

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 03.01.2023

Date of Decision : 21.02.2023

Appeal No. 554 of 2021

Zenith Steel Pipes and Industries Limited
(earlier known as Zenith Birla India Limited)
Dalamal House, 1st Floor, 206, J.B. Marg,
Nariman Point,
Mumbai – 400 021.

...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. Somashekar Sundaresan, Advocate with Ms. Rasika Ghate,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Misbah Dada and Mr. Deepanshu Agarwal, Advocates i/b
ELP for the Respondent.

WITH
Appeal No. 555 of 2021

Yashovardhan Birla
Birla House,
21 Mt. Pleasant Road,
Malabar Hill,
Mumbai – 400 006.

...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. Deepak Dhane, Advocate with Mr. Aditya Thanvi,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Misbah Dada and Mr. Deepanshu Agarwal, Advocates i/b
ELP for the Respondent.

WITH
Appeal No. 657 of 2021

European American Investment Bank AG
Schottenring 18,
1010 Vienna,
Austria.

...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. Mihir Nerurkar, Advocate with Mr. Jenil Shah, Advocate
i/b Ganesh and Company And Mr. Shoryendu Ray, Advocate
i/b Wadhwa Law Offices for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Misbah Dada and Mr. Deepanshu Agarwal, Advocates i/b
ELP for the Respondent.

WITH
Appeal No. 373 of 2022

Mahender Singh Arora
C 2503 DB Woods, Gokuldham,
Goregaon (East),
Mumbai – 400 063.

...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

Ms. Yugandhara Khanwilkar, Advocate with Ms. Rasika Ghate,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Misbah Dada and Mr.
Deepanshu Agarwal, Advocates i/b ELP for the Respondent.

**WITH
Appeal No. 633 of 2022**

Yashovardhan Birla
Birla House,
21 Mt. Pleasant Road,
Malabar Hill,
Mumbai – 400 006.

...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. Deepak Dhane, Advocate with Mr. Aditya Thanvi,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Misbah Dada and Mr. Deepanshu Agarwal, Advocates i/b
ELP for the Respondent.

**WITH
Misc. Application No. 929 of 2022
And
Appeal No. 634 of 2022**

Zenith Steel Pipes and Industries Limited
(earlier known as Zenith Birla India Limited)
Dalamal House, 1st Floor, 206, J.B. Marg,
Nariman Point,
Mumbai – 400 021.

...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. Somashekar Sundaresan, Advocate with Ms. Rasika Ghate,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Misbah Dada and Mr. Deepanshu Agarwal, Advocates i/b
ELP for the Respondent.

AND

Appeal No. 635 of 2022

Mahender Singh Arora
C 2503 DB Woods, Gokuldham,
Goregaon (East),
Mumbai – 400 063.

...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

Ms. Yugandhara Khanwilkar, Advocate with Ms. Rasika Ghate,
Advocate i/b Triad Law Chambers for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Misbah Dada and
Mr. Deepanshu Agarwal, Advocates i/b ELP for the
Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Six appeals has been filed by Zenith Steel Pipes and
Industries Limited and its Directors against two orders dated

March 30, 2021 passed by the Whole Time Member ('WTM' for short) and order dated June 16, 2022 passed by the Adjudicating Officer ('AO' for short) in the matter relating to issuance of Global Depositories Receipts ('GDRs' for short). Another appeal has been filed by European American Investment Bank AG ('Euram Bank' for short) against the order of the WTM. Since the issue is common, all the appeals are being decided together. The WTM by the impugned order has restrained the Company Zenith Birla (India) Ltd. (hereinafter referred to as the 'Company'), Chairman and its Managing Director from accessing the securities market for a period of three years and one year respectively. The AO by the impugned order has imposed a sum of Rs.10 crore upon the Company and Rs.10 lakh each upon the Chairman and Managing Director. The WTM has warned Euram Bank to ensure that all future dealings in the Indian Securities Market is done strictly in accordance with law.

2. The facts leading to the filing of the present appeal is, that the matter arises in respect of the issuance of GDRs by the Company whereby a fraudulent scheme was devised by the Company and its Directors. In this regard, the Board of Directors of the Company passed a resolution dated

March 3, 2010 authorising European American Investment Bank AG (hereinafter referred to as 'EURAM Bank') located outside India to receive the subscription money in respect of the GDR issued by the Company. The resolution further resolved that Mr. P.V.R. Murthy, Director was authorised to sign, execute any application, agreement, documents as required by the EURAM Bank for the aforesaid purpose. The Board of Directors also resolved that the Bank was further authorised to use the funds so deposited in the Bank account of the Company as security in connection with loans, if any.

