

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 01.02.2018

**Misc. Application No. 4 of 2017
And
Appeal No. 4 of 2017**

Corporate Strategic Allianz Limited
101, Prerak Apartment,
61, Pritamnagar,
Behind Hope Hospital,
Ellisbridge,
Ahmedabad – 380 006

...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. P.N. Modi, Senior Advocate i/b Crawford Bayley & Co. and Mr. Keval Ponkiya, Chartered Accountant i/b Keval Ponkiya & Associates for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani and Ms. Vidhi Jhavar, Advocates i/b The Law Point for the Respondent.

WITH

Appeal No. 20 of 2017

Corporate Strategic Allianz Limited
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61, Pritamnagar,
Behind Hope Hospital,
Ellisbridge,
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CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair (Oral)

1. These two appeals have been filed by the appellant aggrieved by two orders of Securities and Exchange Board of India ('SEBI' for short). Appeal No. 4 of 2017 is filed against the order dated August 12, 2016 passed by the Whole Time Member ('WTM' for short) of SEBI wherein the appellant (among others) has been prohibited from accessing the securities market directly or indirectly, and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 3 years and further the appellant is directed to disgorge the unlawful gain of Rs. 20,64,745/- along with interest thereon from February 2007 till payment. Appeal No. 20 of 2017 is filed against the direction of SEBI vide their letter dated December 22, 2016 advising the appellant to dissociate from discharging the obligations as a Merchant Banker in view of the 3 year restraint imposed by the order of the WTM of SEBI dated August 12, 2016 (impugned in Appeal No. 4 of 2017). Since the order impugned in the second appeal is a consequential direction of SEBI following the WTM's order impugned in Appeal No. 4 of 2017, it is evident that facts in both appeals are common and therefore, both the appeals are heard together and disposed of by this common decision.

2. Corporate Strategic Allianz Limited, the appellant company was incorporated in 2006 with Ashok Shah and his father Hiralal Shah as the only directors till April 1, 2007. The appellant company received a certificate of registration from SEBI as a Category I Merchant Banker on January 25, 2008. The appellant company has been granted permanent

registration as a Merchant Banker by SEBI on August 1, 2014. On April 1, 2007 five new directors were appointed in the appellant company and Hiralal Shah resigned as a director on April 2, 2007. On March 9, 2012 Ashok Shah also resigned as a director of the appellant company and several new directors were appointed.

3. Order dated August 12, 2016 was passed against 40 entities including appellant herein based on an investigation conducted by SEBI relating to buying, selling and dealing in the scrip of a company namely Platinum Corporation Ltd. ('Platinum' for short). Platinum was incorporated on July 17, 1992 in the name of Kanugo Lease and Investment Ltd. Its shares were listed on BSE on January 9, 1997. Between July 20, 2005 and September 15, 2005 Platinum made a large number of misleading corporate announcements which led to increase in its share price and substantial increase in the volume of trading in its shares. During this period the promoters of Platinum had transferred shares off-market to related entities who in-turn sold the shares in the market and made unlawful gains to the extent of Rs. 12 crore. Platinum also made incorrect filings relating to promoters shareholding. Therefore Platinum and its directors / promoters violated SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2007 ('SAST Regulations, 1997' for short) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

4. The specific allegation in the impugned order dated August 12, 2016 against the appellant herein is that the appellant was one of the parties connected to the promoters of Platinum as they had received 10 lakh shares from Tushar Shah, one of the promoters of Platinum, on August 4, 2006. These shares were sold in the market and the appellant made a profit of

Rs. 20,64,745/- therefore the appellant aided and abetted Platinum and its promoters and directors and thereby violated provisions of Sections 12A(a),(b) & (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) & 3(d), 4(1) & 4(2)(e) of PFUTP Regulations, 2003. Hence, 3 years restraint from the securities market and direction to disgorge the amount of unlawful gains made imputing the acquisition cost at Rs. 1 per share since the appellant did not provide any details relating to the purchase and its costs etc.

5. The Learned Senior Counsel Shri P.N. Modi appearing on behalf of the appellant except on the last date of hearing strenuously argued that the appellant did not receive any shares of Platinum; their alleged 10 lakh shares shown against the appellant was in fact shares belonging to another entity by the name Mahavir Impex who was not even questioned by SEBI. Since Mahavir Impex did not have a demat account, his shares were kept in the appellant's demat account and on instruction of Manish Shah of Mahavir Impex the appellant sold the shares through the broker Kotak Securities in January 2007 and kept Rs. 45,000/- as service charges and paid remaining Rs. 29,90,000/- to Mahavir Impex. Therefore, the shares were received by Mahavir Impex whose managing director Manish Shah requested the appellant in August 2006 to keep these shares in the appellant's demat account which was sold in January 2007 on their instruction and the consideration minus service charge paid to Mahavir Impex. Therefore, the appellant had no role in the entire matter. As such, the impugned order dated August 12, 2016 needs to be quashed and set aside and if any disgorgement is applicable it should be imposed on Mahavir Impex.

