(2023) 09 SEBI CK 0005

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 61, 653, 815 Of 2022

Suresh Hegde And Others — APPELLANT

Vs

Securities & Exchange Board Of India — RESPONDENT

Date of Decision : 04-09-2023

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 11, 11B, 12A

Citation : (2023) 09 SEBI CK 0005

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

Bench : Division Bench

Advocate : Yadunath Bhargavan, Rohan Janardhanan, Sanjana Muttath, Prachi Gharat, Hetvi Mota, Sumit Rai, Daksha Kasekar, Veena Hari

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed by the appellant Deepak Shenoy being Appeal Nos. 653 of 2022 against the order dated April 20, 2021 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') wherein the appellant has been restrained from accessing the securities market, prohibited from buying, selling or dealing in the securities market and has been restrained from holding any position of a director or key managerial personnel in any listed company or any intermediary registered with SEBI for a period of seven years. Appeal No. 815 of 2022 has been filed by Deepak Shenoy against the order dated May 31, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') wherein a penalty of Rs. 12 lakh has been imposed to be paid jointly and severally by five noticees. Another appeal has been filed by Suresh Hegde and Anr. being Appeal No. 61 of 2022 against the order dated April 20, 2021 passed by WTM. Since the

issue is common, all the appeals are being decided together.

2. The facts leading to the filing of the present appeal is, that the company Sudar Industries Ltd. came out with an Initial Public Offer (hereinafter referred to as 'IPO') for issue of 90,88,000 equity shares of a face value of Rs. 10 each through 100% book-building process. The company was listed on the BSE Ltd. (hereinafter referred to as 'BSE') and National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE') and the scrip opened at Rs. 85.05 on NSE and touched a high of Rs. 117.35. Through this IPO, the company raised an amount of Rs. 69.97 crore and was transferred through its three bank accounts. The said amount was raised on the basis of the objective of the issue as provided in the prospectus.

3. SEBI made an investigation and found that the company had deviated from the objects of the issue mentioned in the prospectus of the company and siphoned off Rs. 64.43 crore from the IPO proceeds. It also found noticee nos. 9 who is the proprietor of a Chartered Accountant firm, noticee nos. 10 was the statutory auditor and had a personal relationship with the company and its directors had connived and colluded with the company and / or its related entities concocting sales figures of the company for the financial year 2008-09 and 2009-10 which was also mis-stated in the prospectus. The said CA had also certified mis-stated financial statements for the financial year 2010-11. The investigation also revealed that noticee nos. 11 to 18 were party to the scheme of the siphoning off Rs. 64.43 crore from IPO proceeds of the company. Consequently, a show cause notice was issued to 18 noticees to show cause as to why suitable direction under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') should not be issued against them.

4. The show cause notice, thus, alleged that noticee nos. 1 to 8, namely, the company, its directors had deviated from the object of the issue as per the prospectus of the company and had siphoned off the funds and in their endeavor noticee nos. 1 to 8 had received the assistance and support from noticee nos. 9 to 18. The WTM after considering the replies of the noticees and after considering the material evidence on record came to the conclusion that the managing director and chairman of the company noticee nos. 2 Murugan M. Thevar was in charge and responsible for the day to day affairs of the company and was deeply involved in the issuance of the IPO and the siphoning off the funds from the company. The WTM found that the company had deviated from the object of the issue by siphoning off the funds. The WTM found that the noticee nos. 3, Deepak Shenoy was not only a consultant and giving advice to the managing director and chairman and to the company for the IPO but was also an independent director of the company and, therefore, he was playing a dual role. The WTM found that as per the credit rating report of CRISIL, noticee nos. 3, Deepak Shenoy had substantial role to play in the IPO and, therefore, the appellant along with the other noticees came out with an idea of siphoning off the funds of the IPO

proceeds. The WTM consequently, passed orders against all the noticees restraining them from accessing the securities market for different periods. The AO on a similar finding has passed an order imposing a penalty of Rs. 12 lakh to be paid jointly and severally with five other entities.

