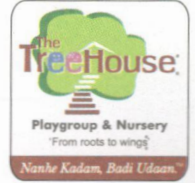


Tree House Education & Accessories Ltd.

Registered Office: 702, Morya House, 'C' Wing, Off. Link Road, Andheri (W), Mumbai - 400 053.
Tel.: 022 - 40492222 Fax : 022 - 40492207
CIN : L80101MH2006PLC163028



November 08, 2019

To, To, BSE Limited Phiroze Jeejeebhoy Tower Dalai Street, Fort Mumbai - 400 001	To, The National Stock, Exchange of India Ltd. Bandra (East) Mumbai- 400051	To, Metropolitan Stock Exchange of india Ltd. Exchange Square. CTS No. 25, Suren Road, Andheri (East), Mumbai – 400 093
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Re: Intimation of Order received from Securities Appellate Tribunal Mumbai (SAT).

Ref: Scrip Code: 533540 / TREEHOUSE

Dear Sir/Madam,

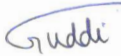
As required under Regulations 30 of SEBI (Listing Obligations & Disclosure Requirements), Regulations, 2015, we inform that an order has been received from Securities Appellate Tribunal Mumbai (SAT) dated 07.11.2019, copy of which is enclosed.


We request you to kindly take the above information on record.

Thanking you,

Yours truly,

For Tree House Education & Accessories Limited


Guddi Bajpai
Company Secretary



Encl: SAT Order dated 07.11.2019

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 01.10.2019

Date of Decision : 07.11.2019

Appeal No. 78 of 2019

1. Tree House Education and Accessories Limited
Registered office at
702, Morya House, 'C' Wing,
Off. Link Road, Andheri (W),
Mumbai – 400 053.
 2. Mr. Rajesh Bhatia
Residing at 202, Morya Regency,
Khar (West),
Mumbai – 400 052.
 3. Mrs. Geeta Bhatia
Residing at 202, Morya Regency,
Khar (West),
Mumbai – 400 052.
 4. Mr. Giridharilal S. Bhatia
Residing at 102, Morya Regency,
Khar (West),
Mumbai – 400 052.
 5. Mr. Hiten Trivedi
Residing at 1102, Nazarene Building,
Road No. 13, Near Central Avenue,
Chembur (East),
Mumbai – 400 071.
- Appellants

Versus

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

....Respondent

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sharma and Mr. Akshay Bafna, Advocates i/b Rizwan Merchant & Associates for Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the confirmatory order passed by the Whole Time Member (“WTM’ for short) of Securities and Exchange Board of India (“SEBI’ for short) dated November 16, 2018. By the said order directions contained in the *ad-interim ex-parte* order dated March 7, 2018 against the appellants were confirmed. Accordingly, the appellants are restrained from accessing the securities market in any manner, directly or indirectly, with the further direction to the National Stock Exchange of India Ltd. (‘NSE’ for short) to appoint an independent auditor / audit firm for conducting a detailed forensic audit of the books of accounts of appellant no. 1, namely, Tree House Education and Accessories Limited (‘Tree House’ for short) from the financial year 2011-12.

2. The relevant background of the matter is the following. Appellant No. 1, Tree House was incorporated on July 10, 2006. On August 26, 2011 Tree House was listed on BSE & NSE. Appellant nos. 2, 3 and 4 are promoters / Directors and appellant no. 5 is the Chief Project Director of Tree House. Mr. Rajesh Bhatia and Mrs. Geeta Bhatia (appellant nos. 2 and 3) together held about 35% paid up share capital of Tree House. Appellant no. 4 is the father-in-law of the appellant no. 2 and father of appellant no. 3 and held 0.11% of the share capital of Tree House.

