(2020) 02 SEBI CK 0030

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 599 Of 2019

Transgene Bioteck Ltd And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Citation : (2020) 02 SEBI CK 0030

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : L. S. Shetty, U. R. Naik, Prasad Bhabal, Shyam Mehta, Shehaab Roshan

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellants being aggrieved by the order of the Whole Time Member (â??WTMâ? for convenience) of Securities and Exchange Board of India

(â??SEBIâ?? for convenience) dated August 28, 2019 have filed the present appeal.

2. The Facts leading to the filing of the appeal is, that the appellant no. 1 Transgene Biotek Ltd. issued GDR for the purpose of raising capital from

overseas market for expansion of its present business activities. These 50 lakh shares were issued in two tranches raising US$ 40.5 million. Certain

complaints were received regarding diversion of monies raised through GDR issues and, based on a preliminary enquiry, SEBI issued an ex-parte ad-

interim order dated November 20, 2014 prohibiting the appellant no. 1 from issuing any further equity shares or any other instrument convertible into

equity shares and further restrained the other appellants from accessing the securities market etc. Thereafter, a confirmatory order dated March 03,

2016 was passed confirming the ex-parte ad-interim order.

3. The appellants and other entities filed six separate appeals before this Tribunal which was dismissed by judgement dated August 17, 2017.

Thereafter, upon completion of investigation a show cause notice dated April 26, 2018 was issued alleging that the appellants had devised a scheme

under which the appellant company made two GDR issues, the proceeds of which were diverted by them and subsequently involved in covering up of

diversion of GDR issues by legitimizing the same through back-dated agreement/ invoices, by making false statement with regard to utilization of GDR

proceeds into annual reports for the financial year 2010-11, 2011-12 and 2012-13.

4. The WTM after considering the submission and the evidence on record held that the company had devised a fraudulent scheme by making two

GDR issues, proceeds of which were diverted and thereafter covering up the diversion of the funds through back-dated agreements/ invoices and by

making false statements with regard to the utilization of GDR proceeds in the annual report. The WTM further found that the company failed to

inform the Stock Exchange with regard to the price sensitive information with regard the agreements entered with other entities.

5. Before this Tribunal the only contention raised by the appellant was that they have not committed any fraud nor defrauded any investor and in fact

the appellants were victims of fraud and forgery committed by one Mr. Nirmal Kotecha and his associates. It was contended that the promoters/ or

directors of the company never received the GDR proceeds nor misappropriated it. Such contention was repelled by the WTM in the impugned order

and cannot be accepted by us as we find that the appellants have not denied the fact that the company had made two GDR issues nor has denied the

fact that the proceeds of the two GDR issues were transferred to various entities as brought out in the show cause notice. The only defense is that

such transfer was made on the advice of Mr. Nirmal Kotecha on whose advice the company floated a subsidiary in Hong Kong and entered into

agreement with Asia First Technologies Ltd. (AFTL) and SyMetric Sciences Inc. (symetric) for purchase of technology and thus the diversion of the

GDR proceeds was done at the behest of Mr. Nirmal Kotecha cannot believed. The contention that the first information report has been lodged

against Mr. Nirmal Kotecha cannot be a ground to mitigate the direct involvement of the appellant in the fraudulent scheme and diversion of the

proceeds through two other entities.

6. We accordingly do not find any manifest error in the order of the WTM. The appeal fails and is dismissed.