(2020) 01 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.24 Of 2020

Mondal Construction Company Ltd And Others — APPELLANT

Vs

Recovery Officer And Others — RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 15(T)
Companies Act, 1956 — Section 56(1), 56(3), 60, 73(1), 73(2), 73(3)

Citation : (2020) 01 SEBI CK 0002

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Chandra Sekhar Jha, Vikram Nankani, Vivek Shah, Abhiraj Arora

Judgement

Tarun Agarwala, Presiding Officer

1. The appellants have prayed for the following reliefs:

â??a) The present appeal under Section 15(T) of the Securities and Exchange Board of India Act, 1992 be admitted;

b) The Impugned the Notice of Demand Certificate No: RC2648 of 2019 dated November 27, 2019 with Notice of Attachment No.5417 of 2019 for

Bank Account and Notice of Attachment No.5418 of 2019 for MF & Demat Account, as issued by the respondent no.1 to execute a full freeze on the

bank, MF & Demat accounts of the appellants be quashed and set aside;

c) Declaration that there is no breach of or non-compliance of the Order dated April 28, 2016 passed by this Honâ??ble Tribunal.

d) Ad interim order in terms of prayers above;

e) Costs of and incidental to the appeal be paid by the respondents;

f) Such further or other order or orders be passed and/or direction or directions be given as to which this Honâ??ble Tribunal may deem fit and

proper.â??

2. The facts leading to the filing of the present appeal is, that the appellant issued Redeemable Preference Shares (hereinafter referred to as

â??RPSâ??) to 3981 persons during the period 2005-06 to 2012-2013 and collected an amount of Rs.2,51,94,100/-. Since the same was in violation of

Securities and Exchange Board of India Act, 1992 (hereinafter referred to as â??SEBI Actâ??) an interim order dated

15 th December, 2014 was issued restraining the appellant and its Directors from mobilizing any further funds from the investors through offer of RPS

and further restrained them from disposing of any properties. Thereafter, a final order dated 15th January, 2016 was passed by the Whole Time

Member (WTM) holding that the offer of RPS made by the Company was in violation of 60, 56(1) and 56(3) and Sections 73(1), (2) and (3) of the

Companies Act, 1956 (hereinafter referred to as â??Companies Actâ??) and accordingly issued a slew of directions for refund of money so collected

by the Company alongwith interest. Two such directions contained in paragraph 11.1(e) and (f) which is relevant to the present controversy are

extracted hereunder:-

â??e) The Company, namely, Mondal Construction Company Limited and its Directors, Shri Samarjit Mondal, Shri Swapan Kumaar Mondal, Shri

Sachi Dulal Mondal, Shri Sanjiv Jain and Shri Indranil Chattopadhyay, shall issue public notice, in all editions of two National Dailies (one English and

one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of contact persons including

names, addresses and contact details, within fifteen days of this Order coming into effect.

f) After completing the aforesaid repayments, Mondal Construction Company Limited and its Directors, Shri Samarjit Mondal, Shri Swapan Kumaar

Mondal, Shri Sachi Dulal Mondal, Shri Sanjiv Jain and Shri Indranil Chattopadhyay, shall file a report of such completion of repayment with SEBI,

within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel

of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant,

who has been categorized so by the Institute of Chartered Accountants of India (â??ICAIâ??).â??

3. Against the order of the WTM, the appellant and its Directors filed Appeal no.76 of 2016 before this Tribunal which was disposed of by an order

dated 28th April, 2016. It was asserted by the appellants that out of Rs.2,51,94,100/- collected, the appellants had already refunded Rs.2,43,81,600/-

and only a balance amount of Rs.8,12,500/-remained with the appellant since the RPS holders were not coming forward to receive the balance

amount. The appellant further contended that they are willing to comply with the conditions set out in para 11.1(e) and (f) of the order of the WTM.

The Tribunal, after considering the submissions made by the appellant, disposed of the appeal by issuing certain directions. For facility, the entire order

of the Tribunal dated 28th April, 206 is reproduced here under for facility of reference:

â??1. Appellants are aggrieved by the order passed by the Whole Time Member (â??WTMâ? for short) of Securities and Exchange Board of India

(â??SEBIâ? for short) on 15th January, 2016. By the said order, appellants are directed to refund the monies collected by the appellant No.1-

Company through issuance of Redeemable Preference Shares (â??RPSâ? for short) with 15% interest per annum compounded at half yearly

intervals from the date when the repayments became due.

2. It is the case of the appellants that the total amount collected by appellant No.1 under the RPS was Rs.2,51,94,100 and out of the said amount the

appellants had already refunded Rs.2,43,81,600 to the RPS holders prior to the impugned order dated 15th January, 2016. It is further submitted that

since the balance RPS holders are not coming forward to receive the balance amount of Rs.8,12,500, the appellants are willing to deposit the balance

amount of Rs.8,12,500 with SEBI. Counsel for appellants submitted that the appellants would comply with conditions set out in para 11.1(e)&(f) of the

impugned order within a period of three weeks from today and submitted that the interest liability @ 15% be restricted to the unpaid amount of

Rs.8,12,500 which amount the appellants are willing to deposit with SEBI.

3. In these circumstances, we pass the following order:-

(a) Appellants are directed to deposit Rs.8,12,500 with SEBI within a period of one week from today.

(b) Appellants are directed to comply with the conditions set out at para 11.1(e)&(f) of the impugned order within a period of three weeks from today.

(c) If appellants comply with conditions set out in para 11.1(e)&(f) of the impugned order within a period of three weeks from today, then, SEBI

within a period of three weeks thereafter shall ascertain as to whether the appellants are justified in contending that Rs.2,51,94,100 has already been

repaid to the concerned RPS holders and also determine the rate and quantum of interest amount payable by the appellants after taking into

consideration the amount already repaid to the RPS holders in full and final settlement of their claim.

