

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Hearing : 09.02.2022**

**Date of Decision : 02.05.2022**

**Appeal No. 179 of 2019**

1. Tarini International Ltd.
2. Mrs. Vakamulla Anu Naidu
3. Mr. Vakamulla Chandra Shekhar

D-2, 1<sup>st</sup> Floor, Amar Colony,  
Lajpat Nagar IV, New Delhi – 110 024. .... Appellants

Versus

Securities & Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400 051. ... Respondent

**With**  
**Appeal No. 138 of 2020**

1. Tarini International Ltd.
2. Mrs. Vakamulla Anu Naidu
3. Mr. Vakamulla Chandra Shekhar

D-2, 1<sup>st</sup> Floor, Amar Colony,  
Lajpat Nagar IV, New Delhi – 110 024. .... Appellants

Versus

Securities & Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400 051.

... Respondent

Mr. J. P. Sen, Senior Advocate with Mr. Vaibhav Ghogre, Advocate  
i/b. Mr. Govind Solanke, Advocate for the Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Manish Chhangani,  
Mr. Ravi Shekar Pandey, Ms. Samreen Fatima, Advocates i/b. The  
Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Justice M. T. Joshi, Judicial Member

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the order of the learned Whole Time Member (hereinafter referred to as 'WTM') of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated May 29, 2019 directing the appellant no. 1 to bring back the amount diverted to the group entities alongwith interest and restraining the appellants from accessing the securities market for a period of four years, appeal no. 179 of 2019 is filed. On the same set of facts, the Adjudicating Officer (hereinafter referred to as 'AO') of the respondent had penalized the appellants for different amounts from

Rs. 5 crore to Rs. 5 lacs on different appellants as detailed in the order dated February 10, 2020, the appeal no. 138 of 2020 is filed.

2. For the sake of convenience, the facts stated in the order passed by the WTM in the appeal no. 179 of 2019 are being considered.

3. The allegations against the appellants essentially are that the proceeds of Initial Public Offering (hereinafter referred to as 'IPO') received by appellant no. 1 Tarini International Ltd. (hereinafter referred to as 'Tarini') was diverted by it as well as by the other appellants by resorting to unfair means behind the back of investors and have, thus, violated Regulations 57(1), 60(4)(a) and 60(7)(a) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations').

4. Appellant no. 1 Tarini, during the relevant period was in the business of providing consultancy services related to Hydro Power generation, transmission and distribution and infrastructure. On May 23, 2014, it issued a prospectus for IPO in the SME segment in public issue of 39,78,000 equity shares of the face value of Rs. 10/-

each at a price of Rs. 41/- per share aggregating to Rs. 16,30,98,000/-. Respondent SEBI conducted investigation on the basis of some complaints to find as to whether the above IPO proceeds were properly utilized or not.

In the investigation, *prima-facie*, it found that approximately Rs. 15.40 crores were not utilized by the appellant Tarini for the object stated in the prospectus and the same amount was diverted to various group companies and other entities / persons. Therefore, the show cause notice dated October 13, 2017 was issued to the appellants and thereafter the proceedings for violation of the ICDR Regulations along with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f) and (k) 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') was initiated.

5. The appellants submitted before the WTM as well as the AO that the amount was utilized for the purpose stated in the prospectus. Certain instructions orally given to the lead managers to the issue however were not incorporated in the prospectus. Therefore, the appellants asked SEBI to make available the personnel from the lead

manager for cross-examination. Respondent SEBI however did not agree to the said request and the impugned order came to be passed.

6. We have heard Mr. J. P. Sen, the learned senior counsel with Mr. Vaibhav Ghogre, the learned counsel for the appellants and Mr. Kevic Setalvad, the learned senior counsel with Mr. Manish Chhangani, Mr. Ravi Shekar Pandey, Ms. Samreen Fatima, the learned counsel for the respondent.

7. The prospectus had detailed the different heads / objectives for which the amount was to be utilized. The table regarding the same is set out in paragraph no. 11 of the impugned order of the learned WTM which is as under :-

<i>Sl.</i>	<i>Particulars</i>	<i>Amount ( Rs. in Lakhs )</i>
<i>i.</i>	<i>To finance long term incremental working capital requirements</i>	<i>1,000.00</i>
<i>ii.</i>	<i>Renovation &amp; Interior of Registered Office</i>	<i>160.00</i>
<i>iii.</i>	<i>Brand Building</i>	<i>150.00</i>
<i>iv.</i>	<i>General Corporate purposes</i>	<i>250.00</i>
<i>v.</i>	<i>Issue expenses</i>	<i>70.98</i>
	<b><i>Total</i></b>	<b><i>1630.98</i></b>

**A. Working capital requirements :**

8. However, in annual report for the financial year 2014-15, the appellant Tarini had disclosed actual utilization with certain deviation. In the investigation, it was found that the appellants had used the funds meant for long term working capital requirements, to transfer the funds to other promoter group entities in the following manner.

