BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 20.9.2022
Date of Decision:13.10.2022

Appeal No.801 of 2021

1. Svam Software Ltd.
   S-524, Vikas Marg,
   Shakarpur, Delhi-110092.

2. Mr. Virendra Gupta
   House no.153, Suraj Apartments,
   SurajKund Road, PulpehaladPur,
   New Delhi – 110044.

3. Mr. Sudhir Kumar Agarwal
   106, S-524, Vikas Marg, Shakarpur,
   New Delhi – 110092.

4. Mr. Harshwardhan Koshal
   23-24, Rural Industrial Estate, Loni,
   Ghaziabad, Uttar Pradesh-201102.

5. Mr. Rajeev Garg
   K- Block, 157, Kavi Nagar,
   Ghaziabad, Uttar Pradesh-201101.

6. Mrs. Manisha Agarwal
   D-6, Arya Nagar Society, I.P. Extension,
   Patparganj, Delhi-110092. ...Appellants

Versus

Securities and Exchange Board of India
Plot No.C-4A, G Block,
Bandra-Kurla Complex,

Bandra (E), Mumbai – 400 051. …Respondent

Mr. Parveen Kumar Bansal, Advocate with Mr. Anil Shah and Ms. Poonam Gadkari, Advocates i/b. Juris Matrix Partners LLP for the Appellant.

Ms. Rathina Maravarman, Advocate with Mr. Chirag Shah, Mr. Akash Jain, Ms. Karishma Motlaand and Ms. Daksha Kasekar, Advocates i/b. Mansukhlal Hiralal & Co. for the Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 7th October, 2021 passed by the Whole Time Member ('WTM' for short) restraining the appellants from accessing the securities market and further prohibiting them 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 also imposed penalties of different amounts totaling Rs.63 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 7th August, 2017 placing trading restrictions on the appellant Company, its Directors and promoters. The Company made a representation on 1st September, 2017 and also filed appeal no.271 of 2017 which was disposed of by this Tribunal by an order of 16th October, 2017 directing SEBI to decide the representation.

4. Subsequently, based on further investigation, SEBI passed an ex-parte ad-interim order dated 27th November, 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 6th March, 2020 was issued. The broad charges in the show cause notice are as follows:

> *A. "Violations of LODR Regulations, 2015 due to misrepresentation, including of financials and misuse of funds/books of accounts.*
> *B. Violation of PFUTP Regulations, 2003."*

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 further found that there was no violation of

Section 12A of the SEBI Act and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') as there was no misappropriation of the funds nor the Company nor its Directors had played a fraud upon the investors nor was there any disproportionate gain or unfair advantage nor any specific loss was incurred by any investor. The WTM accordingly for the above violations debarred the appellant from accessing the securities market for specified periods and imposed different amounts of penalties on the appellants.

7. We have heard Mr. Parveen Kumar Bansal, Advocate assisted by Mr. Anil Shah and Ms. Poonam Gadkari, Advocates for the appellant and Ms. Rathina Maravarman, Advocate assisted by Mr. Chirag Shah, Mr. Akash Jain, Ms. Karishma Motlaand and Ms. Daksha Kasekar, Advocates for the respondent.

8. The WTM has gone into detail and came to a conclusion that there has been misrepresentation including of financials and, consequently, there has been a violation of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations'). In this regard, the WTM has found irregularities in:

a. Non-disclosure of related party transaction for the financial years 2015-16, 2016-17 and 2017-18.

b. Wrong valuation of inventory.

c. Non-compliance of the provision of Section 269ST of the Income Tax Act holding that expenses beyond Rs.2 lakhs were made in cash which was violative of Section 269ST of the Income Tax Act.

d. The Company had advanced loans which amounts to lending activities and is not the core activity of the Company.

9. The misrepresentations as stated aforesaid is being dealt herewith. With regard to third party transaction it is alleged that the Annual Reports of 2015-16, 2016-17 and 2017-18 does not show any related party transactions. In this regard, we have perused the Annual Reports for the aforesaid period. We find that disclosure has been made by the Company relating to third party transactions. Thus, it is incorrect to state in the impugned order that no third party transaction was disclosed in the Annual Reports. The respondent has filed the forensic report. The forensic auditor has observed that proper disclosure of related party transaction has not been made by the Company. Details with regard to some of the related party transactions which have not been disclosed in the Annual Report was identified by the forensic auditor which admittedly is not disputed by the appellant. Thus, we are of the opinion that it is not a case of non-disclosure of related party transaction but a case of

partial non-disclosure of certain related party transactions which was not disclosed in the annual reports.

