

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 29.1.2018

Appeal No.417 of 2016

1. Steelco Gujarat Limited
2. SPICA Investments Limited
Plot No.2, GIDC Estate,
Palej, Dist. Bharuch,
Gujarat – 392220.

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex, Bandra E,
Mumbai – 400 051.

... Respondent

Ms. Minakshi Nimbalkar, Advocate with Mr. Satyan Israni, Advocate i/b. S.D. Israni Law Chambers for the Appellant.

Mr. Pesi Modi, Senior Advocate with Mr. Pulkit Sukhramani, Advocate i/b. The Law Point for the Respondent.

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

Per : Justice J. P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Adjudicating Officer (A.O.) of Securities and Exchange Board of India ('SEBI' for short) on 29th April, 2016. By the said order penalty of Rs.25 lakh is imposed on the appellants under Section 23E of the securities Contracts (Regulation) Act, 1956 (1956 Act) to be paid by the appellants jointly and severally.

2. Facts relevant for the present appeal are as follows:

(a) Appellant no.1 is a company listed on the Bombay Stock Exchange Limited (BSE) and Vadodara Stock Exchange Limited. Appellant no.2 is the promoter of the appellant no.1 company.

(b) Admittedly appellant no.2 held 78.26% shares of the appellant no.1 company since June 2002.

(c) Rule 19(A)(1) inserted to the Securities Contracts (Regulation) Rules, 1957 (1957 Rules) with effect from 4.6.2010 (to the extent relevant) reads thus:

“Continuous Listing Requirement –

19A. (1) Every listed company (other than public sector company) shall maintain public shareholding of at least twenty five per cent :

Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation:

For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five percent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

(2)

(3)

(d) In view of rule 19A(1) of the 1957 Rules the appellants were obliged to maintain public shareholding of atleast 25% within a period of 3 years from 4.6.2010 (the date on which Rule 19(A)(1) came into force) i.e. on or before 3.6.2013.

(e) As the appellants failed to comply with the minimum public shareholding requirement under Rule 19(A)(1) of the 1957 Rules within the stipulated time and in fact complied that obligation belatedly after delay of 14 months on 6.8.2014, proceedings were initiated against the appellants and by the impugned order the AO imposed a penalty of Rs.25 lakhs under Section 23E of the 1956 Act

to be paid by the appellants jointly and severally. Challenging the aforesaid order appellants have filed the present appeal.

3. Ms. Minakshi Nimbalkar, leaned counsel appearing on behalf of the appellants submitted as follows:-

(a) the financial position of the appellant no.1 company became weak in the year 2011-12 and hence the appellant no.1 company underwent Corporate Debt Restructuring (CDR). As per the order passed by the empowered group of CDR on 1.6.2012, 100% shares of appellant no.1 held by the appellant no.2 (i.e. 78.26% share of the total equity shares in the appellant no,1 company) were pledged in favour of State Bank of India.

(b) On 6.3.2013 appellants received a letter from BSE whereby the appellants were called upon to comply with the minimum public shareholding requirement as contemplated under the 1957 Rules as amended. By their reply dated 14.3.2013 the appellants informed BSE that since the 78.26% shares held by appellant no.2 were pledged to the State Bank of India, it would be difficult for the company to comply with the minimum public shareholding requirement.

(c) Similarly on receiving letter dated 23.4.2013 from SEBI, appellants held a meeting with the officials of SEBI wherein appellants pointed out that 100% of promoter shareholding are pledged with bankers who are not willing to reduce their security, and therefore, the promoter's shareholding cannot be reduced by way of sale in the secondary market. Thereupon SEBI suggested that the pledged shares may be sold to the bankers thereby achieve the minimum public shareholding requirement. Accordingly the appellants took steps to sell the pledged shares to the bankers.

