
(2021) 01 SEBI CK 0009

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 260 Of 2020

Mukesh Chauradiya

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 07-01-2021

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 15HA

Citation : (2021) 01 SEBI CK 0009

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Piyush Chhajed, Devendra Dhanesha, Chhajed, Doshi, Mukesh Chauradiya, Shyam Mehta, Nidhi Singh, Kinjal Bhatt, Hersh Choudhary

Final Decision : Dismissed

Judgement

Dr. C.K.G. Nair, Member

1. This appeal has been preferred challenging the order of the Adjudicating Officer (AO for short) of Securities and Exchange Board of India

(SEBI for short) dated July 28, 2020 whereby the appellant has been held to have violated Regulations 3 and 4 of SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 2003 (PFUTP Regulations for short) and therefore imposing

a penalty of Rs. 10 lakh under Section 15HA of the SEBI Act, 1992.

2. The matter pertains to an issue of Global Depository Receipts (GDR for short) by M/s. Winsome Yarns Limited (Winsome for short)

on March 29, 2011 for an amount of USD 13.24 million, which has been found to have been vitiated by the fact that the entire GDR issue was

subscribed by Vintage FZE, an entity owned and controlled by Arun Panchariya, using loan taken by Vintage by providing security of the very same

GDR proceeds of the company Winsome. In connection with the same an investigation was conducted by SEBI and a show cause notice dated

September 11, 2019 was issued to the appellant. During the investigation it was found that the appellant had signed a loan agreement with European

American Investment Bank AG (â??Euram Bankâ? for short) dated March 22, 2011 and thereby became part of the chain in facilitating the fraud

committed in defrauding the investors in Winsome. The relevant details of the said loan agreement signed by the appellant and as given in the

impugned order is as follows:-â??14.

Loan Agreement:

15. Vintage FZE (â??Vintageâ?) opened a loan account having number 540012-51-3 with EURAM Bank and Winsome opened a retail account

having number 5800400101 with EURAM Bank. Vintage obtained loan of USD 13.24 million by entering into a Loan Agreement dated March 22,

2011 with Euram Bank. The Loan Agreement was signed by Mukesh Chauradiya, in capacity of Managing Director of Vintage for subscription of

GDRs of Winsome.

16. The Loan Agreement inter-alia states as follows:-

2. â??Nature and purpose of facilityâ? â??To provide funding enabling Vintage FZE to take down GDR issue of 1,994,125 Luxemburg public

offering and may only be transferred to EURAM account nr. 580040, WINSOME Yarns Ltd.â??

6. Security: â?|â?|it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to

time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

1) Pledge of certain securities held from time to time in the Borrowerâ??s a/c no. 540012 at the Bank as set out in a separate pledge agreement

which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.

2) Pledge of the account no. 580040 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex

2 and which forms an integral part of this

Loan Agreement.â??

17. As per the Know Your Customer documents (singed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Noticee

was the beneficial owner and Managing Director of Vintage as on June 06, 2007. Documents received from EURAM Bank show that Alkarni

Holding Limited was the sole shareholder of Vintage FZE and Noticee was the sole shareholder of Alkarni Holding Ltd.â??

3. After that the investigation further revealed that a pledge agreement, also dated March 22, 2011 was entered into between Winsome and the Euram

Bank. The relevant details of which is given in the impugned order is as follows:-

â??18. Pledge Agreement:

a) A Pledge Agreement dated March 22, 2011 was entered into between Winsome (as Pledgor) and EURAM Bank (as Bank). The pledge

Agreement was signed by Manish Bagrodia, Managing Director on behalf of Winsome.

b) The preamble of the Pledge Agreement states:

Â â??By Loan Agreement K210311-002 (hereinafter referred to as the â??Loan Agreementâ?) dated 22 March 2011, the Bank granted a loan

(hereinafter referred to as the â??Loanâ?) to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab

Emirates (the â??Borrowerâ?) in the amount of USD 13,240,990- The pledger has received a copy of the Loan Agreement No. K210311-002 and

acknowledge and agrees to its terms and conditions.â??

c) The Pledge Agreement pledged all of the pledgorâ?s (Winsome) rights, title and interest in and to the securities deposited from time to time at

present or hereafter (hereinafter referred to as the â??Pledged Securitiesâ?) and the balance of funds up to the amount USD 13,240,990 existing

from time to time at present or hereafter on the securities account(s) no. 580040 held with the Bank; and all of its right, title and interest in and to, and

the balance of funds existing from time to time at present or hereafter on the account(s) no. 580040 kept by the Bank and all amounts credited at any

particular time thereinâ?!

19. Further, conditions were put in the Pledge Agreement for realization of the pledge which permitted the Euram Bank to apply the funds in the

Pledged Account to settle the Obligations and to realize the Pledged Securities (i) at a public auction for those items or Pledged Securities for which

no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376

Austrian Commercial Code.

20. Thus, Winsome opened a bank account (A/c no. 580040) with EURAM Bank to keep the GDR proceeds and pledged its GDR proceeds before

issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of

Winsome. It was observed from the pledge agreement that Winsome was aware of the loan agreement and initial subscriber and the source of

funding. â??

4. Subsequent to filing his reply and after providing an opportunity of hearing etc. the impugned order has been issued holding that the appellant is

party to the fraud by signing the loan agreement in the capacity of managing director of Vintage FZE. The fraud in the matter led to a single entity

Vintage FZE subscribing the full GDR issue of USD 13.24 million on the basis of a loan agreement and a pledge agreement and in finally not

transferring USD 6.05 million of the GDR proceeds to the Company Winsome.

5. Paragraph 31 of the impugned order substantively captures these findings:-

â??In this regard, it first needs to be established that the scheme for GDR subscription by Vintage FZE was a fraudulent scheme. The material on

record shows that Vintage FZE was on the only subscriber to the Winsome GDR issue on March 29, 2011 for an amount of USD 13.24 million.

Material on record also established that the source of funding for this GDR issue came from a loan taken by Vintage FZE from Euram Bank through

a Loan Agreement dated March 22, 2011. It is also established that this loan was secured by way of a Pledge Agreement signed between Winsome

and Euram Bank dated March 22, 2011 which placed the entire GDR proceeds as security with Euram Bank. Thus, material on record has established

that the entire subscription to the GDR issue by Vintage FZE was through a fraudulent scheme, where the funds raised by the company through the

issue were pledged by the company in favour of the subscriber, who had taken them as loan from Euram Bank, and the funds remained with Euram

Bank itself. Vintage FZE subsequently defaulted on the loan to the tune of USD

6.05 million, and hence the company never received the GDR proceeds to this extent.â??

6. The learned counsel Shri Piyush Chhajer appearing on behalf of the appellant submits that the appellant was never a managing director of Vintage

FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the Company

Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In order to support his

contentions the learned counsel produced documents issued by Jebel Ali Free Zone Authority (JAFZA) and the residency permit details as given in his

passport wherein the designation of General Manager only has been given against the appellant. Moreover, in the certificate given by JAFZA dated

December 28, 2010 the following entities are named in relation to Vintage FZE:-

â?? Shareholder: Alkarni Holdings Limited (an entity 100% owner and controlled by Mr. Arun Panchariya);

â?? Directors: Mr. Ashok Ramswarup Panchariya (Brother of Mr. Arun Panchariya);

â?? Manager: Mr. Mukesh Babulal Chauradiya (the Appellant);

â?? Secretary: Mr. Ashok Ramswarup Panchariya

7. Accordingly, the learned counsel contended that being only an employee of Vintage FZE the appellant is not liable for any violation even if other

parties involved might have committed those violations.

