

(2023) 05 DEL CK 0260

In the Delhi High Court

Case No : Criminal Revision Petition No. 374 Of 2009

Securities & Exchange Board Of India

APPELLANT

Vs

Arihant Jain & Anr

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 21, 21(9), 21(12)
Code Of Criminal Procedure, 1973 — Section 200, 397, 401
Securities and Exchange Board of India Act, 1992 — Section 11(13), 24, 27
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 — Regulation 4(a), 4(e), 4(e)
Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1994 — Regulation 6(1), 6(3), 8(1), 10(1), 10(2)

Citation : (2023) 05 DEL CK 0260

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Sandhya Kohli, Sunil Sethi

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The instant appeal has been filed under Section 401 of the Code of Criminal Procedure, 1973('CrPC') by Securities and Exchange Board of India, 1992 ('SEBI') assailing the order dated 24.03.2009 passed by the Learned Additional Sessions Judge in Revision Petition bearing No. 61/2008 titled 'Arihant Jain v. State & Anr.' ('Impugned Order'). Vide the Impugned Order, the Learned Additional Sessions Judge set aside the summoning order dated 20.03.2000 passed by the Ld. Trial Court qua Mr. Arihant Jain, i.e., Respondent No.1 herein.

2. It emerges that SEBI had filed a Complaint under Sections 24 and 27 of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and Regulations 4(a), 4(e) and 4(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Regulation 6(1), 6(3), 8(1), 10(1) and 10(2) of the SEBI (Substantial Acquisition of Shares and

Takeover) Regulations, 1994 and Section 200 of the CrPC against inter alia Mr. Arihant Jain, the Accused No. 13 therein ('Complaint'). It was alleged that one M/s Ideal Hotels and Industries Ltd. ('IHIL') had bought back its shares through its own group companies, their directors, and friends and family, thereby inter alia artificially raising the price of IHILs securities. At the relevant time, Mr. Arihant Jain, was acting as the Director of IHIL.

3. Vide Order dated 29.03.2000, the Ld. ACMM, Tis Hazari, Delhi was pleased to issue summons to all the accused persons, including Mr. Arihant Jain. Thereafter, a Revision Petition under Section 397, CrPC for setting aside the Summoning Order dated 29.03.2000 was filed by Mr. Arihant Jain.

4. Vide Impugned Order dated 24.03.2009, the Learned Additional Session Judge set aside the summoning order qua the Respondent No.1 herein while observing that the Complaint filed by the Appellant herein did not contain any material to suggest that the Respondent No. 1 herein was responsible for the carrying out the business of IHIL. Aggrieved by this order, the instant Revision Petition was filed by the SEBI.

5. In sum and substance, the Ld. Counsel for the Petitioner has argued that the Impugned Order ought to be set aside since the averments in the complaint, when read in their entirety, establish a prima facie case against the Respondent No. 1.

6. Per contra, the counsel for Respondent No. 1 has defended the propriety of the Impugned Order by stating not only that the Summoning Order was quashed qua similarly placed accused persons but also that without specific averments in the complaint detailing the role of each Accused Person, the Summoning Order was unsustainable.

7. Heard learned Counsel for the Appellant and the learned Counsel for the Respondent and perused the material on record.

8. At the outset, this Court finds it prudent to go through the averments in the complaint. The SEBI had filed the complaint against 23 accused persons under Sections 24 and 27 of the Securities and Exchange Board of India, 1992 and Regulations 4(a), 4(e) and 4(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Regulation 6(1), 6(3), 8(1), 10(1) and 10(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 and Section 200 of the CrPC. It was stated that SEBI had received a complaint dated 27.06.1996 alleging that the Accused No. 1 i.e., IHIL was involved in price rigging and insider trading.

