

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 03.03.2020
Date of Decision : 16.03.2020

Appeal No. 144 of 2019

Highlight Leafins Pvt. Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021

...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

WITH
Appeal No. 145 of 2019

Yard Securities Pvt. Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021

...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

WITH
Appeal No. 146 of 2019

Green Cottage and Resorts Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021

...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

WITH
Appeal No. 147 of 2019

Zoom Colonizers Pvt. Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021

...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

WITH
Appeal No. 148 of 2019

Phenomenal Crafts Pvt. Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021

...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

AND
Appeal No. 149 of 2019

Yellow Consultants Private Ltd.
1011, Embassy Centre,
207, Nariman Point,
Mumbai- 400 021 ...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. Ashok Singh, Advocate with Ms. Mahi Lalka, Advocate for Appellants in Appeal Nos. 144 to 149 of 2019.

Mr. Vishal Kanade, Advocate with Mr. Shehaab Roshan, Advocate i/b K. Ashar & Co. for the Respondent in Appeal Nos. 144 to 149 of 2019.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala

1. Two sets of Appeals have been filed against the two different orders passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience). Appeal No. 144 of 2019 and 145 of 2019 is against an order dated September 27, 2018 passed by the AO imposing a penalty under Section 23H of the Securities Contracts (Regulation) Act, 1956 (“SCRA” for convenience)

and 15A(b) of the SEBI Act. The second set of appeals are Appeal Nos. 146, 147, 148 and 149 of 2019 against the order dated September 26, 2018 passed by the AO imposing a penalty for violation of Section 16 of the SCRA. The issue involved in all the appeals is the same and, accordingly all the appeals are being decided together. For facility, the facts in the first set of Appeals in Appeal No. 144 of 2019 and the second set of Appeals, namely in Appeal No. 146 of 2019 are being taken into consideration.

2. In Appeal No. 144 of 2019 the charge is that off-market transfer of shares was made by the appellant without any consideration. The contention before the AO was that the transfer of shares was made against a consideration but proof of receipt of the consideration has been misplaced and is no longer traceable. The AO recorded a finding that since no documentary proof was filed the transfer of shares without consideration is proved and is in violation of Section 16 of the SCRA. In Appeal No. 145 of 2019 the additional charge is, that on account of transfer of shares there was a change in the shareholding of the appellant by two percent which was not disclosed. Admittedly, the change in the shareholding was not

disclosed and, consequently the AO found that there was a violation of Section 15A(b) of SEBI Act.

3. In the second set of appeals the facts in Appeal No. 146 of 2019 is, that the appellant was induced to enter into a loan transaction and accordingly pursuant to the said loan agreement the appellant provided a loan in the form of shares. It was contended that the borrower issued a cheque which bounced and thereafter a legal notice was given and a complaint was lodged to the police. It was thus contended that the appellant was cheated and that it was not a case that the off-market transfer of shares was without any consideration. The AO did not accept the submission of the appellant and found that the shares were transferred without any consideration thereby violating Section 16 of the SCRA.

4. We have heard Shri Ashok Singh, Advocate for the appellants and Shri Vishal Kanade, Advocate for the respondent. Having heard the learned counsel for the parties, we find that admittedly in the first set of appeals no documentary proof has been filed to show that the off-market transfer of shares was based on any consideration. In the absence of any documentary proof, we do not find any error in

the order of the AO coming to the conclusion that the off-market transfer of shares was based on no consideration.

5. In the second set of appeals we find that the contention that the appellant was induced to transfer the shares is not based on any concrete evidence and is without any foundation. We also find that the shares were transferred and, subsequently a cheque is alleged to have been issued which accordingly to the appellant had bounced. We, however, find that no steps were taken by the appellant for recovery of the amount by way of filing a suit or by filing an application under Section 138 of the Negotiable Instruments Act. Thus, an irresistible inference has been drawn by the AO to the effect that the transfer of shares were without consideration which we do not find any manifest error.

6. In the light of the aforesaid, all the appeals fail and are dismissed with no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M. T. Joshi
Judicial Member