

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 10.04.2018

Date of Decision : 12.04.2018

Appeal No. 256 of 2017

BOI Shareholding Limited
Bank of India House, 4th Floor,
70/80, M.G. Road, Fort,
Mumbai – 400 001.

..... 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. Paras Parekh, Advocate with Mr. Ravichandra Hegde and Ms. Stuti Shah, Advocates i/b J Sagar Associates for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Santanu Mitra and Mr. Anubhav Ghosh, Advocates i/b Desai & Diwanji for the Respondent.

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

Per : Dr. C.K.G. Nair, Member

1. This appeal is filed challenging the order of the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) dated July 31, 2017 whereby a penalty of ₹ 40 Lakh has been imposed on the appellant under Section 15HB of SEBI Act read with Section 19G of the Depositories Act, 1996 for delayed implementation of the SEBI Circulars / Guidelines relating to anti-money laundering (AML) policy.

2. The appellant is a company incorporated under the Companies Act and functions as a clearing house for BSE Ltd. and having its own

depository participant services. It is wholly owned subsidiary of Bank of India.

3. SEBI, on June 29, 2015 conducted an inspection of the appellant's books of accounts to examine whether the appellant had put in place systems and processes to comply with the Circulars issued by SEBI relating to the AML policy to be adopted, among others. The appellant was asked to explain the discrepancies noticed vide SEBI's letter dated July 2, 2015. The appellant replied on November 16, 2015 stating that all the discrepancies have been dealt with and assured maintenance of high standards in future. On March 8, 2017 SEBI issued a Show Cause Notice (SCN) to the appellant alleging violation of AML/CFT policy under the Prevention of Money Laundering Act, 2002 ('PMLA' for short) effected from July 1, 2005 as to why adjudication proceedings should not be initiated against the appellant for violation of – (i) AML/CFT policy; (ii) Client Risk Categorization; and (iii) Suspicious Transaction Monitoring and Reporting. Following reply and opportunity of personal hearing etc. the impugned order was passed on July 31, 2017 whereby the appellant was found to have violated AML/CFT policy by delaying its proper implementation by a number of years and therefore imposed a penalty of ₹ 40 Lakh on the appellant. According to the impugned order, the appellant is alleged to have violated clause 11 of the Third Schedule of Regulation 20AA of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 ('DP Regulations' for short) for non-incorporation of the provisions of the (i) SEBI Master Circular no. CIR/ISD/3/2010 on AML/CFT dated December 31, 2010, (ii) Circular no. CIR/MIRSD/2/2013 issuing Guidelines on Identification of Beneficial Ownership dated January 24, 2013 and (iii) Circular no. CIR/MIRSD/1/2014 dated March 12, 2014, modifying the AML Circular.

4. The table given at pages 4 to 6 of the impugned order lists six violations committed by the appellant in terms of delay in implementation of the required policies and practices under anti-money laundering policy. Such delays range from 2 to 4 years. However, it is not disputed that though delayed, the appellant is in compliance with all the ingredients of the anti-money laundering policy as required under the extant SEBI Circulars.

5. The basic contention of Shri. Paras Parekh, Learned Counsel appearing on behalf of the appellant is that the policy framed was more like procedural in nature to be incorporated in the internal policies of the appellant which has been done. As such, there has been no violation per se. However, without pressing this argument further, Counsel for the appellant submits that the amount of penalty of ₹ 40 Lakh imposed is too high given that the violations are only in the nature of procedural delays and did not adversely affect the investors in any manner. Further, in a few other similar matters the penalty imposed by SEBI was either Nil (in the matter of IFCI Financial Services Limited) or ₹ 1.50 Lakh (in the matter of Triveni Management Consultancy Services Limited). However, in the case of the appellant despite proper implementation of the necessary directions of SEBI penalty of ₹ 40 Lakh has been imposed which is highly disproportionate for the alleged violations.

6. Learned Senior Counsel Shri Gaurav Joshi appearing on behalf of the respondent SEBI contends that the AML policy was to be implemented with full force given that they are emanating from international obligations and as provided for under the Indian laws. Therefore, delay of several years for implementing each of the six noted violations cannot go unpunished.

7. We have perused the records produced before us. In the Master Circular on AML/CFT dated December 31, 2010 issued by SEBI we note

that all the registered intermediaries were directed to comply with the requirements contained therein on an immediate basis. Similarly, subsequent amendments made on January 24, 2013 also required adoption on immediate basis though the Circular dated March 12, 2014 does not specify the implementation time schedule. However, following the spirit of the basic policy it has to be presumed that implementation has to be done at the earliest. From the evidence produced before us it is clear that the appellant has implemented all the requirements of the AML/CFT policy as specified in the SEBI Circulars though belatedly. We have also noted that for delayed implementation / violation SEBI has imposed varying penalty including no penalty in some cases. However, under the relevant Sections i.e. 15HB of SEBI Act read with Section 19G of the Depositories Act, 1996 the penalty imposable for each violation shall not be less than ₹ 1 Lakh which may extend to 1 Crore rupees. Accordingly, the minimum penalty imposable in case of six violations committed by the appellant should be in tune with the statutory provisions relating to the penalty.

8. Given the fact that, though belatedly, the appellant has implemented all the required policies and procedures on AML/CFT policy as stipulated under the various circulars of SEBI and by the penalty precedent set by SEBI itself we are of the view that the penalty of ₹ 40 Lakh imposed on the appellant is excessive. We, therefore, reduce the amount of penalty imposed on the appellant to ₹ 6 Lakh.

9. Appeal is partly allowed in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

12.04.2018

Prepared and compared by:msb