9. Upon the reception of this complaint, SEBI conducted a preliminary investigation into the purchase of IHIL shares which revealed unusually high fluctuation in the price of shares between 30.01.1996 and 29.02.1996. It was also noted that the volume of trade was also substantially high during this period. Thereafter, SEBI obtained details of entities and individuals who had

bought or sold the shares of IHIL. This revealed that certain companies i.e., M/s Dali Fashions Pvt. Ltd.(Accused No. 7), M/s Bhagyaduay Investments Pvt. Ltd. (Accused No. 5), M/s Fouraeya Constructions Pvt. Ltd. (Accused No. 6), M/s A.D. Data Products (Accused No. 9), M/s PKP Consultants Pvt. Ltd. (Accused No. 8), and M/s Fidelity Finvest Pvt. Ltd. (Accused No. 4) had purchased a bulk of the shares, and that Accused Nos. 4-9 companies were either directly or indirectly the group companies of IHIL.

10. Such companies were also directly or indirectly controlled by the Managing Director of IHIL i.e., Shri L.R. Maurya, Accused No. 10 and one Director of IHIL Shri. Shririam Maurya, Accused No. 11, and their friends and family. Details of the companies, their directors, and their registered addresses are reproduced below in a tabulated form:-

Name of Entity

Regd. Office

Directors

Dali Fashions P Ltd.

B-34, Sagar Apts, Tilak Marg, New Delhi-1 is the regd. Office of IDEAL and also the office of Shri Prakash Gupta

Shri Prakash Gupta and his wife Smt. Nirmal Gupta

PKP consultants P Ltd.

B-34, Sagar Apts, Tilak Marg, New Delhi-1 is the regd. Office of IDEAL and also the office of Shri Prakash Gupta

Directors include Shri Prakash Gupta and his wife Smt. Nirmal G

Fidelity FinvestPvt.

B-34, Sagar Apts, Tilak Marg, New Delhi-1 is the regd. Office of IDEAL and also the office of Shri Prakash Gupta

Directors included Salil Dubey employee of IDEAL and Shri Sudhir Gupta, a friend of Shri Prakash Gupta.

Fourays Construction P Ltd.

No linkage.

Directors include Smt. Nirmal Gupta, Shri Salil Dubey, an employee of IDEAL, Shri Sudhir Gupta, a friend of Shri Parkash Gupta and Shri Sushil

Kumar, a relative of Shri Prakash Gupta,

A D Data Products

D-169, Sarita Vihar, New Delhi, a property

owned by Shri Parkash Gupta

Proprietary concern of Shri Vikram Kumar an

employee of Shri Parkash Gupta.

Bhagyauday Investment P. Ltd.

28, 26, Old Rajinder Nagar, New Delhi, the residence of Shri Parkash Gupta

Shri Pankaj Goel and Shri Ram Niwas Goel, relatives of Shri Parkash Gupta.

11. Hence, not only was the registered address for these entities the same, but as is evident, the Directors of these entities are also common i.e., one Mr. Pankaj Gupta, Accused No. 16.

_ of the Person/Party

Violation

Ideal Hotels & Industries Ltd.

Regulation 4(a) and 4(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995. (hereinafter referred to as 'UFTP' Regulations) Regulation 6(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations. (hereinafter referred to as Takeover Regulations. 1994).

Ideal Carpets Industries

Regulation 4(e) of UFTP Regulations

Ideal Carpets Ltd.

Regulation 4(e) of UFTP Regulations

Fourays Constructions

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

Dali Fashions P. Ltd.

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

PKP Consultants P. Ltd

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

A D Data Products

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and

10(2) of Takeover Regulations, 1994.

Fidelity Finvest Pvt. Ltd.

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

Bhagyauday Investment P. Ltd.

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

Shri L. R. Maurya

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

Shri Shri Ram Maurya

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

Shri Parkash Gupta

Regulation 4(a) of UFTP Regulations 6(1), 8(1), 10(1) and 10(2) of Takeover Regulations, 1994.

12. The following is a summary of the various violations committed by the entities and individuals, as mentioned in the Complaint:-

13. The above table also does not contain the name of the Respondent No. 1. Hence, the Complaint is entirely silent insofar as the Respondent No. 1 is concerned.

