BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.92 of 2013

Date of Decision: 1.7.2013

Lucky Holdings Private Ltd.
16-B, Shakespeare Sarani,
2nd Floor, Kolkata – 700 001. …… 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 with Mr. K.C. Jacob, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Mihir Mody and Mr. Akhilesh Singh, Advocates for the Respondent.

CORAM : Jog Singh, Member & Presiding Officer (*Offg*.)
A.S. Lamba, Member

Per : Jog Singh (Oral)

1. The challenge in this appeal is to the order dated February 28, 2013 passed by Adjudicating Officer of the Securities and Exchange Board of India (for short "SEBI") imposing a monetary penalty of Rs. 5,00,000/-

(Rupees Five Lac Only) under Section 15A(a) for the violation of the provisions of Sections 11C(2) & 11C(3) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act").

2. The Appellant is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Kolkata. The main business of the Appellant is dealing in shares and securities etc. in the market. In June 2011, Sagar Fintrade Private Limited "SFPL", a non-banking finance company registered with Reserve Bank of India, was merged and amalgamated with the Appellant pursuant to Scheme of Amalgamation sanctioned by the Hon'ble High Courts at Calcutta and Cuttack (Orissa) by orders passed on March 16, 2011 and June 24, 2011 respectively. Pursuant to the aforesaid orders, appropriate orders have also been passed for dissolution without winding up of "SFPL". Upon amalgamation, all assets, rights, duties, entitlements, obligations and liabilities of "SFPL" stood transferred to and vested with the Appellant.

3. SEBI received a reference from the Income Tax Department ("ITD") containing certain findings in the matter of Murli Industries Limited ("MIL"). It was stated in the said reference that ten entities were holding substantial shares of "MIL" and the affairs of the ten companies were being looked after by Mr. Amit Raja, Chartered Accountant, who happened to be their auditor. The ITD had found certain documents suggesting manipulation in the share price of "MIL". The reference stated that following ten private limited companies were found to be dummy

companies incorporated by “MIL” which had together cornered a large part of the shareholding of “MIL”.

i. Ambaji Papers Private Limited (Ambaji)

ii. Inco Infrastructures Private Limited (Inco)

iii. Kanhaiya Mining And Minerals Private Limited (Kanhaiya)

iv. Krishnum Investments Private Limited (Krishnum)

v. Lakhi Packaging Private Limited (Lakhi)

vi. Ramji Agri Business Private Limited (Ramji)

vii. Ramkrishna Fabrication and Machineries Private Limited (Ramkrishna)

viii. Runicha Alloys And Steel Private Limited (Runicha)

ix. Simple Mining And Power Private Limited (Simple)

x. Taitan Management Services Private Limited (Taitan)

ITD also forwarded certain documents which indicated an agreement for manipulation of “MIL” share price and profit sharing between “MIL” promoters and Sanjay Dangi. ITD suggested that the price of the “MIL” scrip was manipulated by the entities mentioned in the reference for the purpose of issuing Foreign Currency Convertible Bond (“FCCB”) at a higher price than what was the correct price. SEBI initiated a preliminary inquiry in the matter to find as to whether there was any concentration of shareholding of the company among the ten entities and whether there was any attempt to manipulate the share prices of the company before the FCCB issue of “MIL”. It appeared to SEBI that a group of entities connected with each other (Dangi Group) had influenced the price rise in the scrip during the ‘pricing period’ of FCCBs and thereafter, exited the scrip at a profit, as per the alleged agreement made with the promoters of “MIL”. SEBI

examined patterns in the trading and price-volume of scrips of other companies that had issued FCCBs or in which Dangi group had been found to have traded regularly, or both. The said examination revealed that the Dangi Group was actively trading in the shares of many companies where there was capital raising exercise through FCCB issue, ADR/GDR issue, QIB/QIP placement, preferential allotment or loans or pledge / revocation of pledge of promoter shares.

