
(2022) 09 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 202, 1133 Of 2021, 932, 860, 933 Of 2022, Appeal No. 43, 51, 89 Of 2020, 336, 337 Of 2022

Sukumar Subramanian And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 3(a), 3(b), 3(c), 3(d), 4, 4(1), 4(2)(f), 4(2)(k), 4(2)(r)
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B, 12A, 12A(a), 12A(b), 12A(c), 15HA
Securities Contracts (Regulations) Act, 1956 — Section 21, 23E

Citation : (2022) 09 SEBI CK 0002

Hon'ble Judges : Tarun Agarwala Presiding Officer; M. T. Joshi, J; Meera Swarup Technical Member

Bench : Full Bench

Advocate : Ankit Lohia, Prachi Pandya, Shyam Mehta, Mihir Mody, Arnav Misra, Mayur Jaisingh, K Ashar, Joby Mathew, Nitiksha Parmar, s. Tanya Gupta, Somasekhar Sundaresan, Rushin Kapadia, Sumit Rai

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against the order dated November 29, 2019 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) wherein penalties have been imposed under Section 15HA of the SEBI Act, 1992. These appeals are Appeal no. 43 of 2020 (Sukumar Subramanian), Appeal no. 51 of 2020 (Rajagopal K) and Appeal no. 89 of 2020 (A Venkataramani).

Two appeals have been filed by Uma Karthikeyan. Appeal no. 336 of 2022 has been filed against the order dated February 25, 2022 passed by the Whole Time Member ('WTM' for short) and Appeal no. 337 of 2022 has been filed against the

order dated April 21, 2022 passed by the AO.

2. The facts leading to the filing of the present appeals is, that the Board of Directors of the Company known as Sanraa Media Ltd. passed a resolution on January 31, 2008 for opening a bank account with Banco Effisa, Lisbon (hereinafter referred to as 'Banco') for depositing the GDR proceeds. By the said resolution, the Chairman was also authorized to sign and execute an agreement as may be required by the bank and take such steps from time to time on behalf of the Company. The resolution further resolved to use the funds so deposited in the aforesaid bank account as security in connection with loan, if any, as well as to enter into any escrow agreement or similar arrangements if and when so required.

3. The resolution approved by the Board of Directors resolved that a bank account would be opened with Banco for the purpose of receiving the subscription money in respect of GDR issue. Further, Mr. Annaswamy Venkataramani, Chairman of the Company was authorized to sign and execute an agreement as may be required by the Bank and take such steps from time to time on behalf of the Company. The resolution further resolved to use the funds deposited in the aforesaid Bank account as security in connection with the loan, if any as well as to enter into any escrow account or similar arrangement if and when so required.

4. Based on the aforesaid resolution, the Company issued 10 million GDRs for USD 27.50 million dated May 2, 2008. The aforesaid GDR was subscribed by one entity, namely, Clifford Capital Partners AGSA (hereinafter referred to as 'Clifford') and a corporate announcement was made by the Company that the entire issue was subscribed.

5. SEBI conducted an investigation pertaining to the issue of GDR by the Company. Based on the investigation, a show cause notice dated February 12, 2018 was issued to the Company, its Directors and employees to show cause as to why suitable directions under Section 11 and 11B should not be issued for violation of Section 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'), Section 21 of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as the 'SCR Act') read with Clauses 32, 36(7) and 50 of the Listing Agreement and Section 23E of the SCR Act.

6. The show cause notice alleged that pursuant to the resolution dated January 31, 2008 not only a bank account was opened with Banco but the Chairman executed a pledge agreement on behalf of the Company based on which a loan agreement dated April 17, 2008 was executed between Clifford and Banco in which the proceeds of the GDR was to be kept as security with Banco. The show cause notice further alleged that the pledge agreement and the loan agreement

was not disclosed to the stock exchange and, consequently, the investors and shareholders were kept in the dark. The show cause notice further alleged that based on the pledge agreement and the loan agreement Banco advanced USD 27.50 million to Clifford which amount was utilized by Clifford to subscribe to the entire issue. The GDR proceeds were pledged as security till such time the loan was repaid by Clifford. It was also alleged that the fact that Clifford was the sole subscriber was not intimated to the stock exchange and to the Indian investors. Further, Clifford did not repay the loan and defaulted, as a result, the Company adjusted USD 27.24 million out of USD 27.50 million from the GDR proceeds and, accordingly, the Company and its Directors were charged with violation of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

