

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 28.02.2018

Misc. Application No. 08 of 2018
In
Misc. Application No. 99 of 2016
And
Appeal No. 141 of 2016

Gurmeet Singh
22, 3rd Floor, Amber Tower,
Sansar Chand Road,
Jaipur 302 004, Rajsthan

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

WITH
Misc. Application No. 311 of 2017
In
Misc. Application No. 100 of 2016
And
Appeal No. 142 of 2016

Subrata Bhattacharya
22, 3rd Floor, Amber Tower,
Sansar Chand Road,
Jaipur 302 004, Rajsthan

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Pulkit Sharma, Advocate i/b Abhishek Adke for the Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and
Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the
Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

Misc. Application Nos. 08 of 2018 & 311 of 2017

By these two Miscellaneous Applications applicants seek recall of our orders dated 24.05.2017 whereby both the appeals were dismissed for want of prosecution as none appeared on behalf of the appellants. For the reasons stated in the respective Miscellaneous Applications, the order dated 24.05.2017 is recalled and both appeals are restored to the file and taken up for hearing.

Both the Miscellaneous Applications are disposed of accordingly with no order as to costs.

Misc. Application Nos. 99 & 100 of 2016

There is delay of 33 days in filing the respective appeals. By these Miscellaneous Applications, applicants seek condonation of the said delay. For the reasons stated in the respective applications, the delay is condoned.

Miscellaneous Applications are disposed of accordingly.

Appeal No. 141 & 142 of 2016

1. Appellants in these two appeals have challenged the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 02.02.2016. By the said order penalty has been imposed on PACL Ltd. and its directors including the

appellants herein. In the impugned order it is held that the appellants have violated Section 15D of the SEBI Act and accordingly maximum penalty of ₹ 1 crore has been imposed on each appellant.

2. It is not in dispute that the appellants were directors of PACL Limited for about six years. When the appellants joined as directors admittedly several schemes floated by PACL Ltd., were in force and during their tenure several new schemes were also launched. Since the said schemes floated by PACL Ltd., were in the nature of Collective Investment Schemes (“CIS”) and the said schemes were carried on without obtaining registration from SEBI in gross violation of the CIS Regulations, proceedings were initiated against PACL Ltd., and its directors including the appellants herein. Thereafter, the Whole Time Member (“WTM” for short) of SEBI by his order dated 22.08.2014 held that the schemes floated by PACL Ltd. were CIS and directed PACL Ltd. and its directors to wind up the existing CIS and refund the money collected from the investors with promised returns. By the impugned order dated 02.02.2016 the AO of SEBI has imposed penalty of ₹ 1 crore on each appellant under Section 15D of SEBI Act.

3. Appellants had filed appeals before this Tribunal to challenge the decision dated 22.08.2014 passed by the WTM of SEBI. The said appeals were dismissed by this Tribunal on 12.08.2015. Challenging the decision of this Tribunal the appellants have filed appeals before the Apex Court and the same are pending. However, during the pendency of the said appeals, the Apex Court by its order dated 02.02.2016 has directed that the land purchased by PACL Ltd. be sold and the sale

proceeds be given to the investors in the manner as more particularly set out in the said order.

4. In these appeals filed by the appellants to challenge the order passed by the AO on 02.02.2016, counsel for the appellants submit that the order passed by the AO cannot be sustained for the following reasons:-

- a) Once the WTM of SEBI had record a finding that the schemes run by PACL Ltd. were CIS and that finding was being contested in the appeals filed by the appellants before this Tribunal, SEBI could not have initiated parallel proceedings and, therefore, the impugned order is liable to be set aside.
- b) Fact that the appellants at the relevant time were the directors of PACL Ltd. cannot by itself be a ground to impose penalty on the appellants. Without disclosing the role played by the appellants in running the CIS, the AO is not justified in imposing penalty against the appellants.
- c) There were several directors in PACL Ltd. before the appellants joined as directors of PACL Ltd. In such a case imposing uniform penalty of ₹ 1 crore on all the directors including the appellants is wholly unjustified.

5. We see no merit in the aforesaid contentions.

6. Powers conferred on the WTM of SEBI under Section 11 & 11B of SEBI Act are different from the powers conferred on the Adjudicating Officer of SEBI to impose penalty for the violations enumerated in Chapter VIA of the SEBI Act. Therefore, fact that the appeals filed by the appellants against the order passed by the WTM of SEBI were pending before this Tribunal, did not preclude SEBI from initiating penalty proceedings against the appellants.

7. Argument that without setting out the role played by the appellants no penalty could be imposed on the appellants merely because they were directors of PACL Ltd. is also without any merit. Very fact that the appellants as directors of PACL Ltd. not only continued the schemes operating on the date on which they joined as directors but also floated new schemes in the nature of CIS without obtaining registration from SEBI is sufficient to hold the appellants guilty of violating Section 15D of SEBI Act.

8. Argument of the appellants that the AO has erroneously imposed uniform penalty on different directors of PACL Ltd. is factually incorrect. On perusal of the impugned order it is seen that the AO has imposed different penalty on the directors who were covered under Section 15D of SEBI Act as it stood prior to its amendment on 29.10.2002 and has imposed penalty of ₹1 crore on all the directors covered under Section 15D of SEBI Act as it stood after 29.10.2002. It is relevant to note that penalty imposable under Section 15D of SEBI Act as

it stood prior to 29.10.2002 was ₹ 10,000/- for each day during which the person carried on CIS or 10 lakh of rupees whichever is higher. Penalty imposable under Section 15D of SEBI Act after 29.10.2002 was ₹ 1 lakh for each day during which the person carried on CIS or ₹ 1 crore whichever is less.

9. In the present case, the amount collected by PACL Ltd. from 5.85 crore investors for selling agricultural land was to the tune of ₹ 49,100 crore, whereas value of total lands held by PACL Ltd. in the form of stock in trade as on 31.03.2014 was ₹ 11,706.96 crore. Thus, it is apparent that substantial amounts collected from the investors have been swindled away by the directors of PACL Ltd. Since, the appellants were directors of PACL Ltd. for a long period, imposition of maximum penalty of ₹ 1 crore on the appellants cannot be faulted.

10. In the result, we see no merit in both the appeals and the same are hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

28.02.2018
Prepared & Compared By: PK