

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 23.12.2020

Date of Decision : 07.01.2021

Appeal No. 304 of 2020

State Bank of India
A&S Dept., Corporate Centre,
4th Floor, State Bank Bhavan,
Madam Cama Road,
Mumbai – 400 021. ...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

Mrs. Rathina Maravarman, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and
Mr. Sushant Yadav, Advocates i/b K Ashar & Co for the
Respondent.

WITH
Appeal No. 306 of 2020

Life Insurance Corporation of India Limited
Central Office, Yogakshema,
Jeevan Bima Marg,
Mumbai – 400 021. ...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

Mrs. Rathina Maravarman, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K Ashar & Co for the Respondent.

AND
Appeal No. 307 of 2020

Bank of Baroda
Treasury Branch, 4th Floor,
Baroda Sun Tower, C-34, G Block,
BKC, Bandra (East),
Mumbai – 400 021. ...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

Mrs. Rathina Maravarman, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K Ashar & Co for the Respondent.

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

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

1. These three appeals have been challenged similar orders in respect of each of the three entities / appellants passed by the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) dated August 14, 2020. By the

said orders a penalty of Rs. 10 lakh each have been imposed on the appellants under Section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) for violation of Regulation 7B of the SEBI (Mutual Funds) Regulations, 1996 ('Mutual Fund Regulations' for short), inserted with effect from March 13, 2018. As per the inserted Regulation 7B, a sponsor of a mutual fund, its associates or group company etc. cannot have 10% or more shareholding or voting rights in the AMC or Trustee Company of any other mutual fund or entities holding 10% or more of such shareholding or voting rights. One year time, i.e upto March 12, 2019 was also given to entities which exceed such shareholding limit to comply with Regulation 7B.

2. All appellants are public sector banks/financial institutions who have sponsored their own Mutual Funds, in addition to holding stake in UTI Mutual Fund. Since the issue is the same, not complying with Regulation 7B of Mutual Funds Regulations, all appeals are heard and decided by this common decision.

3. Prior to the impugned order the appellants were issued a show cause notice dated July 19, 2019 under Section 11(1), 11(4) and 11B of the SEBI Act for non-compliance of Regulation 7B of Mutual Fund Regulations and the Whole Time Member ('WTM'

for short) of SEBI passed an order dated December 6, 2019. This

WTM order directed the appellants as follows:-

- “a. The shareholding and voting rights of the Noticees in UTI AMC and UTI Trustee shall be brought down 10% on or before December 31, 2020;*
- b. The Noticees shall take suitable steps to ensure compliance with Regulation 7B of MF Regulations as regards board composition, on or before December 31, 2020;*
- c. In the event of non-compliance with the aforesaid directions, the shareholding and voting rights of the Noticees in UTI AMC and UTI Trustee in excess of 9.99% and corporate benefits thereon shall stand frozen till such time the Noticees comply with the aforesaid directions;*
- d. The Noticees shall submit a compliance report to SEBI, with respect to compliance with the aforesaid directions, within a period of one month from such compliance.*
- e. This order shall be without prejudice to any other action including adjudication proceedings that SEBI may initiate against the Noticees for the non-compliance with the provisions of Regulation 7B of the MF Regulations.”*

4. Subsequently, on March 12, 2020 another show cause notice was issued by the AO SEBI on the same issue / violation which culminated in the impugned order dated August 14, 2020 and the imposition of penalty to the tune of Rs. 10 lakh each. Hence these appeals.

5. It is the stand of Mrs. Rathina Maravarman, the learned counsel appearing on behalf of the appellants, that the shareholding by appellants in UTI AMC had a long history since the early 2000. These appellants have been directed by the Government at the time of reorganization of the erstwhile UTI to buy the shares of newly constituted UTI AMC and with the subsequent direction that prior Government approval is needed for transfer / alienation of these shareholding rights. As such, it was not open to the appellants to *suo motu* divest its shareholding from 18.2% each as on February 13, 2018 to below 10% as per the inserted Regulation 7B of Mutual Fund Regulations. Hence, the appellants had taken up the matter with the Government of India; Department of Financial Services (DFS) and Department of Investment and Public Asset Management (DIPAM) soon after the insertion of Regulation 7B was notified. The appellants had repeatedly followed up with the Government. However, an approval for disinvestment could be obtained only in the month of April 2019 after which the entire disinvestment process had to be completed and the IPO process was floated on September 29, 2020. It is in this context that the WTM had granted them time till December 31, 2020 and the appellants have divested their excess

holding to level of 9.9% each as on 12 October, 2020, almost 3 months before the time limit granted by the WTM and therefore as on today they are fully in compliance with the Regulation 7B of Mutual Fund Regulations. Therefore, it is the stand of the learned senior counsel for the appellants that when the WTM, after considering the efforts made by the appellants and the constraints under which the appellants were operating in the divestment process, extended time till December 31, 2020 no penalty should have been imposed on the appellants. It was also emphasized by the learned counsel that the appellants were in compliance of all other directions, including the other directions of the WTM regarding appointment of directors, role in day to day management of all the affairs of UTI AMC etc. Therefore, a delay of about 7 months in completing the divestment to below 10% and that too for which the WTM had given time till December 31, 2020 should not have resulted in any penal orders and therefore the impugned order is liable to be quashed and set aside in toto.

