
(2023) 03 SEBI CK 0040

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 404, 553, 572 Of 2022

JMD Ventures Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 12A

Citation : (2023) 03 SEBI CK 0040

Hon'ble Judges : Tarun Agarwala Presiding Officer; Meera Swarup Technical Member

Bench : Division Bench

Advocate : Vinay Chauhan, Harish Khedkar, Akash Rebello, Abhiraj Arora, Shourya Tanay, Misbah Dada, Deepanshu Agarwal

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against the order dated September 14, 2021 passed by the Whole Time Member ("WTM" for short) restraining the appellants from accessing the securities market and further prohibiting them from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market, in any manner, whatsoever for certain period as specified in the impugned order. In addition to the above, the WTM also imposed penalties of different amounts totaling Rs. 67 lakhs. Insofar as appellant no. 1, Company is concerned (Noticee no. 1), a penalty of Rs. 40 lakh has been imposed. Insofar as Noticee no. 2, Mr. Kailash Prasad Purohit is concerned, a penalty of Rs. 15 lakh has been imposed. Insofar as appellant no. 2 (Noticee no. 3), Mr. Jagdish Prasad Purohit is concerned, a penalty of Rs. 3 lakh has been imposed. Insofar as Noticee no. 7 Mr. Pravin T. Sawant is concerned, a penalty of Rs. 5 lakh has been imposed and insofar as appellant no. 3 (Noticee no. 8), Mr. Shiv Kumar Yadav is concerned, a penalty of Rs. 1 lakh has been imposed.

2. The facts leading to the filing of the present appeal is, that on 9th June, 2017 the Ministry of Corporate Affairs issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") and its regulations.

3. Based on the said letter, SEBI issued an order dated 7th August, 2017 placing trading restrictions on the appellant Company, its Directors and promoters. The Company made a representation on 18th August, 2017 as well as filed appeal no. 202 of 2017 which was disposed of by this Tribunal by an order of 24th August, 2017 directing SEBI to decide the representation.

4. Subsequently, based on further investigation SEBI passed an ex-parte ad-interim order dated 14th September, 2017 which included a direction for appointment of a forensic auditor to verify misrepresentations including financial and misuse of funds in books of accounts of the Company. Subsequently, the interim order was confirmed.

5. Based on the forensic audit report and further investigation made by SEBI a show cause notice dated 21 st August, 2020 and 21st August, 2020 were issued. The broad charges in the show cause notice are as follows:-

A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds / books of accounts;

B. Non-furnishing of information / non-cooperation by the Company;

C. Violation of provisions of PFUTP Regulations, 2003.

6. The WTM after considering the replies of the appellant and the material evidence on record concluded that the appellant misrepresented its financials and violated the accounting standards. The WTM found that various provisions of LODR Regulations was not complied with during the three financial years and there were lapses on the part of the Company in not making the disclosures within the stipulated period. The WTM further found that there was no violation of Section 12A of the SEBI Act and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") as there was no misappropriation of the funds nor the Company nor its Directors had played a fraud upon the investors nor was there any disproportionate gain or unfair advantage nor any specific loss was incurred by any investor. The WTM accordingly for the above violations debarred the appellant from accessing the securities market for specified periods and imposed different amounts of penalties on the appellants.

7. We have heard Shri Vinay Chauhan, the learned counsel assisted by Shri Harish Khedkar, the learned counsel and Shri Akash Rebello, the learned counsel assisted by Shri Abhiraj Arora, Shri Shourya Tanay, Ms. Misbah Dada and Shri Deepanshu Agarwal, the learned counsel for the respondent.

8. Having heard the learned counsel for the parties we are of the opinion that the controversy involved in the present appeals are squarely covered by various decisions of this Tribunal, namely, Appeal no. 750 of 2021, V.B. Industries Limited & Ors vs SEBI, decided on July 29, 2022, Appeal no. 471 of 2022, Dalmia Industrial Development Limited vs SEBI and other connected appeals decided on September 1, 2022, Appeal no. 801 of 2021, SVAM Software Ltd & Ors vs SEBI decided on October 13, 2022, Tatia Global Vennture Ltd. & Ors. vs SEBI decided on August 24, 2022 and Venmax Drugs and Pharmaceuticals Ltd. vs SEBI in Appeal no. 759 of 2021 and other connected appeals decided on November 14, 2022 wherein similar controversies the debarment passed by the WTM was set aside and the penalties was reduced appropriately.

9. We, thus, find that the Company had made certain lapses and failed to comply with the LODR Regulations. However, these lapses are not intentional but such lapses occurred on account of procedural and technical issues.

10. We also find that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the WTM has given a clear finding that there was no violation of the PFUTP Regulations and there was no diversion of funds nor there was any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor. In the absence of any specific loss being caused to anyone it was contended that the penalty imposed in the given circumstances was totally disproportionate to the alleged violation apart from being harsh and excessive.

11. Admittedly, a clear finding has been given by WTM that there is no misappropriation of funds of the Company nor there is any manipulation in the price of the scrip. The WTM has given a categorical finding that Section 12A of the SEBI Act or PFUTP Regulations have not been violated.

12. In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive.

13. In the instant case, we find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive.

14. While affirming the violation committed by the Company with regard to non-compliance of the LODR Regulations we direct that period undergone towards debarment of the appellants is sufficient for the aforesaid violation and consequently the period is reduced to the period underwent by the appellants. In addition to the above, we reduce the penalty directing the appellant Company to pay a sum of Rs. 15 lakhs for violation of the LODR Regulations. The penalties

imposed on the other appellants are set aside.

15. In view of the aforesaid, the appeals are partly allowed.

16. 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. Certified copy of this order is also available from the Registry on payment of usual charges.