



CS Makarand Joshi

## Case Law Update

**Name of the Case: Final Order of the Whole Time Member in the matter of Jai Mata Glass Ltd dt: November 23, 2021.**

### Facts of the case

1. Securities and Exchange Board of India ('SEBI') was in receipt of letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs ('MCA') vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. Taking this matter further, in respect of shell companies which are listed on stock exchanges, SEBI had, vide its letter dated August 7, 2017, advised the stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. One such listed company was Jai Mata Glass Ltd ('JMGL/the Company'). Further SEBI vide the said letter dated August 7, 2017 also advised the stock exchanges to place the scrip of such companies in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip.

BSE further vide its notice dt: August 7, 2017 initiated actions as stated by SEBI. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

2. As restrictions were placed by stock exchanges, JMGL vide its letter dated August 17, 2017, made a representation to SEBI inter alia submitting that the action taken by SEBI is against the principle of natural justice since it has been initiated without giving an opportunity of hearing to JMGL. Aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and Bombay Stock Exchange ('BSE'), JMGL filed an appeal No. 209 of 2017 also before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "SAT"). SAT asked SEBI to grant an opportunity of personal hearing to JMGL.

3. SEBI granted personal hearing to JMGL, and subsequently an interim order dated September 14, 2017 (hereinafter referred to as ‘**the interim order**’) came to be passed by Whole Time Member where inter-alia BSE was asked to undertake Forensic Audit of JMGL. Vide this order interim order, JMGL was provided time of 30 days to file its reply/ objections. Contesting the findings of the interim order, JMGL filed reply dated October 26, 2017. After granting an opportunity of personal hearing, and also after considering the reply filed by JMGL, the WTM, SEBI vide order dated November 14, 2018, confirmed the directions issued in the interim order.
4. BSE appointed M/s. M. Verma & Associates, Chartered Accountants, as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as “**FAR**”) was submitted to BSE by the said Forensic Auditor on July 12, 2019. Thereafter, based on the FAR which was forwarded by BSE to SEBI on January 8, 2019, SEBI carried out an investigation in the matter and a issued a fresh Show Cause Notice dt: August 24, 2020. Vide this show cause notice SEBI alleged that JMGL had indulged in
  - (a) Misrepresentation including that of its financials and its business and possible violation of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘LODR Regulations’) and/or,
  - (b) Misusing their respective books of accounts/funds including facilitation of accommodation entries to the detriment of minority and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key managerial personnel (‘KMP’).

### Charges levied

Noticee no. 2 to 8, who were the directors/ CFO of JMGL [viz. Noticee no. 2 – Mr Chander Mohan Marwah (Promoter Non Executive Director), Noticee no. 3 - Mr Sanjeev Bhushan Deora (Non-Executive Independent Director), Noticee no. 4 – Mr Samir Katyal (Promoter Non-Executive Director), Noticee no. 5 – Mr Ambarish Chatterjee (Independent Director), Noticee no.6 - Ms Anu Marwah (Promoter Non-Executive Director), Noticee no 7 – Mr Sanjay Kumar Sareen (Independent Director), Noticee no. 8 - Mr Lalit Anand (Chief Financial Officer)] at the relevant time, are liable for the violations alleged to be committed by JMGL viz. Regulation 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(2), (3), (6) & (12), Regulation 16(1) (b)(vi), Regulation 33(2)(a) and Regulation 48 of LODR Regulations. Noticee no. 1 [JMGL] is liable for violation of Section 21 of SCRA, 1956 read with Regulation 4(1)(a), (b), (c), (e) and (g)of LODR Regulations.

### Arguments made by Noticee: Violations of provisions of LODR Regulations due to misrepresentation including financials and misuse of funds/books of accounts:

- a. ***Purchase of Flat no. 901 and 904 in Camilia, Bhiwadi, Rajasthan and accounting entries in that regard***  
JMGL submitted that it had executed an ‘agreement to sell’ with M/s Connoisseur Developers Ltd [‘Developer Company’] on July 26, 2016. The Company submitted that it had booked 2 properties to be purchased as investment, and given advances out of its own funds to the Developers. JMGL further submitted that it realised in due course of time that one of the developer company was unable to deliver the developed properties, and that several of its customers had filed complaints against the Developer Company and

that the Developer Company was not issuing refunds to its customers. JMGL further submitted under this situation it thought that chances of getting property are very bleak and also it was difficult for the Company to get refund of advance amount. In view of this, JMGL submitted that it thought it should follow a conservative approach in the matter of recognition of its assets for purposes of drawing up its financial statements, and accordingly it was decided to write off advances paid by it to Developer Company and should not be carried as assets. So accordingly amounts paid by the Company to the Developer Company were written off by the Company in its books of account during the year ended March 31, 2017. JMGL submitted that inspite of writing off the advance from books of account it continued the efforts to recover the money and finally it could recover from Connoisseur Developers Ltd.

