

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/52956	Date: July 12, 2022
Circular Ref. No: 90/2022	

To All NSE Members,

Sub: SAT Order in the matter of Mr. Praveen Kumar Hastimal Shah

This is with reference to NSE Circular No. NSE/INVG/40186 dated February 08, 2019, in respect of SEBI Order No. WTM/AB/EFD-1/ DRA-1/18 /2018-19 dated February 08, 2019.

The Hon'ble SAT, now vide its Order dated July 06, 2022, inter alia directed that the SEBI order passed by Whole Time Member (WTM) dated February 08, 2019, against the entity Mr. Praveen Kumar Hastimal Shah (PAN: - ABEPS3974Q) cannot be sustained and is quashed.

The detailed order is available on SAT website (<http://www.sat.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Ojas Murudkar (Extension: 22378), Mr. Anand Jangir (Extension:22385)
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For and on behalf of
National Stock Exchange of India Limited

National Stock Exchange of India

Anand Jangir
Manager

ANNEXURE: SAT Order in the matter of Mr. Praveen Kumar Hastimal Shah

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 13.6.2022

Date of Decision : 06.7.2022

Misc. Application No.6 of 2022

And

Appeal No.28 of 2022

Praveen Kumar Hastimal Shah
410, Bawala Wadi,
86D Parsi Bhavan,
Flat No.3, Dr. Ambedkar Road,
Mumbai -400012.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Bandra Kurla Complex,
Bandra, Mumbai 400 050.

...Respondent

Mr. Dinesh Guchiya, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Ms. Nidhi Singh,
Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha
Kothari, Advocates i/b. Vidhii Partners for the
Respondent.

With

Appeal No.29 of 2022

Praveen Kumar Hastimal Shah
310, Bawla Wadi,
86D Parsi Bhavan Building,
Flat No.3, Dr. B.R. Ambedkar Road,

Lower Parel, Mumbai -400012.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Bandra Kurla Complex,
Bandra, Mumbai 400 050, Maharashtra.

...Respondent

Mr. Dinesh Prakash Guchiya, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Ms. Nidhi Singh,
Ms. Binjal Samani, Ms. Aditi Palnitkar, Ms. Moksha
Kothari, Advocates i/b. Vidhii Partners for the
Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed by the appellants, one against the order dated 8th February, 2019 passed by the Whole Time Member ('WTM' for short) and other against the order dated 4th March, 2020 passed by the Adjudicating Officer ('AO' for short). The WTM has debarred the appellant from accessing the securities market for a period of five years and the AO has

imposed a penalty of Rs.5 lakhs for violation of the provisions of Section 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 3(a), (b), (c), (d) and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

2. The facts, in brief, leading to the filing of the present appeal is, that a resolution dated 16th March, 2010 was passed by the Board of Directors of Nissan Copper Ltd. The Board of Directors in its meeting dated 16th March, 2010 resolved to open a bank account with European American Investment Bank AG (hereinafter referred to as 'EURAM BANK') for the purpose of receiving subscription money in respect of Global Depository Receipts (hereinafter referred to as 'GDR') issue of the Company. The said resolution further authorised its Managing Director to execute,

sign any application, agreement as required by the bank and further authorised EURAM Bank to use the funds so deposited in the account as security in connection with loans, if any. The resolution is extracted hereunder:

“RESOLVED THAT a bank account be opened with EURAM Bank (“the Bank”) or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Ratanlal Mardia, Director of the Company, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

...

RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required.”

