

(2023) 12 SEBI CK 0039

Securities Appellate Tribunal Mumbai

Case No: Appeal No. 328, 329, 330, 331, 332, 333, 359, 381 Of 2021

M/s. Rupak Trading Pvt. Ltd And
Others

APPELLANT

Vs

Securities And Exchange Board Of
India

RESPONDENT

Date of Decision: Dec. 20, 2023

Acts Referred:

- Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 - Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e)
- Securities And Exchange Board Of India Act, 1992 - Section 12A(a), 12A(b), 12(c), 15HA

Hon'ble Judges: Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench: Division Bench

Advocate: Pulkit Sharma, Jaikishan Lakhwani, Tanvi Gupta, Sumit Rai,, Abhiraj Arora, Shourya Tanay, Deepanshu Agarwal, Sharad Bansal, Sumit Rai, Abhiraj Arora, Shourya Tanay, Deepanshu Agarwal, Rajesh Khandelwal,

Final Decision: Partly Allowed/ Allowed

Judgement

Meera Swarup, Technical Member

1. Six appeals have been filed against a common order dated February 4, 2021 of the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI for short) by M/s. Rupak Trading Pvt. Ltd. ('Rupak' for short), M/s. Orbit Financial Consultants Private Limited ('Orbit' for short), Marutinandan Infosolutions Pvt. Ltd. ('Maruti' for short), M/s. Sanjukta Vanijya Private Limited ('Sanjukta' for short), M/s. Darshan Tradelink Private Limited ('Darshan' for short), Aashrit Capital Limited (formerly known as Jalan Cement Works Ltd.) ('Jalan' for short) as Appeal nos. 328 of 2021, 329 of 2021, 330 of 2021, 331 of 2021, 332 of 2021 and 333 of 2021 respectively challenging imposition of penalty of Rs. 20 lakh each for violation of Regulations 3(a),(b),(c)&(d) and 4(1), 4(2)(a)&(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) under Section 15HA of the SEBI Act, 1992.

2. Appeal no. 359 of 2021 has been filed by M/s. Gautam Dealers Private Limited ('Gautam' for short) challenging AO's order dated February 12, 2021 imposing a monetary penalty of Rs. 5 lakh for violation of Regulations 3(a),(b),(c), (d) and 4(1) of the PFUTP Regulations.

3. Appeal no. 381 of 2021 has been filed by four appellants, namely, M/s. KV Impex Prop. Ketan Vora, M/s. New Fashion Prop. Ketan Vora, M/s. Vora Associates Prop.

Dinesh Vora HUF and M/s. J.C. Enterprise Prop. Jigar Vora against a common order of AO dated February 10, 2021 imposing a monetary penalty of Rs. 20 lakh each on the Appellants for violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations.

4. All these aforesaid appeals are being taken up together as the subject matter of these appeals is the same and a common show cause notice dated April 20, 2017 was issued to all these appellants based on the investigation in the scrip of Birla Pacific Medspa Limited ('BPML' for short).

5. SEBI conducted an investigation into the Initial Public Offer (IPO) of BPML for the investigation period of July 7, 2011 to July 15, 2011. The IPO opened from June 20, 2011 to June 23, 2011. BPML's scrip was listed in BSE Limited (BSE) on July 7, 2011. The investigation revealed that the price of the scrip had seen sharp volatility on the listing day. The issue price was Rs. 10/- per share, however, on the first day of listing the price closed at Rs. 25.35, an increase of 154%. On the day, 2205 out of the 2966 retail allottees, all 5 High Net-worth Individual (HNI) and 2 of the Qualified Institutional Buyer (QIB) had sold their shares. An analysis of the trading in the scrip of BPML on BSE and fund flows to net buyers and counterparties led to the conclusion that by providing money out of the IPO proceeds to various entities, BPML had facilitated purchase of its own securities. Accordingly, a common show cause notice (SCN) was issued to all the appellants on April 20, 2017.

Appeal no. 328 to 338 of 2021

6. BPML transferred out of IPO proceeds an amount of Rs. 7 crores each to Sanjukta and Darshan on July 7, 2011. On the same day, Sanjukta transferred Rs. 1.00 crore to Jalan, Rs. 2.29 crores to Maruti and Rs. 2.19 crores to Rupak. Darshan too transferred, on the same day, Rs. 2 crores to Jalan, Rs. 2 crores to Orbit and Rs. 3.00 crores to Rupak. These four entities (Jalan, Maruti, Rupak and Orbit) placed an amount of Rs. 12.52 crore with their broker GRD Securities as pay-in obligation to purchase shares of BPML. These four entities acquired a net of 67,11, 242 BPML shares valuing approximately Rs. 9.29 crore that was 21.56% of total delivered quantity on July 7, 2011 and 10.3% of the issue size. They took delivery of 99.98% of their total buy volume. This trading led to price increase in the shares which closed at Rs. 25.35 on the day of the listing as against the price of Rs. 10.00 per share. Thus, it was alleged that these entities colluded with BPML for trading in the scrip with the help of funds received from BPML. Further, they played a fraud on investors by creating a misleading appearance of trading in the securities market and by supporting the price rise in the scrip.

