(2021) 08 SEBI CK 0125

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 299 Of 2021, Appeal No. 486 Of 2020

Rich Infra Developers India Limited And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 11AA

Citation : (2021) 08 SEBI CK 0125

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

Bench : Division Bench

Advocate : Rajesh Ranjan, Anoop Dawar, Kevic Setalvad, Manish Chhangani, Ravishekhar Pandey

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The facts leading to the filing of the present appeal is, that in the year 2013 many complaints were lodged to the effect that the appellants and its

directors were promising huge returns on investments and that they failed to repay the amount on maturity. On the basis of these complaints, an

inquiry was conducted with regard to the mobilization of funds and it was found that the appellants were acquiring land and selling the developed lands

to the investors in the garb of promising huge returns on investments.

2. Accordingly, an ex parte ad interim cum show cause notice dated March 31, 2015 was passed in which it was observed that the Company and its

directors were involved in the illegal mobilization of funds through various schemes which was in the nature of Collective Investment Scheme (â??CISâ?? for short) and that the appellants were running these schemes without obtaining a registration under Section 11AA of the Securities and

Exchange Board of India Act, 1992. It was, thus, observed that the activities of the appellants were fraudulent under Regulation 3 and 4 of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ?? for short). By the

interim order, SEBI directed the appellants not to collect any fresh money from investors and not to launch any new schemes and also restrained them

from disposing or alienating any of the properties and further restrained them from diverting the funds. The appellants were also directed to make a

full inventory of the assets and show cause why appropriate order should not be passed under the SEBI Act and its Regulations.

3. In the reply, the respondent admitted that they have not obtained CIS registration and contended that they were ready to refund the monies to all the

investors and submitted a proposal before the respondent to the effect that they may be allowed to develop two projects which will be used to repay

the money to the investors. This scheme was not accepted by the respondent and accordingly the impugned order dated September 27, 2018 was

passed confirming the interim order and further directing the appellants to wind up the schemes and refund the amount to the investors through bank

demand draft or pay order within nine months. The appellants were also restrained from alienating the assets except for the purpose of refund to its

investors. The appellants were also prohibited from holding any position as directors or the key managerial personnel of any listed company for a

period of four years. The appellants being aggrieved by the confirmatory order has filed the present appeal.

4. We have heard Mr. Rajesh Ranjan, the learned counsel for the appellant and Shri Mr. Kevic Setalvad, the learned senior counsel for the

respondent.

5. Before us an application was filed submitting a proposal contending that SEBI may be directed to consider a proposal given by the appellants. A

reply has been filed by the respondent objecting to the said proposal. Considering the aforesaid, we directed the appellants to show its bonafide by

depositing some amount upfront. In this regard the appellants did not come forward and contended that they will deposit a paltry amount everyÂ month forÂ severalÂ months and in the meantime the respondent may be directed to consider their proposal. The proposal was not bonafide and the

same was not accepted by this Tribunal and accordingly we proceeded to hear the matter on merits.

6. Upon perusal of the impugned order and interim order passed by the respondent we are of the opinion that the four tests which are necessary for

the purpose of finding out as to whether any scheme is CIS or not has been duly proved by the respondent against the appellant. For the said purpose

the four tests which are the essential ingredients under Section 11AA are:-

â??(i) whether there was pooling and utilization of contributions for purposes of a scheme;

(ii) whether contributions were made to the scheme by the investors with a view to receive profits, income, produce or property from such scheme;

(iii) whether the contributions were managed on behalf of the investors; and

(iv) whether the investors did not have day to day control over the management and operation of the scheme.â??

7. The Whole Time Member (â??WTMâ?? for short) has considered in detail not only in the interim order but also in the impugned order and has

found that the four ingredients which are required have been met in schemes run by the appellants. We are in full agreement with the said finding.

8. In any case the appellants themselves admit that they are willing to refund the amount. This fact was asserted by the appellants before the WTM

and also before us. We find that till date no concrete effort has been made by the appellants to refund the monies. Even the proposal given before us

indicates for the development of the land and to refund the money by selling the developed land. Such proposal cannot be accepted especially when

the appellants are not registered as a CIS.

9. In view of the aforesaid, we do not find any merit in the appeal and the proposal submitted by the appellants also lacks bonafide. In view of the

aforesaid, the appeal is dismissed without any order as to costs. The miscellaneous application is also disposed of accordingly.

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.

