(2022) 06 SEBI CK 0079

In the Securities Appellate Tribunal Mumbai

Case No : ??Miscellaneous Application No. 394, 395 Of 2022, Appeal No. 237, 238 Of 2022

Gilbert James Dhason And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 16-06-2022

Acts Referred:

Securities And Exchange Board Of India (Collective Investment Scheme) Regulations, 1999 — Regulation 65
Securities And Exchange Board Of India Act, 1992 — Section 11(1), 11B, 11(4)

Citation : (2022) 06 SEBI CK 0079

Hon'ble Judges : Tarun Agarwala Presiding Officer;M. T. Joshi, J;Meera Swarup, Member

Bench : Full Bench

Advocate : Rushin Kapadia, Robin Shah, Vishal Kanade, Sharvil Kala, Mythili Gosavi

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. For the reasons stated in the applications, the delay in the filing of the appeals is condoned. The applications are allowed.

2. Two appeals have been filed by four noticees challenging the order of the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) dated May 19, 2021 imposing a penalty of Rs. 5 lakhs on each of the noticees for violating the ex-parte ad-interim order of SEBI dated December 10, 2014.

3. The facts leading to the filing of the present appeal is, that SEBI received a complaint vide email dated August 25, 2013 alleging that a few companies in Tamil Nadu were collecting monies from public in violation of the SEBI (Collective Investment Schemes) Regulations, 1999. Based on a preliminary examination an ex-parte ad-interim order dated December 10, 2014 was passed under Section

11(1), 11B and 11(4) read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 restraining the Company and its Directors from collecting any fresh money from investors under the existing schemes.

4. Subsequently, the impugned order was confirmed vide order dated October 20, 2015. Thereafter, another order dated March 30, 2016 was passed directing the Company and its Directors to refund the money so collected to the investors. Thereafter, another order dated September 21, 2016 was passed holding that since the Economic Offences Wing-II, Madurai ("EOW") has treated the scheme of the Company falling under Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 ("TNPID Act" for convenience) and the proceedings are underway, SEBI accordingly directed that they will not take coercive steps in implementing its order of March 30, 2016 till EOW completes its proceedings.

5. Subsequently, a show cause notice dated April 03, 2019 was issued pursuant to which the WTM passed an order dated August 14, 2019, holding that the Company and its Directors shall not launch any new collective investment schemes without seeking registration from SEBI under the SEBI Act and CIS Regulations and shall not collect money from the investors under its existing scheme. The Company and its Directors were further restrained from accessing the securities market for a period of four years or till the completion of proceedings under TNPID Act, whichever is later.

6. In addition to the aforesaid, a show cause notice was issued by the AO dated July 03, 2019 against the appellants to show cause why appropriate order should not be passed for violating the ex-parte ad-interim order dated December 10, 2014. It was alleged that the ex-parte ad-interim order dated December 10, 2014 had specifically restrained the appellants from collecting any fresh money from the investors under its existing scheme inspite of which the appellants continued to mobilize and collected the money from the investors under its existing schemes.

7. The appellants contested the matter and denied having violated the ex-parte ad-interim order. The AO after considering the material evidence on record passed the impugned order holding that the appellants had violated the interim order and consequently imposed a penalty of Rs. 5 lakhs on each of the appellants.

8. We have heard Mr. Rushin Kapadia, the learned counsel for the appellants and Mr. Vishal Kanade, the learned counsel for the Respondent.

9. In paragraph 13 and 14 of the impugned order, the AO has held that the Company had mobilized 84.10 lakhs from April 2013 till January 16, 2015 and, therefore, continued to collect the money even after the passing of the interim order dated December 10, 2014 and thus, violated the ad-interim order. This finding has been arrived at on the basis of the reply dated January 16, 2015 submitted by the Company which is Exhibit "D". A perusal of the reply indicates

that the Company had collected the money of 84.10 lakhs from the existing customers under the earlier scheme in the financial year 2013-2014, which means till March 31, 2014. The finding that the appellants had collected the money till January 16, 2015 is patently erroneous and is based on misappreciation and misreading of the reply filed by the Company Exhibit “D” to the memorandum of appeal.

10. In view of the aforesaid, we find that there is no evidence to show that the appellants had collected money under its existing scheme after April 01, 2014. The interim order was passed on December 10, 2014. There is no evidence to indicate that the appellants had collected any money under its existing schemes after December 10, 2014. Consequently, in view of the aforesaid, the impugned order imposing a penalty cannot be sustained and is quashed. The appeals are allowed with no order as to costs.

11. 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.