

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 04.05.2018**

**Date of Decision : 16.05.2018**

**Misc. Application No. 94 of 2018**

**And**

**Appeal No. 104 of 2018**

Neycer India Limited

Manasa, No. 145, St. Mary's Road,

Alwarpet,

Chennai- 600 018

...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. Ankit Lohia, Advocate with Mr. Ajai Achuthan, Advocate i/b  
Bharucha & Partners for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Shantanu 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: Justice J.P. Devadhar

**Misc. Application No. 94 of 2018**

There is delay of 01 day in filing the appeal. By this Miscellaneous  
Application, applicant seeks condonation of the said delay. For the  
reasons stated in the application, delay is condoned.

Miscellaneous Application is disposed of accordingly.

**Appeal No. 104 of 2018**

1. This appeal is filed to challenge the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India on 04.01.2018. By the said order penalty of ₹ 7.5 lac is imposed on the appellant under Section 23E of the Securities Contracts (Regulations) Act, 1956 (“SCRA” for convenience) for violating Clause 40A of the Listing Agreement read with Rule 19A of Securities Contracts (Regulation) Rules, 1957 inserted with effect from 04.06.2010 (“SCRR” for convenience) read with Section 21 of the SCRA.

2. The appellant company incorporated on 12.05.1960 had filed a reference before the Board of Industrial Finance Reconstruction (“BIFR” for convenience) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) for determination of the measures to be adopted for revival of the appellant which had become a sick company. On 30.09.1992 BIFR declared the appellant as a sick company under the provisions of SICA. On 16.11.1994 BIFR sanctioned a scheme for revival of the company. As the said scheme failed to revive the company, a modified rehabilitation scheme was sanctioned by the BIFR on 17.10.2008.

3. The modified rehabilitation scheme dated 17.10.2008 permitted the appellant extension of time beyond the stipulated period in the SEBI Guidelines/ Regulations to dilute the promoters/investors shareholding till completion of the period of implementation under the modified rehabilitation scheme.

4. It is not in dispute that under Rule 19A inserted to SCRR with effect from 04.06.2010, it was obligatory on part of all the listed companies including the appellant to achieve 25% Minimum Public Shareholding (“MPS”). Since several companies including the appellant failed to achieve the requirement of Rule 19A, the Whole Time Member (“WTM” for convenience) of SEBI passed an ex-parte restraint order on 4<sup>th</sup> June, 2013 against several companies including the appellant and issued several directions as more particularly set out therein.

5. Admittedly, thereafter the appellant took steps to comply with the MPS norms contained in Rule 19A by issuing fresh equity shares to the public investors in terms of the Board Resolution dated 06.09.2013 and accordingly filed a reply to the ex-parte order dated 04.06.2013.

6. Thereupon the WTM of SEBI passed an order on 16.02.2015 rejecting the plea of the appellant basically on ground that in the shareholding pattern filed by the appellant for the quarter ended September 2013 till September 2014, the public shareholding was less than 25% which was in contravention of Rule 19A. Since the MPS norm was achieved in the quarter ended September 2014, the WTM of SEBI by the said order dated 16.02.2015 revoked the directions contained in the ex-parte order dated 04.06.2013 and directed initiation of adjudication proceedings against the appellant for the delayed compliance of Rule 19A.

7. Accordingly, adjudication proceedings were initiated and by the impugned order dated 04.01.2018 the AO has held that the MPS norms were complied belatedly in the quarter ended September 2014 and accordingly imposed penalty of ₹ 7.5 lac on the appellant under Section 23E of SCRA.

