
(2021) 11 SEBI CK 0037

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 440, 1229 Of 2019 In Appeal No. 250, 251 Of 2019

Sahara India Commercial Corporation Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 18-11-2021

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 28A
Income Tax Act, 1961 — Section 220, 221, 222, 223, 224, 225, 226, 227, 228A, 229, 232

Citation : (2021) 11 SEBI CK 0037

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

Bench : Division Bench

Advocate : Gaurav Joshi, Feroze Patel, Satyen Vora,, Ankur Kalal, Jigar Shah, Markand Gandhi, Rafique Dada, Kevic Setalvad, Mihir Mody, Sneha Prabhu, Arnav Misra, Mayur Jaisingh, Somasekhar Sundaresan, Neeta Jain, Satyen Vora, Ankur Kalal, Jigar Shah

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 31st October, 2018 passed by the Whole Time Member ('WTM' for short) whereby the appellants have been directed jointly and severally to refund the monies collected by the Company and its Directors through issuance of Optionally Fully Convertible Debentures (OFCDs) including the application money collected from investors pending allotment of securities alongwith interest of 15% per annum. The appellants were further restrained from accessing the securities market till four years from the date of the refund. The Company was also directed to provide a full inventory of all the assets and properties and details of bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

2. At the time of the filing of the appeal, no separate stay application was filed though in para no.8 of the memo of appeal it was prayed that pending final decision in the appeal the effect and operation of the impugned order may remain stayed. In appeal no.251 of 2019, misc. application no.1229 of 2021 was filed on 26th October, 2021 praying for stay of the impugned order, the notice of demand dated 9th April, 2021 as well as the attachment order dated 21st October, 2021. Misc. application no.440 of 2019 was filed in appeal no.250 of 2019 on 1st August, 2019 for stay of the impugned order. However, an additional affidavit dated 26th October, 2021 has been filed bringing on record the notice of demand dated 9th April, 2021 and the attachment order dated 21st October, 2021.

3. In the misc. application dated 26th October, 2021 and the additional affidavit dated 26th October, 2021 filed in the two appeals it was contended that while this Tribunal was hearing the matter finally since April, 2021, the Recovery Officer issued the notice of demand dated 9th April, 2021 directing the appellants to deposit a sum of Rs.14,106 crores within 15 days failing which recovery would be made as per Section 28A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Sections 220 to 227, 228A, 229, 232 of the Income Tax Act, 1961 read with the second and third schedule to the said Act and the Rules framed thereunder. Since no amount was paid the attachment order was issued by the Recovery Officer on 21st October, 2021 directing the banks to attach the bank accounts, demat accounts etc. of the appellants.

4. We have heard Mr. Gaurav Joshi, Senior Advocate and Mr. Somashekar Sundaresan, Advocates for the appellants in appeal nos.250 and 251 of 2021 and Mr. Rafique Dada, Senior Advocate and Mr. Kevic Setalvad, Senior Advocate for the respondent.

5. The contention of the appellant is, that while this Tribunal was hearing the matter and had heard the appellants in appeal no.250 of 2019 the attachment order was issued. It was urged that there was no tearing hurry and the Recovery Officer should have awaited the result of the appeal instead of attaching the bank accounts of the Company and its Directors. It was urged that the intention of the respondent is to ensure that the appeal of the appellants becomes infructuous by attaching the recovery of the impugned amounts. The learned counsel appearing for the Company contended that the Company is a running Company and has a monthly expenditure of Rs.10.36 crores and Rs.35.85 crores respectively. Salaries to employees, taxes to the government and other business expenditure are required to be made on a daily basis which has come to a halt on account of the attachment order. It was urged that the Company cannot survive unless it has funds to run and manage the affairs of the Company. It was, thus, contended that it is essential for this Tribunal to lift the attachment order otherwise there would be a colossal damage.

6. In so far as the learned counsel for the appellant in appeal no.251 of 2019 is

concerned it was urged that the appellant no.4, namely, Lt. Gen.(Retd.) A.S. Rao is a senior citizen being 81 years old and has served the Indian Army for 39 years and retired as a Lieutenant General. His wife is suffering from various ailments and both his savings bank account and pension account has been frozen. It was also stated in the rejoinder affidavit that Shri Ranoj Das Gupta, appellant no.5 has cardiac ailments and is also suffering from kidney failure and is undergoing treatment for which he requires appropriate funds but on account of attachment of bank accounts his medical treatment is suffering.