3. Investigation revealed that the Company had issued 50 lakh GDR amounting to USD 22.40 million on 20th May, 2010 and that one Vintage FZE (hereinafter referred to as 'Vintage') was the sole subscriber to the GDR issue. Investigation further revealed that Vintage was granted a loan by EURAM Bank by way of a loan agreement dated 7th May, 2010 for the purpose of making payment, transfer subscription of the GDR issue by the Company. The investigation further revealed that the Company stood guarantor in respect of the loan availed by EURAM Bank by depositing the entire GDR proceeds as security for the aforesaid loan availed by Vintage. This guarantee was through a pledge agreement dated 7th May, 2010. Investigation further revealed that the pledge agreement was signed by the Managing Director on behalf of the Company. Based on the aforesaid, a show cause notice was issued alleging that the appellant alongwith other noticees were parties to the fraudulent scheme of issuance of GDR of the Company by way of loan and pledge

agreement which was not disclosed to the shareholders and investors and, therefore, violated the Listing Agreement.

4. The WTM and the AO arrived at similar findings holding that the action of the Company and its Directors in initiating this fraudulent scheme was violative of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations read with Clause 32, 36 and 50 of the Listing Agreement. The authorities came to the conclusion that execution of pledge agreement by which the proceeds were pledged could not be utilised by the Company and such creation of the pledge and loan agreement was not disclosed to the public and investors and, therefore, the entire scheme was fraudulent. The authorities accordingly passed appropriate directions and penalties.

5. In so far as the appellant is concerned it is his specific case that he was appointed as an Independent Director in the year 2007-2008 and resigned in the year

2015. The appellant admits that as an Independent Director he was part of the resolution for opening of a Bank account with EURAM Bank but was not part of any issuance of the GDR nor was part of the day to day affairs and management of the Company. It was further contended that he does not hold any shares of the Company nor received any remuneration from the Company for participating in the Board of Director's resolution as an Independent Director. The appellant further contended that he was not aware of the loan agreement or of the pledge agreement. The AO in the impugned order has imposed a penalty upon the appellant only on the ground that he had participated in the Board meeting of the Company on 16th March, 2010 and since he continued to be on the Board of Directors during the entire process of issuance of GDR he was part of the fraudulent scheme in facilitating the subscription of its own GDR. Similar finding has been given by the WTM in appeal no.29 of 2020 in his order.

6. Having heard Mr. Dinesh Guchiya, Advocate for the appellants and Mr. Suraj Chaudhary, Advocate assisted by Ms. Nidhi Singh, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates for the respondent, we are of the opinion that merely by participating as an Independent Director in the resolution of the Board of Directors on 16th March, 2010 does not make the appellant a part of the fraudulent scheme and arrangement of the Company with regard to the issuance of the GDR.
7. Resolution of 16th March, 2010 only directs opening of a bank account with EURAM Bank account for the purpose of receiving subscription money in respect of GDR and authorises the Managing Director to sign such documents as required. By being part of such resolution does not make the appellant part of a fraudulent scheme in as much the resolution of 16th March, 2010 does not by itself makes it a fraudulent resolution. It is the subsequent acts of the Company and its Managing Directors by issuing a pledge

agreement for the purpose of providing guarantee to Vintage so that it could secure a loan for the purpose of subscribing to the GDR issue makes it fraudulent. However, there is no evidence to indicate that the appellant was party to the execution of the pledge agreement nor there is anything on record to indicate that he was aware of the loan agreement or the pledge agreement.

8. We further find that a specific assertion was made by the appellant that he was not part of the day to day affairs and management of the Company. This fact has not been disputed by the respondent. Therefore, unless and until there is further evidence to indicate that the appellant had participated in the issuance of GDR and/or knew about the fraudulent scheme, in our opinion, the restraint order passed by the WTM and the penalty imposed by the AO on the ground that the appellant was part of the fraudulent scheme cannot be sustained.

