

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 21.11.2022
Date of Decision : 23.11.2022

Misc. Application No. 1199 of 2021
And
Misc. Application No. 1200 of 2021
And
Appeal No. 713 of 2021

Lyka Labs Limited
4801/B & 4802/A,
G.I.D.C. Industrial Estate,
Ankleshwar- 393 002

...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. Somasekhar Sundaresan, Advocate with Mr. KRCV Seshachalam and Ms. Sabeena Mahadik, Advocates i/b. Vissha Law Services for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Purvi Jain and Mr. Niket Dalal, Advocates i/b Vidhii Partners for the Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) dated June 05, 2020 whereby the appellant-company has been restrained from accessing the securities market for a period of three (3) years.

2. SEBI conducted an investigation pertaining to issuance of Global Depository Receipts (“GDR” for convenience) which issued 0.80 million GDR and raised 5 million US\$. The investigation revealed that the Company had made fraudulent arrangement for facilitating the financing of the subscription to the GDR issue and had made misleading disclosures to the investors at large. Accordingly, a show cause notice was issued to show cause why suitable directions should not be issued under Section 11 & 11B of the SEBI Act, 1992.

3. The WTM after considering the material evidence on record found that the Company had allowed the GDR proceeds to be used as a security against a loan taken by a party which had subscribed to the GDR. Further the Company had executed Credit and Account charge Agreements which were not disclosed under the listing agreement to the stock exchange and,

therefore, such suppression of material facts was fraudulent not only upon the existing shareholders but also upon all the investors of the securities market who could have been induced to deal with the shares of the Company.

4. We have heard Shri Somasekhar Sundaresan, the learned counsel for the Appellant and Shri Sumit Rai, the learned counsel for the respondent.

5. At the outset, we find that the *modus operandi* of the GDR issue is the same which this Tribunal has considered and dealt in almost more than two dozen cases. The *modus operandi* is the same and the finding in the present case is identical to the other cases that has been decided by the WTM and affirmed by this Tribunal.

6. Upon perusal of the impugned order we find that pursuant to the Board resolution the company entered into an Account charge Agreement with the bank which permitted use of the GDR proceeds as security against a loan taken by the entity which had subscribed to the GDR. Such procedure was patently fraudulent as it sent a wrong message to the Indian investors who thought that the issue was subscribed by many entities

instead of one entity. Further, we find that the company did not disclose the Board resolution as well as the account charge agreement and, consequently, we are in agreement with the findings of the WTM that such suppression of vital material facts was fraudulent upon the investors to the securities market as well as to the existing shareholders. We, consequently, uphold the findings given by the WTM.

7. We, however, take note of the findings given by the WTM that the proceeds of the GDR was eventually received by the company in India though belatedly. The issue was of the year 2005-2006. The company is still running and is in the pharmaceutical business. There is no allegation of any defalcation of any funds nor there is any financial irregularity of the company other than the non-disclosure made by the company.

8. Considering the aforesaid, as well as the fact that the GDR proceeds were utilized for the purpose for which the GDR were issued we are of the opinion that the direction of the WTM in restraining the company from accessing the securities market was excessive and disproportionate to the misconduct especially when on a similar charge the Adjudicating Officer

(“AO”) imposed a penalty of Rs. 10 lakhs which was accepted by the Company and the penalty amount paid.

9. In view of the aforesaid, while affirming the order of the WTM for the violation committed by the Company, we reduce the direction of debarment of three (3) years to the period undergone.

10. The appeal is partly allowed. The misc. applications are disposed of accordingly.

11. 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