

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53511	Date: September 01, 2022
Circular Ref. No: 119/2022	

To All NSE Members

Sub: SAT order in the matter of Mr. Pawan Kumar Ruia

This is with reference to NSE Circular No. NSE/INVG/47751 dated March 24, 2021 in respect of SEBI order no. WTM/MB/IVD/ID3/11095/2020-21 dated March 24, 2021, wherein SEBI had restrained Mr. Pawan Kumar Ruia (PAN ACNPR3823K) from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the period of 2 years from the date of the order.

The Hon'ble SAT now vide its order dated September 01, 2022 has stated that the aforesaid SEBI Order dated March 24, 2021 cannot be sustained and is quashed in respect of Mr. Pawan Kumar Ruia.

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. Apurv Garg (Extension: 24546), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Atish Agarwal



National Stock Exchange of India

Senior Manager

National Stock Exchange of India

Annexure **SAT Order in the matter of Mr. Pavan Kumar Ruia**

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 20.07.2022

Date of Decision : 24.08.2022

Misc. Application No. 806 of 2021

And

Appeal No. 516 of 2021

Mohan Lall Chauhan

Flat No. C-901,

Ekaaant Apartment,

Gangapur Road, Opp. Vishwas Lawns,

Savarkar Nagar,

Nashik, MH-422 013

...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. Kunal Katariya, Advocate with Mr. Sahebrao Wamanrao Buktare, Mr. Chirag Shah, Advocates and Mr. Ravi Vijay Ramaiya, CA i/b Shah & Ramaiya Chartered Accountants for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Chirag Shah and Mr. Tanmay Gor, Advocates i/b Mansukhlal Hiralal & Co. for the Respondent.

WITH

Appeal No. 475 of 2021

Pawan Kumar Ruia

5, Sunny Park, Kolkata,

West Bengal, India- 700 019

...Appellant

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051
 2. Falcon Tyres Limited
Mr. Shivadutt Bannanje
(Liquidator of Falcon Tyres Limited)
S-505, South Block,
Manipal Centre, No. 47, Dickenson Road,
Bengaluru- 560 042
- ...Respondents

Mr. Yadunath Bhargavan, Advocate i/b R. Bhargavan & Associates for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Chirag Shah and Mr. Tanmay Gor, Advocates i/b Mansukhlal Hiralal & Co. for the Respondents.

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 against the order dated March 24, 2021 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) restraining the appellants from accessing the securities market for a period of two years and

further prohibiting them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of two years. In addition to the aforesaid, the appellants were also restrained from being associated with any other listed company or SEBI registered intermediary, in any capacity either as a Director or as a key managerial person, directly or indirectly, for a period of two years.

2. The facts leading to the filing of the present appeal is, that SEBI conducted an investigation regarding the acquisition of shares of Falcon Tyres Limited and Dunlop India Limited by certain entities through preferential allotment. Based on the investigation, a show cause notice dated April 24, 2018 was issued to Falcon Tyres Limited, Pawan Kumar Ruia, Sunil Bhansali, S. Ravi, Mohan Lall Chauhan and Damodar Prasad Dani. The appellant before us is Pawan Kumar Ruia, who was Director and Executive Chairman of Falcon Tyres Limited (hereinafter referred to as “Falcon”) and Mohan Lall Chauhan who was Non-Executive Director in Dunlop India Limited (hereinafter referred to as “Dunlop”).

3. The facts stated in the show cause notice is, that Manali Properties and Finance Limited (“Manali”) is a group Company of Falcon and held 3.56% of the shares of Falcon and 0.03% of shares of Dunlop. Manali granted a loan of Rs. 144.05 Crore to Falcon on January 07, 2008. This loan was subsequently assigned by Manali to three companies vide separate Assignment Deeds dated February 09, 2012 to three Companies, namely, Regus Impex Private Limited (“Regus”), Suncap Commodities Limited (“Suncap”) and Salputri Commerce Private Limited (“Salputri”). As per the Assignment Deeds it was categorically stated that in the event of any default of repayment of the loan by the borrower the assignees would have a right to get the loan converted into equity shares of Falcon/ Dunlop in accordance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Falcon failed to pay the loan to the assignees and, accordingly, a resolution was passed by the Extra Ordinary General Meeting (“EOGM”) on April 26, 2012 allotting 4,33,87,048 equity shares on a preferential basis to Regus, Suncap and Salputri against the outstanding loan.

