

(2023) 06 SEBI CK 0011

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 219, 234 Of 2020

Mukesh Chauradiya And Others

APPELLANT

Vs

Adjudicating Officer

RESPONDENT

Date of Decision : 06-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14
Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Markets) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 12A, 15HA

Citation : (2023) 06 SEBI CK 0011

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

Bench : Division Bench

Advocate : Masumi Nanavaty, Shyam Mehta, Mihir Mody, Arnav Misra, Harshvardhan Melanta, K Ashar, Sandeep Wadhawan

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Two noticees have filed separate appeals challenging the common order of the Adjudicating Officer dated 17th June, 2020 whereby a penalty of Rs.50 crores has been imposed upon noticee no.3, Mr. Arun Panchariya and a sum of Rs.15 lakhs has been imposed upon noticee no.4, Mr. Mukesh Chauradiya under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") for violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "PFUTP Regulation").

2. The present matter relates to the issuance of the Global Depository Receipts (GDR) of Hiran Orgochem Ltd. (hereinafter referred to as "Hiran/Company") 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 20th May, 2010.

3. The said issue was subscribed by only one entity viz., Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "Vintage"). 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 15th March, 2010 with EURAM Bank. Hiran provided security towards the loan obtained by Vintage, through a Pledge Agreement dated 15th March, 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 27th May, 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. The charge against Mr. Arun Panchariya was that the entire process of GDR issued by the Company Hiran from subscription of GDRs to the sale of converted shares to the Indian investors was devised and structured by Mr. Arun Panchariya in connivance with the Company. It was alleged that to the detriment of the Indian investors, Mr. Arun Panchariya had arranged loans for the subscription of GDR by Vintage, wherein Mr. Arun Panchariya was the Managing Director and 100% shareholder and authorised signatory for Vintage through EURAM Bank and, therefore, using certain Foreign Institutional Investors got the GDRs converted into shares and had sold them in Indian securities market with the help of certain domestic entities who were connected to Mr. Arun Panchariya. The show cause notice alleged that Mr. Arun Panchariya in connivance with the

Company and other connected entities devised a fraudulent GDR scheme and committed a fraud.

8. The charge against Mr. Mukesh Chauradiya was that he was the Managing Director and authorised signatory of Vintage. It is alleged that Mr. Mukesh Chauridiya was a close associate of Mr. Arun Panchariya and collaborated with other noticees and Vintage and performed the role assigned to him and, thus, acted as a party to the fraudulent scheme.

9. The AO after considering the material evidence on record found that the charges levelled against Mr. Arun Panchariya and Mr. Mukesh Chauradiya to be correct and, accordingly, levied a penalty.

10. We have heard Ms. Masumi V. Nanavaty, Advocate for the appellant in Appeal no.219 of 2020 and Mr. Sandeep Wadhawan, Advocate for the appellant in Appeal no.234 of 2020 and Mr. Shyam Mehta, Senior Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates for the respondent.

11. Before us, the learned counsel for Mr. Arun Panchariya submitted that the impugned order is in violation of the principles of natural justice and that no proper opportunity of hearing was provided to the appellant.

12. In this regard, we find that initially when the show cause notice was sent it returned undelivered and, subsequently, the appellant was served at his address of Dubai. The appellant, Mr. Arun Panchariya filed a limited reply on 15th November, 2017. Further, opportunity was provided by the AO on 27th December, 2017 to be file his reply on or before 22nd January, 2018 which was the date fixed for hearing. Mr. Arun Panchariya vide letter dated 18th January, 2018 informed the AO about his inability to file a reply on account of health issues and prayed for two months" time to file an appropriate reply.

13. The impugned order is silent as to whether any hearing was conducted on 22nd January, 2018 and order was reserved or not but we find that apparently no order was passed and the AO was transferred and a new AO took over the charge. In paragraph no.28, we find that the new AO issued notice on 2nd March, 2020 informing that 18th March, 2020 was fixed for hearing on which date noticee no.4, Mr. Mukesh Chauradiya appeared and requested for adjournment. The AO accordingly adjourned the matter to 26th March, 2020.

14. The Central Government declared lock down on account of the Covid Pandemic as a result no hearing could take place on 26th March, 2020. Eventually, some hearing took place through virtual mode on Whats App video call on 20th May, 2020 on which date Mr. Mukesh Chauradiya was heard and, thereafter, the impugned order was passed on 17th June, 2020. Admittedly, the appellant, Mr. Arun Panchariya was not heard on 20th May, 2020.

15. It was contended by the learned counsel for Mr. Arun Panchariya that no opportunity of hearing was provided to the appellant and that the appellant was

unaware of 18th March, 2020 being fixed of hearing as the hearing notice dated 2nd March, 2020 was never served upon the appellant.

