

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 18.06.2019

Appeal (L) No. 345 of 2019

Dr. Prannoy Roy ...Appellant

Versus

Securities and Exchange Board of India ...Respondent

Mr. Janak Dwarkadas, Senior Advocate with Ms. Fereshte D. Sethna, Mr. Adhiraj Malhotra, Mr. Sagar Sarin, Mr. Lokesh Aidasani and Ms. Divya Hirawat, Advocates i/b DMD Advocates for the Appellant.

Shri Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Sushant Yadav and Mr. Tabish Mooman, Advocates i/b K. Ashar & Co. for the Respondent.

WITH

Appeal (L) No. 346 of 2019

Radhika Roy ...Appellant

Versus

Securities and Exchange Board of India ...Respondent

Ms. Fereshte D. Sethna, Advocate with Mr. Adhiraj Malhotra, Mr. Sagar Sarin, Mr. Lokesh Aidasani and Ms. Divya Hirawat, Advocates i/b DMD Advocates for the Appellant.

Shri Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Sushant Yadav and Mr. Tabish Mooman, Advocates i/b K. Ashar & Co. for the Respondent.

WITH**Appeal (L) No. 347 of 2019**

RRPR Holding Pvt. Ltd.

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

Mr. Adhiraj Malhotra, Advocate with Mr. Lokesh Aidasani, Mr. Sagar Sarin and Ms. Divya Hirawat, Advocates i/b DMD Advocates for the Appellant.

Shri Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Sushant Yadav and Mr. Tabish Mooman, Advocates i/b K. Ashar & Co. for the Respondent.

ORDER:

1. Three appeals have been filed against a common order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) dated June 14, 2019. These appeals have been filed by Dr. Prannoy Roy, Radhika Roy and RRPR Holding Pvt. Ltd. The appeals of Radhika Roy and RRPR Holding Pvt. Ltd. are connected to the present appeal of Dr. Prannoy Roy and a common order is being passed in all the three appeals.

2. Since these appeals have been taken up for admission on account of urgency, the appellants have not been able to clear the defects. We accordingly direct the appellants to clear the

defects as pointed out by the Registry within six weeks from today.

3. It transpires that Quantum Securities Pvt. Ltd. made a complaint on August 26, 2017 which led SEBI to investigate and, on the basis of an investigation report dated February 12, 2018 a show cause notice dated March 14, 2018, was issued to the appellants to file their reply and the last hearing took place on December 10, 2018. The impugned order was passed on June 14, 2019. The WTM found that the appellants had violated the provisions of 12A (a), (b), (c) of SEBI Act read with Regulation 3 (a), (b), (c), (d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Further, the appellants also violated Clause 49(1)(D) of Equity Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 ('SCRA' for short).

4. On the basis of the aforesaid violation SEBI issued the following directions under Section 11B, 11(4) read with Section 19 of the SEBI Act, 1992, namely :—

- (i) *Notice no. 1, 2 and 3 are restrained from accessing the securities market and are further prohibited 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 two (2) years. It is also clarified that during the said period of restraint /prohibition, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

- (ii) Noticee no. 2 and 3 are restrained from holding or occupying position as Director or any Key Managerial personnel in NDTV for a period of two (2) years; and*
- (iii) Noticee no. 2 and 3 are restrained from holding or occupying position as Director or any Key Managerial personnel in any other listed company for a period of one (1) year.*

5. The facts leading to the impugned order is, that RRPR Holding Pvt. Ltd. took a loan of Rs. 350 crore from ICICI Bank Limited ('ICICI' for short) which carried interest at the rate of 19% p.a. This loan was required to be repaid within a stipulated period. Finding it difficult to repay the interest and principal amount RRPR Holding Pvt. Ltd. took two loans from Vishvapradhan Commercial Private Limited ('VCPL' for short) totaling approximately Rs. 400 crore in July 2009 and January 2010. RRPR Holding Pvt. Ltd. held shares of New Delhi Television Limited ('NDTV' for short) which is a listed company. Based on the loan taken from VCPL it is alleged that the loan of ICICI was liquidated. While taking a loan from VCPL certain agreements were entered, namely, that VCPL will give interest free loan for a period of 10 years on the condition

