
(2021) 03 SEBI CK 0092

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 409 Of 2020

Voltaire Leasing And Finance Ltd. And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Citation : (2021) 03 SEBI CK 0092

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

Bench : Full Bench

Advocate : Vikas Bengani, Vishal Kanade, Nidhi Singh, Kinjal Bhatt, Hersh Choudhary, Vidhii Partners

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the order of the Whole Time Member ("WTM" for short) of respondent Securities and Exchange Board of India dated 30th April, 2020 whereby the present appellants are restrained from accessing the securities market in any manner for a period of two years each the present appeal is preferred. Appellant no.1 is a listed company carrying in business in finances etc. Appellant nos.2 and 3 were the Managing Director and Chief Financial Officer respectively during the relevant period.

2. Respondent SEBI had received a reference from Department of Income Tax, Chandigarh for possible violation, if any, of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rules and Regulations made thereunder. Respondent SEBI therefore conducted investigation in the scrip of the appellant no.1 Company for a period between August 12, 2014 to July 31, 2015 termed as the investigation period by the respondent. In this period, the scrip opened on the BSE Ltd. at Rs.2.42 and reached a high price of Rs.32.10 and closed at the same price. Respondent SEBI

found the noticee Looklike Trade Pvt. Ltd., Badriprasad Chiripal and Richi Consultants P. Ltd. (termed as group no.1 in the impugned order) through off market transactions transferred shares of the appellant no.1 Company to 13 other noticees. These 13 other noticees thereafter in miniscule quantities from 5 shares to 15 shares sold the same on the exchange platform for a higher price though in fact for a lesser price they had obtained much more shares from the above group 1 sellers. During these 88 days average trading in the scrip was 15 shares per day. Besides those 13 sellers three other sellers were also involved in raising the price by putting one share each for sale on the market platform though they did not have any shares with them. These transactions of 3 other noticees ultimately resulted in stock exchanges taking actions under the relevant rules.

3. Out of the three group 1 entities, Looklike Trade Pvt. Ltd was found to be connected with the appellant by way of fund transfer and it was also a preferential allottee of the appellant no.1. This Looklike Trade Pvt. Ltd had also made off market transfers of certain shares to other in group 1 entities who eventually transferred to 13 entities as detailed above of Group 2 entities the shares which were ultimately sold by them as detailed supra.

Respondent SEBI found that the appellant no.1 Company was suspended from the stock exchange platform for some period in 2010. Thereafter for considerable period 4 years except 2 trades for 700 shares no transaction at all took place and the shares were infrequently transacted. On August 12, 2014 it traded for Rs. 2.42 which is the starting date of investigation period. Then the minuscule sale of shares by the 13 entities/noticees described above in minuscule quantity for higher price the share reached the peak price of Rs. 32.10.

The Company's performance however did not match with this phenomenal rise. The profit after tax of the appellant no.1 Company in the year 2013-14 was Rs.24.5 lakhs, 2014-15 it reduced to Rs. 20.1 lakh and in 2015-16 it again fell to Rs.4.2 lakhs only. Considering all these facts the show cause notices were issued to the appellant and other entities for violation of the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

4. It appears that none of the 16 sellers (termed as group 3 in the impugned order) had appeared before the WTM. Similarly, group 1 entities who have sold in off market transactions to those sellers also did not contest the proceedings. Similarly, appellant nos.2 and 3 did not also put their appearance however the appellant no.1 contested the proceedings.

5. It was the case of appellant no.1 that preferential allotment to Looklike Trade Pvt. Ltd was done in accordance with laws and regulations. Further, on January 29, 2014 an intimation of an open offer for acquiring the shares of appellant no.1 company had been made by the acquirer at the price of Rs.50 when the market price at that time was Rs.2.52 per shares. The open offer opened on March 12,

2015 and closed on March 25, 2015 at a price of Rs.50 per share at a substantial premium over the prevailing market price which was Rs.21.90 and Rs.22.93 on those days. Therefore, the price rise may have occurred because of this takeover exercise. Further, it was explained that an amount of Rs.27,25,000 was paid to Looklike Trade Pvt. Ltd. by the appellant no.1 Company as it owed money to it and, therefore, this transaction cannot be branded as connection between the appellant and Looklike Trade Pvt. Ltd. for carrying any manipulative trade on the platform of the stock exchange. It was therefore submitted that the proceedings be dropped.

