

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 6.8.2019

Date of Decision : 20.8.2019

Appeal No.411 of 2018

SPL Industries Ltd.
C-2/54, 5th Floor, Rajasthali
Apartments, Pitampura,
New Delhi-110034. ... Appellant

Versus

BSE Limited
P.J. Towers, Dalal Street,
Mumbai – 400001, Maharashtra. ... Respondent

Mr. Deepak Dhane, Advocate with Mr. Ravi Kant Purohit,
Advocate i/b. Corporate Pleaders for the Appellant.

Mr. Anubhav Ghosh, Advocate i/b. The Law Point for
Respondent.

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

Per : Justice Tarun Agarwala

1. The appellant being aggrieved by the imposition of a fine of Rs.5,54,600 for violation of Regulation 33 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015 has preferred the present appeal.

2. The facts leading to the filing of the appeal is that the appellant is a public limited Company and its shares are

listed on the BSE Limited (hereinafter referred to as ‘BSE’) as well as on the National Stock Exchange (hereinafter referred to as ‘NSE’). On December 14, 2017, a meeting of its Board of Directors was held and unaudited financial results for the quarter ending 30th September, 2017 were approved. The meeting of the Board of Directors was concluded on 6.15 p.m.

3. As per the circular dated 30th March, 2017 the unaudited financial result was required to be uploaded on the Company’s website as well as on the stock exchange platform within 30 minutes of the conclusion of the meeting of the Board of Directors as well as within 24 hours. Since there was only a partial compliance, a fine of Rs.5,54,600/- was imposed as per the circular dated 30th November, 2015.

4. Before we proceed further it would be appropriate to extract Regulation 33(3)(a) & (c) of the Listing Regulations:

“(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b)

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report:

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.”

5. From the aforesaid it is clear that the quarterly financial results for the quarter ending 30th September, 2017 was required to be uploaded on the stock exchange platform within 45 days of the end of the quarter. As a result, the said financial results were to be uploaded on 14th December, 2017. The manner of uploading of the financial results has been clarified by circular dated 30th March, 2017. The said circular provides as under:

“Financial Results are required to be submitted along with the Limited Review Report/ Audit Report first in PDF mode through the Listing Centre website – Corporate Announcement Filing System (CAFS) within 30 minutes of the conclusion of the Board Meeting as per the provisions of Regulation 30 of the LODR, 2015.

This is required to be followed by filing of the result in XBRL mode within 24 hours from the conclusion of the Board meeting.”

6. From the aforesaid, it is clear that the limited review report/audit report alongwith the financial results was required to be uploaded on the Company’s website and on the stock exchange platform within 30 minutes of the conclusion of the board meeting and the financial result in XBRL mode was required to be uploaded within 24 hours from the conclusion of the board meeting. The requirements under the PDF mode and under the XBRL mode are different and distinct. The financial results alongwith the audit report is required to be uploaded within 30 minutes and the comprehensive financial results in XBRL mode is requested to be uploaded within 24 hours.

7. The imposition of fine has been provided in the circular dated 30th November, 2015. Annexure to the said circular relates to the imposition of fines under various Regulations. Annexure 1 relating to imposition of fine for violation of Regulation 33 is extracted hereunder:

ANNEXURE 1
IMPOSITION OF FINE

<i>Regulation</i>	<i>Fine payable for 1st non-compliance</i>
<i>Regulation 33</i> <i>Non submission of the financial results</i>	<i>`5000 per day of non-compliance till the date of compliance</i>

<i>within the period prescribed under this regulation</i>	<i>and If non-compliance continues for more than 15 days, additional fine of 0.1% of Paid up capital of the entity or ` 1 crore whichever is less.</i>
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“Every recognized stock exchange shall review the compliance status of the listed entities within 15 days from the due date for compliance for the respective regulation and issue notices to the non-compliant listed entities to ensure compliance and pay fine as per this circular within 15 days from the date of the notice.

In any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognized stock exchange may initiate appropriate enforcement action, including prosecution.”

