BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 07.06.2022
Date of Decision : 16.09.2022

Appeal No. 572 of 2021

Atlas Jewellery India Ltd.
Office No. JA-710, 7th Floor,
DLF Tower "A", Plot No. 10,
Jasola District, New Delhi – 110 025. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Dharam Jumani, Advocate with Mr. Mihir Nerurkar, Ms. Sneha Vani Marjadi, Advocates i/b Ms. Sneha Vani Marjadi, Advocate for the Appellant.

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

CORAM : Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the decision of the learned Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated June 17, 2021 holding it guilty for violation of Clause 35 of the Listing Agreement and Regulation 72(1)(c) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') and debarring it from securities market for a period of one year from the date of order and additionally directing it to comply with the minimum public shareholding norms within six months from the completion of the current open offer, the present appeal is preferred.

2. The proceeding was initiated by SEBI against seven noticees including the present appellant. Different orders for different set of violations were passed against the rest of the six noticees. They have not challenged the orders passed against them.

3. The basic allegation against the present appellant is that though original noticee nos. 2 Mathukkara Moothedath Ramachandran (hereinafter referred to as 'MMR') and noticee nos. 3

Atlas Jewellery Pvt. Ltd. (hereinafter referred to as 'AJPL') both its promoters had got allotted preferential shares to rest of the four Dubai based noticees aggregating to 94.93%, no disclosures were made by the appellant of the same to the stock exchanges continuously for eight quarters ended from March 2014 to December 2015. Further, allotment of preferential shares, according to SEBI, had also resulted in violation of minimum public shareholding norms which requires minimum public shareholding of 25%.

4. We have heard Mr. Dharam Jumani, the learned counsel with Mr. Mihir Nerurkar, Ms. Sneha Vani Marjadi, the learned counsel for the appellant and Mr. Pradeep Sancheti, the learned senior counsel with Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, the learned counsel for the respondent.

5. The history of the case shows that MMR had filed a draft offer document dated June 26, 2014 for an open offer for acquisition of 2,61,70,180 equity shares of a face value of Rs. 10/- each which represented 26% of the total equity shares or the voting share capital of the present appellant. SEBI perused the said draft open offer letter. It found that already on January 15, 2014, the appellant made

preferential allotment of shares to noticee nos. 4 to 7 in the following manner :-

Al Juraina Precious Metals & Bullions (19.06%) ("AL Juraina"), Al Layyah General Trading (24.06) ("AL Layyah"), Al Mareiha Precious Metal and Bullions (24.66%), ("Al Marelha") and Mankool General Trading (23.90%) ("Mankool") on January 15, 2014. The shares issued under the preferential allotment constituted 4,61,49,333 equity shares representing 91.70% of the total post allotment share capital. These entities were noticees nos. 4 to 7 before the learned WTM (hereinafter referred to as 'Dubai based companies / noticees').

6. Since the allotment was made on the same date, SEBI conducted further investigation to find out as to whether these four Dubai based companies were acting as persons acting in concert as provided by Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations'). The show cause notice was issued and both sides were heard. On the basis of material before him, the learned WTM found that noticee nos. 2 MMR and noticee nos. 3 AJPL the original promoters of the appellant in concert with

the rest of the four Dubai based companies got allotted the shares to these four companies as detailed above. In view of the same, the rest of these noticees were directed to make public announcement to acquire shares of the appellant company in accordance with the Takeover Regulations within a period of 45 days alongwith the interest of 12% p. a. Noticee nos. 2 MMR was restrained from accessing the securities market for a period of two years. Different orders were passed against the different noticees as detailed in the impugned order.

7. So far as the appellant is concerned, the learned WTM held that the present appellant had a knowledge that noticee nos. 4 to 7 i.e. four Dubai based companies were acting in concert with rest of the two promoters i.e. noticee nos. 2 MMR and noticee nos. 3 AJPL. Still it has not disclosed this fact to the stock exchanges as required by Clause 35 of the Listing Agreement.

8. Learned counsel for the appellant submitted before us as under :-

- That knowledge of noticee nos. 2 MMR is attributed to the appellant. The appellant did not get the chance to

make a case on tis ground and, therefore, the findings that the knowledge of the promoters is beyond the scope of show cause notice.

- It was noticee nos. 2 MMR who had chosen four Dubai based companies, based on several criteria as noted in the impugned order at page no. 52 as a part of annexures of preferential issue.

- Similarly, tripartite agreement was executed between these Dubai based companies with AJPL, noticee nos. 3. Decision to allow shares on preferential basis was approved by the board of directors of the appellant.

