

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 27.09.2019

Appeal No. 273 of 2018

1. First Financial Services Ltd.
2. Nirmal Singh Mertia

Kothari Mile Stone,
Kothari Mall, 2nd Floor,
S V Road, Malad (W),
Mumbai – 400 064.

..... Appellants

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. Vinay Chauhan, Advocate with K.C. Jacob, Advocate i/b
Corporate Law Chambers India for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 158 of 2018

Suresh Kumar Khandelia
C/2801, Oberoi Woods,
Mohan Gokhale Road,
Goregaon (East),
Mumbai – 400 063.

..... 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 Bansal, Chartered Accountant for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 159 of 2018

Smt. Manju Khandelia
C/2801, Oberoi Woods,
Mohan Gokhale Road,
Goregaon (East),
Mumbai – 400 063. 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 Bansal, Chartered Accountant for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 181 of 2018

Syncom Formulations (India) Ltd.
7, Niraj Industrial Estate,
Off Mahakali Caves,
Andheri (E),
Mumbai – 400 093 Maharashtra 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. Ankit Lohia, Advocate with Ms. Nirali Mehta, Practicing Company Secretary i/b Mindspright Legal for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 216 of 2018**

1. Comfort Intech Ltd.
2. Comfort Fincap Ltd.
3. Comfort Securities Ltd.
4. Anil Agarwal HUF
5. Anil Agarwal

A 301, Hetal Arch,
Above Union Bank of India,
S V Road, Malad (West),
Mumbai – 400 064.

..... Appellants

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. Somasekhar Sundaresan, Advocate with Ms. Aarti Sathe and with Mr. Ravishekhar Pandey, Advocates i/b Legis Law Practice.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 246 of 2018**

1. Rajendra Kumar Agarwal HUF
2. Rajendra Kumar Agarwal (Karta)
3. Ritesh Agarwal – HUF
4. Ritesh Agarwal (Karta)

5. Shilpa Agarwal
6. Adhunik Transport Organisation Ltd.

1004 Orchid Tower,
Vasant Valley Complex,
Dindoshi Bus Depot,
Film City Road, Malad (East),
Mumbai – 400 097.

..... Appellants

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. Chetan R. Shah, Advocate for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 290 of 2018

1. B.P. Jhunjhunwala
1-D, Rajagiri Residency, No. 125,
Marshalls Road, Egmore,
Chennai – 600 008.

2. B.P. Jhunjhunwala - HUF
1-D, Rajagiri Residency, No. 125,
Marshalls Road, Egmore,
Chennai – 600 008.

..... Appellants

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. Rajesh Khandelwal, Advocate i/b Juris Link for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 291 of 2018

Mr. Ashokbhai Nathabhai Buha
C/26, Sneh Sagar Society,
Opp. Green Park, Katargam,
Surat – 395 004. 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. Geet Shikhar, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 311 of 2018

Mr. Bharatbhai Nathabhai Buha
C/26, Sneh Sagar Society,
Opp. Green Park, Katargam,
Surat – 395 004. 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. Geet Shikhar, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 374 of 2018

Global Infratech & Finance Limited
Office No. 16, Ground Floor,
Rukmani Purushottam No. 21,
J.P. Road, Andheri West,
Mumbai – 400 058. 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. Rajesh Khandelwal, Advocate i/b Juris Link for the
Appellant

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai,
Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K.
Ashar & Co. for the Respondent.

WITH
Appeal No. 382 of 2018

S. Krishna Rao
106/22, Golden Flats,
Mugappair
Chennai – 600 050 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. Rajesh Khandelwal, Advocate i/b Juris Link for the Appellant

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 137 of 2019**

M/s. Padma Impex Private Limited
6/7, Kings Road, Howrah,
West Bengal – 711 101. 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. Nirman, Advocate i/b Ms. Shruti Belani, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. These appeals have been filed against the order of the Whole Time Member ('WTM' for short) of Securities and

Exchange Board of India ('SEBI' for short) dated April 2, 2018 restraining the appellants from accessing the securities market and further prohibiting them from buying, selling or otherwise dealing in securities, directly or indirectly, or from being associated with the securities market in any manner, whatsoever, for a period of three years from the date of the order. The said was order passed in the exercise of the powers conferred under Section 19 read with Section 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').

2. The facts leading to the filing of these appeals are that on the basis of preliminary investigation in the trading and dealings in the scrips, an ex parte interim order dated December 19, 2014 was passed restraining the appellants and other entities from accessing the securities market and preventing them from buying, selling or dealing in securities, either directly or indirectly, in any manner till further directions. The ex parte interim order was subsequently confirmed by four confirmatory orders dated April 20, 2015, June 2, 2016, June 14, 2016 and August 25, 2016. Appeals were preferred against the interim directions and confirmatory order before this Tribunal which was disposed

of with a direction to SEBI to conclude the investigation and pass appropriate orders expeditiously.

3. Thereafter, upon conclusion of the investigation a show cause notice was issued on September 29, 2017 indicating that preferential allotment was followed by an abnormal and huge rise in the price of scrips. After considering the replies and submissions of the parties and the evidence that was brought on record, the WTM passed the impugned order holding that the fraudulent scheme conceived and executed by the appellants was with the common objective of making wrongful gains by manipulating the market and undermining its integrity. The WTM accordingly restrained the appellants from accessing the securities market and further prohibited 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 three years from the date of the order.

4. The appellants being aggrieved by the said order have filed the present appeals.

5. We have heard the learned counsel for the parties. The contentions of the appellants are that the WTM committed a

manifest error in holding that the appellants were guilty in manipulating the price of the scrips pursuant to the preferential allotment.

6. Without going into the merits as to whether the appellants were involved in the abnormal and huge rise in the price of the scrips by treating all entities connected to the Company pursuant to the issuance of the preferential allotment of shares, we are of the opinion that the appeals can be disposed of without going into the merits.

7. We find that the order of debarment as per the impugned order is of three years. These three years have already been undergone by the appellant pursuant to the impugned ex parte order dated December 19, 2014 restraining them from accessing the securities market, etc. As on date four years and ten months have elapsed and the appellants are still debarred from accessing the securities market etc. We find that the WTM has not considered the period of debarment already spent from the date of the ex parte interim order till the date of passing of the order while considering the quantum of penalty. We are, thus, of the opinion that the debarment

period spent by the appellants from the date of the ex parte impugned order till today is sufficient.

8. Thus, without going into the merits of the case and without considering the submissions of the counsel for the parties on merits, we dispose of all the appeals holding that the restraint order restraining the appellants from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever will come to an end from today.

9. It was stated by the learned counsel that, for the same offence, adjudication proceedings have been initiated by the Adjudicating Officer of SEBI and submitted that the findings given in the impugned order of the WTM would be relied upon by the AO. It was urged that the finding given in the impugned order should not be come in the way while considering the matter on merits by the Adjudicating Officer of SEBI.

10. We make it clear that the Adjudicating Officer of SEBI will consider the matter on merits without being influenced by the findings given by the WTM of SEBI.

11. In the light of the aforesaid, all the appeals are partly allowed to the extent stated aforesaid. In the circumstances of the case, the parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

27.09.2019

Prepared and compared by:msb