

IN THE SECURITIES APPELLATE TRIBUNAL AT
MUMBAI

DATED THIS THE 11TH DAY OF DECEMBER, 2024

CORAM: Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 636 of 2024

BETWEEN

First Overseas Capital Limited
1-2 Bhupen Chambers,
Dalal Street, Fort,
Mumbai- 400 001

...Appellant

Mr. Gaurav Joshi, Senior Advocate with Ms. Rinku Valanju,
Mr. Rushin Kapadia and Ms. Hiral Shah, Advocates i/b R V
Legal for the Appellant.

AND

Securities and Exchange Board of India
SEBI Bhavan, C4-A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai- 400 051

...Respondent

Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody,
Mr. Yash Sutaria and Mr. Tushar Bansode, Advocates i/b. M/s.
K. Ashar & Co. for the Respondent.

THIS APPEAL IS FILED UNDER SECTION 15T OF THE
SEBI ACT, 1992 TO SET ASIDE THE ORDER DATED
23.10.2024 PASSED BY THE WTM, SEBI.

THIS APPEAL HAVING BEEN HEARD AND THE
TRIBUNAL MADE THE FOLLOWING:

ORDER

Per: Justice P. S. Dinesh Kumar, Presiding Officer (Oral)

This appeal is directed against the order dated October 23, 2024 passed by the WTM¹ of the SEBI² issuing a show cause notice and also passing an interim direction debarring the noticee from taking any new mandate in relation to the business of issue management.

2. We have heard Mr. Gaurav Joshi, learned Senior Advocate for the appellant and Mr. Pradeep Sancheti, learned Senior Advocate for the respondent.

3. Brief fact of the case are, appellant is a merchant banker in that business since 2001-2002. SEBI conducted two inspections for the period, April 01, 2021 to March 31, 2022 and April 01, 2022 to October 31, 2023 respectively. During the course of inspection, it was observed that the appellant had failed to maintain the required capital adequacy of Rs. 5 Crores in terms of Regulation 7 read with Regulation 9 of the SEBI (Merchant Bankers) Regulations, 1992 (“MB Regulations” for short).

¹ Whole Time Member

² Securities and Exchange Board of India

4. Mr. Joshi, learned Senior Advocate for the appellant, assailing the impugned order, submitted that the only reason justifying the interim direction that the appellant was non-compliant with the net-worth requirements is erroneous as the appellant is in compliance with net-worth requirement since March 31, 2023. Without prejudice, he submitted that appellant is willing to fulfill the capital adequacy requirement by bringing in an additional sum of Rs. 3 Crores and prayed that pending consideration of the issue before the SEBI, appellant may be permitted to carry on the business.

5. Mr. Sancheti, learned Senior Advocate for the respondent opposing the appeal adverted to paragraph 36 of the impugned order, pointed out that the appellant does not meet the net-worth requirement, as it has invested a sum of Rs. 7.5 Crores in two real estate companies as a joint venture partner, whereas in terms of Regulation 13A of the MB Regulations, 1992 it was restricted to carry on other business. When this was pointed out, the appellant converted the said investment into convertible preferential shares. Thus, the appellant has violated the terms of registration by indulging in activities other than the permissible activities. If the said investment is excluded, appellant's net-worth comes to around Rs. 2 Crores, which is far below the threshold of Rs. 5

Crores. All that the SEBI has done is to put the appellant on notice. The appellant is always at liberty to approach to the SEBI by filing the reply and participate in the adjudication proceedings. Therefore, there is neither merit nor urgency to consider this appeal.

6. We have carefully considered rival submissions and perused the records. Undisputed facts of the case are, the appellant has been functioning as a merchant banker since 2001. The tabular column in paragraph 36 of the impugned order shows the net-worth of the appellant for the year ended March 31, 2024 is Rs. 2.13 Crores, if the amount of Rs. 7.5 Crores is reduced. The principal argument of SEBI is that the appellant has invested the sum of Rs. 7.5 Crores in real estate business, which is not permissible for a merchant banker under Regulation 13A of SEBI (MB) Regulations. Appellant's defense is that the said investment has been converted into preferential shares of two real estate companies, which being in the nature of 'securities' is permissible. The other violations have been recorded in paragraph 92 of the impugned order.

7. A careful perusal of the impugned order shows that the interim direction has been passed on the solitary reason recorded

in paragraph 94 of the order. Keeping in view the totality of circumstances, in our opinion, the direction to debar the appellant from taking new mandate, who is in the business since 2001 is not desirable, particularly in the light of the offer made by Mr. Joshi that the appellant is prepared to infuse additional Rs. 3 Crores as paid up capital to reach the net-worth condition of Rs. 5 Crores.

8. In the circumstances, the following:

ORDER

- i) The appeal is allowed in part. Direction in paragraph No. 96 to debar the appellant from taking any new mandate shall be stayed subject to appellant bringing in Rs. 3 Crores within 15 days from today and thereby ensuring that the net-worth capital adequacy of Rs. 5 Crores is maintained.
- ii) The appellant shall file his reply within four weeks from today before the SEBI and the proceedings may continue thereafter. All contentions of both parties kept open.

iii) The appeal stands disposed of. Pending interlocutory application(s) stand disposed of.

No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

11.12.2024
PK