BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved : 22.7.2019
Date of Decision: 10.10.2019

Appeal No.361 of 2018

1. Inventure Growth and Securities Ltd.
   201, Viraj Tower, 2nd Floor,
   Western Express Highway,
   Andheri (East), Mumbai – 400069.

2. Nagji K. Rita
   Flat No.11, Anand Kunj,
   Daftary Road, Malad (East),
   Mumbai – 400097.

3. Virendra D. Singh
   1605, Grandeur Vasant,
   Marbour Complex, Nr.
   Magathane Tele Exchange,
   W.E. Highway, Borivali (East),
   Mumbai-400066.

4. Kanji B. Rita
   1601, Laburnam Towers,
   Mahindra Gardens,
   S.V. Road, Goregaon (W),
   Mumbai – 400062.

5. Vinod K. Shah
   Vijaya Bhuvan, 1st Floor,
   Bajaj Road Vile Parle (West),
   Mumbai-400056.

6. Arvind Gala
   Flat No.2, 2nd Floor,
   Plot No.36A, Pushpa Park,
   Daftary Road No.3,
   Malad (East), Mumbai – 400097.

7. Bhavi Gandhi

C-405, Gokul Garden,
Thakur Complex,
Kandivali (East), Mumbai-400101. …. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot no.C4-A,
G-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051. …Respondent

Mr. P.N. Modi, Senior Advocate with Mr. Kunal Kataria, Mr. Prakash Shah, Mr. Chinmay Paradkar, Advocates and Mr. Meit Shah, Practicing Company Secretary i/b. Prakash Shah & Associates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b. The Law Point for the Respondent.

With
Appeal No.362 of 2018

1. Arun N. Joshi
   Flat No.6, Manas CHS.,
   Besant Street, Santazcruz (West),
   Mumbai – 400054.

2. Srinivasaiyer Jambunathan
   Prakash Co-operative
   Housing Society,
   Relief Road, Daulat Nagar,
   Santacruz (West), Mumbai-400054.

3. Harshawardhan M. Gajbhiye
   Flat No.1301, 13th Floor,
   Patliputra CHS., A Wing,
   Four Bunglows, Andheri (West),
   Mumbai – 400053.

4. Ajay Khera
   61-C, Pocket B,

Mayur Vihar Phase II,
Delhi – 110091.

5. Deepak M Vaishnav
B 506, Vrindavan 3,
Raheja Township W E, …. Appellants
Mumbai – 400 097.

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot no.C4-A,
G-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051. …Respondent

Mr. Nihar Modi, Advocate with Mr. Prakash Shah, Mr. Chinmay Paradkar, Advocates and Mr. Meit Shah, Practicing Company Secretary i/b. Prakash Shah & Associates for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b. The Law Point for the Respondent.

With
Misc. Application No.299 of 2018
And
Appeal No.363 of 2018

Pravin N. Gala
1502, Laburnum,
Mahindra Gardens,
Goregaon (W), Mumbai – 400062. …. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot no.C4-A,
G-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051. …Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju, Advocate i/b. R.V. Legal for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b. The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi

1. All the present appeals have been filed by Inventure Growth and Securities Ltd. (hereinafter referred to as 'the Company/IGSL') as well as its directors during the relevant period. They are aggrieved by the order of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') for holding them alongwith others guilty of committing three different acts vide order dated 6th August, 2018. Appellants except Arvind Gala and Bhavi Gandhi were prohibited from accessing the securities market for a period of four years from the date of the order. They were further prohibited from associating themselves with any listed Company or partners in a partnership firm with effect from 1st February, 2019 and appellant Arvind Gala and Appellant Bhavi Gala were warned to exercise due care and diligence.

The appellant Company went into an Initial Public Offer of equity shares in July and August, 2011. The Red Herring Prospectus was published on 12th July, 2011. Opening date of issue was 20.7.2011. Closing date was 22.7.2011. Prospectus was issued on 27.7.2011 and the shares were listed on BSE and NSE on 4th August, 2011.

2. It was a public issue of 70 lakh equity shares of Rs.10 each at a price of Rs.117 per equity aggregating to Rs.8190 lakhs. The objects of the issue as per the prospectus were:-

(1) Investment in subsidiary Inventure Finance Pvt. Ltd. (hereinafter referred to as 'IFPL') amounting to Rs.30 crores.

