BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 30.08.2021
Date of Decision : 02.09.2021

Misc. Application No. 23 of 2021
And
Appeal No. 58 of 2021

Jaiprakash Kabra
52, Sunflower Orchids,
Majiwada, Thane (West),
Maharashtra – 400601. ….. 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

With
Misc. Application No. 25 of 2021
And
Appeal No. 61 of 2021

Pradip J. Mundhra
Flat No. 2003, C Wing,
Oberoi Gardens, Thakur Village,
Kandivali (East), Mumbai – 400101. ….. 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

With
Misc. Application No. 28 of 2021
And
Misc. Application No. 64 of 2021
And
Appeal No. 62 of 2021

Pradip J. Mundhra
Flat No. 2003, C Wing,
Oberoi Gardens, Thakur Village,
Kandivali (East), Mumbai – 400101. ….. 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

With
Misc. Application No. 53 of 2021
And
Appeal No. 146 of 2021

Gopaldas Maheshwari
F/801, Shrunagar Residency,
Vesu, Near Nandini – 1,
Khajod, Surat, Gujarat – 395007. ….. Appellant

Versus

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

With
Misc. Application No. 39 of 2021
And
Appeal No. 148 of 2021

Sanjay Taparia
Plot No. 12, S. No. 142, Keshavkunj,
Sardar Vallabhbhai Patel Nagar,
Jalgaon, Maharashtra – 425001. ….. Appellant

Versus

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

With
Misc. Application No. 41 of 2021
And
Misc. Application No. 42 of 2021
And
Appeal No. 149 of 2021

Sanjay Taparia
Plot No. 12, S. No. 142, Keshavkunj,
Sardar Vallabhbhai Patel Nagar,
Jalgaon, Maharashtra – 425001. ….. Appellant

Versus

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

With
Misc. Application No. 43 of 2021
And

Appeal No. 150 of 2021

Rajesh Jhunjhunwala
A-4/B, Ratna Vilash Apt.,
Opp. Rajmahal Complex, Vesu,
Near Dhiraj Sons, Surat,
Gujrat – 395007. ….. Appellant

Versus

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

Mr. Pritesh Burad, Advocate with Mr. Chinmay Paradkar, Advocate i/b Pritesh Burad Associates for the Appellants.

Mr. Sharan Jagtiani, Senior Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Advocates i/b Vidhii Partners for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged two sets of orders, namely, the order dated March 28, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') and the order dated November 20, 2020 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter

referred to as ‘SEBI’). Since the issue is common, all these appeals are being decided together.

2. The appellants Jaiprakash Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala have filed the appeals against the order of the AO whereby each of the appellants have been imposed a penalty of Rs. 10 lac. The appellants Pradip Mundhra and Sanjay Taparia have challenged the orders of AO as well as the WTM whereby they have been restrained from accessing the securities market for a period of five years and a penalty of Rs. 50 lac has been imposed.

3. The facts leading to the filing of the present appeals are, that a company known as Tulsi Extrusions Ltd. issued Global Depository Receipts (hereinafter referred to as ‘GDRs’) in August 2010. Total 1,25,000 GDRs amounting of US$ 14.325 million was issued. European American Investment Bank AG (hereinafter referred to as ‘Euram Bank’) granted a loan to Vintage FZE (hereinafter referred to as ‘Vintage’) through a loan agreement dated August 11, 2010 for making payment towards subscription to the entire GDRs issue. The company pledged the entire GDRs proceeds to Euram Bank as a security towards the loan availed by Vintage. The pledge agreement was an integral part of the loan agreement. Subsequent to the

issuance of the GDRs, the GDRs, was converted into equity shares and sold in the Indian market.

4. The issuance of the GDRs was pursuant to a company resolution dated May 7, 2010 where the company resolved to issue GDRs for the purpose of modernizing its company and expand in its subsidiary concern off-shore. The said resolution authorized Euram Bank to use the proceeds in connection with a loan. The investigation revealed that the Company made selective disclosure to Bombay Stock Exchange (BSE) and suppressed material information, namely, that Euram Bank was authorized to use the proceeds in connection with a loan and that the execution of the loan agreement and the pledge agreement was not disclosed.

