

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Hearing: 11.1.2023**

**Date of Decision: 06.2.2023**

**Appeal No.1020 of 2022**

1. Mr. Akash Patni  
2. Mr. Vimal Kumar Patni  
3. Mr. Vikash Patni  
Shanti Niwas  
229, Goms Defence Colony,  
8<sup>th</sup> Avenue, Vaishali Nagar,  
Jaipur 302021.

...Appellants

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. Vikas Bengani, Advocate i/b Dr. S. K Jain, PCS for  
the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr.  
Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K  
Ashar & Co. for the Respondent.

**With**  
**Appeal No.1021 of 2022**

1. Mr. Akash Patni  
2. Mr. Vimal Kumar Patni  
3. Mr. Vikash Patni

Shanti Niwas  
 229, Goms Defence Colony,  
 8<sup>th</sup> Avenue, Vaishali Nagar,  
 Jaipur 302021.

...Appellants

Versus

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

...Respondent

Mr. Vikas Bengani, Advocate i/b Dr. S. K Jain, PCS for  
 the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr.  
 Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K  
 Ashar & Co. for the Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed by the appellants.

Appeal no.1020 of 2022 is against the order dated 29<sup>th</sup>

September, 2021 passed by the Whole Time Member

(hereinafter referred to as the 'WTM') restraining the

appellant from accessing the securities market and

further prohibiting them from buying, selling or

otherwise dealing in the securities market for a period of three years and from holding any position of director or key managerial personnel in any listed Company for the same period.

2. The appellants have also challenged the order dated 30<sup>th</sup> September, 2022 passed by the Adjudicating Officer whereby penalty of Rs.20,00,000 has been imposed on Mr. Akash Patni, appellant no.1 and Rs.10,00,000 each has been imposed on Mr. Vimal Kumar Patni, appellant no.2 and Mr. Vikash Patni, appellant no.3 for violation of the provisions of Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992) read with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').
3. The facts leading to the filing of the present appeal is, that the Vikash Metal and Power Ltd. ('Company'

for short) is a listed company and the shareholders in the extraordinary general meeting resolved and approved the issuance of Global Depository Receipts ('GDR' for short). Based on the aforesaid resolution, the process of issuance of GDR was initiated and, on 27<sup>th</sup> October, 2010, a resolution of the board of directors was passed resolving to open a bank account with EURAM Bank for the purpose of receiving the subscription money in respect of GDR. The resolution also authorized the appellants to sign all documents and process the necessary transactions in relation to the GDR issue. The resolution further authorized EURAM Bank to use the funds so deposited as security in connection with loans if any.

4. It transpires that thereafter on 22<sup>nd</sup> March, 2011, the loan Agreement was executed between Vintage FZE (hereinafter referred to as 'Vintage') with EURAM Bank wherein EURAM agreed to give a loan to Vintage. On 20<sup>th</sup> March, 2011, a pledge agreement was

executed by the Managing Director of the Company Mr. Akash Patni with EURAM on the basis of which it enabled Vintage to avail a loan from EURAM for subscribing to the GDR. Based on the loan Agreement and pledge agreement, a loan was availed by Vintage from EURAM which was used to subscribe to the GDR issue of the Company and a public announcement was made on the stock exchange that the GDR issue was fully subscribed. GDR of 1.20 million was issued amounting to US \$ 11.99 million. Further, Vintage was the sole subscriber to the GDR issue on the basis of a loan taken under the loan Agreement.

5. A show cause notice was issued to various noticees including the appellant alleging that Vintage was the sole subscriber to the GDR issued by the Company and that the subscription amount was paid by obtaining a loan under a pledge agreement from EURAM and that Mr. Akash Patni signed a pledge agreement which was an integral part of the loan agreement and on the basis

of this agreement Vintage availed loan from EURAM for subscribing the GDR issue. It was further alleged that the Company did not inform the stock exchange about the execution of the pledge agreement or the loan agreement. This act of concealing and suppressing the material facts was in violation of the provisions of Section 12A of SEBI Act, 1992 and Regulation 3 and 4 of the PFUTP Regulations.

6. An opportunity of hearing was given to the appellant and thereafter the impugned order was passed finding the appellant guilty of violating Regulations 3 & 4 of the PFTUP Regulations and Section 12A of the SEBI Act. The AO accordingly imposed a penalty of Rs.20 lakhs on the appellant and appropriate period of debarment was issued.

7. We have heard Mr. Vikas Bengani, Advocate for the appellants and Mr. Sumit Rai, Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the respondent.

8. The modus operandi adopted by the Company in the issuance of GDRs is identical and was considered by this Tribunal in several appeals. This Tribunal found that the modus operandi was the same and that the investors were misled into believing that the GDR was subscribed by many investors whereas the fact remained that the GDR was subscribed by one entity who received a loan from the bank for the purpose of subscribing the issue. Further, the bank had given a collateral security by the Company in the form of a Pledge Agreement securing the GDR proceeds as collateral securities for the loan given to that entity. This Tribunal found that such scheme was fraudulent.
9. Similar is the finding in the instant case and therefore it is not necessary for us to deal in detail with regard to the findings given by the WTM and AO in this regard.
10. The only ground urged is that this Tribunal in a large number of appeals has reduced the penalty

imposed by the AO and the period of debarment passed by the WTM considering the gravity of the offence.

11. There is no doubt that this Tribunal found that the penalties imposed upon the Directors in other matters were disproportionate to the violation committed by them. However, we find that in the instant case, the total GDR issue was USD 11.99 million out of which Vintage defaulted on the loan payment of USD 11.46 million including interest on the loan amount which loss had to be borne by the Company. We also find that the Company has gone into liquidation.

12. In addition to the aforesaid, we find that the appellants were in charge of the day to day affairs and were managing the Company. One appellant was the Managing Director, the other was the Chairman and the third was the Director. They were aware of the pledge agreement and the loan agreement and the fraudulent announcement of the GDR issue being fully subscribed.



13. Considering the aforesaid, we find that the penalty and the period of restraint imposed is proportionate to the violation and is not arbitrary or excessive.
14. For the reasons stated aforesaid, we do not find any error in the impugned orders. The appeals fails and are dismissed.
15. 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

6.2.2023

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