

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 10.6.2016

Date of Decision : 30.6.2016

Misc. Application No. 89 of 2014

And

Appeal No.224 of 2014

Sumeet Industries Limited
504, Trividh Chambers, Opp. Fire Station,
Ring Road, Surat, Gujarat – 395002.

...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. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and Ms. Yugandhara Khanwilkar and Mr. Dhaval Kothari, Advocates i/b. J. Sagar Associates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat, Advocate i/b K. Ashar & Co. for the Respondent.

WITH

Misc. Application No. 91 of 2014

And

Appeal No. 226 of 2014

Sumeet Kumar Somani
Mahesh Kumar Somani
504, Trividh Chambers, Opp. Fire Station,
Ring Road, Surat, Gujarat – 395002.

...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

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and Ms. Yugandhara Khanwilkar and Mr. Dhaval Kothari, Advocates i/b. J. Sagar Associates for the Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : J.P. Devadhar

**Miscellaneous Application no.89 of 2014 in Appeal No.224 of 2014 &
Miscellaneous Application no.91 of 2014 in Appeal no.226 of 2014**

There is delay of 2 days in filing Appeal nos.224 of 2014 and 226 of 2014 respectively. For the reasons stated in the Miscellaneous Applications the delay is condoned. Both the Miscellaneous Applications are disposed of accordingly.

Appeal nos.224 of 2014 and 226 of 2014

1. Appellants in these two appeals are aggrieved by the order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on 21.5.2014. By that order, inter alia, appellants are restrained from accessing the securities market for two years under section 11 and 11B of Securities and Exchange Board of India Act, 1992 (SEBI Act) and section 12A of the Securities Contracts (Regulation) Act, 1956 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Since both these two appeals arise from a common order, both these appeals are heard together and disposed of by this common decision.

2. At the outset, it is relevant to note that the appellants have already undergone the punishment in as much as the appellants have not accessed the securities market for two years as stipulated in the impugned order and

as such the appeals have become infructuous. However, it is submitted by counsel for the appellants that the appeals be heard and decided on merits, because, according to the appellants, the impugned order is patently erroneous and is contrary to law. Accordingly, both the appeals are heard and decided on merits.

3. Sumeet Industries Ltd ('SIL' for short) appellant in Appeal no.224 of 2014 is a company engaged in the manufacture, sale and export of textile goods. Appellants in Appeal no.226 of 2014 were the directors of SIL at the relevant time.

4. Facts revealed from the investigation carried out by SEBI into the suspected price and volume manipulation in the scrip of SIL for the period from 1.10.2006 to 12.3.2007 and the steps taken by SEBI pursuant to the aforesaid investigation are as follows:

- a) As on 30.9.2006, the promoters of SIL held 79,78,832 shares of SIL which constituted 45.84% of the entire shares issued by SIL. The said shareholding of the promoters came down to 67,57,677 shares (38.83%) as on December 31, 2006 and further came down to 49,38,010 shares (28.38%) as on March 31, 2007 on account of sale of shares effected by the said promoters.
- b) During the investigation period, it was noticed by SEBI, that the price of the scrip increased from Rs.4.81 on December 5, 2006 to Rs.34.25 on February 21, 2007 (rise of 612%) alongwith volume spurt when the scrip was traded with an average volume of 9,78,304 shares.
- c) One month before the investigation i.e. during the period from 1.9.2006 to 30.9.2006, the price of the shares of the SIL was in the

range of Rs.4.30 to Rs.5.90 and the shares of SIL were traded with an average daily volume of 17,775 shares.

- d) One month after the investigation period the price of the scrip decreased from Rs.27.60 on March 13, 2007 to Rs.15.10 on April 30, 2007 and the scrip was traded with an average daily volume of 5,26,582 shares.
- e) During the investigation period, SIL had come out with a number of favourable corporate announcements and there was a gradual price rise on the back of those public announcements.
- f) Out of several corporate announcements made during the investigation period following corporate announcements were not implemented by SIL, i.e.
 - i) On 8.1.2007 SIL announced that the Board meeting will be held on January 16, 2007 to consider preferential allotment of shares to promoters and their associates at a rate of Rs.25 to Rs.30 per share. Thereafter on January 16, 2007, SIL announced that the Board at its meeting held on January 16, 2007 has approved allotment of maximum 25 lakh shares on preferential basis to promoters and their associates at a rate of Rs.30 per share or as per the price as may be decided as per guidelines prescribed for preferential issue of shares. This announcement was not implemented and it is only after SEBI issued show cause notice on 25.2.2008, SIL on 28.2.2008 withdrew its application for in-principle approval from BSE.
 - ii) On January 24, 2007, SIL announced that Board meeting will be held on February 13, 2007 inter alia to consider acquisition of further 200 acres of land near its 55 acre land bank at Kandla

