
(2021) 06 SEBI CK 0052

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 218, 461 Of 2020

Yes Capital (India) Private Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 18-06-2021

Acts Referred:

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 28, 28(3), 31, 31(1), 31(3)
Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirement) Regulations, 2015 — Regulation 3(a), 4(2)(f)(i)(1), 4(2)(f)(i)(2)
Rajasthan Excise Act, 1950 — Section 43B
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B, 15HB

Citation : (2021) 06 SEBI CK 0052

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M. T. Joshi, J

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Tomu Francis, Abhishek Venkataraman, Yugandhara Khanwilkar, Arka Saha, Fredun DeVitre, Mihir Mody, Arnav Misra, Mayur Jaisingh

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the order of the Adjudicating Officer (â??AOâ? for short) of the respondent Securities and Exchange Board of India (hereinafter

referred to as â??SEBIâ?) dated 31st March, 2020 imposing a penalty of Rs.50lacs each on the appellants in Appeal no.218 of 2020 for violation of

the provisions of Regulation 31(1) read with 31(3) and 28(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and

Takeovers) Regulations, 2011 (hereinafter referred to as SAST Regulations, 2011) the appeal is preferred by the original two noticees.

2. The next of the appeal is filed by Mr. Rana Kapoor the then Managing Director

and Chief Executive Officer of Yes Bank aggrieved by another order dated 25th September, 2020 passed by another AO of the respondent SEBI imposing a monetary penalty of Rs.1 crore for violations of

Regulation 4(2)(f)(i)(1) and 4(2)(f)(i)(2) of Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations.

3. Since material facts are common, all the appeals were heard together and are being decided together by the present common order.

4. Appellant no.1 and 2 in Appeal no.218 of 2020 were the then promoters of Yes Bank Ltd.(hereinafter referred to as Yes Bank), a listed company.

In September, 2017, appellant no.1 Yes Capital India P. Ltd. (hereinafter referred to as Yes Capital) being a promoter entity of Yes Bank raised an

amount of Rs.630 crores from Franklin Templeton and Mutual Fund Ltd. (hereinafter referred to as Franklin Mutual Fund) by issuance of unlisted

Zero Coupon Non-Convertible Debentures (hereinafter referred to as ZCNCD/NCD).

5. A debenture trust deed dated 21st September, 2017 was executed by Yes Capital as a part of the said transaction. Yes Capital vide the said deed

agreed that as a condition it would maintain a cover ratio of 3.3X for 12 months and, thereafter, 3X at all time by retaining shares of Yes Bank of

about 1900 crores.

6. Appellant no.2 Morgan Credit Pvt. Ltd. (hereinafter called as Morgan) another promoter of Yes Bank also raised an amount of Rs.950 crores from

Reliance Mutual Fund by issuing similar ZCNCD and also had executed a similar debenture trust deed dated 20th May, 2018 which was later on

amended on 14th November, 2018. As a part of this transaction Morgan also bound itself by a condition that it would always maintain a cap on the

borrowing at 0.5X. Milestone Trusteeship Services P. Ltd. (hereinafter referred to as "Milestone") was appointed as the debenture trustee for the

debenture holders in both the transactions. During the relevant period, Yes Capital held 3.27% while Morgan held 3.3% equity shares in Yes Bank.

7. Admittedly, these transactions were not disclosed to Yes Bank or to the Exchanges. Upon getting knowledge of these transactions respondent

SEBI made queries with both the appellants as well as with appellant Mr.Rana Kapoor. Ultimately show cause notices were issued to promoters,

appellants dated 20th May, 2019.

Respondent SEBI claimed that the transactions were in the nature of encumbrances of the underlined shares which were required to be disclosed as required by SAST Regulations and, therefore, the provisions of Regulations 31(1) read with 31(3) and 28(3) of the SAST Regulations were violated as those were not disclosed to Yes Bank or the exchanges within 7 days as provided by these Regulations.

8. The essence of the reply of the promoter appellants was that the transactions were not in the nature of any encumbrances as regards the shares of Yes Bank held by the promoters and therefore there was no violation of any provision of the Regulations. The respondent however did not agree with the submissions as found by the learned AO in the impugned order. Hence, penalty was imposed as detailed supra. Therefore the present appeal no.461 of 2020 is filed by the promoter appellants.

