

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 17.2.2021
Date of Decision: 6.4.2021

Appeal No.224 of 2020

1. Gautam Thapar
2. Avantha Holdings Ltd.
3. Solaris Industrial & Chemicals Ltd.
First India Place, Tower C,
Mehrauli, Gurgaon Road,
Gurgaon-122022.

...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Mumbai-400051.
2. CG Power & Industrial Solutions Ltd.
6th Floor, C.G.House,
Dr. Annie Besant Road,
Worli, Mumbai – 400030.

...Respondent

Mr. Janak Dwarkadas, Senior Counsel with Mr. Somasekhar Sundaresan, Mr. Marezbán P. Bharucha, Ms. Sneha Jaisingh, Mr. Mehul Jain, and Ms. Jaidhara Shah, Advocates i/b. Bharucha and Partners for the Appellants.

Mr. Fredun De Vitre, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Zal Andhyarujina, Advocate with Ms. Ishani Khanwilkar, Mr. Narendra Dingankar, Mr. Sohil Shah and Vedika Shah, Advocates i/b. Pioneer Legal for the Respondent No.2.

**With
Misc. Application No.222 of 2020
And
Appeal No.231 of 2020**

B. Hariharan
First India Place, Tower C,
Mehrauli Road,
Gurgaon – 122022. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400051. ...Respondent

Mr. Pradeep Sancheti, Senior Advocate with Mr. Amit Agrawal, Mr. Sumit Agrawal, Ms. Radhika Yadav, Mr. Kushagra Agarwal, Ms. G S Sreenidhi and Mr. Mohit Das, Advocates i/b. Regstreet Law Advisors for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Zal Andhyarujina, Advocate with Ms. Ishani Khanwilkar, Mr. Narendra Dingankar, Mr. Sohil Shah and Ms. Vedika Shah, Advocates i/b. Pioneer Legal for the Respondent Nos. 2.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice M.T. Joshi, Judicial Member

1. Aggrieved by the confirmatory order dated 11th March, 2020 of the learned Whole Time Member ('WTM' for short) of respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), the original noticee no.2 Mr. Gautam Thapar, noticee no.6 Avantha Holdings Ltd. and noticee no.8 Solaris Industrial & Chemicals Ltd. (hereinafter referred to as 'Solaris') as appellant nos.1, 2 and 3 respectively filed appeal no.224 of 2020 while noticee no.5 Mr. B. Hariharan filed appeal no.231 of 2020. The directions in the impugned order are in the nature of confirming the exparte interim order dated 17th September 2019 (as reproduced in paragraph no 4 below) with modification of permitting all the noticees to liquidate 25% of the securities held by them and allow the appellant no 2 Avantha holding to make certain necessary payments as detailed therein. We are

informed that the process of issuing show cause notices for passing final order in the matter is already undertaken by the Respondent SEBI and forensic auditor's report (as directed vide interim order) has reached the Respondent after passing of the impugned order.

2. Appellant no.1 Gautam Thapar who was the then Executive Chairman - promoter director of noticee no.1 CG Power and Industrial Solutions Ltd. (hereinafter referred to as 'the Company'). Appellant no.2. Avanta Holdings Ltd., is an unlisted holding Company of Avanta group of companies. Till 8th March, 2019 it held 34.42% of equity shares of the Company CG Power. These shares were pledged by the appellant no.2. However, the same were transferred to the security trustee on behalf of the lenders on 6th May, 2019. In the result, since then the Company is 99.99% public shareholding Company.

Appellant no.3 Solaris is an unlisted company and part of Avantha group. Appellant Mr. B,H Hariharan in appeal no.231 of 2020 was the director of the Company. According to him he was non-executive director from July 2012 till March 2019.

