

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 14.07.2016

Date of Decision : 26.07.2016

Appeal No. 404 of 2014

Mr. Sandeep Baid
Basudebpur Dakshin Palli 1 No.,
Purbo Haldia Mecheda Rasta,
Haldia Durgachak,
Purbo Medinipur- 721 602 ...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 with Mr. Vinay Chauhan, Advocate i/b
Corporate Law Chambers India for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Saurabh Bachhawat and
Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the
Respondent.

WITH
Appeal No. 403 of 2014

Mr. Sunder Lal Dugar
RDB Rasayans Ltd.
Room No. 9, 3rd Floor,
Bikaner Building 8/1,
Lalbazar Street,
Kolkata 700 002 ...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. Vinay Chauhan, Advocate i/b Corporate Law Chambers India for the
Appellant.

Mr. Kumar Desai, Advocate with Mr. Saurabh Bachhawat and
Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the
Respondent.

WITH
Appeal No. 402 of 2014

Mahendra Pratap Singh
1003 ODYSSEY I,
Hiranandani Gardens,
Powai, Mumbai- 400 076

...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. Vinay Chauhan, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Saurabh Bachhawat and Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 432 of 2014

Mr. Sachin Shridhar
A-1/20, Safdarjang Enclave,
New Delhi- 110 029

...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. Vinay Chauhan, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Saurabh Bachhawat and Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per: Justice J.P. Devadhar

Appeal Nos. 404, 403, 402 & 432 of 2014

1. Appellants in these four appeals are aggrieved by the common order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 06.08.2014. Hence all these appeals are heard together and disposed of by this common decision.

2. By the impugned order dated 06.08.2014, appellants are held liable to pay penalty jointly and severally under Section 15HA & Section 15HB of the Securities and Exchange Board of India Act, 1992 (“SEBI Act” for short) aggregating to ₹ 3 crore for violating the provisions contained in the SEBI Act and the Regulations made thereunder. Additionally penalty of ₹ 5 lac is imposed on Mr. Sandeep Baid (Appellant in Appeal No. 404 of 2014) under Section 23H of Securities Contracts (Regulation) Act, 1956 (“SCRA” for short) for not complying with clause 49 of the Listing Agreement read with Section 21 of SCRA.

3. At the relevant time Mr. Sandeep Baid (Appellant in Appeal No. 404 of 2014) was the Whole Time Director of RDB Rasayans Ltd. (“RDB” for short) Mr. Sunder Lal Dugar (Appellant in Appeal No. 403 of 2014) was the Promoter and Chairman of RDB. Mr. Mahendra Pratap Singh, Mr. Prabir Kumar Sarkar and Mr. Sachin Shridhar, (Appellants in Appeal Nos. 402, 401 & 432 of 2014) were the Independent Directors of RDB.

4. Facts relevant for the purpose of these appeals are as follows:-

- a) At the relevant time RDB was a public limited company engaged in the manufacture of PP Tape, PP woven sacks, Woven Fabrics, Industrial woven fabric etc. RDB Realty & Infrastructure Ltd. (“RDBRIL” for short) is a group/sister company of the RDB group engaged in the business of real estate and infrastructure. RDBRIL is a listed company whose shares are listed on BSE and NSE.
- b) In March 2010 RDB filed a Draft Red Herring Prospectus (DRHP) with SEBI to raise funds for expanding its manufacturing activities at Haldia, Kolkata through Initial Public Offer (“IPO” for short).
- c) On 12.09.2011 SEBI granted its approval to the DRHP filed by RDB. Accordingly, the IPO opened on 21.09.2011 and the IPO closed on 23.09.2011.
- d) On 05.10.2011 IPO funds to the tune of ₹ 34.25 crore was credited to the bank account of RDB.
- e) On 07.10.2011 at about 11:00 A.M. Audit Committee Meeting of RDB was held and in that meeting the committee decided to recommend to the Board of RDB to utilize the IPO funds by investing in high quality interest bearing instruments for the profitability of the company. It also decided to

recommend to the Board for giving secured loan to the group companies of RDB.