9. The facts regarding the case in appeal no. 461 of 2020 of Rana Kapoor are dependent on the above facts alongwith other facts of execution of guarantee by him to the transaction of Morgan and the same would be dealt with separately.

10. Heard Mr.Somasekhar Sundaresan, Advocate assisted by Mr. Tomu Francis, Mr. Abhishek Venkataraman, Ms. Yugandhara Khanwilkar and Mr.

Arka Saha, Advocates for the appellants in both the appeals and Mr.Fredun DeVitre, Senior Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra

and Mr. Mayur Jaisingh for the respondent in appeal no.281 of 2020 and Mr. Mustafa Doctor, Senior Advocate assisted by Mr. Mihir Mody, Mr.

Arnav Misra and Mr. Mayur Jaisingh, Advocates for the respondent in appeal no.461 of 2020.

11. The argument from both the sides as well as the impugned order revolve around the interpretation of the relevant provisions of the SAST

Regulations in reference to the relevant terms and conditions of two debenture trust deeds executed by the appellants. It would therefore be fruitful to

first advert to the necessary provisions of the SAST Regulations. Regulation 31(1) of the SAST Regulations provides as under:-

â??Disclosure of encumbered shares.

31.(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons

acting in concert with him in such form as may be specified.â??

12. The term "encumbrance" as found in the above provision is defined in Regulation 28(3) of the SAST Regulations which runs as under:-

"Disclosure-related provisions.

28.(3) For the purposes of this Chapter, the term "encumbrance" shall include a pledge, lien or any such transaction, by whatever name called."

13. There is no denial that if the promoter of a Company encumbers the shares of the Company held by it, then it is required to be disclosed in the manner as prescribed by Regulation 31(1) as above. The issue involved in the present case is whether the transactions entered into by the promoter appellants are encumbrance as defined by Regulation 28(3) of the SAST Regulations as reproduced supra.

Debenture Trust Deeds : Relevant Nature

14. The debenture trust deed executed by the appellant Yes Capital in question would interestingly show that the term encumbrance is defined therein

for the purposes of the trust deed which is as under:

"Encumbrances" means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract,

hypothecation, right of other persons, claim, security interest, quasi-security interest, option, lien, charge, power of sale to a third party,

retention of title, restriction or limitation of any nature whatsoever, including restriction on use, transfer or exercise of any other attribute

of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security

interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same."

15. Financial indebtedness (which may be incurred by the appellant in future) is defined in the deed as under:-

"Financial indebtedness" means, without double counting, the aggregate of (a) the principal amount of any debt availed by Issuer, (b)

the amount of any contingent liability of Issuer, including any guarantees, by virtue of which Issuer is responsible for, the indebtedness of

any other person/entity, (c) the amount of any borrowing availed by any person to the extent such borrowing is secured by a pledge or

other Encumbrance on any Listed Shares held by Issuer and/or any other assets

of Issuer.â??

16. The trust deed defines â??required coverâ? and â??required cover ratioâ? of the shares of Yes Bank to be maintained by the appellant during the life time of the ZCNCD as under:-

Â â??Required Coverâ? shall mean a Required Cover Ratio of 3.3x for the first 12 (twelve) months from the Allotment Date, and a Required Cover Ratio of 3.0x thereafter till the Final Settlement Date.â??

â??Required Cover Ratioâ? shall mean the ratio of: (1) the Market Value of the Listed Shares, to (2) the Issue Amount (adjusted for any Partial Redemption) plus accrued Redemption Premium less Promoter Sub-Debt less Designated Amount. Provided that the accrued

Redemption Premium shall be added to the denominator every 12 (twelve) months from the Allotment Date.â??