**b. *Liability for interest and compensation has been provided in books of account of JMGL on its settlement in the financial year 2016-17 i.e. cash basis instead of accrual basis***

JMGL stated that Memorandum of Understanding ('MoU') was executed between JMGL and Integrated Capital Services Ltd ('ICSL') on October 14, 2014 for sale of land in Himachal Pradesh. It was agreed that approvals required for this sale shall be taken within a period of 100 days. JMGL further stated that it was not able to take the approvals within the given period. Consequently it was required to pay twice the amount of Earnest Money Deposit ('EMD') and also refund EMD as it was agreed in MoU. As this compensation was too large, JMGL offered to settle the same

with ICSL. Further JMGL settled this compensation with ICSL and agreed to pay only interest on EMD. JMGL stated that as per applicable accounting standards (I.e. AS-29) it is provided that uncertain amounts shall be accounted only when settled. This means that they are to be accounted on cash basis and not accrual basis. Hence there was no misrepresentation.

**c. *Receivables written off without creating provision for doubtful debt thus not complying with accrual basis of accounting***

JMGL mentioned that contract with its suppliers were continued even though they were unable to recover its dues as it was required for running business. JMGL further mentioned that amounts advanced by the Company to suppliers and pending adjustment were accounted as an advance in creditors ledger, which has the effect of being reflected as a debit balance in creditors ledger or as negative balance in creditors list. JMGL further mentioned that it was trying to recover money also from its debtors and advances given to suppliers who did not perform their part of contract. In some cases JMGL also contested the matter before courts for recovery of money. In few cases the supplier companies got struck off and in some cases the amount recoverable was seen as a reconciliation difference. Hence it was decided to write off the respective amounts. The decision to write off was taken on advice of professionals and accountants. JMGL further mentioned that had the company made a provision and not written off the amount, the same would have depicted an incorrect picture of a hope of recovery, not matching with the reality.

## Conclusions made by Whole Time Member, SEBI

### a. ***Purchase of Flat no. 901 and 904 in Camilia, Bhiwadi, Rajasthan and accounting entries in that regard***

SEBI stated that JMGL had executed an 'Agreement to sell' with M/s Connoisseur Developers Ltd. on July 26, 2016. Copy of this agreement to sell was not stamped and hence as per Section 39 of Rajasthan Stamp Act, 1998 the copy of the purported 'Agreement to sell' executed between JMGL and M/s Connoisseur Developers Ltd. is inadmissible as evidence for any purpose, before any person including SEBI. SEBI further stated that within a span of six months of making this investment, the Board of Directors of JMGL decided to write-off the same from the books of the Company. In this regard SEBI stated that there is no corroborating evidence furnished by JMGL (like copy of correspondence with the Developers) to show that the purported investments in the properties of M/s. Connoisseur Developers Ltd. were indeed turning bad and worse to such an extent that it could not be recovered. SEBI further noted that even if decision to write-off the advance of ₹ 40 lakhs was taken but financial statements of JMGL for FY 2016-17 do not reflect any 'Extraordinary items' that show the 'capital advances written off' by JMGL which was required to be disclosed as per para 8 of Accounting Standard 5. SEBI stated that this raises doubt about authenticity of resolution passed. SEBI further stated that JMGL in its board resolution dt: February 9, 2017 has claimed that the booking advance paid to M/s Connoisseur Developers Ltd has been transferred to M/s M-Tech Developers Ltd but it is seen that return of advance is received by JMGL from

M/s Connoisseur Developers Ltd and not from M/s M-Tech Developers Ltd. SEBI thus noted that though there were fund transfers between JMGL and M/s. Connoisseur Developers Ltd, but the following claims of the Replying Noticees remain unestablished: (i) the nature of the said fund transfers to be 'advance against purchase of property', (ii) the claim that the 'advance became irrecoverable by end of March 2017' and (iii) the claim that JMGL had written off the advance given. Therefore SEBI held that the financial statements of FY 2016-17, do not reflect a correct picture of the affairs of the Company, in respect of the aforesaid transactions.