3. On 20th August 2019 the Company made a corporate announcement filed with BSE and NSE. It disclosed that there was a board meeting of the Company on 19th August, 2019. It was announced that the operation committee of the Company was made aware of some unauthorized transactions by certain personnel of the Company. The operations committee had appointed one independent M/s. Vaish Advocates Associates to investigate and the total liabilities of the Company were found to be understated. Further, advances to related and unrelated parties of the Company and the group were also understated in the accounts.

4. On the basis of this material the officials of the respondent SEBI had meetings with the officials of the

Company. It took information from them. It also gathered that appellant no.1 Gautham Thapar was removed. The Company has also produced a preliminary investigation report prepared by M/s. Vaish Associates aided by Deloitte India an audit entity. The then Chief Financial Officer Mr. V.R. Venkatesh one of the noticee was already removed by the Company for the said alleged misconduct. The respondent SEBI issued notices to 8 noticees including the present appellants, took into consideration the preliminary examination report of Vaish-Delloitte, information received by the Company and passed ex-parte interim order on 17th September, 2019 thereby issuing the following directions.

- i) *“Noticees no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders.*

- ii) *Notices no. 2–5 are restrained from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders.*
- iii) *The concerned stock exchanges are permitted to allow the aforementioned persons/entities at paragraph 6.1(i) to square off their existing open positions in the Futures and Options segment, if any, immediately. The aforementioned persons/entities shall not be allowed to take fresh positions or increase their open positions or execute trades. Further, the concerned stock exchanges shall ensure that no fresh positions are created for the aforementioned persons/entities.*
- iv) *Notices no. 6–8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG Power and Industrial Solutions Limited, as per Table X at paragraph 4.4. B. To the extent of their liability, the aforesaid Notices are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders.*
- v) *Noticee no. 1 i.e. CG Power and Industrial Solutions Limited, is directed to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Notices/entities mentioned at paragraph 5.5 A. along with due interest expeditiously*

and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.

- vi) BSE shall appoint an independent Auditor/Audit Firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015– 16 onwards till date. The expenses for the aforementioned forensic audit shall be borne by the Company. The independent Auditor/Audit Firm so appointed shall verify inter alia the following – a. Manipulation of Books of Accounts; b. Misrepresentation including of financials and/or business operations; c. Wrongful diversion/siphoning of company funds; d. Any other related matter.*
- vii) Noticees no. 1–8 shall extend necessary co-operation to the independent Auditor/Audit Firms appointed as per this Order and shall furnish all information/documents sought from them from time to time.*
- viii) The independent Auditor/Audit Firm so appointed as per this Order shall submit a Report to SEBI within six months from the date of this Order.”*

5. Aggrieved by the said directions the appellants filed appeal in this Tribunal including some other noticees like Mr. V.R. Venkatesh, Mr. Madav Acharya

etc. bearing appeal no 413 Of 2019. The same was dismissed by this Tribunal on October1, 2019.

This Tribunal held that the preliminary investigation report prima facie shows that there was serious misstatement of accounts and diversion of funds from the Company to the related, unrelated group and its subsidiaries in which the appellant and other noticees were involved. The appeal was, therefore, dismissed with a direction to the respondent SEBI to expedite the hearing in the following terms.

- a) *“The appellants shall file a reply before the WTM of SEBI on or before October 15, 2019. In the event the appellants want further time then appropriate application will be filed before the WTM of SEBI which will be considered and appropriate orders would be passed.*
- b) *In the event any document is required by the appellants either from Company or from SEBI a formal request to that effect shall be made by the appellants which document(s) shall be supplied in accordance with law within three working days.*
- c) *Upon receipt of the reply, SEBI will grant an opportunity of hearing to the appellants and after considering their submissions pass a confirmatory order within a period of four weeks from the date when the hearing is concluded.”*

6. Thereafter number of correspondences took place between the appellant and respondent SEBI for providing documents. SEBI also directed the appellants and other noticees to seek some documents from the Company. The table of the correspondence alongwith the list of documents would show that the Company though supplied number of documents did not supply some documents on the ground that those were not available.

