

**BEFORE THE ADJUDICATING OFFICER SECURITIES
AND EXCHANGE BOARD OF INDIA [ADJUDICATION
ORDER NO. : Order/GR/RK/2020-21/9767]**

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of
Patil Rail Infrastructure Pvt. Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (“**SEBI**”) received a letter dated September 19, 2019 from Vistara ITCL (India) Ltd. (“**Vistara**”), a SEBI registered Debenture Trustee in which Vistara had provided a list of companies from which it had not received till that date the Half Yearly Communication (“**HYC**”) as per Regulation 52(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (“**LODR Regulations**”) for the half year ended March 31, 2019. The aforesaid list of companies included Patil Rail Infrastructure Pvt. Ltd. (“**Noticee/Company**”). In view of the aforesaid information, SEBI conducted an examination and had observed *prima facie* prima violation of Regulation 52(1) of LODR Regulations by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer (“**AO**”) vide order dated June 10, 2020, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, “**SEBI Act**”) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under

Section 15A(b) the alleged violations of Regulations 52(1) of LODR Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated August 28, 2020 (hereinafter, "SCN") was issued by the AO to the Noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it and penalty be not imposed on it under Section 15A(b) of the SEBI Act for allegedly failing to submit financial results of the company for the half year ended March 31, 2019 to the exchange, which is not in compliance of Regulation 52(1) of the LODR Regulations.
4. Subsequently, the Noticee vide its letter dated September 05, 2020 submitted its reply to the SCN which is summarized as below:

*"we would like to inform you that the company has 12 manufacturing units located in different states across India. One of the manufacturing location of the Company is situated at Kaipadar vilage near Puri in the state of Odisha where there was severe cyclonic storm "Fani" *which has destroyed the office and the entire manufacturing set up of company as a result of which there was no power and internet and phone connectivity for more than 15 days since May 3,2019. The Company took time to restore its office and recover and collate the data and documents and arrange duplicate copies of lost and destroyed documents destroyed in the storm. On account of the- pending information from its Kaipadar unit, the company was not in a position to finalise its audited financial results for the half year ended March 31, 2019 on or before May 30,2019. Anticipating such delay, the Comp-any has duly filed a letter dated May 29,2019 with BSE Ltd. intimating delay in submission of audited financial results for the half year ended March 31, 2019 pursuant to Regulation 52 of the SEBI (Listing obligations and Disclosure Requirement) Regulations, 2015.*

Later on, after finalization of the audited financial results for the half year ended March 31, 2019, the company has filed the results with BSE Ltd. on October 1, 2019 at its board meeting held on 24.09.2019 has approved the standalone audited financial results and the same has been filed with the Stock Exchange on October 1, 2019.

In the matter, we would kindly like to submit that the delay in submission of the aforesaid financial results was not intentional on the part of the Company and the Company was constrained to file the results within the due time due to force majeure event (Storm Fani) which was beyond the control of the company. we are annexing herewith as Annexure - III a copy of the Weather Report dated July 22, 2019 obtained by the Company from India Meteorological Department for submission for insurance claim. We are also annexing herewith as Annexure -IV a copy of the letter dated May 15, 2019 for submitting the incident report to the insurance surveyor and also annexing as Annexure - V discharge voucher of Oriental Insurance Company for discharging our insurance claim in respect of the loss / damage happened in the storm on May 3,2019 for your kind reference.

We would like to reiterate that the Company has on its own duly intimated in advance about the delay in filling of the results and later on also filed the results.”

5. Subsequently, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide email dated September 11, 2020, the Noticee was granted an opportunity of personal hearing on September 18, 2020. In reply to this, the Noticee requested to adjourn the Hearing by a month. Hence, the Noticee was granted another opportunity of personal hearing on October 06, 2020. The said hearing was attended by the Authorized Representatives (AR) of the Noticee in which it reiterated its earlier submissions made vide its letter dated September 05, 2020.
6. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS

7. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are:
- Whether the Noticee has violated the provisions of Regulation 52(1) of the LODR Regulations?
 - Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?
 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?
8. Before moving forward, it is pertinent to refer to the relevant provisions of LODR Regulations, which reads as under:

Regulation 52(1)

“The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty-five days from the end of the half year to the recognised stock exchange(s).

Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.”

FINDINGS

9. The first issue for consideration is whether the Noticee has violated Regulation 52(1) of the LODR Regulations.
10. It may be noted that Regulation 52(1) of SEBI (LODR) Regulations provides for submission of the financial results within forty-five days from the end of the half year.
11. From the fact of the case, I observe that in pursuance of the reference of Vistra, SEBI sought information from Exchanges (NSE and BSE) regarding the compliance status of the Noticee

with respect to Regulation 52(1) of LODR Regulations for the half year ended March 31, 2019. From the submissions of the BSE vide its email dated October 07, 2019 and March 11, 2020, it was observed that the company has not complied with provisions of Regulation 52(1) of SEBI LODR Regulations.

