BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No.154 of 2012
With
Appeal No.155 of 2012
And
Appeal No.156 of 2012

Date of decision:08/04/2013

Appeal No.154 of 2012

1. Vashi Construction Pvt. Ltd.
having registered office at
2/2/B, Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006.

2. Rajesh C. Shah
as Director of Vashi Construction Pvt. Ltd.
having office at 2/2/B,
Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006.

3. Ms. Bhavana Rajesh Shah
as Director of Vashi Construction Pvt. Ltd.
having office at 2/2/B,
Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006. … Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Appeal No.155 of 2012

1. Dhanlaxmi Lease Finance Ltd.
having registered office at
3/A, Laxmi Colony, Navo Vas,
Rakhiyal Road,
Ahmedabad – 380 006.

2. Bipin Ratilal Shah
as Director of Dhanlaxmi Lease Finance Ltd.
having office at
3, Laxmi Colony, Navo Vas,
Rakhiyal Road, Rakhial Zone,
Ahmedabad – 380 026.

3. Bharat Ratilal Shah
as Director of Dhanlaxmi Lease Finance Ltd.
having office at
3, Laxmi Colony, Navo Vas,
Rakhiyal Road, Rakhial Zone,
Ahmedabad – 380 008.

4. Girish G. Doshi
as Director of Dhanlaxmi Lease Finance Ltd.
having office at
945, Bhatni Pole, Nr. Ramkrishna Mill,
Gomtipur, Ahmedabad – 380 021. … Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Appeal No.156 of 2012

1. Rudra Securities and Capital Ltd.
through authorized Director
having registered office at
2/2/B, Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006.

2. Nileshkumar T. Kava
as Director of Rudra Securities and Capital Ltd.
having office at
2/2/B, Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006.

3. Ketan D. Sorathiya
as Director of Rudra Securities and Capital Ltd.
having office at
2/2/B, Centre Point Flats,
Panchwati, Ambawadi,

Ellisbridge,
Ahmedabad – 380 006.

4. Vipul Shantilal Trivedi
as Director of Rudra Securities and Capital Ltd.
having office at
2/2/B, Centre Point Flats,
Panchwati, Ambawadi,
Ellisbridge,
Ahmedabad – 380 006. … Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Mr. Killol V. Shelat, Advocate for Appellants.
Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody,
Advocate for the Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
Jog Singh, Member

Per : Jog Singh

Since these three appeals involve common questions of law and fact, with the consent of the learned counsel for all the parties, we have heard the same together and are being disposed of by this common order. For the sake of convenience, the facts of Appeal No.154 of 2012 (Vashi Constructions Pvt. Ltd. and ors. vs. Securities and Exchange Board of India) have been taken as the leading case.

2. The three appeals are preferred by 11 appellants against the impugned order dated 19th January, 2012 seeking to impose a penalty of ` 20 lacs under the provisions of Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the SEBI Act') on them. Two persons namely, Shri Ashok H. Shah and Ms. Neha R.

Shethwala have, however, been exonerated as no violation could be established against them before the adjudicating officer.

3. Brief facts leading to the passing of the above said impugned order are that the Securities and Exchange Board of India (for short SEBI) conducted investigations relating to the preferential allotment of 2,90,00,000 shares @ Rs.1 each at a premium of Rs.0.25 per share by the Platinum Corporation limited (hereinafter referred to as 'PCL Comp). These preferential shares were allotted to the following 7 persons on 13th January, 2009:-

1. Dhrumal Vaidya – 25,00,000 shares
2. Anindo Achinto Banerji – 25,00,000 shares
3. Pratik R. Shah – 50,00,000 shares
4. Nikita B. Dave – 50,00,000 shares
5. Vashi Constructions Pvt. Ltd. – 50,00,000 shares
6. Dhanlaxmi Lease Finance Ltd. – 40,00,000 shares
7. Rudra Securities and Capital Ltd. – 50,00,000 shares

