

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 03.11.2022

**Misc. Application No. 1097 of 2022
And
Appeal No. 454 of 2022**

Yashovardhan Birla
Birla House,
21 Mount Pleasant Road,
Malabar Hill,
Mumbai – 400 006. 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

Mr. Vinay Chauhan, Advocate with Ms. Rasika Ghate,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Abhiraj Arora and
Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

**WITH
Misc. Application No. 1098 of 2022
And
Appeal No. 463 of 2022**

Yogendra Premkrishna Trivedi
Mistry Manor,
62-A Napean Sea Road,
Mumbai – 400 006. 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

Mr. Somasekhar Sundaresan, Advocate with Mr. Tomu Francis, Ms. Yugandhara Khanwilkar and Mr. Arka Saha, Advocates i/b Khaitan & Co. for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Abhiraj Arora and Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. Both the appeals are against a common order dated May 25, 2022 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) and are being decided together.

2. We have heard Shri Vinay Chauhan, the learned counsel and Shri Somasekhar Sundaresan, the learned counsel for the appellants in respective appeals and Shri Sumit Rai, the learned counsel for the respondent.

3. The present matter relates to issuance of Global Depositories Receipts ('GDRs' for short) on March 15, 2010 amounting to Rs. USD 24.99 million. With regard to the same

transaction the Whole Time Member ('WTM' for short) passed an order dated September 29, 2020 holding that the issuance of GDR was fraudulent and necessary disclosures were not made to the Stock Exchanges which has misled the investors into believing that the GDR was subscribed by various investors abroad. The WTM accordingly issued directions under Section 11 and 11B of the SEBI Act.

4. Against the said order of the WTM, the appellant Yashovardhan Birla filed Appeal no. 38 of 2021 which was dismissed by judgment dated July 28, 2021 passed by this Tribunal. The violation committed by the Company and the appellant stood affirmed.

5. Against the same violation for the same GDR the AO initiated proceedings and after holding that the appellant has violated the provisions of the Act and the Regulations imposed a penalty of Rs. 10 lakh against which the appellant Yashovardhan Birla has filed Appeal no. 454 of 2022.

6. Having heard Shri Vinay Chauhan, the learned counsel for the appellant we find that the controversy involved in the present appeal insofar as the violation is concerned has already been affirmed by a decision of this Tribunal against

the same appellant in Appeal no. 38 of 2021 which was decided by judgment dated July 28, 2021.

7. The only contention raised by the learned counsel for the appellant is for the reduction in quantum of penalty and, in support of his decision, has relied upon a decision of this Tribunal in Mr. P.F. Sundesha & Ors. vs. SEBI in Appeal no. 534 of 2019 and other connected appeals decided on June 27, 2022. It was urged that this Tribunal had reduced the penalty from Rs. 10 lakh to Rs. 2 lakh and therefore a similar relief should be granted to the appellant.

8. Having heard the learned counsel for the appellant, we are of the opinion that the said decision is distinguishable and therefore not applicable in the present circumstances. The appellant was the co-chairman-cum-non-executive director as well as promoter of the Company. The appellant was wholly involved in the issuance of the GDR and was totally responsible for the non-disclosure of material information to the investors. Consequently, we do not find any reason to interfere in the quantum of penalty imposed by the AO. The appeal fails and is dismissed. Miscellaneous application is accordingly disposed of.

9. Insofar as the appellant Yogendra Premkrishna Trivedi in Appeal no. 463 of 2022 is concerned, the appellant was an independent director and the only charge against him is that he was present in the meeting of the Board of Directors in which the resolution was passed for subscribing to the GDR issue. Apart from this there is no other charge against the appellant. The WTM passed an order dated September 29, 2020 holding that the appellant was involved in the fraudulent issuance of GDR and accordingly issued directions under 11 and 11B of the SEBI Act against this appellant. The appellant filed Appeal no. 417 of 2020 which was allowed and the order of the WTM dated September 29, 2020 insofar as it related to the appellant was set aside.

10. On the same charge the AO initiated proceedings and held the appellant to be guilty and accordingly imposed a penalty of Rs. 10 lakh

11. Having heard Shri Somasekhar Sundaresan, the learned counsel for the appellant, we are of the opinion that since the appeal of the appellant against the WTM was allowed, the order of the AO on the same facts cannot be allowed to stand and appeal of the appellant is liable to be allowed.

12. In *Appeal no. 393 of 2020, Chromatic India Limited vs SEBI and other connected appeals decided on May 12, 2021*

this Tribunal held that in order to implicate a person, namely, a director of any fraudulent act it is necessary for the authority to further find any evidence which would show that the said person or director was involved in the fraud with regard to the GDR issue or that he was involved in the defalcation of the funds which was raised through GDR issue.

13. In the instant case, we find that there is no such evidence against the appellant Yogendra Premkrishna Trivedi other than the fact he was part of the resolution dated August 13, 2010. We are of the opinion that mere fact that the appellant was part of the resolution by itself does not create any suspicion nor create any fraudulent act. The Resolution by itself does not violate any provision of the SEBI Act or PFUTP Regulations.

14. In *Appeal no. 201 of 2019, Govind Das Pasari vs SEBI and other connected appeals decided on April 30, 2021* this Tribunal held:-

“15. Upon hearing both sides, in our view, appellant Mr. Govind Das, Mr. Bharat Kumar and Mr. Avichal were admittedly independent non executive directors. The resolution itself would show

that they did not participate in the issue of GDR proceeds at any point of time after passing of the resolution. All the necessary followup was to be carried by the Managing Director. No case of adverse inference that they should have taken efforts to bring back GDR proceeds was made out against them in any of the impugned order as argued before us and, therefore, they could not have been penalised or restrained as detailed supra.”

15. In ***Appeal no. 338 of 2021, Mr. H.S. Anand vs SEBI and other companion appeals decided on September 20, 2021*** it was found that the said appellant after attending the only meeting in which the resolution was passed took no further part in any subsequent board meetings of the committee and was not associated with the issuance of the GDR issue. This Tribunal held that once the finding has been given that he was not involved in the financials of the Company it was no longer open to the respondent to penalize the said appellant.

16. In ***Jaiprakash Kabra vs SEBI and other companion appeals in Appeal no. 58 of 2021 decided on September 2, 2021*** it was held that an independent director who has no role to play in the day to day affairs of the Company cannot be penalized.

17. Similar view was held in *Appeal no. 433 of 2021, Rajesh Shah vs SEBI decided on July 5, 2021*.

18. In view of the aforesaid, the impugned order insofar as the appellant Yogendra Premkrishna Trivedi is concerned cannot be sustained and to that extent the order is quashed. The appeal is allowed. Miscellaneous application is disposed of.

19. 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

03.11.2022
msb