

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 16.8.2019

Date of Decision : 4.9.2019

Appeal No.114 of 2019

Vatsal Agarwal
A-703-704, Shiv ParvatiCHSL,
S.V.P. Nagar, Near Vasova Telephone
Exchange Varsova, Andheri (West)
Mumbai- 400053. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
“G” Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.Respondent

Mr. Tomu Francis, Advocate with Mr. Ramesh Mishra and
Mr. Arka Shah, Advocates i/b. Lokanath Mishra for the
Appellant.

Mr. Kevic Setalvad, Senior Advocate with Ameya Kulkarni
and Mr. Chirag Bhavsar, Advocates i/b. MDP & Partners 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

1. The promoters of the target Company namely Gremach Infrastructure Equipments and Projects Limited presently known as Sancia Global Infraprojects Ltd. (hereinafter referred to as the 'target Company') collectively held 54.90% of the paid up equity share capital of the target Company as on 31st March, 2009. The target Company decided to allot 4,90,00,000 warrants to its promoters and to some Foreign Institutional Investors which entitled the holder to convert the same into equity shares within 18 months from the date of allotment. The investigation revealed that the said warrants were converted into equity shares in June, 2009, October, 2009 and December, 2009. As a result, the shareholding of the promoter group entities increased by 6.87% thus triggering the obligation of the promoter group to make public announcement of an open offer for acquiring shares of the target Company in terms of Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'Takeover Regulations, 1997') Since the promoters of the target Company failed to make a public announcement, a show cause notice dated 22nd September, 2017 was issued to the target Company as

well as to the promoter group calling upon them to show cause as to why suitable directions under Sections 11 and 11B read with Regulations 44 and 45 of the Takeover Regulations, 1997 read with Regulations 32 and 35 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations, 2011') should not be issued against them for alleged violation of Regulation 11(1) of the Takeover Regulations, 1997.

2. Upon considering the replies of the promoter group and after giving them an opportunity of hearing, the WTM found that the target Company as well as the promoter group had violated Regulation 11(1) of the Takeover Regulations and consequently directed them jointly and severally to make a public announcement to acquire the shares of the target Company in accordance with the provisions of the Takeover Regulations within 45 days from the date of the order. The appellant being aggrieved by the said order has filed the present appeal.

3. We have heard Shri Tomu Francis, Advocate assisted by Mr. Ramesh Mishra, PCS and Mr. Arka Shah, Advocate for the Appellant and Mr. Kevic Setalvad, Senior Advocate

assisted by Ameya Kulkarni and Mr. Chirag Bhavsar, Advocates for the Respondent. The contention of the appellant is that he was a minor during the relevant period and was holding 50,000 equity shares which was monitored and controlled by his guardian Mr. Ratan Tamakhuwala. It was contended that being a minor no show cause notice could have been issued to him nor was he obligated to make an open offer as per the impugned order and consequently contended that the liability imposed under the impugned order should be discharged.

4. In this regard, the WTM considered and found that as per the PAN card the appellant was a minor during the relevant period of triggering of open offer obligations but held that the show cause notice was validly issued to the appellant as he had become a major. The WTM further found that the violation of Regulation 11 of the Takeover Regulations makes the guardian of the appellant liable to make an open offer at the time of triggering of the open offer obligation but the said obligation of guardian stood discharged when the appellant became a major. The WTM thus concluded that since the appellant had become major it was his obligation to discharge his liability and make the

open offer under the Takeover Regulations. In this regard the WTM took into consideration the provisions of Section 8 of the Hindu Minor and Guardianship Act, 1956 to conclude and hold that the natural guardian had the power to do all acts which was necessary or reasonable and proper for the benefit of the minor and since the minor has now turned major the obligation of the natural guardian stood discharged and the appellant was obligated to make the open offer.

5. In our view, the approach adopted by the WTM is patently erroneous and against the provisions of law. Under Section 11 of the Contract Act a minor has no legal competence to enter into a contract or authorize someone on his behalf to enter into a contract. However, under Section 8 of the Hindu Minority and Guardianship Act, 1956, the position is, that a natural guardian has the legal competence to enter into a contract on behalf of a minor if it is for the benefit of the minor. Thus, the natural guardian is competent to enter into a contract on behalf of the minor for the benefit of the estate but such right can in no case bind the minor by a personal covenant. In furtherance of this aspect, it is made clear that the action of the natural guardian if it involves a minor into an obligation of doing certain acts which would

amount to a personal covenant by the natural guardian binding the minor, in which case, the agreement, if any, cannot be enforced against the minor and the acts of the natural guardian will not bind the minor.

6. Thus, the contract can be specifically enforced as being within the competence of the natural guardian to enter into on behalf of the minor so as to bind him, if it is for the benefit of the minor. But if either of these two conditions is wanting, the contract cannot be enforced at all as held in **Shri Manik Chand and Another vs. Shri Ramchandra, Son of Chawiraj (1980) 4 SCC 22**.

7. A similar question arose in **Ritesh Agarwal and Another vs. SEBI & Ors. (2008) 8 SCC 205** a specific plea was raised before the Tribunal that Ritesh Agarwal and Deepak Agarwal were minors at the relevant moment of time when the Company went in for the public issue. The Tribunal repelled the submissions contending that the question of being a minor could be relevant when prosecution is launched against the Company and its Directors but the present proceedings was civil in nature and such plea had no relevance and in any case the minor had attained majority on the date when the impugned order was passed and, therefore,

the direction restraining them from accessing the capital market could be issued by the Board. The Tribunal's findings are quoted here under:-

"The appellants in appeal no. 43/2004 have taken a plea that they were minors at the time when the Company went in for the public issue and, therefore, the Board was not justified in issuing any direction to them. We are unable to accept this plea. We are informed that the Board has launched prosecution against the Company and its promoters. In those proceedings it may be relevant for these appellants to contend that they were minors, but in the present proceedings which are of civil nature, the plea can have no relevance. At any rate, they had attained majority on the date when the impugned order was passed and, therefore, the direction restraining them from accessing the capital market could be issued by the Board."

8. The said finding of the Tribunal was specifically set aside by the Supreme Court holding that a minor cannot enter into a contract and that the finding of the Tribunal was wholly unsustainable and was not based on any legal principle. The Supreme Court held that if they were minors, they being not party to the fraud and could not have been subjected to penalty under the SEBI Act and the person who committed fraud in their name should have been proceeded against not only for the commission of fraud on his own behalf but also on behalf of the minors. The Supreme Court held :-

“22. Surender Kumar Agarwal ex facie suppressed the fact that Ritesh Agarwal and Deepak Agarwal were minors. Such a contention appeared to have been raised for the first time before the Tribunal. It is one thing to say that as minors they could not have entered into a contract having regard to the provisions of the Indian Contract Act, 1872 and, thus, any act committed by them should be ignored, but, this, itself, goes to show how Surender Kumar Agarwal played an important role in resorting to wholly unfair practices and fraudulent acts. It is, therefore, not possible for us to hold that Surender Kumar Agarwal alone was the promoter. However, a minor cannot enter into a contract. The Tribunal unfortunately did not go into this question in details. Finding of the Tribunal which has been noticed by us hereinbefore, with respect, is wholly unsustainable. It is not based on any legal principle. No reason has been assigned therefor. If they were minors, they being not party to the fraud, could not have been subjected to penalty under the SEBI Act. The person who committed the fraud in their names, viz., Surender Kumar Agarwal himself, should have been proceeded against not only for commission of act of fraud on his own behalf but also on behalf of the minors.”