4. Similarly, another Company Stephens Financial Services Pvt. Ltd. (“Stephens”) was one of the group companies of Dunlop and had granted a loan of Rs. 62.39 crores on September 15, 2011 to Dunlop. Stephens assigned the loan vide three separate Assignment Deeds on January 14, 2012 to three companies, namely, Regus, Suncap and Sulputri. Dunlop failed to pay the loan and accordingly allotted 5,00,00,000 equity shares on a preferential basis on April 28, 2012 to Regus, Suncap and Salputri.

5. As a result of the preferential allotment to Regus, Suncap and Salputri the shareholding of the Company including promoter shareholding was reduced to 31.62% and public shareholding increased to 68.38% in so far as Falcon was concerned. Similarly, the shareholding to Dunlop was reduced to 38.35% and public shareholding increased to 61.65% and thus the two companies were in compliance of the minimum public shareholding (“MPS”) requirement as provided under Section 21 of the Securities Contracts (Regulation) Act, 1956 (“SCRA” for convenience) read with Rule 19(A) of the Securities Contracts (Regulation) Rules, 1957 (“SCRR” for convenience).

6. The show cause alleged that the entire scheme of assignment of loan by Manali and Stephens to the three entities, namely, Regus, Suncap and Salputri and subsequent conversion of the loan into equity shares through preferential allotment of shares was done by Falcon and Dunlop in collusion with their group companies and the three preferential allottees with a view to avoid MPS requirements under Clause 40A of the Listing Agreement and was also violative of Rule 19(A) of the SCRR.

7. The WTM after considering the reply and the material evidence on record found that the preferential allotment by Falcon to the three assignee companies was not a genuine assignment and, therefore, the shareholding of the assignee companies has to be clubbed together with the shareholding of the promoter group which taken together would reach 87.27% and, therefore Falcon which had time till June 03, 2013 to achieve the minimum public shareholding of 25% as mandated under Rule 19(A)(1) of the SCRR was not achieved. The WTM accordingly passed the directions as stated aforesaid.

8. The conclusion drawn that the allotment to the assignee companies was not a genuine consequence or outcome of the

Assignment Deeds was based on the fact that the three companies had no business activity and their net worth was nowhere close to the assigned amounts. Further, the assignment was without any collateral securities and, therefore, the WTM came to a conclusion that the Assignment Deeds were executed with a view to overcome the mandate of having the minimum public shareholding of 25% in a listed company through this fraudulent device.

9. We have heard Mr. Kunal Katariya, the learned counsel and Mr. Yadunath Bhargavan, the learned counsel for the appellants and Ms. Anubha Rastogi, the learned counsel for the Respondent.

10. Before proceeding further it would be appropriate to refer to a few provisions of the SCRA and the SCRR and Listing Agreement. Section 21 of the SCRA and 19(A) of the SCRR and Clause 40A of the listing agreement are extracted hereunder:-

Section 21 of the SCRA

*“21. Conditions for listing-
Where securities are listed on the application of
any person in any recognized stock exchange, such*

person shall comply with the conditions of the listing agreement with that stock exchange.”

Continuous Listing Requirement.

“19A. (1) Every listed company other than public sector company shall maintain public shareholding of at least twenty five per cent.: ”

Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

(2) Where the public shareholding in a listed company falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.

(3) Notwithstanding anything contained in this rule, every listed public sector company shall maintain public shareholding of at least ten per cent:

Provided that a listed public sector company-

(a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of three years from the date of such commencement;

(b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction”

Listing Agreement

“40A Minimum level of public shareholding

The company agrees to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

Where the company is required to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level: -

- (a) issuance of shares to public through prospectus; or*
- (b) offer for sale of shares held by promoters to public through prospectus; or*
- (c) sale of shares held by promoters through the secondary market in terms of SEBI circular*

CIR/MRD/DP/05/2012 dated February 1, 2012; or

- (d) Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended.*
- (e) Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*
- (f) Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*
- (g) any other method as may be approved by SEBI on a case to case basis.*

11. Section 21 of the SCRA, provides that where securities are listed in a stock exchange then the conditions of the listing agreement with the stock exchange are required to be complied with. SCRR was amended and Rule 19(A) was inserted w.e.f. June 04, 2010. Rule 19A(2)(b) required that a listed company must have a public shareholding of atleast 25%. Various circulars were issued by SEBI providing method of reducing the company's shareholding and increasing the public shareholdings. Clause 40 of the listing agreement also mandated that every listed company should have a public

shareholding of atleast 25% w.e.f. June 04, 2010 and the period of three years from June 04, 2010 was given to every listed company to comply with Clause 40A of the listing agreement read with Rule 19(A) of the SCRR.

