

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**DATE : 21.05.2019**

**Appeal No. 437 of 2018**

Kitex Garments Ltd.

P. B. No. 5, Kizhakkambalam,  
Kochi, Kerala - 683562.

... Appellant

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. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b  
Corporate Law Chambers India for the Appellant.

Mr. Kaushal Parsekar, Advocate i/b Legasis Partners for the  
Respondent.

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

Per : Justice M. T. Joshi, Judicial Member (Oral)

1. Aggrieved by the order of the Adjudicating Officer of the respondent SEBI imposing a penalty of Rs. 1 lac under Section 15HB and Rs. 10 lac under Section 15C of the Securities and Exchange Board of India Act, 1992, the present appeal is preferred.

2. The record would show that the complaint of one Mr. Madhubhai Patwa, shareholder of the appellant, was registered on the online platform of the SEBI Complaints Redressal System (SCORES) on July 25, 2015. As per the SEBI circular dated December 18, 2014 the complaint is required to be redressed within 30 days and Action Taken Reports (ATRs) alongwith supported documents, if any, were to be electronically uploaded in SCORES. The appellant, however, failed to comply with the same and, therefore, a show cause notice was issued to the appellant. Till the date of issuing of the impugned order on August 31, 2018, the complaint remained to be redressed. Therefore, penalties on two count i.e. one failure to upload ATRs and second non-redressal of the complaint were imposed.

3. The facts would show that the complainant was due holder of 3500 shares of the appellant. Thereafter, he purchased 1000 shares from one Mr. Jaisukhlal D. Mehta and 200 shares from Pankaj Jariwalla. All these transfers were duly endorsed by the appellant. It, however, appears that the appellant failed to make the necessary corrections in the register of the shareholders. Subsequently, the appellant decided to split the shares in the year 2006 of the face value of Rs. 10/- in the ratio of 1:10. The appellant instead of dispatching

the split shares to the complainant dispatched the same to the earlier owners i.e. Mr. Mehta and Mr. Jariwalla respectively.

4. In the circumstances, the complaint was uploaded on the SCORES by the complainant on July 28, 2015. Since the complaint remained unresolved the proceedings as detailed supra was taken.

5. The appellant submitted before respondent SEBI that all these transactions took place on March 29, 2006 and now upon receipt of the complaint they were contemplating legal proceedings against Mr. Mehta and Mr. Jariwalla. It was found that these persons have already transferred the post-split shares.

6. The learned adjudicating officer found that the lapse on the part of the appellant in updating its register of members has caused loss to the complainant. The complaint was not resolved till the date of the passing of the order on August 31, 2018. Therefore, the penalty was imposed.

7. The learned counsel for the appellant submitted before us that the incident has occurred long back in the year 2006 and complaint was made in 2015. Since the post-split shares certificates though wrongly were issued to the earlier owners, as they had already transferred to other entities the matter became complicated. The appellant was contemplating legal proceedings. In the matter no

immediate action could be taken. In view of the above facts, he further submitted that after passing of the impugned order in August 2018, the grievance of the complainant was resolved and 12000 shares plus 4800 bonus shares were transferred to the demat account of the complainant. In the above circumstances, the appellant prayed that the complaint has now been resolved and, therefore, the penalty should be quashed.

8. The learned counsel for SEBI opposed the submissions. He submits that the complainant was 81 years old senior citizen. The appellant failed to redress the grievance of the complainant even after the decision in the impugned order though the complaint was received in the year 2015. He submits that subsequent redressal, if any, would only show that the appellant could have redressed the grievance earlier.

9. Having heard both sides, in our view, the appeal deserves to be dismissed. It cannot be gainsaid that the fault of the appellant in updating register of the shareholders maintained by it had led to the loss to the complainant. Though one was not aware as to whether any complaint was made by the complainant to the appellant in this regard, the complaint was made by the complainant on SCORES platform on July 28, 2015. The show cause notice was sent by the respondent SEBI to the appellant on August 6, 2015. After hearing

the appellant the impugned order came to be passed on August 31, 2018. Till the said date the grievance was not redressed. The learned counsel for the appellant submits that the grievance was redressed during the period of passing of the order. Be that as it may. We find that the order of the adjudicating officer does not suffer from any infirmity, hence, the following order:-

10. For the reasons stated aforesaid, the appeal lacks merit and is dismissed.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

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

Sd/-  
Justice M. T. Joshi  
Judicial Member

21.05.2019  
Prepared & Compared by  
PTM