(2) Augmenting long term capital requirement of Rs.20 crores.

(3) General corporate purposes Rs.27.65 crores and public issue expenses Rs.4.25 crores.

It was declared in the prospectus that no bridge loan was raised/scheduled to be repaid from the IPO proceeds.

3. The respondent SEBI conducted an investigation in the case. It found that the IPO proceeds were not utilized as per the object in the prospectus. Long term working capital

augmentation was not done and on the other hand using the IPO proceeds certain shares were purchased. Secondly so far as investment in IFPL was concerned it was conveyed through the prospectus that IFPL during the relevant period was in the business of lending against shares and equities which help the Company to take additional exposure as regards their clients. However, the business activity of the IFPL subsequent to the issue would show that for a certain period there was small increase in the exposure in this segment but there was decline later on. Eventually, IFPL increased its lending against unsecured loan, gold etc. thus mis-utilising the IPO proceeds.

Thirdly during the investigation it was found that under the name of deposits etc infact bridge loan was raised from some parties which was later on repaid. Lastly, security deposits were accepted without disclosing the same as required in the prospectus. In the circumstances, following issues were framed by the Whole Time Member as can be seen from the impugned order as under:-

(i) Whether IGSL mis-utilised public issue proceeds contrary to the stated intent of investment in the company's subsidiary and augmenting the company's

working capital, thereby violating the provisions of Regulation 57 (1), Clause (XV10)(2) of Part A of Schedule VIII and regulation 60(4) of SEBI (Issuance of Capital & Disclosure Requirements) Regulations 2009 ("ICDR Regulations") read with Section 12A(a), (b) and (c) of the SEBI Act, 1992 and; regulations 3(b)(c)(d), regulations 4(1) and 4(2)(f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations 2003 ("PFUTP Regulations").

(ii) Whether IGSL made false statements in its RHP and prospectus with respect to raising bridge loans and thereby violated regulations 57(1) and 57(2) read with clause 2(VII)(G) and clause (XVI) (B)(2) of Part A of Schedule VIII of the ICDR Regulations.

(iii) Whether IGSL failed to disclose acceptance of deposits under Section 58A of the Companies Act, 1956, thereby violating regulation 57(1) of the ICDR Regulations?

4. Show cause notices were issued to the appellants. Certain additional documents were called for in view of the explanation given in the reply. After hearing the parties, the

WTM came to the conclusion that except the charge of mis-utilisation of IPO proceeds contrary to the intent of augmenting the interim working capital all other charges are established. Therefore, the impugned order came to be passed. Hence the present appeals.

5. The learned counsel for the respective appellants made submissions in the light of the explanation given by them before the WTM as well as the submissions made in the appeal. The learned Senior counsel for the respondent Mr. Mustafa Doctor, supported the reasoning of the WTM on the basis of the material on the record.

We propose to deal with the submission firstly to find as to whether there is any breach as detailed supra and if yes as to whether all the appellants or any of them is liable for the same.

6. Non utilization of the IPO proceeds towards the stated object of IFPL of advance money against shares, securities.

In the show cause notice, it was alleged that the prospectus revealed that IFPL was advancing money solely against shares, securities and that too only to the clients of IGSL and this business actually was to be expanded by deploying the proceeds of the IPO in the amount as stated

above. During investigation the information was sought from the Company in this regard. The information is tabulated in the impugned order as below:-

TABLE 3

S. No	Details of Money advanced (`.)	31.03.2011	30.09.2011	31.03.2012
1	Secured against Shares	37,05,10,904	46,96,52,024	26,33,07,089
2	Less: Amount borrowed against shares	34,41,12,654	33,98,17,133	22,26,91,810
3	Net amount lent against shares	2,63,98,250	12,98,34,891	4,06,15,279
4	Secured against equipment	-	88,31,007	2,37,44,825
5	Secured against gold	-	-	7,30,000
6	Unsecured loans	3,51,85,939	47,54,76,785	40,21,43,430
7	Sub-total (4+5+6)	3,51,85,939	48,43,07,792	42,66,18,255

7. From this table WTM found that before IPO, IFPL had advanced money against shares in the amount of Rs.37 crores Five lakh and odd which was marginally increased to Rs.46.96 crores immediately after IPO but decreased in the month of March, 2012 to Rs.26.33 crores. As against this, unsecured loans started increasing and a new segment of advance against gold and advance against equipment was started by IFPL.