4. The case of SEBI is that all the above 7 allottees acted in concert with each other for the purpose of acquiring a huge number of shares of PCL Comp through preferential allotment but failed to come out with a public announcement to acquire the said shares as per the requirement of Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations, 1997'). Accordingly, adjudication proceedings were initiated against the following 19 noticees:-

1.	Pratik R. Shah	Not in appeal before this Tribunal
2.	Dhrumal Vaidya	Not in appeal before this Tribunal
3.	Anindo A. Banerjee	Not in appeal before this Tribunal
4.	Nikita B. Dave	Not in appeal before this Tribunal
5.	Vashi Constructions Pvt. Ltd.	Appellant No.1 in Appeal No.154 of 2012
6.	Ashok H. Shah	Exonerated
7.	Rajesh C. Shah	Appellant No.2 in Appeal No.154 of 2012
8.	Bhavana R. Shah	Appellant No.3 in Appeal No.154 of 2012

9.	Ms. Neha R. Shethwala	Exonerated
10.	Rudra Securities and Capital Ltd.	Appellant No.1 in Appeal No.156 of 2012
11.	Nileshkumar T. Kava	Appellant No.2 in Appeal No.156 of 2012
12.	Ketan D. Sorathiya	Appellant No.3 in Appeal No.156 of 2012
13.	Vipul S. Trivedi	Appellant No.4 in Appeal No.156 of 2012
14.	Ms. Neha R. Shethwala	Exonerated
15.	Dhanlaxmi Lease Finance Ltd.	Appellant No.1 in Appeal No.155 of 2012
16.	Bipin R. Shah	Appellant No.2 in Appeal No.155 of 2012
17.	Bharat R. Shah	Appellant No.3 in Appeal No.155 of 2012
18.	Girish G. Doshi	Appellant No.4 in Appeal No.155 of 2012
19.	Ms. Neha R. Shethwala	Exonerated

5. For the sake of convenience, Regulation 10 of the SAST Regulations,1 997 is reproduced hereinbelow:

> "10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

6. Shri P.K. Bindlish, was appointed as the adjudicating officer by the competent authority vide its order dated 4th July, 2011 to enquire into and adjudicate under section 15H(ii) of the SEBI Act for the above said allegations. The learned adjudicating officer issued show-cause notices to all the above 19 incumbents as per the requirement of Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. From the pleadings, it is noted that Pratik R. Shah, Dhrumal Vaidya, Anindo A. Banerjee, and Nikita B. Dave duly received notices issued by the learned

adjudicating officer on several occasions but did not respond to him in any manner. However, the following persons appeared in person and filed their replies:-

1. Vashi Constructions Pvt. Ltd.,
2. Rajesh C. Shah.
3. Bhavana R. Shah,
4. Ashok H. Shah,
5. Rudra Securities and Capital Ltd.,
6. Nileshkumar T. Kava,
7. Ketan D. Sorathiya
8. Vipul S. Trivedi,
9. Dhanlaxmi Lease Finance Ltd.,
10. Bipin R. Shah,
11. Bharat R. Shah
12. Girish G. Doshi,
13. Neha R. Shethwala

7. The replies submitted by the appellants, all in more or less the same vein, before the learned adjudicating officer broadly mention the following points:

- We hereby state that entities as mentioned in SCN No.24510 dated 28th July, 2011 are not known to us.
- Further, we state that we don't have any relations directly or indirectly with the directors and other persons as mentioned in such notice.
- Ms. Neha Shethwala, mentioned in your SCN as noticee no.9 was authorized signatory for day to day accounting purpose.
- The company has raised debt for acquisition of shares of Platinum Corporation Limited.
- The company has acted in good faith.
- We strongly state that we were not involved in this matter at all.
- This reply is to be treated as a reply from company and its all directors.
- We plead you to resolve this matter.
- Some appellants have also suggested, without any evidence, that the money received from M/s. Hirak was due to them.

