

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 21.03.2018

Appeal No. 61 of 2018

Mr. Ashwin Bhandari
26, Morsail Gali,
Near Jain Mandir,
Indore,
Madhya Pradesh 42 002

...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. Saurabh Bachhawat, Advocate i/b Mr. Manoj Jain, Company Secretary, Sarda Soni Associates for the Appellant.

Mr. Aditya Chitale, Advocate with Mr. Tomu Francis, Advocate for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on December 21, 2017. By the said order penalty of ₹ 2 lac is imposed on the appellant under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act” for short) for violating Section 11C(2) & 11C(3) of SEBI Act.

2. Dispute in the present case relates to the investigation carried out by SEBI in the scrip of Tarang Projects and Consultants Limited (“Company” for convenience). During the course of investigation, SEBI suspected that various persons including the appellant may be involved in the violations relating to the scrip of the company. Accordingly, statement of the appellant was recorded on 27.04.2016 wherein appellant answered the questions put to him and agreed to furnish certain additional information by 30.04.2016. However, appellant failed to furnish that information.

3. Thereupon, summonses under Section 11(2), 11C(3) and 11C(5) of SEBI Act were issued to the appellant on 27.05.2016, 02.06.2016 and 13.06.2016 respectively. It is not in dispute that the first two summonses were served on the appellant after the due date for compliance set out in the summonses. As regards the third summons, appellant contends that he was not served, whereas, SEBI contends that the appellant refused to accept the summons. However, it is not in dispute that despite the failure on part of the appellant to furnish information, the investigation continued and on completion of investigation, an investigation report was prepared on 24.07.2017. The investigation report recommended initiation of prosecution against some of the suspected persons and initiation of adjudication proceedings against some of the suspected persons. In case of the appellant initiation of adjudication proceedings were recommended for non-compliance of the summonses issued to the appellant. Accordingly, adjudication proceedings were initiated and by the

impugned order, penalty of ₹ 2 lac is imposed on the appellant for non-compliance of the summonses issued to the appellant.

4. Basic argument advanced on behalf of the appellant is that since the two summonses were served beyond the period for compliance set out in the respective summonses and the third summons was not served, appellant cannot be held guilty of violating Section 11C(2) and 11C(3) of SEBI Act. It is further contended that since the investigation report has concluded that the appellant was not involved in the violations relating to the scrip of the company, the proceedings initiated against the appellant for non-compliance of the summonses ought to have been dropped.

5. We see no merit in the above contention. Admittedly, the appellant, during the course of his statement recorded on 27.04.2016 had specifically agreed to furnish certain information by 30.04.2016, but failed and neglected to furnish the same. Thereupon, summonses were issued again and again calling upon the appellant to furnish requisite information, but the appellant failed and neglected to furnish the information. In such a case, fact that the summonses were served beyond the date prescribed in the summonses for furnishing the information cannot be a ground for the appellant not to furnish the information especially when the appellant himself had agreed to furnish the information by 30.04.2016. Similarly, fact that the investigation report concludes that the appellant was not involved in the violations relating to the scrip of the company, cannot be a ground to hold that the appellant has not violated Section 11(C)(2) and 11C(3) of SEBI Act. Thus, in the

facts of present case, since the appellant is guilty of not furnishing the information called for, decision of the AO that the appellant has violated Section 11C(2) and 11C(3) of SEBI Act cannot be faulted.

6. Question then to be considered is, whether, the AO is justified in imposing penalty of ₹ 2 lac, on the appellant. In our opinion, imposition of ₹ 2 lac as penalty is unjustified for the following reasons:-

- a) Appellant on receiving the summons for recording statement had in fact appeared and his statement was recorded.
- b) Admittedly, the two summonses seeking information were served after the date for compliance set out in those summonses. Thus, even SEBI is guilty of not serving the summonses before the date for compliance set out in the summonses.
- c) It is apparent that the information sought from the appellant was not a vital information, because the investigation continued without the information called for and it is not the case of SEBI that failure on part of the appellant to furnish the information has hampered the investigation.

- d) On the contrary, the investigation report clearly records that the appellant was not involved in the violation relating to the scrip of the company.
- e) Appellant is found guilty of not furnishing the information under the summonses served beyond the date for compliance set out in the summonses for the first time and there is nothing on record to suggest that such violation has been repeated.

In these circumstances, in the facts of present case, in our opinion, it would be just and proper to issue warning to the appellant instead of imposing penalty of ₹ 2 lac.

7. Strong reliance was placed by counsel for SEBI on the Apex Court decision in case of Vijay Mallya V/s Enforcement Directorate reported in (2015) 8 SCC 799 in support of his contention that the penalty imposed on the appellant is justified. That decision is distinguishable on facts, because, in that case, criminal proceedings were initiated under Section 56 of Foreign Exchange Regulation Act, 1973 (“FERA”) for avoiding summons/ not attending in obedience to summons and in that case Vijay Mallya (Supra) was seeking quashing of the criminal proceedings on ground that the AO had dropped the proceedings. In that context, Apex Court held that the criminal proceedings initiated under Section 56 of FERA are independent from the penalty proceedings and therefore, dropping of the penalty proceedings by the AO cannot be a ground for

quashing the criminal proceedings. Further, the Apex Court observed that dropping of the penalty proceedings by the AO in that case had not attained finality, because, appeal filed against the order of AO was pending. In the present case, investigation report holds that the appellant was not involved in the violations relating to the scrip of the company and further, for non-compliance of the summonses, only adjudication proceeding was recommended. Moreover, finding recorded in the investigation report that the appellant was not involved in the violations relating to the company is accepted by SEBI and it has attained finality. Thus, the decision of the Apex Court in the case of Vijay Mallya (Supra) is wholly distinguishable on facts.

8. Similarly, decision of this Tribunal in case of Concord Realty Pvt. Ltd. V/s SEBI (Appeal No. 22 of 2016 decided on 14.07.2016) relied upon by counsel for SEBI is distinguishable on facts. In that case, the appellant therein had not only failed to furnish all information but also failed to appear inspite of receiving the summons. In the present case, there is no finding that the appellant failed to appear before the investigating officer. In fact, pursuant to the summons, appellant appeared before the investigating officer for recording his statement. Therefore, decision of this Tribunal in case of Concord Realty Pvt. Ltd. is also distinguishable of facts.

9. Accordingly we hold that in the facts of present case, it would be just and proper to issue a warning to the appellant to comply with the summonses whenever issued.

10. Before concluding, we would like to place on record that in the interest of investors SEBI must concentrate more on persons who have committed market violations instead of concentrating on persons like the appellant who is admittedly not involved in the market violations but only failed to furnish information called for under the summonses which were served after the date for compliance set out in the summonses for furnishing the information and which information is ultimately found to be not relevant for investigation.

11. In the result, while uploading the decision of AO that the appellant has violated Section 11C(2) and 11C(3) of SEBI Act, we modify the order passed by the AO by setting aside the penalty of ₹ 2 lac imposed on the appellant and issue a warning to the appellant that he would be penalized if he commits such violation again.

12. Appeal is disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

21.03.2018
Prepared & Compared By: PK