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27.6.2019

Special SEBI Case No. SEBI/7/2018

DISTRICT : KOLKATA

IN THE COURT OF JUDGE,
FIFTH SPECIAL COURT,
CALCUTTA.

Present : Sri Prabir Kumar Misra,
Judge, 5th Special Court,
Calcutta.

Special SEBI Case No. SEBI/7/2018

SEBI

Vs.

Saurovemoy Ghosh

Under Section: 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992.

For the Prosecution : Shri Rajib Ray.

For the Defence : Bakhtier Ali Shah.

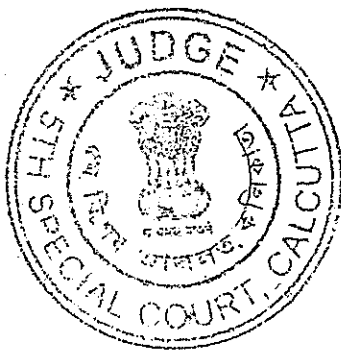
Date of Judgement : 27.06.2019

J U D G E M E N T

The Security Exchange Board of India Ltd. (herein after refer to as SEBI) being the complainant of this case has filed the instant complaint U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992.

The SEBI has been established under the Security Exchange Board of India Ltd. of the SEBI Act. 1992 with a view to protect the interests of investors in securities and to promote the development of and to regulate the securities markets and for matters connected therewith or incidental thereto.

The prosecution version as unfolded during trial is essentially as follows:



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27/6/19
Judge

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X/39
27-6-2019

-: 2 :-

The complainant states that with the above mentioned object and in exercise of its functions and power U/s. 19 r/w Section 11 and 11C of the SEBI Act. 1992, the Executive Director of the complainant, Shri R.K. Podmanabhan vide letter dated 23.11.2015, has appointed Mr, S. Madhusudhan, Deputy General Manager as the investigating authority to investigate into the matter of Roofers Realty Ltd. being the accused company, as the complainant had reasonable ground to believe that the accused being the Director of the accused company has raised money from the public and has violated the provisions of SEBI Act. 1992 and rules and regulations made or directions issued by the SEBI thereunder. In furtherance of the powers conferred hereinabove, the investigation was initiated against Roofers Realty Ltd. and during the course of investigation, to asses of the role of the accused persons with regard to the above mentioned trading activities, the investigating authority in exercise of its power U/s. 11C of this act, the complainant issued summons to the accused persons asking him to appear and to provide information U/s.11C (2) 11C (3) 11C (5) of the SEBI Act. 1992. The complainant has alleged that vide summons dated 15.04.2016 the accused was summoned to appear in persons on 03.05.2016 before the investigating agency for the purpose of investigation in the matter of Roofers Realty Ltd. Along with the documents which could be material for the purpose of investigation. The said

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Judge 27/6/19
5th Spl Court Kolkata

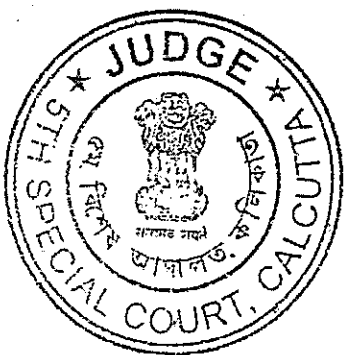
X/39
27-6-2019

-: 3 :-

summons was served through Speed Posts and the same was return with endorsement 'Left'. Thereafter the complainant again issued summons dt. 27.05.2016 directed the accused persons to appear in person on 03.06.2016 before the investigating agency and the summons was duly receipt by the accused persons but the accused persons in spite of due receipt of the summons failed to comply with the statutory obligation caste upon him as per U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992 and failed to provide necessary information pertaining to Roofers Realty Ltd. and deliberately remained absent on the date of hearing. It has been further alleged that the non-cooperation of the accused person during investigation hampered the investigation which is detrimental to the interest of investors and security market and as such the accused persons willfully violated the provision U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992.

The complainant has impelled to file this written complaint against the accused persons for violation of Section 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992.

