

(2022) 08 SEBI CK 0047

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 329 Of 2020

Kantilal Hiran

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulations 3(a), 3(b), 3(c), 4(1)
Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12A(c), 15

Citation : (2022) 08 SEBI CK 0047

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

Bench : Full Bench

Advocate : Vikas Bengani, Shyam Mehta, Mihir Mody, Arnav Misra, Mayur Jaisingh, K. Ashar

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellant against the order dated June 17, 2020 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) under Section 15 HA of the SEBI Act, 1992 thereby levying a penalty of Rs. 1 crore upon the appellant for violation of the provisions of Section 12A (a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trades Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short)

2. The present matter arises with respect to the Global Depository Receipts (GDR) of Hiran Orgochem Ltd. ('Hiran / Company' for short) and the fraudulent scheme devised by the Company, its Directors and connected entities to ensure

that the GDR issue was successfully subscribed to Hiran had issued 15,38,462 GDRs amounting to US\$ 10 million on May 20, 2010 on Luxembourg Stock Exchange.

3. The said issue was subscribed by only one entity viz., Vintage FZE (now known as Alta Vista International FZE) ('Vintage' for short). The subscription amount for the said issue of GDRs was paid by Vintage by obtaining loan from European American Investment Bank AG ('EURAM Bank' for short) by entering into a Loan Agreement dated March 15, 2010 with EURAM Bank. Hiran provided security towards the loan obtained by Vintage, through a Pledge Agreement dated March 15, 2010, executed between Hiran and EURAM Bank, wherein Hiran pledged GDR proceeds against the loan availed by Vintage for subscribing to GDRs of Hiran.

4. The Pledge Agreement was signed by the appellant (Chairman and Managing Director of Hiran) on behalf of Hiran, which was an integral part of the Loan Agreement entered into between Vintage and EURAM Bank, and these agreements enabled Vintage to avail the loan from EURAM Bank for subscribing the GDRs of Hiran. It was alleged that the GDR issue would not have been subscribed had Hiran not given such security towards the loan taken by Vintage.

5. Further, Hiran had transferred US\$ 5.09 million to its bank account in India. On account of default on loan repayment by Vintage, EURAM Bank adjusted the outstanding amount of US\$ 4,945,613.91 on May 27, 2013, from the GDR proceeds of Hiran kept in Hiran's EURAM Bank account.

6. The investigation further revealed that Hiran had reported to BSE that the GDR issue of the Company had been successfully subscribed which made investors believe that the said GDR issue was genuinely subscribed. Further, the fraudulent arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Further, Hiran did not inform BSE regarding write off amounting to Rs. 27.51 crore (US\$ 4.95 million) and the delisting of the GDRs on Luxembourg Stock Exchange. It was alleged that the Company had reported misleading information to the BSE which contained information in a distorted manner and may have influenced the decision of the investors. It was thus alleged that the scheme of issuance of GDRs was fraudulent.

7. We have heard Shri Vikas Bengani, the learned counsel for the appellant and Shri Shyam Mehta, the learned senior counsel assisted by Shri Mihir Mody, Shri Arnav Misra and Shri Mayur Jaisingh, the learned counsel for the respondent.

8. The modus operandi adopted by the Company in the issuance of GDRs is identical and was considered by this Tribunal in several appeals. This Tribunal found that the modus operandi was the same and that the investors were misled into believing that the GDR was subscribed by many investors whereas the fact remained that the GDR was subscribed by one entity who received a loan from the bank for the purpose of subscribing the issue. Further, the bank had given a collateral security by the Company in the form of a Pledge Agreement securing the GDR proceeds as collateral securities for the loan given to that entity. This

Tribunal found that such scheme was fraudulent.

9. Similar is the finding in the instant case and therefore it is not necessary for us to deal in detail with regard to the findings given by the AO in this regard.

10. The only ground urged by the learned counsel for the appellant is, that no inspection was granted to the appellant to inspect the documents relied by the respondent. Further, adequate opportunity of hearing was not provided. It was urged that appellant was not aware of the notice fixing the date of hearing and accordingly the matter proceeded ex parte against the appellant. The learned counsel further urged that he was not aware of the Pledge Agreement as he had never signed but further submitted that blank paper were signed by him which could have been utilized for executing the Pledge Agreement. In the end it was urged that the penalty imposed upon the appellant was harsh and excessive and, in similar matters, the AO has awarded lesser penalties.

11. In the instant case we find that appellant was Chairman and Managing Director of the Company. The appellant was duly served with the notice and the record shows that in spite of giving several opportunities he failed to file a reply. Thus, it does not lie in the mouth of the appellant to contend that he was not given an opportunity to inspect the documents. The appellant failed to appear before the AO and therefore cannot contend that no opportunity of hearing was given to inspect the documents.