5. We have heard Mr. Yadunath Bhargavan, the learned counsel and Mr. Devesh Tripathi, the learned counsel with Mr. Rohan Janardhanan, Ms. Sanjana Muttath, Ms. Prachi Gharat, Ms. Hetvi Mota, Ms. Pragya Agrawal, Ms. Pankti Shah, Ms. Nidhi Nair, the learned counsel for the appellants and Mr. Sumit Rai, the learned counsel with Ms. Daksha Kasekar, Ms. Veena Hari, the learned counsel for the respondent.

6. The contention of the learned counsel for the appellants is, that there has been an inordinate delay in the initiation of the proceedings as well as in its disposal. It was urged that the issue of IPO dates back to the year March 2011 and the show cause notice was issued in the year 2017 and the impugned order was passed in the year 2021. Thus, there has been an inordinate delay of more than six years in the issuance of the show cause notice and ten years in the passing of the impugned order. It was contended that on account of inordinate delay, the proceedings were liable to be quashed. In support of his submission, the learned counsel placed reliance in Ashlesh Gunvantbhai Shah vs. SEBI [2020 SCC OnLine SAT 30], Sanjay Jethalal Soni & Ors. vs. SEBI [2019 SCC OnLine SAT 247], SEBI vs. Bhavesh Pabari [(2019) 5 SCC 90].

7. It was also urged that the appellant Deepak Shenoy, noticee nos. 3 was an independent director and was not involved in the day to day affairs of the company and that he is restricted to the scope of work given by the board. It was contended that merely because noticee nos. 3 had attended board meetings does not mean that he was involved in the day to day affairs of the company nor could it lead to an inference that the appellant was involved in the siphoning off the funds of the IPO proceeds. Further, it was urged that the impugned order does not point out any specific act or omission of noticee nos. 3 in relation to the alleged violation. It was also contended that noticee nos. 3 was appointed in the year 2010 and it was impossible for the said noticee to be involved in the action of the company's sales figures for the financial year 2008-09 and 2009-10. It was, thus, urged that in the absence of any evidence to show that noticee nos. 3 was actively involved in the commission of the violation, namely, the falsification in the facts of the IPO in the prospectus or being involved in the siphoning off the funds, no liability could be fastened upon the appellant nor he could be penalized. In support of his submission, the learned counsel placed reliance in P. G. Electroplast Ltd. & Anr. vs. SEBI [2019 SCC OnLine SAT 148].

8. It was also urged that the entire proceeding was violative of the principles of the natural justice. It was contended that no opportunity of cross-examination was given to examine Edwin Joseph, Reena Nadar and Santosh Ingale whose statements were relied upon by the authorities in the impugned order and, therefore, on this short ground the entire proceedings are liable to be set aside.

It was also urged that noticee nos. 3 had retracted its statements which fact was not considered and that reliance of CRISIL report was wholly unwarranted.

9. Having heard the learned counsel for the parties, we find that a specific plea was raised with regard to the delay in the initiation of the proceedings. This aspect has not been dealt with by the authorities in their impugned orders. Even in the written submissions filed by the respondent, nothing has been stated as to why the proceedings were initiated so late. In the instant case, we find that the IPO was issued in 2011. This issuance of the IPO was in the public domain. The show cause notice was issued in 2017 after more than six years. Nothing has come on record as to why proceedings could not be initiated earlier. Even after the issuance of the show cause notice, the reply was filed in 2017 itself in the proceedings before the WTM and the written submissions were filed in May 2020. The impugned order was passed on April 20, 2021. Nothing has come on record as to why the WTM took four years to pass the order.

10. In SEBI vs. Bhavesh Pabari (supra), the Hon'ble Supreme Court held :-

"35. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show cause notice within a reasonable time and there being a delay of about 8 years in issuance of show cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default / statute, prejudice caused, whether the third-party rights had been created, etc. The show cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 TO 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine / penalty imposed, we do not find good ground and reason to interfere."

11. In Ashlesh Gunvantbhai Shah vs. SEBI (supra), this Tribunal held :-

"12. Having considered the matter we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for the alleged violations. The controversy in this regard is squarely covered by a decision of this Tribunal in Mr. Rakesh Kathotia & Ors. vs SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019. The relevant paragraph is extracted herein below :-

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal

Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held :

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc.