After submission of the written complaint by the SEBI, the court was pleased to issue W/A against the accused person on 28.03.2018 and subsequently on 01.10.2018 the accused surrendered before this court and prayed for bail and the bail of the accused was granted. Thereafter on 20.11.2018 the copies of the relevant papers



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27-6-2019

-: 4 :-

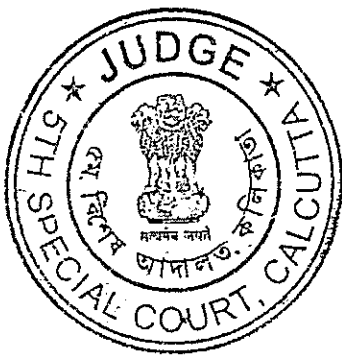
was supplied to the accused persons U/s. 207 of the Cr..P.C.

Pursuant to the written complaint filed by the complainant and on perusal of the materials of the record the court framed the charges U/s.11C (2) 11C (3) 11C (5) of the SEBI Act. 1992 against the accused persons. The said charges were read over and explained to the accused, having pleaded not guilty he was put on trial.

The defence case as it appears from the trend of cross-examination and the examination U/s 313 Cr.P.C. is that the accused is innocent and he never received any summons from the complainant and he has been falsely implicated in this case.

The prosecution, in order to bring home the charges against the accused, has produced Miss P.L.Leena Shree being the complainant in this case as P.W.1.

The documents admitted in the evidence in favour of the prosecution are marked Ext. 1 to 7.



Point for consideration

1. Whether the accused willfully violated the provision U/s.11C (2) 11C (3) 11C (5) of the SEBI Act. 1992 by not appearing before the investigating agency in course of investigation.

Decision with reason

The point no.1 is taken up for discussion. The prosecution has alleged that the accused no.1 being the director of the accused company during the Financial Year

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27/6/19
Judge

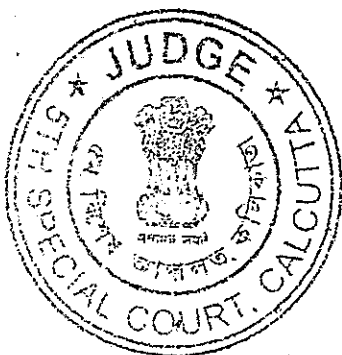
X/39
27-6-2019

-: 5 :-

2011-12 raised money from the public violating the provision of SEBI Act. 1992 or rules and regulations made or direction issued by the SEBI thereunder and accordingly the Investigating Officer issued summons upon on the accused direct him to appear before the Investigating Authority for the purpose of investigation and to comply with the direction of the Investigating Authority as per the provision of section of 11C (2) 11C (3) 11C (5) of the SEBI Act. 1992 r/w Section 27 of SEBI Act. but in spite of due receipt of the summons dated 27.05.2016 the accused failed to appear before the Investigating Authority and thereby committed offence U/s. 11 C (6) of the SEBI Act.

It order to substantiate the above allegation, the prosecution has produced the complainant before this court who has deposed as P.W.1 and P.W. 1 has successfully corroborated the allegation made in the written complaint before this court and the complaint has also proved that she has been authorized to file the complaint on behalf of the SEBI and the said authorization letter /delegation of power has been marked Ext.3. She has also proved that the appointment letter issued by R.K. Podmanabhan, Executive Director of SEBI directed Mr, S. Madhusudhan to investigate the affairs of the accused company and its director the said appointment letter has been marked Ext. 4. The P.W. 1 has also proved the summons which was sent to the accused persons by Speed Post and by hand delivery which have been marked Ext. 5, 5/A, 5/B and 6. The

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27/6/19
Judge

X/39
27-6-2019

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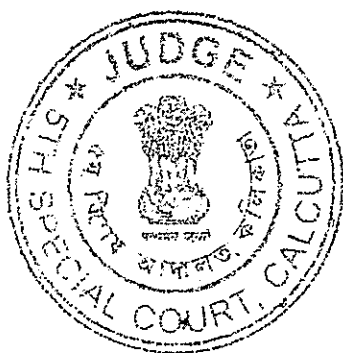
Prosecution also filed the Register of Company which is marked Ext.7.

The Ld. Public Prosecutor representing the SEBI has submitted that the SEBI having reasonable ground to believe that the accused person raised huge amount from the market in a manner detrimental to the investors or the security market and accordingly as per the provision of Section 11C (2) 11C (3) 11C (5) of the SEBI Act, the SEBI asked the accused persons to appear and produced relevant documents but the accused in spite of the receipt of the summons did not appear and thereby has violated the provision of Section 11C (2) 11C (3) 11C (5) of the SEBI Act.1992.

