



**SEBI penalizes listed co., MD and WTD for failing to redress investor complaints. Independent Director not liable for such non-compliances, SEBI relied on independent director's appointment letter for determining their liability.**

**Case Details:**

1. In respect of Top Telemedia Ltd., its promoters, Independent director, MD & WTD
2. Order passed by Ms. Rachana Anand, General Manager & Adjudicating Officer, SEBI,
3. Order dated June 6, 2016.
4. Citation: LSI-1120-SEBI-2016-(MUM).

**Facts:**

1. SEBI initiated adjudication proceeding u/s 15C and 15HB of SEBI Act, 1992 against Top Telemedia Ltd., its Promoters, Managing Director, Whole Time Director, Independent Directors, Non-independent directors for failing to redress investors grievances and for failing to comply with SEBI directions;
2. There were 11 investor complaints relating to the period from 2000 to 2014 and none were resolved by the company (even during the initiation of present adjudication proceedings);

**Final Decision and its basis:**

1. SEBI held that company has failed to redress the investor grievances for a long time and therefore, upon non-redressal of such grievances and non-compliance of SEBI Order (earlier, dated August 10, 2012), the Company has violated Sec. 15C and 15HB of SEBI, Act;
2. SEBI observed that certain noticees are promoters of the company and it is not shown how they are in control of the company or how they are liable for the day to day affairs of the company. SEBI observed that such promoters are not shown to have hold office either as director or in capacity of any officer bearer of the company;
3. SEBI stated that "It is settled law that to charge a person for the commission of an irregularity by the co. or on behalf of co., he should be shown as in charge of and responsible for the conduct of the business of the co. in such zone. In other words only the person who are

looking after day to day affairs of the Company can be held liable for such default". Accordingly, SEBI held that the promoters (who are not directors, whole time directors or MD) cannot be held liable for failure to redress investor grievances as they are not liable for the day to day affairs of the company;

4. With respect to certain noticees (i.e. Independent Directors), SEBI perused their appointment letters and observed that work of the company relating to SEBI, investors, public shareholders and auditors are not handled by them, but was dealt by someone else. Accordingly, SEBI held that independent directors are not liable for failure to comply with failing to redress investor grievances;
5. SEBI referred and relied on SC ruling Everest Advertising Pvt. Ltd. Vs State of Delhi 2007 indlaw SC 334, wherein it was held that "merely being a director of a Company is not sufficient to make the person liable, because a director in a Company cannot be deemed to be in charge of and responsible to the Company for the conduct of its business. The requirement is that the person sought to be made liable, should be in charge and responsible to the Company for the conduct of its business at the relevant time and there is no deemed liability of a director;
6. SEBI held that MD and WTD are liable for the failure to comply with failing to redress investor grievances, SEBI held that MD and WTD are considered to be responsible position for the day to day affairs of the Company.
7. SEBI stated that "MD and WTD are included in the list of KMP u/s 2 (51) of Cos. Act, 2013 and under the said Companies Act at various places / various provisions, the role and liability of MD /WTD Director is prescribed which ultimately subscribes the importance of position of such MD /WTD while carrying out day to day affairs of the Company";
8. Accordingly, SEBI imposed penalty of Rs. 1.10 crore on the listed co. and Rs. 10 lac each on MD and WTD for failing to redress investor grievances.

**Bombay HC: Rejected defamation suit against**



**Mr. Azim Premji for want of authority in accordance with Article of Association of Subhiksha Trading Services, Contract Act provisions are inapplicable**

**Case Details:**

1. In the matter of Subhiksha Trading Services Vs Mr. Azim Premji,
2. Order passed by Justice SJ Kathawalla, Bombay HC,
3. Order dated May 12, 2016,
4. Citation: [2016] 70 taxmann.com 130 (Bombay)

**Facts:**

1. Subhiksha Trading Services Ltd. is the Plaintiff co. / Plaintiff No. 1 and Promoter/MD of Subhiksha Trading Services was Plaintiff No. 2. The plaintiffs filed a suit against the defendant (Mr. Azim Premji) alleging defamation by the defendant. The plaint was verified by Plaintiff No. 2, however, there was no reference to Plaintiff No.2 being authorized on behalf of Plaintiff No.1 to file the suit;
2. Mr. Azim Premji challenged the maintainability of the suit, inter alia, on the ground that Plaintiff No.2 had no authority to file the suit on behalf of Subhiksha Trading Services and further that under Article 17A of Articles of Association of Subhiksha Trading Services, any resolution for commencement or discontinuance of any litigation as set out (requiring consent of at least one Director nominated by investor or investor itself). It was further submitted that there was no board resolution authorizing plaintiff No.2 to file the present suit on behalf of Subhiksha Trading Services;
3. In response to the above, the Plaintiff No. 2 filed a notarized affidavit of evidence claiming to be authorized to deal with all legal matters in respect of the company pursuant to a resolution passed in a board meeting held on April 9, 2000;
4. Mr. Azim Premji prayed before the Court that the issue of maintainability based on the lack of authorization of Plaintiff No.2 to file the present suit on behalf of Subhiksha Trading Services, be tried first as a preliminary issue as

it involved a pure point of law. The Court by order allowed the same.

**Final Decision and its basis:**

1. Bombay HC held that defamation case filed against Mr. Azim Premji is not maintainable for the want of MD's authority;
2. HC perused Article 17A of Subhiksha's Articles of Association, noted that the board resolution or shareholders' resolution to which at least one director nominated by VC is required for commencing or discontinuing any litigation / arbitration which is material in context of co.'s business. HC observed that MD had no such specific authority;
3. HC rejected plaintiffs' contention that Article 17A is void as it restrains filing of suit without the consent of VC Investor, and that violated Sec. 28 of Indian Contract Act (relating to 'Agreements in restraint of legal proceedings, void'). HC held that "Article 17A does not contain a bar to filing of a suit, it simply prescribes a condition precedent for filing the same". HC stated that there is nothing in law to prevent a co.'s Articles of Association having such a provision, and held that Section 28 of Indian Contract Act will have no application to the present case;
4. HC peruses Article 17A of Subhiksha's Articles of Association, opined that litigation must be 'material in the context of the co.'s business' and need not actually relate to its business. HC stated that "defamatory allegation concerning the co.'s business, which had caused a considerable adverse impact on the co.'s business leading to 'substantial damages to the tune of Rs. 500 crores' can only be described as 'material in the context of co.'s business'";
5. HC further rejected Official Liquidator's submission that OL is entitled to prosecute the suit u/s 441 and 457 of Cos. Act, 1956, and held that "Sec. 441 read with Sec. 457, the fiction whereby winding-up of co. is deemed to commence at time of presentation of the petition for winding-up is extended to apply only in certain specific situations and cannot be applied to cure bar or defect in the filing of the suit".

