

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 08.01.2024

Date of Decision : 18.01.2024

Misc. Application No. 1667 of 2023
In
Appeal No. 942 of 2023

1. Brightcom Group Ltd.
2. M. Suresh Kumar Reddy
3. S.L. Narayan Raju ...Applicants

In the matter of:

1. Brightcom Group Ltd.
Floor 5, Fairfield Marriott
Road No. 2, Nanakramguda,
Gachibowli,
Hyderabad, Telangana – 500 032.
2. M. Suresh Kumar Reddy
Floor 5, Fairfield Marriott
Road No. 2, Nanakramguda,
Gachibowli,
Hyderabad, Telangana – 500 032.
3. S.L. Narayana Raju
Floor 5, Fairfield Marriott
Road No. 2, Nanakramguda,
Gachibowli,
Hyderabad, Telangana – 500 032. ...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. Janak Dwarkadas, Senior Advocate with Mr. L. S. Shetty, Mr. Ankit Lohia, Mr. Darshan Bafna, Mr. Sandeep K. Shirsagar, and Ms. Juhi Masani, Advocates i/b. L. S. Shetty & Associates for the Applicants.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Shreya Parikh, Mr. Nishit Dhruva, Ms. Shefali Shankar and Mr. Sahil Charniya, Advocates i/b MDP & Partners, Advocates for the Respondent.

ORDER:

1. Misc. Application No. 1667 of 2023 has been filed by the Brightcom Group Ltd. (Appellant No. 1), M. Suresh Kumar Reddy (Appellant No. 2) and S.L. Narayana Raju (Appellant No. 3) in Appeal No. 942 of 2023 praying to this Tribunal to stay the effect and operation of paragraph 145(a) of the impugned order dated August 22, 2023 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short). The paragraph is extracted below:-

“145. Keeping in view the prima facie observations and findings recorded in the preceding paragraphs and in order to protect the integrity of the securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the SEBI Act, 1992 hereby issue the following interims direction, which shall be in force until further orders:-

a) Noticees 2 and 3 shall cease to hold the position of a director or a Key Managerial Personnel in any listed company or its subsidiaries until further orders.”

2. Background of the case is, that SEBI received complaints in 2022 and 2023 in respect of preferential allotments made by Brightcom Group Ltd and conducted a detailed investigation in the matter. Preliminary findings indicated *prima facie* irregularities in preferential allotments by the Company including circulation of funds to create impression of receipt of funds, allotment of warrants / shares without receipt or partial receipt of funds, submission of fabricated bank statements to SEBI and significant misstatements / misrepresentation in the financial statement of the Company. Considering the gravity of the *prima facie* findings, the WTM arrived at the conclusion that urgent intervention by SEBI is warranted and accordingly interim order dated August 22, 2023 was issued under Section 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

3. Before me, Shri Janak Dwarkadas, the learned senior counsel for the Appellants urged that they are seeking stay only on the direction barring Appellant Nos. 2 and 3 from holding any position of a Director or Key Managerial Personnel (KMP) in any listed Company or its subsidiaries. They are ready to comply with rest of the directions issued by the WTM in the impugned order. As the Appellant Nos. 2 and 3 have had to step down from their positions in the Company, the operations of the Company have been severely affected thereby affecting the interest of the public shareholders. The turnover has reduced substantially and share price of the Company has fallen down between August 2023 to December 2023. Further, the other Promoter cum Executive Director has also resigned from the Board of Directors with the result the Board has been left with only Non-Executive Independent Directors to run the Company. The Company is totally a technology driven company and it is not possible for the Independent Directors to run the specialized operations of the Company. The Appellant No. 2 has played a pivotal role in building up the Company to a global company with 16 subsidiaries in various part of the world and over 400 employees. He has built client relationships in the specialized areas of digital marketing and Adtech and without him at the helm of affairs the revenue generation of the company is

impacted. By removing the Appellant Nos. 2 and 3 from their key positions, while the investigation is still going on, grave prejudice has been caused to the Appellants and also to the investors of the Company as almost Rs. 850 crores of shareholder's wealth has been wiped out due to fall in share prices since the impugned order was passed.

4. The learned senior counsel stated that, keeping the interest of shareholders in view, irreparable injury will be caused if the Appellant Nos. 2 and 3 are not allowed to resume their positions in the Company. At this stage, while investigation is still continuing, the Company should be allowed to function normally which would be possible only when Appellant Nos. 2 and 3 are back at the helm of affairs of the Company.

5. Shri Shiraz Rustomjee, the learned senior counsel appearing on behalf of SEBI, on the other hand, submitted that the other Promoter Director had not played any effective role in the Board at least since July 2023 and the Company was aware of his intention to step down as an Executive Director. Despite being aware of his impending resignation and the Appellants ceasing to hold any positions in the Company, no steps have been taken to appoint any Executive Director to run the

Company. Secondly, the allegations against the Appellants are grave. Both Appellant Nos. 2 and 3 have submitted false / fraudulent statements to SEBI. They have failed to file their replies and cooperate with SEBI. There are allegations of direct involvement of Appellant No. 2 in round tripping of funds and in siphoning off of proceeds of preferential issues. Appellant No.3 is alleged to have submitted forged bank statements in order to cover non-receipt of adequate consideration by the Company while making preferential allotments. Putting back Appellant Nos. 2 and 3 at the helms of affairs of the Company would not be prudent from any angle especially when they themselves are responsible for bringing the Company to the position it is now in.

6. Having heard the arguments of both the parties, I note that the Board of Directors of the Company were aware of the impending resignation of the other Promoter and Executive Director and his ceasing to participate in Board meetings from July 2023. The Board was also aware of the resignation of the Appellant No. 2 on August 22, 2023 as a consequence of the directions issued in the impugned order. However, I note that no efforts were made to appoint any Executive Director in the Board to manage the affairs of the Company though almost four

months have passed since the impugned order was issued. Further, serious allegations have been made against direct involvement of Appellant Nos. 2 and 3 especially with regard to submission of forged / fabricated bank statements to SEBI. Though investigation are on-going, examination of transactions pertaining to 22 allottees out of 82 allottees of preferential allotments have pointed out to evidence of *prima facie* diversion of funds by Appellant No. 2. In the absence of any evidence to the contrary being filed by the Appellants before me, I do not find any lacunae in passing of the impugned order.

7. In view of the aforesaid, I do not find any reason to interfere in the impugned order at this stage. The Misc. Application is disposed off. It is made clear that any observation made by this Tribunal in this order is only *prima facie* and will not be utilized by either of the parties.

Ms. Meera Swarup
Technical Member

18.01.2024
msb