

(2021) 03 SEBI CK 0174

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.324, 325, 326, 327 Of 2021, Appeal No.161, 162 Of 2021

Unicorn Infra Projects & Estates P. Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 26-03-2021

Acts Referred:

Second Schedule To The Income Tax Act, 1961 — Rule 2
Securities And Exchange Board Of India Act, 1992 — Section 28A

Citation : (2021) 03 SEBI CK 0174

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

Bench : Division Bench

Advocate : Vikram Nankani, P. R. Ramesh, Suresh Gupta, Gaurav Joshi, Mihir Mody, Arnav Misra

Judgement

1. Two separate appeals have been filed against a common certificate cum notice of demand dated 1st March, 2021 issued under Rule 2 of the Second Schedule to the Income Tax Act, 1961 read with Section 28 A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'). The appellants have also challenged the attachment order dated 1st March, 2021 by which their bank accounts have been seized.

2. The short submission made by the learned senior counsel for the appellant is, that the present notice of demand cum certificate and attachment order have been issued pursuant to recovery proceedings initiated against PACL in which the appellants were not parties to it. It transpires that some order was passed against PACL based on which recovery proceedings were initiated to recover Rs.49,100 crores from PACL. The Supreme Court of India vide order dated 2nd February, 2016 constituted a Committee headed by Justice R.M. Lodha to sell land and return the money to the relevant investors. Based on further orders being passed by the Supreme Court of India it transpires that the Committee submitted a report based on which the impugned notice of demand has been issued as well as the attachment order.

3. The recovery order, the notice of demand indicates that the appellants are associated companies.
4. One of the questions which arises for consideration is whether recovery proceedings can be initiated straight away under section 28A of the SEBI Act without issuing notice for adjudicating a dispute between the regulator and the appellants and without giving an opportunity to the appellants to contend that they are not associated companies of PACL. Further, assuming that the Recovery Officer does have the jurisdiction to initiate recovery proceedings under Section 28A is it not necessary for the Recovery Officer to issue notice before proceedings with the recovery of the amount and, further whether attachment order could be passed without issuing any notice especially when there is no evidence in the impugned order that there is a possibility that the appellants would run away with the money.
5. On the other hand, we find that the appellants is a running Company and the financial year is coming to an end on 31st March. The attachment order attaching the bank accounts is certainly not in the interest of the smooth running of the business of the Company.
6. In the light of the aforesaid, we direct the respondent to file a reply within two weeks from today. Two weeks thereafter to the appellant to file rejoinder. The matter would be listed for admission and for final disposal on 29th April, 2021.
7. In view of the undertaking given by the appellants today we direct that the attachment orders passed against the appellants shall remain in abeyance. The appellants would be permitted to operate their accounts and make necessary expenditures for the smooth running of the business.
8. Parties are directed to contact the Registrar 48 hours before the date fixed to find out as to whether the hearing would take place through video conferencing or through physical hearing.
9. 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.