(2022) 03 SEBI CK 0060

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1235 Of 2021, Appeal No. 86 Of 2022

Raju Ghosh APPELLANT

Vs

Securities & Exchange Board Of India RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Companies Act, 1956 — Section 5(g)

Citation : (2022) 03 SEBI CK 0060

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

Bench : Full Bench

Advocate : Aryak Dutt, Md. Bani Israil, Rumeli Sarkar, Vyom Shah, Chirag Shah, Akash Jain, Rishab Jain, Mansukhlal Hiralal

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. There is a delay of 889 days in the filing of the appeal. The ground urged is that the appellant was never served with the impugned order and that he came to know for the first time in July 2021 when his demat and back accounts were frozen. In this regard, we had directed the respondent to file a limited reply. Paragraph no. 14 of the reply indicated that the impugned order was sent to the last known address of the appellant but it came back unserved. Subsequently, publication was made in the various newspapers. Considering the aforesaid, we are of the view that cause shown is sufficient. The appellant was not served with the impugned order and consequently, the delay in the filing of the appeal is justified. The delay is condoned. The application is allowed.

2. The present appeal has been filed against the order dated April 9, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') wherein the appellant alongwith the company was directed to refund jointly and

severally the money collected by the company during the tenure of the appellant during the issuance of Redeemable Preference Shares (hereinafter referred to as 'RPS') alongwith the interest at the rate of 15% per annum. The appellant was also prevented from selling the assets and from accessing the securities market.

3. The facts leading to the filing of the present appeal is, that the company G. R. Agro Project Ltd. issued RPS in violation of statutory regulations pursuant to complaint being received by SEBI. An inquiry was initiated to ascertain as to whether the company had issued securities without complying with the provisions of Companies Act, 1956 (hereinafter referred to as 'Companies Act'), Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the Regulations framed thereunder. In the enquiry, it was observed that the company had made an offer of RPS in the financial year 2012-13 and that, prima-facie, the issuance of the RPS was in violation of the provisions of the Companies Act and the SEBI Act. Accordingly, the ex-parte interim order dated December 3, 2015 was passed wherein various directions were issued against the company and its directors restraining them from mobilizing any fresh funds, etc. The interim order was subsequently confirmed by an order dated March 22, 2018 wherein the company and its directors were directed to refund the money collected during their respective period of directorship alongwith the interest at the rate of 15% p.a. In the order of March 22, 2018, the WTM observed that separate orders would be passed in respect of past directors of the company, namely, the appellant and five others.

4. Pursuant to the aforesaid observation, notices were issued to the appellant and other past directors and upon considering their replies the impugned order was passed directing the appellant to refund the money collected during his tenure of directorship alongwith the company to be paid jointly and severally.

5. We have heard Mr. Aryak Dutt, the learned counsel with Mr. Md. Bani Israil, Ms. Rumeli Sarkar, the learned counsel for the appellant and Mr. Vyom Shah, the learned counsel with Mr. Chirag Shah, Mr. Akash Jain, Mr. Rishab Jain, the learned counsel for the respondent.

6. The contention of the appellant is that the direction of the WTM quantifying an amount of Rs. 6.531 crores is incorrect. It was urged that during the appellant's tenure only an amount of Rs. 65,31,000/-was collected. The WTM found that no evidence has been filed by the appellant to show that only Rs. 65,31,000/- was collected through RPS. On the other hand, the WTM came to a conclusion on the basis of the documents available on record that a sum of Rs. 6.531 crores was collected during the tenure of the appellant through RPS.

7. Before us, no evidence of any sort has been filed by the appellant to show that the findings of the WTM that the amount collected was less than Rs. 6.531 crores. Consequently, in the absence of any evidence, we are of the opinion that the finding given by the WTM on the collection of the amount through RPS does not suffer from any error of law.

8. It was contended that whereas other entities were also directors during the period in question, the WTM has exonerated them and only penalized the appellant which was wholly arbitrary. In this regard, we find that the WTM has found that the appellant was the managing director of the company and in view of Section 5(g) of the Companies Act, 1956, the appellant, being the managing director, was an officer in default and was thus responsible for the action of the company. The WTM has also relied upon a decision of this Tribunal in Pritha Bag vs. SEBI (Appeal No. 291 of 2017 decided on February 14, 2019). In the instant case, the appellant admits that he was the managing director. We also find that he was also the authorised signatory of all the bank accounts of the company and that the bank account statements were in his custody and that he was controlling the company. In view of the aforesaid, the finding of the WTM that he is solely responsible alongwith the company to refund the amount collected during his tenure does not suffer from any error.

9. Having heard the learned counsel for the parties, we find that the impugned order does not suffer from any error of law 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.