



CS Makarand Joshi

Case Law Update

In the matter of *Solar Industries India Ltd. (Appellant Co./Company) vs. Kailash Chandra Nuwal and Ors. (Respondent)*

NCLAT (Delhi) Order dated 14th December 2021.

Facts of the case

- The Appellant Company (“**Company**”) is a quasi-partnership between two families i.e. K.C. Nuwal Group (holding 29.28%) and S.N. Nuwal Group (holding 43.88%) shares. Further 26.84% of shares are owned by the general public.
- K.C. Nuwal (“**Respondent No. 1**”) has been a shareholder of the Company since its incorporation and was formerly appointed as a full-time Director in October 2005 on the Board of the Company and thereafter as Vice Chairman of the Board of Directors and served as Whole-Time Director for nearly 15 years.
- There was a family settlement in 2009, wherein all the assets of the family including the shareholdings in the Group Companies were settled such

that K.C. Nuwal, his wife, and his son together were allotted 40% shares in the assets of the family; S.N. Nuwal and his wife together were allotted 20% shares in the assets of the family, and the son and daughter in law of S.N. Nuwal were allotted 40% shares in the assets of the family.

- The controversy arose when Company Secretary (“**CS**”) sent an email on 31 July 2020 to K. C. Nuwal enclosing a letter dated 30 July 2020 stating that he has automatically vacated the office of Director as he had failed to disclose his interest in AG Technologies Private Limited (“**AGT**”) (i.e. Company formed by K. C. Nuwal & his sons and with whom appellant company decided to hire premises on rent) in proper format and at the board meeting of Company.
- The CS also intimated stock exchanges about the cessation of office of K. C. Nuwal as Executive Director and Vice Chairman of the Company. It was also stated that vacation is on account of the operation of law arising due to failure to make appropriate disclosure.

- AGT was acquired by K.C. Nuwal and his two sons on 2 May 2019 and the decision to hire on rent the premises owned by AGT for the office of the Company was taken at the Board meeting of the Company held on 7 November 2019, in which K. C. Nuwal was not present.
- K. C. Nuwal filed a petition against the Company and others under Sections 241 and 242 of the Companies Act, 2013 (“**the Act**”). Further, K. C. Nuwal group has filed the company application for many interim reliefs. Pursuant to the same, the NCLT restrained the Appellant Company and S.N Nuwal Group from interfering and obstructing K. C. Nuwal from acting as a Director and Vice Chairman of the Company by an order of injunction.
- The Appellant Company being aggrieved by this injunction order, has filed the present appeal before NCLAT.

Appellant’s contentions

- Sections 241 and 242 of the Act do not specifically confer the power of reinstatement, such a power to reinstate cannot be implied or inferred from any of the powers specifically conferred. Additionally, removal from Directorship can never be held to be oppressive or prejudicial conduct as held by the Hon’ble Supreme court in the case of ***Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd. & Ors. 2021 SCC Online SC 272.***
- The Appellants argued that NCLT failed to appreciate that K.C. Nuwal’s vacation of his office as a Director is attributable to his own failure to disclose his interest in AGT and that such cessation

of Directorship due to operation of law cannot be said to prejudice the interest of any shareholder.

- Such cessation of office was not on account of any act or omission of Appellant or other Respondents, but automatic by the operation of Section 184 r/w Section 167 of the Act. K. C. Nuwal failed to comply with his duty under Section 184 of the Act, to forthwith disclose his interest in AGT.
- K. C. Nuwal was well aware of his obligation to disclose his interest in other entities in the prescribed format as was duly informed at the Board meeting held on 26 May 2014. Therefore, the vacation of his office as a director is attributable to his own failure to disclose his interest in AGT.
- K. C. Nuwal, though was not physically present at the concerned board meeting held on 7 November 2019, he constructively participated in the same as he was aware that there was an agenda item pertaining to hiring the AGT premises for the company.

Respondent’s contentions

- K. C. Nuwal acquired the interest in AGT after seeking due approval/clearance/permission from S.N. Nuwal Group (Chairman & Managing Director of Company). Also, they categorically offered to grant monies to K. C. Nuwal Group to acquire a stake in the IT Company/AGT.
- K. C. Nuwal duly informed Company Secretary about his interest in AGT on 3 May 2019, the shareholding structure in AGT was communicated to her in writing on 28 June 2019. The CS was

required to ensure due compliance under Section 184 of the Act and for the purpose help and guide K.C. Nuwal in filing the proper form.

