BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 21.09.2022

Appeal No. 688 of 2021

Neha Nilesh Patil
Nageshkar Building, 29-K,
Khotachi Wadi,
Near Dattmandir, Girgaon,
Mumbai- 400 004 …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

Dr. S. K. Jain, Practicing Company Secretary for the Appellant.

Mr. Akash Rebello, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani and Mr. Niket Dalal, Advocates i/b Vidhii Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against the order dated 11.08.2021 passed by the Whole Time Member ("WTM" for convenience) restraining the appellant from accessing the

securities market and further prohibiting her from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market, in any manner, whatsoever for a period of one year. In addition to the above, the WTM has also imposed a penalty of Rs. 15 lakhs.

2. The facts leading to the filing of the present appeal is, that on 9th June, 2017 the Ministry of Corporate Affairs issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") and its regulations.

3. Based on the said letter, SEBI issued an order dated 7 th August, 2017 placing trading restrictions on the appellant Company, its Directors and promoters. The Company made a representation and also filed Appeal No. 267 of 2017 which was disposed of by this Tribunal by an order of 06.10.2017 directing SEBI to decide the representation.

4. Subsequently, based on further investigation SEBI passed an ex-parte ad-interim order dated 21.11.2017 which included a direction for appointment of a forensic auditor to verify misrepresentations including financial and misuse of funds in

books of accounts of the Company. Subsequently the interim order was confirmed.

5. Based on the forensic audit report and further investigation made by SEBI, a show cause notice dated 28.08.2020 was issued. The show cause notice alleged that the appellant along with other directors as well as the company failed to present true and fair financial statements of the company and that the company executed transactions which were non-genuine in nature thereby resulting in misrepresentation of the accounts/ financial statements and misuse of account/ funds of the company during the period 01.04.2015 to 31.12.2017. The show cause notice alleged that such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the company and had the potential to mislead the investors. The show cause notice alleged violations of Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience) as well as violation of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" for convenience) read with Section 21 of

Securities Contracts (Regulations) Act, 1956 ("SCRA" for convenience).

6. The WTM after considering the replies of the appellants and the material evidence on record concluded that the appellant Company misrepresented its financials and violated the accounting standards. The WTM found that various provisions of LODR Regulations were not complied with during the three financial years and there were lapses on the part of the Company in not making complete disclosures. The WTM found that the financial statements of the company contained misstatements and the same were not in line with the applicable accounting standards. The WTM further found that the annual audited financial results approved by the Board of Directors were misrepresented and since noticees nos. 3 to 7 which includes the appellant approved the financial results of the company for the financial years 2015-2016, 2016-2017 and 2017-2018 the same were in violation of the Regulation 33(2)(a) of the LODR Regulations. The WTM further observed that the appellant being a director did not exercise due diligence in approving the financials and, consequently, violated Regulation 4 of the LODR Regulations. The WTM also concluded that since the appellant had also certified the annual report which

contained misrepresentation of the financial statements the appellant violated Regulation 33(2)(a) of the LODR Regulations.

7. We have heard Dr. S. K. Jain, Practicing Company Secretary for the appellant and Shri Akash Rebello, the learned counsel for the respondent.

8. The appellant was a non-executive professional director and was not responsible for the day to day running of the Company. This fact is admitted by the respondent. The appellant has been charged for signing the annual report and approving the financial results in which he was a member of the Board of Directors and, consequently, violating Regulating 33(2)(a) of the LODR Regulations.

9. In this regard, Regulation 33(2)(a) provides as under:-

> ***"33(2)(a)*** *The quarterly financial results submitted shall be approved by the board of directors:*
>
> ***Provided*** *that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading."*

10. A perusal of the aforesaid provision indicates, that the financial results has to be approved and authenticated by the Board of Directors but before it is approved by the Board of Directors the financial results are required to be certified by the chief executive officer and chief financial officer to the effect that the financial results does not contain any false or misleading statement or figures and does not omit any material fact which may make the statements or figures contained therein misleading.

11. Thus, the chief executive officer and chief financial officer are required to certify that the financial results does not contain any misleading statements or figures and only thereafter such financial results are placed for approval before the Board of Directors. Consequently, the violation of Regulation 33(2)(a) of the LODR Regulations has been caused by the chief executive officer and chief financial officer of the listed company.

12. Merely because the appellant is a signatory to the annual report does not mean that the misstatements contained therein has been approved by the appellant. He is only a signatory in the annual report as per the provisions of the Companies Act. The violation under 33(2)(a) of the LODR Regulations is with

regard to the approval and authentication of the financial results and that approval and authentication in the first instance is required to be done by the chief executive officer and chief financial officer. The appellant being a non-executive professional director cannot be held liable under any circumstances to have violated Regulation 33(2)(a) of the LODR Regulations.

13. In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive. We also find that directions of debarment and imposition of penalties have also been imposed upon the appellants.

14. In the instant case, we find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive.

15. In the light of the aforesaid, the impugned order in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed. By an interim order dated 23.11.2021 we had directed the appellant to deposit a sum of Rs. 7 lakhs. Since we are allowing the appeal, we direct SEBI to refund the amount along with accrued interest, if any, within three weeks from today.

16. 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

Ms. Meera Swarup
Technical Member

21.09.2022
PK

RAJALAKSHMI H NAIR Digitally signed by RAJALAKSHMI H NAIR Date: 2022.09.27 10:43:51 +05'30'