

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of decision : 19/12/2014

APPEAL NO.93 OF 2014

Shri Dave Harihar Kiritbhai

C-2/22 Shanti Nagar,

Vejalpur, Ahmedabad,

Gujarat – 380 0551.

... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C-4A, “G” Block,

Bandra Kurla Complex,

Bandra (E), Mumbai – 400 051.

... Respondent

WITH

APPEAL NO.104 of 2014

1. Shreyanshnath Shares and Financial Services
Private Limited

64, Panchavati Society,

Delvada Road B/High School

at Una, Junagadh, Gujarat – 380 0551.

2. Shri Patel Kirtikumar Gopalbhai

Director,

Shreyanshnath Shares and Financial Services
Private Limited

64, Panchavati Society,

Delvada Road B/High School

at Una, Junagadh, Gujarat – 380 0551.

3. Shri Chauhan Vijaykumar Babubhai
Director,
Shreyanshnath Shares and Financial Services
Private Limited
64, Panchavati Society,
Delvada Road B/High School
at Una, Junagadh, Gujarat – 380 0551. ... Appellants

Versus

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

WITH

**MISC. APPLICATION NO.73 OF 2014
AND
APPEAL NO.180 OF 2014**

Shri Prakashbhai Ishwarbhai Rana
No.217, Gawarno Rajputvado,
Cambay 22, Anand,
Gujarat – 388 620. ... Appellant

Versus

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

WITH
MISC. APPLICATION NO.74 OF 2014
AND
APPEAL NO.181 OF 2014

1. BMD Exports Pvt. Ltd.
22-A, Suraksha Society,
Visnagar, Mehsana,
Gujarat – 384 315.

2. Shri Jitendrabhai Ramanbhai Patel
Director,
BMD Exports Pvt. Ltd.
22-A, Suraksha Society,
Visnagar, Mehsana,
Gujarat – 384 315.

3. Shri Madhavlal Bechardas Patel
Director,
BMD Exports Pvt. Ltd.
22-A, Suraksha Society,
Visnagar, Mehsana,
Gujarat – 384 315.

... Appellants

Versus

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

... Respondent

Ms. Poonam Gadkari, Advocate i/b Juris Matrix for Appellants.

Mr. Kumar Desai, Advocate with Mr. Rushin Kapadia, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM : A. S. Lamba, Member

Per : A.S. Lamba

Misc. Application No. 73 of 2014 in Appeal No.180 of 2014, And
Misc. Application No. 74 of 2014 in Appeal No.181 of 2014

Misc. Applications for condonation of delay of 5 days have been filed in the aforesaid Appeals. For the reasons stated in the Misc. Applications, the delay is condoned.

Misc. Applications stand disposed of accordingly.

Appeal No.93 of 2014:

1. Facts in other three appeals, namely, Appeal No. 104 of 2014 in matter of Shreyanshnath Shares and Financial Services Private Ltd. & Ors. Vs. SEBI, Appeal No.180 of 2014 in the matter of Shri Prakashbhai Ishwarbhai Rana Vs. SEBI, and in Appeal No.181 of 2014 in the matter of BMD Exports Pvt. Ltd. & Ors. Vs. SEBI, are more or less identical to Appeal No.93 of 2014 in the matter of Shri Dave Harihar Kiritbhai vs. SEBI which is dealt in details hereunder. Hence with the consent of Ld. Counsels of Appellants and Respondent, all four matters were heard together and it was agreed that order applicable in leading case, i.e. Appeal no.93 of 2014, will be applicable to other three also. Hence, it was decided to hear Appeal No.93 of 2014, in details.

2. Securities and Exchange Board of India (SEBI) conducted investigation in initial public offer (IPO) of RDB Rasayan Ltd. (RDB) and its subsequent trading on and around listing day, since scrip of RDB witnessed wide

fluctuations in price of RDB scrip in Bombay Stock Exchange (BSE). RDB came out with IPO of 45,00,000 equity shares of Rs.10 per share, at issue price of Rs.79 each.

