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CORPORATE LAWS
Case Law Update

Companies Act

1. In the Matter of Anbronica Technologies Private Limited. Adjudication Order dated 1st March 2023, ROC (Delhi)

Facts of the case

- Anbronica Technologies Private Limited (hereinafter referred to as "subject company") approached Tyke Platform (owned and operated by Tyke Technologies Private Limited) which is engaged in the business of running a technology-based community platform under the brand name "Tyke." This network is created through registration on Tyke platform and includes individuals from the business industry, corporate executives and professionals who are part of the start-up ecosystem.
- Further, the Tyke platform also provides various services, including but not limited to, the facilitation of setting up of escrow bank account for accepting the investment in the separate subscription bank account, identity verification of proposed investors (KYC Verification) using Aadhar authentication and PAN verification, and assistance in completing the compliance procedures of private placement as provided under Companies Act, 2013.
- As per published terms of use including the Privacy Policy, and Risks ("Terms of Use") to govern the use of the website of Tyke platform includes an internal mechanism to restrict the number of Investors that view the detailed profile to 200 by default thereby making it compliant with the applicable laws. However, it shall be the company's responsibility to comply with the provisions of applicable laws including the Companies Act, 2013 and the private placement rules thereunder.
- Further, it is also stated that Tyke is neither acting as an intermediary to offer nor inviting the public to subscribe to securities of any company and is merely collecting investment interests from its community of members. Also, the Tyke platform is not acting as an agent of the company to inform the public at large about any private placement offer.
- The subject company had issued its Compulsorily Convertible Debentures (hereinafter referred to as "CCDs") using the website of Tyke.

- Tyke platform organized an online pitching session (referred to as "AMA" or "Ask Me Anything") for the subject company, after which, the members of Tyke showed interest in investing in the company. Out of these interested members, the company identified 28 members who were willing to invest in the subject company and the board passed a resolution in the Board meeting held on 10th July 2021 to issue 1,25,000, 0.01% CCDs having a face value of ₹ 10 each at par for a total consideration of ₹ 12,50,000 subjects to the approval of the members. The members passed a special resolution as on 2nd August 2021 to approve private placement. MGT-14 to the said effect was filed with ROC and the private placement offer letter was circulated and allotment happened.
- ROC considered this private placement in violation of section 42(7) under Companies Act, 2013 and issued a show cause notice dated 27th December 2022 to the company asking therein the reasons for not imposing penalty on the subject company under section 42(10) under Companies Act, 2013.

Observation of ROC in Show Cause Notice

- The campaign for raising fund closed on 25th July, 2021, the subject company had already received a Board approval of identified persons on 10th July, 2021.
- The CCDs were oversubscribed, as was displayed on the website of Tyke.
- The details of the banking transactions enclosed by the subject company suggested that the money in the virtual escrow account of the subject company was received from the investors at different dates ranging from 15th July, 2021 to 28th July, 2021 in the virtual escrow account, whereas the approval of members in the EGM was received only on 2nd August, 2021.
- It was also not clear as to whether Tyke was collecting any commission or service fees.
- Whether engaging the services of Tyke amounted to violation of sub-section (7) of Section 42 of the Companies Act, 2013.

Reply on the part of subject company

The opportunity of being heard was also provided to representative/officer of Tyke. While appearing the director of the Tyke gave detailed submission on working of Tyke platform. The relevant submissions are as under:

- Tyke charges a fee (on-boarding fees from the subject company) for accessing the Tyke platform.
- Tykes allows the company to display the pitching information in the Tyke's website and organises AMA sessions which are accessible to all the community members which are approximately 1.5 lacs.
- Community members can communicate their intention to invest by parking the proposed investment amount in their own virtual escrow account. Tyke charges fee on the amount transferred in the escrow account by the community members.
- Tyke can access list of members anytime who have parked their money in their own virtual escrow account. The number of community members at this stage can exceed 200.
- In case the community members who have shown interest to invest exceed

200 or the investment commitment has exceeded the amount sought by the company, this is termed as, `over-subscription'. On the basis of this information, the company finalises the list of identified persons to whom private placement offer is made.

- The company thereafter passes a board resolution with such identified group of people to initiate the private placement process and also, calls for an EGM to take necessary approvals. A form PAS-4 is circulated by the company to such identified group of people using the Tyke platform via hosting it on the profile of the user and at times over email as well. Also, the Company enters into investment Agreements with each of the identified people, individually.
- Upon compliance with private placement offer requirements the proposed investment amount is remitted by the escrow account agent to the company's separate bank account.
- Thereafter, the company allots the securities through a Board Resolution and the same is filed via e-Form PAS -3 with the Registrar of Company and thereafter issues the security certificates to each investor. Tyke charges the company a Service fees which is calculated as a percentage of the amount raised from the investors.

