

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Date of Hearing : 17.06.2022**

**Date of Decision : 27.06.2022**

**Misc. Application No. 463 of 2020  
(Stay Application)**

**And**

**Appeal No. 455 of 2020**

1. Mangalam Drugs & Organics Ltd.  
3<sup>rd</sup> Floor, Rupam Building,  
239, P. D'Mello Road, Near G. P. O.,  
Mumbai – 400 001.
2. Shri JB Pharma LLP  
3<sup>rd</sup> Floor, Rupam Building,  
239, P. D'Mello Road, Near G. P. O.,  
Mumbai – 400 001.
3. Mangalam Laboratories Pvt. Ltd.  
3<sup>rd</sup> Floor, Rupam Building,  
239, P. D'Mello Road, Near G. P. O.,  
Mumbai – 400 001.
4. Raga Organics Pvt. Ltd.  
3<sup>rd</sup> Floor, Rupam Building,  
239, P. D'Mello Road, Near G. P. O.,  
Mumbai – 400 001.
5. Ajay R. Dhoot  
Shriniketan, Gr. Flr., 86A, Netaji Subhash  
Road, Marine Drive, Mumbai – 400 002.

6. Aditya R. Dhoot  
Shriniketan, Gr. Flr., 86A, Netaji Subhash  
Road, Marine Drive, Mumbai – 400 002.
7. Brijmohan M. Dhoot  
214, Oceana, 5<sup>th</sup> Floor, Marine Drive,  
Mumbai – 400 002.
8. Govardhan M. Dhoot  
12, Oceana, 5<sup>th</sup> Floor, 214, Marine Drive,  
Mumbai – 400 020.
9. Ramniwas R. Dhoot  
Shriniketan, Ground Floor, 86-A,  
2<sup>nd</sup> Floor, Netaji Subhash Road,  
Marine Drive, Mumbai – 400002. .... Appellants

Versus

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

Mr. Rohaan Cama, Advocate with Mr. Aditya Udeshi, Advocate i/b  
M/s. Sanjay Udeshi & Co. for the Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Abhiraj Arora,  
Ms. Anshu Mehta, Mr. Shourya Tanay, Mr. Harshvardhan Nankani,  
Advocates i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Justice M. T. Joshi, Judicial Member  
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged the order dated September 22, 2020 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') wherein the appellants were restrained from accessing the securities market for a period of six months and were further directed to pay a penalty of Rs. 6 lacs each under Section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') in violation of Regulation 77(2) and 77(3) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations, 2009') read with Regulation 169(2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as 'ICDR Regulations, 2018') and Section 12A(a) of the SEBI Act read with 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').

2. The facts leading to the filing of the present appeal is, that a show cause notice dated December 31, 2019 was issued to show cause as to why suitable direction should not be issued and appropriate penalty should not be imposed. The show cause notice alleged that the company alongwith its directors have violated Regulation 77(2) and 77(3) of the ICDR Regulations, 2009 since warrants / shares on preferential basis issued to appellant nos. 2 by appellant nos. 1 was without any receipt of consideration. The show cause notice contended that appellant nos. 2 was allotted 26,50,000 warrants at the rate of Rs. 65/- each on a preferential basis with an option to convert each warrant into one equity share of face value of Rs. 10/- at a premium of Rs. 55/-. The minutes of the AGM of the company held on September 3, 2015 revealed the appellants pattern, namely, that the warrant holder on the date of allotment of warrants would be required to pay an amount equivalent to 25% of the total consideration and that the conversion of the warrants into equity shares shall be made in one or more tranches within a period of 18 months from the date of the allotment of warrants as per the option exercised by the warrant holders. It was alleged that the appellant nos. 2 paid a sum of Rs. 17,22,50,000/- in various tranches. The

bank statement of appellant nos. 1 company revealed that the payment was received from appellant nos. 2 for acquisition of warrants / equity shares. Further, the bank statement of appellant nos. 2 revealed that he had received funds from appellant nos. 3 and bank statement of appellant nos. 3 revealed that he had received the funds from appellant nos. 4. In view of the above, it was alleged that the amount transferred from appellant nos. 4 to appellant nos. 3 and appellant nos. 3 to appellant nos. 2 and from appellant nos. 2 to appellant nos. 1 was exactly the same amount and such transfers could not be expected to be in the nature of a loan. Based on the aforesaid, it was alleged that the issuance of warrants to appellant nos. 2 by appellant nos. 1 was without any consideration.

