

(2020) 03 SEBI CK 0012

In the Securities Appellate Tribunal Mumbai

Case No : ??Miscellaneous Application No. 90, 382 Of 2019, Appeal No. 231 Of 2018

Ravikiran Realty India Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 28A
Income Tax Act, 1961 — Section 222

Citation : (2020) 03 SEBI CK 0012

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : R.M. Chatterjee, Kevic Setalvad, Anubhav Ghosh

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the Certificate No.1370 of 2018 issued by the Recovery Officer and the Attachment Order issued

under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Section 222 of the Income Tax Act, 1961 as well as the Order

dated 6th June, 2019 passed by the Recovery Officer rejecting the representation which was made during the pendency of the appeal.

2. The facts leading to the filing of the appeal is, that an ex-parte ad-interim order dated 4th August, 2014 and the confirmatory order dated 1st March,

2016 passed by the Whole Time Member, was challenged by the appellants in Appeal No.213 of 2016. The Whole Time Member by the said

impugned orders directed the appellants to refund the amount collected through the issuance of Redeemable Preference Shares within a stipulated

period. The said appeal was disposed of by this Tribunal by Order dated 5th August, 2016 on the statement of the counsel that they are ready and

willing to comply with the order of the Whole Time Member. This Tribunal after recording the statement of the counsel, disposed of the appeal

directing the appellants to submit a concrete proposal for the sale of the assets and, if such a proposal was made, SEBI would look into it and pass

appropriate orders. For facility, the entire order of this Tribunal dated 5th August, 2016 is extracted hereunder:-

1. The appellants are aggrieved by the ex-parte ad-interim order dated 4th August, 2014 and the confirmatory order dated 1st March, 2016 passed

by the Whole Time Member (for short WTM) of Securities and Exchange Board of India (for short SEBI). By the said order, the

appellants are directed to refund the amounts collected by the appellants through issuance of redeemable preference shares within the period specified

therein.

2. Counsel for the appellants states that the appellants are ready and willing to comply with the impugned order by paying to the investors the amounts

collected from them and in fact they have taken several steps in that behalf. With a view to implement the impugned order, the appellants want to sell

the properties belonging to them by seeking approval of SEBI so that the investors are paid the amounts due to them as expeditiously as possible.

3. In these circumstances, appellants are permitted to withdraw the appeal and approach SEBI with concrete proposal for sale of the assets belonging

to them. If such proposal is received within a period of two weeks from today, then SEBI shall consider the same and take appropriate steps in that

behalf so that the assets belonging to the appellants are sold expeditiously and the sale proceeds are paid over to the investors.

4. Appeal is disposed of in the above terms with no order as to costs. In view of the disposal of the Appeal, Misc. Application does not survive and the

same is disposed of accordingly.

3. Pursuant to the aforesaid direction, no concrete proposal was submitted. On the other hand, SEBI issued a letter /communication to the appellants

on 13th October, 2016 directing them to submit a concrete proposal in terms of the directions of this Tribunal. Instead of submitting a proposal, the

appellants filed Appeal No.409 of 2016. This appeal was dismissed by order of

the Tribunal dated 6th January, 2017 holding that no concrete proposal was submitted and no fault could be found in the communication sent by SEBI. This Tribunal while dismissing the appeal further directed SEBI to implement the order of the Whole Time Member.

4. Since no concrete proposal was submitted and no steps were taken to refund the amount collected through the Redeemable Preference Shares along with interest, the impugned Recovery Certificate and Attachment Orders were issued. The appellants being aggrieved by the Recovery Certificate has filed the present appeal. During the pendency of the appeal, a representation was made by appellant No.3 which was rejected by the Recovery Officer by its order dated 6th June, 2019. The said order has been brought through the Misc. Application.

5. One of the directors Animesh Chaudhary filed Appeal No.58 of 2018 questioning the Recovery Certificate. This Tribunal by Order dated 19th March, 2018 disposed of the appeal directing that the assets of the appellant could be realized only if the assets of the company are insufficient to repay the amounts due to the investors.

6. It may be mentioned here that the recovery certificate and attachment order was also challenged by the appellants in a writ jurisdiction before the Calcutta High Court, being Writ Petition No. 4491(4) of 2018 and 18144 (W) of 2018 which was dismissed as withdrawn by order dated 12/4/2018.

7. The present appeal has been filed by three appellants. Appellant no.1 is the company which had issued the Redeemable Preference Shares.

Appellant no.2 is the director in the said company, and appellant No.3 is the ex-director. During the pendency of the appeal, the appeal of appellant nos.1 and 2 was dismissed as withdrawn by order dated 14th June, 2019. Thus, the appeal of appellant No.3 is now being decided.