3. In the third quarter of 2015-16 Tree House entered into discussion with promoter of Zee Group Companies for exploring possibility of merger between the two companies. On December 23, 2015 a Board resolution approving merger with the swap ratio of 5.3:1 was passed. On August 16, 2016, after certain developments, Zee Learn Ltd. intimated to the Stock Exchanges that the swap ratio of 5.3:1 earlier announced was changed to 1:1. On December 16, 2016 Zee Learn Ltd. announced cancellation of the proposed merger between the two companies. Some of these developments appeared in the media with a few such reports alleging irregularities in the functioning of Tree House. Accordingly,

SEBI initiated an investigation in the matter in December 2016. Certain complaints were also filed against Tree House in other fora like EOW in parallel. SEBI started seeking information from Tree House with a letter dated January 25, 2017 followed up with further communications dated February 2, February 14 and March 6, 2017. These communications, including summons to appear before SEBI, were responded to by the appellants promptly. The last such communication seeking additional information was issued by SEBI on March 28, 2017 and responded by Tree House on March 29, 2017. On March 7, 2018 the *ex-parte ad-interim* order was passed by SEBI restraining the appellants from accessing the securities market and directing NSE to conduct a detailed forensic audit of Tree House. An appeal was filed against this *ad-interim ex-parte* order before this Tribunal, which was disposed of by this Tribunal by its order dated August 29, 2018. By the said order appellants were granted three weeks time to file their replies and the WTM of SEBI was given two months thereafter to pass the confirmatory order. In addition, the submission of the appellant was also taken on record that they would cooperate with the forensic auditor though subject to the constraints on availability of documents as some of the documents were with other

investigating agencies because of parallel proceedings. The order impugned in this appeal is passed by the WTM on November 16, 2018 pursuant to the aforesaid directions by this Tribunal.

4. The learned senior counsel Shri Pradeep Sancheti appearing on behalf of the appellants submits that the impugned order has been passed by the WTM of SEBI without considering the prima facie findings given by the Bombay High Court and without coming to any contrary conclusion and simply confirming the ex-parte order. Further, the impugned order also proceeds on the wrong basis that the appellants were guilty of related party transaction without considering the appellants' submission that trustees of a public trust are not related parties either under the Companies Act, 2013 or under the SEBI Act / Rules / Regulations.

5. Elaborating the contention relating to the finding in the anticipatory bail order dated December 19, 2017 passed by the Bombay High Court in respect of appellant no. 2, Mr. Rajesh Bhatia, the learned senior counsel quoted following part of para 8 of the said order:-

“there is no substance in the allegation of the informant that there was something amissed in the applicant's Company which forced him to file the

present FIR. If there would have been some substance in the contention of the informant's allegations, he after the lodgment of the present crime on 31.1.2017 would not have been purchased the aforesaid shares from the market. Thus, prima facie it appears that the first informant lodged the first complaint on 23.11.2016 and the alleged subsequent complaint dated 12.12.2016 and the present crime on 31.1.2017 with malafide intention to bring down the price of shares of the applicant's company in the market. The motive / intention of the first informant behind filing the present crime can be safely discerned from the concluding paragraphs of his complaints written to the Joint Commissioner of Police on 23.11.2016 and 12.12.2016 wherein he has prayed to handover the company's and trust's day to day management to professional managers and remove the promoters / trustees / associates from any involvement from the affairs of the applicant's company. It therefore, appears that, there is substance in the submission of the learned counsel for the applicant that, the said Zee Group through the applicant had intention to take over the applicant's company at a meager purchase of 9% share and throw the applicant out from the company by making the price of the shares of the applicant's company fail."

6. Quoting the above, the learned senior counsel vehemently argued that the entire issue of decline in profit and performance of Tree House during 2015-16 and 2016-17 happened only because of the malafide actions taken by the Zee Group promoters starting October 2015. Such malafide action included attempt to takeover Tree House with a 9% shareholding which appellants nos. 2 and 3 have transferred to

the Zee Group as part of an understanding. When such attempt did not succeed various other coercive actions and false complaints have been resorted to by people belonging to the Zee Group. Therefore, the entire finding in the impugned order that the appellant's business decline was on account of transfer of resources to some Trusts has no basis as the entire information is available in public domain particularly through filings in the annual reports of Tree House which show the declining activity, performance and profits clearly coinciding with the period from 2015-16 onwards.