- Further, disclosure was made even before K.C. Nuwal acquired an interest in AGT. An email dated 17 January 2019 was produced wherein K. C. Nuwal informed S. N. Nuwal and Manish Nuwal regarding his intention to acquire the IT Company and they offered to provide funds from the family account itself.
- It is also to be noted that the CS, vide email dated 10 April 2020 sent a draft letter and MBP-1 to K. C. Nuwal for signatures categorically mentioning the name of AGT.
- The CS has been grossly remiss in her duties and has in fact ignored several requests made by K. C. Nuwal to make the disclosure of his interest in AGT to relevant authorities.
- Respondent No. 1 cited the decision of Delhi High Court (*Ravi Raj Gupta & Ors. vs. Hans Raj Gupta & Co. Pvt. Ltd. & Ors. (2009) SCC Online Del 381 and Suryakant Gupta vs. Raja Ram Com Products (Punjab) Ltd. (2001) SCC Online CLB 5*) which held that, if the Directors, who also hold the majority shareholding are aware of the interest of each other, the question of further disclosure does not arise.
- It is not a case of the Appellant that K. C. Nuwal has not disclosed his interest in AGT. But admittedly, the Appellant's case is that the disclosure is not made in the prescribed format. Even if the disclosure of shareholding/directorship in Form MBP 1 is not provided, it may

only result in the violation of Section 184(1) and not Section 184(2) of the Act.

- Section 184(2) of the Act mandates disclosure of interest by a director in the board meeting where an agreement is being entered into with an entity in which the director has an interest.
- The disclosure can be oral and/or in writing. Accordingly, Section 184(2) of the Act too stands substantially complied with.
- Section 184(1) of the Act has no link with Section 167(1)(c) and (d) of the Act, as the disclosure of terms of any contract or arrangement is only stipulated under Section 184(2) of the Act. Section 184(1) of the Act is a general obligation on the directors to disclose their interest in the prescribed format annually. Therefore, a non-disclosure of interest under Section 184(1) of the Act in the prescribed format would not lead to the automatic vacation enshrined under Section 167 of the Act.

Held

- On 3 May, 2019, an email was sent to the CS that K. C. Nuwal and his son Rahul Nuwal became Directors in AGT from 2 May, 2019 and she was also requested to inform the ROC and others, if required.
- The only defect is pointed out that such disclosure was not in requisite form i.e. Form MBP 1.
- Thereafter on 28 June, 2019, the shareholding of K. C. Nuwal and his sons Rahul Nuwal and Rahil Nuwal was also informed to the CS and she was

also requested to inform the ROC and others of this, if required.

- Therefore, NCLAT was of the view that K. C. Nuwal has substantially complied with the requirement of Section 184 (1) of the Act.
- Further NCLAT agreed that non-compliance with Section 184(1) of the Act has no link with Section 167 of the Act.
- Section 184(4) of the Act provides for consequences for not complying with Section 184(1) of the Act which talks about imprisonment or fine. Thus, non-compliance of Section 184(1) of the Act would not lead to the automatic vacation of the office as Director of the Company.
- It is an admitted fact that in the concerned board meeting it was resolved to take the premises of AGT on rent for the Company. And in this board meeting, K. C. Nuwal was not present.
- However, CS and 2 other Directors (S. N. Nuwal and Manish Nuwal) were present and they were well informed that K. C. Nuwal is a Director in AGT but they did not raise any objection.
- Therefore, NCLAT took the view that K. C. Nuwal has not contravened the provisions of Section 184(2) of the Act. Therefore, he is not liable for the consequences as provided under Section 167(1)(c) and (d) of the Act.
- On the contention of power of reinstatement u/s 241-242 of the Act, NCLAT noted that K. C. Nuwal has not vacated office as Director. The NCLT, by the impugned order, issued

an injunction from the implementation of the notice of the vacation. The NCLT has not passed any order of reinstatement of K. C. Nuwal as Director. In the facts of the present case, the interim order is just and equitable.

- The NCLT has rightly granted the interim relief, and no ground of interference was found in the impugned order. Thus, the Appeal was dismissed.