that the principal amount would be paid within 10 years and that the VCPL will have a right of first refusal on 50% of the shares in the event the said shares are sold in the market. Further, a call option agreement was made whereby an option was given to two associates of VCPL for transfer of 30% of the shareholding of RRPR Holding Pvt. Ltd. to it at the price of Rs. 214.65 per share. It was stated that at the time when the loan agreement was executed the price of the NDTV share was Rs. 130 per share. It was also stated that the price of 214.65 per share was fixed in order to cover the loan amount of Rs. 403.85 crore. The agreement further stipulated that RRPR Holding Pvt. Ltd. would have the sole control and will not sell the shares without the right of the first refusal by the lender, namely, VCPL.

6. It has come on record that the call option was never exercised.

7. SEBI has considered the loan agreement in detail and has given a finding that the said loan agreement was nothing else but a sham agreement and that no prudent person / entity would enter into such an agreement giving a loan without any interest. In fact, SEBI further found that the transfer of money, in fact, was to control the listed company NDTV. SEBI further found that the transfer of 9% individual shares of Prannoy Roy and

Radhika Roy to its holding company, namely, RRPR Holding Pvt. Ltd. amounted to a non-disclosure of transfer of shares inviting violations of disclosure obligations.

8. After hearing Shri Janak Dwarkadas, the learned senior counsel along with Ms. Fresthe Sethna, the learned counsel for the appellants and Shri Shyam Mehta, the learned senior counsel along with Shri Mihir Mody, the learned counsel for the respondent at some length, we are of the opinion that whether the loan agreement was a sham transaction or not and whether the loan agreement, in fact, wrested control of NDTV to VCPL is a question which is required to be considered in detail. Whether call option gives an unfettered right of controlling the company without exercising the right of call option is also required to be considered. Upon the interpretation of the loan agreement at this stage, we are of the opinion that these agreements have remained in existence for the past 10 years. The loan agreements were executed in the year 2009 and 2010. Whether there was a violation of the SEBI laws including the PFUTP Regulations are all required to be considered. At this stage, *prime-facie*, we are of the opinion that a listed company which is managed by the appellants holding more than 61% of the total shares cannot remain headless. The impugned order has been passed restraining the appellants, Dr. Prannoy Roy and

Ms. Radhika Roy from occupying a position as a Director or in any Key Managerial personnel in NDTV for a period of two years. Such orders prima facie would not be in the interest of the shareholders of the NDTV or for that matter the investors at this stage.

9. We accordingly, grant the respondent six weeks time to file a reply from today. Three weeks thereafter to the appellants to file a rejoinder. The matter would be listed for admission and for final disposal on September 16, 2019.

10. Even though the prayer for an interim stay was strongly opposed by the learned senior counsel for the respondent, considering the aforesaid, we stay the effect and operation of the impugned order dated June 14, 2019 till the next date of hearing. However, the appellants shall not alienate or create any encumbrance on their shareholding in NDTV till further orders.

11. We would also like to point out that it is essential for SEBI to supply a copy of the impugned order to the aggrieved party, namely, the appellants. An adjudication proceeding had been initiated by SEBI by issuance of the show cause notice. The appellants thus have the first right to be supplied a copy of the impugned order from SEBI. It is the onerous duty of SEBI to

supply a copy of the impugned order to them so that the directions are made effective. In the instant case, we find that the whole world knows about the impugned order except the appellants. Till date they have not been supplied a copy of the impugned order in spite of the oral direction given by this Tribunal yesterday. We are constrained to observe that the system undertaken by SEBI needs a revisit. Their liability and their onerous duty does not end the moment they upload the order on their website. The first duty is to supply a copy of the impugned order to the aggrieved party which in the instant case has not been done till date. We accordingly, direct the appellants to apply for a certified copy of the impugned order. If such an application is made, SEBI will provide a certified copy of the impugned order within five working days.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

18.06.2019

Prepared and compared by: msb