7. Submissions of Sanjukta and Darshan were that they received funds of Rs. 7 crore each from BPML as unsecured loans and these were repaid in full in 6 – 7 months. The monies transferred were either for share application in the entities or were refund of the share application amount for shares which could not be allocated to the entities. They were unaware as to how the four entities utilized the funds. Similar explanation was given by the four entities for receipt of funds from Sanjukta and Darshan that these monies were either for share application or refunds of shares application due to non-allotment of shares. They were unaware as to how Sanjukta or Darshan got the money and have had refunded back the funds. They purchased BPML shares in normal course of their business and took delivery of 99% of shares. They continued to hold the shares for different period of time. Rupak, Orbit and Maruti claimed that they had made loss while trading in the BPML shares. Jalan made some additional submissions. There was a change of management in 2014. On July 7, 2011 they had traded in other shares along with BPML shares in normal course of business through their broker GRD Securities. The value and volume of their transaction in BPML share were insignificant to have manipulated the price of the shares. Their trading account with GRD Securities

was under T+5 settlement period basis. They had no relation with BPML, its promoters or directions.

8. Based on above stated facts and taking into consideration the submissions of the Appellants, the AO in the impugned order dated February 4, 2021 concluded that Appellants were part of the scheme to transfer IPO funds from BPML for buying shares on the day of listing. The buying by Jalan, Maruti, Orbit and Rupak in the scrip of BPML with the help of funds received from BPML through Sanjukta and Darshan provided buying support in violation of the fair market principle and thereby resulted in fraud on the investors of BPML. These trades created a misleading appearance of trading in securities market and by showing false buy side demand supported the price of BPML. Accordingly, the AO found that violation of Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)(a) and (e) of the PFUTP Regulations by the Appellants stand established.

Appeal no. 359 of 2021

9. BPML transferred Rs. 3.25 crore on February 6 and 7, 2012 to the Appellant for purchase of shares of unlisted companies. The Appellant procured and handed over to BPML shares of five unlisted companies amounting to Rs. 3.25 crore on the same day. The allegation was that the Appellants were fully aware of the scheme of siphoning of the IPO proceeds by BPML and had willingly become conduit for the said transfer of funds by BPML.

10. In reply, the Appellant urged that the transfer of funds from BPML was on February 6 and 7, 2012, much beyond the period of investigation (July 7 to July 15, 2011). The funds were transferred to the Appellant seven months after the IPO and were for purchase of shares of unlisted companies. The Appellant had procured the shares of five unlisted companies and handed them over to BPML. There was no question of return of the money as shares were handed over to BPML.

11. Noting that there is no evidence of share certificates being transferred in the name of BPML and had BPML wanted to invest in unlisted shares, they could have also directly purchased them without involving the appellant, the AO concluded that the Appellant was an integral part of the scheme by which IPO funds were transferred from BPML to various entities for siphoning off. Therefore, the AO held that the Appellant is in violation of Regulations 3(a),(b),(c),(d) and 4(1) of the PFUTP Regulations read with Section 12A(a),(b) and (c) of the SEBI Act.

Appeal No. 381 of 2021

12. Facts in the Appeal no. 381 of 2021 were that BPML transferred Rs. 10.80 crore to the four appellants on July 6 and 7, 2011. The four appellants were connected to each other and were in the business of trading in fabrics and textiles. The appellants in turn transferred Rs. 10.07 crore to ten entities. It was alleged that the appellants colluded with BPML to willingly divert the money from IPO proceeds.

13. The Appellants case is that they were persuaded by Mr. P.V. Murthy, an official of BPML, to accept the receipt of funds from BPML and to transfer the same to other entities in order to build potential relationship with BPML. The Appellants neither purchased nor sold any share of BPML and their role was limited to transfer of funds. They were not aware that the fund transferred to their account was those of IPO proceeds of BPML. All transactions took place within a day's time and they were not beneficiary of the siphoned off funds of BPML.

14. Based on above said facts, the AO concluded that the Appellants have admittedly routed funds at the behest of BPML to various other entities. The Appellants by

agreeing to participate in illegal routing of IPO funds of BPML have facilitated BPML to siphon off IPO money for purposes other than stated in the prospectus and therefore defrauded the investors who participated in the IPO. Thus, violation of Regulations 3(a),(b),(c) and (d) and 4(1) of the PFUTP Regulations stood established in case of the Appellants.

15. We have heard Shri Pulkit Sharma, Ms. Tanvi Gupta, Shri Sharad Bansal, Shri Prakash Shah and Shri Rajesh Khandelwal, the learned counsel for the appellant in respective appeal and Shri Sumit Rai, the learned counsel for the respondent.

16. From the perusal of pleadings, oral and written submission filed by the parties, the undisputed facts are as under:-

(i) The Appellants received funds from BPML directly in the case of Gautam and K V Impex and indirectly through Sanjukta and Darshan;

(ii) In all cases but one (that of Gautam) these transfer of funds took place either on July 6 and 7, 2011 just after the IPO of BPML concluded. In case of Gautam, funds were transferred by BPML on February 6 and 7, 2012, seven months after the IPO.