- f) It is not in dispute that at 5:00 P.M. on 07.10.2011 Board meeting was held, whereby the Directors of RDB were authorized to invest the unutilized IPO proceeds of RDB in high quality interest bearing instruments. It was further resolved to authorize RDB to enter into loan agreement with RDBRIL and the draft loan agreement placed before the Board was approved with certain modifications with consent of both parties.
- g) It is also not in dispute, that on 07.10.2011 itself loan of ₹ 31.60 crore out of the amount of ₹ 34.25 crore received from IPO were transferred by RDB to RDBRIL at about 2:47 P.M. i.e. even before the Board approved transfer of funds from RDB to RDBRIL.
- h) On 28.12.2011 the Whole Time Member (“WTM” for short of SEBI passed an ad-interim ex-parte order prohibiting various individuals/entities including the appellants from buying, selling or dealing in the securities until further orders and further directed RDB to call back loan of ₹ 31.60 crore from RDBRIL

and deposit the same in an escrow account till further orders.

- i) Accordingly, RDB recalled the demand loan and it is not in dispute that during the period from January to 31.03.2012, RDB received total amount of ₹ 33.43 crore (₹ 31.60 crore being the loan amount + ₹ 1.83 crore being interest) and intimated it to the Stock Exchange.
- j) Challenging the aforesaid ad-interim ex-parte order RDB filed a writ petition before the Calcutta High Court wherein partial relief was granted to RDB. Challenging the Calcutta High Court order, SEBI filed an SLP before the Apex Court. On 22.09.2014, by consent SLP was disposed of, whereby, the writ petition filed by RDB before the Calcutta High Court stood withdrawn and SEBI was required to pass orders within three months and till then, RDB was directed not to alienate fixed assets up to the value of ₹ 6.5 crore and it was directed that the amounts lying in the escrow account shall continue to remain in the escrow account.
- k) On 19.12.2014 the WTM of SEBI passed final order whereby the RDB and its Directors including the appellants were debarred from entering into the

securities market till 28.12.2015. Appellants as also RDB have filed appeals to challenge the said order of WTM dated 19.12.2014 by filing Appeal Nos. 514 of 2015 and 532, 533 & 534 of 2015 which are all being heard along with these appeals.

- l) On 30.07.2013 a show cause notice was issued by AO of SEBI calling upon the appellants herein to show cause as to why inquiry should not be held against the appellants and why penalty should not be imposed under Section 15HA and 15HB of SEBI Act for violating the provisions contained in the SEBI Act and the regulations framed thereunder.
- m) Appellants filed their reply to the show cause notice denying the allegations made therein. Thereafter personal hearing was granted to the appellants and by the impugned order dated 06.08.2014 penalty aggregating to ₹ 3 crore is imposed on the appellants with a direction that the said penalty be paid by the appellants jointly and severally. Additional penalty of ₹ 5 lac was imposed on the appellant in Appeal No. 404 of 2014. Challenging the said order of AO, these four appeals are filed by the appellants.

5. At the outset, we would like to consider the penalty of ₹ 5 lac imposed on Mr. Sandeep Baid (Appellant in appeal No. 404 of 2014).

6. In the impugned order it is held that Mr. Sandeep Baid who was the Whole Time Director of RDB chaired the Audit Committee Meeting of RDB on 07.10.2011 in violation of Clause 49 of the Listing Agreement.

7. Admittedly, Clause 49 of the Listing Agreement provides that Chairman of the Audit Committee shall be an Independent Director and on 07.10.2011 even though an Independent Director of RDB was available to chair the Audit Committee, the said meeting was chaired by the appellant in Appeal No. 404 of 2014 who was the Whole Time Director. It is contended by the counsel that the Whole Time Director chaired the Audit Committee Meeting on 07.10.2011 under the bonafide belief that he can chair it and thus it being a technical mistake merited no penalty.

