

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 25.01.2023

**Misc. Application No. 1801 of 2022
And
Appeal No. 112 of 2023**

Avisha Credit Capital Limited
606, Kailash Building,
Kasturba Gandhi Marg,
New Delhi - 110001

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

Mr. Abhiraj Arora, Advocate with Mr. Shourya Tanay, Ms. Misbah
Dada, Mr. Deepanshu Agarwal, Advocates i/b ELP for the
Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. There is a delay of 257 days in the filing of the appeal. For the reasons stated in the application, the delay is condoned. Misc. Application is allowed.

2. The present appeal has been filed against the order dated February 28, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 8 lacs upon the appellant to be paid jointly and severally for the fraudulent scheme to fund IPO of noticee no. 9 i.e. Channel Nine Entertainment Ltd. (hereinafter referred to as 'Channel Nine Entertainment').

3. The facts leading to the filing of the present appeal is, that SEBI passed an interim order dated June 29, 2015, based on the preliminary findings and, consequently, restrained 254 entities from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner, in the matter of Initial Public Offer (hereinafter referred to as 'IPO') of ECO Friendly Food Processing Park Ltd., Esteem Bio Organic Food Processing Ltd., Channel Nine Entertainment and HPC Biosciences Ltd. Subsequently, a confirmatory order dated June 1, 2017 was passed against 235 entities.

4. Further, investigation revealed that 9 entities were part of the funding group entities, 6 entities funded the IPO applicants of noticee no. 9 i.e. Channel Nine Entertainment. During investigation 5 more entities were found to have funded the IPO applications. Consequently, a show cause notice dated December 10, 2018 was issued to 13 noticees including the appellant who was noticee no. 7. The allegation against the appellant is, that it had received Rs. 92 lacs from noticee no. 4 i.e. Goldline International Finvest Ltd. (hereinafter referred to as 'Goldline International'), out of which the appellant funded 3 IPO allottees to the extent of Rs. 42 lacs. It was further alleged that noticee no. 4 had received the fund from noticee no. 9 (Channel Nine Entertainment) who had issued the IPO.

5. The AO after considering the material evidence on record found that the fund movement indicated that the IPO subscription was not genuine but was orchestrated by funding various applicants and that the fund so provided were returned by noticee no. 9 i.e. Channel Nine Entertainment to noticee no. 4 Goldline International. Accordingly, the AO came to the conclusion that this fraudulent scheme was violative of Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with 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 (hereinafter referred to as 'PFUTP Regulations') for the fraudulent scheme to refund the IPO of noticee no. 9.

6. We have heard Mr. Prakash Shah, the learned counsel with Mr. Kushal Shah, Chartered Accountant for the appellant and Mr. Abhiraj Arora, the learned counsel with Mr. Shourya Tanay, Ms. Misbah Dada, Mr. Deepanshu Agarwal, the learned counsel for the respondent.

7. The only ground urged was that the appellant had commercial transaction with noticee no. 9 and, therefore, did not act as conduit for the funding of the IPO.

8. We find that the routing of the fund has not been denied by the appellant. The contention that the appellant had regular commercial transaction with noticee no. 9 is neither here or there. A finding has come on record to indicate that the fund so received by the appellant from noticee no. 4 was utilized for the allotment of the IPO.

9. We are of the opinion that the appellant acted as a conduit for the fund movement and funding of allottees and return of fund to noticee no. 4 post-IPO which substantiated that IPO subscription was not genuine but was orchestrated by funding various applicants

including the appellant, which fund was ultimately returned by noticee no. 9 to noticee no. 4. We are of the opinion that the IPO of noticee no. 9 was not genuinely subscribed but was funded by the entities connected to noticee no. 9. The appellant was one of the entities which employed a fraudulent scheme to get the same subscribed in a fraudulent manner.

10. We, consequently, do not find any error in the impugned order. The appeal fails and is dismissed.

11. 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

Ms. Meera Swarup
Technical Member

25.01.2023
PTM