17. Clause 5.4 of the trust deed requires that if there is a gap in the required cover ratio, a top up event shall occur and within 14 business days from

the date of such event equivalent number of debentures by making payment are required to be redeemed. Under clause 8(2)(1)(m) debenture trustee

is required to monitor the required cover and the maintenance of the required cover ratio on a daily basis and issue the notices as per the term of the

said deed. Upon failure to maintain required cover by appellant Yes Capital, clause 12(1)(2) provided that if default is committed, the debenture

trustee would promptly notify the Yes Capital of the fall. The debenture trustee would have the obligation to test the maintenance of required cover at

all times on a daily basis irrespective of whether a top up action was required to be undertaken by the Company on the preceding day.Vide Clause

22.3 Yes Capital was obliged to maintain the required cover at all times irrespective of whether a top up notice has been issued or not. Vide clause 34

it was declared that the debenture trustee was appointed as attorney of the Yes Capital to act upon the occurrence of an event of default. In this

scenario as an attorney of the appellant Yes Capital it was authorised to execute, file and do any deed etc. which in its opinion was necessary or

expedient to be executed or done for the purpose of carrying out any of the trust obligation declared or imposed upon the Yes Capital under the trust

deed given to the MCD holder or the debenture trustee. It was authorised to use the name of the Yes Capital in the exercise of all or any of the

power conferred upon this clause.

Clause 23 is regarding the superior borrowing. It runs as under:-

23.1. The Company agrees and undertakes that it shall not create any Encumbrance on any of its assets including the Listed Shares

held by it so as to secure any Financial Indebtedness availed of by itself or by any other person (Superior Borrowing). Provided that

in the event that the Company avails any Superior Borrowing or creates any Encumbrance for any Superior Borrowing availed by any

other person in contravention of this Clause 23.1 (Superior Borrowing), the same shall not automatically result in an Event of Default under

Clause 12.1(f) (Event of Default) if the Company creates security in favour of the Debenture Trustee, in the manner and upon the terms and

conditions provided for in Clause 23.3 (Pledge) below.

23.2 In the event that any Superior Borrowing is proposed to be availed of by the Company or by any other person, the Company shall: (i)

be obliged to inform the Debenture Trustee of the same (Superior Borrowing Intimation) at least 15 (fifteen) Business Days prior to

the date on which the Superior Borrowing is sought to be availed (Superior Borrowing Date); and (ii) provide a Right of First

Refusal (ROFR) to the NCD Holders to lend in part or full the amount of the proposed Superior Borrowing, and on the same terms

applicable to such Superior Borrowing. Provided that the NCD Holders shall be obliged to communicate their intention to exercise the

ROFR within 7 (seven) Business Days of the date of the Superior Borrowing Intimation (Superior Borrowing Intimation Date).

18. Clause 23(3) provided that in case any superior borrowing as detailed supra is made by Yes Capital then within ten business days prior to the

superior borrowing date, it shall create a first ranking exclusive pledge in favour of ZCNCD holders on the shares of Yes Bank held by it.

19. Next of the Trust deed executed by the appellant no 2 is of similar nature except the details of amount raised and the provisions of borrowing cap

as detailed above.

Appellant's Submissions

20. Mr.Somashekar Sudaresan, learned counsel for the appellants promoter submitted that the AO has wrongly held that all kinds of undertaking

including those which restrict the right of promoter concerning the shares held by them would constitute an encumbrance as declared by him in para no.24 of the impugned order. He submits that stipulation of maintaining the minimum ownership of shares in Yes Bank without any rights on the shares being created in favour of the lender would not constitute an encumbrance as defined in the SAST Regulations. The transaction in question itself was allotting debt instruments in the form of "unsecured non-convertible debentures" issued by the appellants to two mutual funds vide two separate trust deeds. Only condition was that of maintaining a minimum ownership of shares is linked to the value of share and the outstanding amount as defined in relevant clauses of the debenture trust deed. The deed executed by appellant Yes Capital further provided that appellant shall not create any encumbrance on its assets including the Yes Bank shares and if the same is done in future then only it was required to create a pledge in favour of Milestone of the Yes Bank shares.

So far as appellant no.2 is concerned the learned counsel submitted that the Debenture Trust Deed provided that the appellant shall maintain a borrowing cap linked to the shares of Yes Bank held by it. Further the appellant required consent of the majority of debenture holders for any sale or encumbrance of the shares. The debenture trust deed as regards appellant no.2 further provided that if it failed to deposit the redemption amount 30 days prior to the due date it was bound to create a pledge over the Yes Bank shares in its hands. He therefore submitted that the learned AO has wrongly expanded the scope of the term encumbrance beyond its plain meaning as found in Black's Law Dictionary 6th Edition and even the term as defined in the SAST Regulations as reproduced supra. He submitted that the definition would show that it first enumerates specific transactions like pledge, lien and subsequent words "by whatever name called" are preceded by above specific words i.e. pledge and lien. The rule of ejusdem generis therefore would be applicable and the other transactions than specifically listed would mean the transaction those are akin to pledge, lien only.