7. The AO after considering the evidence on record found that the entire scheme of using the GDR proceeds to fund a subscriber to the GDR issue was a fraudulent scheme and violative of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations. The AO found that the GDR was subscribed by one entity, namely, Clifford and not by five entities as disclosed by the Company vide its letter dated June 17, 2015. The AO further found that the funds were not made available at the Company's disposal and the same was adjusted to the loan availed by Clifford. Further, the loan agreement was not disclosed to the stock exchange and to the Indian investors. Further, the disclosure made by the Company to the stock exchange that the GDR issue was fully subscribed was misleading as the investors were not informed that the GDR was subscribed by only one entity and, therefore, the scheme hatched by the Company and its Directors was violative of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

8. The AO found that the non-disclosure of the loan agreement and the pledge agreement was violative of Clause 36 of the Listing Agreement as well as Section 21 of the SCRA Act read with Clause 32 and 50 of the Listing Agreement.

9. We have heard Shri Ankit Lohia, Shri Joby Mathew and Shri Somasekhar Sundaresan, the learned counsel in respective appeals and Shri Shyam Mehta, the learned senior counsel and Shri Sumit Rai, the learned counsel for the respondent.

10. The contention of the appellants is that even though they have been signatory to the resolution of the board they were, however, not involved in the day-to-day affairs of the Company nor were involved in the issuance of the GDR and therefore cannot be held liable merely because they were directors. It was urged that the appellants Sukumar Subramanian was an employee / chief financial officer and was not a signatory to the resolution. The appellant Rajagopal K urged that he was an independent director and did not attend the meetings by which resolution was passed for issuance of the GDR. The appellant A Venkataramani contended that he had not admitted the charges levelled in the show cause notice and that the statement made by his authorized representative was wholly incorrect. The appellant Uma Karthikeyan contended that even

though she was the member of the board of directors she was only in-charge of the finance and had nothing to do with the GDR issue and therefore the direction issued and penalty imposed was harsh and excessive.

11. It was, thus, contended by all the appellants that penalty imposed was harsh and excessive and did not commensurate with the violation.

12. Having heard the learned counsel for the parties and having perused the records we find that the controversy on the same facts and on the same issue was also decided by the WTM whereby the appellant Company and all the other directors were debarred for 5 years. This order of the WTM has become final. Similar finding have been given by the AO in the impugned order which in our opinion does not suffer from any error.

13. We also find that Company in spite of being served did not appear nor filed any reply. The appellant A Venkataramani, Chairman of the Company also did not file any reply. His authorized representative appeared on the date of hearing and admitted to the charges leveled in the show cause notice. There is nothing on record to indicate that the authorized representative of this appellant was not authorized to make such statement. No such affidavit was filed either before AO or before this Tribunal. In the absence of any assertion being made by the appellant A Venkataramani before the AO, we are of the opinion, that the said appellant being a signatory to the loan agreement as well as to the pledge agreement and being Chairman of the Company had knowledge of the fraud that was being committed by him as well as by his Company.

14. Insofar as Sukumar Subramanian and Rajagopal K are concerned we find that they were executive director and additional director respectively. The contention that Sukumar Subramanian was an employee and that Rajagopal K did not attend the meetings by which the resolution for issuance of GDR was passed cannot be allowed to be raised since similar findings have been affirmed by the WTM.

15. Insofar as appellant Uma Karthikeyan is concerned the WTM has debarred her for a period of five years and the AO has imposed a penalty of Rs. 10 lakh. The contention of the appellant is that she was only a board member dealing with the finance of the Company and was not involved in the GDR issue cannot be believed. The appellant attended the board meetings and was a director and consequently was responsible for the affairs of the Company.

