

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 01.01.2016

Appeal No. 505 of 2015

Nirmal Singh Bhangoo

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Prakash Shah, Mr. Bharat Redij, and Mr. M. Jain, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Shruti Chiniwar and Mr. Saurabh Bachhawat, Advocates for the Respondent.

ORDER:

1. The appellant, Shri Nirmal Singh Bhangoo, has preferred the present appeal mainly against the learned recovery officer's orders dated December 11, 2015 regarding bank accounts and demat accounts respectively. Both these orders are annexed at pages 16 and 21 of the appeal. Same appellant has earlier filed an Appeal No. 94 of 2015 challenging the order dated August 22, 2014 passed by SEBI. By way of Misc. Application No. 347 of 2015 in Appeal No. 94 of 2015, the applicant, Shri. Nirmal Singh Bhangoo, is seeking stay of the operation of impugned order dated August 22, 2014 qua him. This order stands upheld by this Tribunal in a bunch of appeals preferred by the company PACL and some of other directors by order dated August 12, 2015 and Special Leave Petitions are stated to have been preferred before the Hon'ble Supreme Court. With the consent of the parties fresh Appeal No. 505 of 2015 as well as Misc Application No. 347 of 2015 in Appeal No. 94 of 2015 moved by the same applicant are being taken up together for hearing.

2. We have heard Learned Senior Counsel Shri. P. N. Modi, and Learned counsel for SEBI, Shri. Desai, who submits that the present recovery order emanates mainly from the order dated August 22, 2014. Said order was passed in respect of the company i.e. PACL Limited and certain other directors, including the appellant, directing them to wind up the various Collective Investment Schemes in question and refund an amount of about Rs. 49,100 crore to the investors.

3. Per contra, Shri. Modi, Learned Senior Counsel submits that the appellant, Mr. Nirmal Singh Bhangoo, was appointed as director on June 03, 1996 and he resigned from the directorship of the said company on February 03, 1998. During this period the Regulations to regulate CISs were not in force despite insertion of Section 12(1B) in the SEBI Act, 1992 in the year 1995. Therefore, the appellant cannot be retrospectively held guilty of running CISs contrary to law even for a period while he was director in the said company or while he was associated with that company as an advisor because of his reach experience of sale and purchase of agricultural land and real estate.

4. After hearing both the learned counsel for the parties, it is noted that the appellant has already filed Appeal No. 94 of 2015 impugning the main order dated August 22, 2014 and the said appeal has not yet been decided by this Tribunal, although all other connected appeals have since been dismissed by this Tribunal's order dated August 12, 2015, upholding the main impugned order dated August 22, 2014. It is also brought to our notice that the Appeal No. 94 of 2015 is being listed on

January 29, 2016 for final hearing and both the learned counsel for the parties agree that this present appeal arises out of the main impugned order dated August 22, 2014. It would, therefore, be in the interest of justice to list this appeal on January 29, 2016 for final disposal alongwith Appeal No. 94 of 2015 preferred by the same appellant. In the meanwhile SEBI is directed to file reply in Appeal No. 505 of 2015 with a period of two weeks. Shri. Desai, undertakes to serve an advance copy of the reply to the other side by January 14, 2016. Rejoinder, if any, be filed by January 25, 2016 by the appellant.

5. As regards the interim relief in the Appeal No. 505 of 2015, Shri Desai, learned counsel for SEBI, fairly states that the respondent shall maintain status-quo as of today as regards the two impugned orders dated December 11, 2015 annexed at pages 16 and 21 in Appeal No. 505 of 2015. Ordered accordingly.

Misc. Application No. 347 of 2015

In
Appeal No. 94 of 2015

Nirmal Singh Bhangoo
Farm No. 2, Creative Farm,
Near Parkland Retreat,
Silveroak Lane,
Satbari,
South Delhi,
Delhi- 11 00 74

...Applicant

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. P. N. Modi, Senior Advocate with Mr. Bharat Redij and Mr. M. Jain,
Advocates i/b Mr. Prakash Shah, Advocate for the Applicant.

Mr. Kumar Desai, Advocate with Ms. Shruti Chiniwar and Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Jog Singh, Member

Per: Jog Singh (Oral)

1. This Misc. Application has been moved by the applicant, Mr. Nirmal Singh Bhangoo, who acted as an Advisor/Director of PACL Limited for a certain period between the years 1996 to 1998 for stay of the impugned order dated August 22, 2014. By this said order the applicant, alongwith others including the company PACL, has been mainly directed as under:-

38e. In the event of failure by PACL Limited and its directors/ promoters to comply with the above directions, the following actions shall follow:-

- PACL Limited and its directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, Mr. Anand Gurwant Singh, Mr. Nirmal Singh Bhangoo, Mr. Uppal Devinder Kumar, Mr. Tyger Joginder and Mr. Gurnam Singh (R/o Wazidpur) shall immediately (on expiry of the three months period available for making refunds) be restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities market till all the Collective Investment Schemes of PACL Limited 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 PACL Limited, 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; and*
- *SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, PACL Limited.*
- *Without prejudice to the above, SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.*