3. Show Cause Notice (SCN) was issued on 29/7/2013 by Ld. A.O. and Appellant was alleged to have received part of IPO proceeds, routed in a circuitous manner by RDB, in order to enable him to make payment to his stock broker on time i.e. T+2 settlement mechanism and Appellant was asked why inquiry should not be held against him and why penalty not be imposed on him under Section 15HA and 15HB of SEBI Act, 1992 for violation of Section 12(A)(a), (b) and (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (d) and (e) of PFUTP Regulations.

4. Appellant did not reply to SCN despite ample opportunities or appeared before Ld. A.O. for personal hearing and hence present proceedings were undertaken by Ld.A.O. ex-parte, on basis of material made available on record. The following facts emerge from material on record.

- 204,524 trades in scrip of RDB for 3,50,09,187 shares took place on October 17, 2011 i.e. on listing day, which is 1.98 times the paid-up capital of RDB. Out of all shares traded, only 40,17,005 shares were delivery based i.e. 89.27% of 45 lakh IPO shares, which shows large number of allottees of IPO, sold their shares on day of listing.
- It was seen that RDB scrip opened at Rs.85 on October 07, 2011 and was in the range of Rs.72.90 to Rs.93.15 till 13:18:07 and thereafter started falling and reached intra-day low of Rs.19.80 and closed at Rs.26.50.

- Appellant was one of four major buyers of RDB (trade quantity more than 25,000) on listing day, before the market price of scrip started falling. Appellant bought 61,000 shares of RDB at 13:14:43 for Rs.81 per share and his total purchase and sale for that day was 1,46,000 shares, for which he suffered loss of Rs.77,01,102/-. RDB transferred funds on 7/10/2011 to RDB Reality and Infrastructures Ltd., who transferred some of it to Namokar Duplicating Pvt. Ltd. who transferred some of it to Mercury Fund Management Co. Ltd., who transferred some of it to Deesha Tie Up Pvt. Ltd. and transferred some of it to Dharmnath Shares and Services Pvt. Ltd., who transferred some of it to Sardhav Investment and Finance Pvt. Ltd. and finally Sardhav transferred funds to four loss making trading clients, and one of these four clients was the Applicant.
- It is also seen that entities Dharamnath and Deesha are related as its Director of Dharamnath, Mr. Maheshbhai Patel and Director of Deesha, Mr. Mohanlal Patel have common address. Mohanlal Patel is also Director of Subodh Sagar and Subodh Sagar and Sardhav have common email id and that Namokar is a significant shareholder of RDB Insurance Brokers Services Pvt. Ltd., which is a group company of RDB.
- RDB had paid capital of Rs.13.21 crore, before IPO and reserves of Rs.4.66 crore as on March 31, 2011 i.e. net worth of Rs.17.87 crore, and amount of loan of Rs.50 crore to be given by RDD to RDB RIL, as referred in explanatory statement to EGM notice

dated September 21, 2011, was IPO proceeds which was to be received by RDB.

- In view of above, it is stated in SCN that it can be concluded that IPO money was routed by RDB through a web of interconnected entities to make transaction look complex and hide the actual source of money, in order to enable Appellant to make payment to its stock broker on time, i.e. as per T+2 settlement mechanism.

5. Appellant made the following submissions before the Tribunal during hearing of the matter:

- Appellant is an individual investor has been a trader in the securities market since the past 3-4 years.
- Appellant has regularly borrowed funds from Sardhav Investment and Finance (Pvt.) Ltd. and repaid the same, pursuant to an agreement dated 4/2/2011. Appellant is also liable to pay interest on such loans at agreed rate. A copy of ledger account of Sardhav, as maintained in Appellant's books for financial year 2011-12 is furnished.
- For trading carried out by Appellant on 7/10/2011, Appellant did not have the required fund and therefore borrowed Rs.1.55 crore from Sardhav on various days between 10/10/2011 to 20/10/2011, out of which 70 lakh was utilized by Appellant to pay his brokers for clearing the debit of Rs.94,61,691.64.
- Appellant further states that the Appellant had repaid the amount of Rs.1.55 crore, borrowed, to Sardhav to tune of Rs.1.35

crore, as evident of ledger account of Sardhav, as maintained in Appellant's books for financial year 2011-12.

