

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date: 25.04.2024

Misc. Application No. 92 of 2024
IN
Appeal No. 185 of 2024

Mr. Anil Harish

...Applicant

Versus

Securities and Exchange Board of India

...Respondent

Mr. Sharan Jagtiani, Senior Advocate with Ms. Rishika Harish, Ms. Nirali Mehta and Mr. Juan D'Souza, Advocates i/b. Mindspright Legal for the Applicant.

Mr. Pratham Masurekar, Advocate with Ms. Shefali Shankar and Ms. Rasika Ghate, Advocates i/b MDP & Partners, Advocates for the Respondent.

ORDER:

1. The present application has filed by the applicant seeking an interim stay on the order dated December 29, 2023 impugned in the Appeal No. 185 of 2024. The impugned order dated December 29, 2023 passed by the Securities and Exchange Board of India ("SEBI" for convenience) directs the appellant not to take any new assignment as Trustee of Alternative Investment Fund of any category for a period of one (1) year and restrains the appellant from associating with any SEBI registered intermediary which deals with investors' money in any manner for a period of one (1) year from the date of this order (para 78.8 of the

impugned order). Additionally, it debarred the appellant from accessing the securities market for a period of six (6) months from the date of the order (paragraph 78.9 of the impugned order).

2. The learned senior counsel for the appellant pleaded that the appellant is a reputed lawyer and was appointed as a Trustee of CIG Realty Fund (the “Fund” for convenience) on August 11, 2005. He tendered his resignation as Trustee of the Fund on May 25, 2015 and the resignation was accepted on June 02, 2016. During the period between submission and acceptance of his resignation the tenure of schemes under the Fund expired and were extended for the 3rd term which was beyond the extension allowed in Private Placement Memorandum (“PPM” for convenience) of the respective schemes. The respondent conducted an investigation and launched a adjudication proceedings for violation of SEBI (Venture Capital Funds) Regulations, 1996 (“VCF Regulations” for convenience). The show cause notice was issued on November 30, 2018 and order passed on March 28, 2019 which concluded that the 3rd extension was in violation of the VCF Regulations. A penalty of Rs. 1 lakh was imposed upon the appellant. This was challenged by the appellant in this Tribunal. This Tribunal dismissed the appeal

vide its order dated May 04, 2021. The appellant preferred an appeal before the Hon'ble Supreme Court challenging the order of this Tribunal and the appeal is pending at the Apex Court. Pleading that the present impugned proceedings are on the same cause of action, the learned counsel stated that this amounts to double jeopardy and is in violation of law. Further, the present proceedings have been initiated on the basis of complaints made by the Unit Holders against the non-winding/ liquidation of the investments in the Fund and as the appellant has resigned w.e.f. June 02, 2016 he cannot be held liable for this non-liquidation. Also, at the time of extension of scheme approval of the requisite majority of the Unit Holders was taken and was duly reported to SEBI. There is also undue delay in issuing of the show cause notice dated March 10, 2023. The balance of convenience is in favour of the appellant therefore the learned counsel prayed that the effect and operation of the impugned order may be stayed.

3. On the other hand, the learned counsel for the respondent stated that considering the continued nature of violation the issue of show cause notice cannot be stated to be delayed. The impugned order notes that the present proceedings were launched on the basis of investor's complaints. Directions against the various noticees have been distinguished in the impugned order

and the directions against the appellants for debarment is only six months as the respondents were aware that the appellant had resigned in June 2016. Stating that if the stay application is upheld it will tantamount to the order against the appellant getting vacated, the counsel stated that interim relief should not be allowed to the appellant.

4. In rejoinder, the learned senior counsel for the appellants stated that the appellant is only seeking stay of the order until the pendency of the appeal therefore the question of order getting vacated does not arise. The charge of continued violation cannot be made applicable on the appellant as he had already resigned in June 2016. Irreparable harm would be caused to the appellant if the interim relief is not granted whereas no damage would be caused to the respondent as the directions issued against the appellant can be enforced even after the present appeal is decided.

5. Considering the arguments of both the parties, I am of the opinion that the balance of convenience lies in the favour of the appellant. The appellant had resigned from the fund in June 2016 and the appellant had no role to play in the decision made thereafter for ongoing continuation of the schemes. The appellant

has already suffered the consequences of this order for almost four months and directions can be continued even after the present appeal is decided. Accordingly, the effect and operation of the impugned order is stayed as far as it pertains to the appellant.

6. The stay application is disposed of.

Ms. Meera Swarup
Technical Member

25.04.2024
PK