7. The learned senior counsel further contended that Sub Section (77) of Section 2 of the Companies Act, 2013 which lists out "relatives" does not include a trustee as related party. Therefore, a trustee or a trust cannot be deemed to be a related party according to the amended provision of 2013 with effect from April 1, 2014. Similarly, under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short), Regulation 2(1)(zb) defines "related party" as a related party as defined under sub-section (76) of Section 2 of the Companies Act, 2013 or under the applicable accounting standards and "related party transactions" as defined under 2(1)(zc) means "transfer of

resources, services or obligations between a listed entity and a related party”. Therefore, Sub Section 2(76) of the Companies Act, 2013 provides a comprehensive list of related parties with reference to a Company and a trust is not covered under the said definition. Further, the trustees in a public charitable trust are custodians of public interest and have no personal / business interest nor any personal gain / interest. Therefore, transfer of funds by a Company (here, Tree House) to the educational trusts in which Mr. Giridharilal Bhatia was a Trustee was not a related party transaction and hence no disclosure was required under any applicable laws. Mr. Giridharilal Bhatia was not even a founder Trustee of these Trusts and he was included as a Trustee to safeguard the interests of Tree House which is lending large sums to those Trusts to run schools.

8. In short, the learned senior counsel for the appellants submits that the impugned order passed by SEBI is without any merit and defective since it does not consider the explanations given by the appellants regarding the context in which the business of the appellant Company Tree House was affected and that too despite such an explicit finding by the Bombay High Court in its anticipatory bail order (supra)

and the explicit provisions of law (both the Companies Act and SEBI Act / Regulations) which was extensively detailed by the appellants in its reply dated September 21, 2018 following the directions of this Tribunal.

9. It was further submitted that the business model of Tree House itself was of providing funds to public trusts who runs schools, as it runs only a few schools directly. Tree House provides standardized curriculum for quality education including infrastructure, furniture and fixture etc. and other related support to the schools run by the established charitable trusts and also provide them with refundable loans with interest on a revenue sharing model thereby earning 20 to 40% revenue generated by those trusts.

10. It is evident from the table at page 9 of the impugned order that the WTM of SEBI has noted the fact that the number of schools declined from a peak of 654 in 2015-16 to 417 in 2016-17. This was because many centres / schools run by the company had to be closed down on account of various issues cropped up in the context of the issues with the Zee group companies. The same table also discloses that the profit and loss account records decline in profit to Rs. 59.27 crore in 2016-17 from 209.33 crore in the previous financial year.

Therefore, when the business itself is declining on account of the developments relating to a 'forced takeover' by a competing entity the WTM of SEBI could not have ignored these background and impose false charges on the appellants that of diverting funds from appellant no. 1 and in wrongly applying facets of related party / related party transactions contrary to the provisions relating to the same both under the Companies Act 2013 and LODR Regulations 2015. It is on record that the self operated pre-schools declined to 188 from its peak level of 542 as on March 31, 2016 while franchise pre-schools increased from 68 in 2011 to 94 in 2016 and 214 as on March 31, 2017. There is overall effectively a decline of 237 schools in 2016-17 from 2015-16.

11. As regards the alleged irregularities in respect of furniture and fixtures it was submitted that all records are available; the expenditure involved on these items is one of the most important component of expenditure as in every centre standardized furniture and fixtures have to be provided. Moreover, once the furniture is prepared it has to be procured and the cost incurred irrespective of whether the schools get closed down because such closure happened in very short

time during 2015-16 due to a host of factors relating to the Zee group accusations and complaints.

12. The learned senior counsel for the appellant, relying on the order of this Tribunal dated March 7, 2019 in the matter of ***North End Foods Marketing Pvt. Ltd. vs. SEBI, Appeal No. 80 of 2019***, submitted that continuation of the restraint order is adversely affecting the appellant from pursuing its profession having substantial and serious consequences and that too without explicitly considering the detailed submissions made by the appellant before the WTM of SEBI.