Port, District Bhuj, Gujarat for development under joint venture with a renowned infrastructure company for industrial park and power generation plant. On February 5, 2007 it was announced that the Board has approved further acquisition of 200 acres of land in the adjoining area and has also approved joint venture with a leading development and infrastructure company, namely, Vishwas Infrastructure Ltd. (formerly known as Mefcom Agro Industries Ltd.) for development of the lands to be acquired, into industrial park, power generation plant for captive consumption, road and telecom infrastructure, building interiors etc. This public announcement was also not implemented by SIL and much after the issuance of show cause notice, SIL informed the stock exchange on 30.4.2013 about the withdrawal of above joint venture proposal.

iii) On January 24, 2007, SIL announced that Board meeting will be held on February 13, 2007 to consider, inter alia, amalgamation of other group companies with SIL. On February 5, 2007 SIL announced that Board has approved amalgamation of its group companies namely Somani Overseas Ltd., Sitaram Prints Pvt. Ltd. and Mahesh Texturisers Pvt. Ltd with SIL. However, this announcement was not implemented and it is only on 30.4.2013 i.e. much after issuance of the show cause notice SIL announced withdrawal of the proposal relating to amalgamation of companies.

h) Apart from the above, investigation carried out by SEBI further revealed that SIL was acting in concert with SIC Stocks & Services Pvt. Ltd. ('SIC' for short) and one Mr. Purshotam Khandelwal ('PK' for

short) as it was noticed that SIL funded PK through SIC for trading in the shares of SIL. It was noticed that PK by his trades created artificial buying pressure in the scrip of SIL by manipulating the order book and indulged in self trades, synchronized trades with promoter group entities with a view to inflate the price of the scrip and thereby enable the promoter group entities to offload substantial portion of their stake in SIL at inflated prices and make illegal profits.

i) In view of the aforesaid facts, a show cause notice was issued to the appellants as also other promoter group entities on 19.3.2012 calling upon them to show cause as to why appropriate direction including direction to disgorge the ill gotten profit of Rs.4.69 crore be issued under section 11 and 11B of SEBI Act read with Regulation 11 of the PFUTP Regulations and section 12 A of the Securities Contracts (Regulation) Act, 1956.

j) Appellants in their affidavit in reply and also during the course of personal hearing denied the allegations made in the show cause notice and submitted that the public announcements were made in the ordinary course of business and some of the public announcements could not be implemented due to bonafide reasons and therefore no adverse inference could be drawn against the appellants.

k) Rejecting the aforesaid contentions, the WTM of SEBI has passed the impugned order, whereby the appellants are restrained from accessing the securities market for a period of two years. No disgorgement order was passed against appellants in Appeal no.226 of 2014 who were directors of SIL as they had not traded in the scrip of SIL during the relevant period.

- 1) Challenging the aforesaid restraint order, appellants have filed the appeals in question.
5. Basic question to be considered in these two appeals is, whether, the WTM of SEBI is justified in holding that some of the unimplemented corporate announcements were made by SIL with the fraudulent intention of influencing the price of SIL scrip and thereby enable the promoter group entities to off load the shares of SIL at the inflated prices and make unlawful gains.
6. Counsel for appellants submitted that all public announcements were made by SIL with bonafide intention of implementing the said announcements and merely because, some of the announcements could not be implemented due to bonafide reasons, the WTM of SEBI ought not to have inferred that the said announcements were made with a fraudulent intention of inflating the price of SIL scrip and thereby enable the promoter group entities to offload the shares of SIL at inflated prices and make unlawful gains.
7. Counsel for the appellants submitted that the reasons for making the three public announcements and the reasons for not implementing the said three public announcements were as follows:-
 - a) With reference to public announcement relating to preferential allotment of shares, it is submitted that since SIL was in need of urgent funds to meet the expenses relating to its expansion, power plant etc, the promoters of SIL decided to subscribe to its shares by way of preferential allotment. Accordingly public announcements were made at the proposal stage and also after the proposal was approved by the Board. Immediately after the proposal was approved by the Board, SIL as per SEBI Guidelines, sought

in-principle approval from BSE for listing the shares to be issued under the preferential allotment. Vide letter dated 11.4.2007 BSE declined in-principle approval inter alia on ground that SIL failed to make disclosures in the explanatory statement to the notice for general meeting of shareholders as required under clause 13.1A of SEBI (DIP) Guidelines and consequently the Auditor's certificate was also defective.

