
(2023) 12 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1318, 1319 Of 2023, Appeal No. 652, 653 Of 2023

Mahendra Singh Bisht And Others

APPELLANT

Vs

Securities & Exchange Board Of India

RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

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

Citation : (2023) 12 SEBI CK 0002

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

Bench : Division Bench

Advocate : Kushal Shah, Ketan Rupani, Sumit Rai, Ravishekhar Pandey, Nishit Dhruva, Rasika Ghate, Shefali Shankar, Harsh Sheth

Final Decision : Party Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated June 28, 2023 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 11 lakh upon the company and Rs. 20 lakh upon the Whole Time Director.

2. The facts leading to the filing of the present appeals is, that the company Goldline International Finvest Ltd. made five preferential allotments during the period January 2013 to March 2013 and raised a fund of Rs. 48.72 crore. SEBI carried out an investigation to ascertain whether there was any mis-utilization of funds raised through the said preferential allotments by the company. Based on the investigation, a show cause notice dated March 21, 2023 was issued to show cause as to why an enquiry should not be initiated and penalty, if any, should not

be imposed under Section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') for the alleged violation. The AO found that the preferential allotment was made for the following purposes, namely :-

- To strengthen the equity base of the company,
- To arrange the funds required for meeting the enhanced working capital requirements of the company,
- To meet certain capital expenditure and
- To meet expenditure for general corporate purposes.

3. The AO found that the company had not utilized Rs. 11.70 crore out of Rs. 48.72 crore and had given loans to 30 entities without interest and that some of the loans given were not recovered and, therefore, the company had mis-utilized Rs. 11.70 crore resulting in violation of Section 12A of the SEBI Act and Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

4. The AO also found that the ratification done by the company on September 15, 2018 ratifying the purpose of repayment of loans regarding the utilization of the funds raised from the preferential issue was not validly done. It was found that notices were sent to only 3000 shareholders out of 5000 shareholders and that only 38 members had attended the Annual General Meeting ("AGM" for short) held on September 15, 2018 and, consequently, the ratification done in the AGM was not valid. The AO after taking into consideration the various factors as given under Section 15J, coupled with the fact that there was a huge time gap in the issuance of the preferential issue and initiation of the adjudication proceedings imposed a penalty of Rs. 11 lakh upon the company and Rs. 20 lakh upon the whole time director

5. Having heard the learned counsel for the parties, we are of the opinion that, admittedly, the preferential issue was made in order to raise company for certain purposes, namely, to strengthen the equity base of the company, to meet its working capital requirements and to meet certain capital expenditure. Admittedly, money raised was not used for that purpose and Rs. 11.70 crore was used to give loans to 30 entities without interest. The giving of such loans was against the purpose for which the money was raised. The purpose for raising the loans can be ratified but, in the instant case, we find that the ratification was done after almost five years for which there was no justification for doing so. Further, the ratification so done was not in accordance with the Companies Act. Notices were not sent to all the shareholders and only 38 members participated in the AGM which does not meet the requisite quorum. Consequently, ratification cannot be allowed to cover up the misdeeds of the company.

6. We are of the view that the company had mis-utilized the funds raised through

preferential allotments and the AO after considering the all factors including the delay in the initiation of the proceedings imposed a penalty which does not suffer from any error of law. However, the imposition of Rs. 20 lakh upon the appellant Mahendra Singh Bisht is harsh and arbitrary. In the absence of any finding that he was responsible for the mis-utilization of the funds or that he benefited the mis-utilization in his personal capacity, we are of the opinion that the imposition of Rs. 20 lakh is excessive and arbitrary and consequently, we reduce the penalty to Rs. 5 lakh.

7. In view of the aforesaid, the findings of mis-utilization by the company is upheld. The penalty imposed upon the company is affirmed and the penalty upon the appellant Mahendra Singh Bisht is reduced from Rs. 20 lakh to Rs. 5 lakh. The appeal of the company is dismissed. Appeal of Mahendra Singh Bisht is party allowed.