7. Considering the aforesaid, we are of the opinion that it is unfortunate that the respondents have initiated recovery of the amount pursuant to the impugned order during the period when this Tribunal was hearing the matter finally. However, we are of the opinion that merely by filing an appeal does not give a right to the appellant for an automatic stay of the impugned order. We find that no separate application was filed alongwith the memorandum of appeal for stay of the impugned order. Much later misc. application no.440 of 2019 dated 1st August, 2019 was filed by the appellant in appeal no.250 of 2019 for stay. Similarly, misc application no.1229 of 2021 was filed by the appellant in appeal no.251 of 2019 on 26th October, 2021. We also find from a perusal of the order sheet that no attempt was made by the appellants to pursue the interim relief for stay of the impugned order and even though the appellant had filed misc. application no.440 of 2019 in appeal no.250 of 2019 on 1st August, 2019 no serious attempt was made to argue on the interim relief.

8. We also find that when the hearing of the appeals had started in April, 2021 the notice of demand was issued on 9th April, 2021 and the appellants became aware that the Recovery Officer had initiated proceedings under Section 28A of the SEBI Act. No attempt was made by the appellants to press the interim application at that stage nor the appellants brought this fact to the knowledge of the Tribunal. It is only when the attachment order was issued that the misc. application in appeal no.251 of 2019 and additional affidavit in appeal no.250 of 2019 was filed on 26th October, 2021. Thus, we are of the opinion that even though it would have been appropriate for the respondent to await the result of the decision of this Tribunal, however, there is no embargo upon the Recovery Officer to proceed independently to recover the amount under Section 28A of the SEBI Act since there was no stay of the impugned order.

9. No doubt the Company is a going concern. It has a large number of employees on its rolls. Salaries are required to be disbursed, taxes are to be paid. There are business expenditures which are required to be met on a daily basis. The Company cannot run on air. The attachment of the bank account can bring the Company to a grinding halt. At the same time, the interest of the investors is required to be protected.

10. Considering the track record of the appellants we find that under the impugned order the appellants are required to refund a sum of Rs.14,106 crores alongwith interest at the rate of 15 percent per annum to the investors. Whether

this amount is actually required to be refunded or not is a subject matter of appeal which will be decided on merits. However, during the pendency of the appeal, equities have to be balanced. We find that in para 19 of the rejoinder of the appellants in appeal no.250 of 2019, the appellant no.1 Sahara India Commercial Corporation Ltd. has a monthly expense of Rs.10.36 crores and appellant no.2 Sahar India has a monthly expense of Rs.35.87 crores. Some statistics has been given in 'Annexure 1' to the rejoinder affidavit. Though the statistics given cannot be accepted as the gospel truth as it is not certified by a qualified Chartered Accountant but we can take judicial notice of the fact that if the total expenses of the appellant companies is around 46 crores per month then the annual turnover would be in 100 and 1000 of crores on a rough estimate. Therefore, we are of the opinion that the appellants have the capacity to deposit some amount pursuant to the impugned order.

11. Considering the aforesaid and in order to balance the equities we find it appropriate to direct the appellants in appeal no.250 of 2019 to

(i) deposit a sum of Rs.2000 crores before SEBI within four weeks from today. Such amount shall be kept by SEBI in an escrow account which will be subject to the result of the appeals.

(ii) Upon deposit of the aforesaid amount the attachment order against the Company and its Directors would be lifted forthwith.

(iii) In so far as appellant no.4 Lt. Gen (Retd.) A.S. Rao and appellant no.5 Shri Ranoj Das Gupta in appeal no.251 of 2019 are concerned considering their old age and medical exigencies we direct that the attachment orders against them would be withdrawn forthwith.

(iv) We direct the appellant no.1 Sahara India Commercial Corporation Ltd. and appellant no.2 Sahara India in appeal no.250 of 2019 to provide a full inventory of all the assets and properties and details of all the bank accounts in India and abroad, demat accounts and holding of mutual funds/shares/securities (in physical or in demat form) to SEBI within four weeks from today. The said details would be provided on an affidavit to be sworn by Mr. Subrata Roy.

12. In case of failure to carry out the aforesaid directions the interim order shall stand automatically vacated. Misc. application nos.440 of 2019 in appeal no.250 of 2019 and misc. application no.1229 of 2021 in appeal no.251 of 2019 are disposed of accordingly.

13. 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.