8. However, Shri Ashok H. Shah submitted in his reply dated 14th October, 2011, that:-

- Firstly, at that time he was not a director in Vashi Construction Pvt. Ltd. because he had resigned from the director post since back.

- And because of the resignation from that co. he was not aware about the company's transactions and other dealings.
- And also he was also not knowing the other entities and not acting in concert at all.
- For individual acquisition through off market on 19th January, 2004, he made a proper disclosure to the company i.e. PCL on 21st January, 2004, Ahmedabad Stock Exchange and complied with the regulations.
- He further submitted that he got these shares from off market only and not traded in the market.
- He, therefore, requested for dropping of the proceedings against him.

9. Similarly, Ms. Neha R. Shethwala, who was served with three different show-cause notices submitted her reply dated 13th October, 2011 to the following effect:-

- At that time she was just providing her service to these companies as,
  - Vashi Construction Pvt. Ltd.
  - Rudra Securities and Capital Ltd.
  - Dhanlaxmi Lease Finance Ltd.
- And because of providing service, she was just an authorized signatory and not the director in any of these companies.
- She was not knowing the other entities and not acting in any role at all.
- She, thus, prayed for keeping herself away from the transaction and dropping the allegations against her.

10. In these circumstances and after giving reasonable opportunity of personal hearing to the noticees, the learned adjudicating officer considered the replies of the appellants and other material/documents brought on record by the parties and came to the conclusion that the 11 appellants and 4 more noticees were guilty of violating the provisions of Regulation 10 of the SAST Regulations, 1997 and hence imposed a penalty of ` 20 lacs on behalf of them, jointly and severally. However, Mr. Ashok H. Shah and Ms. Neha Shethwala were exonerated by the adjudicating officer after analyzing the facts and evidence in respect of their alleged role in the whole matter.

11. The appellants before this Tribunal have mainly submitted that all transactions are bona fide purchases and they have nothing to do with the

act of PCL Comp in giving money to some other party. The appellants have further contended that the conclusion of the learned adjudicating officer regarding rotation of money is based on assumptions and that the appellants, being bona fide investors, have paid the amount through cheques.

12. It is also one of the contentions of the appellants that Ms. Neha Shethwala, a common signatory for all the companies, and Shri Ashok Shah have also been similarly situated and have been exonerated by the adjudicating officer. Further, the appellants submit that on the basis of mere assumption that three noticees namely, Sarang Chemicals Ltd., M/s. Hirak Biotech Ltd., and Mr. Dinkar B. Shreemali have been connected, the appellants cannot be termed as being connected to each other by any stretch of imagination. In this context, it is also submitted that assuming they are connected, the shares received by them through preferential allotment are unlisted and, therefore, such shares do not attract any violation of SEBI Regulations. It is also strenuously argued by Shri Shelat, learned counsel for the appellants that in the matter of unlisted shares, SEBI cannot intervene until these unlisted shares are allotted to a particular group exceeding 15% of the total post-issue paid-up capital. The appellants' individual holding is stated to be neither 15%, nor is the total holding of all the appellants 15% of the total post-issue paid-up capital and, therefore, there is no violation of Regulation 10 of SAST Regulations, 1997. In fact, the contention of the appellants is that there is no evidence connecting them with each other.

13. It is also submitted by the appellants that PCL Comp preferably allotted the shares in question to its own directors and to the three

appellant-companies and not to the directors of these three companies. There are no common directors between three appellant- companies and the directors of the PCL Comp. Therefore, the directors of the three appellant-companies are not liable to pay the penalty of ` 20 lacs jointly and severally as they are not persons acting in concert. There was no common interest or motive in the matter of preferential allotment of the shares in question. It is also contended by Shri Shelat, that the principles of natural justice have been violated by the learned adjudicating officer in conducting and concluding the proceedings against them in as much as the show-cause notice is vague and the opportunity to lead evidence had not been granted to the appellants. Similarly the right to cross-examination and rebuttal of evidence has also been denied. The order is otherwise harsh and violative of Articles 14 and 21 of the Constitution of India.

