

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 28.04.2021

Date of Decision : 03.05.2021

Appeal No. 201 of 2018

1. Suzlon Energy Limited
'Suzlon', 5 Shrimali Society,
Near Shri Krishna Complex,
Navrangpura,
Ahmedabad – 380 009.

2. Hemal A Kanuga
'Suzlon', 5 Shrimali Society,
Near Shri Krishna Complex,
Navrangpura,
Ahmedabad – 380 009. 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. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanwilkar, Mr. Abishek Venkataraman, Mr. Joby Mathew, Mr. Anshuman Sugla and Mr. Arihant Agarwal, Advocates i/b Joby Mathew & Associates for Appellants.

Mr. Vishal Kanade, Advocate with Mr. Anubhav Ghosh and Mr. Ravishekhar Pandey, Advocates i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged the order of the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) dated April 20, 2018 whereby a penalty of Rs. 5 lakh was imposed under Section 23A(a) of Securities Contracts (Regulation) Act, 1956 ('SCRA' for short) upon the appellant no. 1 and further a sum of Rs. 1 crore was imposed upon the appellant no. 1 under Section 23E of SCRA and a sum of Rs. 5 lakh was imposed upon the appellant nos. 1 and 2 under Section 15HB of the Securities and Exchange Board of Act, 1992 ('SEBI Act' for short).

2. The facts leading to the filing of the present appeal is, that the appellant is a Company and provides end solutions in wind energy generation. The said Company has a presence in various countries. The Company from time to time receives orders for manufacture and installation of wind turbines which are normally disclosed to the stock exchange under Clause 36 of the Listing Agreement.

3. On October 12, 2015 a show cause notice was issued in respect of certain orders which were cancelled in the year

2007-08, the valuation of the contract was worth Rs. 1506 crore. The show cause notice alleged that corporate announcement of the cancellation / truncation of the orders was not made known to the stock exchange and that in respect of certain orders so received no announcement whatsoever was made to the stock exchange. The show cause notice, therefore, alleged violation of Clause 36 of the Listing Agreement read with Section 21 of the SCRA and Clause 2.1 and 3.2 of Schedule II read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations of 1992' for short) and SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations of 2015' for short).

4. The appellants contested the matter and denied the charge and submitted that the truncation of the orders was not a material information which was required to be announced on the platform of stock exchange and that it was also not a price sensitive information which required a disclosure under Clause 36 of the Listing Agreement.

5. The AO after considering the material evidence on record found that the appellants while receiving the orders

had made corporate announcements and therefore when these orders were cancelled or truncated the said information was required to be disclosed on the stock exchange platform so that information would be made known to the shareholders and investors. The AO further held that the cancellation / truncation of the orders was a price sensitive information and such information should have been disclosed on an immediate basis.

6. The AO further held that Clause 36 of the Listing Agreement provides that any information / event which is price sensitive should be reported to the stock exchange immediately and since the truncation of the orders was not disclosed it was violative of Clause 36 of the Listing Agreement.

7. We have heard Shri Somasekhar Sundaresan, the learned counsel for appellants and Shri Vishal Kanade, the learned counsel for the respondent at some length.

8. The contention of the appellants that these work orders were disclosed in the order book and that the truncation of the orders was not material information or an event which was required to be disclosed under the Listing Agreement is not

correct. This submission in the facts of the present case does not appeal to us. In this regard before we proceed further it would be appropriate to take a look at Clause 36 of the Listing Agreement and Section 21 of the SCRA. For facility, the same are extracted here under:-

Relevant provisions of Listing Agreement:-

“36. Apart from complying with all specific requirements, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to stock exchange(s) on request such information concerning the Issuer as the stock exchange(s) may reasonably require. The material events may be events such as:-

- (a) Change in the general character or nature of business.*
- (b) Disruption of operations due to natural calamity.*
- (c) Commencement of Commercial Production / Commercial Operations.*
- (d) Developments with respect to pricing / realisation arising out of change in the regulatory framework.*
- (e) Litigation / dispute with a material impact*

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

(f) Revision in Ratings

(g) Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;

- Issue of any class of securities.*
- Acquisition, merger, e-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.*
- Change in market lot of the company's shares, sub-division of equity shares of company.*
- Voluntary delisting by the company from the stock exchange(s).*
- Forfeiture of shares.*
- Any action, which will result in alteration in, the terms regarding redemption / cancellation / retirement in whole or in part of any securities issued by the company.*
- Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.*
- Cancellation of dividend/rights/bonus, etc.”*

The above information should be made public immediately.

