(2023) 10 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1229, 1230, 1256 Of 2023 In Appeal No. 284, 285 Of 2023

Securities And Exchange Board Of India — APPELLANT

Vs

Arshad Warsi & Ors — RESPONDENT

Date of Decision : 04-10-2023

Acts Referred:

Citation : (2023) 10 SEBI CK 0002

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Akshay Petkar, Vivek Punjabi, Shweta Bhagchandani, Kinnari Mehta, Pranhita Singh, Pradeep Sancheti, Mihir Mody, Arnav Misra, Sumit Rai

Final Decision : Disposed Of

Judgement

1. We have heard the learned counsel for the parties on Misc. Application Nos. 1229 and 1230 of 2023 filed by the respondent and Misc. Application No. 1256 of 2023 filed by the original appellants.

2. This Tribunal by an order dated March 27, 2023 while setting aside the directions contained in the ad-interim order has issued certain directions which are extracted hereunder:-

"32. Considering the aforesaid:-

a. Directions contained in the impugned order against the appellants in appeal no. 284 of 2023 are set aside with the following directions:-

(i). The appellants are restrained from trading in the scrip of Sadhna during the pendency of the investigation.

(ii). The appellants shall deposit 50% of the alleged unlawful gains in an escrow account with a scheduled commercial bank within 15 days from today. For the balance amount, the appellants shall give an undertaking within the same period of 15 days that they will deposit the balance amount within 30 days from the date of final order, if any, passed by the WTM.

(iii). This escrow account shall be kept in an interest bearing escrow account and a lien will be created in favour of SEBI.

(iv). Directions (i), (ii) and (iii) would continue to operate during the investigation.

(v) The appeal is partly allowed.

b. In Appeal No. 285 of 2023, the impugned order in so far as it relates to the said appellant is quashed. The appeal is allowed. We however restrain the appellant from dealing in the scrip of Sadhna during the pendency of the investigations.

c. We also direct SEBI to complete the investigation within six months and initiate appropriate proceedings, if any, against the appellants. If the investigations remain incomplete and no proceedings are initiated, it will be open to the appellants to apply for modification of our order.

d. Any observation, findings given in this order is only tentative in nature and will not affect the investigation. Further, neither party will rely upon any observation / finding in any proceedings before any authority.

e. In the circumstances of the case, parties shall bear their own costs."

3. While directing the appellants to deposit 50% of the unlawful gain and further restraining the appellants from trading in the scrip of Sadhna Broadcast Limited ("Sadhna" for convenience) during the pendency of the investigation we had also directed Securities and Exchange Board of India ("SEBI") to complete the investigation within six months and initiate appropriate proceedings, if any, against the appellants.

4. The investigations are still going on and accordingly SEBI has moved an application seeking further time to complete the investigation. The appellant on the other hand has also filed an application seeking modification of our order praying that they have cooperated with the investigation and that there is no evidence against them till date and therefore the directions issued by this Tribunal against the appellant should be modified.

5. In this regard, we had also directed the respondent SEBI to file an application bringing on record as to what further material has come against the appellants during the investigation. In this regard, an affidavit has been filed on October 04, 2023 alleging certain fund transfers by noticee no. 1 to the appellant. Apart from this allegation there is nothing on record to indicate that the appellant was involved with notice no. 1 Manish Mishra with regard to the making of the Youtube.

6. Considering the aforesaid, prima facie, no fresh material has come on record

to show the involvement of the appellant. On this basis, it was urged by the appellants' counsel that the directions contained in our order should be vacated and the appellants should be allowed to trade in the scrip of Sadhna and that the deposit made by them should be allowed to be withdrawn. We note that the appellant has cooperated though other noticees are not cooperating with the investigation and that is why it is quite possible that the investigation is not being completed.

7. Considering the aforesaid, in the interest of justice we dispose of the applications permitting SEBI to complete the investigation as prayed within two months from today i.e. till December 10, 2023. Thereafter the respondents may if they choose issue a show cause notice within two weeks. In the event the investigation is not completed and the respondents are unable to issue the show cause notice, the directions contained in our order dated March 27, 2023 will stand vacated and it will be open to the appellant to trade in the scrip in question and would also be permitted to withdraw the amount that has been deposited pursuant to our order.