Contentions of the subject company

The authorised representative of the company on behalf of subject company argued as follows:

- The subject company has only availed value added services in the form of facilitation of connecting like-minded people community with start-ups. Tyke also provides the verification of KYC and identification of KYC of people who have shown interest to invest in the subject company.
- Mere availing of the value added services from Tyke platform will not amount to issue of public advertisements and company has complied section 42(7) of the Companies Act, 2013 while issuing of CCDs.
- The subject company connected with persons who showed the interest in their business on Tyke. The company availed the services of Tyke and entered into the agreement with Tyke. CCDs were issued to the investors identified by Board.

Held

- Section 42 of the Companies Act, 2013 clearly provides that the private placement shall be made to a select group of persons who have been identified by the Board. The number of such persons cannot exceed 200 as prescribed in the rules.
- The Explanation I to section 42(3) of the Companies Act, 2013 makes it very clear that the process of "private placement" covers:
  - — the offer, or
  - — invitation to subscribe, or
  - — issue of securities
- The provision requires a company to adhere to the limit of 200 persons not just with respect to the number of persons who ultimately subscribe to the securities of the company, but also the said number, i.e. 200, cannot be exceeded at the time of making an offer or invitation to offer of the securities of the company.

- Thus section 42(7) of the Companies Act, 2013 provides that no company issuing securities under this section shall release any public advertisement or utilize any media, marketing or distribution channels or agents to inform the public at large about such issue.
- Even if it is assumed that the pitch related information is visible to the members of the Tyke platform, such number is around 1.5 lakhs. Also, while explaining the issue of over-subscription for fund campaign on its website, the representative of Tyke admitted that community members showing interest in the company can exceed 200. Therefore, the "Terms of Use" of Tyke which was quoted by the subject company that the platform restricts the number of investors to 200 is clearly not true.
- In this present case, the website of Tyke has been clearly used by a company as a media/marketing/distribution channel/ agent to inform the public at large about the issue of securities.
- Tyke has collected its fees/commission at various stages from the company. Moreover, Tyke based on its own submissions has also collected money from the investors who have used the platform for investing in different companies. Thus, the role of Tyke cannot be relegated to mere "generation of interest in the company". Instead, it is an active facilitator for allowing the companies to raise investments through its portal and it is providing end-to-end services, either by itself or through its agents/partners.
- In view of the above facts and circumstances, it has been found that the company and its promoters/directors are liable for penalty for violation of section 42(7) of the Companies Act, 2013.
- The nature of the present violation on the part of the subject company is serious. Whereas, under the of the Companies Act, 2013, the subject companies fulfil the requirements of a small company. Thus, the penalty on the subject company would be governed by Section 446B of the of the Companies Act, 2013.
- The penalty levied on the subject company is ₹ 2 lakhs and on officer in default ₹ 1 lakh each on 2 directors of the subject company.
- Further, it is noted that as the provisions of Section 42 of the Companies Act, 2013 does not allow adjudication officer to impose penalty on Tyke which has clearly facilitated the subject company in the act of commission of default of sub-section (7) of Section 42 of the Companies Act, 2013.

2. In the matter of *Surendra Kumar Singhi (Petitioner) vs. Registrar of Companies, West Bengal (Respondent)* Calcutta high court order dated 20th January 2023.

Facts of the case

- M/s Mani Square Limited (the "Company") was incorporated on 30th October, 1959 under the Companies Act, 1956 with paid up share capital of ₹ 66,28,000/.
- According to the provisions of Section 217(3) of the Companies Act, 1956, the Board of the company was bound to give fullest information and explanation in its report on every reservation, qualification or adverse remark contained in Auditor's report.

- Upon scrutiny of the Balance-sheet and other documents as on 31st March, 2014 it was found that the Board of Directors of Company did not furnish fullest information and explanation in their Director's report with respect to the remarks of Auditors in their report on Balance Sheet for the year ending on 31st March, 2014.
- This has resulted in violation of provisions of Section 217(3) of Companies Act, 1956. The said violation was pointed out to the directors vide show cause notice.
- Reply on the part of the Company was not satisfactory and hence issued instructions to launch prosecution for the aforesaid violation.
- Considering this as non-compliance of section 217(3) of the Companies act 1956, the ROC West Bengal (hereafter called as "Respondent"), filed a complaint against the Company and all its directors before Chief Metropolitan Magistrate of Calcutta
- Rest of the accused directors of the Company i.e., other than the Petitioner recorded a plea of guilty before the learned magistrate and were convicted and sentenced to pay a fine of ₹ 10,000/- only each, and were directed to undergo simple imprisonment for 15 days.
- The Petitioner was appointed as an independent director of the Company w.e.f. 2nd June, 2014 as the petitioner did not have any connection with the Company prior to 2nd June, 2014. The Petitioner being absolutely innocent and having no connection with the alleged circumstances of the instant case, chose not to take the course adopted by the rest of the accused persons and prayed for discharge by filing a petition before the Learned Metropolitan Magistrate.
- But the Magistrate rejected the petition and refused to discharge the Petitioner from the complaint.
- Aggrieved by the initiation and continuation of the impugned proceedings the Petitioner preferred a revision petition before the High Court, praying to quash the proceedings against him.

