
(2023) 11 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1494 Of 2022, Appeal No. 985 Of 2022

Kuber Floritech Ltd

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 10-11-2023

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 28A

Citation : (2023) 11 SEBI CK 0002

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

Bench : Division Bench

Advocate : Asim Naeem, Mohd Haaris, Sumit Rai, Mihir Mody, Arnav Misra, K Ashar

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated January 11, 2022 passed by the Recovery Officer of Securities and Exchange Board of India ('SEBI' for short) rejecting the representation / objection to the attachment order dated March 9, 2018. The appellant has also prayed that the properties attached pursuant to the order dated March 9, 2018 should be de-sealed.

2. An application for condonation of delay has been filed contending that there is a delay of 309 days in challenging the order dated January 11, 2022. The ground urged is, that after the rejection of its representation by the order dated January 11, 2022, the appellant preferred a Writ Petition No. 11426 of 2022 before the Delhi High Court which was dismissed on August 2, 2022 on the ground of alternate remedy. It was, therefore, urged that the delay of 309 days from the date of the impugned order dated January 11, 2022 and 106 days from the date of the order passed by the Delhi High Court be condoned.

3. We find that that the application for condonation of delay is only confined for

condoning the delay in filing the appeal against the order dated January 11, 2022. Nothing has been stated as to why the appellant could not file the appeal earlier against the order dated March 9, 2018. We also find that the order dated March 9, 2018 has not been annexed to the memo of appeal.

4. In the light of the aforesaid, we condone the delay in the filing of the appeal insofar as it relates to challenging the order dated January 11, 2022 passed by the Recovery Officer rejecting the representation / objection filed by the appellant. The application is allowed.

5. Insofar as the order dated March 9, 2018 is concerned we find that the said order has not been annexed to the memo of appeal nor any ground has been urged in the application for condonation of delay as to why the appeal could not be preferred against the order dated March 9, 2018 earlier. In the absence of any sufficient cause being shown, we are of the opinion that there is an inordinate delay in the filing of the appeal against the order dated March 9, 2018. No sufficient cause has been shown. The appeal against the order dated March 9, 2018 filed by the appellant is dismissed on the ground of laches.

6. The facts leading to the filing of the present appeal is, that the appellant Kuber Floritech Limited was earlier known as M/s. Kuber Plantation Limited and was incorporated on July 29, 1993. Another Company known as M/s. Kuber Planters Limited which is a group company of the Kuber Floritech Limited was incorporated on April 21, 1995 and launched various Collective Investment Schemes.

7. SEBI vide order dated July 25, 2001 directed Kuber Planters Limited to refund the money collected under the purported CIS to the investors. Pursuant thereto the Recovery Officer initiated recovery proceedings vide recovery certificate dated June 6, 2016 against the Kuber Planters Limited for failure to pay a sum of Rs. 2462.17 crore. The Recovery Officer passed a prohibitory order dated March 9, 2018 against Kuber Planters Limited as well as against the appellant, namely:-

"In view of the above, and in exercise of the powers conferred under Rule 16 and 48 of the Second Schedule to the Income Tax Act, 1961 read with Section 28A of the SEBI Act, 1992, the defaulters are hereby prohibited from disposing, transferring, alienating, or charging in respect of the following properties attached:

(a) All the immovable properties held by the defaulter including the following in the name of Kuber Planters Ltd. or Kuber Plantations Ltd.:"

8. The appellant preferred a representation / objection against the prohibitory order dated March 9, 2018 and without waiting for a response from SEBI filed a Writ Petition No. 10558 of 2021 before the Delhi High Court which was disposed of by an order dated November 16, 2021 directing SEBI to dispose of the appellant's representation. Based on the direction of the Delhi High Court the Recovery Officer passed the order dated January 11, 2022 rejecting the

representation / objection.

9. The sole contention before this Tribunal is, that the appellant was incorporated on July 29, 1993 and the defaulter company Kuber Planters Limited was incorporated on April 21, 1995. It was also contended that the properties so attached by order dated March 9, 2018 were properties of the appellant which were purchased from their own funds prior to the incorporation of the defaulter company, namely, Kuber Planters Limited. On this basis the learned counsel for the appellant contended that the attachment order is per se erroneous and the properties are therefore required to be de-sealed.

10. The contention raised by the learned counsel for the appellant is patently misconceived in as much as no proof has been filed before the Recovery Officer to show that the appellant had purchased the properties in question prior to the incorporation of the defaulter company Kuber Planters Limited.

The Recovery Officer had asked for the certified copy of the sale deeds which were not supplied nor the information relating to the source of funds was supplied by the appellant. We also find that the directors of the appellant and the defaulting company are the same. The appellant was directed by Recovery Officer to submit the details of the directors of the Company as well as of the defaulting company since inception but the same was also not done.

11. Consequently, in the absence of furnishing proof that the properties of the appellant which were attached by the Recovery Officer was produced prior to the incorporation of the defaulting company and that the properties were purchased from its own funds having not been supplied, the representation / objection of the appellant was rightly rejected. We, therefore, do not find any manifest error in the impugned order. The appeal fails and is dismissed with no order as to costs.