BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 06.11.2019
Date of Decision : 14.11.2019

Appeal No. 378 of 2017

1. Siddharth Sanghi
   Plot No. 156, Road No. 73,
   Jubilee Hills, Hyderabad - 500033.

2. Amit Sanghi
   8-2-686/D/L/2, Road No. 12,
   Banjara Hills, Hyderabad - 500034. ….. Appellants

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. Prakash Shah, Advocate with Mr. Chinmay Paradkar, Mr. Meit Shah, Advocates i/b Prakash Shah & Associates for the Appellants.

Mr. Anubhav Ghosh, Advocate with Ms. Rashi Dalmia, Advocate i/b The Law Point for the Respondent.

With
Appeal No. 55 of 2018

Mr. Seshadri Upadhyayula
1-5-266/4, Old Alwal, Ayyappa Nagar,
Ward - 24, Alwal Ranga Reddy,
Secunderabad - 500010. ….. 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. Ramesh Gogawat, Advocate with Mr. Nikhil Shah, Mr. Lalit Sharma, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Rashi Dalmia, Advocate i/b The Law Point for the Respondent.

With
Appeal No. 56 of 2018

Kodhaty Chandrsekhar Rao
Flat No. 116, Plot No. 3,
SuryaSaroj Apartments, HUDA Complex,
Kothpet, Hyderabad - 500035. ….. 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. Ramesh Gogawat, Advocate with Mr. Nikhil Shah, Mr. Lalit Sharma, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Rashi Dalmia, Advocate i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against a common order passed by the Whole Time Member (hereinafter referred to as, 'WTM'). Consequently, all the three appeals are being decided together.

2. The facts leading to the filing of the present appeals is that Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') received several investor complaints pertaining to money mobilization by Sanghi Plantations Ltd. (SPL / the Company) and its failure to refund the dues to the said investors. SEBI examined the complaints and found that the money collected by the Company for teak plantation scheme was in the nature of Collective Investment Scheme (CIS) as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act'). Since the scheme was being carried on without requisite registration under the SEBI Act, a common show cause notice dated February 23, 2016 was issued requiring the company and other noticees including the appellants to show cause as to why directions under Section 11 and 11B of the SEBI Act read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as, 'CIS Regulations') should not be issued against them.

3. The relevant facts is that the scheme was launched in 1992 and the money was collected from 27,383 persons in 1992 itself. As per the auditors certificate refunds have already been made to 13,048 persons and a sum of Rs. 2,07,26,000/- was outstanding as on July 23, 2005. The Teak Sapling Sale Certificate issued by the Company to the investors indicated that the maturity date of the plantation scheme was May 20, 2012.

4. The WTM after considering the reply and after giving an opportunity of hearing found that the scheme launched by the company was a CIS which required registration under the SEBI Act. Since the same was not registered, the scheme could not continue and was required to be wound up. The WTM further found that all the noticees including the appellants were responsible and were held liable to refund the monies and further to wind up the scheme. The WTM accordingly issued the following directions, namely, :-

> *"(i) Sanghi Plantations Ltd. and the noticee directors namely, Siddharth Sanghi, Amit Sanghi, Kodhaty Chandrasekhar Rao, Seshadri Upadhyayula, Benda Ram Narayan are jointly and severally liable to wind up the existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'.*
>
> *(ii) Upon completion of the refund as directed above, within a further period of seven days, the Noticee company and the present directors namely, Kodhaty Chandrasekhar*

Rao and Benda Ram Narayan shall submit a winding up and repayment report (WRR) to SEBI in accordance with the CIS regulations. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants.

(iii) In the event of failure by the Noticees to comply with the directions at sub-paras (i) and (ii) above, SEBI shall initiate recovery proceedings under the SEBI Act against the Noticees.

(iv) The Noticees shall not alienate or dispose off or sell any of the assets of Sanghi Plantations Ltd. except for the purpose of making refunds to its investors as directed above.

(v) The Noticees shall, with immediate effect, be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complied with, as directed at sub-paragraph (i) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.

