

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 31.08.2017

Appeal No. 100 of 2016

Ritesh Properties and Industries Ltd.
Phase-VIII, Focal Point,
Chandigarh Road,
Ludhiana – 141 011.

...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. P.N. Modi, Senior Advocate with Mr. N.P.S. Chawla, Ms. Kalpana Desai and Ms. Nikita Panhalkar, Advocates i/b Vaish Associates for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis and Mr. Vivek Shah, Advocates for the Respondent.

WITH
Appeal No. 101 of 2016

Sanjeev Arora
Flat No. H-1002,
Catriona Apartments,
Ambience Island, NH-8,
Gurgaon – 122 001.

...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. P.N. Modi, Senior Advocate with Mr. N.P.S. Chawla, Ms. Kalpana Desai and Ms. Nikita Panhalkar, Advocates i/b Vaish Associates for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis and Mr. Vivek Shah, Advocates for the Respondent.

**WITH
Appeal No. 102 of 2016**

Roop Kishore Fatehpuria
375 CX Model Town Extn.
Ludhiana – 141 002.

...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. I.S. Ratta, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis and
Mr. Vivek Shah, Advocates for the Respondent.

**WITH
Appeal No. 103 of 2016**

Rajiv Arora
1108/1, Tagore Nagar,
Civil Lines,
Ludhiana – 141 001.

...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. N.P.S. Chawla, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis and
Mr. Vivek Shah, Advocates for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. These appeals are preferred by the appellants aggrieved by the impugned order dated January 13, 2016 passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short). By the said order the appellants herein have been restrained from accessing the securities market directly or indirectly for a period of 3 years from the date of the order for violation of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations, 2003). Since the impugned order is common to all appeals, we heard the appeals together and dispose them off by this common order.

2. We heard the matter in detail relating to Appeal No. 100 of 2016, Ritesh Properties and Industries Limited ('Company' for short) as the lead matter. Appellant in Appeal No. 101 of 2016 is the Managing Director and appellants in Appeal Nos. 102 of 2016 and 103 of 2016 are Directors of the Company.

3. SEBI conducted an investigation into the trading / dealings in the scrip of the Company covering the period from July 14, 2006 to May 20, 2008. It was observed that the share price of the Company rose from ` 3.52 on July 13, 2006 to ` 123.50 on May 21, 2008. In parallel, the volume of trading also increased substantially from 5440 shares to 71,702 shares during the same period. The investigation revealed that the Company had made several misleading announcements regarding its projects / plans and also had delayed certain required disclosures to the stock exchanges. These include:-

- (a) Announcement of a Collaboration Agreement between the Company and Ansal Townships and Projects Ltd., regarding a joint venture but without backing up with detailed project plans and profit sharing mechanism etc. thereby selectively disclosing some information and suppressing certain other information;
- (b) Premature public announcement on January 8, 2007, stating that the Punjab Govt. had approved the project of the company as Mega Project with all requisite approvals, while the crucial permission from the Punjab Pollution Control Board ('PPCB' for short) was actually received more than two years later in February 2009;
- (c) On February 2, 2008, the Company made an announcement regarding their decision of the board to issue 1,92,308 equity shares of the Company at a premium of ` 120 to NDTV Ltd. However, subsequently on April 1, 2008, when NDTV withdrew the proposed subscription the Company did not disclose this information to the stock exchanges;
- (d) On may 17, 2008 the Company made an announcement of their plan to open 500 retail outlets of their fully owned subsidiary namely Femella Fashions but actually opened only about 7 outlets and
- (e) The Company made irregular preferential allotment of its shares / warrants to its related entities on various occasions.

4. The investigation also revealed certain misleading financial statements and inappropriate accounting practices. These include sale proceeds of a flat being shown as “Income from Operations” rather than under the head “Other Income”; charging the collaborator’s (Ansal Townships and Projects Ltd.) share of the sale proceeds under ‘material consumed’ etc.

5. In short, the impugned order holds that the appellant made several misleading public announcements relating to various plans / activities and resorted to inaccurate / inappropriate accounting practices regarding revenue sharing and categorization of operating / non-operating income etc, in order to present a rosy picture on the performance of the Company and thereby manipulated its share price and therefore violated provisions of the PFUTP Regulations 2003. Hence vide the impugned order SEBI imposed 3 years restraint on the Company and its Directors (appellants) from dealing in the securities market directly or indirectly.

6. Shri P.N. Modi, Learned Senior Counsel for the appellant in Appeal No. 100 of 2016 extensively argued the matter. He submitted that:-

- (a) The appellant was a BIFR Company till 2005 after which it managed to revive on the basis of a scheme floated by the Government of Punjab for developing a Mega City with over 40 acres of land to develop both green (non-polluting) industries and as well as residential area on a 60 : 40 basis. The share price of the Company increased substantially from its BIFR days to post revival and development of this new project purely on its merit because the project was expected to

generate revenue of more than ` 800 crore. While the work relating to the industrial portion is almost complete, the work relating to the residential part is yet to commence because of the inability of the Company to generate sufficient funds following the impugned order. Accordingly, far from helping the investors including the subscribers in the project the impugned order is adversely impacting all of them.