- Appellant has also made other submissions regarding his dealing in RDB scrip, on day of its listing and tried to pass these dealings in normal course of his business, such as alleged flow of funds from RDB to his account being factually incorrect, he having no contact with RDB, no third party funded his loss or compensated him, he made profit on several days of trading and also incurred losses on other days, but never defaulted on any pay-in obligations and has produced various documents, such as Income Tax Returns, ledger account of Sardhav, etc. and has submitted that Ld. A.O. has erred in concluding that Appellant has violated SEBI (PFUTP) Regulations.

6. Ld. Counsel for Respondent has submitted the following:

- Appellant did not have sufficient funds to meet pay-out obligations for his trading in RDB scrip on listing day of scrip.
- Web of transfer of funds to fund loss made by Appellant in respect of Appellant's trading in RDB scrip on listing day, is in impugned order and impugned order also contains interconnection between parties involved in fund flow from RDB to Appellant.
- Appellant dealt in scrip of RDB on listing day of the scrip, made losses in trading of RDB scrip. Appellant did not have funds to meet pay-out obligations on account of losses in trading of RDB scrip. Appellant claims to borrow funds to meet pay-out

obligations from Sardhav, entered into agreement with Sardhav which lacks credence. Appellant repaid money borrowed money only partially with interest but no proof of interest paid supplied. Appellant made one large purchase transaction at 13:14:43, at about Rs.81 per share and counter-party is Techno Broking & Financial Services Pvt. Ltd. and no reply filed by Appellant to SCN, Appellant did not avail of opportunity of personal hearing granted to him on several occasions.

- In view of the fact that Appellant did not file any reply to SCN of Ld.A.O. and also did not avail of personal hearing granted to him by Ld. A.O., it is not possible, at appeal stage, to look into various documents filed for the first time in present appeal.

The proper course may have been to send the case in remand to Respondent for granting hearing to Appellant, examine the documents filed by Appellant and pass order thereafter, but the same is not been adopted, in view of the fact that Appellant is not asking for remand of his case to Respondent, principles of natural justice have not been violated and even allegedly violated by Respondent and since further it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and

avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal and on basis of submissions of Appellant and Respondent, in accordance with applicable law.

7. In view of above, the Tribunal cannot consider the submissions of Appellant nor look at the documents produced before this Tribunal, since these were not made available or produced before Ld. A.O., despite being provided ample opportunities and since fresh submissions and documents cannot be accepted in Appeal as these were not made or produced before Ld. A.O., the Tribunal will decide this matter on basis of material and evidence before Ld. A.O.

8. Accordingly, this Tribunal accepts the conclusions drawn by Ld.A.O., since these are based on material, evidence before him which has been considered logically and conclusions drawn, in which no infirmity is evident. Accordingly, this Tribunal upholds the decision of Ld. A.O. that IPO money was routed by RDB, through a web of inter-connected entities to make the transactions look complex and hide the actual sources of money, in order to enable Appellant to make payment to its stock-broker, as per T+2 settlement mechanism.

9. Ld. Counsel for Respondent has further submitted in view of the facts set out hereinbelow, charge of Respondent against each of the four Appellants, is proved:

- a. Each Appellant dealt in scrip of RDB Rasayan Ltd. (RDB) on 1st day of listing i.e. 7th October, 2011.