7. In the meantime, the respondent SEBI filed an application before this Tribunal for extension of time and, accordingly time was granted to the respondent SEBI to pass the confirmatory order. Accordingly, the present confirmatory impugned order dated 11th March, 2020 was passed. The forensic audit report as directed by the earlier order of SEBI however reached the SEBI after a week later on. Resultantly, the present impugned order is based on the information collected by SEBI from the Company, the preliminary investigation report of M/s. Vaish Advocate Associates

aided by Deloitte India and the submissions of the appellants and other noticees.

Heard Mr. Janak Dwarkadas, Senior Counsel with Mr. Somasekhar Sundaresan, Mr. Marezban P. Bharucha, Ms. Sneha Jaisingh, Mr. Mehul Jain, and Ms. Jaidhara Shah, Advocates i/b. Bharucha and Partners for the Appellants in Appeal no. 224 Of 2020.

Heard Mr. Fredun De Vitre, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Amit Agrawal, Mr. Sumit Agrawal, Ms. Radhika Yadav, Mr. Kushagra Agarwal, Ms. G S Sreenidhi and Mr. Mohit Das, Advocates i/b. Regstreet Law Advisors for the Appellant in Appeal no. 231 Of 2010

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Zal Andhyarujina, Advocate with Ms. Ishani Khanwilkar, Mr. Narendra Dingankar, Mr. Sohil Shah and Vedika Shah, Advocates i/b. Pioneer Legal for the Respondent No.2 in both the appeals

8. The main thrust of argument of the learned senior counsels for the appellants is that the necessary documents were not supplied of which details are given in the impugned order itself. Further while the

order is based on the preliminary investigation report, the forensic audit report which is now made available would show that the preliminary investigation report is defective. The directions issued in the impugned order like direction to take legal action etc. are beyond the jurisdiction of the respondent SEBI. Therefore, arguing at length on the basis of finding in the forensic report it is submitted that respondent SEBI ought to have waited for the forensic report or ought to have persuaded for reaching the report earlier and then pass the necessary order which according to them would have entailed into withdrawing the ex-parte interim order itself. It was submitted that some of the disputed transaction which had already taken place were not only within the knowledge of the Board of directors of the Company, but even sanction for such transaction in future upto a limit of Rs. 1000 Crores was approved by the Board vide resolution dated 30th August 2016. The appellant also sought support of certain comments made by National Company Law Tribunal (hereinafter

referred to as 'NCLT') in the proceedings where the Ministry of Corporate Affairs has sought reopening of the accounts of the Company for last 5 financial years under Section 130 of the Companies Act, 2013. The NCLT had at some places commented that there is a corporate war in the Company.

9. On the other hand, the learned senior counsel for the respondent SEBI submitted that now the forensic report has reached the SEBI, hence the final order would be passed shortly upon issuing fresh notice to the appellants and other noticees. Though as regards some of the transactions the learned WTM had observed that the forensic audit report would throw better light on those transactions, as regards some of the transactions, the learned WTM based his finding on the basis of the material before him. It was further submitted that the interpretation of the findings in the forensic audit report made by the appellant is wrong and, those need not be considered at this stage by the Tribunal as those would be considered by the WTM at

the time of final order by the respondent SEBI as the report is submitted after the passing of the impugned order.

10. Upon hearing both the sides, in our view, the appeals are liable to be dismissed for the following reasons.

11. Nine specified transactions entered into concerning the Company are at the heart of the impugned order which can be enumerated as under :-

Sale of Nahik Properties to Blue Garden Estate Pvt. Ltd. ('Blue Garden' for short)

12. The Company had acquired on lease for a term of 95 years an industrial plot from Maharashtra Industrial Development Corporation (MIDC). There was a covenant that the plot cannot be assigned without the consent of MIDC to a third party. In 2016, one of the noticee Mr. Madhav Achariya on behalf of the Company executed an assignment agreement in favour of Blue Garden for a consideration of Rs.264 crores.

