBI Complaints Redress System (for short 'SCORES').

2. In the present case SEBI observed that Appellant Company had not redressed two investor grievances pending against it out of which one

complaint has been pending for more than two years as per SEBI Complaints Redress System (SCORES). Accordingly, SEBI appointed Ld. AO under Section 15-J of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire into the alleged violations by the Appellant Company.

3. A Show Cause Notice dated July 30, 2013 was issued to the Appellant in which it was alleged that said two investor grievances / complaints were pending in SCORES out of which one complaint was pending for more than two years. It was also mentioned that SEBI vide its letter dated January 22, 2013, had directed the Appellant to resolve the aforesaid two investor grievances but the Appellant failed to do so. Further, the SCN refers to SEBI's letter dated February 15, 2013 wherein the Appellant was directed to resolve the aforesaid two investor grievances failing which SEBI may initiate Regulatory Actions against the Appellant which includes debarring from securities market and or / imposing penalty. It was also alleged in the SCN that the Appellant did not activate the SCORES authentication.

4. An opportunity of hearing was granted to the Appellant on May 5, 2014 and after taking into consideration the written reply dated October 24, 2013 earlier submitted by the Appellant, the Ld. AO found the Appellant guilty of not redressing the grievances of investors in question in time as required by Section 15C of SEBI Act, 1992 and imposed a monetary penalty of Rs. 2 lac.

5. The case of the Appellant is that the two complaints in respect of Ms. Monisha Jeet and Mr. Harjit Singh. Both the complaints had already been resolved by the Appellant, therefore, there was not occasion for the SEBI to

pass the impugned order and impose penalty in question. It is argued that Ms. Monisha Jeet was never shareholder of the Appellant Company.

6. The factual conspectus of the matter is that two investor complaints, first of Ms. Monisha Jeet dated March 4, 2011 for ‘non-receipt of shares duly transferred’ and, second, of Mr. Harjeet Singh dated June 19, 2007 for ‘non receipt of shares duly transferred’, were pending against the Appellant. We note that complaint in respect of Ms. Monisha Jeet was received by the SEBI on March 16, 2011 and it was forwarded physically to the Appellant on March 28, 2011. On April 17, 2012 Appellant Company was advised to obtain SCORES authentication and redress the pending investor grievances. Thus, on September 17, 2012 itself the Appellant Company obtained SCORES authentication. The pending complaint was again forwarded through SCORES to the Appellant Company on September 18, 2012 for necessary action and submission of ATR. The Appellant Company filed an ATR on August 20, 2013 after redressing the grievance and enclosed a letter dated August 16, 2013 seeking clarification from the complainant as to whether the complaint was in fact a shareholder of the Appellant Company. Thereafter, SEBI sent first reminder on September 5, 2013. Case of the Respondent is that the Appellant should have filed a final ATR after receipt of reminder even though the complainant was not a shareholder of the Appellant Company. Regulatory action was, therefore, initiated against the Appellant Company for non-resolution of pending investor grievances. The impugned order dated February 6, 2015 under Section 15C of SEBI Act was passed against the Appellant Company imposing a monetary penalty of Rs. 2 lac. Subsequent to the impugned order Appellant Company filed an ATR on May 14, 2015 saying that the complainant was not replying to the queries raised. Appellant

Company sent one more reminder letter dated May 29, 2015 to the complainant. From records, we note that the complainant, Ms. Monisha Jeet had never been a shareholder of the Appellant Company. Therefore, such a bogus complaint by an outsider / alien to the Appellant Company cannot form the basis of punishment. A person not holding any shares in a company cannot have a locus to seek redressal of non-existent grievances.

7. The second complaint in respect of Mr. Harjit Singh was received by the SEBI on June 19, 2007 and it was forwarded to the Appellant Company on June 23, 2007 in physical form. On April 17, 2012 Appellant was advised to obtain SCORES authentication and redress the pending investor grievance. Thus, on September 17, 2012 itself the Appellant obtained SCORES authentication and the pending complaint was again forwarded through SCORES to the Appellant Company on September 18, 2012 for necessary action and submission of ATR. The Appellant Company filed an ATR on August 7, 2013 and enclosed a copy of email dated August 6, 2013. Appellant Company sent first reminder to the aforesaid mail on August 14, 2013. Once again the case of the Respondent is that final ATR, after receipt of another reminder by the Appellant Company was not filed and hence the Impugned order was passed against Appellant.

