(2022) 02 SEBI CK 0142

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 364 Of 2021, 22 Of 2022

Harivallabh Mundra APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 15HA

Citation : (2022) 02 SEBI CK 0142

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

Bench : Division Bench

Advocate : Sean Wassoodew, Vishal Kanade, Nidhi Singh, Binjal Samani, Aditi Palnitkar, Moksha Kothari, Vidhii Partners

Final Decision : Dismissed

Judgement

M. T. Joshi, J

1. Aggrieved by the impugned order passed by the learned Whole Time Member (hereinafter referred to as "WTM") of respondent Securities and Exchange Board of India (hereinafter referred to as "SEBI") dated February 15, 2021 restraining the appellant from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner for a period of 2 years and the order of the Adjudicating Officer (hereinafter referred to as "AO") dated November 24, 2021 imposing a penalty of Rs. 15 lakhs on the same set of allegations, the present appeals are preferred.

2. The record would show that proceedings were initiated against 22 entities with an allegation that the Company Voltare Leasing and Finance Ltd. (hereinafter referred to as "the Company") along with the directors, related entities like preferential allottees and some of the buyers and sellers had in collusion with each other had managed to increase the price of the share of the company from Rs. 2.42 and reached a high price of Rs. 65 during the investigation period i.e. August 12, 2014 to July 31, 2015. This happened though the fundamentals of

the Company were very weak.

3. The allegations would show that in the year 2013-2014 the company had allotted the preferential shares to one of the noticees, namely, Looklike Trade Pvt. Ltd. who had thereafter transferred the shares to various entities in off-market transaction and thereafter these connected entities by selling or buying one share each for a price higher than the price available in the market, by contributing to the positive Last Traded Price ("hereinafter referred to as "LTP") had manipulate the price. Futher post preferential shares allotment to Lookalike Trade Pvt. Ltd. There was financial transaction between it and the company.

4. It was found by the respondent SEBI that the appellant was executive director of the company during the relevant period. Therefore, along with him the learned WTM had earlier passed the similar order dated April 30, 2020. The present appellant has challenged the said order before this Tribunal. It was found by this Tribunal that the appellant had filed reply to the show cause notice but remained absent for personal hearing. However, his reply was not taken into consideration by the learned WTM. Therefore, the matter was remitted back to the learned WTM so far as the present appellant is concerned. After hearing the appellant afresh the impugned order dated February 15, 2021 is passed. Hence the present Appeal No. 364 of 2021 is filed.

5. Appeal No. 22 of 2022 arises out of the impugned order dated November 24, 2021 passed by the learned AO on the same set of facts imposing a penalty of Rs. 15,00,000/- on the present appellant as well as different penalties on other entities. So far as the present appellant is concerned the penalty under Section 15HA of the SEBI Act as detailed (supra) is imposed. Hence this appeal is preferred.

6. We have heard the Shri Sean Wassoodew, the learned counsel for the appellant and Shri Vishal Kanade, the learned counsel for the respondent.

7. The learned counsel for the appellant submitted before us that the appellant is not anyway involved in the fraudulent and manipulative practices indulged into by the company or any other entities. The appellant though was appointed as independent director since the year 2011 he never attended any meetings of the Board of Directors. He had not received any notice of the meetings, no sitting fees are paid and even no consent was obtained for appointing him as a director. Further, the appellant resigned from the company vide his resignation letter dated March 31, 2014 which was delivered by registered post to the company on June 17, 2014. This resignation was prior to the fraudulent scheme being put into operation i.e. the investigation period. The acknowledgment of receipt of the resignation letter by registered post acknowledgement due was already filed on record. However, the learned WTM had wrongly considered the material on record i.e. the inconsistencies in the annual reports of the year 2013-2014 and 2014-2015 of which the appellant is not concerned and hence he wanted that the appeal against the order dated March 31, 2014 passed by the WTM be allowed.

8. As regard the order passed by the learned AO, it was submitted that the learned AO has merely carried the exercise of cut and paste the reasoning recorded by the learned WTM in his order without application of any mind and, therefore, relying on the facts as detailed above he wanted that the said appeal also be allowed.

On the other hand, the learned counsel for the respondent SEBI took us through the record and submitted that the appellant was very well executive director of the company during the period the fraudulent scheme was in the nature of making preferential allotment of the shares in Looklike Trade Pvt. Ltd. He also continued to be the executive director during the investigation period and as such both the appeals deserve to be dismissed.

