

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 15.09.2023

Date of Decision : 27.09.2023

Misc. Application No. 985 of 2021

And

Appeal No. 159 of 2022

1. MPS Infotecnics Ltd.
(Formerly known as Visesh
Infotecnics Ltd.)
703, Arunachal Building,
19, Barakhamba Road,
New Delhi – 110001.

2. Mr. Peeyush Kumar Aggarwal
H. No. 390, UGH & FF,
Kohat Enclave, Pitampura,
Delhi – 110034.

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent

With
Misc. Application No. 1140 of 2021
And
Appeal No. 160 of 2022

Karun Jain
H. No. 150, 2nd Floor, Vikas Marg

Extension, Delhi 110092.

..... 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

**With
Misc. Application No. 1163 of 2021
And
Appeal No. 161 of 2022**

MPS Infotecnic Ltd.
(Formerly known as Visesh
Infotecnic Ltd.)
703, Arunachal Building,
19, Barakhamba Road,
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

**With
Misc. Application No. 1238 of 2021
And
Appeal No. 162 of 2022**

Karun Jain
H. No. 150, 2nd Floor, Vikas Marg
Extension, Delhi 110092.

..... 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

With
Misc. Application No. 1428 of 2021
And
Appeal No. 163 of 2022

Peeyush Kumar Aggarwal
7/33, Near Virmani Government School,
Roop Nagar, Delhi – 110007.

.... 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. Shubham Aggarwal, Advocate for the Appellants.

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

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

Per : Justice Tarun Agarwala, Presiding Officer

1. This group of appeals is against a common issue and are being taken up together.

2. Appeal Nos. 159 of 2022 and 160 of 2022 are against the order dated March 12, 2020 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') wherein the company MPS Infotecnics Ltd. noticee nos. 1 (hereinafter referred to as "MPS") has been directed to bring back 8.90 Million USD and further the company has been debarred from accessing the securities market till it brings back the money which was raised through Global Depository Receipts (hereinafter referred to as "GDR") issues. Noticee nos. 3 and 7 have also been debarred for a period of five years from accessing the securities market and have further being directed to ensure compliance of bringing back the money. Appeal Nos. 160 of 2022, 161 of 2022, 162 of 2022 and 163 of 2022 are against two separate orders of the Adjudicating Officer (hereinafter referred to as 'AO') dated November 27, 2020 and November 27, 2021 wherein the AO has imposed a penalty of Rs. 10 crore upon the company and Rs. 10 lakh each upon the directors.

3. The facts leading to the filing of the present appeal is, that the MPS is a listed company and the shareholders in the extraordinary general meeting held on January 30, 2007 resolved and approved the issuance of GDR. Based on the aforesaid resolution, the process of issuance of GDR was initiated and, on October 19, 2007, a resolution of the board of directors was passed resolving to open a bank account with Lisbon Bank for the purpose of receiving the subscription money in respect of GDR. The resolution also authorized Mr. Rajinder Singh Negi, a director of the Company to sign all documents and process the necessary transactions in relation to the GDR issue. The resolution further authorized Banco Efisa, S.F.E., S.A. (hereinafter referred to as “Banco”) a bank based in Lisbon “to use the subscription money as security in connection with loans, if any”.

4. It transpires that thereafter on October 29, 2007, the Credit Agreement was executed between Clifford Capital Partners A.G.S.A. (hereinafter referred to as “Clifford”) with Banco wherein Banco agreed to give a loan to Clifford. On October 30, 2007, Account Charge Agreement was executed by the director of the company Mr. Rajinder Singh Negi with Banco on the basis of which it enabled

Clifford to avail a loan from Banco for subscribing to the GDR. Based on the Credit Agreement and Account Charge Agreement, a loan was availed by Clifford from Banco which was used to subscribe to the GDR issue of the company for which the circular was issued on December 4, 2007 and the public announcement was made on BSE Limited (hereinafter referred to as "BSE") on December 5, 2007. GDR of 4.65 million was issued amounting to US \$ 9.99 million. Further, Clifford was the sole subscriber to the GDR issue on the basis of a loan taken under the Credit Agreement.

5. After 11 years, a show cause notice dated January 31, 2018 was issued to various noticees including the appellant alleging that Clifford was the sole subscriber to the GDR issued by the company and that the subscription amount was paid by obtaining a loan under a Credit Agreement dated October 29, 2007 from Banco and that Mr. Rajinder Singh Negi signed an Account Charge Agreement dated October 30, 2007 which was an integral part of the Credit Agreement and on the basis of this agreement Clifford availed loan from Banco for subscribing the GDR issue. It was further alleged that the Company did not inform BSE about the execution of the Account Charge Agreement or the Credit Agreement and alleged that the

GDR proceeds were diverted to the extent of US \$ 8.90 million. This act of concealing and suppressing the material facts was in violation of the provisions of Section 12A of 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 (hereinafter referred to as “PFUTP Regulations”).