8. On behalf of the appellant it is submitted that in view of the order passed by the BIFR on 17.10.2008, time to dilute the promoter/ investors shareholding stood extended till completion of the rehabilitation scheme. Since the rehabilitation scheme continued beyond September 2014 and in the meantime the MPS norms were achieved on 06.09.2013 it could not be said that the appellant had violated Rule 19A of SCRR. Alternatively, it is submitted that since the MPS norm was in fact complied on 06.09.2013, the AO by relying on the order passed by the WTM of SEBI is not justified in holding that the MPS norm was complied in the quarter ended September 2014 and the AO is not justified in imposing penalty of ₹ 7.5 lac on the erroneous assumption that the MPS norms were complied in the quarter ended September 2014.

9. We find that the aforesaid arguments raised on behalf of the appellant deserve partial acceptance.

10. No doubt that the BIFR by its order dated 17.10.2008 had permitted extension of time beyond the period stipulated in the SEBI guidelines/ regulations to dilute the promoters/ investors shareholding till completion of the period of modified rehabilitation scheme. As rightly

contended by counsel for SEBI, para 11.1 of the said order dated 17.10.2008 clearly records that the rehabilitation period under the modified rehabilitation period was till the year 2010-2011. Since Rule 19A was inserted to SCRR with effect from 04.06.2010, i.e. after the order of BIFR dated 17.10.2008 and time line of 3 years for compliance of MPS was fixed by amending Rule 19A with effect from 09.08.2010, appellant is not justified in contending that the BIFR by its order dated 17.10.2008 extended the time for compliance set out in Rule 19A which was not in existence on 17.10.2008. In any event, in the absence of any order passed by BIFR extending time for compliance of MPS after insertion of Rule 19A, decision of the AO that the appellant violated Rule 19A by failing to comply with the MPS norm within the stipulated period therein cannot be faulted.

11. However, findings recorded by the AO that the MPS norms were achieved by the appellant in the quarter ended September 2014 cannot be sustained in view of the following documents brought on record:-

- a) *Minutes of the Board Meeting dated 06.09.2013, wherein fresh issue of equity shares to the public investors were approved.*
- b) *Form 2 filed before Registrar of Companies (ROC) containing details of the allotment of equity shares made on 06.09.2013.*

- c) *List of allottees submitted to ROC wherein names of the public investors to whom the fresh equity shares were issued on 06.09.2013 have been disclosed.*

Neither the genuineness of the aforesaid documents brought on record for the first time nor the correctness of the facts set out therein have been doubted by SEBI. In fact, counsel for SEBI fairly stated that the facts set out in the aforesaid documents are correct. Thus, it is apparent that the MPS norms were achieved by the appellant on 06.09.2013 and not in the quarter ended September 2014 as erroneously held in the impugned order.

12. AO committed the aforesaid error in view of erroneous shareholding pattern filed by the appellant for the quarter ended September 2013, December 2013, March 2014, June 2014 and September 2014, wherein the issuance of fresh equity shares on 06.09.2013 were not at all reflected and the public shareholding was shown at less than 25%. No doubt that the appellant had contended before the WTM of SEBI that the shareholding pattern disclosed in the aforesaid filing were erroneous, however, in the absence of documentary evidence in support of the above claim, the WTM rejected the plea of the appellant and held on the basis of the filing made by the appellant that the MPS norms were complied in the quarter ended September 2014. Following the decision of WTM, the AO has held that the MPS was achieved in the quarter ended September 2014. Thus, the appellant is guilty of making erroneous filings relating to shareholding pattern for several quarters. However, fact that the

appellant had made erroneous filings for several quarters cannot be a ground to hold that the MPS norms were achieved in the quarter ended September 2014 when in fact the MPS norms were achieved on 06.09.2013. Since the penalty of ₹ 7.5 lac is imposed on the basis of erroneous finding that the MPS norms were achieved in the quarter ended September 2014, the appellant company which is a sick company is entitled to reduction in the penalty.

13. Accordingly, while upholding the decision of the AO that the appellant is guilty of violating Rule 19A of SCRR, we reduce the penalty from ₹ 7.5 lac to ₹ 2 lac for the reasons stated above.

14. Appeal is disposed of in the aforesaid terms with no order as to costs.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

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