(iii) The four entities (Rupak, Orbit, Maruti and Jalan), who received funds from Sanjukta and / or Darshan transferred a total of Rs. 12.52 crore to their broker GRD Securities to buy shares of BPML on July 7, 2011.

(iv) Gautam invested the money received from BPML in shares on five unlisted entities.

(v) All four Appellants in Appeal no. 381 of 2021 also transferred the monies received from BPML to ten different entities on the same day they received it from BPML.

17. Having heard the learned counsel for the parties, we find the following-

Appeal nos. 328 to 333 of 2021

18. There is sufficient evidence that funds were transferred to Sanjukta and Darshan by BPML on the listing day i.e. July 7, 2011. The timing of these transactions substantiates the finding that these were proceeds of the IPO. The reason advanced by Sanjukta and Darshan for these transfers that these were unsecured loans is not plausible especially when there is no evidence of any interest being paid on these funds. The reasons given for transfer of funds from Sanjukta and Darshan to the four entities (Rupak, Orbit, Maruti and Jalan) are sketchy and clearly an afterthought. The Appellants in these appeals have urged that these transfers were on account of share application account or refunds due to non-allotment of shares due to rejection of application for share allotment. However, they have failed to produce any evidence in form of board approval / minutes resolving for application to issue shares or for rejection of share application. The refunds made due to non-allotment of shares have taken 6 to 7 months however communication for application / rejection were sent on the same day. Further, there is no denying the fact that the four entities bought around 21% of total deliverable quantity of BPML on July 7, 2011. In case of Rupak, Orbit and Maruti, there is enough evidence to indicate that the shares of BPML were purchased through funds transferred by Sanjukta and Darshan as they did not have sufficient balance in their Bank Account without transfers of these funds.

19. Jalan urged that their case is different than other three entities. They had traded in other shares and bough BPML shares from their sale proceeds. Their networth was approximately Rs. 97.8 crores out of which Rs. 73.04 crores was invested in shares. Their purchase of BPML shares on July 7, 2011 was only 0.08% of the market volume at BSE on the day of listing and was not capable of disturbing the market equilibrium. Due

to change in management in 2014, they had to defend their case on the basis of material given by the old management.

20. Be that as it may, the fact remains that Jalan received Rs. 1.00 crore from Sanjukta and Rs. 2.80 crore from Darshan. The reasons for these transfers of funds are not convincing and Jalan too has urged that these transfers were either on account of refund of their application money due to non-allotment of shares or on account of application of shares. As the first leg of transaction, namely, receipt of funds from Sanjukta and Darshan who in turn has received funds from BPML, are proved, we are not convinced about the second leg of the transactions.

21. In view of the aforesaid, we hold that the charges in the impugned dated February 4, 2021 stand proved.

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22. We find that the transfer of funds from BPML to the appellant Gautam took place on February 6 and 7, 2012 while the IPO of BPML took place during June 2011. Therefore, we are not convinced that these funds were the proceeds of the IPO. We also find that the AO in paragraph 18 of the impugned order has held that:-

“Based on the facts on record, I note that Noticee received Rs. 3.25 crores one year after IPO proceeds and therefore I am of the view that we cannot directly attribute that IPO funds have been siphoned off to noticee.”

23. In view of the above, we hold that the charge, that the Appellant was an integral part of the scheme by which IPO funds were transferred from BPML to various entities for siphoning off, is not proved.

Appeal no. 381 of 2021

24. We note that the Appellants admitted that they received funds of Rs. 10.81 crore from BPML and transferred them further to ten entities having been misled by one of the employees of BPML. Having admitted to being conduits in routing of BPML funds, we have no hesitation in holding that the charges in the impugned order dated February 10, 2021 against the Appellants are proved.

25. We note that the Appellants in all the appeals have raised the issue regarding prejudice caused to them due to delay in proceedings. The investigation period for the impugned transactions was from July 7, 2011 to July 15, 2011. Based on the investigation, a common SCN was issued on April 20, 2017 and impugned orders issued during 2021. We note that the SCN was issued approximately six years after the investigation which in our view is not justified.

26. Considering the delay in the proceedings as a mitigating factor, we reduce the penalty imposed on the Appellants in Appeal nos. 328 of 2021, 329 of 2021, 330 of 2021, 331 of 2021, 332 of 2021 and 333 of 2021 and Appeal no. 381 of 2021 vide impugned orders dated February 4, 2021 and February 10, 2021 from Rs. 20 lakh each to Rs. 15 lakh each.

27. Appeal nos. 328 of 2021, 329 of 2021, 330 of 2021, 331 of 2021, 332 of 2021 and 333 of 2021 and Appeal no. 381 of 2021 are partly allowed. Impugned order dated February 12, 2021 in Appeal no. 359 of 2021 is set aside and the Appeal is allowed.