

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 18.1.2021

Date of Decision: 09.2.2021

**Review Application No. 11 of 2020
in
Appeal No. 413 of 2020**

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A,

G Block, Bandra Kurla Complex,

Bandra (East), Mumbai – 400051.

...Applicant/

Original Respondent

Versus

1. Prabhat Dairy Limited

2. Sarangdhar Ramchandra Nirmal

3. Vivek Sarangdhar Nirmal

Gat No. 122, At Ranjankhol, Post

Tilaknagar, Ahmednagar District

Maharashtra 413720.

...Respondents/

Original Appellants.

Mr. Rafique A. Dada, Senior Advocate with Mr. Anubhav Ghosh and Mr. Ravishekhar Pandey, Advocates i/b. The Law Point for the Applicant/ Original Respondent.

Mr. Janak Dwarkadas, Senior Advocate with Ms. Rishika Harish, Mr. Mutahhar M. Khan, Mr. Aditya Bhansali and Mr. Suyash Bhandari, Advocates and Ms. Nirali Mehta, Practicing Company Secretary i/b. Mindspright Legal for the Respondents/ Original Appellants.

Mr. P.N. Modi, Senior Advocate with Ms. Kalpana Desai,

Mr. Shrinivas Sankaran and Mr. Mihir Gupte, Advocates
i/b. Vaish Associates for Intervenors.

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. Against the ex-parte ad interim order dated 20th October, 2020 passed by the Whole Time Member ('WTM' for short), the appellant had filed an appeal which was allowed and the interim order was set aside. While setting aside the order, this Tribunal issued certain directions which were required to be carried out by the parties.
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has filed a review application contending that certain errors have crept in the order which are errors on the face of the record in terms of the finding given by the Tribunal which is required to be corrected.
3. The ground of attack has been drawn in para 7 of the review application.

4. We have heard Mr. Rafique Dada, the learned senior counsel for the applicant/original respondent and Mr. Janak Dwarkadas, the learned senior counsel for the respondents/original appellants through video conference.
5. Having heard Shri Dada, the learned senior counsel for SEBI we find that the grounds mentioned in para 7 of the review application does not point out any mistake which is an error on the face of record. In fact, through this review application, an attempt was made to argue the matter de novo in the grab of seeking a clarification which is not permissible in a review application. The order of the Tribunal is clear and requires no clarification.
6. We may point out that an application for review cannot reopen questions which have been decided by the impugned order. The matter can be reopened only if the application for review is accepted. The question whether a review petition should be accepted or rejected has to be decided with reference to the

grounds on which review is permissible. The grounds for review is restricted, namely, in the instant case, an error on the face of the record, ie, where some material which the Tribunal ought to have considered had escaped its consideration, or where an evident error which was so manifest which the Tribunal could not permit such an error to remain on the record.

7. In the instant case, no error on the face of the record have been pointed out. It was only urged that the directions issued by the Tribunal should be reviewed keeping in mind the interest of the public shareholders. In our opinion, even an erroneous view taken by us or even if the Tribunal has wrongly applied the law or failed to apply the law cannot be considered a mistake or error apparent on the face of the record.
8. There is yet another aspect of the matter. At the start of the hearing of the review application, it was pointed out by the learned senior counsel for the appellant that para 7 of the review application has not been sworn and, therefore, the affidavit accompanying

the application was defective. Considering this defect an opportunity to cure the defect was given to the applicant SEBI. A fresh swearing clause was filed in which para 7 has been sworn on the basis of “legal advice”. In our opinion, the grounds of review which is alleged to be based on an error apparent on the face of the record cannot be sworn on legal advice. Some responsible officer has to come forward and take the burden of verifying the contents of para 7 of the review application, which is based on alleged factual error, on personal knowledge and not on legal advice.

9. In view of the aforesaid, we do not find any merit in the review application and is dismissed with no order as to costs.

10. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of

the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

09.2.2021
RHN