

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision:7.9.2021

Appeal No.472 of 2020

S.N. Sharma
H. No. 129, Navjeevan Vihar,
Ground Floor,
Near Aurobindo College,
Delhi – 110017.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan,
Plot No. C-4A, G-Block,
Bandra Kurla Complex,
Bandra (East), Mumbai- 400051.

...Respondent

Mr. Prakash Shah, Advocate with Mr. Kushal Shah,
Chartered Accountant i/b. Prakash Shah & Associates for
the Appellant.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr.
Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K.
Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against the order
dated 6th March, 2020 passed by the Whole Time

Member ('WTM' for short) debarring the appellant from accessing the securities market for a period of five years for violation of Section 12A of the Securities and Exchange Board of India Act, 1992 and Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

2. The facts leading to the filing of the present appeal is that the board of directors of the Company known as MPS Infotecnics Ltd. passed a resolution dated 19th October, 2007 for issuance of the Global Depository Receipts (GDRs). The Board of Directors also resolved to open a bank account for with Banco Efisa, S.F.E., S.A. (hereinafter referred to as 'Banco') for the purpose of depositing the GDR proceeds and also authorised Mr. Rajinder Singh, a Director to sign relevant documents on behalf of the Company. Based on the said resolution the Company issued 4.65 million

GDRs amounting to US Dollar 9.99 million on 4th December, 2007.

3. Investigation in the issuance of the GDR revealed that the Company did not make adequate disclosure under the listing agreement and that certain monies had also been diverted. Accordingly, a show cause notice dated 31st January, 2018 was issued alleging that the sole subscriber to the GDR issue was Clifford Capital Partners A.G.S.A (hereinafter referred to as 'Clifford') and that the subscription amount paid by Clifford was through a loan agreement with Banco. The loan was secured through account charge agreement with Banco by the Company. It was alleged that the account charge agreement was an integral part of the loan agreement which allowed Clifford to avail the loan in order to subscribe to the GDR issue which was fraudulent and such loan agreement, account charge agreement was not disclosed to the stock exchange.
4. The only charge against the appellant in the show cause notice was that he was a signatory to the

resolution dated 19th October, 2007 by which the first resolution was passed by the Board of Directors for issuance of the GDR and for opening an account with Banco.

5. Before the WTM the appellant contended that he was appointed as a Non-executive Independent Director and resigned on 14th November, 2013. The appellant contended that he was never involved in the day to day affairs of the Company nor was part of the decision making process relating to the GDR issue. The appellant further contended that he has not signed any agreement with any entity involved in the alleged fraud and that his role as a Non-executive Independent Director was very limited and restricted.
6. The WTM after considering the matter passed the impugned order holding that the issuance of GDR was a fraud upon the investors which was violative of Section 12 and Regulations 3 and 4 of the PFUTP Regulations. In so far as the appellant is concerned no finding whatsoever has been given as to whether the

appellant had any role to play in the issuance of the GDR. The only finding given in paragraph 49 is a finding of a general nature, namely, that the board of directors play a key role in balancing the interest of management and shareholders and that the independent directors are expected to ensure fairness and transparency in dealings of accounts and that acts of omission occurred through board processes cannot absolve the Non-executive Directors. The WTM concluded that since the appellant had participated in the resolution of the Board of Directors he did not act diligently and, therefore, he was debarred from accessing the securities market for a period of five years.

7. Heard Mr. Prakash Shah, Advocate assisted by Mr. Kushal Shah, Chartered Accountant for the Appellant and Mr. Sumit Rai, Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the Respondent.

8. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in *Adi Cooper v. SEBI, appeal no.124 of 2019 decided on 5.11.2019*, *Adesh Jain vs. SEBI, Appeal No. 217 of 2020 decided on 19.11.2020*, *Rajesh Shah& Ors. v. SEBI, appeal no.433 of 2021 decided on 5th July, 2021*, *Prafull Anubhai Shah v. SEBI, appeal no.389 of 2021 decided on 28th June, 2021* and *Govind Das Pasari v. SEBI, appeal no.201 of 2019 decided on 30th April, 2021*.

9. For the reasons stated aforesaid, the impugned order in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed.

10. 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 Private Secretary 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

Justice M.T. Joshi
Judicial Member

7.9.2021
RHN