13. We have also heard the learned senior counsel Shri Kevic Setalvad appearing on behalf of respondent SEBI who contended that the investigation relating to the books of accounts of Tree House is from the year 2012-13 onward, not only from the time of 2015-16 during which Tree House allegedly have certain problems with the Zee Group; SEBI is not concerned with those type of disputes between business entities; it is concerned with the general interest of the investors in listed companies as well as in the securities market. Therefore, when complaints relating to serious allegations of wrong doing by companies and other entities are received it is the duty of SEBI to investigate the same and

to pass appropriate orders. The order impugned in this appeal is also one such instance where it has been noticed that the appellant has been providing substantial amount of funds to several trusts, some of them incurring losses and in which one of the promoters of Tree House was a trustee. Hence by implication it is a related party transaction. It was further contended that some of the conditions relating to interest etc. on those loans given to the trusts were subsequently amended to the disadvantage of the listed company Tree House. Therefore, the charge that the appellant company and its directors / promoters have indulged in activities harmful to the interests of the listed entity is fully in conformity with the SEBI Act and PFUTP Regulations 2003 and the Listing Regulations 2015. It was further contended that in addition SEBI has directed NSE to do a detailed forensic audit to bring out the full facts which in any case will prove the veracity which inexplicably the appellant is not fully cooperating with.

14. Learned senior counsel also brought out the facts relating to deterioration in the financial position of Tree House from 2011-12 to 2016-17 and showed how Tree House went into significant decline in profit by approximately Rs. 150 crore in 2016-17 from a profit of about Rs. 210 crore

in 2015-16 with concomitant decline in their business / activities. The learned senior counsel also showed that Rs. 25 crore has been also written off by Tree House without adequate explanation.

15. The relevant Sections of the Companies Act, 2013 and the LODR Regulations, 2015 are quoted below:-

Companies Act, 2013

“2. Definitions.— In this Act, unless the context otherwise requires,—

(76) “related party”, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager 1 [or his relative] is a member or director;

(v) a public company in which a director or manager is a director 2 [and] holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company.

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate];

(ix) such other person as may be prescribed;”

LODR Regulations, 2015

“Definitions

2. (1) *In these regulations, unless the context otherwise requires:—*

(zb) “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

(zc) “related party transaction” means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);”

16. We note that the entire issue relating to the matter has been initiated basically based on media reports supplemented with information culled out from the annual reports of Tree House. Tree House did not make any effort in not disclosing the facts relating to their business model, decline in their business and consequent losses on account of closing a large number of self run schools from 2015-16. The downturn coincides with the problems it had with a proposed merger and its failure and other aspects reported by the appellant company to the police authorities etc. and on which the

Hon'ble High Court passed the bail order (supra) though this Tribunal does not propose to go into those details.

17. We are unable to fathom why the explanations provided by the appellant both relating to the basic facts on the proposed merger and its failure was not given sufficient consideration in the impugned order particularly because of the given business model of Tree House. It is an undisputed fact that Tree House is operating in the area of education both for running its own schools, through franchise system and / or by providing funds to various trusts. If that business is adversely affected due to unfavourable business environment obviously that would be a factor leading to the decline in performance as well as profitability. Therefore without passing any judgment on the veracity of the complaints between two groups / different entities the facts on record have to be analyzed in judging / evaluating business performance particularly when there are reliable evidence in the form of orders of the High Court etc. available.