Blue Garden took a loan of Rs.200 crores from Aditya Birla Finance Ltd. It was guaranteed by Avanta Holding - appellant no.2, which was then the holding company of the Company. This guarantee was executed by appellant no 2 on behalf of the Company itself. The amount was immediately paid to the Company CG Power as an advance with a stipulation that the Company would have to pay an interest of 15% on such advance. The Company, however, advanced the said amount to appellant no.2 Avanta Holdings and one Acton Global P. Ltd. another noticee without any interest. Appellant no.1 Mr. Gautam Thapar was holding 87% shares in appellant no.2 Avanta Holdings. In fact, the shareholders involved in transaction on behalf of Blue Garden to transaction were two employees of the Company CG Power. Acton Global P. Ltd was one of the holding company of Blue Garden and it's shareholders-directors were also the employees of the Company CG Power. List of the employees and the directors including the

present appellant Mr. Gautam Thapar is given in the impugned order which were involved in the transactions.

13. The respondent SEBI took into consideration the submissions of the appellant and other noticees in this regard that the Company and its officials were aware of the transactions that the Blue Garden and Acton were related parties and not the connected parties. WTM noted that the transaction did not find place in The Company's financial statement. Ultimately, upon taking into consideration the documents on record the learned WTM found that the transaction was unauthorized, without any board approval and further Acton was neither a CG Group Company nor a related party to whom the resolution which was passed by the Company for giving finance to certain extent on which the appellant had placed reliance, could be applied.

Transcation relating to the sale of Kanjurmarg Property

In a similar fashion a transaction is alleged to have occurred in the year 2017 regarding the Company's property at Kanjurmarg, Mumbai. While sale agreement with another entity was in existence, in February 2017 on behalf of the Company MOU was executed in favour of Blue Garden for transfer of the same property for Rs. 489 Crores. The Company Received Rs. 190 Crore as an advance but it immediately advanced an amount of Rs. 192 Crores to Acton. The learned WTM observed that neither there was board approval for the transaction with Blue Garden nor for transfer of amount to Acton.

Transaction of issuing of cheque by the Company in favour of Yes Bank Ltd.

14. It was found by the respondent SEBI that since the year 2015 Yes Bank had sanctioned credit facility to appellant no.2 Avanta Holdings. The Company CG Power had issued a comfort letter for this purpose and

had also issued a cheque for Rs.210 Crores in favour of Yes Bank for the said credit facility of appellant no.2 Avanta Holding. However, the board of the Company was in dark regarding these transactions. Only when a request was made by Yes Bank in April, 2019 for renewal of the same the Company became aware of it.

15. In this transaction, it was alleged that appellant no.1 Gautam Thapar had personally written to Yes Bank that he was the person in-charge for the Company CG Power. Appellant B. Harihanaran had signed the cheque issued by the Company CG Power. The appellants' submission in this regard that the Company was aware of issuing a postdated cheque was considered by the learned WTM. He found that the comfort letter was issued without the approval of the Board of Directors. The learned WTM further observed that the appellant B. Hariharan had issued the said letter of comfort to YES Bank in violation of section 185 of the Companies Act.

Euro 44 million borrowing by CG International Holding Singapore PTE Ltd. from Standar Chartered Bank which was guaranteed by a corporate guarantee by CG Power

16. It appears that on the basis of the resolution of the Company dated 9th November, 2017 it's subsidiary i.e. CG Singapore obtained a term loan of Euro 44 million from Standard Chartered Bank in 2017. The loan was for general corporate purposes including working capital etc. This loan amount however was remitted to an overseas entity Avantha International Assets B.V. which is a private investment entities of appellant Mr. Gautam Thapar. The board of the Company was not aware of the said borrowing or the remittance. Subsequently also the board of CG Power was also not informed about the said deviation. Further, while the said facility was obtained from Standard Chartered Bank at interest, the remittance was made to Avantha International interest free. The learned WTM took into consideration involvement of the personnel who had signed the concerned documents or who were the

beneficiaries of the said transaction. He further took into consideration the submissions that the borrowing was approved by the Company and the transaction was structured by Standard Chartered Bank and that Avantha International was not the ultimate beneficiary of the funds. The learned WTM held that remittance of the amount to Avantha International Assets B.V. was certainly not authorized and that Avantha International B.V. was the beneficiary of the entire transactions. Additionally, the learned WTM observed that the forensic auditor's report might give a better picture of the claim made by the appellant in this regard.