13. Similar view was again relied in Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019) and again in Sanjay Jethalal Soni & Ors. vs SEBI in Appeal No. 102 of 2019 and other connected appeals decided on November 14 2019.

14. We also find that in the case of Ashok Shivlal Rupani (supra) the period of investigation was January 4, 2010 to January 10, 2011 in the scrip of M/s. Oregon Commercial Ltd. and the show cause notice issued on November 20, 2017 which this Tribunal held that there was an inordinate delay. In the instant case, the same scrip was investigated for the same period and there is a delay of 7 years in issuing the show cause notice. To this extent, the facts are common. Further, Civil Appeal No. 8444 – 8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr., etc. was dismissed by the Supreme Court on November 15, 2019 thus affirming the decision of this Tribunal.

15. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. Even though there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period as held recently in Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) SCC OnLine SC 294. In the instant case, we are of the opinion that the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed."

12. In Sanjay Jethalal Soni and Ors. vs. SEBI (supra), this Tribunal held :-

"11. Having heard the learned counsel for the parties at some length we find that the respondent had investigated the scrips of Shree Global Tradefin Ltd. for the period March 1, 2009 to January 10, 2011 in September 2011. Pursuant thereto, a show cause notice dated April 20, 2012 was issued for the violation found during the investigated period March 1, 2009 to November 30, 2009. The respondents thereafter waited for another five years to issue a second show cause notice dated July 20, 2017 for the investigated period April 1, 2010 to January 10, 2011 which had been investigated in September 2011. We find that the respondents were aware of the alleged violation and thus there is no justification for waiting for more than five years to issue the second show cause notice dated July 20 2017. In our view there is an inordinate delay in initiating the proceedings."

13. In view of the aforesaid, we are of the view that there has been a delay in the issuance of the show cause notice and in deciding the matter. However, in our opinion, in the peculiar facts of the case, the proceedings cannot be quashed on this ground. But we are of the opinion that the delay would be a mitigating factor while considering the quantum of penalty for the possible violation.

14. The charge against noticee nos. 3 is, that the appellant along with other noticees nos. 1 to 8 have deviated from the object of the issue as per the prospectus of the company and have siphoned off the funds upon receiving assistance and support from noticee nos. 9 to 18. Admittedly, noticee nos. 3 was an independent director in the company. In addition to the aforesaid, noticee nos. 3 was working for Finaventure Advisory Services India Pvt. Ltd. (hereinafter referred to as 'FASIPL') which firm was providing financial consultancy services to the company for its public issue. On this basis, a finding has been given that noticee nos. 3 was holding two positions, one as an employee of FASIPL and other as an independent director of the company and, therefore, was playing key role in the IPO of SIL. This finding given in paragraph no. 6.41 of the impugned order is not borne out from any evidence to show that noticee nos. 3 was providing advice to the company and its other directors with regard to the issuance of the IPO. Even the CRISIL grading report dated January 21, 2011 does not indicate that noticee nos. 3 was giving advice on the IPO issue. From the said paragraph one finds that FASIPL was acting as a financial consultancy to the company in which noticee nos. 3 was an employee and that the said firm was giving consultancy to the company. But nothing has come on record to indicate that noticee nos. 3 was giving any consultancy advice to the company in the IPO issue. The WTM and the AO have presumed that the noticee nos. 3, being an employee of FASIPL must have been advising the company with regard to the IPO issue. No evidence to that effect has come on record. The finding given that the violations committed by the company in siphoning off the funds happened with the knowledge, consent and connivance of noticee nos. 3 who had failed to act diligently is based on surmises and conjunctures.

15. In this regard, we are further of the opinion that assuming without admitting that noticee nos. 3 was being consulted with regard to the IPO issue as held in paragraph nos. 6.41, there is nothing to indicate by way of any finding that noticee nos. 3 was actively involved in the siphoning off the IPO proceeds. Giving

consultation for the IPO issue is one thing, but the allegation of siphoning off the funds has nothing to do with the consultation given, if any, by noticee nos. 3 to the company on the IPO issue. IPO issue is one aspect of the matter and the siphoning off the funds of the IPO proceeds is a totally different matter and, in our opinion, there is no finding whatsoever that noticee nos. 3was involved in the siphoning off the IPO proceeds. There is also nothing on record to indicate that noticee nos. 3 was a beneficiary to the IPO proceeds.

