
(2020) 02 SEBI CK 0042

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 376 Of 2019

Jindal Cotex Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 05-02-2020

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)(f), 4(2)(k), 4(2)(r)
Securities And Exchange Board Of India Act, 1992 — Section 11B, 11(1), 11(4), 12A(a), 12A(b), 12A(c), 19

Citation : (2020) 02 SEBI CK 0042

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Yugandhara Khanwilkar, Druheen Mohanty, Shyam Mehta, Mihir Mody, Shehaab Roshan, K. Ashar

Final Decision : Dismissed

Judgement

Dr. C.K.G. Nair, Member

1. This appeal has been filed aggrieved by the order of the Whole Time Member (â??WTMâ? for convenience) of Securities and Exchange Board of

India (â??SEBIâ? for convenience) dated April 24, 2019. By the said order, by invoking powers conferred under Section 19 read with Sections 11(1),

11(4) and 11B of the SEBI Act, 1992, the appellants have been prohibited from associating with the securities market directly or indirectly for a period

of five years from the date of the order.

2. M/s. Jindal Cotex Limited (â??JCLâ? for convenience), Appellant No. 1 is a company which came out with an allegedly vitiated issue of Global

Depository Receipts (â??GDRsâ? for convenience) in 2010. Appellant No. 2, 3

and 4 were Managing Director, Whole Time Director and Chairman of JCL at the relevant time.

3. Facts relevant to the matter are the following:-

a) SEBI conducted an investigation relating to issuance of 5 million GDRs valued at US\$ 38.75 million by JCL on June 30, 2010. The said GDRs were

listed on the Luxembourg Stock Exchange and the proceeds from the issue were deposited with European American Investment Bank (â??EURAM Bankâ??).

b) During the investigation it was revealed that Vintage FZE (â??Vintageâ?) was the only entity that subscribed the entire issue of 5 million GDR and the subscription amount was paid by obtaining a loan from EURAM Bank.

c) On June 11, 2010 JCL provided security in the form of a Pledge Agreement between JCL and EURAM Bank for the loan obtained by Vintage from EURAM Bank. By this Pledge Agreement JCL pledged the proceeds from the GDR issue against the loan availed by Vintage.

d) Appellant No. 2, the Managing Director of JCL, executed the said Pledge Agreement with EURAM Bank. Further this Pledge Agreement was also an integral part of the Loan Agreement entered into between Vintage and EURAM Bank on the same date of the Pledge Agreement i.e. on June 11, 2010.

e) Accordingly, these two agreements â??Pledge Agreementâ? and the â??Loan Agreementâ? enabled Vintage to obtain the loan and to use that loan amount to fully subscribe the 5 million GDR issue by JCL.

4. On June 30, 2010 JCL reported to the Bombay Stock Exchange (â??BSEâ?) that â??â?|the Board of Directors of the Company at its meeting

held on June 30, 2010 has concluded the placement of 5,000,000 Global Depository Receipts/ Shares at US\$ 7.75 per Global Depository Receipts/

Shares (Representing 20,000,000 equity shares of Rs. 10/- each) totaling USD 38.75 millionâ?|â?. In the show cause notice issued by SEBI on May

21, 2018 it was also alleged that JCL provided a false list of GDR subscribers. Therefore, it was alleged that the entire scheme involving a Pledge

Agreement and the announcement that the GDRs were successfully subscribed without disclosing the Pledge Agreement to the investors resulted in

misleading information to the public and thereby adversely impacting the

investors and, therefore, the scheme of issuance of GDRs was fraudulent violating the provisions of Section 12A(a), (b), (c), of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (â??PFUTP Regulations, 2003â?? for convenience), Therefore, Appellant Nos. 2,3,4 also have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

5. It is the contention of Shri Somasekhar Sundaresan, learned counsel appearing on behalf of the appellants that the impugned order suffers from the vice of disregarding natural justice to the extent that the investigation started five years after the issue of GDRs when the entire information was in public domain and available to SEBI in 2010; the show cause notice was issued eight years after the issue of GDRs and the impugned order is passed without considering the submissions made by the appellants. Further it was contended by the learned counsel that the impugned order is not a remedial action as contemplated under Sections 11(1), 11(4) and 11B of the SEBI Act, but a penal action despite an adjudication procedure has also been launched separately. Therefore, restraining the appellants from accessing or dealing in the securities market directly or indirectly for a period of five years and that too after nine years of the alleged violations becomes a highly arbitrary and harsh punishment on the appellant-company which has come back to the rails after several years of concerted efforts.

6. As regards the contention that the submissions made by the appellants have not been considered in the impugned order, the learned counsel for the appellants submitted that unlike the issue of GDRs in a manipulative manner by certain other entities, JCL had done a genuine GDR issue. No GDRs were sold in the domestic market before the entire money was withdrawn by the appellant-company from its account with EURAM Bank. Similarly, the entire issue proceeds were received by the appellant-company and utilized for the purpose for which the GDR issue was made. The only allegation, according to the learned counsel for the appellants, that could be pressed is that the Pledge Agreement was not disclosed to the Stock Exchange (BSE). This was, it was contended, because there was no requirement for disclosing the Pledge Agreement under the Listing Agreement.