14. A perusal of the Complaint also indicates that the Appellant had issued summons under Section 11(13) of the SEBI Act, 1992 to Accused Nos. 5-7 and 9 Companies, Accused No. 16 i.e., Mr. Prakash Gupta, and Shri L.R. Maurya, Accused No. 10. The Complaint refers to the statements given by both, Accused Nos. 10 and 16. Mr. Prakash Gupta, in his statement, mentioned that the Accused No. 4-9 Companies were directly or indirectly the group companies of Accused No. 10 and 11, and their friends and family. He further stated that the affairs of these companies were handled by him from his office and residence. This was reiterated by Accused No. 10 i.e., Shri L.R. Maurya in this statement recorded on 05.07.1999. He admitted that Accused No. 4-9 Companies were controlled directly or indirectly by him, and his friends and family. He reiterated that the day to day affairs of such companies were also being handled by Shri Prakash Gupta, after due consultation with him. Neither Accused No. 10 nor 16 has detailed the role of the Respondent No. 1. On the contrary, it appears that

Shri L.R. Maurya acting in connivance with one Shri Prakash Gupta was running the day to day functioning of these Accused No. 4-9 Companies.

15. From a perusal of the Complaint, it appears that Appellant herein did not place on record any information which incriminates Respondent No. 1. It appears that the Respondent No. 1 has found his way into the array of parties simply because he was the Director of IHIL at the relevant time. Pertinently, it is not even the case of the Appellant that the Respondent No. 1 was at the helm of affairs at the relevant point of time or that the daily functioning of IHIL was being handled by Respondent No. 1. On the contrary, a perusal of the statements of Shri L.R. Maurya and Mr. Prakash Gupta indicates that it was in fact them who were running the daily affairs of IHIL and Accused No. 4-9 Companies.

16. It is now trite law that a Director cannot ipso facto, simply by virtue of being the director of a Company, be arraigned as an Accused by the SEBI [Refer to: SEBI v. Gaurav Varshney, (2016) 14 SCC 430]. By virtue of being a juristic person the acts attributed to a Company are attributed to the officers at the helm of affairs. Section 27 of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') encapsulates such vicarious criminality, and is being reproduced below for ready reference:-

"Section 27 - Contravention by companies

(1) Where [a contravention of any of the provisions of this Act or any rule, regulation, direction or order made there under] has been committed by a company, every person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the [contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such [contravention].

(2) Notwithstanding anything contained in sub-section (1), where an [contravention] under this Act has been committed by a company and it is proved that the [contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

17. It emerges that every person responsible for the commission of the offence or with the knowledge of whom the offence was committed, is liable for the offence. There is now burgeoning jurisprudence both under the SEBI Act, and under the Negotiable Instruments Act, 1881 which suggests that the liability is fastened upon an individual by virtue of being in charge, and being responsible when the offence was committed, and not merely on the basis of holding a designation or office in the company. Even an individual not holding a particular designation in the Company, but who was at the helm of affairs at the relevant time can be held liable. Hence, such vicarious criminality is not attributed to individuals simply by virtue of the position held by them in the company. The Director or officer of the company needs to have played a role in the functioning of the Company or in the commission of the offence, as recorded in the Complaint, to be arraigned as an Accused. There must be specific averments against the Accused Director detailing the manner in which the Director was responsible for the conduct of the business. [Refer to: Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1; State of Karnataka v. Pratap Chand, (1981) 2 SCC 335; Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189; National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330]. A company may have numerous Directors, however, it is apposite to state that to make each of these Directors accused persons simply by virtue of their position in the Company is not the true import of Section 27 of the SEBI Act.

18. As stated, there is not even a bald cursory averment which ties Respondent No. 1 to the allegations of price manipulation of IHILs stock. It appears that the Respondent No. 1 has been arraigned as an Accused solely by virtue of him being a Director in IHIL. On the contrary, the statements of Accused Nos. 16 and 10, categorically stated that the day to day affairs of IHIL were being handled by Mr. Prakash Gupta, Accused No. 16, Shri L.R. Maurya, Accused No. 10 and Shri. Shriram Maurya, Accused No. 11. It must also be noted that the Summoning Order dated 29.03.2000 was quashed qua similarly placed Accused Persons i.e., Mr. Vinod Kumar, also a Director of IHIL, Accused No. 12 and Mr. Pankaj Goel, Accused No. 20. In light of this, this Court does not find any reason to interfere with the order dated 24.03.2009 passed by the Learned Additional Session Judge in Revision Petition bearing No. 61/2008.

19. In light of this, the instant Petition stands dismissed, along with pending application(s), if any.