(2021) 10 SEBI CK 0071

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1155, 1156 Of 2021, Appeal No. 623 Of 2021

Mondal Construction Company Ltd And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:
Companies Act, 1956 — Section 56(1), 56(3), 60, 73

Citation : (2021) 10 SEBI CK 0071

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

Bench : Division Bench

Advocate : Chandra Sekhar Jha, Aditya Kumar, Abhiraj Arora, Rashi Dalmia, Karthik Narayan

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated May 25, 2021 passed by the Recovery Officer (hereinafter referred to as 'RO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as well as the notice of demand certificate dated November 27, 2019 and notice of attachment Nos. 5417 and 5418 of 2019.

2. The facts leading to the filing of the appeal is, that the Whole Time Member (hereinafter referred to as 'WTM') by an order dated January 15, 2016 found that the issuance of Redeemable Preference Shares (RPS) by the company was in violation of Sections 60, 56(1) and 56(3) and 73 of the Companies Act, 1956 and accordingly issued a number of directions including the direction for refund of money so collected by the company alongwith interest. Against the said order, an appeal was filed which was disposed of by this Tribunal by an order dated April 28, 2016. This Tribunal, in paragraph No. 3 of its order, directed the appellant to deposit Rs. 8,12,500/- and further comply with the directions contained in

paragraph No. 11.1(e) and (f) of the WTM order. In paragraph No. 3(c), this Tribunal directed that if the payments made by the appellants are ascertained then the rate and quantum of interest would be determined.

3. According to the appellants necessary information and proof was given with regard to the payments made by them. Since the same was not accepted the notice of demand certificate dated April 27, 2019 and notice of attachment No. 5417 and 5418 was issued against which the appellants preferred Appeal No. 24 of 2020 which was dismissed alongwith costs as this Tribunal found that the appellants had not complied with the directions contained in the Tribunal's earlier order dated April 28, 2016 and had also found that the appellants stated false facts on oath. For facility, paragraph No. 11 of the order of this Tribunal dated January 29, 2020 is extracted hereunder :-

"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 'E' 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."

4. Thereafter, it transpires that the appellants appeared before the RO and filed representations / letters indicating compliance of the direction of the WTM order of 2016 and the directions of this Tribunal dated April 28, 2016. The RO considered and found that the alleged repayments which have been certified by the Chartered Accountant does not include interest which was subsequently affirmed by another report of the Chartered Accountant. The RO came to the conclusion that the appellants have failed to furnish requisite proof of the repayments done by them to the holders and accordingly held that the recovery proceedings will continue till the directions of the WTM dated January 15, 2016 and the directions given by this Tribunal in its orders dated April 28, 2016 and January 29, 2020 are not complied with.

5. Before us, the learned counsel contended that necessary proof has been furnished by providing the certificates of the two Chartered Accountants and the interest components has not been calculated by SEBI and that the same would be paid as and when it is calculated.

6. In our opinion, it is clear that the alleged deposits made by the appellants did not cover the component of interest which has been certified by the Chartered Accountant. Further, the determination of the rate and quantum of interest would only arise after SEBI is satisfied that the appellants have repaid the RPS holders of the alleged amount of Rs. 2,43,81,600/- which apparently has not been satisfied till date.

7. For the reasons stated aforesaid, we do not find any merit in the appeal and is dismissed summarily at the admission stage itself without calling for a reply.

8. 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.