(2022) 03 SEBI CK 0083

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 156 Of 2022, Appeal No. 95 Of 2022

Rajesh Jaiswal APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Citation : (2022) 03 SEBI CK 0083

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

Bench : Division Bench

Advocate : Deepak Dhane, Ramesh Gogawat, Mohnish Malpani, Abhishek Khare, Sharvil Kala

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the communication dated January 13, 2022 issued by the Recovery Officer ("RO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) through email directing the appellant to comply with the directions of the Whole Time Member ("WTM" for convenience) dated May 12, 2016 wherein the amount along with interest was required to be paid.

2. The brief facts leading to the filing of the present appeal is, that certain non-convertible debentures and redeemable preferential shares was issued by the company known as Cell Industries Limited in which the appellant was an erstwhile director. The WTM in its order of May 12, 2016 had directed the company along with the other directors to refund the money collected by the company through issuance of non-convertible debentures and redeemable preferential shares along with interest @ 15% per annum. It is alleged that the appellant had deposited a sum of Rs. 1 crore with SEBI with a request that genuine investors who had deposited the money may be refunded through their agencies. A further request was made by the appellant that in view of the deposit

made by him, his bank account etc. may be defreezed.

3. In this regard, we find that in the minutes of the proceedings dated July 09, 2021 the RO had directed the appellant to file a certificate from two independent peer reviewed chartered accountants who are on the panel of a public authority/ institution with regard to the calculation of interest. Based on the minutes of the meeting of July 09, 2021 a certificate of the chartered accountant was duly filed which is at page 53 of the appeal paper book which indicates that sum of Rs.57,16,205 is payable as interest to the depositors.

4. In view of the aforesaid certificate being filed it is strange that the RO in the impugned communication of January 13, 2022 is still insisting on payment of interest @ 15% per annum as per the WTM's order without considering the certificate issued by the chartered accountant.

5. We accordingly set aside the communication dated January 13, 2022 and direct the RO to consider the certificate issued by the chartered accountant and proceed from thereon and pass a reasoned and speaking order within four weeks from today after giving an opportunity of hearing to the appellant.

6. The appeal is allowed with no order as to costs. The misc. application is disposed of accordingly.

7. 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.