8. We see no merit in the above contention. When the Listing Agreement specifically provides that the Chairman of the Audit Committee shall be an Independent Director, the Whole Time Director could not have chaired the Audit Committee Meeting held on 07.10.2011 especially when an Independent Director was available on that day to chair the Audit Committee. There is no basis for the alleged bonafide belief entertained by the Whole Time Director and therefore, to chair the Audit Committee by the Whole Time Director on 07.10.2011 was in violation of Clause 49 of the Listing Agreement. Although, penalty imposable for such violation under Section 23H of the SCRA could extend up to ₹ 1 crore, the AO after considering all mitigating factors has

deemed it fit to impose penalty of ₹ 5 lac which cannot be said to unreasonable or excessive. Accordingly, imposition of ₹ 5 lac penalty on the appellant in Appeal No. 404 of 2014 cannot be faulted.

9. Now, turning to the aggregate penalty of ₹ 3 crore imposed on all the appellants, it may be noted that the said penalty is imposed for the following reasons:-

- a) Penalty of ₹ 1 crore is imposed under Section 15HB of SEBI Act, because the appellants as directors of RDB did not disclose all material information in the offer document that are true and adequate as contemplated under the ICDR Regulations and misutilized the IPO proceeds by giving loan to RDBRIL in violation of the ICDR Regulations.
- b) Penalty of ₹ 1 crore is imposed under Section 15HA of SEBI Act on ground that apart from violating ICDR Regulations, the appellants are also guilty of violating the PFUTP Regulations.
- c) Penalty of ₹ 1 crore is imposed under Section 15HA of SEBI Act on ground that the appellants, in violation of PFUTP Regulations have routed IPO proceeds in a circuitous manner so as to provide funds to four trading clients who had traded in the shares of

RDB on the first day of listing RDB shares and had incurred huge losses.

Violation of ICDR Regulations.

10. In the present case, the DRHP filed by RDB in March 2010 was approved by SEBI on 12.09.2011 and on the same day RDB passed a resolution approving grant of loan up to ₹ 50 crore to RDBRIL in one or more tranches for their business purpose and the said loan was repayable on demand as per the terms and conditions as may be mutually decided between the management of both the companies. In the impugned order it is held that the above information was a material information which ought to have been disclosed and failure to disclose that information constitutes violation of regulation 57(1), 57(2)(a) read with Scheduled VIII Part A(16)(b) and regulation 60(4)(a) of the ICDR Regulations.

11. It is contended by the counsel for the appellants that RDBRIL had requested for financial assistance and therefore, it was resolved on 12.09.2011 to give some of its surplus funds as loan to RDBRIL from time to time up to a maximum of ₹ 50 crore. It was not a resolution to give loan of ₹ 50 crore to RDBRIL, but it was a resolution enabling RDB to give loan to RDBRIL as and when surplus funds were available. There was no preconceived intention to give IPO proceeds to RDBRIL and on 12.09.2011 when the resolution was passed, the IPO was not even opened and there was no certainty that the IPO would be successful. Thus, on 12.09.2011, there was no intention to give IPO proceeds as loan to RDBRIL and therefore, it cannot be said that the resolution dated

12.09.2011 was a material information relating to transfer of IPO proceeds so as to disclose the same in the offer document.

12. We see no merit in the above contentions. Admittedly, the reserves and surplus funds of RDB for the financial year ending on March 2010 and March 2011 were ₹ 2.8 crore and ₹ 4.6 crore respectively. Although SEBI had approved IPO of RDB on 12.09.2011, in view of the labour unrest at Haldia, it was known that RDB would not be in a position to utilize the IPO proceeds for the purpose specified in the IPO and thus the IPO proceeds would be rendered surplus. There is nothing on record to suggest that on 12.09.2011 when RDB passed resolution to give loan of ₹ 50 crore in one or more tranches, apart from receiving IPO funds, there were no other funds to be received by RDB which could be treated as surplus. Therefore, on 12.09.2011 when RDB passed a resolution to give loan up to ₹ 50 crore to RDBRIL after receiving the SEBI approval, it is apparent that the resolution to give loan was with reference to the IPO proceeds to be received by RDB.