16. In this regard, we find that the respondent in paragraph no.18 of their reply have contended that the notice dated 2nd March, 2020 was sent to the appellant Mr. Arun Panchariya's address at Dubai which was returned with the remark "unclaimed" and, thereafter, the AO upon hearing noticee no.4, adjourned the matter and fixed 26th March, 2020 and, thereafter, the hearing was fixed through video call on 20th May, 2020. Admittedly, the hearing date of 20th May, 2020 was never intimated to Mr. Arun Panchariya and was only intimated to Mr. Mukesh Chauradiya.

17. It was stated by the learned counsel for Mr. Arun Panchariya that the question of receiving any notice at Dubai's address did not arise as the appellant Mr. Arun Panchariya had already migrated from Dubai to London.

18. In view of the aforesaid undisputed fact which has come on record, we are of the opinion that when the AO got transferred and a new AO took over the assignment, he was required to issue notice to all the parties which he did by hearing notice dated 2nd March, 2020. The respondent has clearly admitted that the hearing notice came back "unclaimed" which means that it was not delivered. The appellant has already migrated to London and, therefore, the question of receiving the hearing notice did not arise. In our opinion, the AO should have taken fresh steps to serve Mr. Arun Panchariya but took no steps and proceeded ex-parte against Mr. Arun Panchariya and passed the impugned order.

19. In our view, the impugned order insofar as Mr. Arun Panchariya is concerned, is in gross violation of the principles of natural justice. In the absence of hearing notice not being served upon the appellant Mr. Arun Panchariya the order passed against him cannot be sustained being violative of Article 14 of the Constitution of India.

20. Insofar as Mr. Mukesh Chauradiya is concerned, the stand taken is that he was employed by Mr. Arun Panchariya and was not a Director or Managing Director in Vintage nor had any financial or any interest in the loan availed by Vintage, subscription to the GDRs or in the repayment of the loan availed by Vintage. It was contended that the appellant was not a signatory either to the loan agreement or to the pledge agreement and had nothing to do with the GDR issue in question.

21. The AO while considering the submissions of Mr. Mukesh Chauradiya held in paragraph no.89 that he was a Director and CFO of Aurisse International Ltd. in 2011. In paragraph no.95, the AO found that Mr. Mukesh Chauradiya was also a Director of Alka India Ltd. between 31st January, 2006 to 1st June, 2010 in which Mr. Arun Panchariya was also a Director. The AO therefore held

"119. I note from the basis of connections of AP connected entities as tabulated in Para 81 above that Mukesh Chauradiya (Noticee 4) was closely associated with

AP, as he was shown Managing Director/Director of Vintage, in which AP was the Beneficial Owner. Further, I note that the Noticee was an Authorized Signatory of Vintage and he signed redemption of loan amount request of Vintage to EURAM Bank in the instant matter. I also note that the Noticee 4 was a Director in Ramsai Investment Holdings Private Ltd., wherein AP was Director in the same company and was holding 99.98% shares. It is pertinent to note that the Noticee 4 is also connected with one Mr. Anant Kailash Chandra Sharma (beneficial owner of HBSEMF & GC- AP connected entities) who served as Additional Director of Alka India Ltd., (from December 01, 2009 till date), wherein Mukesh Chauradiya also served as Director of Alka India Ltd., from January 31, 2006 till June 01, 2010. In this connection, it is relevant to note that Alka India Ltd., is promoted by AP. From these connections, it is clearly established that the Noticee 4 (Mukesh Chauradiya) was close associate of Noticee 3 (Arun Panchariya).

22. In our opinion, the reasoning adopted by the AO that Mr. Mukesh Chauradiya is a close associate of Mr. Arun Panchariya may be true to some extent but to say that because of being a close associate the appellant Mr. Mukesh Chauradiya was involved in the fraudulent scheme/arrangement with regard to the subscription of the GDRs and, thereafter, monetising those GDR through sale of shares to the Indian investors is not borne out from any record. Merely because the appellant Mr. Mukesh Chauradiya was employed by Mr. Arun Panchariya and was a Manager or Director or Managing Director in Vintage cannot by itself lead to a conclusion that he was involved in the fraudulent activities. There has to be some more evidence before arriving at the conclusion that he was involved in the fraudulent activities in the subscription of the GDR.

23. Since the impugned order insofar as it relates to Mr. Arun Panchariya cannot be sustained, we are of the opinion that the case of Mr. Mukesh Chauradiya requires reconsideration. Accordingly, the impugned order insofar as it relates to the appellant Mr. Arun Panchariya and Mr. Mukesh Chauradiya are concerned are set aside. The appeals are allowed. The matter is remitted to the AO to decide the matter afresh.

24. In this regard, the appellant shall appear personally or through its authorised representative before the AO on 26th June, 2023 on which date the AO will proceed in accordance with law. It will be open to the parties to file additional reply, if any, if advised. In the circumstances of the case, parties shall bear their own costs.

25. 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.