6. It was further argued by the Learned Senior Counsel for the appellant that the alleged violations leveled against the appellant in the impugned

order dated August 12, 2016 were carried out by the erstwhile management of the appellant company during 2006-07. Since 2008 the appellant company has been taken over by a group of professionals who are managing the same. They have no role in the alleged violations stated to have happened during 2006-07 and the appellant company has no connection whatsoever with either Platinum or the directors of Platinum or erstwhile directors or management of the appellant company. Therefore, the appellant company and its current directors and management cannot be punished for no fault of their own with a ban of three years and disgorgement of a huge amount of Rs. 20 lakh + interest thereon.

7. With regards to Appeal No. 20 of 2017 the Learned Senior Counsel for the appellant argued that in any case the license of the appellant could not have been suspended or cancelled without following the due procedure laid down in the SEBI (Intermediaries) Regulations, 2008 by issuing a separate show cause notice and providing an opportunity of being heard etc. and following a two stage process as applicable to intermediaries. The order of the WTM dated August 12, 2016 did not pass any instruction relating to the suspension / cancellation of the certificate of registration of the appellant as a Merchant Banker nor did it find that the appellant was not a fit and proper person as a Merchant Banker. However, through the communication dated December 22, 2016 Deputy General Manager of SEBI has unilaterally declared the appellant as not fit and proper without following any due process and restrained the appellant from taking any merchant banking business. Accordingly, the order impugned in Appeal No. 20 of 2017 is violative of natural justice and has to be quashed and set aside forthwith. The appellant also relied on the decision of this Tribunal in the case of Almond Global Securities Ltd. vs SEBI (Appeal No. 275 of 2014 decided on May 13, 2016) wherein it was held that in every case where a restraint

order is passed against a person that person may not become an unfit and improper person. Therefore, in the instant matter when the WTM did not find the appellant to be unfit and improper it was not within the powers of an officer of SEBI to declare the appellant not fit and proper and that too without following any due process as provided in the Intermediaries Regulations 2008.

8. Shri Keval Ponkiya, Learned Counsel who appeared on behalf of the appellant on the last day of hearing also reiterated the above contentions made by the Learned Senior Counsel Shri P.N. Modi.

9. Shri Pradeep Sancheti, Learned Senior Counsel appearing on behalf of SEBI walked us through the full facts relating to the impugned order dated August 12, 2016. Platinum has changed its name multiple times since its incorporation as Kanugo Lease and Investment Ltd. in July 17, 1992. The name was finally changed to Platinum Corporation Ltd. on June 8, 2007. Based on a complaint received by SEBI on May 12, 2008 an investigation was conducted into buying, selling or dealing in the scrip of Platinum. Accordingly, show cause notice was issued on September 23, 2013 to Platinum and 39 other entities including the appellant herein. It is on record that Platinum made a number of corporate announcements and withdrew those announcements subsequently during 2005-07. As a result of all these corporate announcements the price of the scrip of Platinum increased from Rs. 1.19 to a high of Rs. 3.15. Similarly, volume of trading increased substantially from a daily average of 1.31 lakh shares to daily average of 37.07 lakh shares. Two of the corporate announcements made by Platinum have been relating to tie-up with parties who were found to be related to each other namely Cartesian Computers and Alps BPO wherein the former was a wholly owned subsidiary of the latter and both these companies were

found to have no business in the matter where tie-ups have been announced by Platinum. Further, during the period of these corporate announcements the promoters of Platinum offloaded 4 crore shares of Platinum to various entities who together made a profit of about Rs. 12 crore. Except one director neither Platinum nor other directors gave any satisfactory response to SEBI to the show cause notice nor appeared before SEBI.

10. Coming specifically to the appellant in these two appeals while it is a fact that 10 lakh shares of Platinum was sold by the appellant through Kotak Securities in January 2007 there is nothing on record to show that these shares belonged to Mahavir Impex as claimed by the appellant nor the appellant was able to produce any acceptable evidence (other than one ledger of their own) whereby any fact relating to such dealing between the appellant and Mahavir Impex could be proved. Further, both Ashok Shah and Hiralal Shah, the original directors of the appellant, were also directors of Platinum in the past. It was Ashok Shah as director of Platinum who signed a tripartite agreement with NSDL etc. in March 30, 2000.