16. Much support has been taken by the WTM and the AO on the CRISIL grading report to show that the appellant was closely involved in the business activities and played a major role in guiding the company to take business and financial decisions. We are of the opinion that the extracts of the CRISIL grading report as given in paragraph nos. 6.41 of the impugned order does not indicate anything either with regard to the issuance of the IPO issue of the company or with regard to the alleged siphoning off the IPO proceeds. This report at best only points out the involvement of noticee nos. 3 in the business activities of the company. But such involvement of the business activities cannot include the specific charge of IPO issue or siphoning off the IPO proceeds.

17. The finding that the statement given by many employees point out to the role played by noticee nos. 3 does not, in our view, indicate noticee nos. 3’s involvement or role in the IPO issue or in the siphoning off the funds. The finding that noticee nos. 3’s involvement in the affairs of the company as per the statement of the employees and as per the CRISIL grading report could only lead to a possible conclusion of the noticee nos. 3’s inability to act in the best interest of the minority shareholders for which purpose noticee nos. 3 was appointed as an independent director. But such involvement of noticee nos. 3 could not lead to a conclusion that he had failed to act diligently or that the violation committed by the company happened with the knowledge, consent and connivance of noticee nos. 3. In view of the aforesaid, it is not necessary for us to go into the question relating to cross-examination by noticee nos. 3 of the witness statements relied upon in the impugned order.

18. We are further of the opinion that reliance on the CRISIL grading report was wholly erroneous. The CRISIL grading report is a report given by a credit rating agency which is not a conclusive piece of evidence and is neither binding on the company or on the statutory regulatory body like that of SEBI. Reliance on such report is totally unwarranted. The regulator while making an inquiry is required to come to an independent finding based on evidence and such reliance on a report given by a credit agency which has no authenticity or credibility cannot be made a basis to arrive at a conclusion that the appellant was in the center of the IPO issue and siphoning off the funds.

19. The submission of the learned counsel for the respondent that noticee nos. 3 was involved in the day to day affairs of the company based on the statements of the employees and being an employee of FASIPL is totally erroneous. The impugned order indicates that the figures given in the prospectus for the

financial year 2008-09 and 2009-10 could not be fastened upon the appellant in as much as the noticee nos. 3 was appointed as an independent director in 2010. There is nothing on record to indicate that noticee nos. 3 was involved in the falsification of the financial figures of the company for the financial year 2008-09 and 2009-2010. The mere fact that noticee nos. 3 had attended 20 board meetings does not indicate that said noticee nos. 3 was involved in the day to day affairs of the company. The evidence which has come on record indicates that the managing director and chairman Murugan M. Thevar played a chief role in the management of the company and in the issuance of the IPO issue as well as in the siphoning off the funds.

20. The finding that noticee nos. 3's involvement in the IPO issue and siphoning off the funds is evident by the statements of Edwin Joseph, Reena Nadar and Santosh Ingale is patently erroneous. Their statements cannot lead to a conclusion of the noticee nos. 3's involvement in the creation of proprietorship firm for the purpose of the siphoning off the IPO proceeds. The mere fact that a cheque was handed over either to noticee nos. 3 or to Murugan M. Thevar of a proprietorship company does not lead to an irresistible conclusion that the IPO proceeds of the company were siphoned off.

21. It is alleged that the proprietorship firms, namely, Addon Exports, Shalom Fashion, SM Construction, AR Fabrics, Elim Traders, RJ Traders, Shree Bhagwati Financial International and George Street London was set up at the instance of noticee nos. 3 and managing director of the companyMr. Murugan Thewar. In this regard, we find that there is no evidence of noticee nos. 3 being involved in the setting up all these proprietorship firms. On the other hand, there is ample evidence given by the WTM in paragraph nos. 7.5, 7.13, 7.17and 7.21, etc. that the transactions were at the initiation of the company. There is a categorical finding that noticee nos. 11 to 18 started the proprietorship firms, opened bank accounts in their name and signed blank cheques for use of the company and thereby provided active assistance and support to the company to deviate from the objects and issue by siphoning off the IPO proceeds. We, however, find that there is no direct evidence to show that noticee nos. 3 was party to the scheme with regard to the opening of the bank accounts and issuance of blank cheques by the proprietors of these firms and with regard to the routing of the funds and ultimately the siphoning off the funds.