14. On the other hand, Shri Shiraz Rustomjee, the learned senior counsel with Mr. Mihir Mody, Advocate for the respondent, have submitted that the preferential allotment of shares to the tune of 2,90,00,000 on 13th January, 2009 was made to 7 persons, out of which 4 are directors, and other three are the companies. All of them are appellants in the three appeals. They opened their accounts either immediately preceding the date of allotment of preferential shares to them or their accounts with the concerned Bank had negligible amounts. All the shares were pledged with the banks in order to raise the loan. Thus money comes to the company and goes back to the persons from whom it came and that too, in cash. It is submitted by the learned counsel for the respondent that this has been explained with great clarity in Annexures II, III, IV to the show-cause notice dated 20th April, 2011 and Annexure-I to the impugned order dated 19th January, 2012.

15. After hearing both the learned counsel for the parties, at length, and after perusing the pleadings and documents produced by the parties, it is evident that;

(i) All seven allottees had bank accounts with Vinayak Sahakari Bank.
(ii) All the bank accounts had negligible balance in them before the date of the allotment. Few of them even opened their bank accounts just before the date of allotment of the shares.
(iii) There was a common pattern of circular fund flow, involving Hirak Biotech Ltd. and Sarang Chemicals Ltd, both of which are group concerns of PCL Comp.
(iv) All the seven allottees were funded by Hirak and one was funded by Sarang.
(v) All the shares allotted were pledged with the Ahmedabad Peoples' Bank against loans taken by PCL Comp and its group companies, including Hirak and Sarang.
(vi) The address of another allottee, Rudra Securities, prior to 11/11/2008 was the residential address of the 1st Appellant.
(vii) Dinkar Shrimali is a director of both Platinum and Sarang, and Nikita Dave is a director of Platinum and Hirak. Pratik Shah is a director of Platinum and Hirak.
(viii) The cheques issued by the 1st appellant and the other corporate allottees, Dhanlaxmi Lease Finance and Rudra Securities were all signed by a common authorized signatory, Ms. Neha Shethwala.
(ix) No cogent explanation has been provided by the Appellants with regard to the receipt of funds, the application and the allotment of shares, except to say that they raised debt to apply. It is the admitted position before the adjudicating officer that 'no documents were available' in support of this contention.
(x) Dhanlaxmi Lease Finance Ltd. belongs to Bipin Shah and Bharat Shah.
(xi) Rudra Securities & Capital Ltd. is connected to the promoters of PCL Comp by way of receipt of shares through off market transfer from Mr. Jayesh Shah who is the director of PCL Comp and Hirak.
(xii) Authorized Director of Vashi is also the director of Dhanlaxmi Lease Finance Ltd.

16. A minute perusal of the impugned order dated 19th January, 2012, thus makes it abundantly clear that the 7 allottees in question acted with a common purpose and design in the matter of allotment of 2.90 crore preferential shares in question. It is established by the learned adjudicating officer beyond doubt that all the 7 persons functioned as a one entity for all practical purposes and intents. In this connection, paragraphs 32 to 34 of

the impugned order dated 19th January, 2012 are relevant and reproduced hereinbelow:-