Petitioner's contentions

Learned Advocate for the Petitioner has submitted that:-

- The Petitioner was requested to join the Board of Directors of the company as an "independent director" on 2nd May, 2014.
- The Petitioner gave his consent to join as an "independent director" of the Company on 6th May, 2014 and the formal consent in the prescribed form, DIR-2 was given to act as an independent director on 17th May, 2014.
- The Petitioner joined as an independent director on the Board of the Company since 2nd June, 2014 and prescribed Form DIR-12 was duly filed with the Registrar of Companies on 8th June, 2014.
- The Petitioner resigned from the Board of the Company on 31st December, 2016 by submitting Form DIR-11 evidencing such resignation.
- The alleged violation mentioned in the impugned petition of complaint pertained to the financial year ending on 31st March, 2014 and the Petitioner was not director of the company as

on 31st March, 2014 and therefore, under no stretch of imagination, the prosecution could be allowed to be continued against the petitioner.

- Further learned advocated quoted general circular dated 2nd March 2020 issued by MCA, wherein it has been directed by appropriate authority of government that unnecessary criminal proceedings should not be initiated against the independent directors and non-executive directors.
- The Learned Magistrate failed to consider the aforesaid submissions in proper perspective and rejected the petition mechanically by simply stating that he has no authority to direct discharge of the petitioner.
- It is further submitted that it has been held by the Hon'ble Supreme Court of India by interpreting provisions of other statutes which are pari material to the penal provisions for which the Petitioner is being prosecuted, that liability is attracted against a person/director
- For any violation committed by a Company until such person is conclusively found to be a director on the date of offence.
- A director of a company doesn't ipso facto by holding position of director become responsible for the conduct of the business of the company or any commission or omission of the company; before or after the date on which the said director, was inducted into or had resigned from the company.
- All the persons including the company secretary and managing directors who are involved in day to day affairs of the company and are responsible for violations have pleaded guilty and were convicted and sentenced.
- The complaint has been mechanically filed against all directors picking up the list from the website of MCA on the date of filing of the complaint including the petitioner.
- The Petitioner was an independent director and that he had given his consent to only act as an independent director of the board.
- Section 161 of Companies Act, 2013 clearly states that any person appointed by the Board of Directors should always be appointed as an additional director. It is only the shareholders in the general meeting who can appoint a regular director irrespective of the director being an independent director/ alternate director/any other Director, the appointment can only be as an additional director.
- Hence, the interpretation of the Respondent that the Petitioner was additional and not Independent Director is wrong and misinterpreted.
- The said DIR 12 under the column designation it is stated "Additional Director" because this is the requirement of the Companies Act, 1956 that any director appointed by the Board has to be appointed as Additional Director, however, the next column below the said column designation i.e. category, states in the said form DIR 12 as "independent". The ROC had deliberately withheld from mentioning in its report in the second column category which establishes the fact that the Petitioner has been appointed as Independent Director only.

- The Petitioner was not present during the meeting in which the report of the Board was considered and are in dispute. The Petitioner had also not signed the said report, and was not the part of the Board which considered approval of the report, hence can't be held liable for any shortcomings of disclosure in the said report.

Respondent's contentions

Learned advocate for the Respondent, had argued that:

- Upon scrutiny of Balance Sheet and other related documents in the XBRL format as at 31.03.2014, it was found that Board of Directors did not furnish fullest information and explanation in the Directors' report with respect to the Auditor's remarks in their report on Balance Sheet. Therefore, leading to violation of Section 217 (2A) of the Companies Act, 1956
- As per records from the MCA portal, date of signing of board report for financial year 2013-2014 was 5th September 2014. This falls well within the period of directorship of the petitioner being from 2nd June, 2014 till 31st December, 2016.
- The attachment to the DIR 12 Form on behalf of Company where Petitioner joined as director, clearly states in its resolution dated 2nd June, 2014 that Petitioner was appointed as an Additional Director and not as Independent Director.
- As per Board's Report along with balance sheet for financial year 2013-2014, it has been mentioned that the Petitioner has been appointed as Additional Director with effect from 2nd June, 2014. Therefore, at time of scrutiny of Balance Sheet of the Company, the Petitioner's name was reflected as additional director of the Company as per records fetched from MCA portal website.
- For prosecution under Section 217(3) of Companies Act, 1956, all members of the Board at that point of time ought to have exercised due diligence when the balance sheet was approved.
- Whether the absence of the petitioner from Board's meeting would be falling within the exceptions provided in Section 217(5) of 1956 Act or whether his case is covered under exceptions as mentioned in General Circular 1 of 2020 is essentially a mixed question of fact and law which requires judicial decision by the Trial Court.