From the aforesaid, if the information is not disseminated in the stock exchange platform and on the Company’s website the penalty is Rs.5000/- per day till the non compliance continues and if it continues for more than 15 days then additional fine of 0.1% of paid up capital is automatically levied.

8. In the light of the aforesaid provision it was contended by the learned counsel that the appellant had uploaded the financial results in XBRL mode within 30 minutes instead of 24 hours but on account of a glitch the appellant could not upload the financial results alongwith the audit report within

30 minutes on the BSE platform though it was uploaded on the NSE as well as on the Company's website. Further, the said financial results were also published in the leading newspapers thereafter. It was thus contended that when the comprehensive report was uploaded within 30 minutes the requirement of uploading the financial reports in PDF mode alongwith the audit report was only a technical defect for which the appellant should not be penalized.

9. In the alternative, it was contended that the stock exchange was required to review the compliance status of the listed companies within 15 days from the due date of compliance by issuing a notice to ensure that compliance is made and fines are paid as per the circular. It was contended that the due date of compliance was 29th December and therefore the stock exchange was required to issue a notice immediately thereafter whereas in the instant case the notice was issued by the stock exchange on 18th January, 2018. It was contended that had the stock exchange issued notice on 29th December thereafter the appellant would have immediately noticed the defect and would have removed it and would not have allowed the fine to grow.

10. Having considered the submissions of the learned counsel for the appellant we find that the regulations and the circular require the financial results to be disseminated to the public for a desired purpose so that the investors are made aware of the financials of the Company. Thus, the limited audit report alongwith the financial results are required to be uploaded within 30 minutes of the conclusion of the Board of Directors. The financial results have price sensitive information and cannot remain unpublished and, therefore, the said price sensitive information is required to be disseminated within 30 minutes alongwith an audit report. This was not done. The financial results uploaded in XBRL mode did not contain the audit report which is a vital element and, therefore, filing of the financial result in XBRL mode is not compliance of Regulation 33 read with circular of 30th March, 2017. Thus, when a particular act is required to be done in a particular manner the same is required to be done in that manner alone and not in any other manner. This principle is well settled in a catena of cases starting from **Taylor vs. Taylor (1875) LR 1Ch D 426** and as recent as in **Dharani Sugars and Chemicals Ltd. vs. Union of India and Others**,

(2019) 5 SCC 480. Thus there has been non compliance of Regulation 33.

11. The contention that there was a duty cast upon the stock exchange under clause 4 of Annexure 1 to the circular dated 30th November, 2015 to issue a notice immediately after the completion of the due date of compliance in order to remind the appellant to ensure compliance and pay the fine is patently erroneous. Clause 4 only stipulates that if the listed company fails to comply with the compliance status then it is upon the stock exchange to issue notice giving one more chance to the listed Company to ensure compliance and pay fine failing which it would be open to the stock exchange under clause 5 thereafter to initiate appropriate action including prosecution other than the fine that is due and payable. Needless to state, under the circular of 30th November, 2015, a uniform structure has been made for non compliance with the listing regulations regarding non submissions of certain periodic reports. If the compliance of the listing regulations is not made in the manner and in the period prescribed there would be an automatic imposition of fine as per Annexure 1 thereto.

12. We however find that in the given case the imposition of fine is excessive. There is no doubt that the limited audit report alongwith the financial results in PDF form was uploaded on the NSE website as well as on the Company's website within 30 minutes of the conclusion of the Board meeting. The financial results were also published in the newspapers. Thus, there was no deliberate intention on the part of the appellant to violate Regulation 33 of the Listing Regulations. The violation, if any, appears to been done by inadvertent mistake, by a human error. Considering the aforesaid we are of the opinion that in the given circumstances and in the interest of justice the penalty is reduced to Rs.2,50,000/- which the appellant shall pay to the respondent within four weeks from today. In the circumstances of the case, the appeal is partly allowed. The impugned order is modified to the extent stated aforesaid.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

20.8.2019
Prepared and compared by
RHN