- (b) The allegations in the impugned order are factually not correct and the Company has not received any complaint directly or indirectly from any investor. The Company has about 17,000 public shareholders.
- (c) Two adjudication orders passed by the Adjudicating Officers of SEBI (dated November 30, 2010 and August 31, 2012, against the Company and its Managing Director respectively) on the basis of the same allegations as in the impugned order, imposed only nominal penalties on the appellants (` 1 lakh and ` 10 lakh respectively). This Tribunal reduced the penalty of ` 10 lakh to ` 1 lakh and SEBI did not appeal against the same. All these indicate that the alleged offences were of non-serious nature.
- (d) While SEBI is empowered to take action under Section 11 and 11B etc over and above the adjudication process such action is resorted to only in the case of serious offences and the charge in the impugned order that “serious contraventions are alleged and monetary penalty alone would not be sufficient to safeguard the market integrity” is not based on sufficient facts

/ evidence. Therefore, when the Adjudicating Officers had let off the Company and its Managing Director and this Appellate Tribunal had further reduced the penalty there was no reason for the appellant to invoke Section 11 and 11B procedure.

- (e) The approval granted by the Government of Punjab for the Mega Project on April 12, 2006 was not subject to any conditions. It had stated that the PPCB shall grant its NOC and consent to operate. Both, the Directorate of Industries which approved the project and the PPCB, were under the control of the Chief Minister. As such, the Company's announcement that it got all necessary approvals for commencing the Mega Project was fully in order. Moreover, the Adjudicating Officer's order dated August 31, 2012 had held that noticee was not guilty of any charge on this ground. Since the approval was for only green category industrial projects, the PPCB clearance was only incidental though it is a fact that it was actually received only in February 2009. However, work on the project started in January 2007, soon after its announcement.
- (f) The agreement with NDTV for a preferential allotment was only for a small percentage of shares (1.65% of the total equity) and the announcement had only a marginal impact on the share price. However, price was still lower than the 2008 prices which was consistently above ` 100.
- (g) The statement in the impugned order that no plan was produced regarding the announcement on behalf of its

subsidiary for opening 500 outlets is incorrect as there was a detailed Project Report / Project Information Memorandum which was produced before the Whole Time Member on September 23, 2015. However, because of changes in the global economic scenario and the advent of on-line marketing the appellant changed the proposed model to on-line trading after opening 7 outlets.

- (h) Regarding the misleading financial statements etc. and the controversies surrounding 'operational income' versus 'other income' etc. it was urged that the Company had in fact changed its Articles of Association to include real estate as part of its business and therefore showing the sale proceeds of a property as operational income was within the correct accounting procedure. The Institute of Chartered Accountants of India ('ICAI' for short) disposed of the reference by SEBI stating that there was no misconduct by the Auditor.

7. In short, the Learned Senior Counsel for the appellant argued that the public announcements were made as per correct business plans, there were no suppression of facts, the accounting practices followed were in order both from its procedural angle as also since the ICAI did not find any fault and a project report on retail showrooms was produced before WTM of SEBI. All these facts indicate that the impugned order imposing a harsh punishment on the appellant was ill-conceived as there were only some minor violations which had been dealt with by the Adjudicating Officer ('AO' for short) of SEBI itself as well as this Appellate Tribunal.

8. We have heard the extensive arguments made by the Learned Senior Counsel for appellant and the submissions made by Shri Pradeep Sancheti, Learned Senior Counsel for the respondent SEBI. We have also perused the records produced before us. Fact that the AO has passed adjudication order against the Company and its Directors does not preclude the WTM of SEBI to exercise powers under Section 11 & 11B of SEBI Act, because the two proceedings contemplated under the SEBI Act are independent of each other.

9. While directions given by the WTM under the SEBI Act in the facts of present case cannot be faulted, we find that some of the findings recorded by the WTM of SEBI cannot be sustained as can be seen from the following:-

- (a) In the impugned order the WTM has held that the Company has made false corporate announcement on January 8, 2007 regarding the NOC from the PPCB. The AO in his order dated August 31, 2012 had exonerated and held that the Company cannot be said to be guilty of the above charge. Without finding fault with the decision of the AO and without setting out the reasons for disagreeing with the decision of the AO, the WTM of SEBI could not have taken a contrary view that too without any basis. In fact, the approval granted by the Punjab Government to the Company specifically directs the PPCB to grant its NOC to the Company. In these circumstances finding recorded by the WTM that the Company had made false corporate announcement on January 8, 2007 cannot be sustained.

- (b) In the impugned order it is held that the Company has not furnished any evidence such as market survey, funds earmarked, places identified etc to suggest that it had taken some steps in order to substantiate that it actually had plans to open 500 outlets and the announcement made in that behalf was genuine. Above finding of the WTM is falsified by the Detailed Report / Project Information Memorandum, a copy of which was furnished to SEBI on September 23, 2015. Since the WTM has failed to consider the research analysis report, the aforesaid findings recorded by the WTM cannot be sustained.
- (c) In the impugned order it is held that the Company has not submitted any evidence that it had actually received ` 1.5 crore as compensation. In fact the show cause notice issued to the appellant itself records that the Company had received ` 1.5. crore which was declared as income from operations. Thus, the above finding recorded by the WTM which is contrary to the show cause notice cannot be sustained.

10. In these circumstances, since some of the charges held proved in the impugned order cannot be sustained, while upholding the impugned order on merit, we are of the considered view that the period of restraint imposed on the appellant needs to be reduced. We note that the appellants have already undergone restraint of about 20 months out of the 36 months imposed from the date of the impugned order i.e. January 13, 2016. We are

of the view that the period of 20 months of restraint already undergone by the appellants would meet the ends of justice.

11. Accordingly, while upholding the order of WTM, we restrict the restraint order imposed on the appellants only upto the date of passing this order.

12. All appeals are disposed of on above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

31.08.2017
Prepared & compared by: msb