Held

On hearing the learned Advocates for both the parties and considering the materials on record including the documents relied upon, the court noted that,

- The invitation to the petitioner dated 02.05.2014 clearly showed that the Petitioner was invited to join the board of directors of the company as a Director and the Petitioner's reply dated 6th May, 2014 thereto stated that he had given his consent to act as an Independent Director on the board of the company.
- Form DIR-12 showed that the petitioner had been holding the designation of "Additional Director" and category "independent".
- Form no. DIR-11 is a notice of resignation of a director to the registrar and it is shown in the said form that

the Petitioner was a "director" of Mani Square Limited from 30th September, 2014 to 31st December, 2016.

- As seen from the MCA portal, the Petitioner was an "Additional Director" from 02.06.2014 to 30.09.2014. Thereafter, the designated partner details in the Ministry of Corporate Affairs showed the petitioner as a "Director" of Mani Square Limited
- In spite of being shown on the portal as "Additional Director /Director" the Petitioner did not lodge any complaint with the Ministry about the alleged wrong information. There is no case that the Petitioner had filed any objection to the said wrong information (as alleged) on the portal.
- Though appointed on a temporary basis, an additional director is vested with the same powers of a director. Moreover, they are subject to all obligations and limitations of a director.
- The additional director must utilize his/her powers in the best interest of the Company and the shareholders.
- The Petitioner as seen from the documents was an Additional Director on the date the board report was filed. To counter the same evidence is required to be adduced during the trial so also to decide whether the Petitioner at the relevant time of filing the report was a Director, Additional Director or an Independent Director.
- The responsibility of an Additional Director is the same as that of a director (but different from an independent director) they remain responsible, as the statute provides for the same.
- Thus, to quash the proceedings by exercising the courts inherent powers would amount to an abuse of the process of court and would also amount to serious miscarriage of justice.
- The revision petition was thus dismissed.

SEBI

Order of the Adjudicating Officer of SEBI read with Order of the Hon'ble Securities Appellate Tribunal.

Name of the Case: Adjudication order and order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Quasar India Limited.

Facts of the case

1. Quasar India Limited (hereinafter, referred to as "**Noticee-1**"/"**QIL**") made a preferential allotment on January 31, 2014 by allotting 51,05,000 equity shares of ₹ 10/- each at par to promoter and non-promoter entities aggregating to ₹ 5.10 Cr. Bombay Stock exchange (hereinafter, referred to as "**BSE**") had carried out preliminary examination of the utilisation of funds raised by QIL through preferential allotment.

2. BSE on investigation found that the objects of preferential allotments, as presented by the Noticee-1 to the shareholders *vide* Notice of Extra Ordinary General Meeting ("EGM") of the members of QIL dated December 16, 2013 for the EGM to be held on January 15, 2014, was to augment the working capital requirements of QIL and to fund the proposed business expansion plans of the company. BSE further observed that the aforesaid resolution for the preferential allotment was passed by the members, and there has been no

mention about any modification made to the 'Objects of the preferential issue' as set out in the Notice of the EGM dated December 16, 2013. On further examination carried out by BSE, of the utilization of funds raised by QIL, based on observation of BSE's Auditor Committee and Disciplinary Action Committee, it was observed that QIL had utilized the issue proceeds for granting loan and advances to various entities, which did not adhere to the objects of the issue.

3. In this regard, details were further sought from QIL with respect to utilisation of proceeds of preferential issue. Under preliminary examination BSE sought details regarding utilisation of funds by the Noticee-1. QIL submitted same vide letter dated January 31, 2016. On investigation, BSE found that Noticee-1 had given ₹ 4,67,00,000 as loans to certain entities and ₹ 45,10,400 as payment to creditors. BSE further sought details from Noticee -1 with respect to loans given and payment made to creditors. On replies by QIL, BSE observed that in certain cases the loans were given without interest. BSE, in this regard, further sought clarification from QIL with respect to giving of interest free loans. BSE then stated that QIL changed its earlier stand and intimated that funds were given as business advances for different purposes such as buying of premises, purchases of fabric, setting of power projects, acquisition of sick company, buying office premises etc., and therefore no interest was charged.

4. Further the matter was referred to SEBI and SEBI, as part of its investigation and examination, vide its letter dated November 28, 2019 advised QIL to provide the details of utilization of funds of the allotment dated January 31, 2014 along with reasons/purpose/ transaction/agreement in details along with all relevant documentary evidence. Vide letter dated December 31, 2019, QIL provided the details of utilization of funds raised through the preferential issue. QIL had submitted a copy of its bank account statement highlighting the aforesaid payments/transactions. It was observed from the details of utilization of funds submitted by QIL that the same did not match with the utilization details as submitted by QIL to BSE vide letter dated January 31, 2016. On seeking clarification, *vide* letter dated December 16, 2020, QIL had submitted that there might have been a clerical error in the submission of data to BSE. Also, it was observed from the bank account statement of QIL, where the preferential issue proceeds were credited, that the fund flow did not match with the deployment of proceeds as provided by QIL. So QIL was asked to provide comments on how the details of funds utilization submitted by them did not match with actual fund flow as observed from its bank statement of QIL submitted that the fund utilization provided was true and correct to the best of their knowledge and belief and depicts the final position of the funds' utilization.