“29. Ritesh Agarwal and Deepak Agarwal are said to be minors. As they were minors having regard to the provisions of the Indian Contract Act, they could not have been proceeded against strictly in terms of the provisions of the said Act. Apart from the actions taken by the Board, the persons who undertook those fraudulent actions may also be held to be guilty of making a mis-representation and commission of fraud not only before the prospective purchasers of the shares but also before the statutory authority. The same, however, would itself not mean that a minor would not (sic) be penalized for entering into a contract which per se was not enforceable. A contract must be entered into by a person who can make a promise or make an offer. If he cannot make an offer or in his favour an offer cannot be made, the contract would be void as an agreement which is not enforceable in law would be

void. Section 11 of the Indian Contract Act provides that the person who is competent to contract must be of the age of majority. If Ritesh Agarwal and Deepak Agarwal were minors, as would appear from their birth certificates, they could not have entered into the contract.

30. We, therefore, are of the opinion that subject to any other or further order which the Board may pass as against Shri Surender Kumar Agarwal and Smt. Rooprekha Agarwal, the impugned directions would not be binding on Ritesh Agarwal and Deepak Agarwal.

31. We do not accept the contention of Ms. Aggarwal that the offence is a continuing one. We do not also accept the contention that Rooprekha Agarwal was not a promoter and only promoters were Ritesh Polyesters Ltd. and Surender Kumar Agarwal. We, however, accept the contention of Mr. Sundaram that Ritesh Agarwal and Deepak Agarwal could not have proceeded against for violation of the FUTP Regulations.”

9. From the aforesaid it is apparently clear that the minors at the time of occurrence of the event cannot be subject to any penalty under the SEBI Act and the person who committed the violation can only be proceeded against not only on his own behalf but also on behalf of the minors. The said proposition of law is fully applicable to the instant case which the WTM has totally ignored.

10. Section 11 of the Contract Act provides that a person who is competent to contract must be of the age of majority. Admittedly, the appellant was a minor when the alleged

violation occurred and consequently he could not have entered into a contract nor could be made responsible for the event. Section 8 of the Hindu Minority and Guardianship Act, 1956 clearly indicates that the natural guardian can enter into a contract and do such acts which are for the benefit of the minor. In the instant case, the action of the guardian has resulted in the triggering of Regulation 11 which carried an obligation to make an open offer. Such obligation was not for the benefit of the minor and, is therefore, a personal covenant of the guardian. Thus, the action of the guardian in the instant case could not bind the minor by a personal covenant as stipulated under Section 8 of the Hindu Minority and Guardianship Act, 1956.

11. There is another aspect of the matter which has escaped the attention of the WTM. In our view, the provision of Section 8 of the Hindu Minority and Guardianship Act, 1956 is not applicable in the instant case. For facility, Section 8 of the Act is extracted hereunder:-

“8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or

benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant."

12. The aforesaid provision is applicable to a 'natural guardian'. "Natural guardian" has been defined under Section 6 as under:-

"6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expression "father" and "mother" do not include a step-father and a step-mother."

13. The aforesaid provision makes it clear that only the father and mother of a minor are the 'natural guardian' of a Hindu minor. In the instant case, the WTM has noted that the target Company had confirmed that the appellant was a minor and his guardian was Ratanlal Tamakhuwala. The same stand has been also taken by the appellant in his reply. There is no evidence to indicate that Ratanlal Tamakhuwala was the father of the minor. Thus, in the absence of any evidence to show that Ratanlal Tamakhuwala was the 'natural guardian' the provision of Section 8 of the Hindu Minority and Guardianship Act, 1956 cannot be made applicable in the instant case.

14. In the light of the aforesaid, once a finding has been given by the WTM that the guardian of the appellant was liable to make an open offer at the time of triggering of the open offer obligation, the liability could not be passed on to the appellant merely because he has become a major nor could the liability gets discharged by the guardian merely because the appellant had turned major. Such finding given by the WTM is baseless and against the provisions of law and against the direct decision of the Supreme Court in **Ritesh Agarwal (supra)**. Under the SEBI Act, the person who has

committed the violation should have been proceeded against not only on his own behalf but also on behalf of the minors.

15. In the light of the aforesaid, the appeal is allowed and the direction of the WTM directing the appellant to make an open offer under the provisions of the Takeover Regulations is set aside in so far as it relates to the appellant.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

4.9.2019
Prepared and compared by
RHN