12. Under Section 21 of the SCRA read with SCRR and the listing agreement the liability to comply with the requirement of MPS is that of the Company.

13. In the instant case, we find that admittedly in the case of Falcon, Manali had granted a loan of Rs. 144 crores on January 07, 2008 much prior to the inclusion of Rule 19A in the SCRR w.e.f. June 04, 2010. Thus, the loan given by Manali to Falcon was a genuine transaction. Manali assigned the loan to three companies vide Assignment Deeds executed on February 09, 2012. No evidence has come to light indicating that these three assignee companies are group companies of Manali or are subsidiary companies, etc. We find that Falcon failed to repay the loan and in view thereof under the terms of the Assignment Deeds allotted equity shares to the extent of the loan which was passed by the shareholders of the company in the Extra

Ordinary General Meeting on April 26, 2012. Similar was the case with regard to Dunlop.

14. It is not open to the WTM to question the decision of Manali assigning the loan to the three assignee companies or question the assignment given by Stephens to the three assignee companies. Whether the decision taken by Manali/ Stephens in assigning the loans to the three assignee companies was a prudent decision or a commercial decision was not open to be questioned by the WTM in these proceedings. The fact remains that a loan was given by Manali/ Stephens which is not disputed and if the loan is not repaid Falcon/ Dunlop in their wisdom allotted shares to the assignee companies through preferential allotment of shares in order to square off the loan amount which is permissible in law.

15. The three assignee companies are not promoter group companies of Falcon or Dunlop. Similarly, there is no evidence to show that the three assignee companies were group companies/ subsidiary companies of Manali/ Stephens. In the absence of any such evidence coming on record the WTM committed a manifest error in clubbing the shareholding of the

three assignee companies, namely, Regus, Suncap and Sulputri with the shareholdings of Manali/ Stephens respectively and then clubbing it as the group shareholding with Falcon/ Dunlop. Such clubbing of shares, in our opinion, was not permissible in the eyes of law.

16. In view of the aforesaid, we are of the view, that the company had rightly shown the shareholdings of the three assignee companies as public shareholdings. We are further of the view, that the shareholdings of the assignee companies cannot be clubbed together with the shareholding of the promoter group of Falcon or Dunlop respectively.

17. The appellant Mohan Lall Chauhan was appointed as a Special Director in Dunlop by Board for Industrial and Financial Reconstruction (“BIFR”) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA” for convenience). Subsequently, upon the scheme being sanctioned under the SICA Act a new management came into existence who appointed the appellant as an Independent Director in 2008-2009. The appellant as an Independent Director has been penalized for non-compliance of the MPS requirement under Clause 40A of the Listing Agreement read with Rule 19(A) of

the SCRR. As stated earlier, the obligation to comply with the MPS requirement is upon the company, namely, Dunlop. In the instant case, Dunlop has not been made a party. No show cause notice has been issued to Dunlop and, consequently, in the absence of the company being made a party, no proceedings can be initiated against the Director of the Company.

18. In this regard, Section 27 of the SEBI Act is extracted hereunder:-

Offences by companies.

“27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be

liable to be proceeded against and punished accordingly.

Explanation:- For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.”*

19. A perusal of the aforesaid provision indicates that if an offence is committed by the company then every person who was responsible to the company for the conduct of the business of the company would be guilty of the offence. Thus, violation of Clause 40A of the Listing Agreement read with 19(A) of the SCRR has to be first found against the company and only thereafter SEBI can proceed against the Directors who were responsible for the conduct of the business of the company at the time when the violation was committed. Thus, we are of the confirmed opinion, that no proceedings could have been initiated against the appellant Mohan Lall Chauhan without first initiating proceedings against its company Dunlop.

20. In view of the aforesaid, the impugned order against the appellants cannot be sustained and to that extent the order is

quashed. The appeals are allowed with no order as to costs.

The misc. application is disposed of accordingly.

21. 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

24.08.2022
PK