9. As regard the order of the learned AO the learned counsel submits that since the factual aspect in both the cases are same merely because there is certain repetition in the order of the AO of the reasoning recorded by the learned WTM, it would not follow that the learned AO has not applied his mind. In fact, since the facts are same, the learned counsel submitted no other reasoning could have been forwarded by the AO once the WTM had recorded findings on facts earlier. Upon hearing both side, in our view, both the appeals deserves to be dismissed for the following reasons:-

a) The learned counsel for the appellant submitted that the scheme designed by the company or other entities may be fraudulent, however, the appellant is not concerned with the same.

b) Heavy reliance was placed on the resignation letter dated March 31, 2014 which is said to have been posted by registered post acknowledgement due and received on June 17, 2014. The copy of the acknowledgement is filed on record of the learned WTM and the copy of the same is also filed in the present proceedings.

c) Both the authorities found that while the resignation letter dated March 31, 2014 the acknowledgement card mentioned the date of receipt as June 17, 2014. Further, while the resignation letter is addressed to the Board of the Company at the registered address in Fort, Mumbai. The address on acknowledgement card is of Malad - a suburb of Mumbai. Therefore, the travelling of the resignation letter in intra-city for 2½ months was doubted. On the other hand, Ministry of Corporate Affairs record collected by the SEBI during the investigation showed that the appellant had resigned from the company w.e.f. September 26, 2014. The appellant failed to provide any explanation as to how this date came to be recorded with the Ministry.

d) It was also observed that though the price was manipulated during the investigation period, the premeditated scheme also includes the preferential allotment of the shares made to Looklike Trade Pvt. Ltd. long back in August 2013 when the appellant was admittedly director and was shown as executive director.

10. While the appellant claims that he was independent director, the learned WTM has examined the annual reports of the company since 2012-2013 onwards. The detailed analysis of the same is given in paragraph 21 of the impugned order of the WTM which would show that for the year 2012-2013 the appellant was designated as executive director and was also referred as a Whole Time Director and a Key Management Personnel. In this period itself on July 02, 2013 the allotment of preferential shares was approved. Further, as per the annual report of the year 2013-2014 the appellant was designated as executive director. The annual report also mentions the appellant as non-executive director. However, in the annual report of 2014-2015 the appellant was designated as an independent director as well as non-executive director. The learned WTM by adverting to the relevant provisions of the Listing Agreement concluded that the appellant could not have been an independent director, once he was the director earlier. The learned WTM again highlighted that the appellant was admittedly director and the record shows that he was executive director when the allotment of preferential shares was made to the Looklike Trade Pvt. Ltd.

11. In our view, the reasoning of the learned WTM are based on the documentary evidence placed before him. While the resignation letter is addressed to the Board of Directors at the registered office of the company situated in Fort, Mumbai, the acknowledgement shows that the same was received at Malad. The acknowledgement further does not show any postal stamp or stamp of the company. The appellant continued to be recorded as a director or Key Management Personnel for the subsequent years of the alleged resignation letter. In that view of the matter the reliance of the appellant in the ratio of M/s Madan And Co. vs. Wazir Jaivir Chand, (1989) 1 SCC 264, C.C. Alavi Haji v. Palapetty Muhammed And Another (2007) 6 SCC 555 about the presumption that arises due to the sending of the communication by registered post acknowledgement due would not arise.

12. As regards, the criticism of the finding recorded by the learned AO, though the appellant has relied in number of cases like Jai Singh And Ors. v. State of Jammu & Kashmir (1985) 1 SCC 561, Punamchand Meghaji Shikhare vs. Superintendent of Police, (1983) 2 LLN 241 and Golden Chariot Airport, Mumbai v. Airports Authority of India International Airports Division Chhatrapati Shivaji International Airport, Mumai and Another (2009) 3 Mh. L.J. 684 it is to be noted that in those cases enquiry report, dossier were reproduced in verbatim by the concerned authority which was required to apply its own mind to the case in hand. In the present case the learned WTM had already recorded finding on the same set of facts and the learned AO was to consider the case from the angle of imposing penalty. Therefore, if some repetition of the finding on fact is found, though the same is not desirable would not cause the order to be perverse one.

13. In the result, the following order:

ORDER

Bothe the appeals are hereby dismissed without any order as to costs.

14. The present matters were 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.