

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 05.06.2017

Appeal No. 159 of 2016

K.S. Kasiraman
through his daughter and next friend
Ms. Jayshree Iyer, residing at
1147 Heavensgate,
Lake In The Hills, IL 60156, USA ...Appellant

Versus

Securities and Exchange Board of India
Southern Regional Office,
Overseas Towers,
7th Floor, 756-L, Anna Salai,
Chennai – 600002. ...Respondent

Mr. Rohan Shrivastava, Advocate with Mr. Tushar Shah, Advocate i/b
Vaish Associates for the Appellant.

Mr. Rajesh Nagory, Advocate with Mr. Mihir Mody and Mr. Nishant
Upadhyay and Mr. Nirav Parmar, Advocates i/b K. Ashar & Co. for the
Respondent.

WITH
Appeal No. 160 of 2016

Mr. G. Ramakrishnan
No. 53, R-Block, 1st Floor,
15th Road, Anna Nagar,
Chennai – 600040. ...Appellant

Versus

The Recovery Officer,
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051. ...Respondent

Mr. K.C. Jacob, Advocate with Mr. Ayush Agarwal, Advocate i/b Corporate
Law Chambers India for the Appellant.

Mr. Rajesh Nagory, Advocate with Mr. Mihir Mody and Mr. Nishant
Upadhyay and Mr. Nirav Parmar, Advocates i/b K. Ashar & Co. for the
Respondent.

WITH
Appeal No. 187 of 2016

Mr. K. Natarahjan
F2, Gurukrupa,
10/11, Rajaji Colony,
Virugambakkam,
Chennai – 600092.

...Appellant

Versus

The Recovery Officer,
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. K.C. Jacob, Advocate with Mr. Ayush Agarwal, Advocate i/b Corporate Law Chambers India for the Appellant.

Mr. Rajesh Nagory, Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay and Mr. Nirav Parmar, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : J.P. Devadhar (Oral)

1. Appellants in all these appeals are aggrieved by the communications issued by the Recovery Officer ('RO' for short) of Securities and Exchange Board of India ('SEBI' for short) all dated January 14, 2016. By the said communications, the RO has demanded interest from each appellant on the delayed payment of penalty from the date of the penalty order till payment. Since the issue raised in these appeals are common, all these appeals are heard and disposed of by this common order.

2. Basic dispute in all these appeals is, where the penalty order does not contemplate interest liability for the delayed payment of penalty, whether the RO of SEBI can demand interest under Section 28A of SEBI Act even for the period prior to the insertion of Section 28A to SEBI Act.

3. This Tribunal in a group of cases, the lead matter being the case of Mr. Dushyant N. Dalal & Anr. vs. SEBI (Appeal No. 41 of 2014 decided on March 10, 2017) has, inter alia, held that where the disgorgement order / penalty order does not contemplate any interest liability, then interest would be mandatorily leviable u/s. 28A of the SEBI Act, 1992 only from July 18, 2013 and not for the period prior thereto. In all these cases the penalty orders did not contain any interest liability and the RO by invoking Section 28A has demanded interest for the period prior to July 18, 2013. In these circumstances, we set aside the impugned communications issued by the RO of SEBI and restore the matters for fresh decision on merits and in accordance with law.

4. It is brought to our notice by counsel for SEBI that the decision of this Tribunal in case of Mr. Dushyant N. Dalal & Anr. (supra) has been stayed by the Apex Court. Decision of this Tribunal in case of Mr. Dushyant N. Dalal & Anr. (supra) has no relevance to the present case, because in that case interest liability has been upheld on ground that the disgorgement order itself contained interest liability. In fact applicability of Section 28A of SEBI Act was considered in other cases decided along with the case of Dushyant Dalal, for example in the case of M/s Alka Securities Ltd. vs. SEBI (Appeal No. 313 of 2014 decided on March 10, 2017) and it has been held that interest under Section 28A cannot be imposed for the period prior to July 18, 2013. Therefore, fact that our decision in case of Mr. Dushyant

N. Dalal & Anr. (supra) has been stayed by the Apex Court has no bearing on the facts of present cases.

5. Accordingly, for the reasons stated above, the impugned communications issued by the RO of SEBI in all these appeals are quashed and set aside and the matters are restored to the file of RO for fresh decision on merits and in accordance with law. All contentions of both sides are kept open.

6. All the appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

05.06.2017
Prepared and compared by:
msb