

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 18.11.2014

Appeal No. 106 of 2014

BTL Holding Company Limited
(Formerly known as
BTL Investments & Securities Ltd.)
202, 2nd Floor,
27, New Delhi House,
Barakhamba Road, Connaught Place,
New Delhi- 110 001

...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. Prakash Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Rushin Kapadia, Advocate i/b K.
Ashar & Co. for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. Whether the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) by his order dated February 26, 2014 is justified in imposing penalty of ₹ 20 lac on the appellant being the merged entity of SRS Holding India Limited under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act, 1992” for short) is the question raised in this appeal.

2. Facts relevant for the present appeal are that by an order passed by the Delhi High Court on March 16, 2012, 22 promoter/ promoter group companies of SRS Limited merged with BTL Industries Limited. As a result of merger, 5,59,18,350 shares of SRS Limited equal to 40.14% of the share capital of SRS Limited, held by 20 out of 22 promoter/promoter group stood vested in BTL industries Limited. As per the merger scheme, all liabilities and duties of the 22 merged companies were to be transferred to BTL Industries Limited. On April 19, 2013 name of BTL Industries Limited was changed to SRS Holding India Limited.

3. Thereafter, pursuant to an order passed by the Delhi High Court on July 18, 2013 SRS Holding India Limited merged with BTL Investments and Securities Limited. In the order passed by the Delhi High Court on July 18, 2013 it is specifically recorded that all liabilities and duties of SRS Holding India Limited shall stand transferred to BTL Investment and Securities Limited. On September 30, 2013 name of BTL Investments and Securities Limited was changed to BTL Holding Company Limited which is the appellant herein. Thus, on account of successive merger, rights and obligations arising due to merger of 22 promoter/promoter group entities with BTL Industries Limited/SRS Holding India Limited were required to be discharged by the appellant i.e., BTL Holding Company Limited.

4. Prior to merger of 22 promoter/promoter group entities of SRS Limited, BTL Industries Limited held 2,05,67,555 shares of SRS

Limited which constituted 14.77% of the total shares issued by SRS Limited. As a result of merger of 22 entities, 5,59,18,350 shares of SRS Limited held by 20 out of 22 promoter/promoter group entities were transferred to BTL Industries Limited. Thus, the total shareholding of BTL Industries in SRS Limited after the merger became 7,64,85,905 shares (2,05,67,555+5,59,18,350) which constituted 54.91% of the total shares issued by SRS Limited.

5. Out of the 20 promoter/promoter group entities which held the shares of SRS Limited on the date of merger, shares of SRS Limited, held by 19 entities were in excess of 25,000 shares. Therefore, on transfer of all shares of SRS Limited held by 20 entities on September 7, 2012 and September 21, 2012, 19 entities which held shares of SRS Limited in excess of 25000 shares were required to make disclosures under regulation 13(4A) read with regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations” for short) and some of the entities were also required to make disclosures under regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations, 2011” for short). Similarly, on transfer of shares of SRS Limited, BTL Industries Limited/SRS Holding India Limited was required to make disclosures under regulation 13(3) read with regulation 13(5), regulation 13(4A) read with regulation 13(6) of PIT Regulations, and regulation 29(2) of the Takeover Regulations, 2011 for September 2012 quarter. From the records it is seen that SRS Holding India Limited had made disclosures belatedly on June 1, 2013 under regulation 13(4A) of PIT Regulations

and under regulation 29(2) of Takeover Regulations, 2011. However, no disclosures were made under regulation 13(3) of PIT Regulations. On account of failure to make disclosures within the stipulated time, show cause notices were issued on January 3, 2014 to 19 promoter/promoter group companies which merged with BTL Industries Limited/SRS Holding India Limited. Similarly, show cause notice was also sent to SRS Holding India Limited (changed name of BTL Industries Limited) for not making disclosures under the respective regulations within the stipulated time.

