(2021) 07 SEBI CK 0172

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 346, 347, 348 Of 2020

IKF Technologies Limited And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r)

Securities And Exchange Board Of India Act, 1992 — Section 11B, 12A(a), 12A(b), 12A(c), 15HA

Citation : (2021) 07 SEBI CK 0172

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

Bench : Division Bench

Advocate : Pulkit Sharma, Jitendra Sharda, Shyam Mehta, Mihir Mody, Arnav Misra, Mayur Jaisingh, K. Ashar, Kunal Katariya, Lalit Joshi

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the directions of the Adjudicating Officer (â??AOâ?? for short) of the Securities and Exchange Board of India (â??SEBIâ?? for

short) dated June 24, 2020 imposing penalty of Rs. 12 crore (u/s 15HA) and Rs. 10 lakh (u/s 15A(a) on the appellant IKF Technologies Limited, Rs. 1

crore on appellant Sunil Kumar Goyal and also Rs. 1 crore on appellant Mukesh Kumar Goyal under Section 15 HA of SEBI Act, 1992 for violation of

Section 12A(a,(b),(c) of the SEBI Act read with Regulations 3(b),(c),(d) and Regulations 4(2)(c),(f),(k) and (r) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ?? for short) the present appeals have been preferred.

2. In fact, in the present episode , the learned Whole Time Member (â??WTMâ?? for short) of respondent SEBI had found all the appellants guilty

vide orders dated April 20, 2015 and September 5, 2017. Vide those orders the appellants were restrained from in any way dealing in securities for a

period of certain numbers of years respectively as detailed by the AO in the present impugned order. Admittedly, no appeal was preferred against the

said order. The appellants in their submissions dated July 30, 2019 had therefore submitted before the AO that the said decisions have attained the

finality. Therefore, it is contended that the present proceedings by the AO after a gap of four years without any plausible reasons are barred by

principles of res judicata. This plea was not raised during the argument as the this issue of law is already settled by this tribunal and the Supreme

Court of India, holding that two separate proceedings on same set of facts, one for issuing directions under Section 11B of The SEBI Act to protect

the security market and another under Section 15HA of the SEBI Act for imposing penalty can be initiated.

3. In order to understand the controversy in the matter it is necessary to have a cursory glance with the facts though finding regarding the same has

already attained finality. The appellant IKF Technologies Limited had issued Global Depositiries Recipts (â??GDRsâ??for short) on two occasions.

Firstly on March 30, 2007 it had issued GDRs amounting to US $ 11 million. Secondly GDRs amounting to US $ 10.98 million was issued on May 15,

2009. For both the issuance Pan Asia Advisors Ltd. was the Lead Manger. The record shows that the Lead Manager had been instrumental in finding

only few subscribers to the said GDRs. They had arranged for a loan for the subscription of the GDRs from two separate banks i.e. Banco Efisa and

Euram Bank internationally. The proceeds of the GDRs were agreed to be deposited in these respective banks. In each of the case the appellant IKF

Technologies Limited itself stood as a guarantor by entering into Account Charge Account on both the accounts of the appellants with the respective

bank. Thus Merely a show of issuing a public GDR was made. The entire proceeds of the GDR were parked in the accounts with the bank and the

said amount was charged with the loan amount obtained by the subscribers from the very same bank. This exercise however was not disclosed to the stock exchanges in India. Solemn disclosures were made to the effect that the GDRs issued by the appellant on two occasions were fully subscribed.

The amount however never returned to India. Therefore, the proceedings were lodged.

4. Heard Mr. Pulkit Sharma, Advocate with Mr. Jitendra Sharda, Advocate for the appellant. in appeal no. 346 of 2020 and 348 of 2020 . Mr. Kunal

Katariya, Advocate i/b Mr. Lalit Joshi, Advocate for the in appeal no 347 of 2020. Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr.

Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

5. In view of the findings of fact that attained finality, the learned counsel for the appellant made limited submissions before us.

6. The learned counsel for the appellant submitted that in fact appellant Mukesh Goyal was not at all Director as alleged by the AO. He was merely a

authorized signatory, who had signed Account Charge agreement with the bank , as directed by the Company. He further submitted that the learned

AO did not find the appellant guilty on some part of the transactions. Further, the amount under the GDRs in fact has returned to India and there was

no price rise of the share of the appellant IKF Technologies Limited after the disclosures as can seen from the certificate annexed to the appeal

memo.

7. On the other hand, the learned counsel for the respondent submitted that there is no reliable evidence that the amount has returned to the Company.

There is also no proof that the information of subscription to the GDR on two occasions had no effect of price rise. He further submitted that the issue

as to whether the appellant Mukesh Goyal can be held guilty being only authorized signatory, he pointed to the fact that while Mr. Mukesh was

authorized signatory to the first isuue of GDRs, he was appointed as a director lateron and consented for second issue of GDRs. He additionally

submitted that this issue is also finally decided vide the order of the Whole Time Member . As regards the argument of the appellants that the AO

partially found the appellants not guilty in the matter, it was pointed by the learned counsel for the respondent that the AO was had commented on the

particular part played by each of the appellants in respective field only.

8. Upon hearing both the sides in our view the appeal is liable to be dismissed for the following reasons:-

(a) All the issues in the present appeal are heard and finally decided in view of the decision of the learned WTM earlier.

(b) Though we are not aware as to whether the plea of return of money was taken before the WTM, in the present case, the learned AO has dealt

with the said issue independently.

(c) At paragraph no. 64 of the impugned order. The learned AO noted that no bank statement supporting the said assertion is put on record. Only

document submitted before him was the two page data regarding the same. The learned AO therefore did not place any reliance on the same. The

reasoning of the AO in this regard cannot be faulted with.

(d) As regards the issue of the effect on the prices of the shares of the Company, of the disclosures by the appellant with the stock exchanges

regarding the subscription to the GDRs, again we find that nothing reliable was placed before the learned AO in this regard.

(e) As regards the quantum of penalty we do not find that the learned AO failed to exercise discretion judicially.

(f) Considering all these facts on record, we do not find any merit in these appeals. Appeals are, therefore, 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.