3. Based on the aforesaid resolution, a bank account of the Company was opened in EURAM Bank. Further, a loan agreement dated May 12, 2010 was entered into between EURAM Bank and Vintage FZE (hereinafter referred to as 'Vintage') for subscribing to 1.81 million GDRs of the Company. On the same date i.e. May 12, 2010 a pledge agreement was also executed between EURAM Bank and the appellant Company inter alia pledging the proceeds from the GDR issue as a collateral for the loan taken by Vintage.

4. Based on the aforesaid agreements, Vintage was the only entity which subscribed the entire 1.81 million GDRs of the Company by obtaining a loan from EURAM Bank. Pursuant to

the loan agreement dated May 12, 2010 the loan amount was secured by the pledge agreement dated May 12, 2010 executed by the Company.

5. On May 28, 2010, 11.81 Million GDRs for USD 22.99 million was allotted to Vintage. Vintage purportedly repaid USD 8.53 million of the loan amount in several tranches to EURAM Bank till December 14, 2012 and thereafter defaulted of the balance amount of USD 14.55 million. The Company vide letter dated September 5, 2012 directed Euram Bank to set off the pledged deposits against the outstanding loan.

6. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the issuance of the GDR and found that Vintage was the sole subscriber to the GDR and that the Company did not disclose this fact with clarity that only one entity had subscribed to the entire GDR and, therefore, misled the investors. Further, the loan agreement and the pledge agreements were not disclosed to the stock exchange or to the shareholders of the Company.

7. Accordingly, a show cause notice dated April 2, 2019 was issued to show cause as to why action should not be taken for the alleged violation of the provisions of Section 12A(a), (b), (c)

of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). The show cause notice alleged that the Company had issued the GDRs amounting to USD 22.99 million which was subscribed only by Vintage and that Vintage has paid the subscription amount by obtaining the loan from EURAM Bank. The Company had also executed a pledge agreement by which the GDR proceeds were pledged for the loan taken by Vintage. It was also alleged that the Director had executed the pledge agreement and that the pledge agreement was also an integral part of the loan agreement. The show cause notice further alleged that the Company reported to the stock exchange that the Company had successfully closed its GDR issue of USD 22.99 million. Such information was misleading and distorted as it did not contain the fact that the entire GDR issue was subscribed by one entity through a loan taken by that entity on the basis of pledging the proceeds by the Company and, thus, misled the investors by indicating that the GDRs were successfully subscribed. It was also alleged that the Company furnished wrong information to SEBI by providing false list of

GDR subscribers whereas only one entity had subscribed to the GDR issue. The show cause notice alleged that the announcement misled the Indian retail investors and induced investors to deal in the shares of the Company in the Indian capital market and, therefore, the scheme of issuance of GDR was fraudulent violating Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations.

8. All the grounds taken by the appellants were considered by the WTM and AO. The contention so raised were rejected by the respondent holding that the Company had misled the investors in believing that the GDR issue was successful whereas there was only one subscriber, namely, Vintage. The respondent held that the arrangement made through a pledge and loan agreement for the purpose of issuance of GDR was fraudulent. The acts of the Company resulted in a fraud being committed on the investors of the securities market and created a false impression about the Company which was in violation of Section 12A read with Regulations 3 and 4 of the PFTUP Regulations. The respondent further found that the Company and its Board of Directors having participated in the scheme through which issue of GDR was effected through a fraudulent arrangement were guilty of the fraud and, accordingly,

appropriate orders were passed by the WTM and AO respectively.

9. We have heard Shri Somasekhar Sundaresan, Shri Deepak Dhane, Mr. Mihir Nerurkar and Ms. Yugandhara Khanwilkar, the learned counsel for the appellant in respective appeals and Shri Shyam Mehta, the learned senior counsel assisted by Shri Abhiraj Arora, Ms. Misbah Dada and Shri Deepanshu Agarwal, the learned counsel for the respondent.

10. The proceeds of the GDR issue were received partly by the Company and that too belatedly and same amount was adjusted by Euram Bank against default committed by Vintage. However, there is no diversion of funds and no wrongful dealings in securities other than the fact that the portion of amount deducted by the Euram Bank for default committed by Vintage. The AO has himself given a finding that no disproportionate gain is attributed to the appellants nor any finding that any loss was caused to the shareholders or investors.