2. Heard both the learned counsel for the parties at length. At the outset, it is brought to the notice of the Tribunal by Shri Desai that the main impugned order dated August 22, 2014 itself provides for attachment of accounts as well as recovery of the huge amount in question. It is further noted from the records that the impugned order dated August 22, 2014 was belatedly challenged by the applicant alongwith the company PACL and other directors, although by separate appeals, before this Tribunal and all the appeals were taken up together and heard on March 02, 2014. Certain directions were issued to the parties to be complied with. It is also seen from the proceedings that the applicant has been a party to seek repeatedly adjournments in the matter and never pressed for any stay of the order dated August 22, 2014. The applicant's role in the affairs of the PACL

as an Advisor or Director during the period June 03, 1996 to February 03, 1998 as reflected in the supplementary show cause notice dated June 14, 2013 read with earlier show cause notices dated November 03, 1999 and December 10, 1999 and connected records, has yet to be looked into by this Tribunal in this present proceedings. The applicant, therefore, cannot claim to have made out a prima-facie case for grant of stay of the order in question particularly at this stage when the pleadings are complete and the matter is to be listed on January 29, 2016 for final hearing and order of status-quo, as of now, has already been directed to be maintained so far as the two attachment orders dated December 11, 2015 are concerned and which are the subject matter of connected Appeal No. 505 of 2015 preferred by the same person namely Shri. Nirmal Singh Bhangoo.

3. It is a matter of fact that the applicant Shri. Nirmal Singh Bhangoo, in view of his claimed vast experience in the field of sale and purchase of agriculture land etc. had promoted one PGF Limited Company and worked as its Chairman-cum-Managing Director. Thereafter, because of this expertise, it is submitted by the applicant, that he was appointed as an Advisor too and a Director of PACL. These facts are not in dispute, but the role of Shri. Nirmal Singh Bhangoo, and its connections with PACL have not been considered in the appeal. Therefore, it would be against the interest of justice to grant any stay of the said impugned order dated August 22, 2014 which will prejudice further actions as may be taken by SEBI against the applicant in accordance with law and as mentioned in the said impugned order dated August 22, 2014. Further, grant of any stay

would preclude and pre-empt the respondent from taken any legal action/steps against the applicant as well as other directors/company i.e. PACL Limited purely on hypothetical considerations as submitted by the applicant. The Tribunal would be undoubtedly reluctant to do so in the absence of any prima-facie case having been made by the applicant in the present application for grant of stay of the main impugned order dated August 22, 2014.

4. Mr. Modi, learned senior counsel for applicant has pointed out two judgments. One of them is in Appeal No. 140 of 2003 decided on April 16, 2014 in the case of Radhavallabh Dhoot vs SEBI by this Tribunal. The same has been perused. Said judgment is prima-facie distinguishable as it pertains to activities of a non-executive director of the company in that case. Whereas the applicant in the present case has not only been an active director but also acted as an advisor of PACL as per his own admission. Similarly, the case of Radhavallabh Dhoot does not take into consideration the implication of Section 12 (1B) of the SEBI Act, 1992 which was inserted in the year 1995. Therefore, this judgment, at least, cannot be looked into for the purpose of grant of stay of the impugned order. Similarly, Mr. P. N. Modi, has point out the judgment of the Hon'ble Delhi High Court CRL. M.C. 2145/2006 in the case of Virender Kumar Singh & Anr. vs. SEBI to bring home the point that during the relevant period, the applicant had ceased to be the director of the company. We have gone through the judgment of Hon'ble High Court of Delhi. In that case the person against whom a criminal complaint was preferred by SEBI for non-compliance of its directive regarding sending of an information

memorandum to all investors giving the details of various CISs by February 20, 2000, failed to do so despite reminders by SEBI. In that context the Hon'ble High Court of Delhi noted that the time of commission of an offence was a matter of fact and not of conjecture. It is true that in the case before Hon'ble Delhi High Court the person ceased to be the director of the company prior to the action which was sought to be taken against the company. In the present case, it is however noted that the applicant is seeking stay of the impugned order only on surmises and hypothetical grounds that in future SEBI might take certain steps against the applicant. As already noted hereinabove, the Tribunal cannot stop SEBI from taking appropriate action against the applicant and other entities/persons in accordance with law and as per the impugned order dated August 22, 2014 which has since been upheld by this Tribunal vide its order dated August 12, 2015. Therefore, the prayer for grant of stay at this stage is rejected and the Misc. Application No. 347 of 2015 in Appeal No. 94 of 2015 is dismissed. Both the appeals i. e. 505 of 2015 and 94 of 2015 are directed to be listed on January 29, 2016 for final hearing when the matter shall be heard on merit without entertaining request for adjournment by one of the parties.

Sd/-
Jog Singh
Member

01.01.2016
Prepared & Compared By: PK