(2021) 11 SEBI CK 0055

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 649 Of 2021

Madhav Acharya APPELLANT

Vs

Securities And Exchange Board Of India And Others RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14
Securities And Exchange Board Of India (Procedure For Holding. Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 — Rule 4(6)
Securities And Exchange Board Of India Act, 1992 — Section 15I(2)

Citation : (2021) 11 SEBI CK 0055

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

Bench : Division Bench

Advocate : Vikram Nankani, Rahul Sarda, KRCV Seshachalam, Sabeena Mahadik, Pankaj Uttaradhi,, Aayush Kothari, Sanjana Salvi, Mustafa Doctor, Mihir Mody, Arnav Misra, Mayur Jaisingh, Ashish Kamat, Adarsh Saxena, Vineet Bhansali, Drishti Das

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal praying for the following reliefs:-

a) That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 and Respondent No. 2 to implement the order dated October 01, 2019 passed by this Hon'ble Tribunal in Appeal No. 413 of 2019;

b) That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 and Respondent No. 2 to provide the documents listed in the Appellant's letter dated September 03, 2021;

c) That this Hon'ble Tribunal be pleased to stay the further proceeding under Show Cause Notice dated May 25, 2021 qua this Appellant till the Respondent No. 1 and 2 provide the documents/ information necessary for defending the allegations levelled against Appellant.

d) That this Hon'ble Tribunal be pleased to pass any other order as it may deem fit:

2. The facts leading to the filing of the present appeal is, that the appellant is an individual and joined Respondent No. 2 Company CG Power and Industrial Solutions Limited as Vice President, Finance in 2008. He became the Chief Finance Officer in 2009 and Executive Director on April 01, 2016. It is alleged that he left the Company on August 11, 2017/ September 30, 2017.

3. On a basis of a news report of suspected fraud in the Respondent No. 2 Company and the corporate announcements on the stock exchanges on August 20, 2019 disclosing the outcome of a Board meeting held on August 19, 2019, Securities and Exchange Board of India ("SEBI" for convenience) Respondent No. 1 sought comments from the appellant on August 30, 2019. Since the appellant alleged that he had no access to the information as he had left the Company, the said information could not be supplied and accordingly SEBI was informed. The Whole Time Member ("WTM" for convenience) passed an ex-parte ad-interim order dated September 17, 2019 restraining the appellant and other entities from accessing the securities market. The appellant and other entities filed an Appeal No. 413 of 2019 which was disposed of by an order dated October 01, 2019 directing the WTM to pass a confirmatory order after giving an opportunity of hearing to the appellant. This Tribunal also directed that if any documents are requested by the appellant either from the Company or from the SEBI the same would be supplied. For facility, paragraph 17 of our order dated October 01, 219 is extracted hereunder.

"17. We are however of the view that the appellants are entitled for supply of documents from the Company so that they may file an appropriate reply before SEBI. Denial of such documents by the Company or by SEBI would be in violation of principles of natural justice as embodied in Article 14 of the Constitution of India. Without going into the controversy as to whether requisite documents were supplied or not, we are of the opinion that, if any, document is requested by the appellants either from the Company or from SEBI the same would be supplied in accordance with law."

4. Based on the aforesaid direction, it is alleged that the appellant issued a letter requesting for certain documents. It was contended that only few documents were supplied and another letter dated October 09, 2019 was issued and again a reply was given but no documents were supplied. It is alleged that the appellant under protest filed a preliminary reply on October 31, 2019 and thereafter the WTM passed a confirmatory order on March 11, 2020.

5. The confirmatory order was not challenged by the appellant. However, other entities filed Appeal No. 224 of 2020 wherein this Tribunal by an order dated April 06, 2021 affirmed the confirmatory order and further directed the WTM to issue a show cause notice and decide the same within six months. Based on our

direction, a show cause notice dated May 25, 2021 was issued to the appellant and other entities.

