BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.93 of 2013

Date of Decision: 1.7.2013

Parag Vanijya Pvt. Ltd.
2B, Belmont Apartments,
18/2, Alipore Road, 2nd Floor,
Kolkata – 700 027. …… 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. S.K. Jain, Advocate with Mr. Jagannath Kar, Practising Company Secretary for the Appellant.

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

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

Per : Jog Singh (Oral)

The present appeal has been filed against an order dated February 28, 2013 passed by the Adjudicating Officer imposing a penalty of Rs.5,00,000 on the appellant under section 15A(a) of the SEBI Act, 1992 for violation of sections 11C(2) and 11C(3) of the SEBI Act.

2. Brief facts leading to the case are as follows. M/s. Parag Vanijya Private Limited (the appellant) is a private company limited by shares duly

registered under the Companies Act, 1956. Mr. Joyanta Majumdar and Mr. Gautam Ghosh were the promoter directors of the appellant company since incorporation. Due to change in management of the appellant company, Mr. Manish Dalmia and Mr. Girish Dalmia were appointed on May 03, 2010 as promoter directors of the appellant company. Thereafter, Mr. Joyanta Majumdar and Mr. Gautam Ghosh resigned from the Board on June 14, 2010.

3. Securities and Exchange Board of India (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 the 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)

4. The reference made by the ITD stated that none of the dummy companies had proper offices and that the directors of these dummy companies were of no means to carry out huge transactions running into millions of rupees. As per the said reference, ITD conducted survey under Section 133A of the

Income Tax Act, 1961 at the premises of the dummy companies and found that the companies were not traceable at their given addresses. ITD also forwarded certain documents which indicated an agreement for manipulation of MIL share price and profit sharing between MIL promoters and Sanjay Dangi. The reference received from 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. In the light of the aforesaid reference and documents received from the ITD regarding the manipulation in share price of MIL and the profit sharing arrangement between MIL and Mr. Sanjay Dangi, SEBI initiated a preliminary inquiry in the matter. It appeared to SEBI that a group of entities connected to 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. Based on the finding in MIL, it appeared that a group was operating to offer its services to promoters, 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, on 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.

5. In view of the above investigations 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 (SIMCO) 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 the appellant by the investigating authority. Despite duly receiving summons it failed to submit complete detailed information as required vide summons, thereby violating the aforesaid charges.

6. By order dated 30th March, 2012, Mr. Piyoosh Gupta was appointed as the Adjudicating Officer. A show cause notice in terms of the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to the appellant calling upon it to show cause why an inquiry should not held against it under Rule 4(3) of the Adjudication Rules for the alleged violations. After affording an opportunity of personal hearing and perusal of the material on record and giving regard to the facts and circumstances of the case, the Adjudicating came to the conclusion that the appellant violated the provisions of sections 11C(2) and 11C(3) of the SEBI Act, 1992 and thereby imposed a monetary penalty of Rs.5 lac (Rupees Five Lakh only). Hence this appeal.

7. With the consent of both the parties, the appeal is taken up for final hearing at the admission stage itself and is being disposed of by the present order. Heard both the learned counsel Mr. S.K. Jain for the appellant and Mr. Prateek Seksaria with Mr. Mihir Mody and Mr. Akhilesh Singh, learned counsel for the Respondent. It is vehemently argued by Shri S.K. Jain that the appellant is not responsible to pay the penalty imposed on it by impugned order dated 28th February, 2013 for violation of the provisions of sections 11C(2) and 11C(3) of the SEBI Act, 1992. The said penalty has been imposed by the learned Adjudicating Officer under section 15A(a) of the SEBI Act. The learned counsel for the Appellant Mr. S.K. Jain submits that all the information which were at the disposal of the Appellant were provided to the Respondent. However, the other information which were within the public domain were neither required to be submitted nor published by the Appellant.

8. The learned counsel for the appellant further submits that the company cannot be held liable for the faults of the Directors, if any, in this regard.

9. Mr. Prateek Seksaria, learned counsel for the Respondent on the other hand submits that on a number of occasions the appellant replied but the said replies were misleading and not fully supported by facts. The answers were evasive by Appellant no.1. However, on number of occasions the appellant did not respond altogether. This fact has been viewed seriously by the learned Adjudicating Officer and as such the penalty in question has been imposed.

10. Having heard the learned counsel for the parties we note that the manner in which the replies have been submitted before the Investigating Officer is not appreciable by the Tribunal. Instead of passing the burden on others, the appellant should have fully co-operated with the Investigating Officer appointed by the SEBI.

11. In this view of the matter, we are not inclined to interfere with the impugned order dated 28.2.2013.

12. However, keeping in view the submission made by the learned counsel for the appellant at the bar, we are only inclined to reduce the penalty to Rs.2 lac so that such indifferent attitude is not shown by the appellant against the summons which might be issued to the appellant.

Accordingly, the impugned order is modified by reducing the penalty to Rs.2 lac and rest of the order is upheld. 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 of the impugned order, the appeal stands dismissed. No costs.

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

Sd/-
A.S. Lamba
Member

1.7.2013
Prepared and compared by
RHN