10. The show cause notice alleges that inventories shown in the balance sheet as on 31st March, 2015 was overvalued by Rs.44,97,753/- and that the value of the inventory in the balance sheet as on 31st March, 2015 was overstated and, therefore, there was a misrepresentation in the financial statement of the Company thereby violating Regulation 33(1)(c) and Regulation 48 of the LODR Regulations. In this regard, we find that the WTM has gone into the exercise that certain inventories were sold at a huge loss of Rs.42,38,403 and in the absence of any rational for such a loss the WTM came to the conclusion that the loss of Rs.42,38,403 was infact overvaluation of the assets.

11. In our opinion, the conclusion drawn is patently erroneous. The loss of Rs.42,38,403 has been shown

towards depreciation on computer hardware and software. The same may be accepted or rejected but such value of the inventory cannot be held to be overvalued or overstated in the balance sheet. In this regard, no conclusive finding was given in the forensic auditor's report. The forensic auditor's report observed as:

> *"1. AS-2 – Valuation of Inventories – SSL has a closing stock of Rs.50,47,912 as on 31.03.2015. Out of above, stock of Rs.44,97,753 was sold for Rs.2,59,350, at a loss of Rs.42,38,403. The sales have been made in cash and details regarding such sale have not been provided to us. But it seems that stock have not been valued as per the provisions of AS-2.*
>
> *As per management, the stock was old and obsolete and therefore, realizable value was very low."*

12. The above indicates that stocks was sold at Rs.2,59,350 at a loss of Rs.42,38,403 on the ground that the stock was old and obsolete and the realisable value was very low. The forensic auditor infact did not give any conclusive evidence only holding that "it seems that stock has not been valued as per the

provision of AS 2 of the accounting standards". In this regard, the learned counsel for the appellant has relied upon a decision of the ***Supreme Court in Commissioner of Income Tax, Delhi vs. M/s. Woodward Governor India P. Ltd. decided on 8th April, 2009 (2007) 294 ITR 451 (Del)*** wherein the Supreme Court held that for valuing the closing stock at the end of a particular year the value prevailing on the last date is relevant and that the accounts maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. Similar view was held again by the Supreme Court in ***British Paints India Ltd. vs. Commissioner of Income Tax 1991 AIR 1338***.

13. Be that as it may. No clear cut finding has been given that the depreciation made by the Company which led to a loss of Rs.42,38,403 was incorrect and, consequently, we are satisfied that the value of the

inventory in the balance sheet as on 31st March, 2015 of the Company is not overstated.

14. The show cause notice alleged that the Company had made an expenditure in cash and, therefore, violated of Section 40A(3) of the I.T. Act. The WTM in paragraph 14.4 of the impugned order found that there is no prohibition for the Company to do transaction in cash and, therefore, no adverse inference can be drawn against the Company holding misrepresentation or misuse of funds.

15. The WTM however found fault in making expenses in cash above Rs.2 lakhs being violative of Section 269ST of the Income Tax Act which came into effect from 1st April, 2017. The WTM however found that cash paid for general expenses after 1st April, 2017 was above Rs.2 lakhs in certain cases and, therefore, held that by not complying with the provisions of Section 269ST the appellant has violated Regulation 4(1)(g) of the LODR Regulations.

16. In this regard, Section 269ST of the Income Tax is required to be looked into which is extracted hereunder:

*"**Mode of undertaking transactions***

269ST. .—No person shall receive an amount of two lakh rupees or more—

a. *in aggregate from a person in a day; or*

b. *in respect of a single transaction; or*

c. *in respect of transactions relating to one event or occasion from a person,*

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed:

***Provided** that the provisions of this section shall not apply to—*

i. *any receipt by—*

   a. *Government;*

   b. *any banking company, post office savings bank or co-operative bank;*

ii. *transactions of the nature referred to in section 269SS;*

iii. *such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.*

Explanation.—For the purposes of this section,—

a. *"banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;*

b. "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS'."