8. To show that in the prospectus a different picture of object of IPO in this regard was painted by the Company the

WTM quoted from clause (a) of the object of the issue which is as under:-

> *"IFPL's lending business includes providing loans secured by shares held by customers of IFPL. Our Company [IGSL] is mainly engaged in the broking business, and IFPL helps our customers to leverage their equity market positions to take increased exposure. Thus, revenues are generated via two verticals; firstly interest income by IFPL's lending activities for providing leverage to the clients to undertake additional market exposures and secondly these additional exposures generate additional brokerage income for our Company [IGSL]. IFPL's lending business is complementary to our Company's broking business and it helps improve customer retention and source additional one. This leads to growth in terms of clients as well as revenues of both the companies.... The customer funding is provided against a margin of approximately 25-50% and is available only for purchase of shares which form part of our "Approved List of securities".... Our Company [IGSL] believes that such investment in IFPL is in line with its strategy of expanding its core businesses and will also help us to strengthen the respective balance sheets... To enable clients to take greater participation in different segments of capital market, IFPL provides loan against shares to various clients, including our broking clients. Through such financing clients pay a partial sum of stock price and the balance is then funded by IFPL at an interest.... IFPL is RBI registered NBFC and is in the business of advancing loans to clients for acquisition of shares/stock/ bonds/ debentures/ securities issued by government or local authority or other securities of like marketable nature. This facility provides the clients with the opportunity to buy shares listed on the stock exchanges on credit."*

9. The Company in its reply at para no.5 has adverted the attention of the WTM towards the various sentences, clauses

in prospectus and contended that the business of IFPL was explained and it was also clearly declared that considering the competitive and dynamic nature of the industry the Company would have discretion to revise its finance strategy from time to time. It therefore sought to explain that it was not informed to the investors through RHP that deployment of Rs.30 crore to IFPL would solely and unexceptionally would be for advancing money against the share only.

10. The WTM upon considering the response observed that the dominant message that can be deducted from the prospectus, was to convey to the potential subscriber that IFPL was primarily engaged in lending against shares and such infusion in fund by IGSL would directly and indirectly benefit the shareholders of IGSL.

11. Mr. P.N. Modi, learned Senior Counsel for the appellant Company and its directors in Appeal no.361 of 2018 submitted that the term ‘dominant message’ has been newly invented by WTM. It could not be found in the show cause notice. If the prospectus is read as a whole, he submits that the message that was conveyed to the investors was that IFPL was a non banking financial Company. It was dealing in various non banking finance transactions including

advancing money against the shares to the customers. These customers would be the clients of the Company. He submits that money being fungible and the market being dynamic, the statistics of day or a month as found in the above table would not show that there was any violation of the object of the IPO proceeds. He submits that the company had every right to withdraw the earlier funding lent to its subsidiaries IFPL and infuse the funds received from IPO proceeds as can be seen from the table. He therefore submits that the market dynamics would have to be understood and it has to be appreciated that advance of money towards the shares would depend on the market condition generally. He therefore submitted that the appeal be allowed in this regard.

Mr. P.N. Modi further points towards the description of IFPL given at page no.137 of the prospectus which runs as under:-

> *"Mahajay Investment Private Limited was registered with the Reserve Bank of India as a non banking financial company with effect from November 18, 2000. The name of IFPL was endorsed on registration certificate with effect from October 8, 2008. IFPL has been incorporated inter alia with the main objects of managing investment and to act as brokers, merchant bankers, commission agents, managers and advisers to the issue and to make investments to moveable and immovable properties."*

12. Upon hearing both sides, in our view, the learned WTM ought not to have found that the charge on this count is substantiated. It is to be noted that though at one place in the prospectus as extracted by the WTM in its impugned order a message was conveyed that an amount of Rs.30 crores would be invested in IFPL for use of lending against share as detailed in the extract, there are other ample references regarding the object of IFPL.