Transaction of 40 million dollars foreign currency term loan to CG Middle East FZE from Indus Ind Bank India .

17. In October, 2017 one of the subsidiary of the Company, namely, C.G. Middle East FZE had obtained a term loan from Indus Ind Bank, India. The entire sum was drawn by and paid to CG International

BV i.e. it's parent company. In turn on the same day it was remitted to CG Power Solutions Ltd. ('PSOL' for short) which was further remitted to Solaris (appellant no.3) which is a Avantha group company . In the earlier ex-parte order respondent SEBI had observed that there was no board resolution in this regard. CG Middle East (one of the noticee Mr. V. R. Venkatesh is it's sole director) is mainly a sales office without any substantial business operation or employees. Credit facility availed at interest was remitted to appellant no.3 Solaris on an interest free basis. The provisions of guarantee given by CG International BV to the Bank was not even reflected in the financial statement of CG IBV. Solaris as noted is the Avantha group company of appellant Gautam Thapar. Appellant B. Hariharan without board authorisation executed the deed of guarantee with Indus Ind Bank.

18. The learned WTM took into consideration the submissions of the appellant and other noticees that the transaction was structured by Indus Ind Bank itself.

That the transaction had general approval of the board of the Company CG Power and the appellant no.3 Solaris was not the ultimate beneficiary but the money have been repaid to Indus Ind Bank by one Jhabua Power.

19. The learned WTM upon considering the submissions found that though the borrowing is covered under the resolution dated 26th May, 2017, the utilization of the amount was not reported to the Board though the same is required to be reported on a quarterly basis to the Board. Further, though the board of the Company did not approve of furnishing guarantee for this facility, one of the noticee Mr. V.R. Venkatesh and the present appellant Hariharan is found to have addressed letter to the Indus Bank that there was a board resolution in this regard without their being any such resolution in existence. The learned WTM also took into consideration the defense that appellant no.3 Solaris was not the ultimate beneficiary but one Jhabuva Power Ltd was the beneficiary. In

this background, the learned WTM observed that the then impending forensic report will help in identifying the full money trail in this transaction.

Outstanding advances to vendors in CG Singapore

20. CG Singapore had made certain advances to one Mirabella Trading Pte. Ltd. (Mirabella) in January, 2013 and under service agreement. This Mirabella is an associate company of the Appellant no. 2- Avantha Holdings. This agreement was for creating new business opportunity for the transformer business of the company, setting up a branch in Indonesia, Malaysia etc. It is alleged that this agreement was executed without any board resolution, by one of the noticees Mr. Madhav Acharya. Mirabella was a related party to CG Singapore. The advances made to Mirabella were interest free.

21. The learned WTM took into consideration the submissions of the appellant and other noticees in this regard including of the present appellant Mr. B. Hariharan. The learned WTM observed that rationale

behind this high value payment and role of appellant Mr. B. Hariharan and another noticee Venakatesh needs to be examined and the forensic audit report would give a better picture on the role of these noticees.

