

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 14.01.2020

Date of Decision : 17.01.2020

Appeal No. 409 of 2019

Amit Misra
S-201, Prayagkunj – 3,
Strachey Road, Civil Lines,
Allahabad – 211 001
(Uttar Pradesh)

..... 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. Amit Agrawal, Advocate with Mr. Mittu Choudhary and
Mr. Sahil Raveen, Advocates i/b Regstreet Law Advisors for
the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Eram
Quraishi and Mr. Harshad Vyas, Advocates i/b MDP &
Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated
July 11, 2019 passed by the Whole Time Member (‘WTM’
for short) of the Securities and Exchange Board of India

(‘SEBI’) issuing various directions under Section 11 and 11B of the SEBI Act, 1992. The facts leading to the filing of the present appeal is, that SEBI observed that Togo Retail Marketing Limited (‘TRML/the Company’ for short) had made an offer of equity shares during financial years 2003-04, 2004-05 and 2008-09 from 8424 allottees and raised an amount of Rs. 7.74 crore. The said offer of equity shares was found to be in violation of SEBI laws and the Companies Act, 1956. Accordingly, an *ex parte* interim order dated August 5, 2015 was passed against the Company and its directors including the appellant restraining them from mobilizing funds through the issue of equity shares, prohibiting any diversion of funds and restraining them from accessing the securities market. In spite of this interim order, the appellant did not appear before the WTM nor offered any explanation or reply. As a result, a final order dated July 11, 2019 was passed by the WTM wherein the appellant along with other entities have been directed to refund the amount collected through the open offer along with interest at the rate of 15% per annum. The appellant has been directed to provide a full inventory of its assets and properties and further has been directed to provide details of all the bank accounts etc.

The appellant has also been prevented from selling his assets till such time the refund is not made.

2. The appellant being aggrieved by the aforesaid order has filed the present appeal.

3. The appellant in the impugned order has been shown as Director from July 12, 2006 to October 8, 2007 and Managing Director from October 9, 2007 to April 16, 2012. During this period the WTM has found that the Company had issued 591200 shares to 61 investors. The WTM also came to the conclusion that the appellant alongwith other Directors had violated Section 56, Section 60 and Section 73 of the Companies Act, 1956 while making an offer to the public.

4. We have heard Shri. Amit Agrawal, the learned Counsel for the appellant and Shri Pradeep Sancheti, the learned Senior Counsel for the respondent SEBI. The learned counsel for the appellant contended that the appellant has become a victim of fraud played by the Company and its promoter. The learned counsel further contended that the appellant was only an employee being the sales manager in the Company and was never appointed as a Director or Managing Director. It was contended that the appellant had never given any

consent and that all the documents that have been relied upon are on the basis of forged letters.

5. In this regard we have perused Form 32 Exhibit 'N' to the memo of appeal where we find that the appellant has been shown as 'Independent' and again as 'Executive Director'. The attachment annexed to the Form 32 is the alleged consent letter dated October 9, 2007 given by the appellant for becoming the Managing Director of the Company. A perusal of this consent letter indicates that one Kishan Pal Singh has signed this letter and that the consent letter has not been signed by the appellant. The extract of the minutes of the Board of Directors of the Company held on October 9, 2007 indicates that the appellant was appointed as Managing Director with effect from October 9, 2009 whereas the WTM has recorded that the appellant had been appointed with effect from October 9, 2007.

6. The WTM in its order has relied upon Form 32 and has further contended that if any of the Directors find that the entries are incorrect it would be open to the said entities including the appellant to get appropriate order from a Court of law.

7. Be that as it may. We find that there is a lot of discrepancy in Form 32 which has been relied upon by the WTM. The date of the appointment is not clear, namely, whether the appellant was appointed as a Board of Director on October 9, 2007 or October 9, 2009. At one place he has shown to be appointed as Managing Director but the resignation letter only shows that he was a Director. At another place he has been shown as 'Executive Director' in 'Independent' category and again in the same Form he has been shown as a 'Managing Director'. Thus, there are contradictory entries in Form 32. Further, we find that the consent letter has been signed by some other person and not by the appellant. The supporting documents annexed to Form 32, namely, the consent letter and the extracts of the minutes of the Board of Directors does not reflect the correct picture. On the other hand, the appellant contends that he was merely an employee and was never a Director and had no involvement in the day-to-day affairs of the running of the Company.

8. In the light of the aforesaid, the impugned order passed by the WTM insofar as it relates to the appellant cannot be

sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order in accordance with law after giving an opportunity to the appellant to place his contention and after making due enquiries from the relevant records. In this regard, we direct the appellant to appear before the WTM on February 14, 2020 on which date the appellant shall file his reply and WTM will proceed from there onwards and pass appropriate orders after giving an opportunity of hearing. No order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M.T. Joshi
Judicial Member

17.01.2020

Prepared and compared by:msb