6. Respondent SEBI called for specific document like bank statements etc. from the appellant no.1 to show that the transactions were genuine. The Appellant had placed certain books of accounts and certificate from Chartered Accountant in this regard.

7. Considering all the material before her the learned WTM did not believe the explanation. Further, finding that there was a connection inter-se between the miniscule seller and the connection of the appellant no.1 with Looklike Trade P. Ltd. in the nature of financial transaction and the said Looklike Trade Pvt. Ltd. being connected with the miniscule sellers the impugned order came to be passed. Hence the present appeal.

8. Heard Mr. Vikas Bengani, Advocate for the Appellant and Mr. Vishal Kanade, Advocate assisted by Ms. Nidhi Singh, Ms. Kinjal Bhatt and Mr. Hersh Choudhary, Advocates for the Respondent.

9. The record would show that there was phenomenal price rise in the share of the appellant no.1 Company during the investigation period. The fundamentals of the Company as detailed supra however did not match with said price rise. The appellant no.1's case is that due to the takeover exercise an acquirer who had offered price at the rate of Rs.50 per share during the same period the price rise has occurred.

10. The impugned order shows that the open offer was had opened and closed in the month of March, 2015. At the time of closure the price of the scrip was Rs.22.93. From the date of announcement of the open offer till the start of the investigation period i.e. August 12, 2014 there has been no trading at all in the scrip of the Company. Thereafter in the end of open offer i.e. till March 25, 2015 the price of the scrip rose from Rs.2.42 to Rs.22.93. Therefore, the WTM reasoned that even if the explanation of the appellant no.1 is accepted that the price rise was due to the open offer however it does not explain why the rise in the price continued to increase even after the open offer was concluded.

It was further found that the change in the management due to the takeover exercise was also just a show. The documents showed that the acquirer was not any new acquirer but very Appellant Dilip Patodia who was already acting as a Joint Managing Director of the Company from October 1, 2014. Prior to it he was an independent director in the board of the Company from October 29, 2013. In

the circumstances, the increase in the price of the scrip at 1226% was held to be not attributable to the open offer or to the "change in the management".

So far as financial transaction of the appellant no.1 with Looklike Trade Pvt. Ltd. is concerned, during personal hearing the appellant no.1 Company submitted that it had allotted 80,000 shares in preferential allotment to the Looklike Trade Pvt. Ltd. It had received some advances against these shares. However, the appellant no.1 could not deliver the shares to Looklike Trade Pvt. Ltd. Therefore, an amount of Rs.27.25 lakh was returned to Looklike Trade P. Ltd. The document uploaded by appellant no.1 on the MCA website however showed that the appellant no.1 had allotted 80,000 share to Looklike Trade P. Ltd for a total consideration of Rs.40 lakhs on August 3, 2013. This fund transfer of Rs.27 lakhs was made in January, 2015 i.e. after about one and half year of the transactions. Some unauthenticated ledgers which did not bear the stamp of the company, and bills were placed before the WTM to show that the funds were received and transferred. Therefore the appellant no.1 Company was directed by WTM to submit the bank statement etc. However, except the certificate of the Chartered accountant based on the books of accounts no documents were placed before the WTM.

11. The learned counsel for the appellant submitted that in view of the takeover there was a rise in the price of the shares. Further, the fund transfer transaction between the appellant no.1 and the Looklike Trade P. Ltd. is reasonably explained. In the circumstances, he submitted that the appellants were not instrumental in any way in any price rise.

12. However, taking into consideration all the facts that the takeover cannot be instrumental in the price rise, that the appellant no.1 failed to place trustworthy documents justifying fund transfer, in the background of the performance of the appellant no.1 and trading pattern of the miniscule seller in our view does not call for any interference in the impugned order. The connection between the appellant no.1 and Looklike Trade P. Ltd. who had made off market transfer of the shares to the miniscule sellers is clearly established. In the circumstance the following order. The appeal is hereby dismissed without any order as to costs.

13. 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 Private Secretary 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.