

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 106 of 2012

Date of decision: 19.06.2013

Link Intime India Pvt. Ltd.
having its address at C-13, Pannalal Silk
Mills Compound, LBS Marg,
Bhandup (W),
Mumbai – 400 078.

.....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. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh, Mr. Jaikishan Lakhwani, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Jog Singh, Member & Presiding Officer (*Offg.*)

Per : Jog Singh

1. The present appeal is preferred by Link Intime India Pvt. Ltd. (“Appellant”) against the impugned adjudication order dated February 22, 2012 passed by the Securities and Exchange Board of India (“Respondent”) imposing a consolidated penalty of Rs. 3 lac viz., Rs. 1.5 lac under Sections 15C and 15HB of the SEBI Act, 1992 and Rs. 1.5 lac under Sections 15C, 19D and 19G of the SEBI (Depositories and Participants) Regulations, 1996, hereinafter referred to as “DP Regulations”. The Appellant is registered with

the Respondent as Registrar to an Issue and Share Transfer Agent. It claims to be a professionally managed company which has been handling Initial Public Offerings (IPOs) for almost the last two decades as Registrar to Issue (RTI). It is perhaps the largest RTI in the country and even the Respondent, Mumbai has chosen it as the Back Office Service Provider for their Investor Grievance Cell.

2. Brief facts leading to the present dispute are that the Respondent conducted an inspection into certain affairs of the Appellant in issuing seven IPOs between the years 2004 and 2007. Said inspection was undertaken during January and February 2007. Pursuant to the inspection report, the Respondent appointed an Adjudicating Officer (“AO”) vide order dated December 10, 2008. Accordingly, a Show Cause Notice (“SCN”) dated May 15, 2009 under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by the Adjudicating Officer) Rules, 1995 was issued to the Appellant alleging certain violations. A reply dated June 19, 2009 was submitted by the Appellant.

3. The Respondent, however, conducted a second inspection in or around December, 2009 in continuation of the preceding one. In the second inspection report dated March 19, 2010, it was noted by the Respondent that all complaints pending with the Appellant had been closed. The Appellant, subsequently, filed an additional reply dated August 10, 2011 to the SCN.

4. The main argument advanced by the Appellant is that it handled approximately 20 lac applications during the relevant period and a very miniscule number of mistakes crept in on account of human error while

capturing data. The Appellant also submits that its working was according to the guidelines and practices prevalent at the relevant time. It is contended that since the Respondent had made various amendments in the subsequent period, that itself is sufficient indication to show that the entire process was evolving based on experiences of all parties connected with it. It is submitted that, earlier, providing a PAN number had not been mandatory for applications upto Rs. 50,000/-. However, the same was subsequently made mandatory irrespective of the application amount. Similarly, amendments were made in the Depository System by which without PAN – KYC, demat account was suspended for Debit action. Again, certain amendments were made in April, May and October 2010. SEBI introduced paradigm process change, requiring 2-way reconciliation of Bid file and Bank schedule. Earlier, the entire IPO allotment process involved a 3-way reconciliation of Bid file, Applicant data file and bank schedule file. Next, name verification as per application and as per depository data has since been eliminated because the Applicant's name is not available in the Bid file.

5. On the basis of the above-said, the Appellant submits that it is unfair to shift the entire burden on the Appellant who was following the prevalent guidelines of that period. On the other hand, the Respondent submits that the inspection in question was undertaken on random sample basis and a large number of discrepancies were found by the investigating team of the Respondent. The numerous errors noted by the team were mainly due to deficiencies in the system of the Appellant. The samples proved it beyond doubt that there were blatant, glaring and unpardonable mistakes repeatedly committed by the Appellant in the seven IPOs. Hundreds of mismatches were found on record, multiple allotments of shares were made to one individual in

many cases. Similarly, investors' grievances which should have been resolved within a period of 15-30 days were addressed after a lapse of 2-3 months' time. Owing to such undue delays, the investors suffered. The Respondent further submits that under Section 15C of the SEBI Act, 1992 a minimum penalty of Rs. 1 lac is to be imposed for each day of delay and it can go upto Rs. 1 crore. Therefore, the nominal penalty of Rs. 3 lac has been imposed on the Appellant keeping in view the totality of facts and circumstances of the case.

6. We have heard both the learned counsel for the parties at length and have perused the pleadings and documents produced before the Tribunal.