6. Admittedly, show cause notices issued to all the noticees were accepted by the appellant and in fact by its letters dated January 18, 2014 and January 29, 2014 appellant had filed common reply to the show cause notices, on behalf of the 19 promoter/promoter group entities. Even during the course of personal hearing, arguments were advanced by the representative of the appellant on behalf of all the 19 promoter/promoter group entities as also on behalf of SRS Holding India Limited.

7. After considering all contentions raised by the representative of the appellant in the reply as also at the personal hearing, the Adjudicating Officer, by the impugned order has imposed penalty of ₹ 20 lac on SRS Holding India Limited on the ground that the obligation required to be met on account of transfer of shares of SRS Limited due to mergers that took place from time to time were not complied with.

8. Mr. Shah, learned counsel appearing on behalf of appellant submitted interalia as follows:-

- a) *In the absence of any show cause notice issued to the appellant, liability arising from the show cause notices issued to the 20 entities could not be fastened upon the appellant merely because the appellant represented those entities before the Adjudicating Officer.*
- b) *19 promoter/promoter group entities were not required to make disclosures under the PIT Regulations, because on September 7, 2012/September 21, 2012 when shares of SRS Limited were transferred, all the 19 entities stood dissolved, on account of the effective date of merger being prior to the date of transfer of shares. Similarly, effective date of merger of SRS Holding India Limited with BTL Investments and Securities Limited is September 18, 2013, whereas show cause notice is issued to SRS Holding Limited on January 3, 2014 i.e., after SRS Holding India Limited stood dissolved on account of merger. Therefore, proceedings initiated against a dissolved entity being bad in law, the impugned order is liable to be quashed and set aside.*

- c) Pursuant to the order passed by the Delhi High Court On July 18, 2013 approving merger of SRS Holding India Limited with BTL Investments and Securities Limited, only proceedings pending by or against SRS Holding India Limited as on the effective date could be continued by or against BTL Investments and Securities Limited/appellant. In the present case, the show cause notice is issued after the effective date and therefore, the proceedings are vitiated.
- d) Division Bench of the Bombay High Court in the case of SEBI vs. SKDC Consultants Limited reported in (2004) 53 SCL 407 (Bom.) while upholding the decision of this Tribunal has held that where a company incorporated on February 18, 1998 took over the business of a proprietary concern on February 25, 1998 with effect from April 1, 1998, then, for any violation committed by the proprietary concern in November/December 1995, the company could not be held liable. Applying the ratio laid down in the said judgment it must be held that for the alleged violations if any, committed by the entities which were not in existence on the date of initiation of the proceedings, the appellant cannot be held liable.

9. We see no merit in the above contentions.

10. By the impugned order appellant is not held guilty of violating any of the regulations framed by SEBI. What is held by the impugned order is that in view of failure to make disclosures under PIT Regulations and Takeover Regulations, 2011 by 19 promoter/promoter group entities as well as SRS Holding India Limited due to transfer of shares of SRS Limited on account of merger, appellant being the successor to SRS Holding India Limited is liable to discharge the penal liability. Admittedly, appellant represented the 19 promoter/promoter group entities as well as SRS Holding India Limited before the AO. Therefore, fact that the show cause notice was not issued to the appellant cannot be a ground to escape liability to discharge penal liability especially when the appellant represented the 19 promoter/promoter group as well as SRS Holding India Limited before the AO and in view of the order passed by the Delhi High Court at the time of approving merger, appellant is obliged to discharge all rights and obligations of the merged companies.

11. While approving merger of 22 entities (which includes 19 entities which held shares of SRS Limited in excess of 25,000 shares) with BTL Industries Limited, Delhi High Court had expressed recorded that the rights and obligations of the merged entities shall be the responsibility of BTL Industries Limited. Admittedly, name of BTL Industries has been changed to SRS Holding India Limited. Later on, while approving

merger of SRS Holding India Limited with BTL Investments and Securities Limited, Delhi High Court once again expressly recorded that the rights and obligation of SRS Holding India Limited shall be discharged by BTL Investments and Securities Limited. Admittedly, name of BTL Investments and Securities Limited has been changed to BTL Holding Company Limited i.e., the appellant herein. Thus, by operation of the first order passed by Delhi High Court on March 16, 2012 rights and obligations of 19 promoter/promoter group entities were liable to be discharged by SRS Holding India Limited and pursuant to the second order of Delhi High Court dated July 18, 2013 rights and obligations of SRS Holding India Limited were liable to be discharged by BTL Investments and Securities Limited and due to change of name by the appellant. Therefore, the appellant cannot escape liability to discharge the penalty imposed on 19 promoter/promoter group entities and SRS Holding India Limited.