(vi) The noticee directors i.e. Siddharth Sanghi, Amit Sanghi, Kodhaty Chandrasekhar Rao, Seshadri Upadhyayula, Benda Ram Narayan shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order."

5. The appellants being aggrieved by the said order have filed the present appeals.

6. In Appeal No. 378 of 2017, the appellants contended that they were appointed as directors on February 26, 2008 and resigned on

June 6, 2009. During this period no money was collected under the scheme nor the investors amount had matured during their period which required repayment to the investors. It was, thus, contended that since the appellants were appointed as directors for a brief period they cannot be held liable to refund the amount which was not collected during their period nor had matured during their period. It was contended that since they are no longer directors, they cannot be made liable to wind up the existing scheme nor can they in any way alienate or dispose of the assets of the company. It was also urged that since they were not responsible for the affairs of the company, the directions of the WTM restraining the said appellants from holding position of directors in any listed company for a period of four years was wholly arbitrary.

7. In Appeal No. 55 of 2018, the said appellant was appointed as a director in 2008 and continued till March 2014. In Appeal No. 56 of 2018, the said appellant was appointed as a director on February 26, 2008 and continued till December 2017. These two appellants contended that they were employees in the Sanghi group and were forced to become directors. They never participated in any Board's meeting and were not responsible of the affairs of the company. It was, thus, urged that they cannot be made liable to refund the money collected under the scheme by the company. It was also contended in the alternative that the liability to refund the amount should be

confined to the extent of collection made by the directors during their period of directorship. In support of their submission reliance was placed on an order passed by the WTM in the case of **Dr. Jugal Kishore Satapathy** and in the case of **Mr. Nimain Charan Biswal** wherein the WTM directed the said noticee to refund the amount with interest jointly and severally with the company to the extent of amount collected during the tenure of director of the company.

8. Having heard the learned counsel for the parties at some length, we find that the appellants in Appeal No. 378 of 2017 were appointed as directors for a limited period between 2008 and 2009. During this period, no amount was collected under the CIS. There is no finding that the amount collected had matured during the period when these appellants were the directors. Consequently, in our opinion, these directors could not be fastened the liability to refund the amount as they had neither collected the money nor were responsible for disbursement of the money to the investors at that stage. Further, admittedly the said appellants after their resignations are not involved in the affairs of the company. Consequently, no direction could be issued to them to wind up the investment scheme or to restrain them from selling the assets of the company in which they are not the directors. In the light of the aforesaid, the impugned order in so far as the appellants in Appeal No. 378 of 2017 is concerned cannot be sustained.

9. In so far as the appellants in Appeal No. 55 of 2018 and 56 of 2018 are concerned, we are of the opinion that no interference is required in the impugned order. The investment made by the investors had matured in 2012 during the period when the appellants were the directors in the company and were responsible for the refund of the money. The appellants failed to refund the amount and therefore are liable to refund the amount alongwith interest as directed by the WTM. The contention that they were not responsible for the affairs of the company or that they had never participated in any Board's meeting is only an afterthought which has been raised without any cogent proof. In fact, the appellant in Appeal No. 56 of 2018 did not file any reply and only sought time to collate the particulars and file a detailed reply which he failed to do so. The appellant in Appeal No. 55 of 2018 only made a bald assertion that he was not responsible for the day to day operations and management of the company without filing any resolution of the Board of Directors to show the he did not participate in any meeting. In any case, the amounts had matured during the period they were directors and thus, were responsible for the refund of the money to the investors. The decisions relied upon them that they were only liable to the extent of collection made by them is not applicable to the instant case as they are liable for the refund of the money collected by the company which was liable to be refunded during the period

when the said appellants were directors. Consequently, Appeal No. 55 of 2018 and 56 of 2018 lacks merit.

10. In view of the aforesaid, the impugned order in so far as it relates to the appellants in Appeal No. 378 of 2017 cannot be sustained and is quashed. The said appeal is allowed. Appeal Nos. 55 of 2018 and 56 of 2018 lacks merit and are dismissed. In the circumstances of the case, parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

14.11.2019
Prepared & Compared by
PTM