(2019) 12 SEBI CK 0007

In the Securities Appellate Tribunal Mumbai

Case No : Review Application No. 29 Of 2019 In Appeal No. 238, 239 Of 2019

Securities And Exchange Board Of India — APPELLANT

Vs

Rakesh Singh Narwaria And Others — RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Securities And Exchange Board Of India (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 — Rule 7, 7(a), 7(c)
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 30

Citation : (2019) 12 SEBI CK 0007

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

Bench : Full Bench

Advocate : Chirag Bhavsar, Nishit Dhruva, Eram Quraishi, Prakash Shah, Chinmay Paradkar

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. The present appeals were filed against the order dated March 27, 2018 passed by the Whole

Time Member (â??WTMâ? for convenience) of Securities and Exchange Board of India (â??SEBIâ? for convenience) issuing various directions

namely, to wind up the collective investment schemes and refund the monies and were also restrained from accessing the securities market, etc.

Pursuant to the said orders, the bank accounts and the demat accounts of the appellants were frozen.

2. This matter came up for hearing and final disposal on November 26, 2019.

Since we could not get the assistance of the learned senior counsel for

the respondent, we passed an interim order dated November 26, 2019 after hearing the parties directing the respondent to withdraw a sum of Rs.20

lakh from the accounts of the appellants and thereafter defreeze the bank accounts and the demat accounts of the appellants within a week.

3. The respondent being aggrieved by this part of the order has filed the Review / Modification Application No. 29 of 2019 praying that the directions

issued by this Tribunal on November 26, 2019 be remained stayed during the pendency of the appeal.

4. At the outset, we may point out that during the midst of a hearing in another matter a mention was made by the learned senior counsel for the

respondent to take up this matter. The Tribunal agreed to do so and when the appeal was called out we again found the non-availability of the learned

senior counsel for the respondent. We accordingly, heard the learned counsel for the parties.

5. An attempt was made that the balance sheet as on March 31, 2008 indicates that a sum of Rs. 4,62,08,962/- was received from the investors. The

respondent thus contended that since the said amount was received during the period when the appellants were directors consequently the directions

issued by this Tribunal should remain an abeyance failing which it would be difficult to recover the amount in the event of the dismissal of the appeal.

6. On the other hand, we find from a perusal of the balance sheet as on March 31, 2010 that the reserve and surplus as per the profit and loss account

was Rs. 1.38 crores, the investment made by the company was Rs. 4.65 crores, the cash at bank was Rs. 1.95 crores. Thus, at the time when the

appellants resigned as directors, the networth of the company was far more than the deposits taken from the investors. Consequently, at this stage we

do not find any reason to modify our order dated November 26, 2019. The Review Application No. 29 of 2019 is misconceived and is dismissed.