Order of Adjudicating Officer of Securities and Exchange Board of India

Name of the Case: In respect of IIFL Securities Ltd (hereinafter referred to as the “**Noticee**”) in the matter of ICICI Lombard General Insurance Company Limited (hereinafter referred to as “**ICICIGI**”/“**Company**”)

Facts of the case

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the block deals executed by one FAL Corporation Ltd. (hereinafter referred to as “**FAL**”) in the scrip of ICICIGI to, inter-alia, check any manipulation of reference price considered for execution of the block deal trades for the period April 01, 2019, to September 30, 2019 (hereinafter referred to as the “**Investigation Period**”/“**IP**”).
2. Subsequent to the IPO and listing of shares of ICICIGI on September 27, 2017, FAL was holding 44,978,770 (i.e. 9.90%) shares of ICICIGI till September 25, 2019. FAL was classified as a public shareholder of ICICIGI since the IPO.
3. FAL vide its email dated December 17, 2020, informed SEBI that subsequent to the release of the lock-in period, FAL

wanted to reduce its shareholding in ICICIGI and accordingly, approached the Noticee for selling upto 2,26,75,380 equity shares of ICICIGI at a minimum price of ₹ 1125/- per share. It was also confirmed by the Noticee that SBI Mutual Fund, the Anchor Buyer, had intended to buy the shares of ICICIGI at the floor price i.e. ₹ 1125 per share with an indicative interest of ₹ 930 crores and that other buyers also agreed to trade at the same price.

4. Accordingly, the Noticee carried out the block deal of ₹ 213.13 Lakh equity shares of ICICIGI worth ₹ 2406.40 crores at BSE in the Afternoon Block Deal Window Session, i.e., between 14:05 to 14:20 hours. on September 26, 2019, and also traded in the cash segment of BSE on the same day from 13:45 p.m. to 14:00 p.m. on behalf of its client, FAL.
5. SEBI alleged that in order to execute the block deal at a committed price between ₹ 1125 to ₹ 1130, the Noticee placed 18 sell orders from 13:59:10.511678 to 13:59:11.076816 hrs. on behalf of FAL to sell a total of 13,61,895 shares of ICICIGI with a limit price of ₹ 1125.

This order quantity of 13,61,895 shares was about 17.55 times the shares which were traded i.e. 77600 shares during the day before these orders were placed. SEBI also alleged that the Noticee was aware that this large order at a limit of ₹ 1125 would impact the VWAP significantly and eventually the VWAP was brought down to ₹ 1140.33 which ensured that the block deal price was in the range of +/- 1% of VWAP i.e. ₹ 1128.92 to ₹ 1151.73.

6. In order to meet their commitment given to both the seller and the buyers, it was alleged by SEBI that the Noticee knowingly traded between 13:45:00 to 14:00:00 hrs. and contributed 57.97% to negative Last Traded Price (hereinafter referred to as the “LTP”) and 100% to New Low Price (hereinafter referred to as the “NLP”) on BSE and indulged in malpractice, influenced and manipulated the Volume-weighted Average Price (hereinafter referred to as the “VWAP”) i.e. the reference price for block deal during afternoon window. Trading details of FAL on September 26, 2019, were as follows:

Client name	Buy traded quantity	% buy quantity	Sell traded quantity	% sell quantity
FAL	0	0	0	96.89
Total	0	0	0	96.89
Market total	2,34,03,413	100	2,34,03,413	100

Further during 13:45 to 14:00 hours on September 26, 2019

Client name	Buy traded quantity	% buy quantity	Sell traded quantity	% sell quantity
FAL	0	0	13,61,895	92.97%
Total	0	0	13,61,895	92.97%
Market total	14,64,873	100	14,64,873	100

So it was noted that FAL contributed 96.89% to sell volume on September 26, 2019 (full day) and contributed 92.97% to sell volume during the time period 13:45 to 14:00 hours.

Charge

Based on findings of the investigation, SEBI observed that trades executed by the Noticee were violative of Sections 12A(a), (b) and (c) of SEBI Act & the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations**”) and Clauses A(1) to A(4) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”).

