**(2021) 05 SEBI CK 0116**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Miscellaneous Application No. 44 Of 2021, Appeal No.468 Of 2018

Seashore Securities Limited APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

**Date of Decision :** 19-05-2021

**Acts Referred:**

Companies Act, 1956 — Section 56, 60, 73, 212(2)
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B

**Citation :** (2021) 05 SEBI CK 0116

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

**Bench :** Division Bench

**Advocate :** Nimay Dave, Ankur Loona, Aparna Wagle, Yash Garach, Pradeep Sancheti, Anubhav Ghosh, Ravishekhar Pandey

**Final Decision :** Disposed Of

## Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the Seashore Securities Limited (â?? Companyâ?? for short) and its directors against the order dated

September 24, 2018 passed by the Whole Time Member (â??WTMâ?? for short) of the Securities and Exchange Board of India (â??SEBIâ?? for

short) wherein a number of directions have been issued, namely, that the appellants were required to refund the monies so collected during their period

of directorship along with interest @ 15% per annum and were further restrained from selling their assets and were further restrained from accessing

the securities market, etc.

2. The facts leading to the filing of the present appeal is, that SEBI conducted an investigation to ascertain as to whether the activities of the Company

and its directors in the matter of money mobilization activity was detrimental to the interest of the investors. Based on the investigation it was observed

that the Company had issued Redeemable

Preference Shares (â??RPSâ?? for short) from 2008-09 to 2012-13 to 76,758 allottees and had raised an amount of approximately Rs. 503 crore in

violation of the Companies Act, 1956, Securities and Exchange Board of India Act, 1992 and its Regulations. Accordingly, an ex parte ad interim order

dated July 23, 2014 was passed and certain directions were issued in respect of mobilization of funds through issue of RPS without complying with the

provisions of the Companies Act, SEBI Act, SEBI (Disclosure and Investor Protection) Guidelines, 2000 (â??DIP Guidelinesâ?? for short) and SEBI

(Issue of Capital and Disclosure Requirements) Regulations, 2009 (â??ICDR Regulationsâ?? for short).

3. Subsequently, a confirmatory order dated March 18, 2015 was passed by the WTM, which was challenged by the appellants in Appeal No. 328 of

2015. This appeal was allowed by this Tribunal by an order dated November 25, 2016 and the confirmatory order dated March 18, 2015 was set aside

with a direction to the WTM, SEBI to decide the matter afresh after giving an opportunity of hearing to the appellants.

4. Subsequently, after considering the replies of the appellants the WTM, passed the impugned order dated September 24, 2018 holding that the

Company came out with an offer which was violative of Sections 56 and 73 of the Companies Act and accordingly directed the Company and its

directors to refund the amount along with interest to the allottees.

5. We have heard Shri Nimay Dave, the learned counsel for the appellant and Shri Pradeep Sancheti, the learned senior counsel for the respondent.

6. The contention of the learned counsel for the appellant was that various documents and computers were seized by the Crime Branch, Odisha Police

and therefore they were unable to collect the correct facts or defend themselves before the SEBI authorities. It was further contended that the

Serious Fraud Investigation Office (â??SFIOâ?? for short) was looking into the complaint under Section 212(2) of the Companies Act and therefore

no proceedings could have been initiated by SEBI. It was alleged that it is a case of double jeopardy and that two different proceedings cannot be

initiated for the same cause of action. This contention was repelled by the WTM in the impugned order. On this issue, we are of the opinion that the contention that the documents were not available to defend their case is wholly incorrect. Nothing has been pointed out as to which document was

required for the appellants to defend themselves. In the absence of any specification of a particular document not been available such general

contention is patently vague and cannot be accepted. The fact remains that RPS was issued to more than 49 persons which is admitted by the

appellants and therefore there was violation of Sections 56, 60 and 73 of the Companies Act.

7. We are also of the opinion that the principle of double jeopardy is not applicable in the instant case. Two separate proceedings have been initiated

one is for an offence committed by the Company and its directors under the Companies Act which offence was investigated by the SFIO under

Section 212(2) of the Companies Act. These proceedings are totally different and distinct from the proceedings initiated by the Regulator for violation

of the provisions of the Companies Act and SEBI Act and consequential directions that can be issued under Section 11 and 11B of the SEBI Act. We

are further of the opinion that the cause of action is not the same and, in any case, the principle of double jeopardy is not applicable in the instant case.

We further find that Section 212(2) of the Companies Act relates to a bar on other investigating agencies. In the instant case, SEBI is a Regulator and

is not an investigating agency thus the contention raised has no basis and is rejected.

8. It was further contended that appellant no. 4 Ms. Jyotirani Sarangi was only a school teacher and became a director for a negligible period of seven

months from April, 2008 to October, 2008 and that the said appellant never attended any meeting of the board of directors nor signed any documents.

It was further contended that the said appellant never received any salary as a director nor was involved in any day-to-day affairs. It was also

contended that the appellant could never be a director as the appellant was a civil servant and therefore could not hold the post of a director.

9. This contention was disbelieved by the WTM and it was found that the appellant attended various meetings of the board of directors from June

2008 till October 2008 and that she was also a director in Seashore Healthcare Pvt. Ltd. from August 17, 2007 to February 6, 2010 and was also a

director in Sagiarien Systems Pvt. Ltd. from March 15, 2003 to August 8, 2011. The aforesaid facts have not been disputed before us and therefore we are unable to accept the contention of the said appellant that she should be exonerated on the ground that she was a school teacher and never

attended any meetings of the board of directors.

10. Similar plea was raised on behalf of appellant no. 5 Ms Sapna Jena who also contended that she was employee of the Company and never

attended any meetings of the board of directors nor was involved in the day-to-day affairs of the Company. The finding in this regard given by the

WTM was that she attended meetings from April 2011 to April 2012 and that no proof has been filed to the effect that she was made director without

her consent. These findings have remained unrebutted before this Tribunal. No evidence has been submitted by the said appellant that these findings

are incorrect.

11. In the light of the aforesaid, we do not find any error in the impugned order passed by the WTM. The appeal fails and is dismissed with no order

as to costs. In view of the disposal of the appeal, the Misc. Application No. 44 of 2021 has become infructuous and is disposed of accordingly.

12. 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.