13. Above conclusion is corroborated from the fact that on 12.09.2011 itself RDB decided to call Extra Ordinary General Meeting (EOGM) on 28.09.2011 by curtailing the notice period of 21 days so as to seek approval for giving loan to RDBRIL from the pre IPO shareholders. In the EOGM held on 28.09.2011 (after the IPO closed on 23.09.2011 and before allotment of shares) the pre IPO shareholders approved giving loan up to ₹ 50 crore to RDBRIL. Even on 28.09.2011, apart from the IPO proceeds there were no other funds that could be treated as surplus

and transferred to RDBRIL by way of loan. It is relevant to note that on 05.10.2011 IPO funds of ₹ 34.25 crore was credited to the RDB's bank account and on 07.10.2011 at 11.00 A.M. the Audit Committee of RDB recommended to the Board that the unutilized IPO funds should be invested in high quality interest bearing instruments and further recommended giving loan to the RDB group companies which would be repayable on demand. However, before the Board of RDB could consider the above recommendation of the Audit Committee at 5.00 P.M. on 07.10.2011 and approve the draft loan agreement, RDB transferred ₹ 31.60 crore to RDBRIL at 2.37 P.M. on 07.10.2011. Thus, the conduct of RDB in transferring ₹ 31.60 crore out of the IPO proceeds amounting to ₹ 34.25 crore to RDBRIL even before the Board of RDB authorized giving loan to RDBRIL and even before the draft loan agreement was approved at 5.00 P.M. on 07.10.2011, clearly shows that the resolution passed on 12.09.2011 to give loan up to ₹ 50 crore to RDBRIL was with reference to the IPO proceeds. Utilizing the IPO proceeds for a purpose other than the purpose specified in the IPO being a material information ought to have been disclosed as contemplated under the ICDR Regulations. Failure to do so, constitutes violations of ICDR Regulations.

14. Argument of the appellants that the disclosure made in the prospectus that 'pending utilization of the proceeds of the issue, we intend to invest such proceeds in high quality interest bearing liquid instruments' entitled RDB to utilize IPO proceeds by giving loan to RDBRIL is without any merit. Investing surplus funds in high quality liquid instruments cannot be equated with giving loan to a group

company. Investment in liquid instruments is done without any security as it involves minimum risk and can be accessed easily. However, giving loan involves maximum risk and hence loan is ordinarily given subject to security. In the present case, RDB has utilized the IPO proceeds to give loan to RDBRIL instead of investing the IPO proceeds in high quality interest bearing liquid instruments by obtaining security of valuable assets and post dated cheques. Fact that IPO proceeds have been utilized by giving loan with security, cannot be construed to mean that IPO proceeds have been invested in liquid funds. Hence, decision of the AO that instead of investing IPO proceeds in liquid instruments RDB misutilized the IPO proceeds by giving loan to RDBRIL cannot be faulted.

15. Argument of the appellants that giving loan by RDB to RDBRIL would amount to placing surplus funds from one pocket to another cannot be accepted, because, RDB and RDBRIL are two separate and distinct legal entities. Moreover, an investor who wants to invest funds in the IPO of RDB may not prefer to invest in the IPO of RDB if informed that IPO funds are being transferred as loan to RDBRIL. In para 24 of the impugned order the AO has recorded a finding that prior to the IPO, RDBRIL had taken ₹ 7.28 crore from RDB as inter corporate loan at an interest rate of 15% per annum and since RDBRIL could not repay the said loan within the stipulated time RDBRIL had sought extension of time in the last week of August 2011 and accordingly RDB had granted 90 days time to RDBRIL for repayment of loan. With these facts on record, it is not open to the appellants to contend that giving loan

to RDBRIL amounts to placing IPO funds from one pocket to another. Thus, in the facts of present case, resolution passed on 12.09.2011 to give loan up to ₹ 50 crore to RDBRIL being a resolution relating utilization of IPO proceeds was a material information which ought to have been disclosed. Apart from the above, when statement was made in the offer documents that the IPO proceeds would be invested in high quality interest bearing liquid instruments, utilizing the IPO proceeds by giving loan to RDBRIL amounts to misutilizing the IPO funds in violation of ICDR Regulations.