- b) After taking requisite steps, SIL by its letter dated 17.5.2007 once again approached BSE seeking the in-principle approval. BSE vide its letter dated 29.5.2007 advised SIL to submit certified copy of the resolution passed under section 81(1A) of the Companies Act, 1956. In the said letter it was also stated that grant of approval under clause 24(a) of the Equity Listing Agreement would be considered only on SIL complying with Regulation 10 of Takeover Regulations, 1997.
- c) Thereupon EGM of SIL shareholders was convened on 4.6.2007 wherein a resolution was passed for preferential allotment of 30 lac equity shares to the promoters and their associates. The above resolution was communicated to BSE on 5.6.2007.
- d) On 23.6.2007 SIL filed an application before SEBI seeking exemption from the obligation to make an open offer under Regulation 10 of Takeover Regulations, 1997 since provisions contained in the Takeover Regulations, 1997 would get triggered consequent to increase in shareholding of the promoters as a result of the proposed preferential allotment.
- e) Since the takeover panel of SEBI recommended rejection of exemption application, SIL decided to withdraw the exemption

application and the same was communicated to BSE vide letter dated 28.2.2008.

- f) As the funds could not be raised through preferential allotment, in March, 2008 SIL decided to raise funds to the tune of Rs.30 crores by issuance of shares through the rights issue. In fact the promoters of SIL subscribed to 1,87,54,611 shares (around 95%) under the rights issue and thereby infused around Rs.28,13,19,165/- in to SIL. In these circumstances it is submitted that decision to raise funds through preferential allotment was a bonafide decision and since that decision could not be implemented due to circumstances set out hereinabove, decision to raise funds through preferential allotment was abandoned and funds were raised through the right issue. Thus, it is submitted that since the object of raising funds has been achieved inspite of the delay, the WTM of SEBI was not justified in drawing adverse inference against the appellants.
- g) With reference to the public announcement relating to acquisition of 200 acres of land, it is submitted that neither in the public announcement dated 24.1.2007 nor in the public announcement dated 5.2.2007 it was stated that SIL has already acquired 200 acres of land. What was stated in the public announcements was that SIL was in the process of acquiring 200 acres of land for development under a joint venture with Vishwas Infrastructure Ltd. Such an announcement could not be said to have influenced the price of SIL scrip.
- h) Admittedly, SIL had furnished documents relating to some of the adjoining lands with which SIL had initiated discussion for acquisition of the said lands, however, due to unavailability of

appropriate tract of land and steep rise in land prices the lands could not be acquired and consequently the object of joint venture could not be achieved. In these circumstances, SIL withdrew the joint venture proposal in its Board meeting held on 30.4.2013 and intimated the same to BSE. The WTM of SEBI, without verifying the documents furnished by the appellants was not justified in arriving at a conclusion that the decision to acquire 200 acres of land was not a bonafide decision.

- i) With reference to the announcement relating to amalgamation of companies, it is submitted by the counsel for appellants, that after making public announcements, SIL was waiting for the right time to act on the proposal for amalgamation. Unfortunately, there being no right time, the proposal for amalgamation was abandoned and the same was intimated to BSE.

Accordingly, it is submitted that all the corporate announcements were made by SIL with bonafide intentions and merely because, out of several corporate announcements some corporate announcements could not be implemented, the WTM of SEBI was not justified in holding that the said public announcements were made with fraudulent intentions, to inflate the price of the SIL scrip.

- 8) We see no merit in the above contentions.

- 9) As rightly contended by counsel for SEBI, various acts committed by SIL during the investigation period led to price rise in the scrip of SIL and during the said period, the promoters and their associates off loaded the shares of SIL at higher prices and made huge profits. In this context it is relevant to note that the promoters and their associates who were intending to pump-in funds amounting to Rs.30 crores by subscribing to preferential

allotment of shares at Rs.30 per share, have infact offloaded more than 30 lac shares of SIL at the inflated prices and thereby made huge profits and thereafter subscribed to the shares of SIL under the rights issue at Rs.15/- per share. With these facts on record, it would have to be seen as to whether some of the public announcements (which were not implemented) were made with bonafide intentions or not.

