(2023) 07 SEBI CK 0019

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 368 Of 2022, Appeal No. 529 Of 2023

Bhadreshwar Pal	APPELLANT
Vs	
Securities And Exchange Board Of India	RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 11, 11B
Companies Act, 2013 — Section 5, 5(g), 73, 73(2)

Citation : (2023) 07 SEBI CK 0019

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

Bench : Division Bench

Advocate : Devasis Mitra, Vyom Shah, Ravishekhar Pandey, Rasika Ghate, Shefali Shankar, Amarpal Singh Dua

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. The appellant has challenged the order dated October 6, 2017 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short).

2. The appeal is accompanied by an application for condonation of delay. The ground urged is, that the certified copy of the impugned order dated October 6, 2017 was never served, as a result, the appellant was unaware of the impugned order.

3. In this regard, we had directed the respondent to file a reply. From a perusal of the Annexure – E, we find that admittedly the impugned order remained undelivered. No steps whatsoever were taken by the respondent to serve the impugned order. Consequently, we are satisfied that the appellant was unaware of the impugned order as the same was never served upon him. The delay is condoned. The application is allowed.

4. The present appeal has been filed against the order dated October 6, 2017 passed by the Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) directing the Company Roofers InfraProjects Limited ("RIPL / Company" for short) along with other directors including the appellant to refund the money collected by the Company during their respective period of directorship through the issuance of Secured Redeemable Non-Convertible Debentures ("NCDs" for short) including application money collected from the investors along with interest of 15% per annum. The amount to be refunded was joint and several.

5. The facts leading to the filing of the present appeal is, that based on a complaint, SEBI conducted an investigation and found that the Company had made an offer of NCDs in the financial year 2009-2019 to 2013-2014 and raised an amount of Rs. 74.40 crores from 42,269 allottees. The said offer of NCDs was violative of the SEBI Act, 1992, the Companies Act, 1956 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations" for short). Accordingly, an interim order dated March 18, 2016 was passed wherein certain directions were issued against the Company, its directors and promoters. Through the said interim order the appellant were also directed to show cause as to why suitable direction should not be passed under Section 11 and 11B of the SEBI Act.

6. The WTM after considering the replies of the company and other noticees passed the impugned order issuing the directions as stated aforesaid.

7. The WTM, however, held that since the appellant was a director of the Company during the period when NCDs were issued by the Company, he was an "officer in default" as per Section 5(g) of the Companies Act and therefore he was required to discharge the obligations contained in Section 73 of the Companies Act and that all the past and present directors of the Company being "officers in default" were liable to refund jointly and severally along with interest.

8. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Ajoy Sankar Sanyal vs. SEBI Appeal No. 117 of 2022 decided on November 23, 2022. In the said appeal, the said appellant Ajoy Sanyal was also a director in the company in question and the order directing the refund of the amount was rejected as this Tribunal found that he was not an 'officer in default' as per Section 5(g) of the Companies Act in as much as the company had a Chairman cum Managing Director, namely, Shri Hirak Nath Sounth. This Tribunal held :-

"8. The appellant has been booked only on the ground that he was an additional director and therefore an officer in default under Section 5(g) of the Companies Act. This finding in our opinion is perverse in as much as the appellant as well as other directors have categorically stated that the Company had a Chairman cum Managing Director, namely, Shri Hirak Nath Sounth and therefore as per the provisions of Section 5 the Managing Director would be an officer in default. There is no finding that appellant was the Managing Director or was person in-charge by the board with the responsibility of compliance with the provisions of the Companies Act and therefore in our opinion the appellant could not be made responsible for refunding the amount under Section 73(2) of the Companies Act."

9. In view of the aforesaid, the decision is squarely applicable in the instant case. The impugned order in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed at the admission stage.

10. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.