5. SEBI thus stated that investigation, *prima facie*, revealed that Noticee-1 had mis-utilized the issue proceeds by not deploying funds for the stated objects of the preferential issue. It was also observed that the said fraudulent act of deviating and mis-utilising the preferential issue proceeds was done by QIL with the knowledge of its directors

i.e. Ankit Agarwal, Ganesh Prasad Gupta and Yogesh Bansal (hereinafter referred to as **Noticees-2 to 4** respectively).

Charge

Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). Non-disclosure under clause 43 of the erstwhile Listing Agreement read with section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**, **1956**") in respect of variation or deviation in the utilization of preferential allotment proceeds and therefore it was alleged that QIL violated the said provisions.

Arguments by QIL

1. Company Utilised the proceeds of preferential allotment for the objects as specified in the explanatory statement to EGM

A. QIL stated that amounts that were raised were advanced to several parties for meeting the business requirements / working capital needs of the Company. They were not diverted or utilised for any other purpose as contended by the Audit Committee of the BSE. QIL further submitted that they have advanced ₹ 278 lacs as loan and has received interest on them as well. It was further stated that the amount was advanced as it was lying idle and they intended to earn some income on the same. QIL further stated that the contents of the main objects permit the business of investing in shares. Further, clause 6 of the Main Objects permits QIL to engage in any lawful activity as may be permitted by the law of the land for the time being in force. This proves that QIL had not done any activity which is not permitted by its Memorandum of Association. QIL further submitted a certificate from Ms V N Purohit & Co., Chartered Accountants confirming the utilisation of the proceeds in accordance with the objects stated. QIL further affirmed that pending utilisation of the funds, they had provided short-term advances to certain entities, which have been returned to QIL. QIL further stated that the details provided by QIL regarding the utilisation of the funds is true and correct and depicts the final position regarding the utilisation of funds.

B. **Ratification of utilisation of funds done:** QIL further stated that BSE directed them to ratify the utilisation of funds by way of a shareholder resolution vide notice no: 20180613-29 dated 13.06. 2018 in the year 2018. They confirmed that the ratification was done in January 2019 as that was the earliest Shareholders Meeting after the direction of the BSE. QIL also submitted that they believed that there was no mis-utilisation of funds and they deny that they have mis-utilized the funds or committed a fraud and violated the provisions of Section 12 of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(I), 4(2)(f), and 4(2)(r) of PFUTP Regulations, 2003. QIL further stated that Noticees 2 to 4 have carried out all duties assigned to them as per the provisions of applicable laws.

C. QIL further specifically stated as follows with respect to certain contracts:

i. Neeru Bansal: QIL confirmed that an amount of ₹ 50,00,000 was paid as advance to Ms Neeru Bansal

on September 10, 2013 towards the office space that was proposed to be purchased from her. Since, she could not deliver as per the commitment made, the amount given to her was returned by her to QIL.

ii. **Taxus Infrastructure:** With regard to the allegation in Paragraph 9(b) regarding the payment of ₹ 96,00,000 made to Taxus Infrastructure ('Taxus') on September 12, 2013, September 27, 2013 and November 07, 2013, QIL denied that the amount advanced was not in accordance with the objects of the issue. One of the objects was to finance fund the expansion propositions of QIL. QIL had accordingly identified investment in the power project of Taxus Infrastructure as it appeared to be lucrative and accordingly advanced ₹ 90,00,000 towards the subscription to the equity capital of Taxus. Remaining ₹ 6,00,000 was a penalty imposed on Taxus opportunity loss caused due to failure of the investment. However, the same was returned to Taxus after they made a request to QIL to refund the penalty amount.

iii. **Madhu Vashist:** Amount of ₹ l,00,000 was paid to Ms Madhu Vashist, as advance towards purchase of fabric.

iv. **Sandeep Gupta:** It is submitted that amount was provided as an advance to Mr Sandeep Gupta so that he could identify certain takeover targets, particularly companies which were sick. Mr Sandeep Gupta however could not complete the transaction and hence the amount advanced to him were refunded by him to QIL on March 10, 2014, March 11, 2014 and March 26, 2014.

v. **Munish Bajaj & Sons HUF:** With regard to the payment made to Munish Bajaj & Sons HUF, QIL denied all the allegations made in the Notice. The amount of ₹ 17,00,000 was advanced to purchase property. The deal was however cancelled as Munish Bajaj & Sons HUF was unable to handover the possession of the property.

vi. **Josh Impex Pvt Ltd:** With regard to the amount of ₹ 30,00,000 paid to Josh Impex Private Limited, QIL denied all the allegations made in the Notice, The amount was advanced towards purchase of Blended Woven Fabric, which is part of the business in which we operate. This was in accordance with the objects of the issue as well. However, QIL was forced to cancel the order due to change in the import Policy of the Government of India and continuing with the order would not have helped QIL's business.