7. The allegations against the Appellant can be summarized under the following heads:-

- (i) regarding functioning of the Appellant as RTI;
- (ii) regarding Bank Schedules;
- (iii) regarding Functioning as Share Transfer Agent (STA); and
- (iv) regarding Redressal of Investor Grievance.

(i) In respect of item no. 1, i.e., functioning of Appellant as RTI:-

- (a) It is stated in the SCN that the Appellant did not independently verify various details of entries keyed in with the physical application for shares from investors before upload of corporation action resulting in several investor complaints due to improper allocation and wrong data entry.

- (b) The Appellant made wrong allotments to wrong beneficiary accounts. There was credit of shares to a beneficiary account even where the name and status were not matching. This was alleged to be due to lack of skill, diligence, care and caution required of an RTI while processing the applications received in a public issue.
 - (c) Many allotments/credit of shares were made to persons who had not even applied in the public issue. This was stated to be due to an unreliable validation process employed by the Appellant. It is further alleged in the notice that the information obtained from the Depositories (NSDL/CDSL) suggested a large number of such instances. Even the cases dealt with by inspection reports were not identified by the Appellant through its procedures but as a result of investor complaints.
 - (d) In a number of applications, PAN details provided by the applicants did not match the details as provided while opening of a beneficiary account. Even in these circumstances, the Appellant considered such applicants for allotment.
 - (e) The Appellant incorrectly made multiple allotments to applicants with the same PAN.
- (ii) Regarding Bank Schedules, it was alleged in the notice that they appeared in dummy numbers in the columns for instrument number, just

to populate the same. Even this could not be unearthed by the Appellant. Similarly, certain serious issues like absence of names, instrument number, bank names etc. were also noted during the inspection. But the Appellant accepted such applications without voicing its concern in any manner whatsoever.

(iii) As far as functioning of the Appellant as the Share Transfer Agent (STA) is concerned, the SCN mentioned that the Appellant failed to dematerialize and rematerialize securities in the prescribed time.

- (a) The Appellant also made erroneous confirmations of demat requests as well as delayed issue of duplicate shares.
- (b) The Appellant is also stated to have failed to process the transfer of shares within the prescribed time. About 13,754 instances were found during the inspection where the demat requests were processed and rejected / dispatched long after the prescribed period of 15 days had elapsed. The Appellant also failed to reconcile its records on a daily basis as required under Regulation 55 of the DP Regulations.

(iv) Next, regarding Redressal of Investor Grievance, it is mentioned in the show cause notice that about 4,981 investor grievances were resolved by the Appellant after the prescribed period of one month from the date of receipt of such complaint had already elapsed. In this connection, it is also mentioned in the SCN that the Appellant did not

have a dedicated e-mail ID for complaints related to share transfer agent activities at the time of inspection. It was also noticed that there was no auto response system with the result that the investor did not immediately come to know of the outcome of his grievance or even receive confirmation of its receipt by the Appellant.

8. The Tribunal has also minutely gone into the analysis of Appellant's defence as undertaken by the learned AO in the impugned order. At the outset, we note that the learned AO has granted sufficient opportunity to the Appellant to defend its case during the adjudicating proceedings before him. Two replies filed by the Appellant, dated June 19, 2009 and August 10, 2011 have been duly considered by the AO while passing the impugned order. Similarly, opportunity of a personal hearing was also granted by the AO to all the Authorised Representatives as well as to the Appellant before considering the evidence and other records to reach the findings in question. After having afforded a rather elaborate opportunity to the Appellant to present its case, and after a detailed consideration of the inspection report, other evidence, replies etc. the learned AO came to the conclusion that the Appellant was guilty of allegations levelled against him in the show cause notice. Precisely, the Appellant is found to have violated the following provisions of law:-

- I. Section 14(3) of the SEBI (Depositories and Participants) Regulations, 1996 which lays down as under:-

“14(3). Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfillment of such conditions and on payment of such fees as may be specified by the regulations, issue the

certificate of securities to the beneficial owner or the transferee, as the case may be.”

- II. Regulations 54(5) and 55 of the SEBI (Depositories and Participants) Regulations, 1996 which read as under:-

“54(5). Within 15 days of receipt of the certificate of security from the participant the issuer shall confirm to the depository that securities comprised in the said certificate have been listed on the stock exchange or exchanges where the earlier issued securities are listed and shall also after due verification immediately mutilate and cancel the certificate of security and substitute in its record the name of the depository as the registered owner and shall send a certificate to this effect to the depository and to every stock exchange where the security is listed.