Arguments from the Noticee

1. **Trades executed at higher LTP are more than that executed at lower LTP:** The Noticee submitted that out of the total of 830 trades of FAL, executed by the Noticee, there were 430 zero LTP trades and 13 positive LTP trades besides 385 negative LTP trades. The quantity involved in zero LTP trades was 8,31,212 and in positive LTP trades was 921 as against the quantity of

5,29,762 shares in negative LTP trades. Thus, it is clear that the number of zero and positive LTP trades as well as the quantity of shares involved in such trades was substantially higher than that of the alleged negative LTP trades. Noticee submitted that show cause notice has ignored this vital aspect and relied arbitrarily only on the negative LTP trades. The pattern of the aforesaid trades shows that there was no intent for manipulating the price of the scrip, as alleged, but the entire trading was driven by the client’s mandate to dispose of its above-mentioned shares of ICICIGI at a minimum price of ₹ 1125 per share. The pattern of the aforesaid trades shows that there was no intent for manipulating the price of the scrip, as alleged.

2. **Not aware of traded price:** The Noticee stated that the allegation made by SEBI that the sale of 6% shares just before the block deal was done to guarantee the execution of trades at a particular price during the block deal window is untenable. The VWAP is calculated, as per the SEBI circular, after 5 minutes of the trade and made available between 14:00 and 14:05 by the stock exchanges. (para 3.2 of the SEBI Circular dated October 26, 2017). The VWAP was not a publicly known fact for the Noticee to take advantage of it and known

how to manipulate. Hence, the Noticee would not have any idea that the trades executed before the block deal would have had an impact on VWAP. The Noticee would have come to know like the rest of the market only after 14.05 hours that day and not before. No seller was impacted or put to loss and no buyer was at loss. No gain was caused by the Noticee. The Noticee would have earned the same brokerage on the basis of the number of shares and value of the transaction, which never changed.

3. **Sale of shares before the block deal was fortuitous and not fraud:** The Noticee argued that there is no dispute that the transaction was genuine i.e. there was indeed a change of beneficial ownership and the buyers were genuine. The Noticee further submitted that there is no allegation of any collusion with any of the buyers. Delivery of shares was indeed given and taken. The trades were fair to the buyers and the seller, and being at the market price, they were indeed fair to the market as well. The buyers for the block deal were for a total of 2.13 crore shares out of 2.26 crore shares represented approximately 94% of the total shares for sale by FAL. The remainder 13 lakh shares constituting 6% had to be sold in the open market and these were the only shares that were sold. It is clear that the pattern of conduct shows that there was no intention to manipulate. This 6% block could have been sold after the Block Window or during the day at any time but it was fortuitous that it was sold before the block deal window, which was benign and without any manipulative intent. The Noticee further argued that for proving the charge of

fraudulent or manipulative practices, it is necessary to prove mens rea or intention to commit such violation. Further, the Noticee argued that no material in support of fraud is available on record and in the show cause notice there is neither any allegation nor any evidence to show that the Noticee had induced any party and thereby played a fraud in the securities market.

Arguments by SEBI

1. **Trades executed at higher LTP are more than that executed at lower LTP:** In this regard, SEBI stated that apart from drawing attention to a mere factual position, the Noticee has not provided any reasoning for the substantial number of trades at negative LTP which were higher than those with positive LTP. When such a substantial amount of market negative LTP contribution is noticed by an explicit act of manipulative trades executed by the Noticee on behalf of its client FAL, the other non-negative LTP contributing trades of the Noticee will not have any strength to outweigh those allegedly manipulative trades which have been executed in a fraudulent in nature to artificially reduce the price of the scrip. It, therefore, appears that the large quantity of trades executed ostensibly at zero LTP was, in fact, happening at a prior negative LTP established in the trading on account of the limit order placed by the Noticee at a price much lower than the prevailing market price. As such, even though such trades were technically at zero LTP, in reality, such ostensible zero LTP had been established at a progressively lower price due to the limit orders placed by Noticee. Therefore, SEBI was not inclined to

accept the contention of the Noticee that no fault can be found with it since the no. of trades/traded quantity executed at zero LTP were more than no. of trades/traded quantity executed at negative LTP.