18. Similarly, we are unable to agree with the contentions of SEBI that a trustee of a public charitable trust is a related party going by the correct reading of the definition in the Companies Act as well as in the LODR Regulations, unless

there is evidence to show that those Trusts have been set up or operating for the benefit of the appellant(s). Moreover, there is nothing on record to show that Mr. Giridharilal, the trustee has personally benefited in any manner not only by virtue of being a trustee or in general by any other means. Similarly, we are also unable to appreciate fully the allegations relating to the inflated expenditure on furniture and fixtures etc. particularly in the absence of any evidence on diversion of money / resources belonging to Tree House being shown. How far SEBI can reassess or reevaluate business decisions and audited figures given in financial reports of a company unless explicit proof / evidence relating to siphoning off or manipulation of accounts is available is also a question that needs to be answered by SEBI. In the absence of such information authorities are not in a position to pass business judgments regarding what could be or what should be the cost / expenditure on a particular equipment / tool such as furniture and fixtures. These are all business decisions of the concerned entity and decisions to be taken by the authorized persons. If any malafide in terms of siphoning off of funds etc is observed in the accounts of the listed companies SEBI definitely has the power to intervene in the interest of investors and securities market.

19. There is yet another aspect which makes the impugned order not fully sustainable. Admittedly, based on media report an investigation was started by SEBI in December 2016. The investigation continued for more than a year and thereafter an *ex-parte* interim order dated March 7, 2018 was passed. By the said interim order SEBI further directed NSE to appoint an independent auditor / audit firm for conducting a detailed forensic audit of the books of account from the financial year 2011-12 onwards for verifying, *inter alia*, the manipulation of the books of account, misrepresentation of financials and / or business operations of the appellant Company and wrongful diversion / siphoning off the funds by the Company through related party transactions etc. As on date, nothing has been shown on record to indicate any finding through interim audit report with regard to the manipulation of books of account or siphoning off the funds of the Company. The forensic audit is still underway.

20. We find that the *ex parte* interim order was issued on the basis of presumption of certain transactions and after acknowledging the dispute between the appellant and Zee group in 2015 and the expenses incurred by the Company from the financial year 2011-12 onwards.

21. We are of the opinion that no case of urgency was made out in the instant case for grant of an *ex parte* interim order or for continuation of the said interim order to restrain the appellant from the securities market. It is settled law that an *ex parte* interim order is required to be passed in order to curb further mischief or to stop large scale exercise of possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found *prima facie*, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an *ex parte* interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. The purpose of passing an *ex parte* interim order is to prevent further mischief or where the act to be prevented is imminent or where action to be taken brooks no delay.

22. In *Liberty Oil Mills & Ors. Vs. Union of India & Ors. AIR (1984) SC 1271* the Supreme Court held that the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. The Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take

action immediately in order to instill and restore confidence in the capital market.

23. In view of the aforesaid, we find that in the instant case no case of urgency was made out in the first instance for grant of an *ex parte* interim order. There was no *prima facie* finding of manipulation of the books of account or misrepresentation of financials or diversion / siphoning off the funds of the Company. The inference drawn was purely based on presumption and not on the basis of any evidence. Till date no report has been submitted by the independent auditor / audit firm. Thus continuation of an *ex parte* interim order restraining the appellants cannot be sustained.

24. The charges of violation of PFUTP Regulations 2003 imposed on the appellants in addition to violation of LODR Regulations are quite serious. However a correct reading of the definition of related party / related party transactions does not make the finding in the impugned order tenable / sustainable as the definitions are very clear and Mr. Giridharilal does not fall within the ambit of that definition in the absence of any finding that those Trusts were in fact entities set up / functioning for the benefit of the appellants. Therefore, we find it difficult to sustain the

charges of various violations in the given facts and circumstances of the matter.

25. In the result, we quash and set aside the impugned orders (both the confirmatory order dated November 16, 2018 and *ad interim ex parte* order dated March 7, 2018) as far as the direction restraining the appellants from dealing in the securities market in any manner. However, we uphold the direction relating to forensic audit of Tree House. Appellants shall extend full cooperation to enable the auditor to complete the forensic audit at the earliest. In the event if substantial new material / evidence is available SEBI is at liberty to issue a fresh show cause notice and proceed thereafter in accordance with law.

26. Accordingly, appeal is partly allowed. No orders on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

07.11.2019

Prepared and compared by:msb