Outstanding Advances to vendors of CG Middle East

22. Advances approximately in 34 million dollars were made as shown in the books of CG Middle East during 2017-18, 2018-19. This advances continued to be outstanding till date. The details of each of the advances are given in the impugned order. It was found that no board resolution was passed by CG Middle East for execution of contract with the service agents. No board approvals were granted in respect of the interest free loan facilities Of 0.62 Euros to one Ballarpur International Holdings BV which is also an associate company of appellant no.2 Avantha Holding. It was the submission of the noticee i.e Mr. Venkatesh that the contract was entered into on the instructions of

the MD & CEO of the Company. The learned WTM in the present order concluded that there was no board approval for entering into this service agreement and the value of the service agreements had been much higher than the underlying customer contract. It was, however, observed that forensic report may throw light on the rationale behind such agreements.

23. Certain write off of the receivables were also noted. The learned WTM observed that a clearer picture would emerge upon receipt of the forensic auditors report in this regard.

Outstanding trade receivables aggregating to Rs.108 crores from identified customers.

24. Tripartite agreement were executed between the Company, certain customers and PSOL-the subsidiary of the Company. It was noted that all the supply of agreements though were executed with different suppliers have identical format in respect of their letter head. Necessary documentation to support the purchase from the identified suppliers were not

made available and even many of the suppliers did not appear to exist at their addresses found in the records of the Company. The formats of the invoices etc were identical. The identified customers did not pay the amount on the due dates. Some of the entities with whom debt servicing agreements were executed did not exist at the address provided by the Company. Therefore all these transactions were suspected to be dubious in the earlier ex-parte order. Further the interest free loan agreement in this regard with PSOL subsidiary of the Company was executed without the authorization of the board of directors. The name of the noticees involved in the transactions was given in the ex-parte order.

25. The learned WTM considered the submissions of the appellant/noticees that there was an omnibus resolution dated 5th August, 2013 in this regard . The learned WTM examined the material. He concluded that the loan to CG group of Companies beyond a

certain limit required the approval, which was not in existence.

26. The learned WTM observed that the transactions might have been carried to increase the liability of PSOL towards the CG Power. However, the forensic audit report may give a better picture on the genuineness of the transactions. As regards a transaction with one of such suppliers, namely, Baba Iron the learned WTM observed that he is not convinced with the genuineness of the transactions. He opined that the forensic auditor's report may give a clear picture of the same.

Rs.229 Crores paid to CG Power Solutions Ltd. (CG Power Solutions)

27. It appears that appellant no.2 Avantha Holding had entered into the agreement with the company CG Power in 2010 under which CG Power was granted right to use Avantha brand name. Thereafter, various amendments to the agreements were made. The last of the royalty payment in this regard was made by the

Company to appellant no.2 on August 31, 2018. Thereafter, a fresh agreement suppressing the earlier agreements was executed between the parties on 13th February, 2019. An amount of Rs.411.20 Crores was monetized as fifty percent of the royalty from 1st October, 2008 in perpetuity. Balance of the annual royalty payment was to be paid on the annual consolidated net operating revenue. It was found that the parties were still in talks to revise those terms pertaining to the consideration payable by the Company to appellant no.2 Avantha Holding. PSOL the subsidiary of the appellant company made advances to appellant no.2 Avantha Holding of Rs.778 Crores by November, 2018. These were not repaid by appellant no.2 to PSOL. The appellant no.2 Avantha Holding issued a letter to the Company CG Power on 20th September, 2018 where under appellant no.2 Avantha Holding proposed vide a letter to make a deposit of Rs.229 crores with the Company CG Power from the dues to PSOL on certain conditions of

keeping the amount in fixed deposit and paying royalty. The details of the payment of royalty amount are accordingly given in the impugned order. Respondent SEBI found that though talks to revise the royalty were in progress still such payment was made. The relevant appellants/noticees submitted that all the transactions were within the knowledge of Managing Director and CEO of the Company. The transaction was also discussed in the board meeting dated 13.11.2018

28. The learned WTM took into consideration the text of the resolution of the board, the emails issued by the concerned in this regard and one of the email of one of the noticee Mr. Venkatesh asking for return of Rs.225 Crores by appellant no.2 Avantha Holdings. The learned WTM found that the conditions stipulated in Avantha Holding's letter was not brought to the notice of the board of the Company. It was observed that one of the noticee Mr. V.R. Venkatesh had misled the M.D.

and CEO towards return of money to appellant no.2
Avantha Holding.

