

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 103 of 2012

Date of Decision : 25.06.2012

1. Onelife Capital Advisors Limited
96-98, Mint Road,
Mumbai, Maharashtra.
2. Mr. Thiruvaidaimarudur Krishna
Prabhakar Naig
96-98, Mint Road,
Mumbai, Maharashtra.
3. Mr. Pandoo Naig
96-98, Mint Road,
Mumbai, Maharashtra.
4. Mr. A.P. Shukla
96-98, Mint Road,
Mumbai, Maharashtra.
5. Mr. Dhananjay Parikh
96-98, Mint Road,
Mumbai, Maharashtra.
6. Mr. T.S. Raghavan
96-98, Mint Road,
Mumbai, Maharashtra.

...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. P.N. Modi, Advocate with Mr. Ranjit Bhosale, Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh, Advocates for the Respondent.

CORAM : P.K. Malhotra, Member & Presiding Officer (*Offg.*)
S.S.N. Moorthy, Member

Per : P.K. Malhotra (Oral)

The appellants have preferred this appeal against the order dated February 15, 2012 read with order dated December 28, 2011 passed by the whole time member of

the Securities and Exchange Board of India (for short ‘the Board’) issuing certain directions against the appellants under Sections 11, 11A and 11B of the Securities and Exchange Board of India Act, 1992 (the Act).

2. Onelife Capital Advisors Ltd. Appellant no. 1 in this appeal is a company registered under the Companies Act, 1956. The Appellants no. 2 to 6 are the directors of the company. The appellant company is a merchant banker and a stock broker registered with the Board. The shares of the company are listed on the Bombay Stock Exchange and National Stock Exchange. The company came out with a public issue in September/October, 2011. The Board conducted an investigation in respect of the public issue and subsequent trading of the shares of the company and prima facie came to the conclusion that the company had failed to disclose to the public, by way of advertisement, the developments that have taken place during the period between the date of registration of red herring prospectus and date of allotment of shares. It also came to the prima-facie conclusion that the proceeds of the public issue were utilized for the objects other than the objects mentioned in the red herring prospectus and thereby the appellants violated provisions of regulation 60(4) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (for short the Regulations) and Section 60B of the Companies Act, 1956. Certain other violations of the regulations issued by the Board were also noticed on the part of the company, its promoters/directors and other entities. Therefore, the Board passed an ex-parte ad-interim order dated December 28, 2011 under Sections 11, 11A and 11B of the Act issuing the following directions:

- “14.3 Onelife Capital Advisors Ltd (OCAL-PAN No. AAACO9540L) is directed that it shall not issue any equity shares or any other instrument convertible into equity shares, in any manner, or shall not alter its capital structure in any manner, till further directions in this regard.
- 14.4 Onelife Capital Advisors Ltd (OCAL PAN No. AAACO9540L) is directed not to undertake any fresh business in its capacity as Merchant Banker, Portfolio Manager, Stock Broker and Trading Member till further directions in this regard.
- 14.5 Onelife Capital Advisors Ltd (OCAL PAN No. AAACO9540L) is further also directed not to buy, sell or

deal in securities directly or indirectly, till further directions in this regard.

- 14.6 The directions of the OCA viz, MR. T.K.P. NAIG (PAN No. ABIPN2653D), MR. PANDOO NAIG (PAN No. ACNPN2800J), MR. A.P. SHUKLA (PAN No. AECPS3296Q), MR. TUSHAR SHIRDHARANI (PAN No. AAIPS0065M), MR. DHANANJAY PARIKH (PAN No. ACTPP2402L), MR. T.S. RAGHAVAN (PAN No. AAFPR1521A) are hereby directed not to buy, sell or deal in securities directly or indirectly, till further directions in this regard.
- 14.7 OCA is further directed to call back funds (IPO proceeds and short term loan taken from Prudential group) transferred to Fincare Financial and Consultancy Services Pvt Ltd. (PAN No. AAACF6005D) and Precise Consulting & Engineering Pvt Ltd. (PAN No. AAACP8434E). These amounts together with all of the IPO proceeds that are still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds, shall be deposited in an interest bearing escrow account with a scheduled commercial bank, till further orders. A confirmation on compliance of this direction shall be sent by the promoters of OCA to the stock exchanges where it is listed, within 7 days from the date of this order.
- 14.8 Fincare Financial and Consultancy Services Pvt Ltd. (PAN No. AAACF6005D) and Precise Consulting & Engineering Pvt Ltd. (PAN No. AAACP8434E) are hereby directed not to buy, sell or deal in securities directly or indirectly, till further directions in this regard.
- 14.9 BRLM to the issue viz. Atherstone Capital Markets Ltd (ACML) (SEBI Registration No: INM 000011245), Shri Gurunath Mudlapur (Managing Director of ACML) and Shri Ranjan Agarwal (compliance officer of ACML) are hereby are prohibited from taking up any new assignment as Merchant Banker or involvement in any new issue of capital including IPO, follow-on issue etc. from the securities market in any manner whatsoever, from the date of this order till further directions.
- 14.10 The above order is without prejudice to any other action that may be initiated against the above entities for the said violations.
- 14.11 The stock exchanges are advised to enable squaring off, at the earliest, existing open positions in the Futures and Options Segment, if any, for the persons / entities mentioned above at paras. Further, the concerned stock exchanges should also ensure that said persons / entities do not take fresh positions or increase their open positions in any manner.
- 14.12 All stock exchanges and depositories are directed to ensure that all the above directions are strictly enforced within the powers available to them.
- 14.13 Further the entities/persons against whom this direction is issued may file their objection, if any, to this order within 21 days from the date of this order and, if they so desire,

