

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of SEBI Order dated September 05, 2017 and Hon'ble Securities Appellate Tribunal order dated September 26, 2019 in the matter of Kassa Finvest Private Limited.

In respect of:

| Noticee | PAN |
|-------------------------|------------|
| Mr. Manoj Kumar Agarwal | AAKPA9123E |

Background

1. SEBI passed a final order dated September 05, 2017 (hereinafter referred to as "SEBI order") against the Noticee, Kassa Finvest Private Limited, its directors, promoters and certain promoter group entities, certain group entities and certain employees holding them liable for having violated the provisions of Section 12 A(b) &(c) of the SEBI Act, 1992 and Regulation 3(a),(c) and (d) and Regulation 4(1) of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations"). The order was passed in the context of their role in the fraudulent and manipulative activities of Kassa Finvest such as siphoning off clients' funds and securities, misutilization of clients' funds etc.
2. The Noticee preferred an appeal (Appeal No. 346 of 2017) against the SEBI order before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). SAT vide common order dated September 26, 2019 (hereinafter referred to as "SAT Order") upheld the findings in the SEBI order on merits; however, as the regards the direction of debarment passed against the Noticee, SAT remitted the matter back to SEBI for a fresh consideration of the period for which the Noticee was restrained from accessing the securities market. SAT also directed that SEBI shall consider the request of the Noticee for liquidation of his mutual fund units. SEBI was also directed to pass

a fresh order in respect of the Noticee within a period of three months after granting him an opportunity of hearing.

3. An opportunity of personal hearing was granted to Noticee on November 11, 2019, where he was represented by Mr. Rajesh Khandewal, Advocate. Noticee also sent in his written submissions dated November 19, 2019.

Reply of the Noticee

4. The summary of written and oral submissions/replies made by the Noticee is as follows:

- (a) The Noticee's job was mainly to finalise accounts, liaise with auditors, and carry out other general functions like Account opening & KYC, branch accounting, back office, general accounting etc. which in turn was also under each activity head. All these activity heads were reporting to MD and also administratively to him.
- (b) The Noticee agreed to act as Compliance Officer only because he was told that even though all work is to be done by respective activity heads, some senior person had to be named as Compliance Officer.
- (c) There was a separate department for client acquisition and trading under the supervision of President Mr Anil Dhawan. After opening trading account with Kasa Finvest, all matters like where and how to trade, advice about trading strategy, funds requirement, leverage to be given to client i.e. all client relationship including trading etc. was under the joint domain of President and Managing Director.
- (d) All funds from clients, though received in Accounts Department, were reported to President and MD, and thereafter all activities like where to transfer funds, pay back etc. were made with the approval/ authority of both of them. Noticee was not even the signatory in the bank accounts (except a joint signatory for amount upto Rs 15,000/- and that too after prior approval from MD). MD and his son Mr Siddhartha Shankar, were the signatories in all bank accounts. All payments were approved and cheques were signed by MD

- (e) Loans in the form of funds & securities were mobilised by marketing teams under President. Their terms were finalised by President and approved by MD. Trading accounts of respective lenders were opened to facilitate market trading as many of them wanted returns in the form of trading profit and not interest.
- (f) The Noticee, being merely an employee, could not go against the decisions of the MD. Noticee further contended that he was not even aware of any ill designs or motives of the MD. How the funds are channelized and how the financing is derived was never known to the Noticee.
- (g) Over and above, the statutory auditors were always in control and had been certifying and auditing the books of KFPL. Therefore, there was no occasion for the Noticee to doubt any ill designs and much less the fund utilizations by the MD.
- (h) The Noticee resigned from Kassa Finvest in November 2014 as the company was not paying salaries for many months.
- (i) The Noticee placed reliance on the SAT order granting relief only to him – and not to any of the other appellants in the matter - by directing SEBI to reconsider period of debarment imposed on him. Noticee also contended that SAT had found merit in his submission that the uniform period of debarment imposed on all the appellants was disproportionate considering the fact that Noticee was a mere employee, there was no finding that he had made any illegal gains and also because the violations of the other appellants in the matter were much graver and they have been saddled with financial liabilities also.
- (j) The Noticee also requested permission to liquidate holdings in his demat account (during the period he was restrained from accessing the capital markets) at an appropriate time to allow him to take advantage of the price movements in the stocks and mutual funds held in his account.

Scope of the limited remand

5. The SAT Order has upheld SEBI's order on merits concurring with SEBI on its findings with respect to the involvement of each of the noticees in the fraud perpetrated by

them attracting the provisions of the SEBI Act, PFUTP Regulations and the matter is being taken up for consideration on a direction of limited remand. The relevant part of the SAT Order reads as:

“44.

ii) The WTM shall reconsider the period of restraint imposed on Manoj Kumar Agrawal, (appellant in Appeal No. 346 of 2017).

iii) The WTM shall consider the request of Manoj Kumar Agrawal for liquidation of his mutual funds units.”