4. In view of the above investigation in various scrips and noticing that such operations were possibly continuing in the market to the detriment of the investing public, SEBI passed an ad-interim ex-parte order dated December 2, 2010, issuing directions against, inter alia, Mr. Sanjay Dangi, his associates and promoter entities of 4 companies, i.e. MIL, Hubtown, WCL & BIL restraining 10 Dangi entities and 14 Ashika entities from accessing the securities market and further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions. From the bank statements of Ramji, Runicha, Ambaji, Kanhaiya and Inco it was observed that these companies had availed loans from SICOM Limited to make the payments to “MIL” for conversion of the share warrants allotted to them. From the information furnished by the dummy companies, “MIL”, bank transaction counterparties of dummy companies, etc. it was observed that many customers of “MIL” had given huge unsecured loans to the dummy companies immediately after their incorporation and even before these companies had set up any business infrastructure. In order to conduct a thorough investigation and in order to ascertain the exact role

played by the various entities including the ten dummy companies and their shareholders, vide summons, detailed information was sought from “SFPL” by the investigating authority. Despite duly receiving summons “SFPL” failed to submit complete detailed information as required vide summons, thereby violating the aforesaid charges.

5. A show cause notice in terms of provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to “SFPL” on January 4, 2013 calling upon it to explain as to why an inquiry should not be held against it under Rule 4(3) of the Adjudication rules for the alleged violation. On a consideration of the documents available on record, oral and written submissions made by the Appellant, the Adjudicating Officer came to the conclusion that the Appellant was guilty of violating the provisions of Sections 11C(2) and 11C(3) of the SEBI Act. This is how a monetary penalty of Rs. 5,00,000/- (Rupees Five Lac Only) came to be imposed on the Appellant by the aforesaid impugned order dated February 28, 2013. It is against this order that the present appeal has been filed.

6. With the consent of both the parties, the appeal is taken up for final hearing at the admission itself and is being disposed by the present order. We have heard both the learned counsel for the parties at length and have analysed the facts and pleadings in detail. Learned counsel for the Appellant submits that “SFPL” has been merged and amalgamated with the Appellant Company pursuant to the Scheme of Amalgamation sanctioned by the Hon’ble High Courts at Calcutta and Cuttack (Orissa). It is further

submitted that the Appellant had no connection with the transaction stated in the Summons and the SCN.

7. It is also the case of the appellant that he has been responding to the summons from time to time and at least on five occasions he has responded to the summons issued by the learned Investigating Officer. In this connection, learned counsel for the appellant Shri Vinay Chauhan has drawn our attention to page 38 of the paper book which forms an integral part of the impugned order. Five instances have been shown where the appellant has responded to the Investigating Officer's summons.

8. On the other hand, learned counsel for the Respondent Mr. Prateek Seksaria submits that the compliance with the summons by the Appellant was half-heartedly and that there was no co-operation from the appellant's side. The learned counsel for the Respondent has further pointed out some more instances where the appellant faulted in responding to the summons. Therefore, the Adjudicating Officer was compelled to impose a penalty of Rs.5 lac on the appellant in this back ground.

9. After hearing both learned counsel for the parties and perusing the impugned order and other connected records, we do not find any lacuna in holding the investigation and the adjudication proceedings by the Respondent. The summons issued by the competent authority of the Respondent have to be complied with otherwise the system will suffer. In this view of the matter, we uphold the impugned order dated 28.2.2013 as passed by the Adjudicating Officer. However, keeping in view the facts and circumstances of the case, we find that the penalty for partial

non-compliance issued by the Investigating Officer is on a higher side and exercising our discretion we modify the impugned order by reducing it to Rs.2 lac. The above said penalty shall be deposited by the appellant within two months from the date of receipt of copy of this order.

With the above said modification, the appeal stands dismissed.

Sd/-
Jog Singh
Member &
Presiding Officer (*Offg*.)

Sd/-
A.S. Lamba
Member

1.7.2013
Prepared and compared by
RHN