Relevant provisions of SCRA:-

“S.21. Conditions for Listing.-Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange”.

9. Section 21 of the SCRA clearly indicates that a person is required to comply with the conditions of the Listing Agreement.

10. Clause 36 of the Listing Agreement has been considered in a number of cases by the Tribunal. In *M/s. New Delhi Television Limited vs. Securities and Exchange Board of India (Appeal No. 358 of 2015 decided on August 7, 2019)*

wherein this Tribunal held:-

*“On a perusal of the aforesaid, Sub-Clause (e) of Clause 36 of the Listing Agreement indicates that the company will **promptly** (the emphasis is ours) after the event inform the Stock Exchange of the developments with respect to any dispute resulting from an assessment which can reasonably be accepted to have a **material impact** (emphasis is ours). The said information is required to be made public **immediately** (emphasis is ours). Such information is required to be intimated to the Stock Exchange immediately. The aforesaid provision makes it apparently clear that the information which will have a **“material impact”** on present or future operations or profitability or financials of the company is required to be reported “promptly” and “immediately” should be made public.*

20. Clause 36 of the Listing Agreement read with the Guidance Note make it apparently clear that the company is required to intimate the Stock Exchange

with regard to the material events immediately, which information is required to be made to the public immediately. The word “**immediately**” has to be construed accordingly. It was urged that the word “**immediately**” should be construed liberally and not literally and, thus, contended that a reasonable time has to be given to make appropriate disclosure under Clause 36 of the Listing Agreement. In support of the submissions, the learned counsel has placed reliance upon a decision in **Rosali V. vs. Taico Bank and Ors. (2009) 17 SCC 690** where the Supreme Court held that the word immediately should mean within a reasonable time and further held that is a well-settled principle of interpretation of a statute that where literal meaning leads to anomaly and absurdity, it should be avoided.

21. As per Black’s Law Dictionary-eighth edition, the word “immediate” means occurring without delay, instant. As per Black’s Law Dictionary-sixth edition, the term “immediately” means without interval of time, without delay, straightaway, or without any delay or lapse of time. The words ‘forthwith’ and ‘immediately’ have the same meaning. They are stronger than the expression ‘within a reasonable time.’ and imply prompt, vigorous action, without any delay.

22. In Wharton’s Law Lexicon the term “immediately” in the statute, means within a reasonable time. In Words and Phrases, the word “immediately” when used in a statute, is not synonymous with “then and there”.

23. Thus in a strict sense the word “immediately” means at once, forthwith, instantaneously or instantly and is also defined as meaning promptly, quickly, without delay, without interval or without lapse of time. However, in a broader relative sense, the term “immediately” means within a reasonable time, necessarily exclude all mesne time and is often construed to mean as soon as an act can be performed within a reasonable time.

24. A Full Bench of the Karnataka High Court in **Keshava v. Ramchandra AIR 1981 Kant. 97**, while interpreting the word “immediately” occurring in Article 134A of the Constitution of India, pointed out that the object of Article 134A was to avoid unnecessary delay and that it was precisely for this reason that the

word “immediately” had been used to convey a sense of urgency.

25. *Black’s Law Dictionary sixth edition defines the word “prompt” and “promptly” as under:*

“Prompt” : to act immediately, responding on the instant.

“Promptly”: adverbial form of the word “prompt”, which means ready and quick to act as occasion demands. The meaning of the word depends largely on the facts in each case, for what is “prompt” in one situation may not be considered such under other circumstances or conditions. To do something “promptly” is to do it without delay and with reasonable speed.

In Rao Mahmood Ahmad Khan through their L.R. v/s Ranbir Singh and Ors. 1995 Supp (4) SCC 275 the Supreme Court held:

“The word ‘immediately’ connotes and implies that the deposit should be made without undue delay and within such convenient time as is reasonably requisite for doing the thing same day with all convenient speed excluding the possibility of rendering the other associated corresponding act and performance of duty nugatory. The word ‘immediately’ therefore, connotes proximity in time to comply and proximity in taking steps to resell on failure to comply with the requirement of deposit as first condition that is to take place within relatively short interval of time and without any other intervening recurrence. The meaning of the word ‘forthwith’ is synonymous with the word ‘immediately’ which means with all reasonable quickness and within a reasonably prompt time.”

