

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 18.12.2020

Date of Decision: 16.2.2021

Misc. Application No.273 of 2020

And

Misc. Application No.274 of 2020

And

Appeal No.139 of 2020

Mr. Puneet Nikore
GV-55, Palm Springs,
Golf Course Road, Sector-54,
Gurgaon, Harayana- 122002.

...Appellant

Versus

Whole Time Member
Securities and Exchange of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex, Bandra (East)
Mumbai - 400 051.

...Respondent

Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Mr. Pratham Masarekar and Ms. Hetal Joshi, Advocates i/b. R V Legal for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, 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 M.T. Joshi, Judicial Member

1. Aggrieved by the order of the learned Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated 18th February, 2020 restraining the appellant along with others from accessing the securities market for a period of two years the present appeal is preferred.
2. The proceeding was launched against three entities. Noticee no.1 was Crew B.O.S Products Limited (hereinafter referred to as the 'Company'), noticee no.2 was one Mr. Robin Bartholomew, the director of the Company. Present appellant original noticee no.3 Mr. Puneet Nikore was during the relevant period Executive Director of the Company. According to the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in the investigation it was found that the Company had issued Global Depository Receipts ('GDR' for short) on 25th July, 2005 for 5 million US Dollars. The GDR was subscribed by single entity, namely, Fusion Investment Ltd. (hereinafter referred to as 'Fusion'). This amount

was secured by Fusion by obtaining credit from Banco Efissa S.F.E.S.A. (hereinafter referred to as Banco Bank). The Company however had pledged its entire GDR proceeds to the same Banco Bank as a security against loan availed by Fusion for subscribing to GDR of the Company. Thus, the money was merely circulated to make a show that GDRs of the Company were subscribed fully. The present appellant the Executive Director has not only participated in the board meeting wherein the above resolutions were passed. But on authorisation from the Company he had signed all the relevant documents like account charge agreement with Banco Bank for charging the GDR proceeds against the loans secured by Fusion. A limited disclosure was made on the stock exchange platform that the GDR was subscribed and the investors/public was defrauded. Therefore, the show cause notice was issued.

3. The present appellant admitted that he has participated in the board meeting and also that he was

authorised to sign the documents and he in fact signed the same. His defence, however, was that the Lead Manager to the GDR issue, namely, Arkios Ltd. had evaluated everything as per the rules and regulations and, therefore, the appellant cannot be blamed for the same. He further submitted that in fact his signature on the account charge agreement was obtained fraudulently by the personnels of Lead manager, at London in the tense atmosphere when the city was under the grip of terror attack. It was further submitted that though the documents regarding account charge agreement were executed in fact later on GDR issue was subscribed by two parties, namely, Fossil and Commercio and not Fusion. The appellant had submitted a copy of the certificate from the Lead Manager, copy of the resolution passed by the board of the Company. In the circumstances, it was submitted that the proceedings be dropped. The learned WTM, however, did not agree with the submission and the impugned order was passed.

4. Heard Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Mr. Pratham Masurekar and Ms. Hetal Joshi, Advocates for the Appellant and Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates for the Respondent.
5. Learned counsel for the appellant submitted before us that there was an inordinate delay in initiating the proceedings. While the GDRs were issued in July, 2005, the show cause was issued in 2017. In the meantime the Company has gone under liquidation process due to which some important documents could not be secured. Further, the Lead Manager has taken all the care at the time of issue of GDR. It was submitted that GDR was subscribed by two entities and not one. The responsibility of disclosure on the stock exchange platform was that of the Company Secretary and/or Compliance Officer and not of the appellant. In the circumstances, he submitted that the appeal be allowed.

6. On the other hand, learned senior counsel for the respondent, Mr. Shyam Mehta submitted that it is an admitted fact that the appellant had participated in the board meeting of the Company wherein the resolution regarding issue of GDR, execution of account charge agreement were passed and the appellant along with another director was authorised to execute the documents which were latter on executed. It was submitted that the appellant filed only the certificate of the Lead Manager (which he himself brands as untrustworthy) to show that the GDR was issued to two other entities and not the Fusion. Thus, no evidence regarding the bank accounts showing actual subscription was produced and, therefore, the case of the appellant cannot be believed. At any rate the investors were not informed that the GDR was subscribed either by one or two entities only. As regard the delay, the learned counsel submitted that no issue was raised before the learned WTM that the delay has caused any prejudice to the appellant and further as

investigation pertains to the international jurisdiction involving many international entities the delay was caused.

7. Upon hearing both the sides, in or view the appeal deserves to be partly allowed as regards the period of restraint only for the following reasons.

It is an admitted fact that the GDRs were issued by the Company and the appellant was authorised to execute the above referred documents which inter alia were in the nature of creating an account charge agreement for the loan secured by Fusion from the same bank. Thus, since initiation it was very well understood that the public issue of GDR was merely a show. Further, there are no supporting documents to show that some other two entities had subscribed to the GDRs. Interestingly, though the GDR was a public issue, as per the appellant himself it was subscribed by only two entities. And the same was not disclosed to the public by making a limited disclosure on the platform of exchanges. So far as the delay is concerned no such

plea was raised before the learned WTM by the appellant, though it was submitted that in the mean period due to the liquidation proceeding of the Company necessary documents are sealed. Further, the record would so that the investigation involved international jurisdiction and various foreign entities. In the circumstances, in our view the delay would not be fatal to the respondent SEBI so far as the merit of the case is concerned. The appellant was admittedly an Executive Director of the Company who had in fact executed the account charge agreement etc. and, therefore, he cannot escape the liability.

However it is required to note that the GDRs were issued in the year 2005 and the show cause notice was issued by respondent SEBI after 12 years in the year 2017. Though the appellant did not raise the plea of delay before SEBI, he showed his inability of production of some documents due to sealing of the documents of the Company in the meantime. Further there is no contention of the respondent SEBI that

during the period of 12 years the appellant has anyway misconducted while dealing in the security market. Therefore in view of the peculiar facts of the present case, restraint of 2 years as imposed by the respondent SEBI, as detailed in the impugned order dated February 18, 2020 is reduced to the period already undergone till the date of passing of this order.

Hence the following order.

The appeal is hereby partly allowed in above terms without any order as to cost. Misc. Application nos.273 and 274 of 2020 are also accordingly disposed of.

8. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will

act on production of a digitally signed copy sent by fax
and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

16.2.2021
RHN