

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 09.04.2018

Appeal No. 35 of 2018

Shikhar Consultants Ltd.
A/41, Nandjyot Industrial Estate,
Near Safed Pool, Andheri Kurla Road,
Andheri East, Mumbai – 400 072. Appellant

Versus

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

Mr. Krishnagopal M. Chandak, Authorized Representative with
Mr. Shekhar J. Asawa, Authorized Representative for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP
& Partners for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
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.' for short) of Securities and Exchange Board of India ('SEBI' for short) on November 29, 2017. By the said order penalty of Rs. 8 lac is imposed on the appellant under Section 15HB of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short), *inter-alia*, for not complying with the directions contained in the SEBI circular dated August 13, 2012.

2. As per SEBI circular dated August 13, 2012, it was obligatory on part of all the listed companies including the appellant to obtain SCORES authentication by September 14, 2012.

3. Admittedly, the appellant did not apply for and obtain SCORES authentication within the time stipulated under the SEBI circular dated August 13, 2012. Appellant applied for SCORES authentication belatedly on July 26, 2017 and the same was granted to the appellant on July 31, 2017.

4. As the appellant failed to obtain SCORES authentication within the time stipulated in the circular August 13, 2012, the A. O. has held that the appellant is guilty of violating the SEBI's circular dated August 13, 2012 and, accordingly, imposed penalty of Rs. 8 lac on the appellant.

5. Authorized representative of the appellant fairly admitted that the appellant is guilty of not obtaining SCORES authentication within the time stipulated in the SEBI circular dated August 13, 2012. However, he submitted that in the facts of present case penalty of Rs. 8 lac imposed on the appellant is unjustified for the following reasons :-

- a) Trading in the shares of the company has been suspended since February 12, 2003.
- b) On May 16, 2016 new Board of Directors (BOD) including the appellant took over the company with a view to revive the company which was in deep financial crisis.
- c) On receiving show cause notice dated June 20, 2017, the appellant company operated by the new BOD applied for SCORES authentication on July 26, 2017 and, accordingly,

SCORES authentication was granted to the appellant on July 31, 2017.

- d) Till January 17, 2018, there was not a single investor's grievance made by an investor against the company.
- e) In similar cases, the A. O. of SEBI has deemed it fit not to impose any monetary penalty against those entities.

Accordingly, it is submitted that the penalty imposed against the appellant company deserves to be quashed and set aside. Alternatively, it is submitted that minimum penalty imposable under Section 15HB of SEBI Act be imposed on the appellant.

6. Counsel for SEBI on the other hand submitted that in the present case violation of SEBI circular dated August 13, 2012 is admitted by the appellant. For such violation penalty imposable under Section 15HB of SEBI Act is upto Rs. 1 crore and the A. O. after taking into consideration all mitigating factors has imposed penalty of Rs. 8 lac which cannot be said to be unreasonable or excessive.

7. We have carefully considered the rival submissions.

8. By failing to obtain SCORES authentication within the stipulated time, appellant has violated the SEBI circular dated August 13, 2012 is not in dispute. However, apart from various mitigating factors set out hereinabove, it is seen that in several similar cases, the A. O. of SEBI has deemed it fit not to impose any penalty against those entities even though the minimum penalty imposable is Rs. 1 lac under Section 15HB of SEBI Act.

9. In these circumstances, while directing the Adjudicating Officers of SEBI to ensure that they pass orders in consonance with the provisions of

SEBI act, in the facts of present case, having regard to the mitigating factors set out hereinabove, we deem it proper to reduce the penalty from Rs. 8 lac to Rs. 1 lac being the minimum penalty imposable under Section 15HB of SEBI Act.

10. Appeal is partly allowed in the aforesaid terms with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

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

09.04.2018
Prepared & Compared by
PTM