Violation of PFUTP Regulations.

16. Failure to disclose aforesaid material information to the investors and misutilizing the IPO funds contrary to the statement made in the offer document was with a manipulative and deceitful intention is evident from the fact that as soon as SEBI approval for the IPO was received, RDB chose to invest surplus fund by way of loan to RDBRIL up to the extent of ₹ 50 crore in one or more tranches, even though no such funds were available. Very fact that on 12.09.2011 itself RDB resolved that along with the Annual General Meeting (“AGM” for short) scheduled on 28.09.2011, Extra Ordinary General Meeting (“EOGM” for short) of RDB shall also be called on 28.09.2011 to seek approval from the pre IPO shareholders of RDB to grant loan to RDBRIL by curtailing the notice period from 21 days to 15 days by invoking Section 171(2) of the Companies Act, 1956, clearly shows that RDB and its directors were in great hurry to seek approval from pre IPO shareholders to give loan up to

₹ 50 crore even though there were no funds for giving the loan. Obviously the hurry was on account of the fact that IPO was commence with effect from 21.09.2011 and if 21 days notice for EOGM was adhered to, then post IPO shareholders would step in and therefore to avoid seeking approval from post IPO shareholders, RDB and its directors chose to suppress resolution dated 12.09.2011 and call EOGM by curtailing the notice period so that approval to give IPO proceeds as loan to RDBRIL is obtained from pre IPO shareholders and not from post IPO shareholders.

17. It is contended on behalf of the appellants that the resolution passed on 12.09.2011 to give loan up to ₹ 50 crore to RDBRIL in one or more tranches did not envisage transferring IPO proceeds as loan to RDBRIL. There is no merit in the above contention because, as on 12.09.2011 apart from receiving IPO funds between 21.09.2011 to 23.09.2011 there was no other source from whether RDB could get funds which could be given as loan to RDBRIL. Although the resolution dated 12.09.2011 does not refer to giving IPO proceeds as loan to RDBRIL, very fact that the said resolution was passed immediately on receiving approval from SEBI for the IPO, very fact that RDB chose to curtail the notice period from 21 days to 15 days so as to seek approval of the pre IPO shareholders to give loan up to ₹ 50 crore to RDBRIL and fact that on 07.10.2011 more than 90% of the IPO proceeds were transferred as loan to RDBRIL, even before giving of loan and loan agreement was approved by the Board of RDB, clearly establish that the object of passing the resolution on 12.09.2011 was to transfer IPO funds as loan to

RDBRIL and by curtailing the notice period from 21 days to 15 days, RDB chose to seek approval from the pre IPO shareholders for giving IPO proceeds as loan to RDBRIL. Thus, RDB and its directors resorted to manipulative and deceitful method to suppress material information from the offer documents which in violation of PFUTP Regulations.

18. It is also relevant to note that on 28.09.2011 the AGM and EOGM of RDB were held and filing in relation to AGM was made before the Registrar of the Companies (“ROC” for short) on 28.09.2011 itself, whereas, filing in relation to EOGM dated 28.09.2011 was made before the ROC on 19.10.2011 i.e. much after the allotment of shares to the IPO subscribers. Since the EOGM resolution dated 28.09.2011 related to the approval given by the pre IPO shareholders to give loan up to ₹ 50 crore, inference drawn by the AO that the filing relating to EOGM resolution dated 28.09.2011 was withheld till 19.10.2011 with a view to suppress vital information from the investors till the shares were allotted to the IPO subscribers cannot be faulted.

