(2021) 10 SEBI CK 0175

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 833, 834, 835, 836, 837 Of 2021, Appeal No. 640, 641, 642, 643, 644 Of 2021

CAT Technologies Ltd And Others — APPELLANT

Vs

Adjudicating Officer — RESPONDENT

Date of Decision : 18-10-2021

Acts Referred:

Citation : (2021) 10 SEBI CK 0175

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

Bench : Division Bench

Advocate : Saurabh Bachhawat, Chitra Sharma, Sumit Rai, Manish Changani, Ravishekhar Pandey, Prerna Sharma

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. All these appeals are against a common order and are being taken up together at the admission stage itself. All the appellants have challenged the order dated 28th April, 2021 passed by the Adjudicating Officer ('AO' for short) imposing penalties under various heads.

2. The facts leading to the filing of the present appeal is, that the Company CAT Technologies Ltd. alongwith its directors and promoters in connivance with entities related to Mr. Arun Panchariya executed a fraudulent scheme of issuance of GDR to the detriment of the Indian investors. Two GDR issues were floated on 27th July, 2007 and again on 6th November, 2009. The original subscribers in both the GDR issue was Vitage FZE which was managed by Mr. Arun Panchariya. The Company signed a pledge agreement as well as a loan agreement on the basis of which it allowed Vintage to take a loan for the purpose of making a subscription to the GDR. On the basis of these agreements, it effectively resulted in the Company itself acquiring the subscription of its own GDR issue. The loans taken remained unpaid for a long time and the Company could not utilize the

proceeds. Further, the major proceeds of the GDR were not received by a Company in India and was allegedly transferred directly to its subsidiary in UAE or was utilized as expenses for the GDR issue. Further misleading corporate announcements were made.

3. Considering the irregularities in the issuance of the GDR, an ex-parte ad-interim order was passed whereby the appellant was restrained from issuing any equity shares or any other securities convertible into equity shares. The interim order was subsequently confirmed. Subsequently, a show cause notice was issued by the Whole Time Member ('WTM' for short) and after considering the reply the WTM found that the appellants had made a fraudulent arrangement to defraud the Indian investors and found that the charge leveled against the Company and its Directors stood proved and, accordingly, prohibited the appellant from accessing the securities market directly or indirectly for a period of five years.

4. Against the order of the WTM dated 3rd April, 2019 the appellants filed appeal no.439 of 2021 which was dismissed by this tribunal on 6th October, 2021. This Tribunal upheld the findings given by the WTM with regard to the modus operandi adopted by the Company and its Directors and also upheld the findings that the Directors were aware of the pledge and loan agreement and that the scheme was violative of Regulation 77(2) and 77(4) of the Companies Act as well as fraudulent under 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. This Tribunal while upholding the findings given by the WTM held:

"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."

5. On the same issue the AO has also initiated proceedings and after considering the modus operandi found that the Company and its Directors and Promoters were liable to pay penalty and accordingly imposed penalties under various heads.

6. The appellants being aggrieved by the said order has filed the present appeal. There is a delay of 19 days in the filing of the appeals. For the reasons stated in the applications the delay is condoned. The applications are allowed.

7. We have heard Mr. Saurabh Bachhawat, Advocate for the appellant and Mr. Sumit Rai, Advocate with Mr. Manish Changani, Mr. Ravishekhar Pandey and Ms. Prerna Sharma, Advocates for the Respondent.

8. The learned counsel for the appellant fairly conceded that in so far as the modus operandi adopted by the appellants is concerned, the same is squarely covered by the decision of this Tribunal dated 6th October, 2021 in appeal no.439 of 2021 and, therefore, the appellants are only confining the present appeal only

on the quantum of penalty imposed upon them by the AO. It was contended that the penalty imposed is excessive and in the given circumstances was also arbitrary. It was urged that in a similar issue the AO in the matter of G.V. Films has passed an order imposing a penalty of Rs.25 lakhs on the Company and Rs.15 lakhs upon the Directors. It was contended that the said decision squarely applies and, therefore, the quantum of penalty should be reduced accordingly.

9. Having heard the learned counsel for the parties and having perused the impugned order we find that the decision of the AO in the matter of GV Films is wholly distinguishable and not applicable in the instant case. No doubt the AO has imposed a lesser penalty but the facts are different and distinct and, therefore the quantum of penalty does not apply in the instant case.

10. In the instant case, we find that from the very beginning the appellants were not co-operating in the investigation and were not providing the information sought. The AO in para 81 of the impugned order has given a long list of the information and details that were asked which was not supplied. Some of the information relates to the execution of the pledge and loan agreement, details of the usage of proceeds of the GDR issues, documentary proof in support of utilization of the funds, copies of the bank statements, details of nature of business of the subsidiary companies etc. In addition of the aforesaid, we find that major portions of the GDR proceeds were not received by the Company in India and was transferred directly to a subsidiary in UAE. The bank statement and other details of the subsidiary companies were not provided. Further, submissions were made that the proceeds were utilized for expenses for the GDR issue without furnishing proof. Apart from the aforesaid, misleading corporate announcements were made in addition to non-disclosure of the pledge and loan agreement. We are of the opinion that the appellant Company and all the Directors were involved in the fraudulent arrangements to defraud the Indian investors. We have already held in the earlier appeal filed by the Company that all the appellants that the modus operandi was fraught with mala fides at every stage of its execution. In the light of the aforesaid, we do not see any justification in reducing the penalty imposed by the AO. The discretion exercised by the AO in the given circumstances is just and fair which does not require any interference to.

11. For the reasons stated aforesaid, the appeals lack merit and are dismissed at the admission stage itself. In the circumstances of the case there shall be no order as to costs.

12. 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.