11. Learned Senior Counsel for SEBI further submitted that not only Ashok Shah, who was the founder director of the appellant but also several other entities connected / related to Ashok Shah also received shares of Platinum off-market from its promoters / directors during the same period. Accordingly, the appellant received 10 lakh shares from Tushar Shah, one of the promoters of Platinum on August 4, 2006. On the same day Vashi Construction also received 10 lakh shares from Tushar Shah through off-market transaction. Ashok Shah and Hiralal Shah were directors of Vashi Construction. Further, Rudra Securities received a total of 24 lakh shares through off-market transfer from Jayesh Shah, another promoter of Platinum during August 30, 2006 – September 4, 2006. The registered address of

Rudra Securities was the residence of Ashok Shah. Similarly, Hiralal Shah (father of Ashok Shah, past director of Platinum and director of the appellant company during investigation period), Meena Shah (wife of Ashok Shah), Sarlaben H Shah (mother of Ashok Shah), Induram Developers Pvt. Ltd. (wherein Ashok Shah and Hiralal Shah were directors) and Exdon Trading managed by Ashok Shah are all part of the noticees in the present matter, some of them on separate appeals before us.

12. Regarding Appeal No. 20 of 2017 the Learned Senior Counsel for SEBI stated that the entire arguments of the appellant that the present directors and management of the appellant company have no relation to its past directors / management crumbles down by a sheer look at the latest filings made by the appellant company and Ashok Shah before Registrar of Companies (RoC). From the documents obtained by SEBI from the RoC and produced before us in affidavit the following have been noted:-

- (a) In the year FY 2006-07 Ashok Shah held 5000 shares (less than 1% in the appellant company). On July 20, 2011 he held 36,500 equity shares (6.6%).
- (b) Similarly, Vashi Construction held 2,49,500 shares, Exdon Trading - 15,000 shares, Meena Shah - 16,500 shares as per the list of shareholders as on September 30, 2013. Accordingly, as on that day Ashok Shah and related entities (wherein Ashok Shah is a promoter / director and his close relatives such as wife) held 58% shares of the appellant company.

- (c) Ashok Shah was appointed as director of the appellant company on April 9, 2011. His designation was changed to managing director on July 20, 2011 and he ceased to be a director on March 9, 2012.
- (d) On April 20, 2016 Ashok Shah was appointed as an additional director with a welcome letter from the managing director of the appellant but resigned from the company on the same day.
- (e) While frequent incoming and outgoing of Ashok Shah as a director and at times as managing director of appellant is inexplicable his continued association with the appellant company intermittently as a director / managing director and continuously as a major shareholder (with more than 6% by himself and 58% by himself and related entities combined) clearly shows the continued close association of Ashok Shah with the appellant company.

13. Shri Pradeep Sancheti, Learned Senior Counsel for SEBI further submitted that the communication from the Deputy General Manager of SEBI dated December 22, 2016 neither suspends nor cancels the license of the appellant. The communication has only advised the appellant to desist from acting as a Merchant Banker consequent to the WTM's order dated August 12, 2016 impugned in Appeal No. 4 of 2017 whereby the appellant has been restrained from dealing in securities directly or indirectly for a period of 3 years from the date of that order. A clear reading of Section 12(1) and 12A of SEBI Act, 1992 and Regulations 2, 3 and 11 of PFUTP Regulations, 2003 make it abundantly clear that a Merchant Banker who is charged with PFUTP violations and therefore restrained from the securities

market cannot discharge its functions as a Merchant Banker because merchant banking is indirectly dealing in securities market. For ease of reference we reproduce the relevant sections of SEBI Act and PFUTP Regulations, 2003 which reads as under:

SEBI Act, 1992

*“12. (1) No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, **merchant banker**, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the [regulations] made under this Act:*

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *No person shall directly or indirectly—*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d) engage in insider trading;*
- (e) **deal in securities** while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a*

recognised stock exchange in contravention of the regulations made under this Act.

Similarly Regulation 2(1)(b) of PFUTP Regulations, 2003 dealing in securities as follows:-

“2(1)(b)” “dealing in securities” includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

Further, Regulation 11 of PFUTP Regulations, 2003 reads thus:-

“11. (1) The Board may, without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:—

- (a) *suspend the trading of the security found to be or prima facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;*
 - (b) *restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;*
 - (c) *suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;*
 - (d) *impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations;*
 - (e) *direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;*
 - (f) *require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;*
 - (g) *prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;*
 - (h) *direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the status quo ante;*
- (2) *The Board shall issue a press release in respect of any final order passed under sub-regulation (1) in at least two newspapers of which one shall have nationwide circulation and shall also put the order on the website of the Board.”*

Therefore provisions of SEBI Act and that of PFUTP Regulations, 2003 explicitly cover Merchant Banker / Merchant Banking and dealing in securities include the activity of merchant banking.