Provided that in case of unlisted companies the condition of listing on all the stock exchanges where earlier issued shares are listed, shall not be applicable.”

“55. The issuer or its agent shall reconcile the records of dematerialised securities with all the securities issued by the issuer, on a daily basis:

Provided that where the State of Central Government is the issuer of Government securities, the depository shall, on a daily basis, reconcile the records of the dematerialised securities.”

- III. Clauses (2), (3), (5), (21) and (27) of the Code of Conduct prescribed under Regulation 13 of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 which read as under:-

“(2). A Registrar to an Issue and Share Transfer Agent shall fulfill its obligations in a prompt, ethical and professional manner.

(3) A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

(5) *A Registrar to an Issue and Share Transfer Agent shall always endeavour to ensure that –*

- (a) *inquiries from investors are adequately dealt with;*
- (b) *grievances of investors are redressed without any delay;*
- (c) *transfer of securities held in physical form and confirmation of dematerialisation / rematerialisation requests and distribution of corporate benefits and allotment of securities is done within the time specified under any law.*

(21) *A Registrar to an Issue and Share Transfer Agent shall endeavour to resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible.*

(27) *A Registrar to an Issue and Share Transfer Agent shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in carrying out its duties as a Registrar to an Issue and Share Transfer Agent and as a part of the industry. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholding and interests, etc.”*

9. The Tribunal, thus, does not find any irregularity, procedural or otherwise in the conduct of adjudication proceedings against the Appellant by the learned AO and in arriving at its decision holding the Appellant responsible for violating various rules and regulations as enumerated hereinabove.

10. The only question, therefore, before the Tribunal is whether in the facts and circumstances of the case, the punishment in question is justified or not. It is a matter of record that a team of SEBI officials undertook inspection of the Appellant's working with effect from January 18, 2007 to February 3, 2007, i.e., for almost 15 to 17 days. This was done as required by Regulation 16R of

the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993. This inspection pertained only to seven IPOs issued by the Appellant between 2004 and 2007. It is noted from the records that a detailed inspection was carried out under the leadership of a senior officer of the rank of Assistant General Manager of the Respondent, assisted by two other officers on the basis of books of accounts, various records, documents as mentioned and furnished by the Appellant. This was being monitored by yet another Assistant General Manager of SEBI. The inspection team, on the basis of samples randomly selected, verified applications, records of books of account related to the public issues, allotments in question etc. The inspection findings were also based on a Sample and Test Check of books of accounts, other records and documents, oral and written responses as furnished by the Appellant regarding the lapses pointed out by the inspection team during the course of inspection. In fact, it is specifically mentioned in the inspection report that the irregularities and observations mentioned in the report were not exhaustive and the illustrations given were not exclusive. On the basis of the allotment file of the respective IPOs, the inspection team found numerous cases of mismatches. On page 26 alone of the inspection report, we find around 10 mismatches. The name, in one of the cases, as per the concerned application should be 'Jyotsna Nagindas Doshi', whereas the name as per the Depository appears as 'Piyush Khimjibhai Faldu'. Similarly, one name as per another application is 'Rita Shyam Sumaya' whereas in the Depository records, it has been noted as 'Prakash K. Lokhande'. One 'Parshana Shah', applicant is, in fact, 'Jigna Naineshbhai Shah' as per the Depository records. There are 20 to 25 such mismatches in respect of one IPO of Parsvanath Developers Ltd. alone, and there are hundreds of such instances on record. The Appellant is stated to have issued 64 IPOs during the relevant time and it is pertinently noted that only seven have been inspected by the

inspection team of the Respondent, the outcome of which has been dealt with hereinabove. Facts of the case lead the Tribunal to the considered opinion that the Appellant has to have a stronger and more reliable validation system to ensure that shares are not credited to beneficiary accounts where the names, order of the names, status etc. do not match. Undoubtedly, one of the very important processes in the IPO application process is the validation process i.e. allotment of shares should only take place with respect to the applicants in the public issue and the consequent credit of shares should also go into the beneficiary account wherein names, order of names, status of the beneficiary account as appearing in the application form perfectly match the names, order, status in the records of the Depository.

