

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 26.07.2021

Date of Decision : 02.08.2021

Appeal No. 178 of 2019

Mr. Rajendra Gothi
SA 6/ 189-G, C-60,
Shrinagar Colony, Pahariya, Varanasi,
Uttar Pradesh- 221 007

...Appellant

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. Simil Purohit, Advocate with Mr. Punit Damodar,
Ms. Nikita Vardhan and Ms. Raveena Kinkhabwala, Advocates
i/b Kanga And Company for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Nishit Dhruva,
Mr. Hridhay Khurana, Mr. Chirag Bhavsar, Mr. Yash Garach
and Ms. Aalisha Shah, Advocates i/b MDP & Partners for the
Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order
dated October 31, 2018 passed by the Whole Time Member

(“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) whereby the appellant has been restrained from buying, selling or otherwise dealing in the securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of ten years from the date of the order. The appellant was further restrained from associating himself with any listed public company and any public company for a period of five years.

2. The facts leading to the filing of the present appeal is, that Deloitte Touche Tohmatsu India Pvt. Ltd. (“Deloitte” for convenience) submitted a draft financial due diligence audit report dated June 28, 2013 which was carried out for the financial year 2012-2013 in which it was observed that various irregularities of serious nature were detected in the day to day affairs of Parekh Aluminex Limited with respect to loans and advances given by the company. The State Bank of India had also lodged a complaint with the Central Bureau of Investigation (“CBI”) alleging that the company and its directors had fraudulently availed credit facilities with intention to cheat the bank to the tune of Rs. 122.57 crores.

3. Based on the above, SEBI carried out an investigation as to whether the company had manipulated the books of accounts for the financial year 2010-2011, 2011-2012 and 2012-2013 and whether there was any diversion of funds and whether the company had misrepresented its business operations.

4. Based on the investigation, the WTM, issued an interim order cum show cause notice dated August 30, 2017 directing the appellant and other entities to show cause as to why suitable action under Section 11 and 11B of the SEBI Act should not be passed for violating Section 12A of the SEBI Act and Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience).

5. The show cause notice alleged that the balance sheet showed a sharp surge in the loans and advances from Rs. 169 crores as on March 2012 to Rs. 1,353 crores as on December 31, 2012 and Rs. 1,243 crores as on September 30, 2013. It was further contended that the profit for the financial year 2011-2012 was Rs. 120 crores and between April 2012 to September 2013 a loss of Rs. 1,423 crores was shown. It was also stated that as per the report of Deloitte the loans and advances as on

April 01, 2012 was Rs. 1,284.13 crores instead of Rs. 169 crores and that the company had written off debts of substantial amounts as a result the reserves of the company had been reduced by Rs. 936 crores. On the basis of the investigation and the reports SEBI alleged that the company was involved in the diversion of funds to non-core activities by granting loans and advances and that the company was being used by Late Mr. Amitabh Parekh as a vehicle for siphoning of funds. It was also alleged that the company made misstatements in the financial statements and that the statutory auditors in their audit reports for the financial year 2010-2011 and 2011-2012 prima facie did not provide the true and fair view of the state of affairs of the company thereby aiding and abetting the company in the falsification of the books of the accounts. It was thus alleged that the appellant along with the statutory auditor had manipulated the books and accounts and misstated the financial statements and failed to make genuine and accurate disclosure regarding the financial statement of the company.

6. Before the WTM the appellant contended that he became a Director from October 01, 2009 and resigned on October 25, 2011. Prior to October 01, 2009, the appellant was the Chairman of the Audit Committee. It was also contended that in the complaint filed by the State Bank of India the

appellant is not mentioned by name. It was also contended that the appellant had not signed the financial results of the company for the financial year 2011-2012. It was also contended that the company was run by the sole promoter, namely, Mr. Amitabh Parekh who was the sole decision making person in the company and who died in January 2013. The appellant contended that he was never in charge of the day to day affairs of the business of the company and was only in charge of marketing activities and was not aware of any financial dealings of the company nor was privy to any details. It was contended that merely signing the financial statement for the financial year 2009-2010 and 2010-2011 should not be construed as him having knowledge of its contents. It was contended that he had signed the said financial statements in good faith on account of trust reposed on Mr. Amitabh Parekh who was the Chairman and Managing Director as well as on the Auditor of the Company.

7. The WTM after considering the evidence found that Mr. Amitabh Parekh was the Managing Director cum Chairman of the company and was instrumental in giving loans and advances to other entities. It has also come on record that Mr. Amitabh Parekh died in January 2013. It is also undisputed

that Mr. Amitabh Parekh was single handedly running the company and was the sole decision maker.

8. The WTM after considering the material evidence on record held that the company had misstated its accounts as on March 2012. The WTM came to a conclusion that the balance sheet for the financial year 2011-2012 incorrectly showed loans and advances at Rs. 169 crores whereas it should have been Rs. 1284.13 crores and therefore the company misrepresented its business operation to its shareholders and to the public in general.

9. The WTM also came to the conclusion that the appellant had signed the balance sheet for the financial year 2009-2010 and 2010-2011 and that he was not only a Director in the company but was also a Director in related entities of the company and was Chairman of the Audit Committee. The WTM however concluded that the appellant was only involved in managing the affairs of the company and had knowledge of the financial health of the company. The WTM concluded that members of the audit committee are expected to exercise due oversight of the financial reporting process and ensure that the financial statement is correct and credible which the appellant

failed to exercise due care and diligence and therefore in view of the decision of the Hon'ble Supreme Court of India in *N. Narayanan vs. Adjudicating Officer, SEBI, (2013) 12 SCC 152* wherein the Supreme Court held that the responsibility is cast on the Directors to prepare the annual records and reports and those accounts should reflect 'a true and fair view'. The Supreme Court held that the over-riding obligation of the Directors was to approve the accounts only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company. Accordingly, the WTM passed the impugned order.

10. We have heard Mr. Simil Purohit, the learned counsel for the appellant and Mr. Kevic Setalvad, the learned senior counsel for the respondent at some length.

11. What we find is that the Deloitte report was with regard to the irregularities in the books of accounts for the financial year 2012-2013 that is to say April 01, 2012 to March 31, 2013. During this financial year, admittedly, the appellant was not part of the company as he had already resigned earlier on October 25, 2011. The Deloitte report however indicates that the loans and advances as on March 2012 was not Rs. 169 crores but was

Rs. 1284.13 crores. The balance sheet of financial year 2011-2012 was not signed by the appellant as he had resigned during the financial year on October 25, 2011. Thus, misstatement of the financials in the balance sheet for the financial year 2011-2012 and 2012-2013 cannot be fastened upon the appellant as he was not part of the company at that stage nor was he a signatory.

12. The appellant's involvement exists prior to October 25, 2011 and for those periods he was the Director as well as was part of the Audit Committee. The contention that he was not aware of the diversion of funds cannot be believed.

13. However, the finding of the WTM that he was the only person responsible for the diversion of the funds and in managing the affairs of the company is incorrect and is not based on any evidence. On the other hand, the evidence is that Mr. Amitabh Parekh was running the show and was involved in the diversion of the funds. Being Chairman of the Audit Committee and a Director it can be inferred that he had knowledge of the irregularities being committed in the company.

14. We are of the opinion, that the appellant being a Director had access to inside knowledge especially with regard to the financial position of the company as he was the Chairman of the Audit Committee. Admittedly, the annual reports which were prepared for the financial year 2011-2012 and 2012-2013 was based on misstatements. The glaring fact which has come is that the loans and advances which was indicated in the financial statement as on March 31, 2012 at Rs. 169 crores was incorrect and that it should have been Rs. 1284.13 crores. Prior to March 31, 2012 the appellant was a Director and Chairman of the Audit Committee for the financial year 2011-2012 and though he may not have signed of that financial year nonetheless he was aware of the wrong doings.

15. Considering the aforesaid, the violation against the appellant is proved. However, we are of the opinion that the debarment restraining the appellant from accessing the appellant from securities market for ten years and from associating in any listed public company and public company for five years is harsh and disproportionate to the misconduct for the reasons stated hereunder.

16. From a perusal of the impugned order one finds that the penalty awarded is based on the violations committed for the financial year 2010-2011, 2011-2012 and 2012-2013. Admittedly, the appellant was not involved in the manipulation of books of accounts or misstatement in the annual report, balance sheet for the financial year 2011-2012 and 2012-2013 as he had resigned on October 25, 2011. The appellant's involvement can only be confined for the financial year 2010-2011. We find that there is no specific averment or finding of any irregularity committed by the appellant during this period.

17. Consequently, we are of the opinion that the period of debarment already underwent till the date of the delivery of the judgement would be sufficient to meet the violation committed by the appellant.

18. In view of the aforesaid, while affirming the violation under Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations committed by the appellant, we reduce the debarment as given by the WTM of SEBI in paragraph 80(a) of the impugned order to the period undergone till the date of the delivery of the judgement. The appeal is accordingly allowed in part with no order as to costs.

19. 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

02.08.2021
PK