6. On the same issue, the AO also issued a show cause notice and after considering the material evidence, the AO passed two separate orders imposing penalties upon the company and its directors.

7. We have heard Mr. Shubham Aggarwal, the learned counsel for the appellants and Mr. Sumit Rai, the learned counsel with Mr. Mihir Mody, Mr. Arnav Misra, the learned counsel for the respondent.

8. Having perused the record we find that this *modus operandi* in the instant appeals is the same and has been dealt with by this Tribunal in a large number of matters relating to the GDR issue wherein the Tribunal has held that non-disclosure of the loan

agreement and the pledge agreement was totally fraudulent and violative of the Listing Agreement. This Tribunal also held that the company and its MDs were aware of the execution of the pledge agreement as well as loan agreement and it was no longer open to them to deny the existence of the said agreements. This Tribunal also held that the company and its directors misled SEBI into believing that there were more subscribers to the issue and not one subscriber.

9. We also held that company and its MDs were aware of the pledge agreement, non-disclosure of the pledge agreement and loan agreement invited penalty. Further, the corporate announcement did not disclose the fact that the subsisting pledge agreement facilitated the subscribers to subscribe to the GDR issue. The corporate announcement was misleading and presented a distorted version to the investors and created a false version inducing the investors to deal in securities. The aforesaid findings have been given in a large number of matters decided by this Tribunal especially in *Appeal No. 381 of 2019 Sibly Industries Ltd. vs. SEBI and other companion appeals decided on July 14, 2022*, *Appeal No. 438 of 2020 Aksh Optifibre Ltd. vs. SEBI and other companion appeals decided on*

June 27, 2022 and Appeal No. 28 of 2022 Praveen Kumar Hastimal Shah vs. SEBI and other companion appeals decided on July 6, 2022.

10. In the light of the aforesaid decisions the only ground urged before this Tribunal was that the penalty imposed was high and excessive and did not commensurate with the alleged violation.

11. In this regard, we have also held in a large number of cases that the penalty imposed upon the company, the Managing Director and other directors was excessive and accordingly reduced the quantum of penalty.

12. In this regard, the appellants have produced various orders passed by SEBI against various companies and its directors wherein different penalties have been imposed for similar / identical offence.

In the instant case, the AO has penalized the appellant company of Rs. 10.10 crore and the Managing Director of Rs. 1.10 crore. In similar matters lesser penalty has been awarded. For facility, a comparative table is given hereunder :-

<u>Penalty Orders</u>						
Sr. No.	Name of the GDR issuer Company	Date of Issue	GDR size (million \$)	Subscriber	Combined Penalty	Date of the order
1.	<i>ABL Biotechnologies Ltd.</i>	<i>June 2008</i>	<i>6.68</i>	<i>Clifford Capital Partners</i>	<i>Rs. 50,00,000/- (Rupees Fifty Lakhs)</i>	<i>23rd April 2018</i>
2.	<i>Syncom Healthcare Ltd.</i>	<i>September 2010</i>	<i>20.74</i>	<i>Vintage</i>	<i>Rs. 25,00,000/- (Rupees Twenty Five Lakhs)</i>	<i>30th August 2019</i>
3.	<i>Visu International Ltd.</i>	<i>April 2006</i>	<i>9.66</i>	<i>Seazun</i>	<i>Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs)</i>	<i>18th March 2021</i>
4.	<i>GV Films Ltd.</i>	<i>April 2007</i>	<i>40</i>	<i>Whiteview</i>	<i>Rs. 25,00,000/- (Rupees Twenty Five Lakhs)</i>	<i>29th January 2020</i>
5.	<i>Aksh Opti-Fibre Ltd.</i>	<i>Sept 2010</i>	<i>25</i>	<i>Vintage</i>	<i>Rs. 10,15,00,000/- (Rupees Ten Crore Fifteen Lakhs)</i>	<i>28th February 2020</i>
6.	<i>Rana Sugars</i>	<i>May 2006</i>	<i>18.00</i>		<i>Rs. 10,00,000/- (Rupees Ten Lakh)</i>	<i>29th February 2018</i>
7.	<i>Sybly Industries Ltd.</i>	<i>June 9, 2008</i>	<i>6.99</i>	<i>Vintage</i>	<i>Rs. 10,30,00,000/- (Rupees Ten Crore Thirty Lakh)</i>	<i>March 2019</i>
8.	<i>Winsome Yarns Ltd.</i>	<i>March 29, 2011</i>	<i>13.24</i>	<i>Vintage</i>	<i>Rs. 11,00,00,000/- (Rupees Eleven Crores)</i>	<i>28th March 2021</i>

