

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 09/07/2018

**Review Application No.3 of 2018
In
Appeal No.222 of 2016**

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

... Applicant
(Org. Respondent)

Versus

1. PAT Financial Consultants Pvt. Ltd.
3-3A, Churchgate House, 1st Floor,
32/34, Veer Nariman Road, Fort,
Mumbai – 400 001.
2. Superior Financial Consultancy Services
Private Limited,
201/B, Dev Neo Vikram, Sahakar Nagar,
CHS , New Link Road,
Andheri (West),
Mumbai – 400 053.

... Respondents
(Org. Appellants)

Mr. Shyam Mehta, Senior Advocate a/w Mr. Mihir Mody and
Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the
Applicant.

Mr. P.N. Modi, Senior Advocate a/w Mr. Neville P. Lashkari, Advocate
i/b M&M Legal for Respondents.

WITH
Review Application No.4 of 2018
In
Appeal No.281 of 2016

Securities and Exchange Board of India
 SEBI Bhavan, Plot No.C4-A, G Block,
 Bandra Kurla Complex,
 Bandra (East), Mumbai – 400 051.

... Applicant
 (Org. Respondent)

Versus

Avadhoot L. Shilotri
 Ex-President & CEO,
 Niskalp Investments and Trading Co. Ltd.,
 Varun CHS, 1st Floor, J.P. Road,
 Versova, Andheri (East),
 Mumbai – 400 058.

... Respondent
 (Org. Appellant)

Mr. Shyam Mehta, Senior Advocate a/w Mr. Mihir Mody and
 Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the
 Applicant.

Mr. Atul S. Tungare, Advocate for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. Not on board. Mentioned by Counsel for the Applicant and taken up for hearing by consent of parties.
2. By these two Review Applications, Applicants request this Tribunal to review the order passed in the aforesaid appeals on 30th May, 2018 and expunge the adverse remarks made against SEBI in para 10, 14, 25 and 28(a) of order dated 30th May, 2018.

3. Basic grievance made in the Review Applications is that the appellants in their appeals had not raised any issue regarding the conduct of SEBI and therefore, this Tribunal could not make any adverse comment on the conduct of SEBI that too, without issuing any show-cause notice to SEBI in that behalf. Accordingly, it is submitted that this Tribunal has exceeded its jurisdiction in passing adverse remarks against SEBI.

4. There is no merit in the above contentions, because, during the course of arguments and even after conclusion of arguments by placing the appeals on Board for directions, we had repeatedly called upon Counsel for SEBI to explain as to why no action was taken against Niskalp Investment and Trading Company ("Niskalp" for short) and Tata Finance Limited ("TFL" for short) even after recording a finding that TFL was guilty of making false declarations in its letter of offer. However, consistently we were informed by Counsel for SEBI that decision at the high level was taken not to proceed against Niskalp and TFL, but no reasons were given for not initiating action against Niskalp and TFL.

5. Mr. Shyam Mehta, learned Senior Advocate appearing on behalf of SEBI fairly admitted before us today that during the course of hearing the appeals, we had repeatedly called upon SEBI to explain the reasons for not taking action against Niskalp and TFL, however, he had no reasons to offer.

6. In the Review Applications, it is merely stated that initially in April, 2007 a Manager of SEBI had recommended that action be taken against TFL and Niskalp and their entire Board of Directors, however, the Committee of Division Chiefs on consideration of the said recommendation were of the opinion that sufficient evidence is not there to proceed against Niskalp/TFL/their Board of Directors and the same was approved by the Whole Time Member (WTM) of SEBI. It is further stated in the Review Applications that sometimes in 2010, at the instance of WTM, the matter was reconsidered by several officers of SEBI and all of them arrived at a conclusion that no action need be taken against Niskalp, TFL and their Board of Directors. Thus, the only reason furnished by SEBI till date is that there is insufficient evidence to proceed against Niskalp, TFL and their Board of Directors.

7. Specific finding recorded in the impugned order is that TFL is guilty of making false declarations in its letter of offer. It is not the case of SEBI that the aforesaid finding recorded by the WTM is erroneous. In such a case, it is not open to SEBI to contend on one hand that TFL is guilty of making false statements in its letter of offer and on the other hand to contend that there is insufficient evidence to proceed against Niskalp, TFL and its Board of Directors. Thus, the stand taken by SEBI is mutually contradictory. In these circumstances, we see no reason to entertain the Review Applications.

8. However, in view of the fairness shown by Counsel for SEBI, we substitute the words 'for the reasons best known to SEBI' for the words "for extraneous reasons" appearing in para 10, 14 and 25 of our order dated 30th May, 2018. Registry is directed to carry out the above modification in our order dated 30th May, 2018 immediately.

9. We see no reason to delete the observation made in our order that in the present case SEBI has not acted impartially, because once it was found that TFL has made false declaration in its letter of offer, then, unless there were compelling reasons to the contrary, SEBI was bound and liable to take action against TFL. In the absence of any reason recorded in the impugned order, it cannot be said that SEBI has acted impartially in the present case. We will be failing in our duty if these serious anomalies are not brought to the notice of SEBI with a view to ensure that such lapses do not occur again in the future.

10. For the very same reason, observation made in para 28(a) of our order does not deserve to be modified, because, holding TFL guilty of making false declarations in its letter of offer but not taking any action against TFL that too without assigning any reason, is bound to send wrong signal to the securities market.

11. Accordingly, subject to the modifications set out in para 8 hereinabove, both Review Applications are disposed of with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

09/07/2018
prepared & compared by-dg