(2021) 03 SEBI CK 0198

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.41 Of 2020, Appeal No.45 Of 2020

Rajesh Kumar Agarwal APPELLANT

Vs

Securities & Exchange Board Of India RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 28A
Income Tax Act, 1961 — Section 220
Companies Act, 1956 — Section 73(2)
Insolvency And Bankruptcy Code, 2016 — Section 34(4)

Citation : (2021) 03 SEBI CK 0198

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

Bench : Division Bench

Advocate : Anshuman Sugla, Joby Mathew, Gaurav Joshi, Mihir Mody, Arnav Misra, K. Ashar

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. The present appeal has been filed against the order dated June 4, 2019 passed by the Recovery Officer (hereinafter referred to as 'RO') under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Section 220 etc., of the Income Tax Act, 1961.

2. The facts leading to the filing of the present appeal is, that the appellant was the director in Prism Infracon Limited. This company issued Non-convertible Debentures (NCDs) in violation of Section 73(2) of the Companies Act, 1956 (hereinafter referred to as 'Companies Act') as a result of which an ex-parte interim order was passed by the Whole Time Member (hereinafter referred to as 'WTM') in December 2014 restraining the company and its directors including the appellant from collecting any further monies. Subsequently, the WTM after considering the objections passed a confirmatory order dated February 18, 2016

holding that the collection of the money through the NCDs was wholly illegal and in violation of relevant provisions of the Companies Act. The WTM accordingly directed the company and its directors to refund Rs. 59.37 crore alongwith interest jointly and severally.

3. This confirmatory order was challenged by the company before this Tribunal which was dismissed by an order dated August 2, 2016.

4. In so far as the appellant is concerned, he did not challenge the order of the WTM dated February 18, 2016 and consequently the said order against the appellant has attained finality.

5. Pursuant to the order of the WTM the recovery proceedings were initiated by the RO. Attachment order was issued and thereafter after considering the objection, the impugned order dated June 4, 2019 was passed.

6. The aforesaid facts are admitted by the appellant. The only contention raised by the learned counsel for the appellant is, that in the meanwhile proceedings were initiated under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') and IRP was appointed on July 3, 2018 and moratorium was issued and thereafter the official liquidator was appointed on November 8, 2019 under Section 34(4) of the IBC. It was, thus, contended that the assets of the company are being liquidated and money realized would be sufficient to recover the refund towards NCDs and, therefore, no amount should be recovered from the appellant till finalization of the liquidation proceedings of the AO. It was also urged that the appellant has no mean for survival and, therefore, in the alternative some directions should be issued permitting the appellant to withdraw a certain amount on a monthly basis from his bank account which has been seized so that he could survive.

7. Having heard the learned counsel for the appellant at some length, we find that there is an order of the WTM directing the fund of the monies to be refunded jointly and severally. This order of the WTM has become final and is binding upon the appellant. The recovery proceedings have been initiated pursuant to the order of the WTM. The subsequent order passed under the IBC appointing official liquidator has no effect in so far as the present recovery is concerned. The order dated February 18, 2016 has been passed prior in point of time before the proceedings under the IBC were initiated and therefore will not affect the recovery proceedings against the appellant.

8. We are also of the opinion that the plea of the appellant that some amount should be allowed to be taken out from his bank account for the purpose of his survival cannot be considered by this Tribunal at this stage. It will be open to the appellant to move an appropriate application before the RO for this purpose.

9. The appeal lacks merit and is dismissed with no order as to costs.

10. 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.

