(2021) 04 SEBI CK 0162

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 101, 201, 306, 445, 533, 602, 603, 615 Of 2019, 32, 97, 98 Of 2020, Miscellaneous Application No.586, 662, 663 Of 2019

Govind Das Pasari And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 30-04-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2), 4(k), 4(r)
Securities Contracts (Regulation) Act, 1956 — Section 21

Citation : (2021) 04 SEBI CK 0162

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

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Aishwarya Shubhangi, Kumar Desai, Mihir Mody, Arnav Misra, K. Ashar, Ranjit Bhonsale, Shourya Tanay, Ramesh Singh Gogawat

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. For the reasons stated in the applications, the delay in filing the appeals is condoned. Misc. application nos.586, 662 and 663 of 2019 are allowed.

2. Aggrieved by the two separate orders of the learned Whole Time Member (â??WTNâ?? for short) of the respondent Securities and Exchange

Board of India (hereinafter referred to as â??SEBIâ??) dated 15th January, 2019 and the learned Adjudicating Officerâ??s (â??AOâ?? for short)

order dated 30th August, 2019 in the same set of facts the present appeals are filed by the common appellants and, therefore, the appeals are being

decided by the present common order.

3. While the learned WTM has restrained all the appellants from accessing the securities market in any manner for a period of five years, the learned

AO has imposed a penalty of Rs.25 lakhs on appellant Syncom Healthcare Ltd. (hereinafter referred to as the â??Companyâ??) and on all the rest

of the appellant Rs.15 lakh each. Both the orders are passed for violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2), (k) and (r) of Securities and

Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred

to as â??PFUTP Regulations), Section 21 of SCRA and various clauses of LODR.

4. The common facts are as under:-

5. That appellant Company had issued Global Depository Receipts (â??GDRsâ?? for short) worth Rs.20.74 million US Dollars on 3rd September,

2010. It was equivalent to 2,25,00,000 equity shares of Rs.10 each. The GDR proceeds were deposited with European American Investment Bank

AG, Australia (hereinafter referred to as â??EURAM Bank). It was, however, found that a single entity namely Vitage FZE presently known as Alta

International FZE (hereinafter referred to as â??Vintageâ??) having registered office in Dubai was the only subscriber to the GDR issue. It has

subscribed to the GDR by obtaining loan from EURAM Bank vide loan agreement dated 20th August, 2010. As pointed earlier the GDR subscription

was to be deposited in the same Bank. However, the loan sanctioned to Vintage was secured by the appellant Company itself by pledging the entire

GDR proceeds with the same EURAM Bank by executing account charge agreement. Thus, the proceeds were not utilised for the objective of the

GDR but merely a show was made that the GDRs issued by the Company were subscribed immediately upon its listing. The GDRs were later

converted into equity shares and those shares were sold in Indian securities market. The cancellation of GDR started from February, 2011 and

continued till January, 2016 by which time all the GDRs were converted into shares.

6. During the said period appellant Mr. Ajay Bankda was the Managing Director, appellant Mrs. Jyoti Bankda his wife as well as appellant Mr.

Jagdish Bagaria, were the Whole Time Director while appellant Mr. Bharat Kumar Doshi, Mr. Govind Das Pasari and Mr. Avichal Kasliwal were the

Directors. Each of them appeared before the WTM as well as AO had submitted that they are not liable for the transactions and they were deceived

either by some of the appellants or by the Lead Manager to the issue of GDRs. And hence they claimed discharge of the proceedings. However, the

impugned order came to be passed as detailed above. Hence the following appeals.

7. Heard Mr. Somasekhar Sundaresan, Advocate assisted by Mr. Ranjit Bhonsale, Mr. Shourya Tanay, Ms. Aishwarya Shubhangi and Ramesh Singh

Gogawat, Advocates for the Appellants and Mr. Kumar Desai, Advocate assisted by Mr. Mihir Mody and Mr. Arnav Misra, Advocates for the

Respondent.

8. The facts on record would show that on 7th July, 2010 the following resolution was passed by the board of directors of the Company which runs as

under:

RESOLVED THAT a bank account be opened with EURAM Bank (""the Bank"") or any branch of Euram Bank, including the Offshore

Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

Resolution further states that:

RESOLVED FURTHER THAT Mr. Ajay S. Bankda, Managing Director of the Company be and is hereby authorised to sign, execute, any

application, agreement, escrow agreement, documents, undertaking, confirmation, declaration and other paper(s) from time to time as may

be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

Resolution also states that:

...... RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Directors of the Company, be and is hereby authorised to draw cheques

and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram

Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant

and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of

the Company

RESOLVED FURTHER THAT the Bank be and is hereby authorised to use the funds so deposited in the aforesaid bank account as security

in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required.