11. Considering the above, the only ground urged by the learned counsel for the appellants was that the directions imposed by the WTM and the penalty imposed by the AO was harsh and excessive.

12. In *Excel Corp Care Limited vs Competition Commission of India & Anr*, (2017) 8 SCC 47, the Supreme Court held:

“92. Even the doctrine of ‘proportionality’ would suggest that the court should lean in favour of ‘relevant turnover’. No doubt the objective contained in the Act, viz., to discourage and stop anti-competitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders. At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to Article 14 as well as Article 21 of the Constitution. The doctrine of proportionality is aimed at bringing out ‘proportional result or proportionality stricto sensu’. It is a result oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.”

13. Similar view was expressed by the Delhi High court in *Rajkumar Dyeing and Printing Works Pvt. Ltd. In Rajendra Yadav*, the Supreme Court held that the doctrine of equality applies to all those who are found guilty. The Supreme Court held:

“9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are

parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.”

14. Undoubtedly, the doctrine of proportionality is now well established in our jurisprudence and is a recognised facet of Article 14 of the Constitution of India. In ***Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Others (2011) 9 SCC 286***, the Supreme Court held:

*“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. However, the action of legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be a case of substantive unreasonableness in the statute itself for declaring the act ultra vires of Article 14 of the Constitution. (Vide: *Ajay Hasia etc. v. Khalid Mujib Sehravardi, Reliance Airport Developers (P) Ltd. v. Airports Authority of India, Bidhannagar (Salt Lake) Welfare Assn. v. Central Valuation Board, Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited, and State of T.N. v. K. Shyam Sunder.*)”*

15. In matters relating to punitive measures the emphasis has shifted from the wednesbury principle of unreasonable to one of proportionality. A disproportionate punitive measure which does not commensurate with the offence would be violative of

Article 14 of the Constitution of India. We are of the opinion that in the rapid growth of administrative law it has become the need and necessity to control possible abuse of discriminatory power by administrative authorities. In this regard, certain principles have been evolved by Courts, namely, that if an action is taken by an authority which is contrary to law or which is improper or where the action taken is unreasonable then the Court of law is duty bound to interfere with such action and one such mode of exercising power is to exercise the doctrine of proportionality. Where the punitive measure is harsh or disproportionate to the offence which shocks the conscience it is within the discretion of the Court to exercise the doctrine of proportionality and reduce the quantum of punishment to ensure that some rationality is brought to make unequals equal.

16. In this regard, the appellants have produced various orders passed by SEBI against various companies and its Directors wherein different penalties have been imposed for similar/identical offence. In the instant case, the AO has penalised the appellant Company of Rs.10.25 crore and the Managing Director of Rs. 20 lakh. In similar matters lesser penalty has been awarded. For facility, a comparative table is given hereunder:

<u>Penalty Orders</u>						
Sr. No.	Name of the GDR issuer company	Date of Issue	GDR size (million \$)	Subscriber	Combined Penalty	Date of the Order
1.	ABL Biotechnologies Ltd.	June 2008	6.68	Clifford Capital Partners	Rs.50,00,000/- (Rupees Fifty Lakhs)	23 rd April 2018
2.	Syncom Healthcare Ltd.	September 2010	20.74	Vintage	Rs.25,00,000/- (Rupees Twenty Five Lakhs)	30 th August 2019
3.	Visu International Ltd.	April 2006	9.66	Seazun	Rs.1,25,00,000/- (Rupees 1 Crore Twenty-Five Lakhs)	18 th March 2021
4.	GV Films Ltd.	April 2007	40	Whiteview	Rs.25,00,000/- (Rupees Twenty-Five Lakhs)	29 th January 2020
5.	Aksh Opti-Fibre Ltd.	Sept 2010	25	Vintage	Rs.10,15,00,000/- (Rupees Rupees Ten Crore Fifteen Lakhs)	28 th February 2020
6.	Rana Sugars	May, 2006	18.00		Rs.10,00,000 (Rupees Ten Lakhs)	29 th February 2018
7.	Sybyl Industries Ltd.	June 9, 2008	6.99	Vintage	Rs.10,30,00,000/- (Rupees Rupees Ten Crore Thirty Lakhs)	March 2019
8.	Winsome Yarns Ltd.	March 29, 2011	13.24	Vintage	Rs.11,00,00,000 (Rupees Eleven Crores)	28 th March 2021