- b. Each Appellant suffered loss as a result of his trading in scrip of RDB.
- c. Each Appellant did not have money to meet his pay in obligations including in respect of trading done on the 1st day of trading i.e. 7th October, 2011 (pay in obligation on 11th October, 2011).
- d. Each Appellant claims to have borrowed/received money to meet his pay in obligations.
- e. Each Appellant claims to have borrowed/received money to meet their pay in obligations from Sardhav Investments & Finance Pvt. Ltd. (Sardhav).
- f. Each Appellant had entered into identical loan agreements with Sardhav, which lacks credence.
- g. Each Appellant claimed to have repaid money borrowed/received (though not fully) with interest (no proof of interest having been paid).
- h. None of Appellants has filed appeal against ad-interim Order dated 28th December, 2011 and Confirmatory Order dated 8th October, 2012.
- i. Each of Appellants has made one large purchase transaction at same time on or about 13:14:43 pm (pg 90 of SCN) at about same price of Rs.81. It may be noted that counterparty and counterparty broker of each of the trades is same i.e. Techno Broking & Financial Services Pvt. Ltd.
- j. No reply was filed by Shri Dave Harihar Kiritbhai & Shreyanshnath Shares and Financial Services Pvt. Ltd. to SCN

before Ld. A.O. and the other two i.e. Shri Prakashbhai Ishwarbhai Rana and BMD Exports Pvt. Ltd. craved leave to refer to the reply filed to ad-interim order cum SCN dated 28th December, 2011, before another authority of Respondent.

- k. None of Appellants availed of opportunity of personal hearing which was granted to them on several occasions.
- l. Each of them admitted that they required funds to meet pay in obligations for trading done on 1st day of listing. Each of them borrowed/received money from Sardhav.
- m. In spite of the fact each Appellant's claim not to know other three, but reply of each Appellant to ad-interim order cum SCN is identical, memo of appeals and rejoinder is also identical.
- n. Fund flow from RDB to Sardhav and to each of Appellants is same.

10. This discussion of Appeal No.93 of 2014 will hold for other three appeals also, viz., Appeals No. 104 of 2014, 180 of 2014 and 181 of 2014, since facts of all three appeals are the same as of Appeal No.93 of 2014, except that Shri Dave Harihar Kiritbhai (Appeal No.93 of 2014) and Shreyanshnath Shares and Financial Services (Appeal No.104 of 2014) did not file any reply to SCN and Shri Prakashbhai Ishwarbhai Rana (Appeal No.180 of 2014) and BMD Exports Pvt. Ltd. & Ors. (Appeal No.181 of 2014) craved leave to refer to their reply filed in response to ad-interim order cum SCN dated 28th December, 2011 i.e. their reply in a connected subject matter in different proceedings, which was independent of present one under appeal.

11. Lastly, it may be stated that Ld. Counsel for Appellant had also submitted that penalty of Rs.2 crore on Appellant in Appeal No.93 of 2014 is very exorbitant in view of the fact that Appellant traded in scrip of RDB only on day of listing and suffered loss of Rs.77 lakh for trade of purchase and sale of 1,46,000 shares on that day and that Appellant did not make any profit and it was only incidence of Appellant being found violative of PFUTP Regulations.

12. Ld. Counsel also submitted that factor, as enumerated in Section 15J of SEBI Act, 1992 to determine quantum of penalty viz. profit to appellant, loss to investors and repetitive nature of default be taken into account and quantum of penalty may be considerably reduced. In this context, case of Appeal No.197 of 2009 in the matter of Mr. Bhanuprasad D. Trivedi vs. SEBI, decided by SAT on 5/7/2010 was cited. In this case, penalty imposed on Appellant of Rs.20 crore was reduced to Rs.2 crore, in view of the fact that Appellant made no profits himself and acted in league with key operator and was willing tool of some financiers. However, ratio of this case does not apply in present case since Appellant acted in its own capacity and not as a willing tool of others.

13. In this view of above, all four Appeals are dismissed and impugned orders in these four Appeals are upheld.

Sd/-
A.S. Lamba
Member

19/12/2014
Prepared & compared by ddg