> "32. TRANSACTIONS ON JANUARY 12, 2009 – It is observed that the Company had shown to have received allotment money of Rs.62,50,000 from Rudra Securities and Capital Ltd. and Rs.50,00,000 of Dhanlaxmi Lease Finance Ltd. The Company had immediately transferred the amount of Rs.1,00,00,000/- to Sarang Chemicals Ltd. and transferred Rs.12,50,000 to Hirak Biotech Ltd. on January 13, 2009. It is observed that thereafter, there were 20 cash withdrawal transactions in the account the Sarang Chemicals Ltd. In regard to source of funds to Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd., it is observed that they had received the amount of Rs.1.125 Crore from Hirak Biotech Ltd. Hirak Biotech Ltd. in turn received 10 cash deposits amounting to Rs.1 Crore and also received Rs.12.50 Lakhs through a transfer entry. It is observed that the cash of Rs.1 Crore shown to have withdrawn from account of Sarang Chemicals Ltd. was once again shown to have credited in the account of Hirak Biotech Ltd., thereby completing circular rotation of transactions to the tune of Rs.1 Crore and in the process, the Company had created entries of receipt of application money of Rs.1.125 Crore in their books of accounts for the purpose of allotment of shares.
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> 33.It is observed that Anindo A Banerjee, Dhrumal Vaidya and Pratik R Shah were directors of the Company and Nikita B Dave was also a director of the Company. It is further observed that Vashi Constructions Pvt. Ltd. belonged to Ashok H Shah and the bank account Vashi Constructions Pvt. Ltd. showed that Rajesh C.Shah and Bhavana R Shah were directors of Vashi Constructions Pvt. Ltd. It is also observed that Bhavana R Shah is sister of Ashok H Shah and wife of Rajesh C Shah. Further, it is observed that Dhanlaxmi Lease Finance Ltd. belonged to Bipin R Shah and Bharat R Shah. The address of Rudra Securities and Capital Ltd. prior to 11/11/2008 was shown to have been residential address of Ashok H Shah.
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> 34. Further, in regard to connection between these persons, it is observed from the KYC documents obtained from Depository Participant's that Ashok H Shah and his father Hiralal Popatlal Shah were directors of Vashi Constructions Pvt. Ltd. and Ashok H Shah was signed as director of the Company in a Tripartite Agreement dated 30/03/2000. It is observed that Meena Ashok Shah is wife and Sarlaben Hiralal Shah is mother of Ashok H Shah. It is also observed that Bipin R Shah and Mrs. Mita Bipin Shah were directors of Parvati Minerals Pvt. Ltd. and Pratik Minerals Pvt. Ltd. Rudra Securities and Capital Ltd. was connected to promoters of the Company by way of receipt of shares through off-market from Jayesh D. Shah. It is observed that one of the directors of the Company, Mr. Dinkar Bhanuprasad Shrimali, was also director of Sarang Chemicals Ltd. It is also observed that Pratik R Shah, Nikita B Dave and Mr. Jayesh D. Shah were directors of Hirak Biotech Ltd., who were also directors of the Company. Thereby, the three entities, Sarang Chemicals Ltd., Hirak Biotech Ltd. and Mr. Dinkar B. Shreemali are connected to each other."

17. Thus, having acted in concert with each other, Regulation 10 of the SAST Regulations gets attracted and in view of the non-compliance with the provisions thereof, all the appellants are liable to pay the penalty in question jointly and severally. Their contention that SAST Regulations, 1997 cannot be applied because 2.90 crore shares allotted on 13/1/2009 were not listed, is totally misconceived and untenable in law and on facts. The moment such a huge number of shares is acquired, voting rights accrue and when the same becomes in excess of the then stipulated percentage of 15, the SAST Regulations, 1997 (Takeover Regulations) would hold the field. PCL Comp being a listed company, therefore, was obliged to make a public announcement in this regard. By not doing so and due to its failure, the general public/ investors at large were put to prejudice. Further, the manner in which the transaction in question has been completed leaves no doubt to hold that the same was not bona fide. The money was deposited through cheques but was withdrawn in cash by the persons concerned at the end of the day. In the process, the shares in question were pledged to take loan. These acts of the appellants are undoubtedly prejudicial to the healthy growth of the market and, therefore, SEBI rightly exercised its jurisdiction in holding the proceedings against the appellants and in passing the impugned order in question that too, after due application of mind.