(d) In the meantime, the Whole Time Member (WTM) of SEBI by his order dated 4.6.2013 directed inter alia, freezing of voting rights and corporate benefits like dividend, rights, bonus shares, spit etc till such time the minimum public shareholding requirement was achieved. Thereafter, on the appellants achieving the minimum public shareholding requirement on 6.8.2014, the WTM of SEBI passed an order on 21.10.2014 whereby the directions contained in the order dated 4.6.2013 were revoked and the matter was referred for adjudication proceedings under Sections 23E and 23H of 1956 Act.

(e) It is submitted that the delay in selling the pledged shares was on account of delay on part of bankers and therefore, the delay was beyond the control of the appellants. Moreover, it is submitted that none of the mitigating factors contained in Section 23J of the 1956 Act have been considered in the present case. In these circumstances, counsel for the appellants submitted that in the facts of present case, penalty imposed on the appellants deserves to be quashed and set aside.

4. We see no merit in the above contentions.

5. As per rule 19A(1) which came into force with effect from 4.6.2010 it was obligatory on part of the appellants to achieve minimum public shareholding requirement by 3.6.2013. Clause 40A of the listing agreement requires the issuer company to comply with the requirements of Rule 19(2) and Rule 19A of 1957 Rules within the time stipulated therein. Section 23E of 1956 Act provides that if a company or any person responsible to comply with Rule 19A inter alia fails to comply with the listing conditions or commits

breach thereof, shall be liable to a penalty not exceeding twenty five crore rupees.

6. In the present case, on the date on which the appellants pledged 78.26% shares in favour of the bankers in the year 2012, Rule 19A(1) was already in operation and therefore, before pledging the shares, the appellants ought to have ensured that the obligation under Rule 19A(1) were complied with, if necessary by selling the requisite shares to the bankers, instead of pledging the shares with the bankers. Failure to do so was in gross violation of Regulation of 19A(1) of 1957 Rules.

7. Apart from the above, when SEBI suggested that the minimum public shareholding requirement could be achieved by selling the pledged shares to the bankers, the appellants ought to have prevailed upon the bankers to do the needful within the stipulated time. However, the appellants failed to prevail on the bankers.

8. It is relevant to note that for non compliance of Rule 19A the WTM of SEBI by his order dated 4.6.2013 had imposed certain restrictions inter alia on the appellants as more particularly set out therein. In spite of the said order passed by the WTM on 4.6.2013, appellants failed and neglected to comply Rule 19A till 6.8.2014. In these circumstances, it is apparent that the appellants are grossly guilty of violating rule 19A of 1957 Rules.

9. Provisions contained in the 1956 Act and the rules made thereunder do not contain any provisions for granting extension of time for compliance beyond the time stipulated in the Act and the Rules. Therefore, in the facts of present case, where the appellants are guilty of violating Rule 19A(1) of 1957 Rules for more than 14 months cannot escape penal liability.

10. Argument of the appellants that the delay on part of the bankers to sell the pledged shares cannot be attributed to the appellants is without any merit, because in the first instance the appellants ought to have ensured compliance of rule 19A before pledging the shares. Alternatively, the appellants ought to have implemented the suggestion given by SEBI to sell the shares to the banker within the stipulated time. Having failed to impress upon the bankers to sell requisite shares within the stipulated time, the appellants are guilty of violating Rule 19A(1) of 1957 Rules and hence the appellants cannot escape penal liability by alleging that the bankers are responsible for the delay.

11. Argument of the appellants that the AO has failed to consider the mitigating factors set out in Section 23J of the 1956 Act is also without any merit. Penalty imposable under Section 23E of 1956 Act for violating the provision contained in the listing agreement which includes compliance of the requirement contained in 19A(1) of 1957 Rule is up to Rs.25 crore. In the present case, the AO after considering all mitigating factors has imposed penalty of Rs.25 lac as against the imposable penalty of Rs.25 crore. In such a case, penalty imposed cannot be said to be unreasonable or excessive.

12. 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/-
Jog Singh
Member

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

29.1.2018

Prepared and compared by
RHN