To buttress his submission he relied on the ratio of Commissioner of Income Tax vs. McDowell and Company Ltd. (2009) 10 SCC 755 para 19.

In this judgment while interpreting subclause (a) of Section 43B of Rajasthan Excise Act which provided for deductions on certain payment actually

made, the rule of ejusdem generis was applied.

The provision is –“(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being

in force, ...” It was held that the clause would be applicable to the sum payable if it falls within the genus of tax i.e. compulsory exaction of certain

amount by an authority under the powers of the State.

21. The impugned order has relied on the answers to the frequently asked questions (popularly termed as FAQs) put on the SEBI’s official website

to come to the conclusion that the impugned transactions were in the nature of encumbrances. He submitted that these FAQs are not even circulars

issued under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992. In any way, they would bound SEBI and not the noticees.

In this respect reliance on the ratio of Commissioner Central Excise, Bolpur vs. Ratan Melting and Wore Industries (2008) 13 SCC 1 was placed.

22. Mr.Somashekhar further adverted Tribunal’s attention to the subsequently amended Regulations of July, 2019 of the SAST Regulations wherein

the term encumbrance is defined in Regulation 3(a) as under:-

“(3) For the purposes of this Chapter, the term “encumbrance” shall include,-

(a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;

(b) pledge, lien, negative lien, non-disposal undertaking; or

(c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or

indirectly.”

23. He submitted that even this new definition of which the aid is taken by the learned AO in the impugned order is of no help as obligation to buy

more shares cannot amount to an encumbrance. He therefore wanted that the appeal be allowed.

Respondent’s submissions

24. On the other hand, Mr. De Vitre the learned senior counsel submitted as under.

25. That the covenants in both the trust deed either of keeping a cover ratio of 3.3/3.3X or maintaining a cap on the borrowing of 0.5X on the Yes

Bank shares are in the nature of encumbrance of the underlined shares.

The definition of encumbrances in the SAST Regulations as existed during the relevant period was inclusive in nature including pledge, lien or any

such transaction by whatever name called. The amendment to the said definition later on in July, 2019 was only clarificatory and explanatory of the

provisions that already existed. Further, answers to FAQ no. 70 and 72 published on the official website of SEBI also clarified that various

transactions like lock-in, non-disposal undertaking, right of first refusal etc. would amount to an encumbrance. Further, vide FAQ no.80 different types

of encumbrance required to be disclosed were enumerated.

26. In the light of the above material Mr. De Vitre, learned senior counsel further pointed out the definition of encumbrance found in the debenture

trustee deed executed by Yes Capital as detailed supra. He further submitted that top up notice definition would show that upon fall in required cover

ratio the Company was required to take top up action to maintain the required cover ratio. Clause 64 provided that redemption of such number of

NCDs was required to be made in case top up event is not addressed so that the required cover ratio is restored to the required cover. Failure to

maintain required cover ratio was declared as a default and all outstanding amount in relation to NCDs was declared to become immediately payable.

Further, Yes Capital was required to maintain the cover ratio at all times until the final redemption date of the NCDs. Negative covenant vide clause

22(4)(c) provided that without prior consent of the debenture trustee any financial indebtedness cannot be incurred by Yes Capital. He further pointed

out the provisions of superior borrowing as detailed supra and the obligation to create a first ranking exclusive pledge on the shares of Yes Bank in

such events.

27. As regards the debenture trust deed of appellant no.2, Mr. De Vitre adverted our attention to the terms and conditions enumerated in the trust

deed executed by appellant no.2 of the similar nature. By taking us through various clauses he submitted that while the required cover ratio was

always to be maintained by the appellant, in the event of default there were negative covenants that the appellants shall not undertake the actions

therein listed without the prior written consent of the debenture trustee (Clause 22.6.1). Further, vide next clauses the appellant was prohibited from

availing any financial indebtedness except the permitted indebtedness. There was also a cap on the borrowing by the appellant which was required not to exceed 116,00,00,000 without the prior written permission of the debenture holders.