10. If public announcements relating to raising of funds through preferential allotment were made with bonafide intentions, then, application seeking in-principle approval would have been made after complying with all requisite conditions. Very fact that BSE has repeatedly found that SIL made applications without complying with requisite conditions clearly show that SIL was not sincere in making the application. Initial application made by SIL was rejected by BSE on ground that notice to the shareholders of SIL as required under the SEBI (DIP) Guidelines has not been issued and hence the Auditor's certificate was also defective. Subsequent application made by appellant was rejected by BSE on ground that the provisions contained in the Takeover Regulations have not been complied with.

11. It is impossible to believe that it is only on receiving letter from BSE, the appellants realised that preferential allotment of shares would trigger provisions contained in the Takeover Regulations, 1997 and that the appellants were bound to comply with the provisions contained under the Takeover Regulations, 1997. Assuming that the appellants came to know about their obligation under the Takeover Regulations, 1997 only on receiving letter from BSE, very fact that the appellants approached SEBI seeking exemption from Takeover Regulations after considerable delay clearly shows that the appellants were not serious in implementing the proposal. Moreover, very fact that the appellants unilaterally chose to

abandon the proposal of preferential allotment solely based on the negative recommendations of the takeover panel of SEBI, without waiting for SEBI to take a decision on the recommendations of the takeover panel, clearly shows that the appellants were not sincere in implementing the proposal. Even the decision to abandon the proposal was intimated to BSE belatedly. Fact that the appellants have complied with most of the public announcements is wholly irrelevant, because, action is taken against the appellants in relation to the public announcements which are not implemented. Moreover, fact that most of the public announcements were found to be genuine cannot be a ground not to take any action in respect of public announcements which were found to be not made with bonafide intentions. Thus, in the facts of present case, inference drawn by the WTM of SEBI that the public announcements made by appellants relating to preferential allotment of shares were not bonafide announcements and accordingly imposing penalty on appellants cannot be faulted.

12. Similarly, public announcements relating to acquisition of 200 acres of land cannot be said to be bonafide announcements, because, there is nothing on record to suggest that as on the date of making public announcements, the appellants had carried out feasibility/availability of 200 acres of land adjacent to the 55 acres of land already held by the appellants. Without ascertaining the availability of the lands for the project, making public announcements for acquisition of lands would obviously mean that it was merely a wishful thinking intended to lure the investors. Board of directors of SIL could approve joint venture only if there existed a blue print of the project. There is nothing on record to suggest that any meetings were held with adjoining land owners and Vishwas Infrastructure Ltd. in connection with the alleged joint venture, before or after the public

announcements. Further, the land documents furnished by the appellants related to the year 2009, whereas, the public announcements relating to acquisition of lands were made in the year 2007. Moreover, the said documents related to notices of stamp duty and corresponding sale deeds with regard to some agricultural land, to which neither SIL nor Vishwas Infrastructure Ltd. were parties. Apart from the above, very fact that proposal to acquire 200 acres of land has been abandoned on ground of unavailability of appropriate tract of land and steep rise in land prices, clearly shows that the public announcements were made without ascertaining the availability of suitable land at suitable prices. Moreover, decision to abandon the project relating to acquisition of land under joint venture was taken belatedly and even BSE was intimated about the abandonment of the proposal for acquisition of 200 acres of land much after the issuance of show cause notice by SEBI. In these circumstances, the decision of the WTM of SEBI that the public announcements relating to acquisition of 200 acres of land for development under joint venture was not made with bonafide intentions cannot be faulted.

13. Even the public announcements relating to amalgamation of companies cannot be said to be bonafide announcements because, after making such public announcements no further steps were taken in that behalf. Argument of the appellants that they were waiting for the right time to act on the proposal is unacceptable because, in the ordinary course, decision to amalgamate companies is taken only if the circumstances as on that date demand amalgamation of companies. In the present case, public announcements relating to amalgamation were made in the year 2007, however, no steps were taken to implement it for several years and it is only on 30.4.2013, after receipt of show cause notice issued by SEBI, SIL

announced withdrawal of its decision relating to amalgamation of Companies. Thus it is abundantly clear that the public announcements relating to amalgamation of companies were not bonafide public announcements.

14. For all the aforesaid reasons, the decision of WTM of SEBI that three public announcements made by appellants were not made with bonafide intentions cannot be faulted. These unimplemented public announcements coupled with various other factors led the WTM of SEBI to arrive at a conclusion that the unimplemented public announcements were made with fraudulent intentions to facilitate the promoter group entities to off load the shares of SIL at inflated prices. In these circumstances no fault can be found with the impugned order. Since the appellants have already undergone the punishment, question of considering any mitigating factor does not arise.

15. Accordingly both the appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

30.06.2016
Prepared and compared by
RHN