11. Similarly, the inspection team found wrong credits in the Central Depository Services Limited. Details of about 60 wrong credits in respect of various companies have been reproduced by the inspection team at pages 33 to 35 of the report. The inspection team also found that on a number of occasions improper information was furnished by the Appellant with regard to credit of shares. The Appellant had provided a miniscule number of instances whereas the Depositories have shown a very large number of such cases.

12. One of the important facts noticed from the records is that there have been multiple allotments in the name of one person itself. This is against the established norms of law in this regard. There are hundreds of such instances brought on record by the investigating team and not disputed by the Appellant regarding such multiple allotments ranging from 2 to 14 in respect of one applicant alone. The Tribunal notes with concern that failure to weed-out such multiple applications with respect to just one applicant definitely leads to great

prejudice to genuine public investors. One group of 'Bhansali' consistently received allotments in every issue in the multiples. The Appellant, therefore, cannot simply take the shelter of a clerical error in the process of weeding-out of such multiple applications. A little alertness could have unearthed such multiples with a simple software check. If such applicants had been identified, at the outset, genuine investors at large would not have suffered. The Appellant, therefore, has to put its house in order by streamlining the system without blaming the Respondent. We do note that the Appellant is a renowned RTI and has been doing this job for more than two decades and has handled more than 300 IPOs which would have called for the scrutiny of lacs of applications every year. Therefore, a greater responsibility lies on the shoulder of the Appellant to revamp their systems by doing the needful.

13. Next, the Appellant has placed reliance on the order passed by this Tribunal in Religare Securities Limited versus SEBI on June 16, 2011. In Religare Securities Limited, the Appellant was a company registered with SEBI as a stock broker and a depository participant. SEBI decided to carry out an investigation of the records of the Appellant for the period between September 24, 2007 and October 4, 2007 and found a total of 60 irregularities in the maintenance of records by the company. SEBI, instead of pointing out the irregularities to the Appellant during the inspection, sent a report to the Appellant for its comments. A show cause notice was issued based on the comments of the Appellant, followed by an order dated November 10, 2010 levying a penalty of Rs. 3 lac on the Appellant. This Tribunal disagreed with the reasoning of SEBI and was of the opinion that all deficiencies found by the adjudicating officer could have been effectively responded to by the Appellant had the inspection team apprised the former of the same at the time of the

inspection itself. In this background, it has been held that the purpose of carrying out an inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. It has been further held that minor discrepancies, irregularities are not culpable. However, the Tribunal has itself added a caveat to the effect that the Respondent is not precluded from taking action against a delinquent in case of serious lapses.

14. There cannot be any dispute regarding the above-stated interpretation in respect of an inspection undertaken by SEBI. But in our considered opinion, the facts in the Religare case are clearly distinguishable in as much as in the case in hand we note that there are hundreds of irregularities and mistakes committed by the Appellant in respect of many aspects / processes in question. There are innumerable cases of mismatches, multiple allotments made to the same person, delayed redressal of grievances despite repeated reminders by the Respondent and so on and so forth. Therefore, the case of Religare Securities Ltd. does not help the cause of the Appellant in any way since the question of justification of any penalty sought to be imposed by an adjudicating officer pursuant to an inspection carried out as per law would depend upon the facts and circumstances of each case.

15. Lastly, as mentioned above, we note that the Appellant has failed to redress the grievances of hundreds of complainants within the prescribed time limit. It is a matter of record that about 4981 such grievances were not attended to by the Appellant within one month from the date of their receipts and were dealt with only after one to two months of delay, which in some cases went upto a much longer period of time. It is also seen from the records that several

complaints were forwarded by the Respondent to the Appellant and these remained to be replied to as on the date of inspection by the former. The same were, however, redressed at a later stage by the Appellant on intervention by the Respondent. The Tribunal has, thus, no hesitation in upholding the impugned order imposing a token penalty on the Appellant. If it were a case of mere inadvertence or minor and ignorable negligence, the Tribunal could have taken a more lenient view, but in the face of hundreds of proved or admitted mistakes which are rather serious in nature, the Tribunal does not find it a fit case for exercising its discretion to reduce the penalty by modifying the impugned order in any manner whatsoever.

The appeal, therefore, stands dismissed with no order as to costs.

Sd/-
Jog Singh
Member &
Presiding Officer (*Offg.*)

19.06.2013

Prepared and compared by:

ptm / msb