22. In the light of the aforesaid, we are of the view that the conclusion drawn by the authorities that noticee nos. 3 was at the center of an elaborate scheme to siphon off the IPO proceeds is based on the surmises and conjunctures. The evidence that has been discussed in the impugned order does not lead to any conclusion that noticee nos. 3 was the sole person involved in the siphoning off the funds nor is there any finding that noticee nos. 3 is a beneficiary of the IPO proceeds. Consequently, we are of the opinion that the direction to debar noticee nos. 3 for seven years for his role as an independent director and / or an employee in a consultancy firm cannot be sustained. For the same reasons, the

imposition of penalty imposed by the AO cannot also be sustained.

23. Noticee nos. 9 Suresh Hegde is a Chartered Accountant. He has a firm by the name of Suresh Hegde & Co. which is arrayed at noticee nos. 10. The show cause notice alleged that Suresh Hegde enjoyed a personal relationship with the company and its related entities and that his firm was the statutory auditor of the company. It is alleged that as statutory auditor of the company, Suresh Hegde in connivance and in collusion with the entities related to the company and its promoters and directors concocted false figures for the financial year 2008-09 and 2009-10 which has been mis-stated in the prospectus of the company dated March 3, 2011. Because of this false sales figures and mis-statement in the prospectus, the show cause notice alleged that the noticee nos. 9 and 10 have violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations.

24. The said noticees admitted their personal relationship with the company and its directors and promoters but denied the charge of concocted sales figures and mis-stating the same in the prospectus of the company. It was further stated that being a professional auditor the firm has a number of clients and because of that the said noticees knew these clients who are also noticees in the present proceedings but the same does not mean that the present noticees were part of the connivance in the defalcation of the IPO proceeds or had enjoyed such defalcation of the IPO proceeds. It was contended that the noticees as auditors of the company performed their role as statutory auditors based on the material and data made available to them and certified the financials.

25. The WTM as well as the AO after considering the material evidence on record found that the company had deviated from the objects of the issue as per the prospectus of the company and siphoned off the money to the tune of Rs. 64.43 crore. It was also found that noticee nos. 9 and 10 were not only connected with the company and its directors but were also connected to the related entities and that noticee nos. 9 and 10 in collusion with the company had assisted and supported the company and other noticees in siphoning off the IPO proceeds.

26. In this regard, after hearing the learned counsel for the parties, we find that the AO vide its order dated May 31, 2022 had imposed a penalty of Rs. 2 lakh to be paid jointly and severally by noticee nos. 9 and 10. This penalty has been paid without protest. Thus, noticees have accepted the order of the penalty and the findings, namely, that noticee nos. 9 and 10 in collusion with the company had assisted and supported the company and other noticees in siphoning off the IPO proceeds and had concocted the sales figures.

27. Notwithstanding, the finding given by the AO and its acceptance by payment of penalty, it was contended that the appellants have the right to challenge the order of the WTM and the period of debarment.

28. The findings given by the WTM and the AO on appreciation of evidence is, that the company had siphoned off Rs. 64.43 crore of the IPO proceeds through

several entities posing as its customers and suppliers. A specific finding has been given that the company has only deployed Rs. 5.54 crore of the IPO proceeds towards the objects of the IPO and the balance amount of Rs. 64.43 crore were siphoned off through group entities which were operated and managed by friends, family and employees of the company and promoter group of the company.

29. In addition to the aforesaid, noticee nos. 8 in his personal capacity had taken a loan of Rs. 9 lakh from Elim Traders which is not a proprietary firm of noticee nos. 13 and had also taken a loan from A R Fabrics which is a proprietary firm of noticee nos. 11. In addition to the aforesaid, noticee nos. 8’s father had also taken a loan of Rs. 30 lakh from AR Fabrics. In addition to the aforesaid, noticee nos. 9 and his father had borrowed substantial sums of money from related proprietorship firms of the company.