16. Having perused the record and having heard the counsel for the parties we find that the execution of the pledge agreement has not been disputed. Based on the pledge agreement the GDR proceeds were used as collateral for the loan given to Clifford. We find that the Clifford defaulted in the repayment of the loan, as a result of which, the GDR proceeds which was kept as collateral security was adjusted by Banco towards the loan amount. The fact remains that the GDR proceeds never got utilized for the purpose for which the GDR was floated.

17. The appellants also misled SEBI into believing that there were five subscribers to the issue. Investigation found that there was only one subscriber. No explanation has been given by the Company and its directors including the appellants. We also find that the loan agreement as well as the pledge agreement was not disclosed under the Listing Agreement. Further, the corporate announcement did not disclose the fact that the subsisting pledge agreement facilitated one subscriber to subscribe to the GDR issue. The corporate announcement so made was misleading and presented a distorted version to the investors and created a false version inducing the investors to deal in securities.

18. The AO in the impugned order dated November 29, 2019 has imposed a penalty of Rs. 5 crore upon the appellant A Venkataramani. In our opinion the appellant being the Chairman and having not filed any explanation or reply to the show cause notice nor has filed any reply on behalf of the Company is not entitled to any relief. We find that the charges levelled against him were not denied and were thus deemed to be admitted by the said appellant. Further, a sum of USD 27.24 million was adjusted towards default committed by the Clifford. Thus, in our opinion the penalty imposed upon the appellant A Venkataramani does not suffer from any error

19. In the impugned order dated November 29, 2019 the AO had imposed a sum of Rs. 1 crore to be paid jointly by five persons including the appellant Uma Karthikeyan. The appellant Uma Karthikeyan had challenged this order of November 29, 2019 which was allowed and matter was remanded to the AO for fresh consideration. Upon remand the AO passed a fresh order dated April 21, 2022 wherein a penalty of Rs. 10 lakh was imposed.

20. Since the AO in the impugned order dated November 29, 2019 had imposed a sum of Rs. 1 crore to be paid jointly and severally by the appellants including Uma Karthikeyan which was subsequently reduced to Rs. 10 lakh for Uma Karthikeyan, we are of the opinion that insofar as the sum of Rs. 10 lakh imposed upon Uma Karthikeyan is concerned we do not find any error. The penalty imposed is just and proper. However, the penalty imposed upon Sukumar Subramanian and Rajagopal K the amount of Rs. 1 crore to be paid jointly and severally needs to be modified in view of the subsequent order passed by the AO in the matter of Uma Karthikeyan. We accordingly reduce the penalty and direct Sukumar Subramanian and Rajagopal K to pay Rs. 10 lakh each.

21. Insofar as debarment of 5 years by the WTM in the matter of Uma Karthikeyan is concerned considering the fact that the appellant had resigned and is residing in Australia we are of the opinion that the debarment of 5 years is harsh and excessive. In similar matters in the case of Aqua Logistics Ltd. the GDR was USD 62.38 million and period of debarment was only 3 years. In Sibly Industries Ltd. vs SEBI, Appeal no. 381 of 2019 dated July 14, 2022 we had reduced the debarment of 5 years to the period undergone.

22. Considering the aforesaid, we reduce the debarment of Uma Karthikeyan in

Appeal no. 336 of 2022 from 5 years to the period undergone.

23. In view of the aforesaid, Appeal no. 89 of 2020 of A Venkataramani is dismissed.

24. Appeal no. 43 of 2020 of Sukumar Subramanian and Appeal no. 51 of 2020 of Rajagopal K are partly allowed. The penalty is reduced to Rs. 10 lakh each.

25. The Appeal no. 337 of 2022 of Uma Karthikeyan against the AO order is dismissed and Appeal no. 336 of 2022 of Uma Karthikeyan against the WTM order is partly allowed and the period of debarment is reduced from 5 years to the period undergone.

26. In the circumstances of the case, parties shall bear their own costs. All the miscellaneous applications are disposed of.

27. 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.