17. A perusal of the aforesaid table indicates that G.V. Films Ltd. had raised 40 million USD and the Company was only awarded a penalty of Rs. 25,00,000/-. Another Company Syncom Healthcare Ltd., raised 20.74 million USD and was awarded a penalty of Rs.25 lakhs whereas in the case of the appellant Company who raised 6.99 million USD has been awarded Rs.10,30,00,000/-. In *Sybyl Industries Ltd. v. SEBI, appeal no.381 of 219 and other connected appeals decided on 14th July, 2022* penalties ranging from Rs.10 lakhs to Rs.10.30

crores were imposed which were reduced to Rs.25 lakhs on the Company and Rs.10 lakhs on the Managing Director. Thus, in our opinion, the penalty imposed is excessive and disproportionate to the violation and is also discriminatory.

18. We find that such excessive penalty imposed upon the Company does not make any sense. In the instant case, there are public shareholders and workers. The Company is a running concern. Penalising the Company with such heavy penalty is in fact penalising the shareholders which is not justifiable especially for a running company. Further, the money raised through GDRs has been received by the Company and has not been misappropriated. The same has been utilised for the purpose for which the GDR was issued which fact has not been disputed. Thus, it is not a case of defalcation of the funds.

19. While affirming the order of the AO for the violations committed by the Company we reduce the penalty against the Company to Rs. 25 lakh. The penalty against the Chairman and Managing Director is affirmed.

20. For the same reason, debarring the Chairman and Managing Director for 1 year is neither excessive nor arbitrary.

We accordingly confirm the directions issued by the WTM.

Further, in the circumstances of the case, the debarment of the Company for a period of 3 years is reduced to the penalty undergone.

21. Insofar as the appeal of Euram Bank is concerned, the WTM has issued a warning to the said appellant to ensure that all its future dealings in the Indian securities market is done strictly in accordance with law. This finding has been challenged by the said appellant contending that the dealings done by the appellant was done strictly in accordance with laws of Austria. Further, Dubai Financial Services Authority also undertook an investigation into the role and activities of the appellant. After investigation, the said Authority had closed the investigation concluding that the appellant had not committed any wrongdoings. It was, thus, contended that these aspects were not considered by the WTM while passing the impugned order.

22. In this regard we find that the appellant Euram Bank was registered as a Foreign Institutional Investor (FII) with SEBI in the year 2008 and that an entity known as India Focus Cardinal Fund (IFCF) was registered with SEBI as a sub account of the appellant. The role played by Euram Bank while granting a fraudulent structured loan to Vintage was dubious. The pledge

agreement executed by Euram Bank with the Company pledging the GDR shares prior to its actual issuance for the purpose of securing the loan given to Vintage was totally dubious.

23. The WTM also found that IFCF undertook the role of off-loading the converted shares of GDR in the Indian market which was done with the active role of the appellant bank and the fraudulent scheme of the sub account IFCF could not have been completed and the shares of Zenith could not have been sold in the Indian market but for the active participation of the appellant bank. On these findings the WTM held that there was sufficient reasons to hold the acts of the appellant bank amounted to transgression of Section 12A of the SEBI Act read with Regulation 3 and 4 of the PFUTP Regulations. In spite of coming to the aforesaid conclusion the WTM has only issued a warning on the strength of the observation that the appellant subsequently took corrective steps in removing Arun Panchariya as Director from its joint venture Euram Bank Asia Ltd. (EBAL).

24. Considering the findings given by the WTM we are of the opinion that the warning given by the WTM to the appellant bank does not suffer from any manifest error.

25. In view of the aforesaid, the violations found against the Company and the Directors are affirmed. Appeal no. 554 of 2021 and 634 of 2022 of the Company, Zenith Steel Pipes and Industries Limited are partly allowed. The debarment is reduced to the period undergone and penalty is reduced from Rs. 10 crore to Rs. 25 lakh. The Appeal nos. 555 of 2021 (Yashovardhan Birla), 657 of 2021 (European American Investment Bank AG), 373 of 2022 (Mahender Singh Arora), 633 of 2022 (Yashovardhan Birla) and 635 of 2022 (Mahender Singh Arora) are dismissed. In the circumstances of the case, parties shall bear their own costs.

26. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

21.02.2023
msb

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BHALBAR SHAMRAO BHALBAR
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