avail themselves of an opportunity of personal hearing at the Securities and Exchange Board of India, SEBI Bhavan, G-Block, Plot No. C-4-A, Bandra Kurla Complex, Bandra East, Mumbai 400 051 on a date and at a time to be fixed on a specific request to be received in this behalf from the entities/persons within 21 days from the date of this order.”

Aggrieved by the aforesaid order the appellants preferred an appeal before this Tribunal (Appeal no. 17 of 2012) alleging that there were inherent contradictions in the order passed by the Board and it was prayed that the impugned order may be set aside. After hearing counsel for the parties, the said appeal was disposed of by this Tribunal on January 20, 2012. The relevant part of the said order reads as under:

“This order will dispose of two Appeals no. 17 and 18 of 2012 which arise out of a common order passed by the Securities and Exchange Board of India (for short the Board). Appellant no.1 in Appeal no. 17 of 2012 is a company registered under the Companies Act, 1956. Appellants no. 2 to 6 in Appeal no. 17 of 2012 and the appellant in Appeal no. 18 of 2012 are directors of the company. The appellant-company is a merchant banker and a stock broker registered with the Board. The shares of the company are listed on the Bombay Stock Exchange and National Stock Exchange. The company came out with a public issue in September/October, 2011. The Board conducted investigations in respect of the public issue and subsequent trading of the shares of the company and prima facie came to the conclusion that the company had failed to disclose to the public by way of advertisement the developments that have taken place during the period between the date of registration of red herring prospectus and date of allotment of shares thereby violating the provisions of regulation 60(4) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (for short the Regulations) and Section 60B of the Companies Act, 1956. Certain other violations of the regulations issued by the Board were also noticed on the part of the company, its promoters/directors and other entities. Therefore, the Board passed an ex-parte ad-interim order dated December 28, 2011 under Sections 11, 11A and 11B of Securities and Exchange Board of India Act, 1992 restraining the company, inter alia, from issuing any equity shares or any other instrument convertible into equity shares in any manner and also restraining it from altering its capital structure in any manner till further directions in this regard. The ex-parte ad-interim order is also a show cause notice giving an opportunity to the appellants to file their objections, if any, within 21 days from the date of the order.

2. The grievance of the appellants is that there are inherent contradictions in the impugned order passed by the Board. To illustrate, it is stated that in paragraph 14.4 of the impugned order, the company is restrained from undertaking any fresh business in its capacity as merchant banker, portfolio manager, stock broker and trading member till further directions in this regard. However, in paragraph 14.5, it has been directed not to buy, sell or deal in securities directly or indirectly till further directions in this regard.

According to the appellants, the direction contained in paragraph 14.5 of the impugned order restrains it from carrying on even its existing business which does not appear to be the intention of the Board in the impugned order.

3. We have heard the learned counsel for the parties for sometime. The appellants have not yet filed any reply to the show cause notice. During the course of hearing, it was admitted that there may be contradictions in the order that need to be clarified, but the purpose can be achieved by making a proper representation before the whole time member who has passed the impugned order.

4. Keeping in view the facts and circumstances of this case, we are not inclined to intervene in the matter at this stage. Since the appellants have not yet filed any reply to the show cause notice, the purpose can well be served by treating these appeals as reply to the show cause notice which should be considered by the Board as expeditiously as possible. In so far as contradictions pointed out by the appellants in the appeal, more particularly with regard to paragraphs 14.4, 14.5 and 14.7 of the impugned order are concerned, the Board shall pass an order within a period of 15 days from today. Before passing the order, in case, the Board wants any further information, the appellants should furnish the same. We make it clear that we are not expressing any view on the merits of the case.

In the result, appeals stand disposed of as above with no order as to costs.”