vii. **Signature Builders Private Ltd:** With regard to the payment to Signature Builders Private Limited, QIL confirmed that same was advanced towards the purchase of 2 Bedroom Guest House. QIL had provided the necessary correspondence in this regard. It can be seen from the notice that it was Signature Builders which had changed its submission and not

QIL. QIL had advanced ₹ 90,00,000 towards the same and the amount was returned by Signature Builders Private Limited as they did not keep up their commitments.

viii. **Rekha Malhotra:** QIL denied the allegations made in the Notice with regard to the payments made to Ms Rekha Malhotra. QIL said it would like to reiterate the amount of ₹ 6,00,000 was made towards purchase of fabric and the order was cancelled due to the non-matching of the final product with the sample and the unethical behaviour of Ms Rekha Malhotra.

ix. **Chanson Shipping and Packaging Company Private Ltd:** QIL denied the allegations regarding payment made to Chanson Shipping and Packing Company Private Limited. The same was for the purchase of warehouse, which they did not deliver on time and hence had to be cancelled. The amount of ₹ 50,00,000 advance was towards purchase of warehouse and not interest free loan as alleged in the Notice. QIL denied that they didn't have the intent of recovering the amounts advanced to the parties. The agreements may not have been entered on a stamp paper, but to receive the amounts advanced as loan or given as advance towards the purchase of fabric, office property, warehouse etc., was with good intent. If the intent to recover the amount was not there, QIL would not have received all the amounts given to the parties mentioned above, except for the amount of ₹ 12,00,000 advanced to Pun Films Private Limited.

Arguments by SEBI

1. **Company Utilised the proceeds of preferential allotment for the objects as specified in the explanatory statement to EGM:** SEBI initially countered the arguments pertaining to each contract as follows:

   a. **Neeru Bansal:** The contention of Quasar India that ₹ 50,00,000 was paid to Neeru Bansal for purchase of office space does not seem tenable. No details/documents regarding the purchase property was available with QIL. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by QIL that the amount was utilized for purchase of office space was an afterthought. Since the amount was returned back by Neeru Bansal without paying any interest, SEBI concluded that the amount paid to Neeru Bansal was actually an interest-free loan.

   b. **Taxus Infra and Power Projects Ltd:** SEBI stated that the contention of Quasar India that ₹ 90,00,000 was paid to Taxus Infrastructure and Power Projects Pvt. Ltd. in accordance with objects of the issue is not tenable. No details/ documents regarding how the payment made to Taxus in in accordance with the objects of the preferential issue was available with QIL. As per information memorandum submitted by QIL to BSE dated June 9, 2014, the business activity of QIL was fabric/ textile trading. It is not clear as to how participation in power projects would benefit QIL engaged in fabrics. Further, submitting different

documents to BSE and SEBI clearly shows that the reason given by QIL that the amount was utilized in accordance with the objects of the issue was an afterthought. Since the amount was returned back by Taxus Infrastructure and Power Projects Pvt. Ltd. without paying any interest, SEBI concluded that the amount paid to Taxus Infrastructure and Power Projects Pvt. Ltd. was actually an interest-free loan.

c. **Madhu Vashist:** The contention of Quasar India that ₹ 10,00,000 was paid to Madhu Vashisht for purchase of fabric is not tenable. No valid legal documents regarding the purchase of fabric is available with QIL or the counterparty. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by QIL that the amount was utilized for purchase of fabric was an afterthought. In view of the above, SEBI concluded that the amount paid to Madhu Vashisht was actually an interest-free loan.

d. **Sandeep Gupta:** The contention of Quasar India that ₹ 10,00,000 was paid to Sandeep Gupta for buyout of a sick company with similar business objectives is not convincing and is not tenable. No valid legal documents/agreements regarding the deal is available with QIL. The counterparty entity had denied the existence of any such agreement. Further, it is observed that submitting different documents to BSE and SEBI clearly shows that the reason given by the Company that the amount was utilized for identifying a sick company with similar business objectives was nothing but an afterthought. In view of the above, SEBI concluded that the amount paid to Sandeep Gupta was actually an interest-free loan.

e. **Munish Bajaj & Sons HUF:** The contention of Quasar India that ₹ 17,00,000 was paid to Munish Bajaj & Sons HUF in accordance with objects of the issue is not tenable. No details/documents regarding the property was available with the Company. Since the amount was returned back by Munish Bajaj & Sons HUF without paying any interest, SEBI concluded that the amount paid to Munish Bajaj & Sons HUF was an interest-free loan.

f. **Josh Impex Pvt Ltd:** It is difficult to accept the contention of Quasar India that ₹ 30,00,000 was paid to Josh Impex Pvt. Ltd. for purchase of fabric. No valid legal documents regarding the purchase of fabric is available with QIL. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by QIL that the amount was utilized for purchase of fabric was an afterthought. In view of the above, SEBI concluded that the amount paid Josh Impex Pvt. Ltd. was actually an interest-free loan.