6. The learned counsel for the appellants relied on the orders of this Tribunal in the matters of *P.G Electroplast Limited vs SEBI (Appeal No. 281 of 2017 decided on August 2, 2019)*, *Samrat Holdings Limited vs SEBI reported in 2001 SCC*

OnLine SAT 2 and M/s. Prrsaar vs NSE (Appeal No. 53 of 2017 decided on March 5, 2020) to press the contention that a monetary penalty is not always need to be imposed for at worst a technical violation. In addition the learned counsel also emphasized that even if an inquiry was done by the AO no penalty should have been ordered as the order of the Supreme Court in *Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* required the AO to consider the mitigating factors beyond what is stated under Section 15J of the SEBI Act which in the instant case was not done and the penalty therefore imposed on the appellants cannot be justified.

7. Mr. Shyam Mehta, the learned senior counsel appearing on behalf of respondent SEBI, on the other hand, contended that no exemption was provided under the regulations to public sector undertakings etc; appellants were fully aware of the time constraint of one year from the date of insertion of 7B in Mutual Fund Regulations but took their own time even in approaching the Government; the extension of time limit by the WTM was not an exoneration of the appellants from their violation as violations were factual and admitted and the WTM have considered all the submissions made by the appellants vide paragraph 14 of the his

order. It was also submitted by the learned senior counsel that considering the difficulties faced by the appellants as submitted by them only a nominal penalty of Rs. 10 lakh each has been imposed since once violation is admitted a penalty has to be imposed following the order of the Hon'ble Supreme Court in the matter of *Chairman, SEBI vs Shriram Mutual Fund reported in (2006) 5 SCC 361*.

8. Having heard the learned counsel/ learned senior counsel for the parties and having perused the documents we are of the view that the appellants were facing excruciating factors in achieving their stake dilution in UTI AMC. They were under orders when investment had to be made and they had to take orders when divestment had to be made and this procedure was long drawn as we note from the various correspondence between the appellant with departments in the Ministry of Finance. Though it is a fact that DIPAM was approached only in January 2019, the appellants were not free to approach DIPAM directly but had to go through other departments in the Finance Ministry. We have noted correspondence since March 2018 made by the appellants on the need for complying with the new Regulation 7B inserted into Mutual Fund Regulations and the need for expeditiously doing so. Therefore, a full reading of the trajectory of investment of the

appellants in the UTI AMC as well as the steps taken by them in implementing the directions issued by SEBI clearly show that the appellants had been serious in their endeavor to achieve the objective. They have been clearly prisoners of protracted procedure thrust upon them by their own promoters, though this need under not be an excuse for complying with the Regulations in its letter and spirit. Therefore, though admittedly there is a violation but in the face of excruciating factors in delaying full compliance and therefore leading to a technical violation need not always result in a penalty. The judgment of the Hon'ble Supreme Court in the matter of **Bhavesh Pabari (supra)** is quite relevant that factors under Section 15J of the SEBI Act is not exhaustive and the adjudicating authorities can look beyond, wherever genuine reasons/factors exist.

9. We also note that the appellants are in full compliance of Regulation 7B with effect from 12 October 2020 by reducing their stake in UTI MF below 10 per cent. They have been in compliance with all other Regulations and the directions issued by the WTM in avoiding conflict of interest; which again emphasize the intention of the appellants in complying with the SEBI directions. Further, there is no repetition of the violation. Moreover, the appellants have been fully cooperating with SEBI in terms of providing timely replies and details of progress made

in their divestment efforts etc. As such, SEBI was kept fully informed of the developments, which among others, have been noted by the WTM in his order while granting extension of time for compliance upto December 31, 2020.

10. In our Judgment in *National Highway Authority of India vs SEBI (Appeal No. 232 of 2020 decided on August 27, 2020)* recently we have noted similar constraints under which the governmental agencies/ public sector undertakings operate which need to be factored in while imposing penalty on such entities, whenever the violations are not deliberate.

11. Given the above facts and reasons, we do not find any justifiable reason to impose any monetary penalty in the present matters, as every technical violation need not be visited with monetary penalty. In these matters a warning is sufficient. Further, SEBI is at liberty to impose penalty for similar violations in future.

12. All 3 appeals are partly allowed by substituting the monetary penalty of Rs.10 lacs each imposed on the appellants with that of a warning. No order on costs.

13. Before parting with, it is also important to emphasize that ownership neutrality is a highly desirable objective since all rules

and regulations should be equally applicable to every legal entity irrespective of its ownership. Only such an approach would bring in clarity and certainty to laws and regulations and a predictable rule of law regime. In the light of this, it is necessary that governmental entities, including public sector undertakings, need to develop protocols for coming out from being prisoners of protracted procedures for complying with applicable laws and regulations timely, because as legal entities accountability falls on them. This is of paramount importance to entities operating in financial/corporate sectors where changes in the applicable laws and regulations are frequent in order to respond to fast changing, dynamic environment of the domestic and global markets.

14. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Private Secretary 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.

Justice Tarun Agarwala
Presiding Officer

Dr. C.K.G. Nair
Member

Justice M.T. Joshi
Judicial Member

07.01.2021
msb