

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Review Application No. 1 of 2013
In
Appeal No. 32 and 34 of 2012**

Date of Decision: 20.01.2014

G. Ramakrishnan
No. 53, R-Block, 1st Floor,
15th Road, Anna Nagar,
Chennai 600 040.

.. Review applicant/
Original 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. P. R. Raviganesan, Chartered Accountant for the Applicant/Original Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh (Oral)

The review application is preferred by the review applicant against the common order dated October 5, 2012, passed by this Tribunal while disposing of eight appeals including two appeals in question i.e. appeal nos. 32 and 34 of 2012 which were preferred by the review applicant.

2. In appeal no. 32 of 2012, the appellant prayed for quashing of impugned order dated July 29, 2011 passed by the learned Adjudicating Officer (AO) under Section 12A of SEBI Act, 1992 read with Rule 5 of SEBI (Procedure of Holding Enquiry and Imposing Penalties by Adjudicating officer) Rules, 1995 and imposing a monetary penalty of ₹ 25 lac on the appellant under Section 15HA of the SEBI Act, 1992 for

violations of Regulations 3(b), (c), (d); 4(1), 4(2)(a), (e), (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations).

3. Whereas in appeal no. 34 of 2012 the review applicant prayed for quashing of impugned order dated March 11, 2011 passed by the learned Whole Time Member (WTM) under Sections 11, 11B and 11(4) of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations) thereby restraining the appellant, Mr. G. Ramakrishnan, from being an independent director or a member of audit committee of any listed company for a period of two years from the date of the said order.

4. As noted hereinabove, by the common order dated October 5, 2012, this Tribunal upheld the two impugned orders passed by SEBI against the appellant one regarding restraint and other regarding imposition of monetary penalty. The appeals were, thus, dismissed. In the present review application the review applicant submits that in the order dated October 5, 2012, this Tribunal observed in para 14 that the review applicant attended the audit committee (AC) meeting towards the end of financial year 2007-08 which is contrary to the fact on record as the review applicant attended the audit committee meeting for the first time only on May 27, 2008 when the AC was reconstituted. The review applicant had drawn our attention towards annexure annexed at page no. 49 of the review application in this regard.

5. According to the review applicant, the above finding of this Tribunal emanates in the context of para 28 of adjudication order which states that the review applicant was a member of AC when quarterly reports of the last two quarters of the relevant year were considered by the board and the AC.

This is factually incorrect as the review applicant was not in the AC which approved the third quarter results as the review applicant attended audit committee meeting for the first time on May 27, 2008 which is evident from minutes of meeting annexed at page 49 of the appeal paper book.

6. The review applicant submits that the annual accounts for 2007-08 under “Corporate Governance”, while furnishing details of working of the audit committee in the reports, clearly show in the table appended to report that the review applicant was not a member of the AC in 2007-08 and did not attend any AC meeting in 2007-08. It is establishes that review applicant was not a member of AC which approved 3rd quarter results of 2007-2008. However, he was present in the audit meeting on June 28, 2008 which approved the 4th quarter results.

7. The review applicant also submits that the finding in para 20 of the adjudicating officer’s order regarding repetitive nature of defaults has been wrongly upheld by the Tribunal in as much as the review applicant attended only one audit committee meeting and not on March 13, 2008. The review applicant was present in the board meeting for approving the 4th quarter results on June 30, 2008. This meeting was, however, adjourned to the next day i.e. January 31, 2008 when the accounts were approved by the board. The review applicant, for all practical purposes, attended only one meeting on his behalf and, therefore, the charge of repetitive nature of defaults against the review applicant is totally unfounded and without any basis.

8. Thus, on the basis of various grounds taken in the appeal and oral submissions made during the hearing, the review applicant submits that the order dated October 5, 2012 dismissing the two appeal nos. 32 and 34 of 2012 should be recalled on the ground that the case of the review applicant differs from the other directors in as much as he never owned shares or dealt with them in any manner. He did not derive any benefit out of such

dealings. The review applicant has an impeccable track record by serving Ashok Layland for forty years, he gets a meager monthly pension of ₹ 4885/- and his father, who is aged 105 years, is dependent on him. To support these submissions, the review applicant has even produced a point-wise chart which demonstrates how the case of the review applicant is different from those of other directors.

9. We have minutely considered the submissions made by Shri P. R. Raviganesan, learned authorised representative who appeared and argued on behalf of the review applicant. Grievance of review applicant is that there are factual errors in our order dated October 5, 2012 is not correct because what is especially held therein is that appellant was part of AC to FY 2007-08. The fact that review applicant was not part of AC in some quarters in 2007-2008 is not disputed but it would not in any way alter merits of the case. We are of the considered opinion the review applicant, in substance, is asking for rehearing of the appeals on merit. The grounds now being urged by the review applicant cannot be appreciated in review application. This Tribunal cannot sit in appeal over its own judgment.

We are, therefore, inclined to dismiss the review application.
Ordered accordingly. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

20.01.2014
Prepared & Compared by
PTM