6. The appellant filed a preliminary reply and sought permission to inspect the documents and also requested for supply of certain documents. It is alleged that SEBI only provided certain documents on July 01, 2021 by letter dated August 09, 2021. The appellant again requested SEBI to supply for certain documents but such documents were not supplied. By another letter dated August 21, 2021, a limited reply to the show cause notice was filed by the appellant in which a further request was made requesting Respondent No. 1 to direct Respondent No. 2-Company to supply the documents. It is alleged that SEBI refused to pass any order on this application but orally instructed the appellant to approach the Tribunal for a direction to Respondent No. 2.

7. Based on the aforesaid, it is alleged that the appellant issued a letter dated September 03, 2021 to the Respondent No. 2-Company requesting to supply the documents as asked for. Since the Company did not supply any documents, the appellant preferred Misc. Application No. 1128 of 2021 in Appeal No. 413 of 2019 which was dismissed as withdrawn on September 27, 2021 with liberty to file an appeal. Thereafter, the present appeal was filed praying for certain reliefs which has been extracted aforesaid.

8. The contention of the appellant is, that this Tribunal in its order of October 01, 2019 in Appeal No. 413 of 2019 had clearly directed that the documents would be supplied either by the Company or by SEBI and therefore it was not open to the Respondent Company to contend that they will not supply the requisite documents. It was contended that these documents are essential for the purpose of defending itself before the WTM and that these documents are essential in order to give an efficacious reply to the show cause notice.

9. On the other hand, the stand of SEBI is, that the present appeal is not maintainable as no order has been passed by SEBI and that an appeal can only be filed against an order. In so far as the stand of Respondent No. 2-Company is concerned it was contended that whatever documents were asked for were duly supplied and that certain documents were not supplied as in their opinion it was irrelevant or was vague. It was contended that Respondent No. 2 will supply the documents if directed by SEBI or by this Tribunal.

10. We have heard Mr. Vikram Nankani, Senior Advocate for the Appellant and Mr. Mustafa Doctor, Senior Advocate for Respondent No. 1 and Mr. Ashish Kamat, Advocate for Respondent No. 2. 11. 15T of SEBI Act provides as under:-

"15T. Appeal to the Securities Appellate Tribunal-

(1) Save as provided in sub-section (2), any person aggrieved.-

(a) by any order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer [under this Act; or]

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter....."

12. A perusal of the aforesaid provision makes it clear that any person who is aggrieved by an order of the Board may file an appeal before the Securities Appellate Tribunal. Therefore, it is essential that an appeal could only be filed if there is an order passed by the Board and, if that person is aggrieved by that order. In the instant case, admittedly there is no order passed by the WTM. Therefore the appeal is not maintainable. The order of this Tribunal dated October 01, 2019 cannot be utilized now in as much as the said order has lost his efficacy. This Tribunal had passed an order dated October 01, 2019 directing the Company and SEBI to supply the documents if sought for by the appellant. This order was in relation to the ex-parte ad-interim order which has now been confirmed and thereafter a show cause notice has been issued.

13. We find that the appellant had filed a limited reply on August 21, 2021 and also requested the WTM to direct Respondent No. 2-Company to supply the documents. It is alleged that no order has been passed by the WTM and oral instructions were issued to the appellant to approach the Tribunal for appropriate orders. In our view, the approach of the WTM is incorrect and arbitrary. The WTM is required to deal with the issue at hand and is required to pass appropriate orders keeping in mind the transparency, fairness and principles of natural justice as embodied under Article 14 of the Constitution of India. Further Section 15I(2) of the SEBI Act as well as Rule 4(6) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 gives powers to summon and enforce the attendance of any person for the purpose of any evidence or to produce any documents. Thus, it was not appropriate for the WTM to refuse to pass any order on the request of the appellant nor can it take a stand that Respondent No. 2 is not a party to the proceedings before it and, therefore, cannot issue any orders.

14. We also find that the stand of the Respondent No. 2 that they will only provide the documents either if directed by this Tribunal or by SEBI is incorrect. Respondent No. 2 has fiduciary duty to supply the documents which are in their possession and cannot hold nor can it take a stand that the documents sought for are irrelevant or vague.

15. In the light of the aforesaid, the appeal is dismissed as not maintainable. We further observe that in the event the appellant files an appropriate application before the WTM for supply of certain documents the same shall be considered and dealt with in accordance with law by the WTM. In the circumstances of the case, party shall bear their own costs.

16. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a

certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