28. On the strength of these terms and conditions in both the debenture trust deeds, Mr. De Vitre submitted that the appellant's right to deal with their shares was restricted by various conditions and covenants. Those were in the nature of encumbrances by way of non-disposal undertaking. The appellants were disabled from taking several actions in regard to the shares of Yes Bank and, therefore, both the transactions were clearly in the nature of encumbrances requiring disclosure under the SAST Regulations.

29. As regards the definition of encumbrances as found in Regulation 28(3) he submits that in fact the rule of ejusdem generis would not apply to this definition. It clearly explains that the term encumbrance shall "include" a pledge, lien by whatever name called, does not call for giving any restricted meaning to the term encumbrance. Therefore, the ratio of the case of Commissioner of Income Tax vs. McDowell and Company Ltd. cited supra would not be applicable. The expression encumbrance is used by import. Lien and non-disposal undertaking would fall within the definition. The appellants also in their memorandum of appeal paragraph (f) had accepted that the transactions akin to a lien would fall within the expression any such transaction.

30. Mr. De Vitre, learned senior counsel for the respondent alternatively submitted that even if it is assumed that the rule of ejusdem generis would apply still the transactions in question being in the nature of or akin to a lien or a non-disposal undertaking the test of ejusdem generis is satisfied.

31. The next of the submission of Mr. De Vitre, learned senior counsel for the respondent is that SEBI Act and the regulations framed thereunder are intended for the benefit and protection of general investors so that they shall remain informed of all the material facts about a listed Company and should be able to take an informed decision while dealing with the securities. In that respect he relied on the ratio of SEBI vs. Ajay V. Agarwal decided on 25th February, 2010 wherein in the Hon'ble Supreme Court, while dealing with the provisions of SEBI Act in para 41 observed as under.

41. It is a well-known canon of construction that when Court is called upon

to interpret provisions of a social welfare legislation the

paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which

frustrates it.â??

32. Mr. De Vitre, learned senior counsel for the respondent also relied on the amended Regulations 28 and 31 of the SAST Regulations in the year

2019 submitting that those amendments were only in the nature of explanation whereby the definition of encumbrance was further clarified which

would encompass all the transactions putting restrictions to the free and marketable title to the shares held by the promoters.

33. Upon extensively hearing the parties in our view Appeal no.218 of 2020 deserves to be dismissed for the following reasons.

Reasons

34. Having heard both the sides and having taken into consideration the definition of encumbrance as found in the SAST Regulations, 2011 i.e. before

amendment we find that the definition is inclusive one if the construction of the definition is taken into consideration. It begins with â??encumbrance

shall includeâ? and thereafter two kinds of encumbrances like pledge, lien are listed and again general words â??or any such transactions by

whatever names calledâ? are used to define the term encumbrance. Therefore, the rule of ejusdem generis which is applied when particular genus

precedes the general words, would not be applicable in the present case.

35. In addition to the conditions as highlighted by Mr. De Vitre, learned counsel for the respondent during his submissions as detailed supra, some of

the terms and conditions of the trust deed executed by appellant no. 1 provided that (a) the appellants were required to maintain a specified ratio of the

shares of the Yes Bank, (b) day to day monitoring of maintenance was to be carried by the debenture trustee, (c) in the event of default in maintaining

the ratio the debenture trustees were declared to be attorney of the promoter company as regards all the affairs and assets of the Company which

would naturally include the shares of Yes Bank . All these recitals in the trust deed would clearly show that a transaction akin to a floating lien was

created by the appellant.

The trust deed executed by the appellant no. 2 of maintaining a borrowing cap as detailed supra is also of similar nature.

36. After taking into consideration the object of the SEBI Act and the subordinate legislations thereunder that the interest of the investing public should

be protected, investors should be informed about the fundamentals of the Company so that they would be able to take an informed decision, in our

view a liberal construction of the definition of encumbrance is required to be made in view of the ratio of SEBI vs. Ajay Agarwal cited supra.