- Noticee nos. 2 MMR being the chairman alongwith his wife as a member of the board was in control of board of directors which has two other independent directors. However, so far as the appellant company is concerned, it was in need of funds. It's promoters i.e. noticee nos. 2 MMR and noticee nos. 3 arranged for the same. There are no ways that the appellant company would know that these four investors i.e. Dubai based companies were

acting in concert with the appellant and, therefore, he submitted that imputing the knowledge of the promoters to the appellant company is fraud.

- Therefore, relying on the ratio of the decision of this Tribunal in the case of ***DLF Ltd. vs. SEBI [(2015) SCC Online SAT 54] and Killick Nixon Ltd. vs. Dhanraj Mills Pvt. Ltd. & Ors. [(1981) SCC OnLine Bom 301],*** it was submitted that the appeal be allowed.

9. The learned counsel for the respondent took us through the reasoning of the learned WTM and submitted that besides the knowledge of the promoter, appellant company itself knew that the four Dubai based companies were acting in concert with each other. He further submitted that in the case of ***DLF Ltd. vs. SEBI (supra),*** the fact was that a FIR was filed against the director which was not disclosed in the prospectus. In those circumstances, this Tribunal has held that a fact of filing of FIR against one of the directors cannot be imputed to the company. Similarly, in the case of ***Killick Nixon Ltd. (supra),*** the Hon'ble Bombay High Court merely held that for transfer of shares upon death of a person the company cannot act on

the knowledge of its directors. He further submitted that this ratio is not applicable in the present case.

10. The definition of person acting in concert as defined in Regulation 2(1)(q)(1) of the Takeover Regulations is as under :-

> *"2(1)(q). "persons acting in concert" means, - ,*
>
> *(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company."*

11. The learned WTM has noted that all these four Dubai based companies were voting in similar fashion like that of rest of the promoters i.e. noticee nos. 2 and noticee nos. 3 for all the times. It was further found that all those companies were *inter se* connected with each other and were also connected with the two promoters. The tripartite agreement executed between these four Dubai based companies, the appellant company and the two promoters separately showed that the appellant had knowledge of the same. All these four Dubai based companies were incorporated just within a week. Their common address, common phone numbers, common domain name

for email ID's, prior professional connection, etc. showed that they were neatly connected with MMR and AJPL. Frequent funds transfer, pattern of credit and debit from the bank accounts and same person operating the said accounts further strengthened that these four Dubai based companies, MMR and AJPL were acting in concert. The details of all these connections are given in paragraph nos. 31 and 32. Thus, there is no doubt that these four Dubai based companies as well as MMR and AJPL were the persons acting in concert.

12. The question would be as to whether the appellant i.e. the appellant company had a knowledge of the fact that its two earlier promoters were acting in concert with these four Dubai based companies. It is to be noted that shares were allotted by the appellant in the preferential allotment unlike the public issue where the funds were raised by investing subscription from the public. A tripartite agreement which preceded the said allotment was executed between the appellant these Dubai based four companies and two promoters, namely, MMR and AJPL and as such the appellant had knowledge about the same. In the circumstances, the learned WTM has additionally held that since the company can act through its directors

or board of directors, knowledge of board of directors is attributable to the company. In the case of ***DLF Ltd. (supra),*** the fact would show that the FIR was filed against one of the directors of the company therein. The same was not disclosed in the prospectus. In those circumstances, the majority opinion of this Tribunal was that the knowledge of the directors cannot be attributed to the company. Same is the case so far as the decision in ***Killick Nixon Ltd. (supra),*** is concerned. In the present case, however the facts on record would clearly show that the appellant company was aware of having discussion with the four Dubai based companies. It had tripartite agreement with them. Thereafter, the preferential shares came to be issued by it. In the circumstances, we find that there is no merit in the submissions.

13. The appellant submitted that the statement made by the learned WTM that the knowledge of a promoter is the knowledge of the company is beyond the scope of show cause notice. However, no new allegations are made in the order nor any fresh violation is attributed to the appellant. Therefore, it cannot be said that the learned WTM has travelled beyond the show cause notice. Therefore, the ratio of this case is not applicable in the present case.

14. In the circumstances, the following order :-

ORDER

15. The appeal is hereby dismissed without any order as to costs.

16. 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 M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

16.09.2022
PTM

RAJALAKSHMI H NAIR Digitally signed by RAJALAKSHMI H NAIR Date: 2022.09.16 15:20:21 +05'30'