(2023) 12 SEBI CK 0008

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1323 Of 2023, Appeal No. 913 Of 2023

Bakil Singh APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 11, 11(1), 11(4), 11A, 11(B), 12, 15A, 15HAA, 15HB, 28A

Citation : (2023) 12 SEBI CK 0008

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Deepak Dhane, Aneri Shah, Prathamesh Kamat, Ravishekhar Pandey, Nishit Dhruva, Shefali Shankar, Rasika Ghate, Harsh Sheth

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated August 31, 2023 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs.50 lakh under Section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) jointly and severally for failure to comply with the directions issued by the Whole Time Member ('WTM' for short) under Section 11(1), 11(4) and 11(B) of the SEBI Act vide its order dated 4th September, 2015 and 7th September, 2015.

2. The appellants were Directors at the relevant moment of time and resigned on 1st June, 2011 of Sunshine Infrabuild Corporation Ltd. This Company came out with various types of debentures during the financial year 2010-11 to 2012-13. A show cause notice was issued alleging that the debentures were issued in violation of the Companies Act. The WTM vide order dated 4th September, 2015 and 7th September, 2015 issued directions to refund the money collected

through the issuance of debentures.

3. The AO issued a show cause notice dated June 13, 2023 alleging that the appellants have failed to comply with the order of the WTM dated 4th September, 2015 and 7th September, 2015. After considering the matter and evidence on record the AO passed the impugned order imposing a penalty of Rs.50 lakh for noncompliance of the order of the WTM.

4. Admittedly, an order under Section 11B was passed by the WTM on 4th September, 2015 and 7th September, 2015. The question that arises for consideration is, that if the order of the WTM passed under Section 11B is not complied by the appellants, is it open to SEBI to initiate proceedings for imposition of penalty under Section 15HB of the SEBI Act. For facility, the provisions of 11B and 15HB are extracted hereunder:-

"Power to issue directions 11-B.

Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,-

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation - For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

Penalty for contravention where no separate penalty has been provided.

15-HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

5. According to the respondent, the directions issued under Section 11B are not penalty and, therefore, for noncompliance of the directions of the WTM, a penalty

under Section 15HB could be issued. It was urged, that under Section 15HB whoever fails to comply with the directions issued by the Board for which no separate penalty has been provided, shall be liable to pay a penalty.

6. In our opinion, the contention raised by the respondent nor the impugned order can be sustained.

7. Directions issued under Section 11B are under Chapter-II of the SEBI Act, which gives powers to the Board to issue such directions as are necessary to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit. Such directions issued under 11B are in the nature of orders which are passed after due enquiry.

8. Black's Law Dictionary Seventh Edition defines 'direction' to mean an order. The word 'order' has also been defined in the same Black's Law Dictionary Seventh Edition as a command, direction or instruction, a written direction or command delivered by a court or judge. Thus, direction and order are synonymous terms and are interchangeable.

9. In Rajinder Nath vs. Commissioner Of Income Tax (1979) 4 SCC 282, the Supreme Court held that a direction is an order issued by the authority or Court which is empowered to give while deciding the case before it.

10. Section 15HB is under Chapter-VIA of the SEBI Act, which provides for penalties and adjudication. A perusal of Chapter-VIA would indicate that penalties have been provided for specific violations, for example, under Section 15A, a penalty is provided for failure to furnish information, return, etc. Under Section 15B penalty is provided for failure by any person to enter into agreement with clients. Penalty is provided under Section 15C for failure to redress investors' grievances and so forth. Section 15HB is a residuary clause meaning thereby that where specific penalties have not been provided elsewhere under Chapter-VI, then a penalty could be awarded under Section 15HB for failure to comply with any provisions of the Act, Rules, Regulations or directions issued by the Board.

11. The word 'directions' issued by the Board under Section 15HB is different and distinct from the directions issued under Section 11B after due enquiry and adjudication. There are many directions issued under the Regulations and the Circulars requiring a person to do an act in a certain manner. For example, a person is required to comply with a certain provision within a stipulated period. Failure to comply with such directions issued by the Board under the Act, Regulations, Rules or Circulars if not complied with may invite penalty. If penalty is not specified under Chapter-VIA from Section 15-A to Section 15-HAA for failure to comply with such type of directions then penalty can be imposed after adjudication under the residuary clause Section 15HB.

12. In our opinion, Section 15HB cannot be invoked for noncompliance of any

directions issued under Section 11B after enquiry and adjudication.

13. Thus, an adjudicatory order passed under Chapter IV or under Chapter VIA, after enquiry and adjudication can be enforced like a decree under Section 28A. Penalty proceedings cannot be initiated for non-compliance under Section 15HB.

14. We are further of the opinion that the appellants having resigned in 2011 were not in a position to comply with the direction of the WTM to bring back the money as they were no longer in-charge of the Company. Thus, there is no willful failure on the part of the appellant to comply with the order of the WTM.

15. In view of the aforesaid, we are of the view that the provisions of Section 15HB cannot be utilized for imposition of penalty for non-compliance of an order of the WTM passed under Section 11B of the SEBI Act.

16. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed with order as to costs. The miscellaneous application is also disposed of.