13. More particularly at page no.68 the following disclaimer below the object of the issue can be found.

> *"Our management, in response to the competitive and dynamic nature of the industry, will have the discretion to revise its business plan from time to time and consequently our funding requirement and deployment of funds may also change. This may, subject to compliance with applicable laws and regulations, also include rescheduling the proposed utilization of Issue Proceeds and increasing or decreasing expenditure for a particular object vis-à-vis the utilization of Issue Proceeds. In case of variations in the actual utilization of funds earmarked for the purposes set forth above, increased fund requirements for a particular purpose may be financed by surplus funds, if any, available in respect of the other purposes for which funds are being raised in this Issue. If surplus funds are unavailable, the required financing will be through our internal accruals and/or debt."*

14. Learned Senior counsel for the respondent SEBI Mr. Mustafa Doctor points towards the paragraph at page no.69 of the prospectus which reads as under:-

> *"IFPL has the appropriate risk management systems in place to monitor the finance provided. For this purpose IFPL performs a credit worthiness assessment of each of its clients before extending finance to them. The customer funding is provided against a margin of approximately 25-50% and is available only for purchase of shares which form part of our "Approved List of securities". This list is decided by the management and reviewed from time to time."*

15. Upon hearing both the sides in our view the charge cannot be sustained. It should be noted that pre IPO period as per the table put by the WTM in the impugned order, IFPL the subsidiary of the Company had advanced 37.5 crores of loan against the shares. Thereafter in post IPO, as on 30th September, 2011, it went to around Rs.48 crores. The submissions of Mr. Modi that the Company was entitled to withdraw the earlier investment made in IFPL cannot be disputed. WTM in the impugned order at page no.25 at table no.7 had taken efforts to show that IFPL continues to reduce advancing loans against shares but increasing the same against unsecured loans. However, what would be the market constraint for the subsequent period cannot be gauged and the same are not part of the present enquiry. In the circumstances, in our view, this charge of making a wrong/false disclosure in the ICDR of funding Rs.30 crores to IFPL for advancing loan against shares holds no water.

Undisclosed Bridge loan

16. The next charge for consideration is non disclosure of bridge loans. The Company had declared in the prospectus that it had not raised any bridge loan which would be repaid from IPO proceeds. In the investigation it was found that between 13th July and 20th July, 2011 an amount of Rs.20 crores and odd was received by the Company from four entities and on the date of receipt of the IPO proceeds i.e on 3rd August, 2011 the whole amount was repaid to the said entities.

The Company in this respect explained that during the period of IPO the Company had over 35000 clients whose funds were lying with the Company from time to time in the normal course of business. The clients fund being "amount due to clients" was in the range of 20 to 30 crores and the certificate attached to the reply at Exhibit I would show that on 30th July, 2011 Rs.47 crores available balance in this account. Out of these specific four entities, from K.R. Shoppers Pvt. Ltd. (hereinafter referred to as KRSPL) a short term loan was availed as working capital which was immediately paid but not from the IPO funds. The rest of the three entities were in fact prospective clients and their funds

were lying with the Company in the clients account. However, the contract could not be fructified for various reasons like KYC compliance and, therefore, the amount that was deposited by them in the clients account was repaid from the clients account and not from the IPO funds. The same therefore cannot be called as a bridge loan.

The WTM held that credit of monies from these three entities in the BSE client account itself become suspect as crediting amount in such accounts whose credentials at the given point of time were not provided. Merely, crediting amount in the client account would not automatically mean that the said entities can be considered as clients.

The timing of repayment was held to be a suspicious transaction i.e. immediately after receipt of IPO proceeds. In the circumstances, it was held that as against the declaration in the prospectus the Company has raised the bridge loan and repaid the amount from the proceeds of the issue.

Mr. Modi, the learned Senior counsel submitted that there is no case that IPO proceeds was utilized for the payment of the amount. The impugned order itself accepts that the amount was lying in the BSE clients account and the

same was paid from the very same account. No diversion of funds is found or even alleged.

17. The documents filed by the appellant clearly showed that an amount of Rs.47 crores was lying in its client account at the time of IPO. The amount of three entities was also lying in the BSE client account and the same was paid from the same account only. There are no allegations that funds from IPO proceeds were diverted from the proceeds. Hence the suspicion of the WTM on the basis of period of transaction would not amount to proof of the same. In our view therefore the transactions regarding these three entities cannot be termed as a bridge loan repaid from the IPO proceeds.