The Ld. lawyer for the defence has submitted that the accused person never raised any amount from the Security market in a manner detrimental to the interest of the investors or the Security Market. He has further submitted that the accused persons did not receive any summons from the SEBI and as such the allegation as to violation of section 11C (2) 11C (3) 11C (5) of the SEBI Act.1992 does not arise at all. It is further submitted that the SEBI has falsely made allegation against the accused persons and the prosecution has measurably failed to substantiate the said allegation before this court and as such the accused persons are entitled to be acquitted from this case.

The record reveals that the SEBI has filed a written complaint against the accused U/s. 11C (2) 11C (3) 11C (5)

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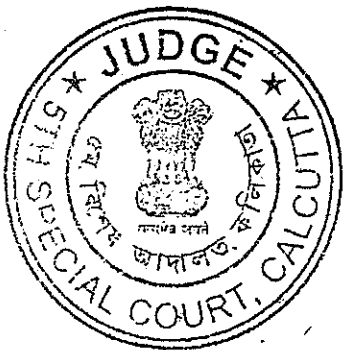


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27/6/19
Judge
5th Spl Court Kolkata

X/39
27-6-2019

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of the SEBI Act.1992. The accused has appeared and contested the proceedings. On the basis of the allegation of the written complaint the charges against the accused persons have been framed U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act.1992. The SEBI has alleged that the accused persons raised amount from the security market without complying the rules and regulation of the SEBI and accordingly the SEBI issued summons upon the accused persons U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act.1992 but the accused persons in spite of due receipt of summons did not appear and thereby has violated the provision U/s.11C (2) 11C (3) 11C (5) of the SEBI Act.1992. It also reveals from the record that the SEBI issued summons against the accused persons U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act.1992 on 15.04.2016 and the said summons return back with a remarks "the addressee not found". (Ext 5, 5/A, 5/B). Therefore the endorsement contains in the said envelope does not prove that the said summons dated 15.04.2016 was duly served upon the accused persons. The SEBI subsequently on 27.05.2016 again served the summons upon the accused by hand delivery and the accused received the said summons by putting his signature on the copy of the summons which have been marked Ext.6. The Ext.7 shows that the accused was the Director of the Roofers Realty Ltd. at the material point of time.



The Ld. advocate for the defence has submitted that

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158

[Signature]
27/6/19
Judge

X189
27-6-2019

-: 8 :-

the prosecution has failed to prove the mode of service before this court. He has further alleged that the signature appearing on the copy of the summons is not the signature of the accused and the prosecution has failed to prove that the signature appearing in the said copy of the summons is the signature of the accused persons.

I discern from the record that after filing the complaint the copy of the complaint as well as the copy of the exhibited documents were supplied to the accused persons U/s. 207 of the Cr.P.C. After receiving the said documents the accused never informed this court that the signature appearing in the Ext. 6 is not his signature or that it is forged signature. During trial the complainant has been examined as P.W. 1 and she has been vehemently cross-examined by defence but during cross-examination no question or any suggestion has been put to the witness suggesting that the signature appearing in the Ext. 6 is not the signature of the accused or that it is a forged signature. The only suggestion put to the witness is that the accused did not receive the summons which has been straight way over ruled by the witness. The accused has been examined U/s 313 Cr.P.C. and during examination the accused did not allege before this court that the signature appearing in the Ext.6 is not his signature or that it is a forged one. After examination U/s.313 Cr.P.C. The accused was given opportunity to produce witness. The accused in spite of having such opportunity neither himself nor produced any

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[Signature] 29/6/19
Judge
27/6/19

X/39
27-6-2019

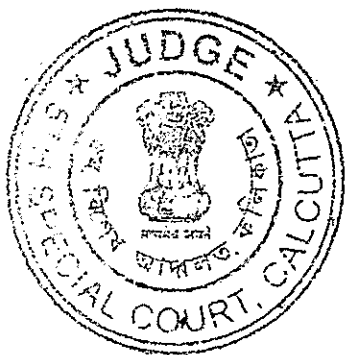
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other person before this court to challenge the signature appearing in the Ext.6.

