National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/57868	Date: August 04, 2023
Circular Ref. No: 184/2023	

To All NSE Members,

Sub: **SAT Order in the matter of Sanraa Media Ltd.**

This is with reference to NSE circular no. NSE/INVG/39848 dated January 02, 2019 in reference to SEBI Order no. WTM/ AB /EFD-1/DRA-1/ 13/2018-19 dated January 02, 2019.

Hon'ble SAT now vide its Order dated July 27, 2023 has inter alia directed that the impugned order in so far as it relates to Mr. Rajeev Agarwal (PAN - AAJPA6719K) cannot be sustained and is Quashed.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (https://sat.gov.in/scripts/search.asp).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sanesh Sawant
Senior Manager

ANNEXURE: SAT Order in the matter of Sanraa Media Ltd.

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 27.7.2023

Misc. Application No.818 of 2023
And
Misc. Application No.911 of 2023
And
Appeal No.638 of 2023

Rajeev Agrawal
E-67, Kirti Nagar,
New Delhi-110015. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No.C4-A,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra-400051. …Respondent

Mr. Sabhay Choudhary, Advocate with Mr. Rajeev Agrawal for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi and Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed. The exemption application is also allowed.

2. The appellant has challenged the order dated 28th June, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') imposing a penalty of Rs.5 lakhs upon the appellant for failure to comply with the directions issued by Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') vide order dated 2nd January, 2019.

3. The facts leading to the filing of the appeal is that Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') investigated the issuance of Global Depository Receipts (hereinafter referred to as the 'GDRs') in overseas market by Sanraa Media Ltd. for the period 1st April, 2008 to 31st May, 2008 which led to the issuance of an order by the Whole Time Member dated 2nd January, 2019 wherein a slew of directions were issued, namely:

(a) Noticee no. 1 shall recover a sum of US $27.244 million from Noticee no. 8 and bring back the money into SML's bank account in India within three months from the date of this order. It is clarified that Noticee nos.2 to 7 and the other present directors of SML shall ensure and facilitate the compliance of this direction by SML, and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction, within three months from the date of this order.

(b) The following Noticees are hereby restrained from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of this order. During the period of restraint, the existing holding (including units of mutual funds) of the following Noticees shall remain frozen:

Noticee No.	Name of the Noticees	PAN
2	Mr. Annaswami Venkatramani	AABPV3960F
3	Mrs. Uma Karthikeyan	AKPPK3166J
4	Mr. Sukumar Subramanian	AOUPS4543L
5	Mr. Rajeev Agarwal	AAJPA6719K
6	Mr. Krishnan Rajagopal	AEHPR7931J
7	Mr. Rajendran Sivashankaran	AVAPS0218D
8	Clifford Capital Partners A.G.S.A.	-----------

(c) The following Noticee is hereby restrained from accessing the securities market and (further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, from the date of this order till the expiry of five years from the date of bringing back the money into SML's bank account in India (as directed in para 26(a) above). During the period of restraint, the existing holding (including units of mutual funds) of the following Noticee shall remain frozen:

Noticee No.	Name of the Noticee	PAN
1	Sanraa Media Ltd.	AAACS9093A

4. Since the directions was not complied with by the appellant, present show cause notice was issued to show cause why penalty should not be imposed.

5. We have heard Mr. Sabhay Choudhary, Advocate for the appellant and Mr. Sumit Rai, Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi and Mr. Harshvardhan Melanta, Advocates for the respondent.

6. Admittedly, an order under Section 11B was passed by the WTM on 2^{nd} January, 2019. The question that arises for consideration is, that if the order of the WTM passed under Section 11B is not complied by the appellants, is it open to SEBI to initiate proceedings for imposition of penalty under Section 15HB of the SEBI Act. For facility, the provisions of 11B and 15HB are extracted hereunder:-

*"**Power to issue directions***

***11-B**. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,-

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation.-For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

***Penalty for contravention where no separate penalty has been provided**.*

***15-HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or*

> *directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*."

7. According to the respondent, the directions issued under Section 11B are not penalty and, therefore, for non-compliance of the directions of the WTM, a penalty under Section 15HB could be issued. It was urged, that under Section 15HB whoever fails to comply with the directions issued by the Board for which no separate penalty has been provided, shall be liable to pay a penalty. It was urged, that at the time when the order was passed by the WTM in 2019 there was no power given to the WTM to issue a penalty and only directions could be issued and, consequently, for non-compliance of the directions of the WTM, penalty under Section 15HB could be imposed especially, when there was no provision at that relevant moment of time for enforcement of a direction/order. It was urged that in the past several orders have been passed by AO imposing penalty under Section 15HB for non-compliance of a direction given by the WTM and such

orders have been upheld in ***Dhaval Mehta vs. SEBI [2013 SCC OnLine SAT 86, Rajesh Ranka vs. SEBI [2019 SCC OnLine SAT 379] and in Top Telemedia Ltd. vs. SEBI [2018 SCC OnLine SAT 36].***

8. In our opinion, the contention raised by the respondent nor the impugned order can be sustained.

9. Directions issued under Section 11B are under Chapter-II of the SEBI Act, which gives powers to the Board to issue such directions as are necessary to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit. Such directions issued under 11B are in the nature of orders which are passed after due enquiry.

10. Black's Law Dictionary Seventh Edition defines 'direction' to mean an order. The word 'order' has also been defined in the same Black's Law Dictionary Seventh Edition as a command, direction or instruction, a written direction or command delivered by a court or judge. Thus, direction and order are synonymous terms and are interchangeable.