9. The facts are not disputed by the appellants. However, their replies to the show cause notice as well as submissions made before us show as under.

10. As per appellants Mr. Govind Das, Mr. Bharat Kumar and Mr. Avichal they were only independent non executive directors. Even the information

collected by the learned WTM from the website of Ministry of Corporate Affairs clearly showed that they were independent non executive directors.

They only knew that the GDR is to be issued and that another appellant Mr. Ajay Bankda, the then Managing Director of the Company would look

into all the affairs concerning it and, therefore, consented to his authorization to deal with all the details.

11. Appellant Mrs. Jyoti Bankda submitted that on the very same day of passing of the resolution she submitted her resignation and the same was

accepted by the Company. Therefore she is not liable for any further transactions.

The appellant Syncom Company submitted that further transaction of entering into account charge agreement were admittedly carried by appellant

Mr. Ajay Bankda, the then Managing Director without the knowledge of the Company and in fact it was the victim of the fraud committed by Mr

Ajay, thus it could not have been charged by SEBI.

12. Mr. Ajay Bankda submitted that he had infact signed the account charge agreement by religiously following the directions of the Lead Manager to

the issue, namely, Prospect Capital Ltd. He was not aware of any of the niceties of the GDR and, therefore, as he himself was deceived by the Lead

Manager in entering into the agreement he also could not have been charged by the respondent SEBI.

13. On the other hand, learned counsel for the respondent SEBI submitted that all the present appellants were parties to the resolution. They did not

take any action when the GDR proceeds did not reach the coffers of the Company later on. They remained silent throughout the period which would

show that all of them are guilty.

14. Post hearing the learned counsels for the appellants forwarded various judgments of this Tribunal to buttress their submissions that merely because

a person is a director of a company he/she would not be liable for a violation of any security or laws related to companies. In our view however this

being a case of violation of the PFUTP Regulations, the role if any of an entity either a director or non-director, in the fraud played will have to be

assessed to fasten any liablility. We therefore propose to carry this exercise hereinafter to follow.

15. Upon hearing both sides, in our view, appellant Mr. Govind Das, Mr. Bharat Kumar and Mr. Avichal were admittedly independent non executive

directors. The resolution itself would show that they did not participate in the issue of GDR proceeds at any point of time after passing of the

resolution. All the necessary followup was to be carried by the Managing Director. No case of adverse inference that they should have taken efforts

to bring back GDR proceeds was made out against them in any of the impugned order as argued before us and, therefore, they could not have been

penalised or restrained as detailed supra.

16. So far as the case of appellant Mrs. Jyoti Bankda is concerned, admittedly on the very day of the passing of the resolution she had resigned from

the Directorship of the Company and the same was accepted. Necessarily she cannot be made liable for the subsequent acts of entering into account

charge agreement by appellant Mr. Ajay Bankda, the Managing Director with the EURAM Bank on the strength of the resolution. Therefore, she

also could not have been penalised or restrained by the respondent SEBI.

17. So far as appellant Mr. Ajay Bankda the then Managing Director of the Company, the Company itself and appellant Mr. Jagdish Bagaria, the

Whole Time Director are concerned, they cannot escape the liability. The Company would be liable for the acts of the Managing Director. So also the

Managing Director is also liable for any default committed by the Company. Appellant Mr. Jagdish Bagaria was the Whole Time Directors and,

therefore, he cannot plead that he was not aware of the day to day affair of the Company which included non return of GDR proceeds to the

Company. Their involvement in the fraudulent activity as detailed supra is writ large from the record. Though the appellant Mr. Ajay Bankda claims

that he had merely signed the documents religiously on instructions by the Lead Manager, being a Managing Director he cannot claim that he was not

aware of the result of the account charge agreement i.e. misappropriation of the

GDR proceeds.

18. In the circumstances, the following order The appeals of Mr. Govind Das Pasari (appeal nos.201 and 603 of 2019), Mr. Bharat Kumar (appeal

nos.101 of 2019 and 32 of 2020) and Mr. Avichal Kasliwal (appeal nos.306 and 602 of 2019) and Mrs. Jyoti Bankda (appeal no.98 of 2020) are

hereby allowed without any order as to cost. The impugned orders to their extent are quashed. Appeal nos.533 of 2019 and 97 of 2020 of Mr. Ajay

Bankda, Appeal no.615 of 2019 Mr. Jagdish Bagaria, the Whole Time Director and appeal no.445 of 2019 filed by Syncom Healthcare Ltd. are

hereby dismissed without any order as to costs.

19. 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.