

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 19.03.2018

Date of Decision : 06.04.2018

Appeal No. 378 of 2016

1. Top Telemedia Ltd.
Registered Address: B-1/304,
Brahama Memories,
Bhosle Nagar,
Pune.
Administrative Office: Level 3
NeoVikram, New Link Road,
Andheri (West),
Mumbai – 400 058.

2. Mr. Indrajit Vaghela Lakhaji
A/202, Asavari Flat,
Opp. Karnavati Club,
Nr. Satyagraha Chavni,
Satellite Road,
Ahmedabad – 380 015.

..... Appellants

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. P.N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Deepak Dhane and Mr. Ramesh Gogawat, Advocates i/b Joby Mathew & Associates for Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Sonam Sethia, Advocate i/b Juris Corp for the Respondent.

**With
Appeal No. 379 of 2016**

Deep Kumar Trivedi
7th Floor, Rustomjee,
7 JVPD Building,
10th Road, JVPD Scheme,
Vile-Parle (West),
Mumbai – 400 049.

..... 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. Deepak Dhane, Advocate with Mr. Ramesh Gogawat, Advocate i/b Joby Mathew & Associates for Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Sonam Sethia, Advocate i/b Juris Corp for the Respondent.

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

Per : Dr. C.K.G. Nair

1. These two appeals are filed challenging the order of the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) dated June 6, 2016. By the said order penalty has been imposed on the appellants for failure to redress investor grievances despite even a direction from the Whole Time Member ('WTM' for short) of SEBI by his order dated August 10, 2012.

2. In Appeal No. 378 of 2016, the Appellant No. 1, Top Telemedia Ltd. ('the company' for short) is a company incorporated on January 1, 1995 and listed on October 3, 2000. Appellant No. 2 Mr. Indrajit Vaghela Lakhaji is the Whole Time Director of the company. In Appeal No. 379 of 2016 the appellant Mr. Deep Kumar Trivedi was the Managing Director of the company during part of the relevant period. Since the impugned order is the same and basic facts are common, by consent of the parties, both the appeals are heard together and disposed off by this common decision.

3. On April 21, 2011 SEBI forwarded certain investor complaints filed against the company instructing the company to redress the complaints and submit Action Taken Report (ATR) to SEBI. Since the letter dated April 21, 2011 could not be served upon the appellant SEBI issued a public notice on July 20, 2011 on its website advising the appellant company to resolve the

investor grievances. On February 23, 2012 SEBI issued a Show Cause Notice (SCN) to the appellants asking why action should not be taken against it for not resolving the investor grievances. Since the SCN could not be served SEBI issued a public notice in newspapers on March 1, 2012 including granting a personal appearance to the company / Directors. On April 10, 2012 a personal hearing was granted to the appellant who submitted that six investor grievances were pending and time was granted by SEBI upto May 10, 2012 to resolve these grievances and submit ATR. On April 16, 2012 the appellant informed SEBI about non-receipt of notices in the proceedings since the registered office of the appellant company was shifted and a qualified Company Secretary was not in position. On August 10, 2012 WTM of SEBI passed an order stating that investor grievances are pending against the appellant company and therefore the appellants were restrained from accessing the securities market directly or indirectly till the investor grievances are redressed. On November 9, 2015 SCN was issued by the AO of SEBI which was reportedly not received by the appellants. On June 6, 2016 impugned order was passed by AO of SEBI, which the appellants came to know on June 30, 2016 from one of their erstwhile directors. This order of AO is impugned in both these appeals.

4. Learned Senior Counsel Shri P.N. Modi appearing on behalf of the appellants in Appeal No. 378 of 2016 extensively argued that they were not in receipt of the SCN issued by the AO dated November 9, 2015. Though the SCN was sent to various addresses and the right address - A/202 Asawari Towers, Satellite, Ahmedabad – 380015 was also given amongst the addresses on the covering page of the SCN, the SCN was admittedly never sent to this address. This is despite the fact that in the order of the WTM of SEBI dated August 10, 2012, which the AO of SEBI proposes to

