BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 24.8.2020
Date of Decision : 27.8.2020

Appeal No.232 of 2020

National Highway Authority of India
Headquarters at G-5&6,
Sector-10, Dwarka,
New Delhi – 110 075. ...Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051. …Respondent

Mr. Rajesh Ranjan, Advocate with Mr. Neeraj Matta, Advocate for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Rashi Dalmia, Advocate i/b. M/s. ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the Appellant

Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the 'LODR Regulations, 2015') namely, that there was a delay in filing the half yearly financial results for the period ending 30th September, 2018 and 31st March, 2019 within 45 days from the end of the half financial year.

2. The facts leading to the filing of the appeal is, that the Appellant is an autonomous body set up by the Parliament under an Act known as National Highway Authority of India Act, 1988 (hereinafter referred to as 'NHAI Act') for the purpose of development, maintenance and management of national highways. This body which is not a Company as defined under the Companies Act is listed on the Bombay Stock Exchange and National Stock Exchange in pursuance of a Listing Agreement for Debt Securities dated 7th February, 2012 and, therefore, is subject to the provisions of the LODR Regulations, 2015. The requirement under Regulation 52(1) of the LODR Regulations, 2015 is to file the unaudited half yearly financial results within 45 days

within the stipulated period on account of circumstances which could not be foreseen, the Appellant made a request by letters dated 31st May, 2019 and 24th June, 2019 for extension of the period. This application was apparently made under Regulation 102 of the LODR Regulations, 2015 which was accompanied by a fee of Rs.1 lakh.

4. Based on the aforesaid request, Respondent sought certain clarifications which was given by the Appellant contending that the Board of National Highway Authority of India (hereinafter referred to as 'NHAI') consists of Chairman, five full time Members and five part time Members appointed by the Government of India. These part time Members includes the CEO of Niti Aoyog, Secretary (Expenditure), Ministry of Finance, Secretary of Road Transport and Highways and D G (RD)/SS, Ministry of Road Transport and Highways and, therefore, at times it becomes unavoidable to ensure that all the Members are present to approve the financial results. It was also clarified that the Appellant has more than 200 accounting units spread across

stated that under Regulation 4(1) of National Highways Authority of India (Transaction of Business) Regulations, 1997 the meeting of the Board could be considered legal and valid only if it is approved by two-third of the Members.

5. It was urged that in view of this unforeseen circumstances, the delay in filing the unaudited financial results be condoned.

6. Inspite of the clarification given, the Respondent by order dated 7th October, 2019 declined to accept the request for extension of time for filing the unaudited financial results for the half year ending 31st March, 2019 but acceded to the request for filing the audited financial results for the financial year 2018-19 to be filed by 31st March, 2019.

7. Thereafter, the Appellant was served with a show cause notice dated 15th January, 2020 to show cause why penalty should not be imposed for non-compliance of Regulation 52 of the LODR Regulations, 2015. The Appellant submitted its reply contending that due to unforeseen circumstances as stated aforesaid the Appellant could not file the unaudited

beyond their control the delay be condoned and no penalty should be imposed.

8. The Adjudicating Officer after considering all aspects of the matter passed the impugned order imposing a penalty of Rs.7 lakhs. The Adjudicating Officer held that there was repeated failure on the part of the Appellant in not filing the returns on seven occasions from financial year 2015-2016 to financial year 2018-2019. The Adjudicating Officer further held that the contention of the Appellant that the procedural delay cannot be taken as a mitigating factor for relaxation of the period for filing the unaudited financial results. Further, there is no provision for providing relaxation under Regulation 52. The Adjudicating Officer held that if an act is required to be done in a particular manner and within a particular period then the same should be done in that particular manner and time and that there cannot be any deviation. The Appellant being aggrieved by the said order has filed the present appeal.

9. We have heard Mr. Rajesh Ranjan, Advocate assisted

10. The learned counsel for the Appellant contended that in view of Section 27 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') no proceedings could have been initiated for imposing penalty under Section 15A of the SEBI Act unless and until the Officers in default were identified and prosecuted under Section 27 of the Act. It was also urged that there were genuine circumstances beyond the control of the Officers of the Appellant in as much as the financial results were prepared but the same could not be approved on account of lack of quorum in the meeting of the Board of Appellate authority. It was urged that in view of Regulation 4 of National Highways Authority of India (Transaction of Business) Regulations, 1997 no meeting of the Board would be legal or valid unless it was approved by two-third of the members. It was contended that on account of composition of the Board which comprises of various dignitaries it becomes difficult to have the minimum quorum which in turn delayed the approval of the unaudited financial results by the

application by deposit of requisite fees was filed under Regulation 102 of the LODR Regulations, 2015 and circumstances were indicated giving reasons for the delay in filing the returns. The said application was rejected mechanically by the Respondent without giving any reason which was arbitrary and violative of the principles of natural justice. The learned counsel further submitted that the factors contemplated under Section 15J of the SEBI Act was not taken into consideration while imposing the penalty.

11. On the other hand, the learned counsel for the Respondent submitted that the violation under Section 52 of the LODR Regulations is admitted by the Appellant. It was urged that there is no relaxation under Regulation 52 and, therefore, penalty was rightly imposed. The learned counsel further urged that a procedure has been provided under Regulation 52 of the LODR Regulations to file the unaudited financial results within 45 days from the end of the half financial year which in the instant case was not done and, therefore, penalty became automatically leviable. It was

12. Having heard the learned counsel for the parties and, in order to appreciate the submissions, it would be appropriate to take a look at the provisions of Regulation 52(1) and 102 of the LODR Regulations which are extracted hereunder:-

Regulation 52(1)

"Financial Results.

52(1) The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty five days from the end of the half year to the recognised stock exchange(s)."

Regulation 102

*" **Power to relax strict enforcement of the regulations.***

102.The Board may in the interest of investors and securities market and for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

(a) any provision of Act(s), Rule(s), regulation(s) under which the listed entity is established or is governed by, is required to be given precedence to; or
(b) the requirement may cause undue hardship to investors; or
(c) the disclosure requirement is not relevant for a particular industry or class of listed entities; or
(d) the requirement is technical in nature; or
(e) the non-compliance is caused due to factors affecting a class of entities but being beyond the

financial results on a half yearly basis within 45 days from the end of the half year to the recognized stock exchange.

14. Admittedly, in the instant case the unaudited half yearly financial results were not filed within the stipulated period. As a result, penalty became leviable under Section 15A(b) of the SEBI Act which is extracted hereunder:-

> ***"15A. Penalty for failure to furnish information, return, etc.-***
>
> *If any person, who is required under this Act or any rules or regulations made thereunder,-*
>
> *(a) ……*
>
> *(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"*

15. Thus, on account of a default of Regulation 52 penalty could be imposed under Section 15A of the SEBI Act.

16. The contention of the Appellant that Section 27 of SEBI Act should have been invoked as the offence, if any, was carried out by the Company and, therefore, it was the

patently erroneous. Prosecution under Section 27 of the SEBI Act can be initiated against the Company and its Directors/Officers and persons responsible for the default but penalty proceedings can be initiated under Section 15A for non-filing of the financial results without taking taking recourse to Sec. 27 of the Act.

17. The contention of the learned counsel for the Appellant that the factors enumerated under Section 15J of the SEBI Act has not been taken into consideration while imposing penalty is patently erroneous. In the first instance, we find that the Adjudicating Officer has taken into consideration the factors mentioned under Section 15J while imposing the penalty of Rs.7 lakhs. We may however note that the Supreme Court in ***Adjudicating Officer, SEBI vs. Bhavesh Pabari, (2019) 5 SCC 90*** held that the provisions of Section 15J may not apply in adjudication proceedings involving penalty under Section 15A while determining the quantum of penalty. For facility paragraph 10 in the matter of Bhavesh Pabari (supra) is extracted hereunder:

under Sections 15-A, 15-B and 15-C, Section 15-J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the adjudicating officer while determining the quantum of penalty."