8. We have also heard Shri Shyam Mehta, the learned senior counsel appearing on behalf of the respondent SEBI who summarized several fraudulent

schemes perpetuated by Vintage FZE, Arun Panchariya, Euram Bank and several other entities, including the appellant herein, in multiple matters. He

also highlighted that the appellant signed as Managing Director of Vintage FZE not only in this matter before us but also while signing loan agreements

for subscribing to the GDR issue of Rasoya Proteins Ltd., Southern Ispat and Energy Ltd. and Aqua Logistics Ltd.; all signed during February â?

April 2011, and on which separate proceedings have been initiated/completed by SEBI.

9. Having heard the learned counsel for the parties through video conference and having perused the documents we find no merit in the appeal.

Paragraph 21 of the impugned order clearly explains the role of the appellant as

Managing Director of Vintage FZE while signing several loan agreements.

21. Noticee had long association with Arun Pancharia. Noticee worked as director in Ramsai Investment Holdings P. Ltd wherein Arun

Pancharia was director and holding 99.98% shares through Vintage. Further, Noticee signed Loan Agreement dated March 22, 2011 for subscription

of Winsome's GDR issue as Managing Director of Vintage and signed redemption requests of loan account as authorised signatory. Noticee also

signed the Loan Agreements dated February 14, 2011, April 28, 2011 and February 03, 2011 in capacity of the Managing Director of Vintage for

subscription of the GDR issue of Rasoya Proteins Ltd, Southern Ispat and Energy Ltd and Aqua Logistics Ltd. Vintage's default on repayment of

balance loan amount affected Winsome to the tune of USD 6.05 million. From the above, it is clear that Noticee acted as aid to Arun Pancharia and

acted as party to fraudulent scheme.

10. It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he

signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as

contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3

names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and

appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the

appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE

in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with

respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could

put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation

of a person and whether a person is "an officer in default" in an organization etc are irrelevant when the charge is that of aiding and abetting

fraud under the PFUTP Regulations, which is the case herein.

11. It is also held in the impugned order that the appellant was also a director of Ramsai Investment Holdings P. Ltd. wherein Arun Panchariya was

also a director holding 99.98% of shares through Vintage FZE. This clearly demonstrates appellant's strong connection with Panchariya.

Appellant's stated lack of awareness relating to details of the loan or other operations of Vintage is clearly feigning ignorance as the appellant has

been working at senior level since 2005 and is admittedly signatory to many such agreements. In the instant matter the loan agreement clearly spells

out that it is for the purpose of subscribing to the Winsome GDR and the amount of GDR issue and the amount of loan matches indicating that

Vintage is going to be the sole subscriber of the GDRs in question. Pledge Agreement was annexed to the loan agreement, as given in the impugned

order quoted in para 2 of this Order.

12. The appellant's contention that he was/is not a beneficial owner of Vintage FZE has no merit as the impugned order has directed him to pay a

penalty amount of only Rs. 10 lakh for aiding and abetting fraud by Vintage and thereby by violating the stated PFUTP Regulations. It is neither an

impounding order nor a disgorgement order where beneficial ownership or profits illegally earned or loss avoided etc. become relevant. On these

issues separate Orders have been passed by SEBI against other entities involved. Moreover, under Section 15HA of the SEBI Act, fraudulent and

unfair trade practices attract a minimum amount of penalty of Rs. 5 lakh which may extend up to Rs. 25 crore or 3 times the amount of profits made

out by such practices, whichever is higher. In the light of this, penalty of Rs. 10 lakh imposed on the appellant is neither harsh nor disproportionate.

13. This Tribunal is fully aware of the modus operandi, as in the impugned matter, used by various entities in the manipulation of several GDR issues

by Indian Companies as held in various orders passed by us such as in Pan Asia Advisors Ltd. (another Panchariya entity), Cals Refineries etc.

14. Given the above reasons, we do not find any merit in the appeal and the appeal is dismissed with no order as to costs. The appellant is directed to

pay the penalty amount within 30 days from the date of this order.

15. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.