<i>Sl.</i>	<i>Name of the promoter group entity</i>	<i>Total amount paid and shown as working capital (Rs.)</i>
<i>1</i>	<i>Tarini Infrastructure Ltd.</i>	<i>4,00,00,000</i>
<i>2</i>	<i>Tarini Sugars &amp; Distilleries Ltd.</i>	<i>2,00,00,000</i>
<i>3</i>	<i>B. Soilmec India Private Ltd.</i>	<i>60,00,000</i>
<i>4</i>	<i>Venture Infrastructure Ltd.</i>	<i>1,75,00,000</i>
<i>5</i>	<i>Tarini Wilderness Innovation Pvt. Ltd.</i>	<i>1,25,10,000</i>
<i>Total</i>		<i>9,60,10,000</i>

9. Besides this, from the working capital head certain other amounts were expended on three different heads like Rs. 50 lacs to Bantia Fintrade Pvt. Ltd. (hereinafter referred to as 'Bantia') for assisting for purchase of land from farmers, Rs. 32 lacs for salary to

the staff for the month of May to July 2014 and Rs. 29,01,450/- towards the payment of electricity, telephone and daily running cost, etc.

10. As regards the transfer of funds to the promoter group entities in the amount of Rs. 9,60,10,000/- as detailed in the above table, the appellant defended that the said amount was in the nature of loans to the subsidiaries in terms of loan agreement dated July 30, 2014.

11. The learned counsel for the appellants submitted before us that in fact in the prospectus itself the object to advance loan was disclosed and the maximum amount is brought back.

12. However, the prospectus in which the details and the objective of the issue is given would show that there was no mention at all that the amount would be utilized as a loan to any of the subsidiaries or a promoter group entities. Merely, description of the company was given that the appellants itself as well as its subsidiaries are in the business and preparation of Hydro Power projects, etc. and the specific object of the utilization of the working capital requirements was disclosed regarding the appellant nos. 1 company itself.

13. The learned counsel for the appellants submits that the appellants time and again written to the respondent SEBI for granting an opportunity of cross-examination to the lead manager of the issues regarding the oral instructions to it by the appellants in this regard. However, he submits that no heed was paid to the appellants' request. He, therefore, relied on the ratio of *Bharat Jayantilal Patel vs. SEBI Appeal No. 126 of 2010 decided on September 15, 2010*.

14. Upon hearing both the sides on this issue, we find that it is the appellant's case that they had given certain oral instructions to the lead manager to the issue for making some insertions in the prospectus. The appellants had to prove those facts. Even otherwise no name of the person was given in the letters. In that view of the matter the ratio of the *Bharat Jayantilal Patel (supra)* would not be applicable to the present case. The learned WTM additionally noted that as per the appellants', the funds were transferred to the promoter group entities as loan, however, the loan agreements produced before him were loan agreements which were unstamped, un-notarized on plain papers executed *post facto* inspiring no confidence. We, therefore, find no infirmity in the reasons forwarded either by the learned WTM or by the learned AO in this regard.



15. As regards the payments made to Bantia, salary to staff, and administrative charges as given in the table above, no details were provided by the appellant regarding the land purchased or to be purchased and ultimately it was submitted that the amount was utilized for purchase of land for one of the group companies for which Rs. 50 lacs was paid to Bantia from the IPO proceeds.

16. As regards the payment of salary no supporting documents were produced to show that the salary was indeed paid to the staff of appellant nos. 1 Tarini. Further, annual report of appellant Tarini for the year 2014 -15 showed that for the entire year salary and wages was paid at Rs. 56,08,221/- while the monthly salary expense statement submitted by the appellant Tarini was Rs. 17 lacs per month approximately. The learned WTM further found that the bank statement of appellant Tarini's account maintained with Karur Vysya Bank showed that the salary for the month of June 2014 was paid at Rs. 5.98 lacs as against the salary of Rs. 17 lacs claimed by the appellants in their submissions. Before us, also no submission for explaining the payment anomalies were made. Thus, we find no infirmity in the findings in this regard.

17. As regards the payment on administrative charges like electricity, telephone, etc. from the IPO proceeds, the bill submitted by the appellants were in the various names of the promoter group company as detailed above and some even in the name of individuals like Dev kumar Pathan, V. Chandrashekhar, Naresh Kumar Saini, etc. Therefore, respondent SEBI found that IPO proceeds to that extent was misappropriated. The learned counsel before us did not submit any explanation on this count. In the circumstances, we do not find any infirmity in the findings on this count also.