3. The allegation made in the show cause notice was specifically denied by the appellants. The appellants contended that the issuance of warrants was done in accordance with the procedure under the Companies Act as well as the ICDR Regulations and no violation has been committed by them.

4. We have heard Mr. Rohaan Cama, the learned counsel with Mr. Aditya Udeshi, the learned counsel for the appellants and Mr. Kevic Setalvad, the learned senior counsel with Mr. Abhiraj

Arora, Ms. Anshu Mehta, Mr. Shourya Tanay, Mr. Harshvardhan Nankani, the learned counsel for the respondent.

5. Upon hearing the learned counsel for the appellants and upon perusal of the record, we find that the WTM in paragraph no. 21 of the impugned order has given a categorical finding that consideration was received by the appellant nos. 1 company towards the warrants issued in favour of appellant nos. 2. In our view, once this finding has come, the entire charge levelled in the show cause notice falls through. The finding that there has been a violation of Regulation 77(2) and 77(3) of the ICDR Regulations, 2009 is totally erroneous. In this regard, Regulation 77(2) and 77(3) of the ICDR Regulations is extracted hereunder :-

*“77(2). An amount equivalent to at least twenty five per cent of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.*

*77(3). The balance seventy five per cent of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.”*

6. From a perusal of the aforesaid provisions, it is clear that the appellant nos. 2 had paid 25% of the amount as per Regulation 77(2)

and that the balance 75% paid in tranches as per Regulation 77(3). Thus, we do not find any violation of the aforesaid provisions committed by the appellant nos. 2 or by the company.

7. The finding that no consideration was paid by appellant nos. 2 to the appellant nos. 1 company is patently erroneous. The bank statement provided by the appellant squarely proved that amount was transferred from the appellant nos. 2 account to appellant nos. 1. The fact that appellant nos. 2 received it from appellant nos. 3 is immaterial and does not lead to conclusion that no consideration was, therefore, paid by appellant nos. 2 to appellant nos. 1 towards the issuance of the warrants.

8. We find that the appellants have been penalized for violation of Section 62(3) of the Companies Act, 2013. It was contended that Section 62(3) of the Companies Act, 2013 was violated. For facility, Section 62(3) of the Companies Act, 2013 is extracted hereunder :-

*“62(3). Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:*

*Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company is general meeting.”*

9. It was contended that under Section 62(3) of the Companies Act, 2013, the company can issue further capital in order to convert a loan taken by it subject to the condition that the option to convert the loan into equity capital must be contained as a term in the loan / loan agreement which in the instant case was lacking as no such loan agreement was provided and on this basis, the impugned order has been passed restraining the appellants from accessing the securities market and imposing a penalty.

10. We are of the opinion that the impugned order proceeding on the basis of violation of Section 62(3) of the Companies Act, 2013 is patently erroneous and cannot be sustained. In our view, the WTM has gone beyond the allegations levelled in the show cause notice. The show cause notice does not allege violation of Section 62(3) of the Companies Act, 2013. In ***Reckitt & Colman of India Ltd. vs. Collector of Central Excise [(1997) 10 SCC 379]***, the Hon’ble Supreme Court has held as under :-



*“3. It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show-cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed.”*

11. In *Commissioner of Central Excise, Chandigarh vs. Shital International [(2011) 1 SCC 109]*, the Hon’ble Supreme Court has held as under :-

*“19. As regards in the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee.”*

12. In view of the aforesaid, we are of the view that unless the foundation of the case is laid in the show cause notice the WTM cannot be permitted to build up a case against the appellant. The WTM has gone beyond the terms of the show cause notice and cannot be permitted to build up a new case against the appellants.

13. In view of the aforesaid, the impugned order against the appellants cannot be sustained and is quashed. The appeal is allowed. It will however be open to the respondent to initiate proceeding against the appellants if they are so advised for violation of the provisions of the Companies Act, if any. In the circumstances, parties shall bear their own costs.

14. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala  
Presiding Officer

Justice M. T. Joshi  
Judicial Member

Ms. Meera Swarup  
Technical Member

27.06.2022  
PTM