
(2023) 02 SEBI CK 0024

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 183, 263 Of 2023, Miscellaneous Application No. 432, 433 Of 2022

Ashish Bagrodia

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 23-02-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 12A, 12A(a), 12A(b), 12A(c)

Citation : (2023) 02 SEBI CK 0024

Hon'ble Judges : Tarun Agarwala Presiding Officer; Meera Swarup Technical Member

Bench : Division Bench

Advocate : Kunal Kataria, Kushal Shah, Prakash Shah, Sumit Rai, Nidhi Singh, Deepti Mohan, Purvi Jain, Hubab Sayyed, Niket Dalal, Vidhii Partners

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed by the appellant. Appeal No. 183 of 2022 is against the order dated October 26, 2021 passed by the Whole Time Member (hereinafter referred to as the 'WTM') restraining the appellant from accessing the securities market and further prohibiting them from buying, selling or otherwise dealing in the securities market for a period of one year.

2. The appellant has also challenged the order dated November 30, 2021 passed by the Adjudicating Officer (hereinafter referred to as the 'AO') in Appeal No. 263 of 2022 whereby penalty of Rs.10 lakhs has been imposed for violation of the provisions of Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992') read with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

3. The facts leading to the filing of the present appeal is, that the Winsome Yarns Ltd. ('Company' for short) is a listed company and the shareholders in the extraordinary general meeting resolved and approved the issuance of Global Depository Receipts ('GDR' for short). Based on the aforesaid resolution, the process of issuance of GDR was initiated and, on 03.09.2010, a resolution of the board of directors was passed resolving to open a bank account with EURAM Bank for the purpose of receiving the subscription money in respect of GDR. The resolution also authorized Manish Bagrodia, Managing Director and Others to sign all documents and process the necessary transactions in relation to the GDR issue. The resolution further authorized EURAM Bank to use the funds so deposited as security in connection with loans if any.

4. It transpires that thereafter on 22nd March, 2011, the loan Agreement was executed between Vintage FZE (hereinafter referred to as 'Vintage') with EURAM Bank wherein EURAM agreed to give a loan to Vintage. On 22nd March, 2011, a pledge agreement was executed by the Managing Director of the Company with EURAM on the basis of which it enabled Vintage to avail a loan from EURAM for subscribing to the GDR. Based on the loan Agreement and pledge agreement, a loan was availed by Vintage from EURAM which was used to subscribe to the GDR issue of the Company and a public announcement was made on the stock exchange that the GDR issue was fully subscribed. 19,94,12,500 GDR was issued amounting to US \$ 13.24 million. Further, Vintage was the sole subscriber to the GDR issue on the basis of a loan taken under the loan Agreement.

5. A show cause notice was issued to various noticees including the appellant alleging that Vintage was the sole subscriber to the GDR issued by the Company and that the subscription amount was paid by obtaining a loan under a pledge agreement from EURAM and that the Managing Director signed a pledge agreement which was an integral part of the loan agreement and on the basis of this agreement Vintage availed loan from EURAM for subscribing the GDR issue. It was further alleged that the Company did not inform the stock exchange about the execution of the pledge agreement or the loan agreement. Further, wrong information was supplied that the GDR was subscribed by six entities. This act of concealing and suppressing the material facts was in violation of the provisions of Section 12A of SEBI Act, 1992 and Regulation 3 and 4 of the PFUTP Regulations.

6. An opportunity of hearing was given to the appellant and thereafter the impugned order was passed finding the appellant guilty of violating Regulations 3 & 4 of the PFTUP Regulations and Section 12A of the SEBI Act. The AO accordingly imposed a penalty of Rs. 10 lakhs on the appellant and appropriate period of debarment was issued. The WTM debarred the appellant from excessing the securities market for a period of one year.

7. We have heard Shri Kunal Kataria, the learned counsel for the appellants and

Shri Sumit Rai, the learned counsel for the respondent.

8. The *modus operandi* adopted by the Company in the issuance of GDRs is identical and was considered by this Tribunal in several appeals. This Tribunal found that the *modus operandi* was the same and that the investors were misled into believing that the GDR was subscribed by many investors whereas the fact remained that the GDR was subscribed by one entity who received a loan from the bank for the purpose of subscribing the issue. Further, the bank had given a collateral security by the Company in the form of a Pledge Agreement securing the GDR proceeds as collateral securities for the loan given to that entity. This Tribunal found that such scheme was fraudulent.

9. Similar is the finding in the instant case and therefore it is not necessary for us to deal in detail with regard to the findings given by the WTM and AO in this regard.

10. The only ground urged is that this Tribunal in a large number of appeals has reduced the penalty imposed by the AO and the period of debarment passed by the WTM considering the gravity of the offence.

11. It was urged, that the appellant is a non-executive director and that this Tribunal in *Sybyl Industries Ltd. vs. SEBI* Appeal No. 381 of 2019 decided on July 14, 2022 had exonerated the non-executive director holding that they cannot be held to be part of fraudulent scheme. The learned counsel also place reliance upon a decision of the Supreme Court in *Chintalapati Srinivasa Raju and Ors. vs. SEBI* (2018) 7 SCC 443 wherein it was held that non-executive directors are persons who are not involved in the day to day affairs of the running of the Company and are not in charge of and not responsible for the conduct of the business of the Company. It was thus urged, that on this ground itself the appellant should be exonerated.

12. It was also urged, that the penalty of Rs. 10 lakhs imposed is harsh and excessive and in the event the appellant is not exonerated of the charge the penalty should be reduced.

13. There is no doubt that this Tribunal has reduced the period of debarment in a large number of cases and has also reduced the penalty as it was found disproportionate to the violation committed by them.

14. In the instant case, the appellant was a non-executive director at that point of time and was the brother of the Managing Director and son of the Chairman. The appellant is part of the promoters group and is a Key Managerial Personnel. The AO has also found the appellant to be a member of the Shareholders/Investors Grievance Committee. In view of the aforesaid facts it is clear that there is a close relationship of the appellant with the Managing Director and Chairman of the Company. The appellant was not merely a non-executive director but also Key Managerial Personnel and related to the Managing Director and Chairman of the Company and was part of the promoter group. The

contention that he had nothing to do with the day to day affairs of the Company is patently erroneous in as much as we find that the appellant was a member of the GDR Issue Committee as well as of the Shareholders/ Investors Grievance Committee. Thus, we are of the confirmed opinion that the appellant was part of the fraudulent GDR Issuance Scheme and, thereby, violated Section 12A(a),(b), (c) of the SEBI Act read with Regulations 3 & 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. The decision of this Tribunal in Sybly Industries Ltd. is totally distinguishable as in that case the non-executive directors were only signatories to the resolution and that they were not involved in the day to day affairs of the Company. The decision of the Supreme Court in the matter of Chintalapati Srinivasa Raju and Ors. is also not applicable to the facts of the present case.

15. Considering the aforesaid, we find that the penalty and the period of restraint imposed is proportionate to the violation and is not arbitrary or excessive.

16. For the reasons stated aforesaid, we do not find any error in the impugned orders. The appeals fail and are dismissed. The misc. applications are disposed off accordingly.

17. 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.