reinforce, it is specifically stated that the above mentioned address is the right address. Since the company (appellant no. 1) is non-functional for a long time and reported change in registered address has been noted in the WTM's order. The letterhead through which the appellant has been writing to SEBI also indicated the above stated address. In spite of these and despite the WTM noticing the correct address of the appellant company in his order itself the SCN from the AO was sent to various other addresses but not to the correct address. Even the e-mail in which the AO has stated to have sent the SCN is also wrong as the correct e-mail was indicated in the letterhead of the appellant company through which letters were issued to SEBI on March 2, 2012 which was noted by the WTM in his order (supra). As far as affixing the SCN it should have been done in the last known address as per SEBI's own rules but despite that SEBI proceeded with by relying on the wrong addresses. Therefore, despite having and knowing the correct address the AO deliberately proceeded against the appellants by not serving the SCN and passing an ex parte order imposing a huge penalty on the appellants. Accordingly, the impugned order has been issued ex parte without giving an opportunity of hearing to the appellant. Such an approach by the AO of SEBI violated the procedure for service of notices and orders as specified in SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. Learned Senior Counsel for the appellant in Appeal No. 378 of 2016 also relied on the order of this Appellate Tribunal in the case of the appellant company in another appeal Top Telemedia Ltd. vs. Securities and Exchange Board of India, Appeal No. 156 of 2006 decided on 11.09.2007 which dealt with the issue of SCNs etc. returned without being served and still the AO of SEBI proceeding with imposing monetary penalty and therefore quashed and set aside that impugned order.

5. As far as merit of the appeal is concerned, it was further submitted by the Learned Senior Counsel that, despite being an inactive company with effect from February 14, 2003 (and subsequently delisted on September 9, 2017) it has been the endeavour of the appellants to redress the grievances of the investors. Accordingly all the investor grievances have been redressed before issue of the impugned order. There was some delay in redressing some of the investor grievances because of the limitations imposed by the circumstances of an inactive company with no proper office facilities, staff etc.

6. Learned Counsel Shri Deepak Dhane appearing on behalf of the appellant in Appeal No. 379 of 2016 submitted that the appellant herein was not a Director of the company when the SCN was issued. He resigned from the company much before the issue of SCN i.e. on July 1, 2013 which was accepted by the company on July 31, 2013 in its board meeting. Minutes of the meeting is on record. Further, his vacancy was filled in by another nomination filed before the Registrar of Companies (RoC) which is also on record. Since the appellant herein was not any way connected with the company when the SCN was issued on November 9, 2015, he is not responsible for any violation relating to non-redressal of investor grievances of the company.

7. Learned Senior Counsel for the respondent SEBI Shri Gaurav Joshi submitted that every company is mandated to have a registered office and in case of any change in the registered address it should be duly informed to the Stock Exchanges / Registrar of Companies (RoC). In the instant matter the information given by the company regarding change in registered address itself was contradicted by evidence. However, in any case, the SCN

was issued in both the registered addresses in Ahmedabad and in Pune, before change and after change as informed by the company. Accordingly, service of documents has been done as per the provisions of Section 51 and Section 146 of the Companies Act, 1956 (with pari materia provisions in Sections 20 and 12 respectively of the Companies Act, 2013) which stipulate that the documents must be served in the registered office of the company. Learned Senior Counsel for the respondent SEBI also relied on the Judgment of the Apex Court in the matter of M/s Madan and Co. vs Wazir Jaivir Chand [(1989) 1 Supreme Court Cases 264] in respect of servicing of SCN etc. He also submitted that reliance on the WTM order dated August 10, 2012 is misplaced since the WTM only noted another address he noticed on the letterhead of the company.

8. We have heard the arguments of both the parties and perused the records before us. We note that the letterhead of the company at page 48 of the appeal paper book (letter dated March 12, 2012) gives two addresses i.e. (1) 701, Anand Mangal – III, Rajnagar Club Lane, Ambawadi, Ahmedabad – 380 006, (2) postal address - A-202, Asavari Towers, B/h Fun Republic, Satellite, Ahmedabad – 380 015. However, in the letters dated April 16, 2012 and May 9, 2012 on the letterhead of the appellant company produced in the reply filed by SEBI before us only 701, Anand Mangal – III, Rajnagar Club Lane, Ambawadi, Ahmedabad – 380 006 is given. Therefore, the company was apparently using different letterheads with different addresses. We also note that AO of SEBI has sent SCN in both the registered addresses as per records which are as per mandate under the Companies Act. Even the information relating to change in registered address from Ahmedabad to Pune given by the company is found to be unreliable as service of SCN could not be effected there also. Given the conflicting information relating to the address given by the appellant the argument that SEBI failed to serve

the SCN following due procedure is devoid of any merit. Rather it is clear that the appellants are taking undue advantage of no service of SCN etc. when records regarding the addresses of the company relating to its registered addresses or as given in the letterheads turn out to be unreliable. The reliance placed by Learned Senior Counsel for the appellant in Appeal No. 378 of 2016 in the order of this Appellate Tribunal (supra) is distinguishable as in that matter it is evidenced that the SCNs issued in the registered office of the company was returned and when the representative of the company approached SEBI personally for getting copies of the notices the same was not furnished by SEBI.

9. Fact that appellant in Appeal No. 379 of 2016 had resigned on July 1, 2013 which was accepted by the board of directors of the company on July 31, 2013 does not absolve him from the obligation of discharging the investor grievances pending upto the date of his resignation / acceptance because he was the Managing Director of the company entrusted with the task of day-to-day affairs of the company. Moreover, he has been with the company as a Director from July 23, 2006; pending investor grievances had been highlighted by SEBI itself to the company on April 21, 2011 when SEBI forwarded these complaints to the company. Subsequently, on August 10, 2012 the WTM of SEBI issued an order directing the company and its Directors to redress these investor grievances pending for long time and restrained the company and the Directors from accessing the securities market till those investor grievances were redressed. However, till the resignation of the appellant in Appeal No. 379 of 2016 i.e. in July 2013, these investor grievances were not redressed. Accordingly, even going by the date of communication by SEBI i.e. April 21, 2011 till July 2013 when the appellant was Director / Managing Director of the company those investor grievances were not redressed.

10. Given the above facts of the matter the findings in the impugned order that the company, its then Managing Director Mr. Deep Kumar Trivedi and Whole Time Director Mr. Indrajit Vaghela Lakhaji have been responsible for considerable delay in redressing grievances of the investors cannot be faulted. They also did not follow the directions issued by the WTM of SEBI vide his order dated August 10, 2012 to redress the investor grievances and to submit ATR. Accordingly, the contention that the appellants have violated Section 15C and the directions of the WTM cannot be faulted and therefore the appellants are liable to be penalized under Sections 15C and 15HB of the SEBI Act, both sections providing that for each violation the penalty may extend to one crore rupees. Accordingly, AO of SEBI imposed a penalty of ₹ 1,10,00,000/- (Rupees One Crore Ten Lakh Only) on the company (appellant no. 1 in Appeal No. 278 of 2016 - ₹ 1 Crore under section 15C and ₹ 10 Lakh under section 15HB of SEBI Act) and ₹ 10 Lakh each on appellant no. 2 in Appeal No. 278 of 2016 and on appellant in Appeal No. 379 of 2016.

11. However, though the Learned Senior Counsel for SEBI argued that there is repeated violation regarding redressal of investor grievances, we note that the six violations which are the subject matter of these appeals have been redressed by the appellant before issue of the impugned order, which is not disputed. Given the fact that the appellant company was defunct should also come to the rescue of the appellant company as a mitigating factor. Accordingly, we do not agree that this is a fit case for imposing a maximum penalty of ₹ 1 crore against the company under Section 15C. At the same time multiple investor grievances had been pending for a long time upto 12 years is a fact. Therefore, considering all the circumstances and on a balance, we reduce the penalty imposed on the

company (appellant no. 1 in Appeal No. 378 of 2016) to ₹ 50 Lakh as against ₹ 1 Crore and ₹ 10 Lakh imposed by the impugned order. However, the penalty of ₹ 10 Lakh each imposed on appellant no. 2 in Appeal No. 378 of 2016 and on appellant in Appeal No. 379 of 2016 remain unchanged.

12. Both the appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

06.04.2018

Prepared and compared by:msb