In compliance with the aforesaid order, the whole time member of the Board reconsidered the matter and passed the impugned order. The grievance of the appellant is that while passing the impugned order which is an order clarifying the earlier order dated February 15, 2012, the Board has not modified or withdrawn the direction as contained in paragraph 14.7 of the said ex-parte ad-interim order and the appellant has been once again directed to comply with the same. According to the appellant the directions contained in paragraph 14.7 of the ex-parte ad-interim order are completely untenable, unsustainable and liable to be set aside inter alia on the ground that such a direction cannot be given while passing an interim order. It is further submitted by the learned counsel for the appellant that the whole time member, while passing the impugned order, has not even looked at the merits or veracity of the submissions made by the appellant and the documentary evidence produced and relied upon by the appellant. Learned counsel for the appellant, therefore, prays for setting aside the ex-parte ad-interim order dated December 28, 2011 and the impugned order dated February 15, 2012. Pending final disposal of the appeal, it is further prayed that the operation of the two orders in question be stayed

qua the appellant or in the alternative stay the operation and implementation of the direction contained in paragraph 14.7 of the ex-parte ad-interim order dated December 28, 2011.

3. Learned counsel for the respondent Board supported the orders passed by the whole time member of the Board and stated that the matter is still at the investigation stage and does not call for any interference. He also supported the interim order passed by the whole time member and submitted that the order has been passed in the interest of the investors to ensure that the money collected through the IPO proceeds is not utilized for the purposes other than those stated in the red herring prospectus. Therefore, he submitted that the directions issued to the appellant in paragraph 14.7 of the order dated December 28, 2011 are justified.

4. After hearing learned counsel for the parties and perusing the record and having considered the fact that the matter is still under investigation involving a large number of parties, it may not be appropriate for us to intervene in the matter at this stage on merits. The appellants have already filed reply which is yet to be examined by the Board. In so far as directions issued to the appellant by the ex-parte ad-interim order dated December 28, 2011 are concerned, we find that by the impugned order dated February 15, 2012, the Board has already clarified the directions as contained in paragraph 14.5 stating that the appellants can deal in shares for the purpose of fulfilling their existing obligations of underwriting for minimum subscription as per requirements under the relevant regulations and do such other incidental acts in respect of those issues. However, the whole time member has not considered it necessary to modify the direction contained in paragraph 14.7 of the ex-parte ad-interim order. The said direction is reproduced again for ease of reference:

“14.7 OCAL is further directed to call back funds (IPO proceeds and short term loan taken from Prudential group) transferred to Fincare Financial and Consultancy Services Pvt Ltd. (PAN No. AAACF6005D) and Precise Consulting & Engineering Pvt Ltd. (PAN No. AAECF8434E). These amounts together with all of the IPO proceeds that are still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds, shall be deposited in an interest bearing escrow

account with a scheduled commercial bank, till further orders. A confirmation on compliance of this direction shall be sent by the promoters of OCAL to the stock exchanges where it is listed, within 7 days from the date of this order.”

5. The impugned order has been passed in exercise of the powers under Sections 11, 11A and 11B of the Act. It has been observed by this Tribunal in a catena of cases that when the Board finds that any person associated with the securities market has committed such serious wrongs he should be kept out of the market to prevent him from committing that wrong again and to preserve its integrity. The Board can also issue such directions to any person associated with the securities market as it may think proper either for protecting the interest of investors or for regulating the securities market. The directions that are issued under the Act are necessarily preventive or regulatory in nature. However, by directing the appellant, at the stage of interim order, to call back funds transferred to Finecare Financial and Consultancy Services Pvt Ltd. and Precise Consulting & Engineering Pvt Ltd., what the Board is purporting to do is directing the appellant to undo something when the matter is still at the investigating stage. The case of the appellant is that the payments to these two companies have made in respect of the services rendered by them. While the Board may be fully justified in giving such a direction at the time of passing a final order if the appellant is found guilty, we do not find any justification in giving such a direction to the appellant at the stage of passing ex-parte ad-interim order. In paragraph 14.8 of the ex-parte ad-interim order dated December 28, 2011, the Board has also issued a direction to the above noted two companies not to buy, sell or deal in securities directly or indirectly till further direction in this regard. If the Board was really concerned about freezing the funds which have been paid by the appellant, the direction could have been issued to these two companies. The Board could have also considered issuing directions to these companies not to deal with the funds received from the appellant. In our considered view, the appellant cannot be asked, by way of an ex-parte ad-interim order, to call back the funds which have already been paid to the above noted two companies for the services rendered by them. In the facts and circumstances of the present case, we are inclined to modify the direction contained in paragraph 14.7 to the extent it directs the appellant to call back funds transferred to

Finecare Financial and Consultancy Services Pvt Ltd and Precise Consulting & Engineering Pvt Ltd. and we hereby do so. Except for the said modification we are not inclined to intervene in the matter at this stage. However, keeping in view the fact that six months have already passed since passing of the ex-parte ad-interim order and the appellants have also furnished their reply, the Board is directed to complete the investigations as expeditiously as possible and, in any case, before October 31, 2012.

The appeal stands disposed of as above with no order as to costs.

Sd/-
P.K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S.S.N. Moorthy
Member

25.06.2012

Prepared and compared by:
msb