37. As regards the quantum of penalty imposed upon the appellants, Mr.Somashekhar, learned counsel for the appellants pointed that before the

impugned order could be passed the appellants have closed both the transactions. On the other hand, Mr. De Vitre, learned senior counsel for the

respondent submitted that the record would show that both the appellants had applied for settlement earlier at a cost. But the same could not be

processed due to expiry of the statutory period. He further submits that taking into consideration the fact that the investing public remained ignorant of

these transactions appropriate penalty was imposed. He further submitted that taking into consideration the totality of circumstances including closure

of the transactions the learned AO had imposed half of the maximum penalty on the appellants.

38. Upon hearing both the sides, in our view the learned AO has taken into consideration the facts of closure of the transactions and, therefore,

already considered the aspect of proportionality hence no interference in the quantum of penalty is also warranted .

Appeal No. 461 of 2020

39. The present appeal relates to the act of appellant Mr.Rana Kapoor the then Managing Director and Chief Executive Officer of Yes Bank

furnishing personal guarantee to the transaction of appellant no.2 Morgan Credit Pvt. Ltd. (hereinafter called as Morgan) in Appeal no.218 of 2020.

As already noted the appellant Morgan had issued the NCDs aggregating up to Rs.95,00,00,000 in May, 2018. A debenture trust deed dated 17th May,

2018 as noted earlier was executed. Thereafter on November 14, 2018 an amended and reinstated debenture trust deed was again executed. To this

trust deed the present appellant stood as a guarantor to the said transactions to the extent of Rs.41,00,00,000 as a guarantee cap. It was also agreed

vide this amended trust deed that if required, as per the provisions of the said deed such number of guarantor's YES bank shares as a security for

the outstanding amount in value equal to 2.0x of the guarantee cap. In view of these facts the respondent SEBI alleged that appellant had though

entered into the said transactions admittedly did not disclose the said transaction to the Yes Bank.

As per the provisions of Regulation 4(2)(f)(i)(1) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements)

Regulations, 2015 a key managerial person has a responsibility to disclose to the Board of Directors whether he is directly, indirectly or on behalf of

the parties has a material interest in any transaction or matter directly affecting the listed entities.

40. The appellant inter alia submitted that the allotment of NCDs was not an encumbrance. Further, the raising of loan by virtue of these NCDs was a

transaction involving a promoter entity of Yes Bank or an independently owned and professionally managed family office and had nothing to do with

the Company. It was therefore submitted that such transactions cannot be said to be directly affecting the Company and therefore was not required to

be disclosed to the Company.

41. The next of the defence of the appellant before the learned AO as well as before this Tribunal was that respondent SEBI had invoked general

principles contained in LODR Regulations to arbitrarily allege a violation thereof. The provision in question is merely a statement of principle without

providing for any penal consequences and as such the show cause notices was defective.

42. The learned AO however did not agree with the submissions. Taking into consideration the fact that appellant no.2 was owned by the wife and

daughters of present appellant Mr.Rana Kapoor, finding that the transactions between appellant no.2 Morgan in appeal no.218 of 2020 of issuing

NCDs was in the nature of encumbrance and further, noting that the present appellant who was the then MD and CEO of Yes Bank as well as from

promoter family, it was held that the transactions in question was material transaction affecting Yes Bank and therefore liable to be disclosed as per

Regulation 4(2)(f)(i)(2) of LODR Regulations. Therefore invoking the power vested in SEBI under Section 15HB of the SEBI Act a penalty of Rs.1

crore was imposed. Hence the present appeal.

43. Heard Mr.Somasekhar Sundaresan, Advocate assisted by Mr. Tomu Francis,

Mr. Abhishek Venkataraman, Ms. Yugandhara Khanwilkar and Mr.

Arka Saha, Advocates for the appellant and Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh,

Advocates for the Respondent. Mr. Somashekar, the learned counsel for the appellant submits that the original transaction of raising unsecured NCDs

was itself not an encumbrance within the definition of the SAST Regulations as detailed supra. Alternatively, he submitted that promoter of Yes Bank

i.e. appellant no.2 in appeal no.218 of 2020 raised money through the issue of those NCDs for their own purposes to which appellant Mr. Rana

Kapoor stood guarantor. All these transactions had nothing to do with the listed entity namely Yes Bank. He submitted that if the logic applied by the

learned AO is accepted then even a transaction of remaining guarantor to the promoter by the key managerial person of the listed Company for

securing house loan, car loan etc. would also be required to be disclosed by the key Managerial personnel.