19. It is contended on behalf of the appellants that Section 171(2) of Companies Act, 1956 empowers a company to give shorter period of notice to the shareholders and Section 192 of the Companies Act permits filing of the resolution up to 30 days and therefore, no fault can be found with RDB in invoking shorter period of notice and filing the resolution within 30 days. In the impugned order it is not held that RDB and its directors have violated Section 171(2) and Section 192 of the Companies Act, 1956. What is held in the impugned order is that the motive in

curtailing the notice period for calling EOGM from 21 days to 15 days by invoking Section 171(2) was with a view to avoid taking consent of post IPO shareholders to give loan up to ₹ 50 crore to RDBRIL. Similarly, it is held that filing of EOGM resolution dated 28.09.2011 was delayed till 19.10.2011, so that during the interregnum allotment of IPO shares are made and once the shares are allotted the question of withdrawing from the offer does not arise even if the subscriber intends to withdraw from the offer on account of RDB giving loan up to ₹ 50 crore to RDBRIL. Fact that apart from IPO proceeds, RDB did not have any other surplus funds to give as loan to RDBRIL and the fact that immediately on receiving IPO proceeds amounting to ₹ 34.25 crore, RDB transferred IPO proceeds to the extent of ₹31.60 crore to RDBRIL, even before the Board of RDB approved giving such loan and even before the Board of RDB approved the draft loan agreement, leaves no manner of doubt that RDB and its directors adopted manipulative and deceptive devices to suppress material facts from the investors which is gross violation of Section 12A of SEBI Act and regulation 3 & 4 of PFUTP Regulations.

20. It is equally important to note that on 07.10.2011 the Audit Committee of RDB was chaired by the Whole Time Director instead of Independent Director as mandated by Clause 49 of the Listing Agreement. The said Audit Committee chaired by the Whole Time Director in violation of Clause 49 of the Listing Agreement recommended to the Board to give loan to RDBRIL. However, even before the Board met at 5.00 P.M. on 07.10.2011 to approve the giving of

loan and approve the draft loan agreement, RDB transferred IPO proceeds amounting to ₹ 31.60 crore to RDBRIL at 2.47 P.M. on 07.10.2011. Moreover, it is not in dispute that all the above material information was not disclosed even to the book running lead manager. In these circumstances, the inference drawn by the AO that RDB and its directors in a manipulative and deceptive manner suppressed material facts from investors and misutilized the IPO proceeds by giving loan to RDBRIL instead of investing the IPO proceeds in high quality interest bearing liquid funds as represented to the investors in the offer document, cannot be faulted.

21. Argument of the appellants that IPO process was completed before the AGM / EOGM held on 28.09.2011 is without any merit, because, admittedly no allotments were made till 28.09.2011 and if requisite disclosures were promptly made, it was open to any investor who had applied for shares to withdraw from the offer before the allotments were made. Fact that no investor has made any grievance cannot be a ground for RDB to escape from penal liability for suppressing material facts in the offer documents in violation of PFUTP Regulations. By no stretch of imagination resolution passed on 12.09.2011 to give loan up to ₹ 50 crore to RDBRIL and the resolution dated 28.09.2011 wherein 5 out of 10 pre IPO shareholders of RDB approved giving loan up to ₹ 50 crore RDBRIL could be said to be a routine matter, especially when IPO proceeds were the only available funds that could be transferred as loan to RDBRIL. Fact that giving loan up to ₹ 50 crore to RDBRIL was three times the net worth of RDB and out of the IPO proceeds of ₹ 34.25 crore, ₹ 31.60

crore was transferred to RDBRIL even before the Board of RDB authorized such transfer and even before the draft loan agreement between RDB and RDBRIL was approved by the Board of RDB, conclusively establish that from the date of passing resolution on 12.09.2011 till transferring IPO proceeds to RDBRIL, RDB and its directors adopted manipulative and deceitful method so as to keep the investors as also the book running lead manager in dark about transferring IPO proceeds as loan to RDBRIL.