18. In the light of the aforesaid, it is clear that for violation of Regulation the authority of SEBI can impose penalty under the SEBI Act. However, there is an exeption to the rule and exemption can be granted by extending the time to comply with the provisions of the Act, Rules and Regulations. In this regard, Regulation 102 of the LODR Regulations gives power to the Board to relax the strict enforcement of the Regulations. Regulation 102(1)(e) stipulates that one of the mitigating circumstances for relaxation could be caused due to a factor which is beyond the control of the entity.

19. In the instant case, the Appellant is governed by a plethora of statutory rules over and above the rigor of the

The Appellant is governed under the NHAI Act and the rules and regulations made thereunder which warrants involvement of a large number of members who are highly ranked officials who are appointed by the Government of India who simultaneously discharge their duties under various other portfolios. It thus becomes slightly tedious and cumbersome to ensure that all the members of the Board meeting come together under one roof and get the audited or unaudited financial results approved before the stipulated period. At times, it is beyond the control of the Officers of the Appellant to enforce strict compliance of the Act, Rules and Regulations of SEBI.

20. In the light of the fact that the Appellate Authority consists of members drawn from the Central Government Ministries at Secretary level rank the Appellate Authority is a *sui generis* company and is unlike any other listed entity which is not saddled with the burden of government functions and senior government functionaries who are entrusted with multifarious functions in the Union

LODR Regulations. We find that in the instant case whereas the Respondent has granted extension of time to file the audited financial results for the year ending 2018-19 the Respondent declined to grant extension of time to file unaudited financial results and the request was declined without assigning any reason. In our opinion, the non-assigning of any reason in the order of 7th October, 2019 was wholly arbitrary.

21. The finding of the Respondent that there was a repeated failure on the part of the Appellant on seven occasions for not filing the financial results for the financial years 2015-2016 to 2018-2019 cannot be taken into consideration as a ground for imposition of penalty of Rs.7 lakhs in as much as the show cause notice was only confined for violation of Regulation 52 of the LODR Regulations for non-filing of the unaudited half yearly financial results for the year ending 30th September, 2018 and 31st March, 2019. The delay in the filing of the returns for the earlier financial years stood exempted and condoned by the respondent

22. The finding of the Adjudicating Officer that Regulation 52 does not provide for relaxation of the time period and that the financial results are required to be filed within the stipulated period is erroneous. The Supreme Court in Bhavesh Pabari's case (supra) has clearly held that the conditions stipulated in clause (a), (b), and (c) of Sec. 15-J are not exhaustive and, in a given case, the AO can take note of other factors which are not specified in clause (a), (b), and (c) of Sec. 15-J of the Act.. In our view, the Adjudicating Officer also could have taken into consideration the mitigating circumstances in addition to the factors mentioned under Section 15J while considering the imposition of penalty.

23. In the light of the aforeasaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the respondent to relax the strict enforcement of the Regulations.

factor under Sec. 15-J while considering the imposition of penalty.

24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, we are of the opinion that the imposition of penalty of Rs.7 lakhs in the given circumstances was harsh and excessive. Thus, the imposition of Rs.7 lakhs upon the Appellant cannot be sustained and is substituted with a warning with a further condition that in the event the Appellant violates Regulation 52 of the LODR Regulations in future it will be open to the Respondent to initiate proceedings under the Act/LODR Regulations and proceed in accordance with law. In view of the aforesaid, the appeal is allowed in part. The penalty of Rs.7 lakhs is substituted with a warning. In the circumstances of the case, there shall be no order as to costs.

25. The present matter was heard through video conference

order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

TARUN AGARWAL

Digitally signed by TARUN AGARWAL
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Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

27.8.2020
RHN