He further submitted that Regulation 4(2)(f)(i)(1) is merely in the nature of restating the principles of transparency in conducting the transactions

related to the listed Company. There is no charging provision which could be said to be the consequence of violation of the said provision.

On the other hand, Mr. De Vitre, learned senior counsel for the respondent contended that admittedly appellant no.2 Morgan is promoter of Yes

Bank. The said promoter admittedly consists of wife and daughters of appellant who was the then Managing Director and CEO of the Yes Bank. As

such he was also part of the promoter group of the Yes Bank. He being from a promoter family, the transaction affecting the listed Company i.e. Yes

Bank was required to be disclosed by him to the Company being its key managerial person.

44. The relevant provisions of Regulation 4(2) are as under:-

Principles governing disclosures and obligations.

4.(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter

IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(a) |

(b) |

(c)??|??|??|

(d)??|??|??|

(e)??|??|??|

(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly,

or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to

stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.??

45. It is correct to say that no specific provision is incorporated in LODR Regulations providing for penalty etc. for violation of the above specific

provisions. Chapter 2 of LODR Regulations in which we find the present regulations is regarding the principles governing disclosure and obligation of listed entities.

46. From the material available on record it is crystal clear that the appellant is a member of promoter family. We already found that the promoters

had caused an encumbrance on the shares of Yes Bank held by them by as detailed supra. The present appellant who is the member of the nuclear

family of the promoters stood guarantor to the said transaction. He was a key managerial personnel i.e. Managing Director as well as CEO of Yes

Bank. These transactions in question certainly are in the nature of directly affecting the listed entity that is Yes Bank. Therefore, in order to foster a

culture of good decision making as underlined in 4(2)(f)(i)(2) it was incumbent upon the appellant to disclose the said transaction to the listed

Company- Board of Directors of Yes Bank.

47. The next issue is of consequences on failure of the said responsibility of disclosure. Mr. De Vitre, the learned senior counsel for the respondent

submits that Mr. Somshekhar argued of absence of charging provision which term is related to the provisions of tax related statutes. In the present

case we have provisions of Section 15HB of the SEBI Act which provides that in case of failure to comply with the provisions of SEBI Act or the

Rules or the Regulations framed there under, in case no specific penalty is provided there under, the penalty which shall not be less than Rs. 1 lakh but

which may extend to Rs.1 crore can be imposed.

48. Provisions of Section 15 HB are as under:

â??Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board

thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but

which may extend to one crore rupees.â??

49. Mr. De Vitre, learned senior counsel for the respondent further submitted that the reading of the provisions of Regulation 4(2)(f) would further

show that Board of Directors or key managerial persons are mandatorily required to disclose these transactions as the term â??shallâ?? is incorporated

in the provision. He therefore submits that the appellant being the Managing Director was mandated to disclose such type of transactions and the

appellants having failed in complying with the said provision would necessarily be liable for the penalty as provided by Section 15HB of the SEBI Act.

50. Having heard the learned counsels on both the sides, in our view, Regulation 4(2)(f) clearly mandates that the transactions of the nature detailed

therein are required to be disclosed by the key managerial persons to the Company. Upon failure of the same, in absence of a specific penal provision

for such specific failure, the umbrella provision of Section 15HB of the SEBI Act takes care of the same. Therefore, the submissions of Mr.

Somashekar in this regard cannot be accepted.

As regards the quantum of penalty, learned AO found the default to be of a serious nature principally because the appellant was the then Managing

Director and CEO of the Company and therefore maximum penalty of Rs.1 crore was imposed.

51. In the facts and circumstances of the case as highlighted by the learned AO we do not find any mitigating factor to interfere in the quantum of the

penalty. The appeal therefore fails. In the result, the following order.

Appeal no.461 of 2020 and appeal no.218 of 2020 are hereby dismissed without any order as to costs.

52. 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.