As regards the fourth entity namely KRSPL transaction, it was explained by the Company, that the amount was taken as a short term loan as a working capital. Therefore, according to it the said loan cannot be considered as a bridge loan. It was a loan from director for that purpose. WTM held that this infact is an admission of the existence of interim financial arrangement. This was not disclosed in the prospectus and, therefore, amounted to the failure to make disclosure according to the provisions of ICDR Regulations.

According to the WTM infact the money received as an interim financing would be a bridge loan since the Company has repaid the same from IPO proceeds.

18. From the record it is established that an amount of Rs.3 crores was repaid to KRSPL on 19th July, 2011 i.e. immediately after the IPO proceeds were received by the Company. In the show cause notice an explanation for the same was sought. In its reply the Company replied at para no.35 as under:

> "*With regards to our transaction with KR Shoppers Pvt. Ltd. we humbly submit that it is also registered with us as a client and apart from that the prospectus disclosed as an "Enterprises where key management personnel exercise significant influence". Further in the financial year 2009-2010 too the said KR Shoppers had provided temporary funds of Rs.2 Crores on which an interest of Rs.13.4 Lakhs was paid. Being an entity where one of the management personnel exercises significant influence, it had paid Rs.3 Crores to us, which was returned on August 3, 2011. However no interest was paid on the said funds. It is humbly submitted that this transaction is also not in the nature of bridge loan but a loan from director's entity."*

It is, thus, established that a short term loan was availed by the Company which was returned on 3rd August, 2011. According to the Company, the repayment was without any interest and, therefore, it was not bridge loan but a loan from

the director entity as it is related to one of the director. Black's Law Dictionary defines bridge loan as under:-

> *"Bridge loan - A short-term loan that is used to cover costs until more permanent financing is arranged or to cover a portion of costs that are expected to be covered by an imminent sale – also termed bridge financing; swing loan*".

19. In financial world, bridge loan is understood as a short term accommodation availed by an entity awaiting the permanent financial resources. In the present case, as per the Company itself short term accommodation was sought from KRSPL and the same was repaid on 3rd August, 2011 i.e. post receipt of IPO money. These facts itself clarify that the bridge loan was raised by the Company. However, in the prospectus it was positively declared that the Company has not raised any bridge loan. Thus on this count it can clearly be declared that a false/wrong declaration was made in the prospectus in violation of ICDR Regulations.

Security Deposits

20. During investigation it was found that in the month of August, 2011 the Company had paid a sum of Rs.7.51 crores to Mrs. Heena Sanjay Shah and Mrs. Usha Atul Shah each. The prospectus revealed that Mrs. Usha had been a shareholder of the Company. When these facts were put to

the Company during investigation, it explained these transactions vide letter dated 27th January, 2016. It explained that the money was received in September, 2010 as a security deposit/advance and refunded back in August, 2011 (para 20 of the SCN). During investigation therefore further details were sought vide letter dated 1st February, 2016. The Company explained as under:-

> *"For reference of your honour, we clarify that money was deposited by them in advance to explore their future opportunities in bullish/bearish market in share/securities business but they did not entered in to any transaction and money was refunded back when they demanded. These money had been received appox a year prior to IPO money realization for doing securities transaction, but they could not order any type of buying or selling of securities in their family name and further the same have been refunded, when they had put up such request to company.*

21. In the show cause notice it was alleged that all these facts would show that the amounts were in the nature of security deposit from others and not from clients as tried to be explained by subsequent letter of the Company dated 9th February, 2016. This amount was not deposited on any other heads available in the account statement i.e. margin from clients/security deposit, security deposit from rent. In view of these facts further details were sought regarding the deposit. The Company gave further reply and it was revealed

that the Company had accepted an amount of Rs.6.39 crores as on March 31, 2010 and Rs.20.65 crores as on March 31, 2011. This amount of Rs.20.65 crores remained payable to these non corporate entities.

22. It was, therefore, alleged in the show cause notice that such deposits were accepted by the Company in violation of Section 58A of the Companies Act, 1957. It was also alleged that since the outstanding amount of Rs.20.65 crore as on 31st March, 2011 was more than 25% of the issue proceeds, the Company was required to disclose the existence of the security deposit in its prospectus to the investors enabling them to take informed investment decision. However as Company failed to disclose the same, contravention of the ICDR Regulations had occurred.