22. It is contended on behalf of the appellants that the promoter group held 63.34% shareholding of RDB and 61.5% shareholding of RDBRIL even post IPO and therefore the ownership and control of both companies being with the same promoter group, the level of control and confidence was the highest and therefore, giving loan by RDB to RDBRIL amounted to investing in high quality, interest bearing liquid instruments. There is no merit in the above contention. If the confidence level was so high then there was no reason for the appellants to suppress utilization of IPO proceeds by giving loan to RDBRIL. Very fact that RDB resorted to suppressing material facts from the investors in relation to the loan to be given to RDBRIL till the allotments were made and the fact that RDB transferred IPO proceeds to the extent of ₹ 31.60 crore as loan to RDBRIL on the basis of the recommendations of Audit Committee resolution dated 07.10.2011 (chaired by Whole Time Director in violation of Clause 49 of the Listing Agreement) and even before the said recommendations and the draft loan agreement forwarded by the Audit Committee were approved by the Board of RDB, leave no manner of

doubt the RDB and its directors resorted to prohibited methods for suppressing material facts from the investors. It is a matter of record that when RDBRIL was asked to return the entire amount of loan of ₹ 31.60 with interest RDBRIL could not repay the said amount at one go and repaid the same in several installments and the entire loan with interest was paid by 31st March, 2012. In these circumstances, findings recorded by the AO in the impugned order that RDBRIL was not financially sound on account of its inability to repay the entire loan amount at one go cannot be faulted. Assuming that RDBRIL was financially sound on account of assets held by it, very fact that RDBRIL could not repay the loan on demand and repaid it in installments clearly supports the view taken by the AO that giving loan to RDBRIL could not be said to be an investment in high quality interest bearing liquid instruments.

23. Apart from the above, RDB had taken loan from the Axis Bank and as per the loan agreement it was obligatory on part of RDB to take prior permission of Axis Bank before giving loan to RDBRIL. Admittedly, no such permission was taken from Axis Bank by RDB. Fact that Axis Bank did not deem it fit to take action for the said breach of the contract and the fact that the Axis Bank subsequently enhanced the loan limit and granted extension of time to repay the said loan cannot be a ground for the appellants to contend that no action be taken against RDB and its directors for violating the ICDR Regulations and PFUTP Regulations. In the impugned order, reference is made to the breach of the loan agreement between RDB and Axis Bank only to highlight that in a bid to transfer IPO proceeds by way of loan to RDBRIL, RDB not only

suppressed material facts from the investors but also suppressed material facts from the Axis Bank. In these circumstances, decision of the AO that the conduct of RDB and its directors (appellants) in suppressing material information from the investors by resorting to manipulative and deceitful devices was in violation of regulation 3 and 4 of the PFUTP Regulations cannot be faulted.

Penalty for violating the provisions contained in the ICDR

Regulations and PFUTP Regulations.

24. Penalty for violating ICDR Regulations under Section 15HB of SEBI Act is up to ₹ 1 crore and penalty for violating PFUTP Regulations under Section 15HA of SEBI Act is ₹ 25 crore. Once it is held that the appellants as directors of RDB are guilty of suppressing material facts from the investors and misutilized the IPO proceeds in contravention of statements made in the offer documents and thereby violated regulation 57(1), 57(2)(a) and regulation 60(4) of the ICDR Regulations and committed those violations by adopting manipulative and deceitful method in violation of regulation 3 and 4 of the PFUTP Regulations, the penalty imposable on appellants would be up to ₹ 26 crore (₹ 1 crore under Section 80HB and ₹ 25 crore under Section 80HA of SEBI Act). However, after taking into consideration all mitigating factors the AO has deemed it fit to impose penalty of ₹ 1 crore under Section 15HB and penalty of ₹ 1 crore under Section 15HA of SEBI Act which cannot be said to be unreasonable or excessive.

Additional penalty of ₹ 1 crore under Section 15HA of SEBI Act.

25. In the impugned order additional penalty of ₹ 1 crore is imposed on appellants under Section 15HA of SEBI Act on ground that IPO proceeds have been routed in a circuitous manner by RDB to four trading clients who had traded in the shares of RDB on the first day of listing and had incurred huge losses.