9. The respondents have filed a reply in appeal no.28 of 2022 contending that the appellant was the Chairperson of the audit committee and, therefore, he should have raised a red flag when GDR proceeds could not be utilised by the Company or the fact that the partial restraint on the GDR issue were dependant on repayment of loan by Vintage to EURAM Bank. It was contended that the appellant was part of the audit committee and therefore had deemed knowledge of the GDR proceeds and the fraudulent scheme.
10. In our opinion, such submission cannot be raised nor can it be considered by this Tribunal at this stage. These facts were not part of the show cause notice nor was it considered by the authorities and it is no longer open to consider such documents as it has been filed in the reply for the first time.
11. In ***appeal no.406 of 2020 Mr. Gurmeet Singh and other connected appeals*** this Tribunal rejected the application seeking permission to bring on record the additional documents. This Tribunal held:

“11. In our view, the application of the respondent seeking permission to bring on record the additional documents cannot be allowed as it does not come within the parameters of the grounds given in Order 41 Rule 27 of the Code of Civil Procedure. Nothing has been stated as to why these documents which are in the public domain could not be considered by the authorities while considering the matter. Nothing has been brought on record to indicate as to why such documents which was within their knowledge could not be brought on record. In any case, reliance upon these documents are misplaced. Merely because Mr. I.S. Sukhija was the Chairman of the Audit Committee does not mean that he was party to the fraudulent scheme, if any. The observations made by the authorities in the impugned orders that he should have raised questions as to why the GDR proceeds was not brought into the Company’s account or why the loan was given to the Vintage from the GDR proceeds are not matters which comes under the purview of the audit committee. In any case, we find that there was no need to raise such questions as the loan in one case was paid immediately and in the other case was paid within a couple of months. Further, the evidence which has come on record indicates that the GDR proceeds were utilized for the purpose for which the resolution for issuance of the GDR was passed. Thus, the finding of the authorities that a fraud has committed by the Company is patently erroneous. When the proceeds have come into the Company and have been utilized for the purpose of setting up a subsidiary in UAE the funds have been utilized for the purpose for which the GDR was issued. Thus, in our view merely because the appellant Mr. I.S. Sukhija was part of the resolution which approved the issuance of the

GDR and opening of a bank account with Euram Bank does not lead to a conclusion that the appellant was part of the scheme of the alleged fraud which in any case was not in existence. Thus, imposition of penalty by the AO and debarment by the WTM was wholly erroneous on this appellant.”

12. In Mr. ***S.N. Sharma vs. SEBI, appeal no.472 of 2020 decided on 7th September, 2021*** this Tribunal has held that merely because Non-Independent Executive Directors were part of the resolution cannot be penalized as they were not involved in the day to day affairs of the Company. The said decision is squarely applicable in the instant case.
13. Similar view was held by this Tribunal in the case of ***Govind Das Pasari vs. SEBI, Appeal No. 201 of 2019 decided on April 30, 2021; Prafull Anubhai Shah vs. SEBI, Appeal No.389 of 2021 decided on June 28, 2021; Jaiprakash Kabra, Appeal no.58 of 2021 decided on September 2, 2021, Gurmeet Singh, Appeal No.406 of 2020 and other connected appeals decided on September 20, 2021 and Rajesh Shah, Appeal no.433 of 2021***

decided on July 5, 2021. In addition to the aforesaid, this Tribunal in ***Chromatic India Ltd., Appeal No.393 of 2020 and other connected appeals decided on May 12, 2021*** held that being part of the resolution by itself cannot make the incumbent liable and something further related to fraud committed by the incumbent is required to be shown. This Tribunal held:

“Without dwelling on the aforesaid aspect, we are of the opinion that in order to implicate a person, namely, a director of any fraudulent act it is necessary for the authority to further find any evidence which would show that the said person or director was involved in the fraud with regard to the GDR issue or that he was involved in the defalcation of the funds which was raised through GDR issue. In the instant case, we find that there is no such evidence against the appellant Vipin Sharma other than the fact that he was part of the Resolution dated August 13, 2010 which has been disputed by the appellant. We are of the opinion that the Resolution dated August 13, 2010 by itself does not create any suspicion nor create any fraudulent act. The Resolution by itself does not violate any provision of the SEBI Act or PFUTP Regulations.”

14. In view of the aforesaid, the impugned orders passed by the WTM and AO cannot be sustained and

are quashed. Both the appeals are allowed with no order as to costs. Misc. application is also accordingly disposed of.

15. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

6.7.2022
RHN