23. In reply to the show cause notice in para 43 onwards Exhibit 'C' the Company replied afresh, as under:-

> *"43. We humbly submit that the Mrs. Heena Sanjay Shah (Client Code 8038 from May 25, 2008) and Mrs. Usha Atul Shah (Client Code 5543 from April 30, 2008) are our registered client trading through us for a long time. They are also related to a few other clients as well who regularly trade through us. The funds were received from them as clients and the fact that the same was repaid without any interest thereon supports our contention. It is extremely unreasonable to expect that such amounts will be repaid without any interest if they were in the form of loans.*

44. Categorization as "Security Deposit Other" or any other head does not change the colour of the fund and the fact remains that it was received from our registered clients.

45. Further it is submitted that Mrs. Heena Sanjay Shah and Mrs. Usha Atul Shah are wives of promoters of Bishakha Diamonds Pvt. Ltd. and Anchor Leasing Pvt. Ltd. which had debit balances as under during the period when the funds remained with us:

Client Code	*Client Name*	*Highest Debit Balance*	*Date*
HNI010	*Bishakha Diamonds Pvt. Ltd.*	*9,62,14,993.46*	*April 26, 2011*
HNI008	*Anchor Leasing Pvt. Ltd.*	*2,19,42,609.96*	*May 26, 2011*
	TOTAL	*11,81,57,603.42*	

Relevant extract of ledger for the month of April 2011 of these clients is attached as Annexure 2.

As per accepted practice and approved, the credit of these clients (Heena Sanjay Shah & Usha Atul Shah) was available with us for adjusting it against the debit balance of their related accounts also. As a result it can be safely inferred that the amount was not in the form of a bridge loan, but was for the dealings in securities.

46. Further it is submitted that Security Deposit Others, Security Deposit for Margin, Client Deposit or any other nomenclature were all deposits from clients and the allegation that we have violated Section 58A of Companies Act is grossly denied. A complete list of accounts along with client codes is annexed herewith as Annexure 3 reflecting the breakup of Rs.20.65 Crores and Rs.6.30 Crores wrongly alleged to be in the form of deposit. As there was no non-compliance, the question of disclosing it in the prospectus does not arise.

47. Even further, it is humbly submitted that Mrs. Usha Atul Shah was a shareholder of our Company and hence assuming but not accepting that the amount was in the form of a loan, it would have been a loan from

the shareholders and was thus not a violation of any of the provisions of Companies Act or SEBI Act and Regulations."

24. Before the Adjudicating Officer as well as before this Tribunal the appellant submitted as under:-

That SEBI has no jurisdiction over accepting security deposits regulated under Section 58A of the Companies Act. The jurisdiction in this regard lies with the Central Government. SEBI itself has referred the issue to the Ministry of Corporate Affairs and no adverse action has been taken as on the date against the Company by the ministry and, therefore, no further action was warranted from SEBI in this regard. Mr. Modi further submitted that in fact the amount was not a security deposit but merely adjustment against debit balances of Bishaka Diamonds Pvt. Ltd. & Anchor Leasing Pvt. Ltd i.e. the related account as quoted above.

25. The WTM held that though the issue of security deposit in view of the provisions of Section 55A of the Companies Act, the jurisdiction would lie with the Central Government, for the purposes of disclosure of the deposit under ICDR Regulations the SEBI would have jurisdiction.

Upon hearing both sides, in our view, the finding of the WTM cannot be faulted with. During investigation the Company emphatically came with a case that all these transactions were security deposits. It is clear that Rs.21.61 crores was repaid post IPO. Only when the show cause notice was issued the Company came with a case that it was not a security deposit but an amount kept in an account for adjustment towards the debit balance of the related accounts. It is, however, a fact that the amount was repaid after the IPO proceeds were received.

26. As found, the deposits were more than 25% of the IPO proceeds and was therefore material information under the ICDR Regulations. The decision of the WTM that the Company failed to disclose the deposits in the prospectus and, therefore, violated the Regulation therefore needs no interference.

27. To conclude, the charge that the Company has misulitised part of the fund by failing to appropriate the necessary amount towards money advanced by its subsidiaries specifically cannot be sustained. The charge of bridge loan is proved to the extent of the aspect of raising the

same from KRSPL. The next charge of non disclosure of security deposit in the prospectus also stands proved.

