(2021) 02 SEBI CK 0086

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No, 273, 274 Of 2020, Appeal No. 139 Of 2020

Puneet Nikore APPELLANT

Vs

Whole Time Member RESPONDENT

Date of Decision : 16-02-2021

Acts Referred:

Citation : (2021) 02 SEBI CK 0086

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

Bench : Full Bench

Advocate : J. J. Bhatt, Rinku Valanju, Pratham Masurekar, Hetal Joshi, Shyam Mehta, Mihir Mody, Arnav Misra

Final Decision : Partly Allowed/ Disposed Of

Judgement

M.T. Joshi, J

1. Aggrieved by the order of the learned Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??)

dated 18th February, 2020 restraining the appellant along with others from accessing the securities market for a period of two years the present appeal

is preferred.

2. The proceeding was launched against three entities. Noticee no.1 was Crew B.O.S Products Limited (hereinafter referred to as the

â??Companyâ??), noticee no.2 was one Mr. Robin Bartholomew, the director of the Company. Present appellant original noticee no.3 Mr. Puneet

Nikore was during the relevant period Executive Director of the Company. According to the respondent Securities and Exchange Board of India

(hereinafter referred to as â??SEBIâ??) in the investigation it was found that the

Company had issued Global Depository Receipts (â??GDRâ?? for

short) on 25th July, 2005 for 5 million US Dollars. The GDR was subscribed by single entity, namely, Fusion Investment Ltd. (hereinafter referred to

as â??Fusionâ??). This amount was secured by Fusion by obtaining credit from Banco Efissa S.F.E.S.A. (hereinafter referred to as Banco Bank).

The Company however had pledged its entire GDR proceeds to the same Banco Bank as a security against loan availed by Fusion for subscribing to

GDR of the Company. Thus, the money was merely circulated to make a show that GDRs of the Company were subscribed fully. The present

appellant the Executive Director has not only participated in the board meeting wherein the above resolutions were passed. But on authorisation from

the Company he had singed all the relevant documents like account charge agreement with Banco Bank for charging the GDR proceeds against the

loans secured by Fusion. A limited disclosure was made on the stock exchange platform that the GDR was subscribed and the investors/public was

defrauded. Therefore, the show cause notice was issued.

3. The present appellant admitted that he has participated in the board meeting and also that he was authorised to sign the documents and he in fact

singed the same. His defence, however, was that the Lead Manager to the GDR issue, namely, Arkios Ltd. had evaluated everything as per the rules

and regulations and, therefore, the appellant cannot be blamed for the same. He further submitted that in fact his signature on the account charge

agreement was obtained fraudulently by the personnels of Lead manager, at London in the tense atmosphere when the city was under the grip of

terror attack. It was further submitted that though the documents regarding account charge agreement were executed in fact later on GDR issue was

subscribed by two parties, namely, Fossil and Commercio and not Fusion. The appellant had submitted a copy of the certificate from the Lead

Manager, copy of the resolution passed by the board of the Company. In the circumstances, it was submitted that the proceedings be dropped. The

learned WTM, however, did not agree with the submission and the impugned order was passed.

4. Heard Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Mr. Pratham Masurekar and Ms. Hetal Joshi, Advocates for the Appellant and Mr.

Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates for the Respondent.

5. Learned counsel for the appellant submitted before us that there was an inordinate delay in initiating the proceedings. While the GDRs were issued

in July, 2005, the show cause was issued in 2017. In the meantime the Company has gone under liquidation process due to which some important

documents could not be secured. Further, the Lead Manager has taken all the care at the time of issue of GDR. It was submitted that GDR was

subscribed by two entities and not one. The responsibility of disclosure on the stock exchange platform was that of the Company Secretary and/or

Compliance Officer and not of the appellant. In the circumstances, he submitted that the appeal be allowed.

6. On the other hand, learned senior counsel for the respondent, Mr. Shyam Mehta submitted that it is an admitted fact that the appellant had

participated in the board meeting of the Company wherein the resolution regarding issue of GDR, execution of account charge agreement were

passed and the appellant along with another director was authorised to execute the documents which were latter on executed. It was submitted that

the appellant filed only the certificate of the Lead Manager (which he himself brands as untrustworthy) to show that the GDR was issued to two other

entities and not the Fusion. Thus, no evidence regarding the bank accounts showing actual subscription was produced and, therefore, the case of the

appellant cannot be believed. At any rate the investors were not informed that the GDR was subscribed either by one or two entities only. As regard

the delay, the learned counsel submitted that no issue was raised before the learned WTM that the delay has caused any prejudice to the appellant and

further as investigation pertains to the international jurisdiction involving many international entities the delay was caused.

7. Upon hearing both the sides, in or view the appeal deserves to be partly allowed as regards the period of restraint only for the following reasons.

It is an admitted fact that the GDRs were issued by the Company and the appellant was authorised to execute the above referred documents which

inter alia were in the nature of creating an account charge agreement for the loan secured by Fusion from the same bank. Thus, since initiation it was

very well understood that the public issue of GDR was merely a show. Further, there are no supporting documents to show that some other two entities had subscribed to the GDRs. Interestingly, though the GDR was a public issue, as per the appellant himself it was subscribed by only two

entities. And the same was not disclosed to the public by making a limited disclosure on the platform of exchanges. So far as the delay is concerned

no such plea was raised before the learned WTM by the appellant, though it was submitted that in the mean period due to the liquidation proceeding of

the Company necessary documents are sealed. Further, the record would so that the investigation involved international jurisdiction and various foreign

entities. In the circumstances, in our view the delay would not be fatal to the respondent SEBI so far as the merit of the case is concerned. The

appellant was admittedly an Executive Director of the Company who had in fact executed the account charge agreement etc. and, therefore, he

cannot escape the liability.

However it is required to note that the GDRs were issued in the year 2005 and the show cause notice was issued by respondent SEBI after 12 years

in the year 2017. Though the appellant did not raise the plea of delay before SEBI, he showed his inability of production of some documents due to

sealing of the documents of the Company in the meantime. Further there is no contention of the respondent SEBI that during the period of 12 years

the appellant has anyway misconducted while dealing in the security market. Therefore in view of the peculiar facts of the present case, restraint of 2

years as imposed by the respondent SEBI, as detailed in the impugned order dated February 18, 2020 is reduced to the period already undergone till

the date of passing of this order. Hence the following order.

The appeal is hereby partly allowed in above terms without any order as to cost. Misc. Application nos.273 and 274 of 2020 are also accordingly

disposed of.

8. 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 Presiding Officer 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.