

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved:22.10.2021

Date of Decision:28.10.2021

Common Review Application No.17 of 2021

In

Appeal No.561 of 2021

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A,

‘G’ Block, Bandra Kurla Complex,

Bandra (East), Mumbai 400 051.

...Applicants

(Org. Respondent)

Versus

Priyadarshan Mehta

22/10, Bhimbhai Mehta Bungalow,

Pritamnagar, 1st Slope,

Ellisbridge, Ahmedabad-380006.

...Respondent

(Org. Appellant)

Mr. Chander Uday Singh, Senior Advocate and Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Advocates i/b. ELP for the Applicant/(Org. Respondent).

Mr. Anil Shah, Advocate with Mrs. Poonam D. Gadkari, Ms. Kritika Nahate, Advocates i/b Juris Matrix Partners LLP for the Respondents/(Org. Appellants).

And

Appeal No.562 of 2021

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A,

‘G’ Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

...Applicants
(Org. Respondent)

Versus

Vilas Joshi
95, Tarang,
Jai Prakash Nagar,
Goregaon (East), Mumbai-400 063.

...Respondent
(Org. Appellant)

Mr. Chander Uday Singh, Senior Advocate and Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Advocates i/b. ELP for the Applicant/(Org. Respondent).

Mr. Anil Shah, Advocate with Mrs. Poonam D. Gadkari, Ms. Kritika Nahate, Advocates i/b Juris Matrix Partners LLP for the Respondents/(Org. Appellants).

And
Appeal No.563 of 2021

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
‘G’ Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

...Applicants
(Org. Respondent)

Versus

Rajbhushan Dixit
204/12, Jawahar Nagar,
Road No.13,
Goregaon (West), Mumbai-400 062.

...Respondent
(Org. Appellant)

Mr. Chander Uday Singh, Senior Advocate and Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi

Dalmia, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Advocates i/b. ELP for the Applicant/(Org. Respondent).

Mr. Anil Shah, Advocate with Mrs. Poonam D. Gadkari, Ms. Kritika Nahate, Advocates i/b Juris Matrix Partners LLP for the Respondents/(Org. Appellants).

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

Per: Justice Tarun Agarwala, Presiding Officer

1. The present review application has filed seeking review of our order dated 30th August, 2021. The ground urged are two folds, namely, that there is an error apparent on the face of the record and, consequently, is a fit case to exercise the power of review under Section 15U of the Securities and Exchange Board of India Act, 1992. Further, in the light of the decision of the Supreme Court in Securities and Exchange Board of India vs. Adi Cooper in Civil Appeal no.380 of 2020 decided on 21st September, 2021, the Tribunal should reconsider its order and recall the impugned order dated 20th August, 2021.

2. We have heard Mr. Chander Uday Singh, Senior Advocate assisted by Mr. Shyam Mehta, Senior Advocate, Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan and Mr. Harshvardhan Nankani, Advocates for the applicant/(org. respondent) and Mr. Anil Shah, Advocate assisted by Mrs. Poonam D. Gadkari, Ms. Kritika Nahate, Advocates for the respondents/(org. appellants).
3. The contention raised by the learned senior counsel does not hold any merit and cannot be accepted.
4. The contention that the original appellants were aware of the pledging of the GDR proceeds with Banco, the account charge agreement, the escrow agreement, the loan availed by Fresia and had knowledge of entire fraud perpetuated by the Company is patently erroneous. The learned counsel has referred to page 100 of the memo of appeal to prove this point. We have perused page 100 of the reply of the appellant before the authority concerned. The said appellant has specifically denied about the credit

agreement between Fresia and Banco. The relevant portion of the reply is extracted hereunder:

“With respect to para under consideration, I state being the NEID, I am not aware about the credit agreement between Fresia and Banco Efisa, the draw down notice of Fresia, loan availed by Fresia, account charge agreement, escrow account with respect to subscription amount towards GDR.”

5. Thus, the contention that there is error apparent on the face of the record which requires reconsideration by this Tribunal is incorrect and cannot be accepted.
6. The contention that the Supreme Court of India in its decision dated 21st September, 2021 in the matter of SEBI vs. Adi Cooper (supra) has altered the law on liability of Directors signing board resolutions involving depositing of GDR proceeds is patently erroneous. No such law has been laid down by the Hon’ble Supreme Court as urged by the learned senior counsel for the applicant.
7. In Adi Cooper (supra) the role of the said appellant was as a Whole Time Director whereas in the instant case the role of the original appellants was of a Non-Executive

Independent Director. Thus, on facts the role and involvement of the original appellants are different and distinct. The decision of the Supreme Court is distinguishable. Further, we are of the opinion that a subsequent decision of the Supreme Court is not a valid ground for review.

8. It is a settled position of law that a review can be preferred on exceptionally limited ground as provided under Order 47 Rule (1) of the Code of Civil Procedure which provides for circumstances under which review may be preferred such as discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be produced at the time when the order was passed or on account of some mistake or error apparent on the face of record or for any other sufficient reason.
9. In view of the aforesaid, we do not find any error requiring us to reconsider our order. The review application fails and is dismissed with no order as to costs.

10. 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

28.10.2021
RHN