

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 15.01.2018

Appeal No. 131 of 2016

1. Skylark Land Developers & Infrastructure
India Ltd.
2nd Floor, Ganga Complex, Mall Road,
Morar, Gwalior – 474 001 Madhya Pradesh.
2. Mr. Durga Prasad Yadav, Director
Mahewa, Gopalpur, Newdia,
Jaunpur 222 137, Uttar Pradesh.
3. Mr. Jai Hind Kumar, Director
Village- Ramraypur,
Post Office- Gangapur 221 001,
Uttar Pradesh.
4. Mr. Rama Shankar Yadav, Director
C-08, Near Ram Vatika, Govindpuri,
Gwalior – 474 001, Madhya Pradesh.
5. Mr. Dilip Jain, Director
2324/5, Ground Floor Pvt, Flat No. G-1,
Mandir Wali Gali, Shadi Khampur,
New Delhi – 110008.

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.

... Respondent

Mr. Subodh Kumar Gupta, Advocate with Ms. Purnima Gupta, Advocate
for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis, Advocate
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)

1. This appeal is filed to challenge the order passed by the Adjudicating
Officer ('A.O.' for short) of SEBI on January 20, 2016. By the said order
penalty of Rs. 1 crore is imposed on each of the five appellants aggregating

to Rs. 5 crore under Section 15A(a) of SEBI Act on ground that the appellants have failed and neglected to furnish information sought under the summons issued to the appellant on July 30, 2014 and September 12, 2014 in gross violation of Section 11C(3) of SEBI Act.

2. Facts relevant for the present appeal are that by a letter dated November 22, 2012 appellant No. 1 was called upon to furnish particulars about its scheme / plans offered to the public, funds mobilized, memorandum of association, detail of directors etc. in order to examine the matter under Section 11AA of SEBI Act and under the SEBI (Collective Investment Schemes) Regulations, 1999 ('CIS Regulations' for short). By a letter dated December 5, 2012 appellants while denying to have mobilized funds from public, sought two months time to furnish the information, however, no information was furnished to SEBI. Thereupon, several letters were addressed by SEBI seeking information from the appellants. Although, partial information was given on April 2, 2014 appellants failed and neglected to furnish balance information inspite of an e-mail sent by SEBI on April 21, 2014.

3. In view of inordinate delay in furnishing requisite information, the investigating authority of SEBI issued summons on July 30, 2014 under Section 11C(3) of the SEBI Act requiring the appellants to provide the information / documents / reports etc. as more particularly set out therein. Appellant no. 1 through its email sought time for furnishing requisite information. As the appellants failed to comply with the summons dated July 30, 2014, another summons was sent to the appellants on September 12, 2014 calling upon the appellants to furnish information by September 22, 2014.

4. As the appellants failed to furnish information in gross violation of SEBI Act, show cause notice was issued to the appellants on June 30, 2015

wherein it was alleged that failure to furnish information as required under the two summons dated July 30, 2014 and September 12, 2014 respectively was gross in violation of Section 11C(3) of the SEBI Act and, accordingly, the appellants were called upon to show cause as to why penalty should not be imposed on them under Section 15A(a) of the SEBI Act for violating Section 11C(3) of the SEBI Act. Appellants filed their reply to the show cause notice wherein they denied to have violated Section 11C(3) of SEBI Act.

5. Thereupon, opportunity of hearing was offered to the appellants and after considering the plea of the appellants, the AO has deemed it fit to impose maximum penalty of Rs. 1 crore on each appellant for violating Section 11C(3) of SEBI Act. Challenging the said decision, the appellants have filed the present appeal.

6. Counsel for the appellants submitted that the penalty imposed on the appellants is unsustainable because, firstly, as per Notification dated July 10, 1995 issued by the Government of India, Board alone is empowered to appoint an adjudicating officer for holding inquiry. In the present case, since the Whole Time Member ('WTM' for short) of SEBI has appointed the A.O. in violation of Notification dated July 10, 1995, the impugned order passed by the A.O. is without jurisdiction. Secondly, it is submitted that the impugned order is passed without considering the mitigating factors set out in Section 15J of SEBI Act. Thirdly, it is submitted that the appellants could not furnish information, because the registered office of the appellants at Gwalior was seized by the collector on May 5, 2011 and, in such a case failure to furnish information could not be attributed to the appellants.

7. We see no merit in the above contentions.

8. First contention raised on behalf of the appellants is without any merit, because, subsequent to the Notification dated July 10, 1995, SEBI has issued a general order on May 3, 2010 under which the WTM of SEBI is authorized to appoint an A.O. for holding inquiry. Therefore, in the present case, appointment of the A.O. by the WTM of SEBI cannot be said to be illegal or without jurisdiction.

9. Second argument advanced on behalf of the appellants that the mitigating factors set out in Section 15J of SEBI Act have not been considered in the impugned order is also without any merit, because, apart from furnishing partial documents belatedly on December 15, 2015 i.e. after a huge gap of around 15 months appellants have not furnished some of the crucial documents to SEBI till date. It is relevant to note that sample copies of the agreement letter / contract entered into with the investors under the schemes floated by the appellants have not been furnished to SEBI till date. Similarly, neither the details of the developmental activities carried on by the appellants on the land alongwith the rights and obligations between the company and the investors nor the particulars relating to the branches of appellant company with address have been furnished to SEBI. It is apparent that the appellants failed to furnish aforesaid basic information merely with a view to delay the investigation being conducted by SEBI to the detriment of investors from whom funds were collected by the appellants in contravention of CIS Regulations. Thus, there being no mitigating factor in favour of the appellants, the A.O. was justified in imposing maximum penalty against the appellants.

10. Third argument of the appellants that they could not furnish information on account of the Collector sealing the head office premises is without any merit, because, such a plea was not taken by the appellants in their letter dated December 5, 2012. Even in the e-mails send by the

appellants on April 3, 2014 and on August 16, 2014 no such plea was raised. Thus, it is apparent that the plea of inability to furnish information on account of sealing the Head Office premises is an afterthought plea taken only with a view to delay the investigation.

11. It is relevant to note that apart from furnishing partial information, belatedly after 15 months delay on April 2, 2014, appellants had furnished some more information during the course of arguments. These facts clearly falsify the case of the appellants that they could not furnish information on account of the sealing of their Head Office premises. Eventhough investigation relating to the CIS run by the appellants in violation of SEBI Act and CIS Regulations commenced in the year 2012, on account of inordinate delay on part of appellants in furnishing requisite information, the investors are deprived of their funds which were illegally collected by the appellants. Thus, in the facts of present case, since the appellants are guilty of suppressing material information without any justification, imposition of maximum penalty imposable under Section 15A(a) of SEBI Act for violating Section 11C(3) of SEBI Act cannot be faulted.

12. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

15.01.2018
Prepared & Compared by
PTM