### b. ***Liability for interest and compensation has been provided in books of account of JMGL on its settlement in the financial year 2016-17 i.e. cash basis instead of accrual basis***

SEBI noted the submissions of JMGL and stated that JMGL was conscious of liability that would arise due to cancellation of MOU. SEBI stated that para 14 of AS-29 (Provisions, Contingent Liabilities and Contingent Assets) provides for as to when provision shall be recognised. SEBI stated that liability arising out of the failure of JMGL to meet the commitments as stipulated in the MoU within 100 days of execution of the MoU, had satisfied all the three criteria's that are stipulated in Para 14 of AS-29 viz. a reliable estimate of probable loss was available with JMGL as the MoU was executed, the obligation was present because of a past event and by virtue of the terms of the MoU and it was probable that an outflow of benefits would have been required to settle the obligation. The contention by JMGL that the negotiations were underway may be true, but AS-29, stipulates that until

the time the matter is finally settled, a provision is required to be made, which JMGL in the FY 2014-15 and FY 2015-16, failed to make. Thus, I find that by not making the appropriate provision, JMGL had understated its loss for the FY 2014-15 and FY 2015-16 to that extent.

**c. *Receivables written off without creating provision for doubtful debt thus not complying with accrual basis of accounting***

SEBI stated that JMGL has done incorrect adjustments in the books by adjusting capital advance for installation of plant and machinery against sundry creditors. Further SEBI stated that JMGL has not followed GAAP while accounting for this transaction. Further SEBI stated that JMGL should have made provision for losses due to impairment of receivables, cheque bouncing etc. SEBI further stated that in one instance JMGL is claiming that they were trying to recover money and in second instance it is seen that JMGL has written off that amount. Both these statements are contradictory to each other. Also SEBI mentioned that if amount due is pursuant to reconciliation difference then why JMGL was making efforts to recover money? SEBI concluded that the financial statements were misrepresented to this extent. After perusing all the above submissions SEBI concluded that financial statements of JMGL for FY 2015-16, FY 2016-17 and FY 2017-18, failed to represent a true and fair view of the state of affairs of the Company in compliance with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Regulation 33(1)(c) and Regulation 48 of LODR Regulations. SEBI also stated that SAT vide its

order dt: March 17, 2020 has upheld jurisdiction of SEBI in ensuring that accounting standards are complied with by the listed entities, in compliance with their listing obligations.

**Conclusions by SEBI with respect to liability of JMGL**

SEBI further stated that consequent to violation of Regulation 33(1)(c) and Regulation 48, JMGL has violated Regulation 4(1)(a), (b), (c), (e) and (g) of LODR Regulations which state principles governing disclosures and obligations by listed entity. SEBI stated that JMGL has signed uniform listing agreement with BSE. SEBI further stated that provisions of Section 21 of SCRA, 1956 requires listed entities to comply with conditions of listing agreement entered with stock exchange. As part of conditions of the uniform listing agreement, listed entity agrees that it shall comply with provisions of LODR Regulations. SEBI held that as JMGL has violated LODR Regulations it is also held in violation of Section 21 of SCRA.

**Conclusions by SEBI with respect to liability of Board of Directors and Independent Directors of JMGL**

SEBI further stated that as JMGL has been found to be in violation of Reg. 33(1)(c) and Reg. 48 of the LODR Regulations. It is also not in compliance with the principles laid down in 4(1)(a), (b), (c), (e) and (g) of LODR Regulations. SEBI further stated that Board of Directors of JMGL would be liable for violation of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f) (iii) (2), (3), (6) & (12) of the LODR Regulations as Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities and any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations. SEBI further noted that Noticee nos. 3, 5 and 7, were Independent Directors of JMGL. They being part of the

audit committee and having been attended all audit committee meetings of JMGL during FY 2015-16 to FY 2017-18 reviewed and approved financial statements of JMGL. Failure to raise any concern regarding the financials of JMGL, as member of the audit committee as well as the board of directors of JMGL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. SEBI further stated that alongwith other directors, Noticee no. 8 executed and signed the financial statements

of JMGL for FY 2016-17 and FY 2017-18. Further Regulation 33(2)(a) creates primary liability of board of directors and CEO/CFO, for certification and approval of financial results. Therefore Noticee no. 2 to 8 are also liable for violation of Regulation 33(2)(a). Noticee no. 2 and Noticee no.4 having issued untrue certificates with respect to the financial statements of JMGL, have also violated Regulation 17(8) read Part B of Schedule II of LODR Regulations.

