

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date: 12.09.2023

Appeal No. 373 of 2021

Yes Bank Limited ...Appellant

Versus

Securities and Exchange Board of India ...Respondent

Mr. Pesi Modi, Senior Advocate with Ms. Kalpana Desai, Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar and Mr. Deepank Anand and Mr. Shourya Tanay, Advocates i/b JSA, Advocates & Solicitors for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody, Mr. Arnav Misra and Ms. Shilpa Joshi, Advocates i/b K Ashar & Co. for the Respondent.

WITH
Appeal No. 374 of 2021

Vivek Kanwar and Ors. ...Appellants

Versus

Securities and Exchange Board of India ...Respondent

Mr. Pulkit Sukhramani, Advocate with Ms. Vidhi Jhawar, Mr. Deepank Anand and Mr. Shourya Tanay, Advocates i/b JSA, Advocates & Solicitors for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Ms. Shilpa Joshi, Advocates i/b K Ashar & Co. for the Respondent.

AND
Misc. Application No. 1228 of 2022
And
Misc. application No. 1729 of 2022
And
Appeal No. 729 of 2022

Rana Kapoor ...Appellant

Versus

Securities and Exchange Board of India ...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Abishek Venkatraman, and Mr. Rushin Kapadia, Advocates for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Sumit Rai, Mr. Mihir Mody, Mr. Arnav Misra and Ms. Shilpa Joshi, Advocates i/b K Ashar & Co. for the Respondent.

ORDER:

1. We have heard the learned counsel for the parties on Misc. Application No. 962 of 2023. On July 25, 2023 the hearing in the appeal was adjourned and the matter was directed to be listed on September 11, 2023 for final disposal. The application for interim relief which was filed along with the memorandum of the appeal was not pressed at that stage. On the same date a recovery notice was issued i.e. on July 25, 2023 which has led the appellants to file the present misc. application seeking relief for stay of the impugned order. The matter was listed yesterday,

but could not be taken up. We accordingly directed the stay application to be considered today.

2. Having heard the learned counsel for the parties, we find that the scope of the show cause notice was to ascertain whether the AT1 Bonds of Yes Bank Limited issued initially to the institutional investors were mis-sold to retail investors by Yes Bank Limited officials and whether such mis-selling of the bonds resulted in violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”).

3. By the impugned order it has been found that the bank mis-sold the bonds and that the appellant, being the Managing Director and Chief Executive Officer was personally responsible. By the impugned order a penalty of Rs. 2 crores has been imposed.

4. On the same charge, a different order was passed against Yes Bank Limited against which an Appeal No. 373 of 2021 was filed which was entertained and an interim order dated May 21, 2021 was passed. This Tribunal *prima facie* observed in paragraph 4 as under:-

“4. We also find that the Relationship Manager have not been booked. Prima facie, the question as to whether the buyers were informed of the risk factor with regard to the AT-1 Bonds can be best explained by the Relationship Managers which were part of the investigation but were not the noticees in these proceedings. On the other hand, the members of the Private Wealth Management Team have been made noticees and they have been penalized by the impugned order. We also prima facie find that the risk factor was already existing on the website and it was in the knowledge of everyone. Considering the aforesaid, prima facie a case is made out for grant of an interim order.”

5. Accordingly, this Tribunal stayed the effect and operation of the impugned order subject to the bank giving an undertaking that in the event of failure of the appeal they would pay the penalty amount within two weeks from the date of the said order.

6. We also find that the Madras High Court in a related petition while considering the Master Circular issued by the Reserve Bank of India (“RBI”) observed that the selling of the

AT-1 Bond was not a case of mis-selling and that the AT-1 Bonds were bought with eyes wide open.

7. The appellant is the Managing Director. In paragraph 81 the Adjudicating Officer (“AO”) observed that the show cause notice did not allege that the appellant had designed the sale pitch but found him to be responsible for overseeing the entire down sell of the AT-1 Bond from institutional investors to individual investors and was giving instructions to the Yes Bank Limited officials in this regard.

8. Considering the aforesaid, the question whether the appellant was responsible directly or indirectly is a question which will be considered at the stage of final disposal. At this this, *prima facie* we find that in view of the interim order passed in the connected appeals where an interim order was passed in favour of Yes Bank Limited, we are of the opinion that the appellant is also entitled for a similar relief.

9. Considering the fact that the factors mentioned in Section 15J of the SEBI Act has not been considered in its entirety and no reason has been given as to why a penalty of Rs. 2 crores which is above the minimum penalty has been imposed under

Section 15HA of the SEBI Act, we are of the opinion that *prima facie* the imposition of penalty appears to be harsh and disproportionate. We accordingly direct the appellant to deposit a sum of Rs. 50 lakhs within six weeks from today. If the said amount is deposited the balance amount shall not be recovered during the pendency of the appeals.

10. List these appeals for final disposal on November 20, 2023. The stay application is disposed of.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

12.09.2023
PK