

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved: 30.7.2021**

**Date of Decision:09.8.2021**

**Appeal No.377 of 2021**

1. Nicer Green Housing Infrastructure  
Developers Ltd.  
2. Pipal Singh  
3. Ranjit Singh  
4. Surinder Kaur  
5. Karanjit Singh  
Sadar Colony, Near Gupta Petrol Pump,  
Firozpur City, Punjab-152002. ...Appellants

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C-4A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai. ...Respondent

Mr. J. S. Saluja, Advocate for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar and Ms. Riddhi Pawar, Advocates i/b. Vidhii 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 by the appellants challenging the order dated 18<sup>th</sup> January, 2021 passed by the Adjudicating Officer ('AO' for short) imposing a penalty of Rs.70 lakhs to be paid jointly and severally by the appellants for violating the provisions of Section 12(1B) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and Regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'CIS Regulations').
2. The facts leading to the filing of the present appeal is, that certain complaints were received by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') against the Company for not repaying the investors the amount that became due upon maturity. Upon examination and enquiry it was found that the activity of fund mobilization by the appellant no.1 Company under its schemes/plans with a resultant

promise of returns fell within the ambit of collective investment scheme as defined under Section 11AA of the SEBI Act.

3. Accordingly, the WTM passed an ex-parte interim order dated 28<sup>th</sup> July, 2014 restraining the appellants from mobilizing any funds from the public and also issued a show cause directing the appellants to show cause as to why appropriate orders should not be passed against them for violating the CIS Regulations. After giving an opportunity of hearing, the WTM passed a final order dated 9<sup>th</sup> November, 2015 directing the appellants to wind up the collective investment scheme and refund the money collected with returns which are due to the investors as per the terms of offer within a period of three months from the date of the order. The appellants were further restrained from accessing the securities market and from launching any scheme for a period of four years. The said final order was challenged before this

Tribunal in appeal no.86 of 2017 wherein the appellants showed their willingness to comply with the order of the WTM and refund the money that was collected. Accordingly, this Tribunal passed an order dated 13<sup>th</sup> November, 2017 disposing of the appeal by permitting the appellants to make a representation which if made would be considered by SEBI.

4. Thereafter, the representation of the appellants was duly considered by the respondent and, by an order dated 1<sup>st</sup> June, 2018 the appellants' representation was rejected. The appellants accordingly preferred appeal no.307 of 2018 which was dismissed by this Tribunal by an order dated 25<sup>th</sup> February, 2019 with the following observation;

*“4. Having heard the learned counsel for the appellants and upon perusal of the memo of appeal and the impugned order, we find that no proof has been filed either before SEBI or even before this Tribunal to show that the appellants had refunded a sum of Rs. 27.48 crore and that they are ready and willing to pay the balance amount in a time bound manner. In the absence of any evidence being filed, we are of the opinion*

*that there is no infirmity in the order passed by SEBI disposing of their representations.*

*5. The appeal lack merit and is dismissed summarily.”*

5. A review application no.3 of 2019 was also dismissed by this Tribunal on 27<sup>th</sup> June, 2019. Thereafter, civil appeal no.7017-7018 of 2020 was preferred by the appellants before the Supreme Court of India which was also dismissed by judgment dated 2<sup>nd</sup> September, 2019.

6. Thus, the order of the WTM holding that the activity of fund mobilization by the appellant Company under its schemes/plans were collective investment schemes as defined under Section 11AA of the SEBI Act has become final.

7. The AO issued a show cause notice dated 12<sup>th</sup> November, 2020 calling upon the appellants to show cause as to why an enquiry should not be held and penalty should not imposed against them under Section 15D(a) of the SEBI Act for the alleged

violations of running a collective investment scheme.

The AO on the same lines as that of the WTM found that the appellants were running a collective investment scheme without obtaining registration under Section 11AA of the SEBI Act and, accordingly, by the impugned order has imposed a penalty of Rs.70 lakhs.

8. We have heard the learned counsel for the parties at some length.
9. The fact that the appellants were running a collective investment scheme without obtaining a registration is no disputed. The fact that before this Tribunal the appellants made a submission that they will refund the amount which they collected under the scheme to the investors is also not disputed. This Tribunal accordingly passed an order directing the appellants to make a representation. Till date the amount has not been refunded to the investors inspite

of the order becoming final up to the stage of the Supreme Court.

10. Thus, there is no equity in favour of the appellants for any kind of relief. The appeal fails and is dismissed with no order as to costs.

11. 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

Justice M.T. Joshi  
Judicial Member

09.8.2021

RHN