18. All the three companies before us in the appeals, who acted through individual directors only, are equally responsible for the wrongful acts in question and hence liable to pay the penalty imposed upon them by the impugned order dated 19th January, 2012. The reliance placed by the learned counsel for the appellant on the decision of Daiichi Sankyo Company Limited vs. Jayaram Chigurupati and others reported in (2010) 7 Supreme Court Cases 449 and that of the Hon’ble High Court of Bombay in the case

of MCX Stock Exchange Ltd. vs. SEBI and ors. reported in (2012) 172 Comp Cas 602 (Bom) does not help the case of the appellants at all. On the contrary it is seen that the interpretation given to the expression “persons acting in concert” used in Regulation 2(i)(e)(ii) of SAST Regulations, 1997 by the Hon’ble Supreme Court and High Court in the above said two cases fully covers the present case as is evident from the improper modus operandi adopted by all the 7 persons in concert with each other as discussed hereinabove to initiate or give finality to the transaction in question.

19. Turning to the question of violation of the principles of natural justice as claimed by the appellants before this Tribunal, it is noted that all the relied upon documents, which were asked for by the appellants, were supplied to them by the learned adjudicating officer. Adjournments on personal grounds to the appellants for personal hearing were also liberally granted by the learned adjudicating officer in consonance with the principles of natural justice. Therefore, the plea regarding violation of principles of natural justice being raised at this stage is an afterthought and hence liable to be rejected. In fact it is seen from the proceedings dated 15th November, 2011 held before the learned adjudicating officer that the authorized representative categorically submitted that they did not have any proper documentary evidence to support the claim of the appellants that they had raised loan for acquisition of shares of the said PCL Comp. Moreover, no grievance regarding non-supply of documents etc. was raised by the authorized representative of the appellants before the learned Adjudicating Officer.

20. Lastly, we deal with the plea advanced on behalf of the appellants regarding breach of Article 14 read with Article 21 of the Constitution of India. In this connection, it may be pertinently noted that the adjudicating officer has given convincing reasoning, particularly in paragraphs 44 and 45 of the impugned order in question, regarding exoneration of Shri Ashok H. Shah and Ms. Neha Shethwala. The Tribunal appreciates the fair gesture shown by the learned adjudicating officer in respect of these two persons and his findings qua Neha Shethwala and Ashok H. Shah are hereby upheld. Therefore, in the facts and circumstances of the case, there is no violation of Articles 14 and 21 of the Constitution of India. There are two important limbs of Article 14, i.e., “equality before law” and “equal protection of law”. Equality, as contemplated by Art. 14, is a dynamic concept and mainly prohibits arbitrariness and discriminatory state action. It also takes in its sheep the doctrine of Natural Justice which is termed as a synonym of fairness in the context of delivery of justice. Similarly, the equal protection clause simply means a right to equal treatment in similar circumstances.

21. In the case in hand, we do not find any arbitrary or unreasonable approach adopted by the learned adjudicating officer towards any of the appellants or noticees. The exoneration of the two noticees is not discriminatory in as much as there is rationale/justification to be found in paras 44 and 45 of the impugned order. The argument of the appellants, regarding infringement of Art.14, therefore, stands rejected.

22. Furthermore, Art. 21 seeks to protect the life and personal liberty of persons. In the facts of the present case, even if the expression “personal liberty” is interpreted to include in its ambit the “right to livelihood”, as pressed by the learned counsel for the appellants, the same cannot be

extended to allow the appellants to carry on trade or business in shares against the statutory and regulatory norms prescribed lawfully by the SEBI. It would, otherwise, be injurious to public interest and may also have insidious effect on the capital market. Therefore, the plea advanced by the appellants based on Art. 21 also fails.

In view of the above discussion of law, the three appeals are hereby dismissed. No order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
Jog Singh
Member

08/04/2013
Prepared & compared by-ddg