(2023) 02 SEBI CK 0028

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 210 Of 2023

Quasar India Limited And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 28-02-2023

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
Securities Contracts (Regulation) Act, 1956 — Section 23E

Citation : (2023) 02 SEBI CK 0028

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

Bench : Division Bench

Advocate : CS Himanshu Gupta, Himanshu S K Gupta, Sumit Rai, Ravishekhar Pandey, Nishit Dhruva, Shefali Shankar, Rasika Ghate

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated October 10, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing penalties upon the appellants.

2. The facts leading to the filing of the present appeal is, that the Company Quasar India Limited, noticee no. 1 made a preferential allotment on January 31, 2014 allotting 51,05,000 equity shares to 49 promoter and non-promoter entities aggregating to Rs. 5.10 crores.

3. The Bombay Stock Exchange ("BSE" for convenience) carried out a preliminary examination with regard to the utilization of funds raised by noticee no. 1 and prima facie found that there was misutilisation of the funds raised by the Company through preferential allotments. Thereafter, an investigation was

carried out and a show cause notice was accordingly issued. The show cause alleged the misutilisation of the preferential allotment proceeds by not deploying the funds for the stated objects for the preferential issue which amounted to a fraudulent act of deviating and misutilisation of preferential issue proceeds. Further, the Company did not comply with the disclosure requirements under Clause 43 of the Listing Agreement.

4. The AO after considering the material evidence on record and after considering the replies of the Company and its Directors found that the explanation given was an afterthought and that the preferential allotment proceeds were misutilised by the Company. The AO accordingly imposed penalties.

5. We have heard Shri Himanshu Gupta, Company Secretary for the appellants and Shri Sumit Rai, the learned counsel for the respondent.

6. The contention of the authorised representative of the appellants is, that the explanation given by the Company and its Directors were not properly considered. The Company had given sufficient reasons that pending utilization of the amount for the objects of the issue the Company had advanced some money to several parties for meeting the business requirements as short term advances which was subsequently returned to the Company.

7. In this regard, we find that the objects of preferential allotments was to augment the working capital requirement of the Company and to fund the proposed business expansion plans of the Company. However, we find that the funds so raised through preferential allotments were utilized for lending of loans which was against the object for which such preferential allotment was approved. The contention of the appellants that pending utilization of funds the Company provided short term advances to certain entities for meeting business requirements is an attractive argument but cannot be accepted. No doubt, pending utilization of the funds the Company can give short term advances to certain entities in order to gain interest as money parked through collection cannot remain idle. However, we find that in the instant case, the loans/advances given to certain entities were interest free and, therefore, was not in the interest of the Company nor could it be said to meet the business requirements or working capital needs of the Company. Thus, the explanation given by the appellants with regard to the funding of certain entities was in clear violation of the objects of preferential allotments.

8. We, consequently are of the opinion that the money was utilized for other purposes and not for the object of the issue which was with regard to the expansion plans of the Company. The diversion of the money for other purposes was a clear fraud and violative of Section 12A of the SEBI Act read with Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience). The penalty imposed by the AO in this regard is just and proper.

9. In so far as a penalty of Rs. 5 lakhs imposed upon the Company for non-disclosure under the listing agreement we find that the penalty of Rs. 5 lakhs has been imposed under Section 23E of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for convenience). In Suzlon Energy Ltd. & Anr. vs. SEBI in Appeal No. 201 of 2018 dated May 03, 2021 this Tribunal had held that penalty under Section 23E of the SCRA cannot be imposed for the violation of any of the conditions of the listing agreement.

10. In view of the aforesaid, the penalty of Rs. 5 lakhs cannot be sustained and to that extent the penalty imposed is quashed.

11. In view of the aforesaid, the appeal is partly allowed. The violations committed by the appellants under Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations is affirmed. The penalty imposed under those heads is also affirmed. The penalty imposed under Section 23E of the SCRA against the Company is quashed. The appeal is partly allowed.

12. 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.