14. Further, Learned Senior Counsel for SEBI stated that definition of ‘dealing in securities’ is broad and inclusive as has been upheld by the Hon’ble Supreme Court in case of Securities and Exchange of India vs Shri

Kanaiyalal Baldevbhai Patel (2017 SCC Online 1148) wherein the Hon'ble Supreme Court in paragraph 25 and 26 of the said order held as follows:-

"25. The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one.

26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation."

15. In the light of the above provisions in the SEBI Act, PFUTP Regulations and the clarification given by the Hon'ble Supreme Court merchant banking is undoubtedly an act of dealing in securities and therefore direction to a Merchant Banker not to undertake merchant banking business when under restraint is fully justified. There is no suspension or cancellation of the license of the Merchant Banker in the instant matter requiring separate procedure to be followed. In any case, the requirement of following the procedure laid out in the Intermediaries Regulations, 2008 would arise when a fresh matter is taken up against a Merchant Banker not when a restraint order is imposed on it on account of serious PFUTP violations. As such, both the appeals are without any merit and liable to be dismissed.

16. We find absolutely no merit in the argument of the appellant company that its present management is completely disconnected from the management prior to 2008. Similarly, we find no merit in the arguments of the appellant that Ashok Shah as a separate entity has been penalized by a separate order of SEBI and as such the impugned orders herein is a double whammy to the appellant company.

17. In fact we are constrained to add that there is all round lack of credibility in the arguments submitted by the appellant in the context of the fact that they are neither willing to give details of their past association nor their present association nor any documents related details regarding dealing in the shares of Platinum. In fact, on a question from the Bench whether there is any other order passed by SEBI against the appellant, the Learned Senior Counsel for the appellant stated in the negative. When he was told that two other appeals are pending before this Appellate Tribunal against the appellant the Senior Counsel had no information about the same because we note that separate Counsel was engaged in respect of those two appeals and the Learned Senior Counsel in these appeals was kept in dark about those matters. Therefore, we find that the appellants are suppressing facts and providing only misleading information just to take this Appellate Tribunal for a ride.

18. It is on record, as evidenced from the records of RoC produced before us, that Ashok Shah continued to be in the board of the appellant company intermittently as director / managing director though for short spells on each occasion. It is also on record that Ashok Shah and related entities hold majority stake (58%) in the appellant company. As such, we do

not find any merit in the arguments of the appellant that the appellant company had a clean break with its past directors / management, which is far from the truth. Given these continued association of Ashok Shah and related entities with the appellant company the latter's unwillingness to produce details relating to the dealings in the shares of Platinum, including their argument that shares belonged to Mahavir Impex, become dubious and as such cannot be accepted.

19. The argument that the respondent did not follow the procedure laid out in suspending / cancelling the merchant banking license is without any merit, because no such order has been passed by the WTM of SEBI in the order dated August 12, 2016 (impugned order in Appeal No. 4 of 2017). Argument that the procedure required under the Intermediaries Regulations have been violated and thereby natural justice has been violated have no merit because the appellant has been charged with major violations of conspiring with other entities and thereby violating the provisions of PFUTP Regulations. In such a case, question of observing the principle of natural justice does not arise. The Hon'ble Supreme Court in the matter of Karnataka State Road Transport Corporation and Another vs SG Kotturappa and Anr. (2005 3 SCC 409) has held that the principles of natural justice are not required to be complied with when it will lead to an empty formality. When the WTM's order dated August 12, 2016 has clearly found the appellant liable for violation of PFUTP Regulations, 2003 and accordingly the appellant is restrained from accessing the securities market and the registration of the appellant as a Merchant Banker has not been either suspended or cancelled by the impugned communication dated December 22, 2016, the question of following the procedure for suspending or cancelling the license does not arise at all. Accordingly, we do not find any merit in the arguments regarding violation of natural justice.

20. In the result, we find no merit in these appeals and both appeals are dismissed with no order as to costs. Consequently, Misc. Application No. 4 of 2017 seeking stay of the impugned order dated August 12, 2016 becomes infructuous and the same is also disposed of accordingly. Misc. Application No. 5 of 2017 for condonation of delay (inadvertently typed as Misc. Application No. 4 of 2017) was disposed of on January 17, 2017.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

01.02.2018

Prepared and compared by:msb