11. In ***Rajinder Nath vs. Commissioner Of Income Tax (1979) 4 SCC 282***, the Supreme Court held that a direction is an order issued by the authority or Court which is empowered to give while deciding the case before it.

12. Section 15HB is under Chapter-VIA of the SEBI Act, which provides for penalties and adjudication. A perusal of Chapter-VIA would indicate that penalties have been provided for specific violations, for example, under Section 15A, a penalty is provided for failure to furnish information, return, etc. Under Section 15B penalty is provided for failure by any person to enter into agreement with clients. Penalty is provided under Section 15C for failure to redress investors’ grievances and so forth. Section 15HB is a residuary clause meaning thereby that where specific penalties have not been provided elsewhere under Chapter-VI, then a penalty could be awarded under Section 15HB for failure to comply with any provisions of the Act, Rules, Regulations or directions issued by the Board.

13. The word ‘directions’ issued by the Board under Section 15HB is different and distinct from the directions issued under Section 11B after due enquiry and adjudication. There are many directions issued under the Regulations and the Circulars requiring a person to do an act in a certain manner. For example, a person is required to comply with a certain provision within a stipulated period. Failure to comply with such directions issued by the Board under the Act, Regulations, Rules or Circulars if not complied with may invite penalty. If penalty is not specified under Chapter-VIA from Section 15-A to Section 15-HAA for failure to comply with such type of directions then penalty can be imposed after adjudication under the residuary clause Section 15HB.

14. In our opinion, Section 15HB cannot be invoked for noncompliance of any directions issued under Section 11B after enquiry and adjudication.

15. The order of the WTM was one of disgorgement and if the amount of disgorgement was not paid by the appellants the same could be enforced under Section

28A. For facility, Section 28A(1) is extracted hereunder:-

> *"**Recovery of amounts.***
>
> ***28-A. (1)*** *If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—*
>
> *(a) attachment and sale of the person's movable property;*
> *(b) attachment of the person's bank accounts;*
> *(c) attachment and sale of the person's immovable property;*
> *(d) arrest of the person and his detention in prison;*
> *(e) appointing a receiver for the management of the person's movable and immovable properties,……"*

16. The aforesaid provision was inserted by Act No. 27 of 2014 w.e.f. 18.07.2013 for the protection of the interest of investors and to enhance the powers of the Board and specifically to enforce compliance of an order of disgorgement. The said provision directs that

if a person fails to comply with the directions of disgorgement order issued under Section 11B the said amount could be recovered under Section 28A through the Recovery Officer. The order of the WTM dated 2nd January, 2019 gave a right to SEBI to enforce the order of disgorgement. Thus, Section 28A could be enforced by SEBI if the order of WTM was not being complied with. In our opinion, Section 28A is procedural in nature and will apply for enforcement of an order passed by the WTM dated 2nd January, 2019. The Parliament, while inserting Section 28A in the SEBI Act specifically provided a mechanism to enable the Board for recovery to be made from any person who fails to comply with a direction of disgorgement under Section 11B.

17. In the instant case, the show cause notice was issued on 20th November, 2020, whereas the provision of Section 28A was inserted w.e.f. 18.7.2013. The said provision could have been utilized for enforcement of the WTM's order.

18. The preamble of the SEBI Act, the Statement of Objects and Reasons of the Act, the scope of Section 11B and the Statement of Objects and Reasons of the amending Act, 27 of 2014, all emphasise on protecting the interest of investors.

19. Black’s Law Dictionary Seventh Edition defines penalty as involving an idea of punishment, corporal or pecuniary; a penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act, which is required to be done. Supreme Court Words and Phrases, Third Edition 2014 defines penalty as a liability imposed as a punishment on the party committing the breach. The very use of the term penal is suggestive of punishment. Thus, the very definition of penalty and the import of Section 15HB is to punish by way of pecuniary liability as a punishment for not complying with the directions issued by the Board. The act of punishment is not in the interest of the investors rather it is towards strictly regulating the securities market, its participants and development of the Board

which is secondary to the protection of the interest of the investors. The object of investor protection is thus not achieved only by punishment or issuing directions as penalty passed in a recurring manner. The mechanism of recovery ensures protecting the interest of investors by getting back the amount to the investors.

20. Looking at it from another aspect, if imposition of penalty is mandated as a punishment, for failure to comply with the directions issued by the Board, then subsequent failures to comply would result in subsequent and recurring punishment directions resulting in a piquant situation of creating an endless loop of penalty directions as punishment for failure to comply. This situation was never intended by the Parliament while enacting Section 15HB enabling the Board for repetitive punishment orders for recovering the disgorged amount.

21. Thus, an adjudicatory order passed under Chapter IV or under Chapter VIA, after enquiry and adjudication can be enforced like a decree under

Section 28A. Penalty proceedings cannot be initiated for non-compliance under Section 15HB.

22. The judgments cited by the respondent are distinguishable. In all the cited cases, no doubt an order under Section 15HB of the Act was passed for not complying the order of the WTM. The question whether Section 15HB could be invoked for non-compliance of a direction passed by the WTM was not considered. Thus, the said decisions are not applicable.

23. In view of the aforesaid, we are of the view that the provisions of Section 15HB cannot be utilized for imposition of penalty for non-compliance of an order of the WTM passed under Section 11B of the SEBI Act.

24. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed with order as to costs.

25. 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. Certified copy of this order is also

available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

27.7.2023
RHN