The signature appearing in the Ext.6 is the signature of the accused persons or not. It is the special knowledge of the accused persons and only the accused persons could say whether the said signature belongs to him or not but in spite of having special knowledge of the same the accused failed to challenge or deny the same and as such the onus of proving the said signature as shifted upon the accused persons has not been properly discharged by the accused persons as per the provision U/s.106 of the evidence Act.

The SEBI filed the written complaint against the accused persons U/s. 11C (2) 11C (3) 11C (5) of the SEBI Act.1992.

11C (2) of the SEBI Act speaks that "without prejudice to the provisions of sections 235 to 241 of the Companies Act. 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by it in this behalf, all the books. Registers, other documents and record of, or relating to, the company or, as the case, may be, of or relating to, the intermediary or such person, which are in their custody or power".



[Signature]
27/6/19
Judge
5th Spl Court Kolkata

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X/39
27-6-2019

-: 10 :-

11C (3) of the SEBI Act speaks that "the Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation".

11C (5) of the SEBI Act speaks that "any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally".

Therefore, on plain reading of section 11C (2) 11C (3) 11C (5) of the SEBI Act.1992. It is clear that when a summons has been issued by the SEBI against the accused persons U/s.11C (2) 11C (3) 11C (5) of the SEBI Act.1992. It is the duty of the accused person to appear and produce the relevant documents to the investigating authority and if the accused persons failed to comply the provision of U/s.11C (2) 11C (3) 11C (5) of the SEBI Act.1992. He shall be punished U/s. 11C (6) of the SEBI Act. 1992.

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29/6/19

[Signature]
27/6/19
Judge

5th Spl Court Kolkata

X/39
27-6-2019

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In the instant case it has been established that having reasonable ground to believe the accused person raised amount from the market without complying the rules and regulations of the SEBI Act, the investigating authority of the SEBI issued summons upon the accused person U/s.11C (2) 11C (3) 11C (5) of the SEBI Act.1992. And the Ext.6 shows that in spite of due receipt of the summons by the accused. The accused failed and refuse to appear before the Investigating Authority of the SEBI and thereby violated the section 11C (2) 11C (3) 11C (5) of the SEBI Act.1992 and as such the accused person is found guilty of the offence punishable U/s. 11C (6) of the SEBI Act. 1992.

Accused is on C.B. is directed to be present for hearing on the point of sentence on 27.06.2019 at 10.30 a.m.

Later,

Heard the accused on the point of sentence. The accused has stated that he is innocent and he is to look after his family alone. The Ld. lawyer for the defence has prayed for less punishment for the accused.

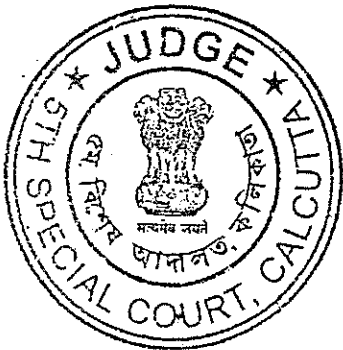
Heard the Ld. Public Prosecutor and considered.

Hence,

It is ordered,

That the accused Sourevemoy Ghosh is found guilty U/s.11C (6) of the SEBI Act 1992. He is sentenced to suffer simple imprisonment for one year and to pay fine

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27-6-2019

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of Rs.5,00,000/- (Rupees five lakh only) i/d to suffer further S.I. for three months and also to pay fine of Rs.1,000/- (Rupees one thousand only) for every day from the date of the refusal on and from 03.06.2016 till the date of delivery of this judgement i.e a sum of Rs.11,18,000/- (Rupees eleven lakh eighteen thousand only) i/d to suffer S.I. for one month more.

The surety be discharged from this case.

The period of detention already undergone by the accused during investigation and trial (if any) be set off as per the provision U/s.428 of Cr.P.C.

Let a copy of this judgement be handed over to the accused at free of cost.



Dictated & Corrected by me,

Prabin K. Mishra
Judge, 5th Special Court, 27/6/19
Kolkata. 27.06.2019

Judge

5th Spl Court Kolkata

Prabin K. Mishra
Judge, 5th Special Court, 27/6/19
Kolkata. 27.06.2019
Judge
5th Spl Court Kolkata

29/6/19