As regards the list of subscribers of GDRs it was contended that the appellant(s) submitted the list as received from the Lead Manager and, therefore,

they were not privy to the fact that the subscription was made fully by Vintage. Given these facts, the learned counsel for the appellants submitted

that the appellant(s) deserves substantial mitigation as there was no fraud or even intention to commit any fraud involved in this matter and, therefore,

the restraint of five years or at least the remaining period of restraint should go.

7. We have also heard Shri Shyam Mehta, learned senior counsel appearing on behalf of respondent SEBI who specifically highlighted paragraph 14

of the impugned order which clearly explains the diversion between the minutes of the Board Resolution dated April 26, 2010 as provided to the

EURAM Bank signed by Appellant No. 2 to 4 and the original minutes of the said Board meeting as provided by JCL to SEBI during the investigation.

For facility paragraph no. 14 is extracted below:-

14. I note that a certified copy of the Board resolution dated April 26, 2010 was provided to the EURAM Bank by JCL, wherein an

authorization has been given to Noticee no. 2 & 3 for opening of bank account with EURAM Bank and EURAM Bank was authorized to use

the funds in the account as security in connection with loans etc. The said resolution was certified by the Noticee nos. 2 to 4. I also note that

Noticee no.1 has vide letter dated October 10, 2017 (sent to SEBI during investigation, vide email dated October 10, 2017), enclosed as

Annexure 1, the copy of original minutes of the Board meeting of the Noticee No.1 held on April 26, 2010. On perusal of the said minutes of

the Board meeting, I note that no such resolution to open account with EURAM Bank and use the funds in such account as security in

connection with loan .etc., was stated in the said minutes. Neither was there any agenda item, nor any discussion took place in the meeting

of Board of Directors on April 26, 2010 in respect of the purported resolution. I also note that, even though the Noticees have filed detailed

reply/written submissions dated February 05, 2019 along with many other enclosures, but conveniently not furnished, either the minutes,

agenda or Board resolution (as submitted with EURAM Bank) of the meeting of the Board of Directors dated April 26, 2010.

8. It was further submitted by the learned senior counsel that on June 30, 2010

disclosure made by the Board of Directors of the company to BSE did not make any mention as to whom the GDRs were allotted to, or subscribed by and, therefore, it was a calibrated message to convey that the GDRs were subscribed to in a normal course of business by normal investors in the foreign jurisdiction.

9. We do not agree with the submissions made by the learned counsel for the appellants. This Tribunal had passed a number of orders relating to

manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also

been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal

No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12. 10.2017)The modus

operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment

bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement

itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the

GDR. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.

In this context, it is relevant to note that in our order in the matter of PAN Asia Advisors Limited (Supra) (Lead Manager) and Vintage (subscriber)

whose beneficial owner was Arun Panchariya were all found to be guilty of the violations of Indian Securities Laws under the PFUTP Regulations,

2003. The same has been the modus operandi in respect of Cals Refineries Limited (Supra) though the entities connected therein were different.

10. The contention that Pledge Agreement was not required to be disclosed under the Listing Agreement is not correct as the Listing Agreement,

which forms the very basis of a disclosure based regulatory regime, requires every material information to be disclosed to the Stock Exchange at the

earliest, sometime in a matter of minutes and others in a matter of days. When the company has lent the entire proceeds of the GDR issue to the tune

of US\$ 38.75 million as security for a third party abroad to avail a loan on the basis of that security and thereby potentially jeopardizing the entire

proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed

in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.

11. Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is

aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from

multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc. We also do not find any deficiency

in the finding in the impugned order that money has been brought in fully by the company starting from December 14, 2010 and ending January 04,

2012 and, therefore, full repayment of loan taken by Vintage was done without resorting to sale in the Indian market as irrelevant. The basic question

to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for

the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue

was properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud and hence finally whether the

money has come back or not is relevant in the facts and circumstances. There has been no allegation of any diversion of money nor any direction

relating to the same in the form of disgorgement etc. as in the case of Cals Refineries Limited in related appeals i.e. Gagan Rastogi vs. SEBI

(Appeal No. 91 of 2015) and Asia Texx Enterprises Limited vs. SEBI (Appeal No. 219 of 2015) both decided by this Tribunal on 12.07.2019. In

any case, we are of the opinion that imposition of the restraint on the appellants herein has been done taking all the relevant factors into account as in

similar matters like Cals Refineries Limited (Supra) the period of restraint imposed on the appellants was 10 years while in the instant matter restraint

is only for 5 years.

12. In the result, the appeal fails and is dismissed. No orders on costs.