30. In addition to the aforesaid, noticee nos. 9 was acquainted with noticee nos. 13 and was filing income tax returns of noticee nos. 13 for the assessment year 2011-12, 2012-13, 2013-14 and 2014-15. The proprietor firm of Reena Nadar, noticee nos.13 was transacting in crores of rupees as suppliers and customers of the company. Noticee nos. 9 was, thus, closely connected to noticee nos. 13 and to the company and was also indebted to the proprietorship firm of the noticee nos. 13 through loan transaction.

31. Further, noticee nos. 10 had issued a certificate to RJ Traders another proprietorship firm which is connected to the company for the purpose of opening a bank account in Federal Bank. The income tax returns for this proprietorship firm RJ Traders for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 were also filed through this firm. This firm RJ Traders is a proprietorship firm of noticee nos. 12 who is an employee in the company holding position of a Manager, Corporate Planning. This firm was shown as supplier of raw materials to the company. Noticee nos. 10 also issued a certificate to Addon Exports who is the proprietorship firm of noticee nos. 15, wife of the managing director and the kingpin and the returns of this firm was also filed through this noticee nos. 10 for the assessment year 2011-12 to 2014-15. Noticee nos. 10 had also issued a certificate to Shree Bhagwati International for opening a bank account.

32. All these entities were controlled by the company for the purpose of routing funds and did not have any genuine commercial activity.

33. Admittedly, the company had siphoned off the funds and noticee nos. 9 and 10 acting as CA and being statutory auditor aided in the siphoning off the funds. The proprietary firms through which the funds were being routed were found to be bogus transaction and they were not genuine commercial activity. Noticee nos. 9 and 10 were also filing their income tax returns and were aware that the supply of materials by these proprietorship firms to the company was bogus and concocted figures. Thus, it leads to an irresistible inference that noticee nos. 9

and 10 knew that the supply of material by these proprietary firms was a bogus transaction and at the same time, these noticees knew that the company was diverting the IPO proceeds through these proprietorship firms. The noticees opened the bank accounts either by giving a certificate for the purpose of opening the bank account and in some cases had introduced the proprietorship firm to the bank. Loans taken by these noticees showed some kind of a quid pro quo arrangement between the company and these noticees.

34. In addition to the aforesaid, ample evidence has also come on record that the company used the proprietorship firm of noticee nos. 11 to 18. It deviated from the objects of the issue by siphoning off the IPO proceeds. This was done under the tacit connivance of the noticee nos. 9 and 10. Further, evidence has come that these proprietorship firms were set up by the company at the instance of noticee nos. 9 and 10. Some of the proprietors were employees of the company or relatives of the promoter groups. The WTM and the AO have recorded a finding that in setting up the proprietorship firms and paper concerns the assistance was provided by noticee nos. 9.

35. In addition to the aforesaid, we are of the opinion that the alleged loan taken by noticee nos. 9 and his father was a quid pro quo arrangement between the company and the noticees for obvious reasons. Nothing has come on record to show that these loans were repaid by the noticees.

36. In the light of the aforesaid, the WTM and the AO rightly came to the conclusion that the siphoning off the IPO proceeds was under the tacit connivance and collusion with noticee nos. 9 and 10. We are also of the opinion that the inference drawn in the facts depicted in the impugned order was rightly drawn.

37. Further, considering the fact that minor penalty of Rs. 2 lakh has been imposed by the AO, the debarment of four years imposed by the WTM upon noticee nos. 9 and 10 is harsh and excessive and does not commensurate with the alleged violation, coupled with the fact that there has been an inordinate delay in the initiation and disposal of the proceedings.

38. For the reasons stated aforesaid, the impugned orders of the WTM and the AO in so far as it relates to noticee nos. 3 are quashed. Appeal Nos. 653 of 2022 and 815 of 2022 of Deepak Shenoy are allowed. In so far as Appeal No. 61 of 2022 Suresh Hegde and Anr. noticee nos. 9 and 10 are concerned the violation is affirmed. However, the debarment of four years passed by the WTM is reduced to the period undergone. The appeal is partly allowed.

39. 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.