13. A perusal of the aforesaid table indicates that G.V. Films Ltd. had raised 40 million USD and the company was only awarded a penalty of Rs. 25,00,000/-. Another company Syncom Healthcare Ltd., raised 20.74 million USD and was awarded a penalty of Rs. 25 lakh whereas in the case of the appellant company who raised 6.99 million USD has been awarded Rs. 10,30,00,000/-. In ***Sybly Industries Ltd. (supra)***, penalties ranging from Rs. 10 lakhs to

Rs. 10.30 crore were imposed which were reduced to Rs. 25 lakh on the company and Rs. 10 lakh on the Managing Director. Thus, in our opinion, the penalty imposed is excessive and disproportionate to the violation and is also discriminatory.

14. In *Jindal Cotex Limited & Ors. vs. SEBI Appeal No. 76 of 2023 decided on February 23, 2023*, this Tribunal by its decision a penalty of Rs. 20 lakh was imposed upon the Managing Director which was reduced to Rs. 10 lakh.

15. In *M/s. Texmo Pipes and Products Ltd. Appeal No. 608 of 2022 decided on September 30, 2022*, a penalty of Rs. 20 lakh imposed upon the Managing Director which was affirmed by this Tribunal. This Tribunal held :-

“We find that such excessive penalty imposed upon the Company does not make any sense. In the instant case, there are public shareholders and workers. The Company is a running concern. Penalising the Company with such heavy penalty is in fact penalising the shareholders which is not justifiable especially for a running company. Further, the money raised through GDRs has been received by the Company and has not been misappropriated. The same has been utilised for the purpose for which the GDR was issued which fact has not been disputed. Thus, it is not a case of defalcation of the funds.”

16. Considering the aforesaid, we find that the direction against the company to bring back 8.90 Million USD does not suffer from any error of law. Admittedly, the money was received through GDR subscription but on account of default made by Clifford, the bank, namely, Banco adjusted it towards the loan given by it to Clifford upon invoking the pledge agreement executed between Banco and the company. Further, debarring the company from accessing the securities market for two years from the date of bringing back the money also does not suffer from any error. The contention of the appellant that they have already filed a suit for recovery of the money does not in our opinion dilute the direction. We find that the suit was filed in 2009 and till date it has not been decided for reasons best known to the appellant company.

17. The directions issued by the WTM to noticee nos. 3 and 7, namely, Peeyush Agarwal and Karun Jain to ensure compliance of bringing back the money also does not suffer from any error of law. However, the debarment of noticee nos. 3 and 7 from accessing the securities market for a period of five years is harsh and excessive and is reduced to the period underwent or undergone as on date and to that extent the debarment period is reduced.

18. The AO has imposed a penalty of Rs. 10 crore upon the company, we find that the penalty of Rs. 10 crore imposed upon the company is excessive and we accordingly reduce it to Rs. 25 lakh since in similar circumstances, a penalty upon the company was appropriately reduced by this Tribunal.

19. The AO has also imposed a penalty of Rs. 10 lakh upon Karun Jain and Peeyush Agarwal who were the directors and the managing director respectively. In *Rajinder Singh vs. SEBI in Appeal No. 467 of 2022 decided on January 6, 2023*, the said appellant was a non-executive independent director in MPS and had signed the pledge agreement with Banco. The AO had imposed a penalty of Rs. 20 lakh which we had reduced it to Rs. 10 lakh. Accordingly, the penalty imposed upon Karun Jain and Peeyush Agarwal does not suffer from any error of law.

20. For the reasons stated aforesaid, the violation committed by the appellants are affirmed. The debarment period is however reduced and the penalty is also reduced as stated above. Accordingly Appeal No. 159 of 2022 filed by the company is dismissed. However, Appeal No. 159 of 2022 filed by noticee nos. 3 is partly

allowed and the period of debarment is reduced to the period undergone. Similarly, Appeal No. 160 of 2022 Karun Jain is partly allowed. The debarment period is reduced to the period undergone. Appeal No. 161 of 2022 is partly allowed. The penalty of Rs. 10 crore is reduced to Rs. 25 lakh. Appeal Nos. 162 of 2022 and 163 of 2022 are dismissed.

21. In the circumstances of the case, parties shall bear their own costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

27.09.2023
PTM