12. Further, we find that the AO had fixed March 18, 2020 for hearing. The said notice was duly served at the address of the appellant. The contention that the appellant was in Coimbatore with his mother and therefore it was not possible for him to appear is irrelevant. If the appellant was unable to appear on the date fixed he could have sent a message or applied for adjournment but he chose not to do so.

13. In view of the aforesaid, we are of the opinion that the appellant was duly served with the notice of hearing and the appellant failed to appear for reasons best known to him. The record also shows that several opportunities was given to the appellant to file replies and to appear but he chose not to file any reply and further chose not to appear. Thus, in our view the principles of natural justice was duly complied with and was not violated by the respondent.

14. The contention that appellant had never signed the Pledge Agreement cannot be believed. We find that after coming to know of the execution of the Pledge Agreement no steps have been taken by the appellant to file a complaint or FIR against those persons who had utilized the blank papers which was utilized allegedly for the execution of the Pledge Agreement. We are of the view that the appellant, being the Chairman and Managing Director, had a responsibility to act prudently. Consequently, the plea that he was unaware of the Pledge Agreement cannot be accepted.

15. Further, the Pledge Agreement was signed by the appellant on behalf of

Hiran, in his capacity as Chairman and Managing Director of Hiran. The appellant has clearly mentioned in the Pledge Agreement, acknowledged receiving the said loan agreement and agreed to its terms and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, it is noted that Hiran had agreed to pledge all its rights, title and interest in and to the securities deposited in the pledge securities account and funds in pledged time deposit account so as to secure the present and future obligations of Vintage. This arrangement shows that the appellant had complete knowledge about the subscriber to GDR issue well in advance (March 2010) before the actual GDR issue (May 2010). Despite being fully aware, the appellant being Managing Director of Hiran had deliberately misled investigations by submitting a false and fabricated list of subscribers. Besides, the appellant has also withheld such material information to the shareholders / investors regarding the sole subscriber and also prearrangement scheme of pledging GDR proceeds and securities to EURAM Bank. Therefore, it is submitted that the appellant had acted in a deceptive manner and was in complicity with fraudulent scheme of GDR issue whereby gullible investors were induced to falsely believe that GDR was subscribed by genuine investors as against manipulators.

16. We find that the Pledge Agreement refers to the Loan Agreement dated March 15, 2010 between the borrower i.e. Vintage and EURAM Bank (Lender), whereby Vintage was granted a loan of US\$10 million and it is stated that the pledger i.e. Hiran had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, while signing the Pledge Agreement, Hiran was clearly aware that Vintage had acquired a loan only to subscribe to the GDR issue of Hiran.

17. The appellant was the Chairman and Managing Director of Hiran. He had signed all the documents on behalf of Hiran while opening of bank account with EURAM Bank. He had signed and entered into the Pledge Agreement with EURAM Bank on behalf Hiran, which had acted as a security to the loan availed by Vintage for subscription of GDRs. We find that the appellant had concealed and suppressed vital information about execution of the loan and pledge agreement, board resolution, etc. from the public and its shareholders and reported misleading news to the BSE which contained information in a distorted manner and may have influenced decision of investors. It is submitted that the appellant had full knowledge of the entire manipulative scheme and was involved at all stages relating to issuance of GDRs, arrangement of loan to Vintage, by signing various documents / agreement necessary for the purpose. Such a scheme and arrangement has in it, all the ingredients that comprise a fraudulent activity in the securities market. Therefore, we find that the appellant has violated the provisions of Section 12A (a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations.

18. The AO has rightly noted from the annual reports of Hiran for the financial

year 2012-13, that the Euram Bank had seized US\$ 4,945,613 (equivalent to Rs. 27,50,74,047) on May 27, 2013, in its retail account with the bank to recover as alleged third party loan to Alta Vista International FZE (earlier known as Vintage) pursuant to a Pledge Agreement alleged to have been executed by the Company with EURAM Bank. Further, Hiran made a provision of Rs. 27,50,74,047 for balance seized by EURAM Bank in its annual report for the financial year 2012-13. However, Hiran did not mention the same in its annual report for the financial year 2012-13 that it has written off US\$ 4,945,613 (equivalent to Rs. 27,50,74,047).

19. In view of the aforesaid, we find that considering the peculiar facts and circumstances in the instant case, the penalty imposed by the AO is appropriate and is neither harsh nor excessive.

20. Consequently, the appeal fails and is dismissed with no order as to costs.

21. 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.