

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 10.8.2022

Date of Decision: 1.9.2022

Misc. Application No.513 of 2022

And

Appeal No.471 of 2022

Dalmia Industrial Development Limited

9, India Exchange Palace,

8th Floor, Kolkata – 700001.

...Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C-4A,

Bandra Kurla Complex, Bandra (E),

Mumbai - 400 051.

...Respondent

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

Ms. Rathina Maravarman, Advocate with Mr. Chirag
Shah, Ms. Karishma Motla, Advocates i/b Mansukhlal
Hiralal & Co. for the Respondent.

With

Misc. Application No.767 of 2022

And

Appeal No.472 of 2022

Vikash Chowdhary

783, Anandapur, Flat No.1803,

Tower 6 Urbana, Near Ruby Hospital,

Kolkata – 700107.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051.

...Respondent

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

Ms. Rathina Maravarman, Advocate with Mr. Chirag
Shah, Ms. Karishma Motla, Advocates i/b Mansukhlal
Hiralal & Co. for the Respondent.

With
Misc. Application No.769 of 2022
And
Appeal No.473 of 2022

Vineet Chowdhary
5, J.B.S, Halden Avenue, Block - 6,
Flat - 10B, 10th Floor,
Silver Spring Complex, Kolkata - 700105.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051.

...Respondent

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

Ms. Rathina Maravarman, Advocate with Mr. Chirag
Shah, Ms. Karishma Motla, Advocates i/b Mansukhlal
Hiralal & Co. for the Respondent.

With

**Misc. Application No.771 of 2022
And
Appeal No.474 of 2022**

Raj Mohta
61, B.L. Saha Road, South City Gardens,
Flat No - 1A, 1H Tower no. 3,
New Alipore, Kolkata - 700053. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051. ...Respondent

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

Ms. Rathina Maravarman, Advocate with Mr. Chirag
Shah, Ms. Karishma Motla, Advocates i/b Mansukhlal
Hiralal & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 21st April, 2022 passed by the Whole Time Member ('WTM' for short) restraining the appellants from accessing the securities market and further

prohibiting them from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market, in any manner, whatsoever for a period of one year. In addition to the above, the WTM also imposed penalties of different amounts totaling Rs.60 lakhs.

2. The facts leading to the filing of the present appeal is, that on 9th June, 2017 the Ministry of Corporate Affairs issued a letter annexing a list of 331 shell companies and requesting SEBI to take appropriate action under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and its regulations.
3. Based on the said letter, SEBI issued an order dated 7th August, 2017 placing trading restrictions on the appellant Company, its Directors and promoters. The Company made a representation and also filed appeal no.211 of 2017 which was disposed of by this Tribunal

by an order of 29th August, 2017 directing SEBI to decide the representation.

4. Subsequently, based on further investigation SEBI passed an ex-parte ad-interim order dated 26th September, 2017 which included a direction for appointment of a forensic auditor to verify misrepresentations including financial and misuse of funds in books of accounts of the Company. A confirmatory order dated 31st October, 2018 was subsequently passed.
5. Based on the forensic audit report and further investigation made by SEBI, a show cause notice dated 27th February, 2020 was issued. The broad charges in the show cause notice are as follows:
 - A. *“Misrepresentation including of financials and misuse of funds/books of accounts in violation of LODR Regulations, 2015;*
 - B. *Non furnishing of information/Non-cooperation by the Company with the forensic auditor;*
 - C. *Other violations of LODR Regulations, 2015.*
 - D. *Violation of PFUTP Regulations, 2003.”*

6. The WTM after considering the replies of the appellants and the material evidence on record concluded that the appellant Company misrepresented its financials and violated the accounting standards. The WTM found that various provisions of LODR Regulations were not complied with during the three financial years and there were lapses on the part of the Company in not making the disclosures within the stipulated period. The WTM further found that non-furnishing of information to the forensic auditor was violative of Section 11(2)(i) of the SEBI Act. The WTM further found that there was no violation of Section 12A of the SEBI Act and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') as there was no misappropriation of the funds nor the Company nor its Directors had played a fraud upon the investors nor was

there any disproportionate gain or unfair advantage nor any specific loss was incurred by any investor. The WTM accordingly for the above violations debarred the appellant from accessing the securities market for specified periods and imposed different amounts of penalties on the appellants.

7. We have heard Mr. Aditya Thanvi, Advocate assisted by Ms. Rasika Ghate, Advocate for the appellants and Ms. Rathina Maravarman, Advocate assisted by Mr. Chirag Shah and Ms. Karishma Motla, Advocates for the respondent.
8. On the issue of failure to furnish information to the forensic auditor we find from the impugned order that a categorical finding has been given that the appellant not only failed to co-operate but also did not furnish the relevant information to the forensic auditor and, thus, hampered the investigation. The contention that necessary information was supplied is bereft of merit as no evidence of any sort has been filed to show that the

appellants had furnished the requisite information to the forensic auditor. In view of the aforesaid, we do not find any error in the order passed by the WTM on this score.

9. The WTM has gone into detail and came to the conclusion that there has been misrepresentation including of financials and, consequently, violation of the LODR Regulations. In this regard, the WTM found discrepancies relating to loans and advances, not deploying appropriate selection process, discrepancies between trade receivable and revenue, making investment in companies which had nil revenue, discrepancies in computation of preliminary expenses. The WTM found that the findings given in the forensic audit report were correct and the Company had disclosed false transactions in the books of accounts and thereby violated Regulation 48 of the LODR Regulations, 2015. The discrepancies found by the WTM is as under:

- i. “There is discrepancy in the cash flow statement disclosed by the Company for FY 2017-18 to the extent of Rs.159.45 lakhs. Further, DIDL had not shown breakup of current assets and current liabilities like changes in inventory, operating receivables and payables under working capital, changes in its cash flow statement for the FY 2015-16 and 2016-17.
- ii. There is discrepancy in the figures shown by the Company for trade receivables of the Company pertaining to FY 2015-16 to FY 2017-18.
- iii. The Company has not disclosed the true nature of investments in companies with Nil revenue in its financials.
- iv. The amount of preliminary expenses charged by the Company to the profit and loss account is not correct.
- v. DIDL has disclosed suspicious transactions in its books of accounts with respect to transferring of funds amounting to Rs.734 lakhs to 8 different parties, on the same day of receipt of funds amounting to Rs.733.9 lakhs.”

10. We thus find that the Company had made certain lapses and failed to comply with the LODR Regulations.

11. We also find that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the WTM has given a clear finding that there was no violation of the PUTP Regulations and there was no diversion of funds nor there was any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor. In the absence of any specific loss being caused to anyone it was contended that the penalty imposed in the given circumstances was totally disproportionate to the alleged violation apart from being harsh and excessive.

12. Admittedly, a clear finding has been given by WTM that there is no misappropriation of funds of the Company nor there is any manipulation in the price of the scrip. The WTM has given a categorical finding that Section 12A of the SEBI Act or PFUTP Regulations have not been violated.

13. In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive. We also find that directions of debarment and imposition of penalties have also been imposed upon the appellants.

14. In the instant case, we find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive.

15. Accordingly, while affirming the violation committed by the Company with regard to non-compliance of the LODR Regulation, we direct that the period undergone towards debarment of the appellants is sufficient for the aforesaid violations and,

consequently, the period is reduced to the period underwent by the appellants. In addition to the aforesaid, we reduce the penalty to 50% of the amount imposed against the appellants. The appeals are partly allowed. All the misc. applications are also accordingly disposed of. In the circumstances of the case, parties shall bear their own 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 Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

1.9.2022
RHN