
(2022) 06 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 114, 115, 116 of 2021

Terrascope Ventures Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 15HA
Securities Contracts (Regulation) Act, 1956 — Section 15 HA, 23E
Companies Act, 1956 — Section 81(1A)

Citation : (2022) 06 SEBI CK 0001

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

Bench : Division Bench

Advocate : Saurabh Bachhawat, Shantibhushan Nirma, Sneha Ramnathan, Suraj Chaudhary, Nidhi Singh, Binjal Samani, Aditi Palnitkar, Moksha Kothari, Vidhi Partner, Deepak Dhane

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Three different orders of the same date i.e. April 29, 2020 has been passed by the Adjudicating Officer ("AO" for short) of the Securities and Exchange Board of India ("SEBI" for short), one against the Company, Terrascope Ventures Limited, one against its Director Geeta Manoharlal Saraf and the third order has been passed against another Director Manoharlal Saraf whereby a penalty of Rs. 1 crore has been imposed upon the Company and Rs. 25 lakh each has been imposed upon the Directors under Section 15 HA of the SEBI Act, 1992 and Section 23E of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for short) for violation of Regulation 3 & 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short). Since the facts and issue is common in all the three appeals, the same are being decided together. For facility, the facts narrated in Appeal no. 116 of 2021, Terrascope Ventures Limited is being taken into

consideration.

2. The Company which was previously known as Moryo Industries Limited made a preferential issue of the 63,50,000 shares at a price of Rs. 25/- per share to 42 persons in accordance with a Special Resolution passed under Section 81(1A) of the Companies Act, 1956 on October 1, 2012. The proposed utilization of the proceeds of the preferential issue as informed to the shareholders in the notice of the Extra Ordinary General Meeting (EOGM) held on October 1, 2012 was-

(a) capital expenditure including acquisition of companies / business

(b) funding long terms working capital requirements

(c) marketing

(d) setting up of offices abroad and

(e) for other approved corporate purposes.

3. The proceeds were apparently not utilized for the purposes made out in the notice to the EOGM held on October 1, 2012. The proceeds were utilized by the Company for purchasing shares of other companies and extending loans and advances to other companies and entities.

4. Subsequently, a Special Resolution dated September 29, 2017 was passed in the Annual General Meeting (AGM) of the Company whereby majority shareholders ratified and approved all acts, deeds and things done by the Company in entering into and giving effect to the utilization of proceeds pursuant to the preferential issue which was in variance to the original objects of the preferential issue stated in the notice of EOGM held on October 1, 2012.

5. Considering the variation made in the utilization of proceeds, a show cause notice dated April 27, 2018 was issued by the AO alleging that the appellants did not utilize the proceeds of the preferential issue in accordance with the Special Resolution passed under Section 81(1A) of the Companies Act on October 1, 2012 and that the variance so made between projected utilization of funds and actual utilization of funds was not disclosed under Clause 43 of the Listing Agreement.

6. The AO after considering the reply and material evidence that came on record held that the variance of the utilization of the proceeds from the preferential issue cannot be legitimized by a subsequent ratification by passing a Special Resolution by the shareholders of the Company on September 29, 2017 and therefore such utilization of proceeds which was in variance of original objects has misled the investors and consequently was fraudulent and therefore violative of Regulation 3 and 4 of the PFUTP Regulations.

7. The AO further held that Clause 43 of the Listing Agreement requires a Company to furnish on a quarterly basis, a statement to the Stock Exchange indicating the variations between projected utilization of funds and the actual

utilization of funds. The AO found that the appellant did not comply with the requirement of Clause 43 of the Listing Agreement and did not furnish the statement to the Stock Exchange with regard to the variation in the utilization of funds admittedly made by them. The AO accordingly found that Clause 43 of the Listing Agreement was violated and accordingly penalty as stated aforesaid was imposed.

8. We have heard Shri Saurabh Bachhawat and Shri Deepak Dhane, the learned counsel for the appellant and Shri Suraj Chaudhary, the learned counsel for the respondent.

9. In the instant case, admittedly, in the Special Resolution of the Company dated October 1, 2012 the proceeds were required to be utilized for various purposes as stated in the said Notice to the EOGM. Subsequently, the proceeds which were utilized for other purposes was ratified by the shareholders of the Company by a Special Resolution on September 29, 2017. The shareholders ratified and approved all acts, deed and things done by the Company in entering into and giving effect to the utilization of the proceeds as received in the said preferential issue which was in variation to the objects as stated in the notice of EOGM held on October 1, 2012. Once this Special Resolution dated September 29, 2017 is passed, utilization made by the Company towards purchase of shares and giving loans and advances to other companies and entities becomes the object of utilization of the Company.

10. In *National Institute of Technology and Another vs Pannalal Choudhury and Another* (2015) 11 SCC 669, the Supreme Court has explained the expression "ratification" as under:-

"29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "*ratihabitio mandato aequiparatur*" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.

30. The expression "ratification" was succinctly defined by the English Court in one old case, *Hartman v. Hornsby* as under:

" "Ratification" is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

11. From the aforesaid, it is clear that ratifies / ratification means making valid of an act already done. Thus, even though the Company utilized the proceeds of the preferential issue for a different purpose in variance with the objects specified in the notice of the EOGM dated October 1, 2012 such variance in the utilization of the proceeds stood ratified and became authorized and valid pursuant to the Special Resolution dated September 29, 2017. The ratification done by Special Resolution on September 29, 2017 approved the acts and deeds of the Company

which was improperly done or performed in the first instance and, therefore it was incorrect on the part of the AO to hold that passed illegal acts or deeds cannot be legitimized by a subsequent ratification by passing a resolution by the shareholders of the Company. This finding of the AO in paragraph 21 of the impugned cannot be sustained.

12. Once the utilization of the proceeds have been ratified by the shareholders of the Company, the acts and deeds done by the Company becomes valid and authorized and therefore there was no variation of the utilization of the proceeds. The show cause notice alleging variation in the utilization of the proceeds is, thus, erroneous.

13. For the same reason, since the utilization of the proceeds have been ratified, there was no variance in the utilization of the proceeds and consequently there was no violation of Clause 43 of the Listing Agreement.

14. The decision cited by the learned counsel for the respondent in the matter of *Ajay Jain vs Registrar of Companies NCT of Delhi & Haryana*, 2010 (119) DRJ 545 and the decision of the Supreme Court in *A. Lakshmanaswami Mudaliar and Others vs Life Insurance Corporation of India and Another*, AIR 1963 SC 1185 has no application to the present facts and circumstances of the case.

15. In view of the aforesaid, the impugned orders passed by the AO cannot be sustained and are quashed. All the appeals are allowed with no order as to costs.

16. 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.