
(2021) 10 SEBI CK 0073

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 439 Of 2021

CAT Technologies Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 06-10-2021

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 11C(3)
Companies Act, 1956 — Section 77(2), 77(4)

Citation : (2021) 10 SEBI CK 0073

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M.T. Joshi, J

Bench : Division Bench

Advocate : Joby Mathew, Anshuman Sugla, Tanya Gupta, Kumar Desai, Manish Chhangani, Ravishekhar Pandey, Prerna Sharma

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated April 3, 2019 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) whereby appellants were prohibited from accessing the capital market directly or indirectly for a period of five years from the date of passing of the impugned order.

2. The Appellant no. 1 is the Company, Appellant no. 2 is the Managing Director, Appellant no. 3 is the promoter and director and Appellant no. 4 is the director in the Appellant no. 1 Company. The Appellant no. 1 Company floated a Global Depository Receipts ('GDRs' for short) issues on July 27, 2007 and again on November 6, 2009. The original subscriber to both the GDR issues was one Vintage FZE. Appellant no. 2 was the authorized signatory of the Appellant no. 1 Company and had signed the pledged agreements dated July 20, 2007 and October 27, 2009 with Euram Bank. The pledged agreements were part of the

loan agreements dated July 23, 2007 and October 27, 2009. On the basis of these agreements it effectively resulted in the Appellant no. 1 Company itself financing the subscription of its own GDR issue.

3. Considering the irregularities in the issuance of the GDR an ex parte ad interim order dated September 21, 2011 was passed whereby the Appellant no. 1 Company was restrained from issuing any equity shares or any other securities convertible into equity shares or alter their capital structure in any manner till further directions. The interim order was subsequently confirmed on December 30, 2011. Thereafter a show cause notice dated December 18, 2014 was issued alleging that the Appellant no. 1 had concealed material information and further provided false information to the respondent in contravention of Section 11C(3) of the SEBI Act, 1992. It was also alleged that all the directors of the Company were aware of the arrangements made by the Company through the pledge and loan agreements which were in violation of Section 77(2) and 77(4) of the Companies Act read with Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). The show cause notice also alleged that non-disclosure of the pledge agreements was in violation of Clause 32 of the Listing Agreement.

4. The WTM after considering the matter found that the charges leveled against the appellant stood proved and accordingly prohibited the appellants from accessing the capital market directly or indirectly for a period of five years.

5. We have heard Shri Joby Mathew, the learned counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent.

6. Having heard the learned counsel for the parties we are of the opinion that modus operandi involved in the issuance of the GDR and diversion of money has been a subject matter of the consideration in various appeals which came before us wherein we have held that the entire scheme was a fraud upon the investors and that the money was illegally diverted for vested interest. The modus operandi, in the present case, is the same. In the instant case, we find that the Appellant no. 2 was the authorized signatory and had signed the loan and pledge agreements and other documents in relation to the GDR issues. He was also the Managing Director and promoter of the Appellant no.1 Company. It was also found false information was submitted regarding subscription made by the alleged subscribers whereas evidence has come on record to indicate that there was only one subscriber. Thus, false information was also given by the appellants to the investigating authority. Further information sought by the investigating authority was also not supplied. From the record we find that GDR proceeds were subscribed only by one entity who had taken a loan for subscribing to the GDR through a loan agreement from the Company itself which had provided security for the loan obtained by Vintage FZE by pledging all the GDR proceeds by executing pledge agreements. The fact that the GDR was subscribed by only one entity and that the entire GDR proceeds were provided as the security for the

loan obtained by the subscriber was not disclosed to the Stock Exchange.

7. Consequently, in view of the various decisions given by us in the matter of Jindal Cotex Limited vs SEBI, Appeal no. 376 of 2019 decided February 5, 2020 and Gangan Rastogi vs SEBI, Appeal no. 91 of 2015 decided on July 12, 2019 and other appeals we are of the opinion that there is no error in the findings given by WTM with regard to the modus operandi. The modus operandi adopted by the appellants was a fraudulent arrangement to defraud the Indian investors and was fraught with mala fides at every stage of its execution. Thus, we do not find any manifest error in the impugned order.

8. For the reasons stated aforesaid, the appeal lacks merit and is dismissed with no order as to costs.

9. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.