2. **Not aware of traded price:** In this regard, SEBI stated that on perusal of para 3.2 of SEBI Circular CIR/MRD/DP/118/2017 dated October 26, 2017, it is seen that stock exchanges have to calculate and disseminate necessary information regarding the VWAP applicable for the execution of block deals within a specific time frame. Thus, in view of the above, SEBI noted that the modality of calculation of the reference price for the Afternoon Block Deal Window Session is clearly specified in the aforesaid circular and the VWAP was required to be disseminated to the public by 14:05 hours by the Stock Exchanges. Further SEBI highlighted that from the records, it is apparent that the Block Deal in the shares of ICICIGI was executed by the Noticee during the period 14:09 hours to 14:18 hours on September 26, 2019, i.e., much after the dissemination of VWAP in the scrip of ICICIGI on that day. Therefore, the VWAP of shares of ICICIGI on September 26, 2019, was very much in the knowledge of the Noticee, contrary to their contention.
3. **Sale of shares before the block deal was fortuitous and not fraud:** SEBI stated that by selling in excess of 13.6 lakh shares of ICICIGI, i.e., in excess of 90% of the total trading volume of ICICIGI in the cash segment of BSE during the reference period and that too at a far lower price than the prevailing market price, the Noticee ensured that VWAP could be reduced at the

desired level for the subsequent block deal. With an intention to manipulate the VWAP, the Noticee first sold part of the total shareholding (6%) of FAL in ICICIGI in the cash segment at a particular price so as to be able to achieve the desired VWAP for the purpose of selling the balance 94% of FAL's shareholding in ICICIGI to the institutional buyers, as per their indicative interest. The pattern of trading resorted to by the Noticee indicates that the Noticee waited till the last one minute (in the reference period) before placing the first sell order, so as to be able to gauge the volume of trades in the ICICIGI shares till then, which turned out to be a meagre 77600 shares, allowing the Noticee to sell the requisite quantity of ICICIGI shares for the purpose of manipulating the price of ICICIGI shares in the reference period which the Noticee achieved by selling huge quantities of ICICIGI shares (above 90% of total traded volume) at prices lower than the prevailing market price. Through such manipulation, the Noticee influenced the price of ICICIGI shares significantly so as to bring down the VWAP to ₹ 1140.33 so that when the Noticee subsequently entered into the Block Deal for the sale of the remaining 2,13,13,485 shares of ICICIGI in the Afternoon Block Deal Window Session, the block deal got executed at within +/- 1% of the reference price i.e. ₹ 1129.05, which was the price agreed upon with the institutional buyers previously. The aforementioned intent to manipulate the price of the scrip before the start of the Afternoon Block Deal Window Session would, therefore, require the Noticee to trade in the cash segment during the reference period.

SEBI stated that it is clear from this that the Noticee intentionally chose to place the sell orders at prices far lower than the LTP to manipulate the price downwards and achieve the desired reference price for the block deal so as to accommodate the counterparties in the block deal. SEBI also highlighted that the Noticee in his email dated February 13, 2022, had stated that he had on September 25, 2019, i.e. a day before the block deal had negotiated with SBI Mutual Fund and offered shares of ICICIGI at a discount of 4% on the following day i.e. September 26, 2019, on block deal window. SEBI also highlighted that there were pending buy orders in the range of ₹ 1139.93 to ₹ 1157.67 in the scrip of ICICIGI but then also the Noticee did not place orders at higher prices which buyers were willing to execute but placed orders at prices far lower than the available buy orders which clearly demonstrates manipulative intent. Thus, SEBI did not find merits in the Noticee contention that it could have sold the

6% block at any time during the day, including even after the block deal window but it was fortuitous that it was sold before the block deal window, which was benign and without any manipulative intent. SEBI further held that trades executed by Noticee on behalf of its client FAL were fraudulent and were carried out with the intention to manipulate the price of ICICIGI shares for the purpose of influencing the VWAP for the subsequent block deal transactions.

Finding

The allegation that the Noticee has violated Sections 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(e) of PFUTP Regulations stands established. SEBI also held that the Noticee failed to demonstrate integrity and due care and diligence in respect of the impugned transactions in the shares of ICICIGI carried out by it on behalf of FAL and thereby violated clause A(1) and A(2) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of Broker Regulations.

Penalty

Sl. No.	Penalty	Under the provisions of
1	₹ 20,00,000	Section 15HA of SEBI Act
2	₹ 5,00,000	Section 15HB of SEBI Act read with Regulation 25(i), 26(xi) and 26(xvi) of Broker Regulations.
	₹ 25,00,000	

Cases quoted by Noticee

SEBI vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1, Ketan Parekh vs. SEBI (2006) and Shubhkam Securities Private Ltd vs. SEBI.

Cases quoted by SEBI

N. Narayanan vs. Adjudicating Officer, SEBI (dated April 26, 2013) and Saint Gobain Sekruit Ltd, SEBI Adjudicating officer dated July 31, 2019.