26. This finding, in our opinion, cannot be sustained because, once it is held that transfer of IPO proceeds as loan to RDBRIL amounts to misutilization of IPO proceeds in contravention of the PFUTP Regulations and accordingly penalty of ₹ 1 crore is imposed, then fact that part of the amounts given by RDB as loan to RDBRIL changed several hands and finally the said amount was in the hands of four trading clients who had traded in the shares of RDB on the first day of trading and incurred losses, cannot be an independent ground to hold that the IPO proceeds have been routed in a circuitous manner so as to fund four trading clients, because, firstly, SEBI has not disbelieved the case of the appellants that transfer of IPO proceeds by RDB to RDBRIL was by way of loan. AO cannot hold on one hand that IPO proceeds were transferred as loan to RDBRIL and on the other hand hold that IPO proceeds were circuitously routed to four clients through RDBRIL. Secondly, by 31.03.2012, entire loan amount with interest has been received back by RDB from RDBRIL. With these facts on record it is not open to SEBI on one hand to contend that RDB gave IPO proceeds as loan to RDBRIL in

violation of ICDR Regulations/ PFUTP Regulations and on the other hand contend that the IPO proceeds have been transferred in a circuitous manner so to fund four trading clients who had traded in the shares of RDB on the first day of listing.

27. Apart from the above, as rightly contended by the counsel for appellants, in the impugned order no link or connection is established between RDB / its Directors and the four trading clients to whom the funds are allegedly held to have been transferred by RDB through RDBRIL and various other entities. Moreover, the appellants had tendered a ledger statement of RDBRIL to show that the funds transferred by RDBRIL to Namokar Duplicating Pvt. Ltd. (“Namokar” for short) was by way of refunding the amount already received by RDBRIL from Namokar. In the impugned order, the ledger statement furnished by RDBRIL is disbelieved on ground that the said ledger statement is not certified and there is no other evidence furnished by the appellants. In our opinion, there was no reason to disbelieve the ledger statement of RDBRIL especially when RDBRIL is a listed company. Moreover, the appellants have annexed to the Memo of Appeal a certificate issued by S.M. Daga & Co., Chartered Accountants which clearly certifies that the amount paid by RDBRIL to Namokar was in fact refund of the amount already received by RDBRIL from Namokar. Sanctity of the said certificate is not doubted by SEBI. In such a case, it is apparent that the amount paid by RDBRIL to Namokar was by way of refunding the amount already received by RDBRIL and therefore, the

finding recorded by AO that RDB transferred IPO proceeds to four trading clients through RDBRIL, Namokar and various other entities cannot be sustained. Consequently, penalty of ₹ 1 crore imposed under Section 15HA of SEBI Act on ground that RDB transferred IPO proceeds to four trading clients through RDBRIL and other entities in violation of PFUTP Regulations cannot be sustained.

28. In the result, we uphold the penalty of ₹ 1 crore imposed on appellants under Section 15HB of SEBI Act for violating the ICDR Regulations and penalty of ₹ 1 crore imposed under Section 15HA of SEBI Act for violating PFUTP Regulations. Similarly, penalty of ₹ 5 lac imposed on appellant in Appeal No. 404 of 2014 for violating Clause 49 of the Listing Agreement is also upheld. However, penalty of ₹ 1 crore imposed under Section 15HA of SEBI Act on ground that RDB transferred IPO proceeds in a circuitous manner to four trading clients is deleted.

29. Accordingly, appellant in Appeal No. 404 of 2014 is directed to pay ₹ 5 lac and all appellants are directed to pay ₹ 2 crore jointly and severally to SEBI within a period of four weeks from today. If the appellants fail to pay the aforesaid penalty within the time set out herein above, SEBI would be entitled to recover that amount from the appellants with interest at the rate of 12% per annum from the date of the order passed by the AO of SEBI on 06.08.2014 till payment.

30. All four appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

26.07.2016
Prepared & Compared By: PK