28. In Appeal no.361 of 2018 at para 5.3 describe appellant no.2 Nagji K. Rita as a Chairman and Managing Director. Appellant no.3 Virendra D. Singh as a Whole time Director. Appellant no.4 Kanji B. Rita and Appellant no.5 Vinod K. Shah as Executive Directors. Appellant no.6 Arvind Gala Chief Financial Officer and Appellant no.7 Bhavi Gandhi as a Company Secretary during the relevant period.

29. In Appeal No.362 of 2018 appellant Arun N. Joshi and Appellant no.2 Srinivasaiyer Jambunathan both were the independent directors during the relevant period. In Appeal no.363 of 2018 appellant Pravin Gala was non executive director during the relevant period. While in Appeal no.361 of 2018 the issue of non liability was not anywhere raised during argument in the rest of the appeal the sole thrust of the appellants was regarding their liability.

30. In Appeal no.362 of 2018 it was strenuously urged that the appellants being independent director had no knowledge of the relevant non disclosures. They merely relied on the Chartered Accountant’s report and signed the prospectus was

the submission. On the other hand, the learned Senior Counsel for respondent SEBI submitted that these two appellants had signed the prospectus and therefore they cannot escape the liability.

Learned counsel for the appellant relied on master circular on prosecution of Directors issued by Ministry of Corporate Affairs on 29th July, 2011. He further relied on the decision in the case of Ionic Metalliks v. Union of India (2014) SCC Online Guj High Court 10066, the decision of this Tribunal in Appeal no.49, 49A, 49B, 49C and 49D of 2003 decided on 11th February, 2005, Appeal no.133 of 2003 decided on 15th September, 2004, in the case of Bhardwaj Thuiruvenkata Venkatavraghavan vs. Ashok Arora (2017) SCC Online Del 7416 of Delhi High Court and decision of another Whole Time Member of SEBI dated 13th January, 2016. The decisions are regarding various aspect of the liability of independent directors or director qua a particular act being a criminal offence or a liability under the Companies Act etc. In many of the above cases on facts, finding that the particular director had no knowledge of the day to day affairs of the Company their plea was accepted.

31. More particularly, in Appeal no.49 and others decided by this Tribunal on 11th February, 2005 the issue related to certain non disclosures made in the prospectus, misutilisation of the proceeds of the public issue which are similar to the present case.

32. In para no.5 of the decision, this Tribunal has noted that the appellant therein were independent directors and were not involved in the day to day management and control of the Company. In the circumstances, the argument of the respondent SEBI that they had put their signatures in the prospectus were taken into consideration. It was finally concluded that disclosures could not be attributed to them as they were independent director and they were not associated in the day to day management or control over the Company. In the circumstances, the appeal was allowed.

33. The appellants in Appeal no.362 of 2018 are also independent directors. In Appeal no.361 of 2018, we find the Company had Whole Time Directors, Managing Directors etc. Considering all these facts on record in our opinion appellant in Appeal no.362 of 2018 cannot be held responsible for the non disclosure as detailed above.

In Appeal no.363 of 2018 the appellant was the non executive director during the relevant period. He was also neither responsible for the day to day affairs of the Company nor for the transaction of raising of bridge loan under the name of short term accommodation or deposit which was sometimes described by responsible director as security deposit or claiming the account for debit balance of other clients. Considering all these facts the Appeal no.363 of 2018 will also have to be allowed.

34. Since one out of three charges against the appellants in Appeal no.361 of 2018 is not sustainable the directions against them also deserves to be mitigated. Accordingly we reduce the period of restraint imposed on Appellant no.1 Company from four years to three years from the date of the impugned order and limit the restrictions on associating as Directors or KMPs etc as in para 44(ii) on Appellant nos.2 to 5 in as far as holding any fresh position in such capacity for a period of three years from January 1, 2019.

35. In the result the following order:-

Appeal no.361 of 2018 is accordingly partly allowed. Appeal no.362 and 363 of 2018 are hereby allowed. The impugned order passed against the appellants in so far as

Appeal no.362 and 363 of 2018 is hereby set aside. Misc. Application No.299 of 2018 in Appeal no.363 of 2018 has become infructuous and is therefore disposed of

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

10.10.2019
Prepared and compared by
RHN