26. In the light of the aforesaid and considering the importance of disclosure under Clause 36 of the Listing Agreement, in our opinion, information was required to be given to the Stock Exchange at the earliest without any undue delay.”

11. In *ICICI Bank Limited vs Securities and Exchange Board of India (Appeal No. 583 of 2019 decided on July 8, 2020)* this Tribunal while considering Clause 36 of the Listing Agreement held:-

“18..... Clause 36 is sweeping in nature as it mandates all disclosures to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. It also mandates that the Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. Sub clause 7 further mandates disclosure of any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to the specified events. Under 7(ii) comes merger, amalgamation etc. Price sensitive information as defined under PIT Regulation 2 (ha) “means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.”

12. In the light of the aforesaid decisions it is clear that the words material / materiality means anything which is likely to impact an investor’s investment decision and depends on the facts of each case. In the instant case, we find that when the appellants received the contract the said information was disclosed on the stock exchange platform and which was

rightly done but when the orders were cancelled or truncated on three occasions the cancellation / truncation orders were not disclosed on the stock exchange platform. Non-disclosure of this information was a material information which could have an impact on the financials of the Company. In our view the objective of Clause 36 of the Listing Agreement is to enable the shareholders and the public to appraise position of the Company and enable investors to take an informed decision. In our view the cancellation / truncation of the contracts has a material impact which warrants a disclosure on an immediate basis. The responsibility was on the appellant no. 1 which it failed to do so.

13. We, thus, hold that the appellants had violated Clause 36 of the Listing Agreement read with Section 21 of the SCRA and was rightly imposed a penalty under Section 23A(a) of the SCRA. For facility, the said provisions is also extracted here under:-

Penalty for failure to furnish information, return, etc.-

“23A. Any person, who is required under this Act or any rules made thereunder,

- (a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement*

or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees] for each such failure;

14. The appellant nos. 1 and 2 have also been penalized under Section 15HB of SEBI Act for violation of Clause 3.2 of the Code of Conduct under the PIT Regulations of 1992. For facility, Clause 3.2 of the Code of Conduct is extracted here under:-

“3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.”

15. A perusal of the aforesaid indicates that it is duty of the Compliance Officer to ensure that the Company complies with all the legal obligations. In the instant case as we have held the cancellation / truncation of the orders had a material impact and was price sensitive information which could have an impact on the financials of the Company. Thus, Clause 3.2 of the Code of Conduct was violated. Since there is no separate provision for imposition of penalty the provisions of

Section 15HB of the SEBI Act was invoked and the penalty was rightly imposed. We do not find any error on this aspect.

16. A sum of Rs. 1 crore has been imposed for violation of Section 23E of the SCRA. For facility, Section 23E is extracted here under:-

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.-

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not less than five lakh rupees but which may extend to twenty-five crore rupees.”

17. The AO held that since Clause 36 of the Listing Agreement was violated, in addition to the penalty imposed under Section 23A(a), the provisions of Section 23E of the SCRA is also invoked. In our view, the imposition of penalty under Section 23E is patently erroneous. The AO has committed a manifest error in invoking Section 23E of the SCRA.

18. Section 23E has nothing to do with the violation of the provisions of the Listing Agreement especially Clause 36.

Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words “fails to comply with the listing conditions” cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 (‘SCRR’ for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E. The AO has made an error.

19. In view of the aforesaid, the penalty of Rs. 1 crore under Section 23E is patently erroneous and cannot be imposed and the order to that extent cannot be sustained.

20. While confirming the order of the AO with regard to violation of Clause 36 of the Listing Agreement and Clause 3.2 of the Code of Conduct to the PIT Regulations of 1992 we affirm the penalty imposed upon appellant no. 1 under Section 23A(a) to the extent of Rs. 5 lakh and also affirm the order of the AO to the extent of imposition of Rs. 5 lakh on appellant nos. 1 and 2 under Section 15HB of the SEBI Act. The imposition of penalty of Rs. 1 crore under Section 23E of the SCRA is set aside.

21. In the light of the aforesaid, appeal is partly allowed. In the circumstances of the case, parties shall bear their own costs.

22. 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

Justice M.T. Joshi
Judicial Member

03.05.2021
msb