18. Another issue was regarding Rs. 5.5 crores obtained by the appellant Tarini as loan from one Hind Ispat Ltd. (hereinafter referred to as 'Hind Ispat') after the date of the prospectus and before the date of the allotment. However, the same was not disclosed to the public by issuing a public notice in the newspaper as required under the relevant regulations. It was also alleged that upon receipt of the said loan, the appellant Tarini transferred an amount of Rs. 73,50,000/- to the appellant nos. 3 Mr. Vakamulla Chandra Shekhar, Managing Director of the appellant Tarini. The appellant explained that such transfer was on account of fund infused by the appellant no. 3 earlier in the month of May 2014 and it had nothing to do with the

loan amount obtained from Hind Ispat. The appellant however did not submit any supporting documents in this regard. Though the appellant has claimed that the said amount was repaid to the appellant no. 3 as he has infused certain funds, the supporting documents were also not placed. Further, as already pointed out, the availment of loan or infusion of any fund by the appellant nos. 3 were not disclosed. In the absence of any satisfactory explanation, we do not find any infirmity in the findings returned by the respondent SEBI in this regard.

### **Renovation & Interior of Registered Office :**

19. As per the prospectus, an amount of Rs. 160 lacs was to be expended for renovation and interior work of the registered office of the appellant Tarini. In the annual report, an amount of Rs. 159.28 lacs was shown to be expended on this head. In reply to the query by SEBI, in this regard, the appellant Tarini vide email stated that an amount of Rs. 120 lacs was spent. It was submitted that the appellant Tarini had given a contract to one M/s. Mapple Destinations and Dream Build Pvt. Ltd. for carrying the work. Respondent SEBI found that this contractor had no experience in execution of such

work. When this fact was confronted by SEBI to the appellant, Tarani had explained that the contract was terminated after execution of work worth Rs. 30 lacs and fresh contract was given to its group company, namely, M/s. B. Soilmec Pvt. Ltd. (hereinafter referred to as 'Soilmec'). In support of this submission, agreement between the appellant Tarini and this Soilmec dated July 30, 2014 was produced before the respondent SEBI. This agreement was however silent regarding contract of execution of renovation work, etc. On the other hand, certain clauses relating to loan given by the appellant Tarini to Soilmec are there in the agreement. The agreement showed that some funds were transferred as loan to Soilmec for acquisition of land, etc. This anomaly is highlighted in the impugned order. The learned counsel for the appellant did not make submissions on this subject before us. Considering the inconsistency as noted in the impugned order, we do not find any infirmity in the reasonings of the respondent SEBI on this aspect.

### **General Corporate Purposes**

20. Appellant Tarini has raised an amount of Rs. 250 lacs by declaring in the prospectus as required for general corporate purposes. From the said amount, an amount of Rs. 2,37,000/- was

paid to M/s. Arvee Sales for purchase of air conditioners and Rs. 38,50,000/- and over security deposit with one cooperative bank for one of the group companies Tarini Sugars and Distilleries Ltd. An amount of Rs. 40,78,000/- and Rs. 12,61,000/- were shown to have been expended towards the registry charges and purchase of stamp papers for this group company.

21. Out of this amount, except the expenses for purchase of air conditioners, all other expenses were made by a group company towards the setting of a sugar factory at Parbhani in Maharashtra. Respondent SEBI, therefore, held that it was a diversion of funds to other group companies not disclosed in the prospectus. Respondent SEBI further pointed out that the statutory auditors in their audit report have also red flagged these transactions. On this count also no explanation was submitted before us by the learned counsel for the appellant. We are, therefore, do not find any infirmity in the appeal as regards the finding of the respondent SEBI on the count of mis-utilization of IPO proceeds as detailed supra.

**Use of IPO proceeds to fund to purchase own shares**

22. Respondent SEBI found that the appellant Tarini had furnished details of Rs. 7.94 crore which were transferred by it mostly to various group entities on the ground of need of working capital. It was however found that these funds were used by these group entities for transfer to third parties which had purchased the shares of the appellant Tarini. The details of this fund transfer are given in the paragraph no. 47 of the impugned order of the learned WTM. Respondent SEBI had issued letters to these third parties. While the appellant and the group companies explained that the fund transfer to the group companies was for acquiring plant, etc. as a loan, the record showed that the said amount was transferred to third parties from which immediately the shares of the appellant Tarini were purchased. Even one of the third parties, namely, Shallot Vincom Pvt. Ltd. had explained to SEBI that the funds were received by it to purchase 1,23,000 shares of Tarini. Out of this, 1,20,000 shares were brought by it from the original allottees. Similar was the case regarding one entity, namely, PRSSB who had purchased the shares from the original allottees. Respondent SEBI, therefore, concluded that the appellant Tarini used proceeds of the IPO for buying its own shares by using conduits in violation of the stated objects of the IPO. In the circumstances, we do not find any

infirmity in the reasonings adopted by the respondent SEBI. Considering all the above facts which clearly prove that the appellant Tarini and its directors i.e. the other appellants have mis-utilized the IPO proceeds, we do not find any infirmity in the impugned order.

23. Both the appeals are therefore dismissed without any order as to costs.

24. 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

Justice M. T. Joshi  
Judicial Member

02.05.2022  
PTM