5. Based on the aforesaid investigation, a show cause notice was issued to the company as well as to the directors to show cause as to why appropriate orders should not be passed under Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') for fraudulently

carrying out the scheme without making adequate disclosures to the investors.

6. Both the WTM and the AO came to the same conclusion that necessary disclosures were not made under the listing agreement and that the scheme floated by the company for issuance of the GDRs was a fraudulent scheme to mislead the public and the investors and was accordingly violative of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations. Accordingly, penalties and debarment was passed by the respective authorities.

7. We have heard Mr. Pritesh Burad, the learned counsel with Mr. Chinmay Paradkar, the learned counsel for the appellants and Mr. Sharan Jagtiani, the learned senior counsel with Ms. Nidhi Singh, Ms. Aditi Palnitkar, the learned counsel for the respondent through video conference.

8. Before us in the appeals, it has been stated that the company is under liquidation. It was contended that the appellants Jaiprakash Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala were the non-executive independent directors and they were not involved in the day to day affairs of the company and had no specific role to play in the issuance of the GDRs. It was, thus, contended that the only charge in the show cause notice is, that the said appellants Jaiprakash

Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala were the signatories to the resolution of the board of directors dated May 7, 2010 which was the first step to the fraudulent scheme. It was contended that on the basis of being the signatories to the Board's resolution, the AO has given a finding that the directors play a key role in balancing the interest of management and shareholders and independent directors are required to ensure fairness and transparency in the dealings of the company and, therefore, are equally responsible for the affairs of the company and cannot get away on the ground that they are non-executive independent director.

9. On the other hand, the learned senior counsel for the respondent fairly admitted that the finding in the instant case in so far as Jaiprakash Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala is concerned is based on the fact that they were signatories to the resolution of the board of directors dated May 7, 2010 and, consequently, have been held responsible for the alleged non-disclosure and the fraudulent scheme. The learned senior counsel however submitted that they have filed additional documents, namely, the annual reports of the company to show that these appellants were members of the audit committee and, therefore, were aware of the financial dealings of the company. In support of his submission, the learned senior counsel placed reliance in the

cases of ***Chromatic India Limited vs. SEBI (Appeal No. 393 of 2020 decided on May 12, 2021)*** and ***Mohandas Shenoy Adige vs. SEBI (Appeal No. 511 of 2020 decided on July 28, 2021)*** passed by this Tribunal and contended that the findings given by the authorities should be upheld.

10. In this regard, having considered the submissions and having perused the impugned order of the AO, we are of the opinion that the reliance placed by the respondent on the decisions in ***Chromatic India Ltd. and Mohandas Shenoy Adige (supra)*** is misplaced. In ***Chromatic India Ltd. (supra),*** the annual report was relied upon by the authority and this Tribunal considered and found that the non-executive independent director was involved in the running of the affairs of the company and, therefore, the order was upheld. Similar was the case in ***Mohandas Shenoy Adige (supra)*** wherein it was found that the non-executive independent director was holding similar post in various subsidiaries of the company and, therefore, was no longer an independent director.

11. In the instant case, we are of the opinion that the controversy involved in the present proceedings in so far as the Jaiprakash Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala is concerned, is squarely covered by the decisions of this Tribunal in the cases of

Adesh Jain vs. SEBI (Appeal No. 217 of 2020 decided on November 19, 2020), Adi Cooper vs. SEBI (Appeal No. 124 of 2019 decided on November 5, 2019), Govind Das Pasari vs. SEBI (Appeal No. 201 of 2019 decided on April 30, 2021) and Praful Shah vs. SEBI (Appeal No. 389 of 2021 decided on June 8, 2021). We find that there is no finding in the instant case that the appellants had any role to play in the issuance of the GDRs and have only been charged on the basis that they were the signatories to the resolution of the board of directors dated May 7, 2010. A finding has been given that the board of directors play a key role in balancing the interest of the management and the shareholders and, therefore, directors are required to ensure fairness and transparency in the dealings of the company and the finding that the appellants had participated in the meeting and therefore, required to act diligently is patently erroneous. In the case of ***Praful Shah (supra),*** the Tribunal after considering the various decisions in ***Adesh Jain, Adi Cooper and Govind Das Pasari (supra)*** has held as under :-

> *"12. In the light of the aforesaid, we are of the opinion that merely because the appellant was present when the resolution dated July 27, 2006 was passed, no conclusion can be drawn that this was the starting point of the fraudulent arrangement for issuance of GDR and for opening a bank account. The resolution does not given any indication that the appellant had knowledge beforehand that the GDR issue was the purpose to manipulate the price or the market or that a fraud would*

be played upon the shareholders and the investors. We are further of the opinion that finding of the WTM that the resolution of the Board of Directors dated June 27, 2006 provides execution of a pledge or execution of a charge agreement is wholly erroneous, perverse and based on no evidence. The resolution also does not stipulate that the proceeds could be utilized by the bank as security in connection with a loan taken by another entity.

13. In the light of the aforesaid, we are of the view that the appellant cannot be debarred only on the basis of being present in the resolution of the Board of Directors dated July 27, 2006. In the absence of any evidence that the appellant had a role to play in the issuance of the GDR, the mere presence of the appellant in the resolution of the Board of Directors dated July 27, 2006 does not make him liable for the alleged fraud that had been committed by the Company."

12. The aforesaid findings are squarely applicable in the instant case.

13. In ***Govind Das Pasari (supra),*** this Tribunal held that apart from being a signatory to the resolution of the board of directors, the said appellant did not participate in the issuance of the GDRs and, therefore, no fraud was played by him. The said decision is squarely applicable to all these three appellants and the finding that a fraudulent scheme was initiated pursuant to the resolution cannot be allowed to stand.

14. In so far as the appeals of Pradip Mundhra and Sanjay Taparia is concerned, we find that Pradip Mundhra was the managing director and was a signatory to the pledge agreement. Mr. Sanjay Taparia was the chief executive officer. These two appellants were at the helm of the affairs of the company and were required to ensure transparency and fairness in the dealings of the company. Admittedly, selective disclosures were made to the stock exchange and information relating to loan agreement, pledge agreement and the fact that Euram Bank was authorized to use the proceeds with connection to a loan was not disclosed to the stock exchange. Thus, there has been violation of the listing agreement on account of non-disclosure and to that extent Pradip Mundhra and Sanjay Taparia cannot escape their liability.

15. We further find that the company is now under liquidation. The loan taken by Vintage has been repaid to the company. US$ 8.3 million was transferred to the account of the company and US$ 6 million was transferred to its subsidiary in UAE as per the GDRs offering. Thus, a genuine GDRs issue was made by the company which was not fraudulent nor the proceeds of the GDRs has been diverted to a third entity. In fact, there is no specific allegation about the non-utilization of the GDRs in the show cause notice. Thus,

there cannot be any violation of any fraud or inducement under Regulations 3 and 4 of the PFUTP Regulations.

16. The AO while considering the factors under Section 15J of the SEBI Act found that there is nothing on record to show or indicate any disproportionality given or unfair advantages made by the appellants nor anything has come on record to show any loss suffered by the investors. In view of this specific finding coupled with the fact that no fraudulent scheme was initiated by the company, we are of the opinion that the findings given by the WTM and the AO against the appellants Pradip Mundhra and Sanjay Taparia relating to the penalty is excessive and arbitrary and is required to be modified.

17. In view of the aforesaid, the appeals of Jaiprakash Kabra, Gopaldas Maheshwari and Rajesh Jhunjhunwala being covered by the decision of this Tribunal in ***Praful Shah (supra)***, the impugned orders of the AO in so far as it relates to these appellants are quashed. Their appeals are allowed with no order as to costs.

In so far as the appeals of Pradip Mundhra and Sanjay Taparia are concerned, they being on the helm of the affairs of the the company on a day to day basis, they are responsible for non-disclosure of vital information. However, the penalty imposed by

the AO and the WTM are disproportionate and excessive, therefore, while affirming the findings of violation in so far as it relates to non-disclosure, the penalty of Rs. 50 lac imposed by the AO is reduced to Rs. 20 lac each and debarment of five years made by the WTM is reduced to two years and six months. The appeals of Pradip Mundhra and Sanjay Taparia are partly allowed.

18. In the circumstances of the case, parties shall bear their own 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

02.09.2021
PTM

RAJALAKSHMI H NAIR
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