(d) If SEBI is satisfied that Rs.2,51,94,100 has already been repaid to the RPS holders, then subject to the appellants depositing the amount of

Rs.8,12,500 within one week from today and the interest amount that may be quantified by SEBI within such time as is permitted by SEBI, the

impugned order shall stand complied with.

e) If SEBI finds that the amount of Rs.2,51,94,100 has not been repaid to the concerned RPS holders then, the impugned order shall stand revived and

SEBI shall be entitled to enforce the same in accordance with law.

4. Appeal is disposed of in the above terms with no order as to costs.â??

4. The learned counsel for the appellant contended that the directions given in para 3(a) was complied by the appellant on 3rd May, 2016 and on 16th

May, 2016, the appellant filed a report alongwith supporting documents with regard to payment of Rs.2,43,81,600 to the RPS holders. For facility, para

8 of the memo of appeal is extracted hereunder:-

â??8. Thereafter, in compliance of the Order dated April 28, 2016 passed by Honâ??ble Securities Appellate Tribunal, Mumbai, the

appellants, by a letter dated May 16, 2016 filed a report with support documents pertaining to such completion of repayment of

Rs.2,43,81,600/- with the respondents.

Copies of letter dated May 16, 2016 along with support documents evidencing completion of repayment of Rs.2,43,81,600 are annexed

hereto and collectively marked with the letter â??Eâ??.â??

5. It may be pointed out that Exhibit â??Eâ?? is a letter dated 3rd May, 2016

which also encloses a list of holders of RPS giving details of the

payments made which lists runs from page 72 to page 192 of the memo of appeal. It was contended that the directions given by the Tribunal was duly

complied and the respondent without ascertaining as to whether the appellant had complied with the order of the Tribunal and without determining as

to whether any amount was still payable or not has issued the notice of demand Certificate dated 27th November, 2019 and notice of attachment for

Bank account as well as notice of attachment for the Mutual Fund and demat account. The appellant has accordingly filed the present appeal praying

for the quashing of the aforesaid Recovery Certificate and notice of attachment and for a declaration.

6. We have heard Mr. Chandra Sekhar Jha, Advocate for the Appellant and Mr. Vikram Nankani, Senior Advocate assisted by Mr. Vivek Shah and

Mr. Abhiraj Arora, Advocates for the Respondent.

7. The learned counsel for the appellant contended that the directions contained in the order of the Tribunal in para 3(a) and 3(b) was duly complied

with within the stipulated period and, therefore, the Recovery Certificate and the attachment of the Bank account and the Demat account could not be

issued without ascertaining as to whether the appellant was still required to pay any further amount. It was contended that the list of payments was

duly supplied as far back as on 16th May, 2016 which list has been annexed as Exhibit â??Eâ?? running from page 72 to 192.

8. The said contention of the learned counsel for the appellant was seriously opposed by the learned Senior counsel for the Respondent contending

that no such list was ever supplied to SEBI vide letter of the appellant dated 16th May, 2016. Faced with this situation, the Tribunal by an order dated

28th January, 2020 directed the appellant to file an affidavit of a responsible Officer indicating with clarity as to when the list which starts from page

no.72 of the memo of appeal was filed before SEBI through a covering letter.

9. On the basis of the said order, an affidavit has been filed today by Swapan Mondal who alleges himself to be the Director of Appellant no.1. In

paragraphs 9 of the affidavit it is stated that by letter dated 5th December, 2014 Form SH7 was submitted to the respondent indicating payments made

to the RPS holders. In para 11 of the affidavit it has been stated that extract of Form SH7 runs from page 71 to 191.

10. We find that the contents of para 8 of the memo of appeal and para nos.9 and 11 of the affidavit dated 28th January, 2020 are contradictory as

well as false. The list which has been alleged to have been supplied in Form SH-7 and which has been annexed as Exhibit â??Eâ?? to the memo of

appeal running from page 72 to 192 also shows alleged repayments made after 16th May, 2016 to 8th August, 2019. Such list could not have been

supplied either by letter dated 16th May, 2016 or by letter dated 5th December, 2014. When this fact was pointed out to the learned counsel for the

appellant he had no answer to it. We are of the opinion, that in view of this glaring discrepancy for which no suitable explanation was forthcoming the

appellant and in particular Swapan Mondal has committed perjury for stating false facts on oath.

11. In any case, we find that the directions contained in order of the Tribunal in para 3(b) has not been complied till date. The conditions stipulated in

para 11.1(e) and (f) of the order of the WTM was required to be complied by the appellant namely i.e. list/report was not signed by two peer

reviewed Chartered Accountants who are in the panel of any public authority or public institution. There is nothing to indicate that the list which has

been annexed to Exhibit â??Eâ?? had been verified by two peer reviewed Chartered Accountants as per para 11.1(f) of the order of the WTM.

Further, we find that SEBI had issued several emails directing the appellants to file supporting documents like bank statement, cash vouchers relied

upon by Chartered Accountants, contact details of the investors to whom refunds have been made etc. These documents were necessary in order for

the respondent to ascertain as to whether the appellants were justified in contending that Rs. 2,43,81,600/-had already been refunded. We do not find

any document in support of the submission made by the appellant.

12. In the light of the aforesaid fact coupled with the fact that the false facts have been stated before this Tribunal the appeal lacks merit and is

dismissed at the admission stage with costs of Rs.2 lakhs which shall be paid by the appellants within two weeks from today before the Registrar of

this Tribunal failing which SEBI would recover the same from the appellants and deposit it with the Registrar.

