

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 01.08.2017

Misc. Application No. 41 of 2017
And
Appeal No. 47 of 2017

Mr. Barun Kumar Nandi
C/o. Mr. D. Roy,
Siddha Town, Flat No. Alps 408,
Sir Ramesh Mitra Road,
Beraberi,
Kolkata- 700 136

...Appellant

Versus

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

...Respondent

Mr. Prakash Shah, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Tomu Francis,
Advocate i/b ELP for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

Misc. Application No. 41 of 2017

There is delay of 439 days in filing the appeal. By this
Miscellaneous Application, applicant seeks condonation of the said
delay. For the reasons stated in the application, delay is condoned.

Miscellaneous Application is disposed of accordingly.

Appeal No. 47 of 2017

1. This appeal is filed by the appellant to challenge the order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on 12.10.2015. By the said order Suraksha Agrotech Industries Limited (“the company” for short) and its Directors including the appellant are jointly and severally directed to forthwith refund the money collected by the company through the issuance by Redeemable Preference Shares with interest at the rate of 15% from the date when the repayment became due till the date of actual payment.

2. Mr. Shah, learned Advocate appearing on behalf of the appellant submitted that on 10.03.2009 the appellant had resigned from the company and by a letter dated 12.03.2009 Mr. Indranil Das, Director of the company had confirmed that the resignation letter of the appellant dated 10.03.2009 has been accepted in the Board Meeting and the same shall be forwarded to the Registrar of Companies as per the company procedure in due course for necessary action. Similarly, by a certificate dated 12.03.2010 Mr. Subrata Das, the Whole Time Director and Authorised Signatory of the company had certified that during the period from 24.11.2008 to 12.05.2010 the appellant was neither involved in the business activities/ operations nor the appellant took part in any Board Meetings, General Meetings, nor the appellant was paid with any remunerations or fees or had not taken any monetary benefits whatsoever in cash or kind. Since these factors have not been considered it is

submitted by the counsel for the appellant that the impugned order is liable to be quashed and set aside.

3. We see no merit in the above contentions.

4. In the Memorandum of Appeal the appellant has annexed a letter dated 12.05.2010 (Exhibit "H" at page 67) which is written by appellant to the Managing Director of the company wherein the appellant has clearly stated that he intends to discontinue as a Director of the company with effect from 15.05.2010. This letter addressed by the appellant to the company completely falsifies the case sought to be made out in the Appeal that he had resigned on 10.03.2009 and the same was accepted by the company on 12.03.2009. Even the letter addressed by the Whole Time Director and Authorised Signatory Mr. Subrata Das on 12.05.2010 to the effect that the appellant during the period from 24.11.2008 to 12.05.2010 was not at all involved in the business activities/ operation of the company is falsified by the letter addressed by the appellant on 12.05.2010 wherein the appellant intended to discontinue as a Director of the company with effect from 15.05.2010. Argument advanced by counsel that the appellant was compelled to write the aforesaid letter on 12.03.2009 is clearly an afterthought and totally unbelievable. In these circumstances, we are clearly of the view that there is no merit in the appeal and the case sought to be made out in the appeal is totally false.

5. At this stage, counsel for SEBI fairly stated that liability of the appellant to refund the amount along with the company and other Directors would be in relation to the amount collected by the company up

to 02.05.2010 as the appellant had ceased to be a Director of the Company with effect from 15.05.2010. Statement made by counsel for SEBI is accepted.

6. For all the aforesaid reasons, the appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

01.08.2017
Prepared & Compared By: PK