29. Thus in all these transactions the learned WTM found that there were deviations as detailed above and as regards some of the transactions observed that the forensic audit report would throw better light.

30. The learned senior counsel for the appellant submitted that the forensic report now made available would show that the specified transactions were at the behest of the lenders. Those were so structured considering the liquidity crunch of the Company. The Board was aware of these transactions.

On the other hand, the learned senior counsels for the respondents by adverting attention to some portion of the forensic audit report submitted that the interpretation made by the appellants is wrong.

31. We find that at this stage, it would not be appropriate for this Tribunal to consider the forensic audit report in appeal which has come into existence after the passing of the impugned order. The impugned

order is based on the material available on record and therefore will have to be upheld.

32. The learned counsel for the appellant submitted that the order of NCLT passed on the application of Ministry of Corporate Affairs would show that the NCLT has come to the conclusion that there is a corporate war in the Company. We, however, find that corporate war, if any, is irrelevant for the respondent SEBI, or for this Tribunal. It appears that the learned WTM has also underlined the same fact by noting that respondent SEBI may take action, if any, against other entities upon finding of the material in this regard.

33. The learned counsel for the respondent SEBI submitted that due to covid pandemic and other difficulties the process of further investigation, recording of further statement of the concerned person including some personnel of the board of directors was delayed. However, the process is now expedited and soon show cause notice for passing of a final order in the matter could be issued. Taking into consideration

all these facts it would be appropriate that both the sides should put all the material including their views on the findings found in forensic audit report upon which a detailed final order can be passed by the learned WTM.

34. The learned counsel for the appellant submitted that while the impugned order is passed in summary manner, on the other hand the learned WTM directed respondent no.2 - the Company to recover the apparent losses leaving the question to be decided by the civil court. We find that SEBI cannot act as a Recovery Officer for the Company and naturally the losses, if any, will have to be recovered by the Company in accordance with law. Since issue of limitation may arise if the said action is delayed, we do not find any merit in this regard also. This direction was also issued in the exparte interim order which was challenged before this Tribunal and upheld by this this Tribunal.

35. As regards the submissions that the impugned order is passed without supplying the necessary documents, we have gone through the table regarding this issue as found in the impugned order. It would show that while number of documents were supplied to the appellants, the Company as regards some of the documents explained that those documents were not available.

36. The learned WTM had observed that the order is based only on the documents relied and supplied to the appellants. Be that as it may. At this stage we do not find it fit to make any comments on this aspect as the process of passing the final order fully on merit is going on.

37. While disposing of the appeals we hereby deem it fit to record that any observation, made in the present order touching the merits of the case shall not be relied upon by any of the parties and the same shall also not be relied in the final order to be passed by the learned WTM as these observations are made only in

the background of passing of confirmatory order by the learned WTM and the final order on merit is yet to arrive.

38. As regards balancing the equities till the final order is passed, we find that in the impugned order ample provision is made for the appellants moving the learned WTM for relaxation of the restraint to some extent as detailed herein. We are informed that till this date no such application was made by any of the appellants. Be that as it may. As the impugned order takes care of the difficulties, if any, of the respective appellants, we do not find it fit to interfere with the impugned order at this stage.

39. In the result, the following order.

Appeal no.224 and 231 of 2020 are hereby dismissed without any order as to costs. Misc. application no.222 of 2020 is also accordingly disposed of.

40. As the restraint order is continuing since September 17th, 2019 it cannot be allowed to continue forever. Sufficient time is already passed, for the respondent to

analyse the forensic report. We accordingly direct the respondent to issue the show cause notice, if any, within four weeks from today and thereafter decide the matter within six months from the date of receiving the replies in accordance with law after giving an opportunity of hearing.

41. 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.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

6.4.2021

RHN