17. A perusal of the aforesaid provision would indicate that the embargo of Rs.2 lakhs per day is for receiving money in cash by the Company whereas fault has been found by the WTM of making expenses above Rs.2 lakhs during the financial year 1st April, 2017 to 31st December, 2017. The embargo under Section 269ST is with regard to receiving money in cash above Rs.2 lakhs per day. We are of the opinion that Section 269ST of the Income Tax Act is not applicable to the charges leveled against the appellant and, consequently, the question of violation of Regulation 4(1)(g) of the LODR Regulations does not arise.

18. The Company has given advances and loans which is a deviation in the business activities of the Company and was a material event which was required to disclosed to the stock exchange in accordance with Regulation 30(6) read with paragraph (c) of Part A of

Schedule III of the LODR Regulations. We find that majority of the loans and advances have been repaid by various parties but the fact remains that there has been non-disclosure of the loan and advances under the LODR Regulations. However, such loans and advances are reflected in the Annual Reports of the Company.

19. With regard to the non-disclosure of related party transactions and expenses involving cash payment a compliant was made by SEBI to the Income Tax Department, based on which reassessment proceedings were initiated under Section 148 of the Income Tax Act. In these reassessment proceedings nothing irregular was found with regard to related party transactions as well as on the advances and loans given by the Company. However, certain expenditure was disallowed under Section 40(3) of the Income Tax Act where the appellant had incurred expenditure in cash exceeding Rs.20,000.

20. We, thus, find that the Company had made certain lapses and failed to comply with the LODR Regulations.

21. Admittedly, a clear finding has been given by WTM that there is no misappropriation of funds of the Company nor there is any manipulation in the price of the scrip. The WTM has given a categorical finding that Section 12A of the SEBI Act or PFUTP Regulations have not been violated.

22. 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.

23. 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.

24. Reliance of the judgment of this Tribunal by the respondent in ***Ketan Parekh in appeal no.2 of 2004 decided on 14th July, 2006*** and in ***N. Narayan vs. AO, SEBI decided by Supreme Court (2013) 12 SCC 152*** is not relevant to the issue in hand.

25. We also find that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the WTM has given a clear finding that there was no violation of the PUTP Regulations and there was no diversion of funds nor there was any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor. In the absence of any specific loss being caused to anyone it was contended

that the penalty imposed in the given circumstances was totally disproportionate to the alleged violation apart from being harsh and excessive.

26. We find that the WTM has debarred the appellants for a period of one year and has imposed penalties amounting to Rs.63 lakhs. Some of these appellants are Independent Directors who were not involved in the day to day affairs of the Company. Under Section 149(12) of the Companies Act, Non-Executive Directors and Independent Directors cannot be held liable unless they have knowledge of commission of wrong doings by the Company or had not acted diligently. Merely because the Independent Directors were members of the audit committee does not mean that they had knowledge of commission of the wrong doings or that they did not act diligently and, therefore, in our opinion the Independent Director cannot be penalized.

27. Similarly, the disclosure is required to be made by the Company and if the Company has violated any provisions of the LODR Regulations then the Company should be penalized but extending the penalty to the Directors in the instant case is unjust and unfair as there is nothing to indicate that the Directors were involved in the misrepresentation of the financials of the Company in its Annual Reports. In the absence of any finding, the imposition of penalties on the Directors appears to be unjust and unfair. We are further of the opinion that in the event the appellant Company fails to pay the amount it is at that stage that recovery proceedings can be initiated against the Directors who were involved in the day to day activities or in the commission of the violation.

28. Considering the aforesaid, we affirm the violation committed by the Company with regard to some of the charges leveled under the LODR Regulations. Since the charge of fraud has not been proved under the

PFUTP Regulations we find that the order of debarment and penalty imposed for violation of the LODR Regulations is harsh and excessive.

29. Accordingly, while affirming the violation committed by the Company with regard to some of the non-compliance under the LODR Regulation, we direct that the period undergone towards debarment is sufficient for the aforesaid violation and, therefore, the period of debarment is reduced to the period underwent by the appellants. In addition, we reduce the penalty of Rs.30 lakhs to Rs.10 lakhs upon the Company Svam Software Ltd. to be paid within six weeks from today. In view of the debarment underwent by the Directors, namely, noticee no.3 to 6 the penalty imposed upon them is set aside. The appeal is partly allowed.

30. 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

13.10.2022
RHN

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