g. **Signature Builders Private Ltd:** It is difficult to accept the contention of Quasar India that ₹ 90,00,000 was paid to Signature Builders Pvt. Ltd. to take 2BHK flat as guest house of QIL. No details/documents

regarding the purchase property is available with the Company. The counterparty entity-Signature Builders Pvt. Ltd. had submitted that the money was transferred for share application money. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by QIL that the amount was utilized for purchasing 2BHK flat was an afterthought. Since the amount was returned back by Signature Builders Pvt. Ltd. without paying any interest, SEBI concluded that the amount paid to Signature Builders Pvt. Ltd. was actually an interest-free loan.

h.. **Rekha Malhotra:** The contention of QIL that ₹ 6,00,000 was paid to Rekha Malhotra for purchase of fabric is not tenable. No valid legal documents regarding the purchase of fabric is available with QIL. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by the Company that the amount was utilized for purchase of fabric was an afterthought. In view of the above, SEBI concluded that the amount paid Rekha Malhotra was actually an interest-free loan.

i. **Chanson Shipping and Packaging Company Private Ltd:** The contention of QIL that ₹ 50,00,000 was paid to Chanson Shipping and Packing Co. Pvt. Ltd. for office cum warehouse is not tenable. No details/documents regarding the purchase property is available with QIL. The reply of counterparty entity is also silent on whether any agreement for office cum warehouse was made. Further, submitting different documents to BSE and SEBI clearly shows that the reason given by QILthat the amount was utilized for taking office cum warehouse was an afterthought. Since the amount was returned back by Chanson Shipping and Packing Co. Pvt. Ltd. without paying any interest, SEBI concluded that the amount paid to Chanson Shipping and Packing Co. Pvt. Ltd. was actually an interest-free loan.

SEBI concluded that QIL has used the funds of preferential allotment to advance loans without interest in most cases and with some interest in few cases. No adverse inference was drawn with respect to utilisation of funds for purchase of fabric as it was main object as per MOA. SEBI further noted that few of the landings have been carried out without any agreements or MoU. With respect to some of the other lendings that were done through MoU/agreements/other documents, it was observed that the said agreements were not executed on stamp paper, not notarized not registered, interest payable not a part of terms in many documents, thus severely hampering the legal validity and scope of enforcing the agreement. SEBI thus summarised that Loans amounting to ₹ 4.67 crores were given from the preferential allotment money. Further, ₹ 1.81 crores were given to different counterparties which were subsequently returned and again utilized. ₹ 0.17 crores were also paid to stock broker for trading in the stock market. As such, Noticee-1 mis-utilized the issue proceeds by not deploying funds for the stated objects of the preferential issue.

Ratification of utilisation of funds done

SEBI stated that ratification was done after six years that too on receipt of notice from BSE. SEBI stated that past fraudulent acts and deeds

of QILcannot be legitimized by subsequent ratification of the same by shareholders of QIL.

Role of directors in the misutilization of preferential issue proceeds

Noticee No.4 was an independent, non-executive director of QIL, he was actively involved in the activities of QIL. Also, Yogesh Bansal and Ankit Agarwal (other directors) were authorized, jointly and severally to sign and file the necessary form and papers with the Registrar of Companies and to take other steps as may be required. Noticee 2 to 4 all attended 19 Board meetings conducted during the investigation period and the only Audit Committee meeting during the year 2013-14 as per annual report. Noticee-4 played a significant role in QIL as he was the chairman of the Audit Committee and Nomination and Remuneration Committee during the period 2013-14. SEBI further stated that Noticee 1 did not utilize the funds as stated in the objects of the issue and utilized the same for making loans and advance and thus there was a variation in the object of utilization of fund, which the Noticee-1 should have disclosed under clause 43 of listing agreement. However, the Noticee-1 failed to do so. Hence, it is established that Noticee-1 failed to utilize the fund as stated in the object and failed to disclose the same under clause 43 of listing agreement and therefore has violated the provisions of clause 43 of the erstwhile Listing Agreement (which is now regulation 32 of the LODR Regulations) read with section 21 of SCRA. **All the above contentions of SEBI were affirmed by Securities Appellate Tribunal ('SAT') in its order dt: February 28, 2023.**

Name of Noticee	***Violation***	***Penal provision***	***Amount***	***SAT***
QIL	Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (r) of PFUTP Regulations	Section 15HA of the SEBI Act	500,000	upheld
	Clause 43 of the erstwhile Listing Agreement (which is now regulation 32 of the LODR Regulations) read with section 21 of SCRA.	Section 23A(a) of the SCRA Section 23E of the SCRA	200,000	Upheld
Ankit Agarwal	Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (r) of PFUTP Regulations	Section 15HA of the SEBI Act	500,000	Cancelled on technical grounds
Ganesh Prasad Gupta	Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (r) of PFUTP Regulations	Section 15HA of the SEBI Act	500,000	Upheld
Yogesh Bansal	Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (r) of PFUTP Regulations	Section 15HA of SEBI Act, 1992	200,000	Upheld

IBC

In the matter of *Chandra Prakash Jain IRP (Applicant) For Mayfair Leisures Ltd. vs Director of Enforcement Department of Revenue (Respondent)* at National Company Law Tribunal (NCLT) Ahmedabad dated 6 March 2023.

Facts of the case

- M/s. Mayfair Leisure Limited is the Corporate Debtor (CD) and was admitted in Corporate Insolvency Resolution Process (CIRP) vide order dated 2 June 2020 at National Company Law Tribunal (NCLT) filed by the Financial Creditor (FC) i.e., Bank of India under section 7 of the Insolvency and Bankruptcy Code (IBC).
- NCLT appointed Chandra Prakash Jain as the Interim Resolution Professional (IRP) which is applicant in this case.
- It was noted by the applicant that the property was already attached by the Enforcement Directorate vide its provisional attachment order dated 24 April 2018. The said order was confirmed by the Hon'ble PMLA Appellate Tribunal vide its order dated 3 December 2018. The Prevention of Money Laundering Act 2002 (PMLA) Appellate Tribunal vide order dated 12 May 2020 had directed that the status of the property of the CD had to be maintained as it was on 7 April 2018 during investigation of the money laundering under PMLA, which was initiated based on Central Bureau of Investigation (CBI).
- Therefore, the application was filed by IRP u/s 60(5) and 14 of the IBC read with Rule 11 of NCLT Rules seeking release of attachment of property by the Enforcement Directorate, Ahmedabad.

Arguments of the Applicant

- It was argued by the applicant that they were informed by Suspended Management that the property of the CD had been attached by CBI on 5 April 2018 and the same was confirmed by the Hon'ble Gujarat High Court in 2019. It was further informed that the property was also attached by the Enforcement Directorate (ED) vide its provisional attachment order dated 24 April 2018.
- The Hon'ble PMLA Appellate Tribunal vide order dated 12 May 2020 had directed that the status of the property of the CD had to be maintained as it was on 7 April 2018 during investigation of the money laundering under PMLA. It was further stated that pursuant to this order, they were not able to take the possession of the property, nor they were able dispose it off.
- Further, the applicant submitted that vide letter dated 17 June 2020 they had intimated ED about initiation of CIRP of the CD, yet ED had not even filed its claim.
- In response to the letter, ED confirmed vide letter dated 26 June 2020 that the immovable assets of the CD were attached by their office. The applicant in response issued another letter dated 21 July 2020 and requested the ED to release the attached property to take charge of the CD.

Arguments of the Respondent

- It was submitted that the office of the Respondent traced immovable properties valued at ₹ 1122.72 crores and provisionally attached the same vide Provisional Attachment Order. Subsequently, a complaint was made

before the Adjudicating Authority, PMLA, New Delhi for confirmation of the attachment. The Adjudicating Authority, PMLA, New Delhi confirmed the provisional attachment of the properties valued at ₹ 1122.72 crores vide order dated 1 October 2018.

- It was also mentioned that Prosecution Complaint (PC) in the designated Special Court under PMLA has also been filed.
- Further, the money laundering case was recorded by ED on 5 April 2018 and the provisional attachment order of the immovable assets was issued on 24 April 2018, which was prior to the admission of the instant application before NCLT.
- Further, the moratorium vide directions issued by NCLT are in respect of proceedings of civil nature as well as disposal of the properties of the CD, whereas the action taken by the Directorate under PMLA, is a criminal matter as the said properties are derived from criminal activities.
- Moreover, a complaint has already been filed before Hon'ble Special Court and the immovable properties attached by the ED was required to be available before Hon'ble Special Court under PMLA for the purpose of confiscation of the same to the Central Government as well as for imposition of penal action on the company and its directors/ responsible officers under the provisions of PMLA.
- It was also submitted that the objectives of PMLA and IBC are different. The concerns of the applicant regarding availability of the properties were already covered under the provisions of PMLA. Once it is established that the money involved in the case is laundered, the said properties which are provisionally attached will stand confiscated and will be dealt as per section 8(8) of PMLA. The claimants with a legitimate interest in the property would be considered during the proceedings before the Special Court under PMLA.
- Hence, it was argued that the present application was not maintainable.

Held

- The NCLT observed that in the case of High Court of Madras in the matter of Deputy Director, office of the Joint Directorate of Enforcement vs. Asset Reconstruction Company of India Ltd. and others it was stated that NCLT has no jurisdiction to go into the matters governed under the PMLA and, therefore, section 14 of IBC having consequent upon an order passed by NCLT declaring moratorium, would not apply to the PMLA which is a distinct and special statute having its own objective and as such section 14 of IBC would not bar a proceeding under the PMLA.
- Accordingly, it was held that a proper recourse to be resorted by the CD to approach the 'Competent Forum' under the PMLA to its logical end or any other 'Jurisdictional Forum' (other than the purview of IBC) in the manner known to law and in accordance with Law. In view thereof, the application was rejected.

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