12. Further, the Noticee vide its reply dated September 05, 2020 submitted that they have filed the audited financial results for the half year ended March 31, 2019 to BSE on October 1, 2019. Hence, from the material available on record, I note that the company had made delayed disclosure to the exchange under Regulation 52(1) of LODR Regulations.
13. The Noticee has submitted that one of the manufacturing unit of the company which is located near Puri in Orissa was severely hit by cyclonic storm "Fani" which destroyed the office and the entire manufacturing set up of company as a result of which there was no power and internet and phone connectivity for more than 15 days since May 03, 2019. The Noticee further submitted that it took time to restore its office and recover and collate the data and documents destroyed in the storm which resulted in delay in submission of aforesaid financial results on behalf of the company. In this regard, the Noticee vide its email dated September 05, 2020 and December 05, 2020 submitted following documents to substantiate its claim:
 - a) Copy of discharge voucher of Oriental Insurance Company for discharging company's insurance claim in respect of the loss / damage happened in the storm on May 03, 2019.
 - b) Copy of the Weather Report for May 03, 2020 obtained by the Company from India Meteorological Department ('IMD') which was submitted as a proof for insurance claim by the company.
 - c) Order of Ministry of Corporate Affairs ('MCA') extending due date for holding Annual General Meeting ('AGM') by the company due to delay in finalisation of financial results by the company caused due to the cyclone.
 - d) Certified true extract from the minutes of their Board meeting held on May 03, 2019, in which the chairman of the company had informed the Board about destruction of their manufacturing unit in Orissa due to cyclone on May 03, 2019.

e) Proof of intimation by the company to BSE regarding delay in submission of financial results under the said Regulation.

14. Hence, I note that the company was not in a position to finalise its audited financial results for the half year ended March 31, 2019 on or before the due date of May 15, 2019.
15. In this regard, I note that Regulation 102 of the LODR Regulations gives power to the Board to relax the strict enforcement of the LODR Regulations. I further note that Regulation 102(1)(e) of the LODR Regulations stipulates that one of the mitigating circumstances for relaxation could be caused due to a factor which is beyond the control of the entity.
16. In the instant case, it is observed that the delay on the behalf of the Noticee to file disclosure under Regulation 52(1) of LODR Regulations to the exchange has been resulted due to destruction of its units caused by a cyclone. In this regard, to substantiate its claim, the Noticee has submitted weather report for May 03, 2019 obtained from Indian Meteorological Department ('IMD') and proof of discharge of their insurance claim by 'Oriental Insurance company' due to loss/damage happened to the Noticee due to cyclone on May 03, 2019. Additionally, vide its email dated December 05, 2020, the Noticee has further submitted certified true extract from the minutes of their Board meeting held on May 03, 2019, in which the chairman of the company had informed the Board about destruction of their manufacturing unit in Orissa due to cyclone on May 03, 2019. I further note that, MCA had granted extension of two and half months for holding AGM by the company which was due on September 30, 2019 due to delay in finalization of financial results by the company caused due to the cyclone 'Fani'.
17. Hence, I note that, the said delay in compliance with the said Regulation by the Noticee was because of an act of God/ force majeure event which made the fulfilment of condition by the Noticee as prescribed by the said Regulation impossible. In this regard, I would like to place reliance on observations made by Hon'ble SAT in the order dated March 17, 2008 in the matter of *M/s. CSL Securities Private Limited v. SEBI* in respect of impossibility of performance:

“...It is trite law that when the fulfilment of a condition prescribed by law, though mandatory, becomes impossible to be complied with because of an act of God or otherwise, law will excuse the fulfilment of that condition. Law can never insist upon the performance of an act which has otherwise become impossible of performance.”

18. In this context, it is relevant to mention the observations of Hon’ble Supreme Court in the case of *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr.* (2005) 4 SCC 530 that:

“38. The Court has to consider and understand the scope of application of the doctrines of "lex non cogit ad impossibilia" (the law does not compel a man to do what he cannot possibly perform); "impossibilium nulla obligatio est" (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law Nemo Tenetur ad Impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: Chandra Kishore Jha v. Mahavir Prasad & Ors., AIR 1999 SC 3558; Hira Tikoo v. Union Territory, Chandigarh & Ors., AIR 2004 SC 3648; and Haryana Urban Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr., AIR 2005 SC 1491).

39. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein.....”

19. Hence, I conclude that, in the instant matter the delay in submission of the aforesaid financial results was not intentional on the part of the Noticee and the Noticee was constrained in filing the results within the due time due to force majeure event (cyclone Fani) which was beyond the control of the company.

ORDER

20. Thus, in the light of the above, considering the facts and circumstances, mitigating factors of this case and guidance specified in section 15J of the SEBI Act, I am of the view that the non-compliance with Regulation 52(1) of LODR Regulations in this case cannot be said to be deliberate and the consequent default is venial and not blameworthy so as to impose monetary penalty under section 15A(b) of the SEBI Act. I am, therefore, of the view that the case does not deserve imposition of any monetary penalty and accordingly, the adjudication proceedings initiated against the Noticee vide SCN dated August 28, 2020 is disposed of.
21. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : December 08, 2020

Place : Mumbai

G Ramar
Adjudicating Officer



LEGAL
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE