

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 29.08.2017

Misc. Application No. 186 of 2017

And

Appeal No. 134 of 2017

Mr. Udaksh Kumar Verma
House No. 109,
Near Hanuman Mandir,
Ward No. 08, Jiratola Rajnandgaon,
Chhattisgarh- 491 888

...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

Ms. Purnima Gupta, Advocate for the Appellant.

Mr. M.P. Rao, Senior Advocate with Ms. Sonam Shethia, Advocate i/b
Juris Corp. for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

Misc. Application No. 186 of 2017

Counsel for the appellant does not press the Miscellaneous Application, in view of the fact that the appellant has already paid the court fees payable on Appeal No. 134 of 2017.

Miscellaneous Application is accordingly disposed of with no order as to costs.

Appeal No. 134 of 2017

1. This appeal is filed to challenge the communication issued by the Recovery Officer (“RO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 06.04.2017. By the said communication it is held that since Vee Realities India Limited (“the Company” for short) and its present directors have failed to refund the amounts directed to be refunded to the investors within the time stipulated in the order passed by the Whole Time Member (“WTM” for short) of SEBI on 03.03.2016 the RO is entitled to attach the bank accounts not only of the company and its present directors but also the bank accounts of its past directors including the appellant for the purpose of refunding the amounts to the investors as per the order of WTM dated 03.03.2016.

2. Facts relevant to the present appeal are as follows:-

- a) The company which was incorporated on 12.10.2010 was engaged in Fund mobilization activity under various schemes floated by it. Appellant was one of the directors of the company since inception. Appellant resigned as a director of the company from 23.01.2014.
- b) The schemes floated by the company were considered to be Collective Investment Scheme (“CIS” for short) and since the CIS was run without obtaining

certificate of Registration from SEBI proceedings were initiated against the company and pending further investigation, by an ex-parte order dated 02.12.2014 the WTM of SEBI inter alia directed the company, its present and past directors (i) including the appellant not to collect any fresh money from the investors, (ii) not to launch any new schemes, (iii) submit full inventory of assets, (iv) not to dispose of or alienate the assets and (v) not to divert any fund raised from public.

- c) After considering the objections filed and the arguments advanced, the WTM of SEBI by his order dated 03.03.2016 held that running CIS without registration was in violation of SEBI Act and the SEBI (Collective Investment Schemes) Regulations, 1999 and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP” Regulations” for short). In para 27 of the said order dated 03.03.2016, the WTM issued various directions against the company, its present and past directors.
- d) Direction contained in Para 27(b) of the order dated 03.03.2016 was that company and its present directors

specifically named therein shall wind up the existing CIS and refund the money collected by the company from the investors within the time stipulated therein. Thus, the obligation to refund the amounts to the investors under para 27(b) of the order dated 03.03.2016 has been restricted to the company and its present directors. Consequently, there was no obligation on part of past directors including the appellant to make any refund to the investors.

e) The WTM of SEBI has recorded in para 27(f) of his order dated 03.03.2016 that the company and its present directors as well as the past directors including the appellant are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.

f) As the company and its present directors failed to refund the amounts to the investors within the stipulated time, the RO issued a certificate on 14.10.2016 under Section 28A of SEBI Act read with Section 222 of the Income Tax Act, 1961 and called upon the company, its present directors and the past directors including the appellant to pay ₹ 22.41 crore along with returns due to the investors, further

interest, all costs, charges and expenses incurred. On 14.10.2016 itself the bank accounts of the appellant were attached by the RO.

- g) Challenging the attachment of bank accounts the appellant filed Appeal No. 7 of 2017 before this Tribunal and also made a representation to the RO for lifting the attachment inter alia on ground that there was no obligation cast on the appellant to refund the money due to the investors under the order passed by the WTM on 03.03.2016.
- h) In view of the fact that the representation made by the appellant was already heard by the RO and the order was awaited, this Tribunal on 20.02.2017 permitted the appellant to withdraw Appeal No. 7 of 2017 with liberty to challenge the decision of RO if adverse to the appellant.
- i) By his communication dated 06.04.2017 the RO rejected the representation made by the appellant by holding that as per para 26(c) of the order dated 03.03.2016 the appellant was liable for contraventions committed by the company in launching and operating unregistered CIS and as per para 27(g) of the order dated 03.03.2016, if the company and its directors

(past and present) fail to comply with the directions including the direction to refund, then SEBI is entitled to initiate recovery proceedings against the company and others responsible which includes the appellant.

- j) Challenging the communication of the RO dated 06.04.2017 the present appeal is filed.

3. Before considering the rival submissions it would be appropriate to quote Para 26(c) and para 27 of the order passed by the WTM of SEBI on 03.03.2016 which reads thus:-

“26(c). *I therefore, find the Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke and **past directors** Mr. Bhikam Chand Sahu, Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, **Mr. Udaksh Kumar Verma** and Mr. Ved Prakash Verma, liable for the contraventions committed by the Company in launching and operating unregistered CIS and contravening regulation 4(2)(t) of the PFUTP Regulations.*

27. *In view of the foregoing, in the interest of investors and the securities market, I, in*

exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B, and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issued the following directions:

- a) Vee Realities India Limited and its directors Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke and **past directors** Mr. Bhikam Chand Sahu, Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, **Mr. Udaksh Kumar Verma** and Mr. Ved Prakash Verma, shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.*

b) *Vee Realities India Limited and its directors Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke shall wind up the existing Collective Investment Schemes and refund through 'Bank Demand Draft' or Pay Order', the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer **within a period of three months from the date of this Order** and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.*

In case the Company has made refunds as claimed in its submission, it shall produce the proof for such repayment as

directed above and also submit a certificate from Chartered Accountant as directed in sub-paragraph (d) below.

*c) Vee Realities India Limited, its promoters and **its directors** Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke, shall not alienate or dispose off or sell any of the assets of the Company except for the purpose of making refunds to its investors as directed above.*

d) After completing the aforesaid repayments in terms of sub paragraph (b) above, the Company, Vee Realities India Limited shall file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been

categorized so by the Institute of Chartered Accountants of India (ICAI).

e) *Vee Realities India Limited **and its directors** Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke and **past directors** Mr. Bhikam Chand Sahu, Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, **Mr. Udaksh Kumar Verma** and Mr. Ved Prakash Verma are also **directed to provide a full inventory of all** their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.*

f) *Vee Realities India Limited **and its directors** Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke and **past directors** Mr. Bhikam Chand Sahu,*

*Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, **Mr. Udaksh Kumar Verma** and Mr. Ved Prakash Verma are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.*

*g) In the event of failure by Vee Realities India Limited and **its directors** Mr. Panchulal Pandhare Motiram, Ms. Rekha Neware, Mr. Nilesh Keshorav Gajbhiye, Mr. Buddhadas Premdas Ramteke **and past directors** Mr. Bhikam Chand Sahu, Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, **Mr. Udaksh Kumar Verma** and Mr. Ved Prakash Verma, **to comply with the above directions**, the following actions shall follow:-*

*- Vee Realities India Limited and **its directors** Mr. Panchulal Pandhare*

Motiram, Ms. Rekha Neware, Mr. Nilesch Keshorav Gajbhiye, Mr. Buddhadas Premdas Remteke and past directors, Mr. Bhikam Chand Sahu, Mr. Ganeshram Verma, Mr. Ramesh Kumar Sahu, Mr. Panna Lal Sahu, Mr. Kamlesh Verma, Smt. Gayatri Verma, Mr. Udaksh Kumar Verma and Mr. Ved Prakash Verma, shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of 4 years of restraint imposed in sub-paragraph (f) above, till all the Collective Investment Schemes of the Company are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.

- *SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors*

and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;

- *would also make a reference to the Ministry of Corporate Affairs to initiate appropriate action as deemed fit.*
- *SEBI would make a reference to the Ministry of Corporate Affairs to restrain above mentioned noticee directors from being directors in other companies.*
- *SEBI shall **initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder against the Company and **others responsible.*****

(emphasis supplied)

4. Basic argument advanced by counsel for the appellant is that the obligation to refund the amount as per para 27(b) of the order passed by the WTM of SEBI on 03.03.2016 is only on the company and the present

directors and therefore, the RO is not justified in holding that for the failure on part of the company and its present directors to comply with the above directions, the past directors including the appellant are liable to refund the amount of ₹ 22.41 crore to the investors. Accordingly, it is submitted that the impugned communication issued by the RO on 06.04.2017 deserves to be quashed and set aside.

5. We see merit in the aforesaid argument advanced on behalf of the appellant.

6. The directions given in para 27 of the order of WTM dated 03.03.2016 may be summarized as follows:-

- a) the company, its present directors and past directors including the appellant shall abstain from collecting any money from the investors and shall not launch any CIS.
- b) the company and its present directors namely Mr. Panchulal P. Motiram, Ms. Rekha Neware, Mr. Nilesh K. Gajbhiye and Mr. Buddhadas P. Ramteke shall wind up the existing CIS and refund the money collected by the company under the schemes with returns which are due to the investors as per the terms of offer within a period of three months.

- c) the company its promoters and its present directors shall not alienate or dispose off or sell any of the assets of the company except for the purpose of making refunds to the investors.
- d) after completing repayments the company shall file a certificate of such completion.
- e) the company, its present directors and past directors including the appellant are directed to provide full inventory of their assets and properties and details of all their bank accounts, demat accounts.
- f) the company, its present directors and past directors including the appellant are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.
- g) In the event of failure by the company, its present directors and past directors (including the appellant) in complying with the aforesaid directions, the following actions shall follow:-
 - the company, its present directors and past directors including the appellant shall remain

restrained from accessing the securities market even after the period of 4 years restraint imposed under para 27(f) is over, till all the CIS of the company are wound up and all the monies mobilized through such schemes are refunded to the investors with returns which are due to them.

- SEBI would make a reference to the State Government/ Local Police to register a Civil/ Criminal case against the company, its promoters, directors and its managers/ person in charge of the business and its schemes, for offence of fraud, cheating, criminal breach of trust and misappropriation of public funds.
- would also make a reference to the Ministry of Corporate Affairs ('MCA') to initiate appropriate action as deemed fit.
- SEBI would make a reference to MCA to restrain the present/ past directors of the company from being directors in other companies.
- SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules

and regulations framed thereunder against the company and others responsible.

7. From the aforesaid directions contained in the order of the WTM dated 03.03.2016 it is abundantly clear that as per para 27(b), the obligation to wind up the CIS and refund the amount collected from the investors is only on the company and its present directors specifically named therein. Since past directors including the appellant are not directed under para 27(b) of the order dated 03.03.2016 to refund the amount to the investors, the RO could not have held that if the company and its present directors fail to refund the amount within the stipulated time, then the past directors are also liable to refund the amount to the investors.

8. Fact that the WTM of SEBI in para 26(c) of the order dated 03.03.2016 has held that the company, its present directors and the past directors including the appellant are liable for the contraventions committed by the company in launching and operating unregistered CIS and contravening regulation 4(2)(t) of the PFUTP Regulations could not be a ground for the RO to hold that if the company and its present directors fail to refund the amount to the investors within the stipulated time, then the past directors including the appellant are also liable to refund the amount to the investors.

9. The WTM of SEBI in his order dated 03.03.2016 after holding that the company, its present directors and past directors are guilty of

violating SEBI Act and the regulations made thereunder has deemed it fit to direct the company and its present directors to refund the money collected by the company to the investors and further restrain the company, its present directors and the past directors including the appellant from accessing the securities market for 4 years. The WTM has further directed in para 27(g) that if the company and its present directors fail to refund the amounts to the investors within the stipulated time or the company, its present directors and past directors including the appellant fail to furnish full inventory of all there assets and properties, then the restraint order passed under para 27(f) shall continue even after the expiry of 4 years till all the CIS of the company are wound up and all the monies mobilized through such schemes are refunded to the investors. Thus, as per the order of WTM, if the company and its present directors failed to refund the amount within the stipulated time, then as a consequence of such failure the restraint imposed on the company, its present directors and also the past directors including the appellant was to continue even beyond 4 years till all the CIS were wound up and all amounts were refunded to the investors by the persons directed to refund, namely, the company and its present directors.

10. The RO has committed a serious error in construing that the WTM in para 27(g) of the order has held that in the event of failure by the company and its directors (past and present) to comply with directions including the directions to refund, SEBI shall initiate recovery proceedings against the company and its present/ past directors. The words ‘other responsible’ in para 27(g) is referable only to the persons

who are directed to refund the money to the investors namely the company and its present directors. If the reasoning given by the RO is accepted it would mean that the WTM in para 27(b) of the order has directed the company and its present directors named therein to refund the money collected by the company to the investors within the time stipulated therein and if they fail, then in para 27(g) the WTM has held that SEBI shall initiate attachment and recovery proceedings and recover the money not only from the company and its present directors but also from the past directors including the appellant. Accepting such reasoning would amount to rewarding the persons who fail to comply with the directions given by the WTM of SEBI. In our opinion, the concerned RO is either incapable of understanding the clear and unambiguous language used in the order of WTM or bent upon distorting the order of WTM for extraneous reasons.

11. In the guise of implementing the order of the WTM, it is not open to the RO to rewrite the order of WTM and seek to introduce obligations which are not to be found in the order of WTM. In our opinion, it is high time for SEBI to take a fresh look at their officers who are worthy of discharging the duties as RO.

12. Argument advanced by counsel for SEBI that the appellant has not challenged the order of WTM and therefore the order of WTM has attained finality has no bearing on the issues raised herein. What the appellant wants is that the RO must follow the order of WTM as it is and not to distort the order. Similarly, fact that the WTM has passed separate

and independent directions against the present directors and past directors does not mean that the obligation cast upon the company and its present directors can be shifted by the RO to the past directors.

13. For all the aforesaid reasons we quash the impugned communication issued by the RO on 06.04.2017 and direct the RO to lift the attachment levied on the bank accounts of the appellant forthwith.

14. Appeal is allowed in the aforesaid terms with costs quantified at ₹ 25000/- to be paid by SEBI to the appellant within a period of four weeks from today. It would be open to SEBI to recover the costs of ₹ 25000/- from the concerned RO if deemed fit.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

29.08.2017
Prepared & Compared By: PK