8. In this regard, Mr. Tomu Francis, learned counsel for the Respondent has brought to our notice Circular dated November 25, 2009 by which SEBI made it clear that an issuer company could seek refund of the deposit of 1% of the issue amount initially deposited by the said company with the stock exchange in respect of the securities offered to the public and/or to the holders of the existing securities of company, inter-alia, on the condition that a No Objection Certificate (NOC) would be issued to the issuer company by SEBI

only on being satisfied that the company had submitted monthly Action Taken Report (ATR) on complaints forwarded by SEBI to the company arising from the issue. A proforma had also been prescribed in the form of Annexure – C, annexed to the Circular dated November 25, 2011. One of the conditions in Table III of the said Annexure – C was regarding two subsequent reminders to be sent with a gap of one month between the two dispatches to the complainant and the steps taken by a company towards resolution of the complaint were to be conveyed to SEBI through another ATR. It appears that the requirement of two reminders was particularly made applicable in cases where additional documents / information were required to be obtained by the company before finally redressing the grievances / complaints. This requirement of two reminders envisaged in Annexure – C (Table III) has been rescinded with vide paragraph 5 of subsequent Circular dated June 3, 2011 issued by SEBI. The result is that the requirement of two reminders has been dispensed with. Paragraphs of SEBI Circular dated November 25, 2009 and June 3, 2011 are reproduced hereinbelow for the sake of convenience:-

“OIAE/Cir-1/2009
November 25, 2009

**Sub : Issue of No Objection Certificate for release of 1 %
of issue amount**

As per the Listing Agreement with the Stock Exchanges, the issuer company deposits 1% of the issue amount of the securities offered to the public and/or to the holders of the existing securities of the company, as the case may be, with the designated stock exchange. This amount was being released to issuer companies after obtaining a No Objection Certificate (NOC) from SEBI in accordance with the SEBI (Disclosure and Investor Protection) Guidelines, 2000. Since these Guidelines have now been rescinded, the NOC will be issued henceforth in accordance with this Circular.

2.

3. SEBI shall issue the NOC after satisfying itself that the complaints arising from the issue received by SEBI against

the Company have been resolved to its satisfaction, the Company has been submitting monthly Action Taken Reports on the complaints forwarded by SEBI to the company as per the proforma specified in Annexure – C, and the fees due to intermediaries associated with the issue process including ASBA Banks have been paid.

- 4.
- 5.

Yours faithfully,

G.P. Garg

Annexure – C
(to SEBI circular OIAE/Cir-1/2009 dated November 25, 2009)

ACTION TAKEN REPORT – PROFORMA FOR SENDING RESPONSES TO SEBI FOR INVESTOR GRIEVANCES

- (i)
- (ii)

Table I: Instrument details
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Table II: Despatch details of Securities / payment instrument
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Table III: Documents/Information sought from the complainant:

- 1) Copy of letter sent to the investor seeking documents / information.
- 2) Two subsequent reminders are required to be sent with a gap of one month between despatches.
- 3) Details of correspondences to complainant:
 - a) Mode of dispatch
 - b) Despatch No.
 - c) Date of dispatch

For all types of complaints, the action taken should be intimated to the complainant.

Circular dated June 3, 2011

“ CIR/OIAE/2/2011

June 3, 2011”

Sub: Processing of investor complaints against listed companies in SEBI Complaints Redress System (SCORES)

1. SEBI has commenced processing of investor complaints in a centralized web based complaints redress system ‘SCORES’. The salient features of this system are:
 - Centralised database of all complaints.
 - Online movement of complaints to the concerned listed companies,
 - Online upload of Action Taken Report (ATRs) by the concerned companies, and
 - Online viewing by investors of actions taken on the complaint and its current status.
2. All complaints pertaining to companies will be electronically sent through SCORES at <http://scores.gov.in/Admin>. The companies are required to view the complaints pending against them and submit ATRs alongwith supporting documents electronically in SCORES. Failure on the part of the company to update the ATR in SCORES will be treated as non redressal of investor complaints by the company. Submission of physical ATR will not be accepted for complaints lodged in SCORES. For complaints forwarded to companies on or before 20/05/2011, physical ATRs should be submitted.
3.
4.
5. This Circular supercedes the Circular No. OIAE/Cir-1/2009 dated November 25, 2009 so far as it relates to Annexure-C to the said Circular wherein the companies had to submit physical ATRs on the complaints forwarded by SEBI to them.”
- 6 to 8

Yours faithfully,

G.P. Garg
Chief General Manager
Office of Investor Assistance and Education

9. Circular dated June 3, 2011 simply advises listed companies to follow SCORES in respect of complaints received after 20.05.2011 and ATR in respect of complaints which might have been received by the complainants prior thereto required to be submitted to SEBI in physical form. The Ld. AO has missed an important aspect while passing the impugned order that requirement of double reminder and two ATRs mentioned in the Circular dated November 25, 2009 has since been superseded by Circular dated June 3, 2011.

10. In this view of the matter, the impugned order is hereby quashed and set aside and the appeal, thus, stands allowed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

16.10.2015

Prepared and compared by:

msb