12. Liability to make disclosures arise only when the shares in excess of the limits prescribed under the regulations framed by SEBI are transferred from one entity to another. Therefore, fact that the 19 promoter/promoter group entities of SRS Limited stood merged from the effective date with BTL Industries Limited/SRS Holding India Limited and thereafter, the shares of SRS Ltd Limited held by 19 promoter/promoter group entities were transferred to BTL Industries Limited/SRS Holding India Limited would not absolve the obligation to make disclosures on behalf of the merged entities. Since disclosure obligations of 19 promoter/promoter group entities were to be

discharged by SRS Holding India Limited within the stipulated time from the date of transfer of shares and since SRS Holding India Limited has made disclosures belatedly, SEBI was justified in initiating proceedings against 19 promoter/promoter group entities as well as SRS Holding India Limited. If the shares of SRS Limited held by 19 merged entities could be transferred after the effective date of merger, there is no reason as to why disclosure obligations arising on account of transfer of shares of SRS Limited held by 19 merged entities could not be discharged by SRS Holding India Limited.

13. It is not in dispute that SRS Holding India Limited has in fact made disclosures belatedly on June 1, 2013. Once SRS Holding India Limited has accepted its obligation to make disclosure and has in fact, made disclosures belatedly it is not open to the appellant being the merged entity of SRS Holding India Limited to deny obligation to discharge the penal liability imposed on SRS Holding India Limited for the delayed disclosures.

14. Strong reliance was placed by the counsel for appellant on the decision of the Bombay High Court in the case of SKDC Consultants Limited (*supra*). That case is distinguishable on facts because, firstly, in that case, SKDC Consultants Limited had only taken over the ongoing running business of a proprietary concern with effect from April 1, 1998 with all the assets and liabilities of the proprietary concern and secondly, alleged violation committed by the proprietary concern related to the period November/December 1995, whereas SKDC Consultants Limited

was incorporated on February 18, 1998. In that context it was held that the penal liability arising from the alleged violations committed by the proprietary concern prior to the incorporation of SKDC Consultants Limited cannot be fastened upon the company. In the present case, respective companies were in existence on the date of merger and the Delhi High Court while approving merger has specifically recorded that the rights and obligations of the merged companies arising on account of merger shall be discharged by a company in which merger of other companies are permitted. Thus, decision of the Bombay High Court in the case of SKDC Consultants Limited is distinguishable on facts and does not support the case of the appellant.

15. It is relevant to note that the disclosures made by SRS Holding India Limited belatedly on June 1, 2013 was only under regulation 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations, 2011. Admittedly, no disclosures were made by SRS Holding India Limited under regulation 13(3) of PIT Regulations, relating to the three entities which merged with it. Penalty imposable under Section 15A(b) of SEBI Act at the rate of ₹ 1 lac per day for the delayed disclosures under regulation 13(4A) of PIT Regulations would be ₹ 1 crore and for delayed disclosures under regulation 29(2) of SAST Regulations, 2011 penalty imposable would be ₹ 1 crore. Similarly, penalty at the rate of ₹ 1 lac per day for not making disclosures under regulation 13(3) of the PIT Regulations in relation to three companies would also be ₹ 1 crore. Thus, as against the penalty of ₹ 3 crore

imposable, imposition of total penalty of ₹ 20 lac by the impugned order cannot be said to be arbitrary, excessive or unreasonable.

16. In these circumstances, 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/-
Jog Singh
Member

Sd/-
A S Lamba
Member

18.11.2014
Prepared & Compared By: PK