(2021) 05 SEBI CK 0230

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 238, 239 Of 2019

Rakesh Singh Narwaria And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 11AA

Citation : (2021) 05 SEBI CK 0230

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

Bench : Division Bench

Advocate : Prakash Shah, Meit Shah, Shyam Mehta, Chirag Bhavsar, Vidhi Shah

Final Decision : Partly Allowed

Judgement

M.T. Joshi, J

1. Aggrieved by the directions issued by the Whole Time Member (â??WTMâ?? for short) of respondent Securities and Exchange Board of India

(hereinafter referred to as â??SEBIâ??) dated 27th March, 2018 and the consequential issuing of recovery certificate by the Recovery Officer of the

respondent SEBI dated 25th March, 2019 as well as attachment of the bank accounts the present two appeals are preferred by appellant no.1 Mr.

Rakesh Singh Narwaria and his wife appellant no.2 Mrs. Girija Rakesh Singh Narwaria. As the facts in both the appeals are same, the appeals are

being decided by the present common order.

2. The present appellant no.1 Mr. Rakesh Singh Narwaria was the Promoter-Director of one Parivar Dairies and Allied Ltd. (â??PDALâ?? for

short) with effect from 31st October, 2002 till 28th October, 2008. Appellant no.2 Mrs. Girija was the Director of the same with effect from 31st

October, 2002 till 11th June, 2006. Various complaints, criminal cases, civil suits were filed against PDAL as well as one entity namely PDA

Foundation (â??PDAFâ?? for short). Some orders by Madhya Pradesh High Court, Civil Courts, Criminal Courts etc were passed. In the

circumstances, prima facie holding that both these organizations were indulging into Collective Investment Schemes (â??CISâ?? for short) as defined

in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as â??SEBIâ??) an ex-parte ad-interim order cum

show cause notice was issued to some of the directors (not the present appellants) on 30th March, 2015. One Mr. Basant Lal Sharma was included in

that order. During the proceedings against those directors and connected persons, it appears that said Mr. Basant Lal Sharma besides contesting the

allegations submitted that he was only a token member of the PDA management. In fact the present appellant no.1 Rakesh Singh Narwaria was the

person associated with the scam and with the mobilisation of the money. He further pleaded that he was merely an insurance agent and was

employed by PDAL and was shown as managing corporate insurance agency of PDAL. He was never in-charge of money mobilisation matters of

the Company. FIRs were lodged against himself and appellant no.1 Mr. Rakesh Singh Narwaria etc.

3. The learned WTM while dealing with this earlier case, found that PDAL and PDAF were operating from the same office premises as was found

during the inspection by the officials of the SEBI. The documents collected also showed the same. So far as the actual funds mobilisation scheme is

concerned it was found that the Company used to pool the amount received from the investors in one common fund for the purpose of the scheme of

maintaining cattle on behalf of the investors. The contribution or investment was not identifiable and from the common pool fund it was promised to

pay certain amount towards the realisation of the value of the cattle which may be deemed reasonable by PDAL. These agreements titled as cattle

booking agreements were executed with the investors by PDAL . The financial statement of PDAL indicated that the funds received from investors

were pooled together as â??Sundry Advances under Cattle Care Schemesâ??. It was found that as on March 31, 2010 these advances amounted to

Rs.4,62,08,962. In the circumstances, the learned WTM in the said order came to the conclusion that the said scheme was CIS being carried in violation of Section 11AA of the SEBI Act and, therefore, final orders were issued against the said noticees.

4. As one of the noticee Director therein namely Mr. Basant Lal Sharma had produced certain documents and certain complaints were also received

by the SEBI, in the same final order, ex-parte ad-interim directions were issued against the present appellants and one more noticee namely Mr. Phool

Singh Rajput (who has not preferred to file any appeal). The order was directed to be deemed as a show cause notice. These three persons i.e. the

appellants and Mr. Phool Singh Rajput were restrained from dealing with the securities market or dispose of any of the assets of the raised from the

CIS till the final order is passed.

5. In view of the said notices the present appellants appeared before the learned WTM and contested the notices. They admitted that they held

between them 80 percent of the shares of PDAL. According to them, however, they had transferred all those shares to Mr. Basant Lal Sharma in the

year 2008. It was also admitted that both of them were the subscriber to the memorandum of association of PDAL. According to them, appellant no.1

Mr. Rakesh Singh Narwaria resigned from the directorship with effect from 20th August, 2008 while appellant no.2 Mrs. Girija Rakesh Singh

Narwaria resigned with effect from 11th June, 2006. They submitted that there was no evidence against them. They had resigned from the

directorship of the Company long back, by disposing of the shares in favour of Mr. Basant Lal Sharma. They were not involved in any fund

mobilisation by PDAL and appellant no.2 Mrs. Girija was never concerned with PDAF.

6. After granting personal hearing and accepting the written additional reply post-hearing, the learned WTM concluded that though the present

appellant had resigned from the directorship of PDAL, they were the dominant shareholder (80%) of the PDAL till the retirement of the appellant no

1 as on 31st March, 2008. Funds for the scheme were mobilised by this Company under the aeigis of appellant no.1 Mr. Rakesh Singh Narwaria and

appellant no.2 Mrs. Girija.

7. The fact that the schemes were CIS was not contested by the appellants. In the result, the following directions were issued vide the impugned order

:-

(i) â??The notice/ directors/promoters of Parivar Dairies and Allied Ltd. (PAN:N.A.) namely, Rakesh Singh Narwaria (PAN: ACNPN0341E),

Girja Narwaria (PAN: AFEPN2325L) and Phool Singh Rajput (PAN: N.A.) are jointly and severally liable (along with PDAL and its

directors being noticees to the final order dated October 10, 2017) to wind up the co1lective investment schemes and refund the monies

collected by it under the schemes, with returns which are due to the investors as per the terms of offer within a period of one month from the

date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'. As directed in the final order dated October 10,

2017, upon completion of the refund as directed above, within a further period of seven days, the present directors of PDAL shall submit a

winding up and repayment report (WRR), separately or jointly, to SEBI in accordance with the CIS regulations. The WRR shall be supported

by the proof of the trail of funds claimed to be refunded, bank account statement indicating refund to the investors and receipt from the

investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants. In the

event of failure by PDAL or its directors, including the noticee directors/ promoters to comply with the above directions for refund, SEBI

shall initiate recovery proceedings under the SEBI Act. Since the assets of Parivar Dairies and Allied Ltd. within Gwalior district have been

attached and refund of monies are currently being executed by the Court Commissioner appointed by Special Judge, the company and its

directors including the noticee directors/promoters are directed hereby to deal with the scheme property, in accordance with the directions

of the court commissioner appointed by the Special Judge and not in any other manner and ensure chat the investors are being refunded

out of such proceeds. As regards the refunds out of the properties of the scheme situated elsewhere, it is directed that the noticee

directors/promoters shall not alienate, dispose off/otherwise deal with the property except for the purpose of repayment of the investors in

the respective jurisdictions are effected and such proof of repayment shall be produced to SEBI.

(ii) The noticee directors/promoters shall not alienate or dispose off or sell any of the assets of Parivar Diaries and Allied Ltd. and any other asset acquired out of funds of Parivar Dairies and Allied Ltd. except for the purpose of making refunds to its investors as directed

above.

(iii) The notice/ directors/promoters shall with immediate effect be restrained from accessing the securities market and prohibited from

buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are

complete, as directed at sub-paragraph (i) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four

years from the date of completion of the refund, as directed above.

(iv) The noticee directors/promoters, namely Rakesh Singh Narwaria, Girja Narwaria and Phool Singh Rajput shall be restrained from

holding position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order.â??

8. Aggrieved by the said directions the present appeal no.238 of 2019 is filed.

9. Consequently, as the Recovery Officer has issued notices of attachment of bank account and demat account dated 25th March, 2019, appeal

no.239 of 2019 is filed.

10. Heard Mr. Prakash Shah, Advocate assisted by Mr. Meit Shah, Authorized Representative for the Appellants and Mr. Shyam Mehta, Senior

Advocate assisted by Mr. Chirag Bhavsar and Ms. Vidhi Shah, Advocates for the Respondent.

11. Mr. Prakash Shah, learned counsel for the appellants submitted that the show cause notices as well as the impugned order nowhere mentions any

amount collected during the period when the present appellants were the directors of PDAL. The balance sheet of PDAL which was before the

learned WTM, showed that as on 31st March, 2007 and as on 31st March, 2008 and amount of Rs.3,96,56,555 and Rs.4,62,08,962 respectively were

shown under the head â??Sundry Advances under Cattle Care Schemeâ??. The balance sheet as on 31st March, 2010 would however show that

reserves and surplus stood at Rs.1.38 crores. Investment of Rs.4.65 crores was made and cash in bank was Rs.1.95 crores as per the balance sheet.

Thus, according to him, even after the resignation of these appellants, surplus fund as detailed above was available with the PDAL even in the year

2010.

He further submitted that show cause notices were issued against the present appellants vide order dated 10th October, 2017. Interim order against

the other noticees was passed on 30th March, 2015. Thus, the show cause notice is issued against the appellants after a period of more than 9 years

from the date of their resignation. As details and documents of the activities carried out by them regarding the scheme remained not available with

them, great prejudice is caused to the appellants in defending their case due to this delay. The joint ventures of PDAL and PDAF as per the

documents supplied by the WTM itself would show that they came into existence in the year 2009 and 2010 much after the resignation of the

appellants.

Mr. Prakash Shah further submitted that there was no evidence on record to find out when the CIS actually was started. He adverted our attention to

certain interim orders passed during the pendency of the present appeals regarding the attachment and submitted that appeals be allowed.

12. On the other hand, Mr. Shyam Mehta, learned senior counsel for the respondent submitted that admittedly the present appellants were the

dominant shareholders, directors and additionally appellant no.1 was the promoter of PDAL since itâ??s inception and subscriber to the

Memorandum of Association of the Company. The replies to the show cause notices, the statements made during the personal hearing and the

additional joint reply filed post-hearing of the appellants would make out totally contradictory stands. There is no contest that the scheme was in the

nature of money mobilization CIS. A huge amount was collected which stood to Rs.3,96,56,555 as on 31st March, 2008 i.e. when the appellant no.1

Rakesh left the Company. Further the submissions of Mr Shah as reproduced above on the strength of documents on record would also show that at

the end of the financial year 2006-2007, an amount of Rs 3,96,56,555 was collected during which period the appellant no. 2 was the director. No

submission was made before the learned WTM that the delay, if any, in initiating the proceedings had prejudiced their defence and suddenly in the

appeal only, the stand is taken which ought to be rejected. He however submitted that since the appellants ceased to be directors of the Company, the

directions of the learned WTM directing them to wind up the scheme and repay the funds from the funds of the Company may be modified. However, according to him the rest of the directions need not be disturbed.

13. Upon hearing both the sides, in our view except making suitable modifications as conceded by Mr. Shyam Mehta as above, both the appeals

deserve to be dismissed for the following reasons.

Reasons

14. In the common reply to the show cause notices appellants simply took a plea that they ceased to be either directors or promoters of the Company

from the year 2008 and 2006 respectively, and therefore they cannot be held liable for the affairs of the Company. However during personal hearing

their representative Mr. Choudhary took a somersault. He submitted that the appellant did not know that they were made directors. In fact appellant

Mr. Rakesh Singh was merely an employee in the Company. Both of them are illiterate and even the salary of the appellant no.1 Mr. Rakesh Singh

was not paid. They thus pleaded ignorance regarding the entire affair.

15. Lastly in the additional written reply filed post-hearing before the WTM, however tried to make out a third case. In this additional written reply the

appellants pleaded that the Company did lawful business. Due to the personal reasons and other business occupation appellant no.1 resigned from the

directorship of PDAL. Mr. Basant Lal Sharma and the appellants had attended one blood donation camp of which the photographs are filed on record

to show the connection. After leaving PDAL in fact appellant no.1 formed other companies namely:

(i) Parivar Agri Business Pvt. Ltd.,

(ii) Parivar Pet Products Pvt. Ltd.

(iii) Parivar Real Estate Developers Pvt. Ltd. and

(iv) Precise Media,

It was futher pleaded in this additional reply that the appellant Mr. Rakesh Singh is well known as â??Parivarshreeâ?? in the region, resulting in the

use of the word parivar in these companies. However, the same cannot be misunderstood with PDAL or PDAF

16. The learned WTM took into consideration these manifest contradictions in the stand taken by the appellants before him. The first of the stand

showed disowning the liability upon resignation form directorship simplicitor. The second stand paints an image of the appellants as illiterate persons, appellant no.1 merely an employee of PDAL whose salary was not even paid. Lastly, in the additional written reply however they painted a picture of

appellant no.1 Mr. Rakesh Singh as â??Parivarshree â?? who had resigned from the directorship of PDAL due his business occupation and had

even floated four more companies thereafter and became a renowned personality in his region.

17. It is clear that during the regime of the appellants substantive funds as detailed supra were collected by PDAL towards the collective investment

scheme.. Both the appellants were 80% shareholders of PDAL. The appellant no. 1 was promoter and subscriber to the Memorandum of Association

of PDAL. Thus, in the collection of the funds they had a role to play which cannot be gainsaid and, therefore, the necessary conclusion would be that

they had participated in the CIS in violation of Section 11AA of the SEBI Act.

18. As regards the delay in launching the proceedings we find that no plea was taken before the learned WTM to that effect. On the other hand,

specific stand of resignation from the directorship were taken and the proceedings were defended without making any grudge regarding any prejudice

in defending the same. The plea of delay therefore lacks merit. The order of the learned WTM therefore cannot be faulted with. However, the

directions contained in para 13 (i) directing the appellants to wind up the CIS and refund the monies collected by PDAL form the funds of the scheme

would not operate against the present appellants since they admittedly ceased to be directors of the company from the year 2008 and 2006

respectively. Similarly, direction no. (ii) restraining them from alienating the assets of PDAL also cannot be sustained. In the circumstances, the

following order.

19. Appeal no.238 of 2019 is hereby partly allowed. Direction nos. 1 and 2 are hereby partly modified. The directions in the impugned order directing

the appellants to wind up the scheme or to pay to the investors from the funds of the Company is hereby set aside. The rest of directions of payment

to the investors jointly and severally by the appellant with other directors is confirmed.

20. Appeal no.238 of 2019 is partly allowed. Direction no. (i) as contained in the impugned order is modified only to the extent that the direction to

wind up the scheme will not apply to the appellants. All other directions given in the impugned order are affirmed qua the appellants.

21. The liability of the appellants being joint and several, the order of the Recovery Officer impugned in appeal no.239 of 2019 attaching the bank

accounts, demat accounts etc of both the appellants for implementing the directions of WTM cannot be faulted with. Appeal no 239 of 2019 is

therefore dismissed.

No orders as to costs in both the appeals.

22. 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.