8. The learned counsel for appellant No.3 contended that the attachment order sealing her bank account and locker are wholly illegal and are liable to

be withdrawn. It was contended that the locker contains jewellery which she got as her â??streedhanâ?? and contended that â??streedhanâ??

cannot be attached nor the dues could be recovered from the â??streedhanâ?? in view of the decision of the Delhi High Court dated 21/10/2016 in

the matter of Sushila Devi vs. Commissioner of Income Tax-XII in Writ Petition (C) 7620/2011. It was also urged that the appellant No.3 was never

connected with the affairs of the company and was only a director for a short period from 8/7/2013 to 15/4/2014 and, therefore, she should be relieved

from the burden of discharging the liability pursuant to the order of the Whole Time Member. It was further urged that the representation of the

appellant was wrongly rejected by the Recovery Officer without assigning any cogent reasons. It was also contended that during the pendency of the

appeal, the company and its directors have now furnished the title deeds of the land and other properties to the Recovery Officer. It was contended

that the value of the property is far more than the value sought to be recovered under the orders of the Whole Time Member. It was thus contended

that in view of the filing of the title deeds, the order of attachment should be lifted.

9. Having heard the learned counsel at some length, we are of the opinion that the appellant is not entitled for any relief whatsoever. Admittedly,

pursuant to the order of the Whole Time Member and the directions issued by the Tribunal, no concrete proposal was submitted by the appellants for

refund of the moneys. Title deed of the property was also not submitted and consequently we are of the opinion that attachment order / certificate

dated 13/3/2018 issued by the Recovery Officer attaching the bank accounts and locker cannot be faulted.

10. With regard to the contention of the appellants that the locker should be released that contains jewellery which is her streedhan property, it is

submitted that whether the contents of the locker is the streedhan property or not is a question of fact which is required to be proved before the

Recovery Officer and, therefore, it is not possible for this Tribunal to go into this question at this stage. It is, however, submitted that the Supreme

Court in *Pratibha Rani vs. Suraj Kumar* 1985 (2) SCC 70 held:-

“A Hindu married woman is the absolute owner of her Streedhan property and can deal with it in any manner she likes and, even if it is placed in

the custody of her husband or her in-laws they would be deemed to be trustees and bound to return the same if and when demanded by her.”

The decision cited by the learned counsel for the appellant in the matter of *Sushila Devi* (supra) is not applicable to the present issue. In the said

decision, the recovery was being made against the husband and the jewellery of the wife was taken into consideration. It is in that scenario that the

Delhi High Court held that the streedhan of the wife cannot be utilized for recovering the dues of the husband. In the instant case, the situation is different. The recovery is being sought from the appellant in terms of the order of the Whole Time Member. Therefore, the contention that streedhan cannot be recovered from the appellant is totally misconceived.

11. The allegation that the appellant was only a director for a limited period and she was never connected with the affairs of the company and, therefore, she should be discharged of the liability of the company pursuant to the order of the Whole Time Member, cannot be raised at this stage.

The appropriate stage was at the stage of filing the appeal challenging the order of the Whole Time Member which the appellant No.3 had done but subsequently consented to comply with the orders of the Whole Time Member. The order of the Whole Time Member has now become final and the directions contained therein that the appellant was responsible jointly and severally in the collection of the money cannot be reopened and therefore the appellant cannot be discharged of its responsibility at this stage.

12. It has been stated that now the title deed has been furnished by the company/appellants to the Recovery Officer pursuant to which the administrator has been appointed on 4/6/2019 under the Securities and Exchange Board of India (Appointment of the Administrator and Procedure for Refunding to the Investors) Regulations, 2018, pursuant to which the valuation of the property was done in August / September, 2019 based on which draft auction notice has been placed before the Competent Authority for approval. According to the respondents, the properties are likely to be sold through auction in the next couple of months.

13. In the light of the aforesaid, we do not find any manifest error in the certificate and the attachment order dated 13/3/2018 issued by the Recovery Officer under Section 28A of the SEBI Act read with Section 222 of the Income Tax Act nor do we find any error in the order of the Recovery Officer dated 6/6/2019 rejecting the representation of appellant no.3. The appeal of the appellant No.3 is accordingly dismissed with no order as to costs. We, however, observe that the assets of the appellant No.3 will only be utilized if the assets of the company are insufficient to repay the amount due to investors pursuant to the order of the Whole Time Member. We also direct the Recovery Officer/Administrator to sell the assets of the

company as early as possible, preferably, within eight months from today. All Misc. Applications are accordingly disposed off.