### Penalty

<i>Noticee No.</i>	<i>Name of the Noticees</i>	<i>Penalty</i>	<i>Debarment from securities market</i>
Noticee no. 1	M/s Jai Mata Glass Ltd	Rs 15,00,000	One year
Noticee no. 2	Mr Chander Mohan Marwah	Rs 750,000	One year
Noticee no. 3	Mr Sanjeev Bhushan Deora	Rs 100,000	Six months
Noticee no. 4	Mr Samir Katyal	Rs 150,000	Six months
Noticee no. 5	Mr Ambarish Chatterjee	Rs 150,000	Six months
Noticee no. 6	Ms Anu Marwah	Rs 150,000	Six months
Noticee no. 7	Mr Sanjay Kumar Sareen	Rs 150,000	Six months
Noticee no. 8	Mr Lalit Anand	Rs 200,000	One year

### Case laws quoted by SEBI

SAT order dt: March 17, 2020 in the matter of Oasis Securities Ltd vs SEBI in Appeal no. 316 of 2018.

### Companies Act

**Registrar of Companies and Regional Director vs. Nirvan Clothing Company Private Limited and Oths**

**Before the National Company Law Appellate Tribunal – New Delhi Bench**

#### Facts of the Case

(i) Nirvan Clothing Company Pvt Ltd (1st Transferor Company), Mikasa Enterprises

Pvt Ltd (2nd Transferor Company) wanted to merge with Richa Global Exports Pvt Ltd (Transferee Company) and applied for amalgamation by praying for dispensation of meetings of the equity shareholders and creditors in case of the transferor companies while dispensation of meetings of the equity shareholders and conduct of meetings in case of the secured creditors and unsecured creditors.

(ii) The NCLT Delhi, Principal Bench dispensed the respective meetings and issued directions to convey meetings of secured and unsecured creditors only in case of the Transferee Company.

- (iii) The Quorum for the meetings of the unsecured creditors was 100 and the scheme was approved by requisite majority of unsecured creditors.
- (iv) Quorum for Secured Creditors Meetings was 18 but at the meeting of the secured creditors, only 11 were present in proxy or in person being representatives of the Secured Creditors and all documents supporting authorization of the proxies for want of authority letters were held invalid and no voting took place. So the meeting was called off.
- (v) To avoid delay, consent affidavits of Secured Creditors having 98.49% in value were filed.
- (vi) However, the NCLT dismissed the application with liberty to modify the scheme and file a fresh petition.
- (vii) The Appellants had filled appeal against the NCLT, Delhi Bench order which stated modification of scheme and filing of fresh petition and the matter went to the National Company Law Appellate Tribunal.

**Contentions of the Counsel for appellants made during NCLT proceedings**

The Counsel for the petitioner companies observed that:-

- NCLT wrongly observed scheme had not met “the approval of the creditors” even though 98.49% secured creditors filed consent affidavits and all unsecured creditors had given their approval.
- The scene regarding Secured Creditors will keep changing and by that itself it cannot be said that the proposed Scheme of Amalgamation has changed.

- NCLT should have modified the earlier order and allowed for dispensation of meeting of secured creditors after consent affidavits.
- To restart the process would be real hardship, stress and much costs involved for the appellants. Such technicalities should not take it back to square one.

**NCLT While dismissing the application stated as follows**

- There was no request in application for any amendment of pleading.
- NCLT stated that the scheme had “not met the approval of the creditors”
- The applicant appears to have further changed the Scheme as payments to certain Secured Creditors have now been made.

**Held**

NCLAT set aside earlier NCLT order.

The NCLAT dismissed the appeal citing following reasons:

- Merely because there has been a change in the secured creditors and some have been paid, the scheme does not get changed.
- In Landmark Infonet Pvt Ltd another bench of NCLT had directed to reconvey the meeting of secured creditors
- NCLT should have given opportunity to the applicants to amend the first motion application instead of rejecting the application on such technical grounds.
- Inconvenience, delays and big costs will be incurred if appellants go back to square one.