6. Thus, in accordance with the SAT’s directions and the request made by the Noticee during hearing and in his written submissions, this order would delve into the merits of the case only to the limited extent of, -

- a. reviewing the period of debarment commensurate with the culpability of the Noticee, and
- b. considering the Noticee’s request for permission to liquidate holdings in his demat account (both stocks and mutual funds) during the period of his debarment, as and when he desires, depending on the price movements.

7. Staying within the scope of the limited remand, I now proceed to consider afresh the period of debarment that would be proportionate to the level of involvement of the Noticee in the fraud and also the request of the Noticee for permission to liquidate all holdings in his demat account.

Specific Reasons for Remand:

8. Para 40 of the SAT order inter alia contains the reasons as to why SAT has remanded the SEBI order in respect of the Noticee back to WTM, SEBI. The main ground for remanding the matter was *“However, since he was not found to have made any illegal gain, the impugned order does hold him liable for refund of the funds mobilised from various clients/ investors. Therefore, we find some merit in the submission that a uniform period of 10 years of debarment from the securities market imposed on the appellant appears disproportionate, given the fact that he was only an employee,*

though a senior one, and was working under the overall direction of the Managing Director who is considered the key person in the entire episode. ”

9. In view of the above, the only question that arises for consideration is whether the Noticee, being only an employee who did not make any illegal gains, ought to be treated on the same footing as the directors and promoters of Kassa Finvest, given the facts and circumstances of the present case.
10. In order to determine the period of restraint required to be imposed, I proceed to analyse the functional role of Noticee, the specific nature of his duties as prescribed under the SEBI Regulations and the extent of his negligence/connivance which facilitated perpetration of fraud by the promoters/directors.
11. The SEBI order, which has been upheld by SAT on merit, finds that Ashok Kumar, Umashankar Shrivastav and Anjana Kumar, as directors/promoters of Kassa Finvest were the key persons behind the fraud and are liable for the acts and omissions committed by Kassa Finvest. The SEBI order also holds that the Noticee, who was the Chief Financial Officer and the Compliance Officer was aware of the fixed/assured return scheme but failed to perform the duties as envisaged under SEBI Regulations and hence liable for the aforesaid acts and omissions committed by Kassa Finvest. In view of this, the Noticee was held to have violated Section 12A(b) &(c) of the SEBI Act and Regulation 3(a),(c) and (d) and Regulation 4(1) & 4(2)(m) of the PFUTP Regulations.
12. I note from the statement given by Noticee before the investigating authority (on March 18, 2015 and March 19, 2015) that he was fully aware of the assured return scheme of Kassa Finvest and also the transfer of funds made by Kassa Finvest to its group persons/entities. The Noticee also stated that the funds were siphoned off for the purpose of interest payments to fixed return clients, repurchase of sold shares, expansion of business, etc.. I also note that the SAT Order also records that Noticee's involvement in *“mobilising funds from various clients is quite clear from the impugned order and other documents including copies of agreements signed with clients where*

the appellant is signatory for Kassa as Senior Vice President, Finance produced before us.”

13. It is also noted that SAT has not agreed with the Noticee’s contention that he was not discharging the role of the CFO. I, therefore, note that the Noticee being CFO would have discharged functional roles involving direct oversight of the activities like transfer of funds, cash position, bank balances etc. and it would therefore be difficult to accept the argument of the Noticee that he was not aware of the fraud that was being perpetrated by Kassa Finvest.
14. Further, as the Compliance Officer, there was a regulatory responsibility cast on the Noticee for ensuring compliance with the regulatory provisions by Kassa Finvest.
15. I, however, find merit in the argument of the Noticee that he had not made any illegal gains and he was only an instrument in the hands of the KMPs who were perpetrating the fraud. It is noted that SAT also found merit in the argument advanced by the Noticee that uniform period of debarment imposed on both the employees and the promoters/directors who were the key people behind perpetrating the fraud seems disproportionate in terms of their respective roles in the entire issue. Accordingly, I am inclined to favourably review the period of debarment of the Noticee.
16. As regards the Noticee’s request for permission for liquidating the entire holdings in his demat account, as stated earlier, it is noted that there is no direction of disgorgement against the Noticee in the SEBI order under remand. I am, therefore, inclined to allow the Noticee to liquidate holdings in his demat account during the pendency of his debarment. However, it is felt appropriate to impose an outer limit of 3 months within which his holdings may be liquidated.

Directions

17. In view of the above, in partial modification of the SEBI order dated September 05, 2017, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with section 11, 11(4) and 11B of the SEBI Act, and regulation 11 of SEBI

(Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, do hereby

- a. restrain Mr. Manoj Kumar Agarwal (Pan **AAKPA9123E**) from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years instead of 10 years. It is also clarified that the period of restraint already suffered by the Noticee since September 05, 2017 shall be taken into account for calculating the total period of restraint imposed, and
- b. permit the Noticee to liquidate his holdings in his demat account within a period of three months from the date of this order.

18. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

DATE: December 11, 2019
PLACE: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA