
(2020) 10 SEBI CK 0101

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.610 Of 2019, 197 Of 2020

Venkitaraman Iyer Subramonian

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Marker) Regulations, 2003 — Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 12A
Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12C(c), 15HA
Securities Contract Regulation Act, 1956 — Section 23

Citation : (2020) 10 SEBI CK 0101

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

Bench : Full Bench

Advocate : Venkitaraman Iyer Subramonian, Kumar Desai, Nishit Dhruva, Chirag Bhavsar, Harshad Vyas

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the two different orders passed by respondent Securities and Exchange Board of India (hereinafter referred to as "SEBI") on

the same set of facts under different provisions the present appeals have been preferred.

2. In Appeal no.610 of 2019, the appellant is challenging the order of the whole time member of the respondent SEBI debarring the present appellant

alongwith other directors etc. of M/s. G.V. Films Ltd. (hereinafter referred as the Company) from accessing the securities market in any manner for

a period of two years for acting fraudulently in breach of the provision of section

12A(a) to (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Regulations 3(a) to (d) and Regulations 4(1) 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, 2003").

3. In Appeal no.197 of 2020, the adjudicating officer had imposed a penalty of Rs.15 lakhs, on same set of facts, vide order dated 29th January, 2020 for violation of the provisions of Section 15 HA of SEBI Act, Section 23 of Securities Contract Regulation Act, 1956 (hereinafter referred to as "SCRA 1956") and various provisions of SEBI PFUTP Regulations, 2003 and provisions of Listing Agreement. In the circumstances, both the appeals were heard together and are being decided by the present common order.

4. M/s. G.V. Films Ltd., the company issued 6.4 million Global Depository Receipts (hereinafter referred to as "GDR") for raising 40 million US Dollar on 27th April, 2007. Earlier on 16th March, 2007 in the board meeting of the company a decision was taken to open an account with Banco Efisa S.A. Lisbon Bank and to authorise the said bank to receive the GDR proceeds in the account. The said Bank was authorized inter alia to use the account as a security for loan if any. The present appellant alongwith other directors were authorised to sign, execute any application, agreement etc. in this regard with the Banco Bank.

A day before, the said Bank granted a loan of equal amount of GDR to Whiteview Trading Corporation (hereinafter referred to as Whiteview) and thereafter on 27th April 2007 this Whiteview - the single entity solely subscribed the GDR.

An account charge agreement was already executed on 27th March 2007, by the appellant and other authorized directors on the basis of the resolutions for the security of loan taken by the single subscriber namely Whiteview. Thereafter, the company had converted the GDRs into shares which were sold in the Indian capital market. However, at that time it was not disclosed to the investors that the GDR was subscribed by a single entity and that the GDR proceeds were used to secure the loans availed by this single entity from the Banco bank. In the circumstances, the company, then directors including the present appellant were issued show cause notices for

violation of the provisions of Regulation 12A of PFTUP Regulations

etc. and the impugned orders were ultimately passed. Similar notices were issued by the A.O in the next of the proceeding. Ultimately the impugned orders were passed. Hence the present appeals.

5. We have heard Mr. Venkitaraman Iyer Subramonian, Appellant in Person and Mr. Kumar Desai, Advocate assisted by Mr. Nishit Dhruva, Mr.

Chirag Bhavsar and Mr. Harshad Vyas, Advocates for the Respondent through video conference.

6. The appellant during the relevant period was a non-executive director. He made his submissions before us in person. He submitted that he signed

the account charge agreement when the same was sent to him at London for webcasting business. He was merely an employee of the company and,

therefore, on the direction of the other directors he signed over the said agreement. He did not seriously dispute that the acts in general were in

violation of the PFUTP Regulations. He submitted that he had no role to play in all these activities.

7. On the other hand, Mr. Kumar Desai, the learned counsel for the respondent SEBI submitted that the records would show that the present

appellant was a director at the relevant period and had attended the meeting of the board of directors in which all decisions were taken. Further the

records would also show that at the time of signing of the account charge agreement the appellant was in fact in London for meeting with counsels on

the same subject. It was further argued that the appellant admittedly did not object on execution of the account charge agreement where under the

entire GDR proceeds was utilized to secure the loan obtained by Whiteveiw from the said Bank, for subscribing the GDR the agreement and,

therefore, it was submitted that the impugned orders need not be interfered.

8. Mr. Venkitaraman Iyer Subramonian appearing in person had further submitted that he was merely an employee of the company. He has not

gained any monetary benefit from the transactions. He was only asked to help the company and, therefore, he submitted that the penalty imposed is

very harsh.

9. Upon hearing both the sides, according to us, it is crystal clear that the entire transaction was a fraudulent transaction wherein a single entity

Whiteview has subscribed to the GDRS by availing loan from Banco bank and in

turn the company had pledged entire GDR proceeds for securing the said loan. The record would show that these specific facts were never disclosed to the shareholders or to the general investors who had subscribed to the conversion of the GDR into shares in the Indian market. Though appellant Mr. Venkitaraman Iyer Subramonian had submitted that his role was only to put signature on the disputed account charge agreement, the copy of the resolution of the board of directors would show that he had signed the resolution and, therefore, he cannot escape the liability.

10. As regards the quantum we find that debarment of the appellant from the securities market for 2 years cannot be called as excessive in the stated facts for his participation in the decision making process. As regards the quantum of penalty however, we find that the appellant was merely an employee of the company and a non-executive director. He apparently did not gain anything in the disputed exercise. In the circumstances, penalty of Rs.15 lakhs imposed upon him is excessive. In our view, penalty of Rs.5 lakhs would meet the ends of justice.

11. In the circumstances Appeal no.610 of 2019 is hereby dismissed without any order as to costs. Appeal no.197 of 2020 is partly allowed to the extent of quantum of penalty. The direction of the adjudicating officer to pay penalty of Rs.15 lakhs is reduced to Rs.5 lakhs so far as the present appellant is concerned.

12. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.