

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 10.1.2018

**Misc. Application No.193 of 2017
And
Appeal No. 142 of 2017**

Mr. Kali Kishore Bagchi
Flat no.9, Amrit Dham, Nityanand Nagar,
Bakultola, Howrah - 711109. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex, Bandra E,
Mumbai – 400 051. ... Respondent

**With
Misc. Application No.194 of 2017
And
Appeal No. 143 of 2017**

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Bandra Kurla Complex, Bandra E,
Mumbai – 400 051. ... Respondent

Ms. Purnima Gupta, Advocate alongwith Mr. Prithu Ghosh, Advocate for
the Appellant.

Mr. Rajesh Nagori, Advocate with Mr. Tomu Francis and Mr. Vivek Shah,
Advocates 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 Nos.193 & 194 of 2017

1. By these two Misc. Applications the appellant seeks waiver of the fees payable on the two appeals.
2. By our order dated 14th June, 2017 we had permitted the appellant to withdraw the Appeal nos.273 and 274 of 2016 with liberty to file fresh appeals. Since the above two appeals are filed pursuant to the liberty granted by this Tribunal, registry is directed to adjust the fees paid on Appeal no.273 and 274 of 2016 towards the fees payable on Appeal no.142 and 143 of 2017.
3. Both the Misc. Application Nos. 193 and 194 of 2017 are disposed of accordingly with no order as to costs.

Appeal Nos.142 & 143 of 2017

1. Appellant has filed these two appeals to challenge the order passed by the Whole Time Member of Securities and Exchange Board of India ('SEBI' for short) on 26th February, 2016 and 23rd February, 2016 respectively. Since the issues raised in these two appeals are common, both the appeals are heard together and disposed of by this common decision.
2. Counsel for appellant states that the facts in both cases being similar decision in Appeal no.142 of 2017 would equally apply to Appeal no.143 of 2017.
3. By order dated 26th February, 2016 which is impugned in Appeal no.142 of 2016, the Whole Time Member of SEBI has directed Amrit Projects Ltd (Company) and its directors including the appellant to jointly and severally refund the money collected by the company through issuance of redeemable preference shares to the investors with interest at the rate of

15 % p.a. from the date when the repayments became due to the investors till the date of actual refund.

4. Counsel for the appellant submitted that the impugned order is unsustainable because, firstly, the appellant was not a director of Amrit Projects Ltd. and was appointed as a director of Amrit Bio Energy and Industries Ltd. for development and building up a green field power project in West Bengal and in Assam. Since, the appellant was not a director of Amrit Projects Ltd, the WTM of SEBI is not justified in treating the appellant as a director of Amrit Projects Ltd. and accordingly issue direction against the appellant. Secondly, it is submitted that as per the order dated 13th July, 2016 passed by the Calcutta High Court in Company Petition No.220 of 2015 Mr. Kailas Chand Dujari, Chairman and Managing Director of the company has taken the entire responsibility on behalf of Amrit Projects Ltd/Amrit Group of companies to make disbursement of payment to the investors and therefore the directions issued against the appellant cannot be sustained.

5. We see no merit in the above contention.

6. First contention of the appellant that he was not a director in Amrit Projects Ltd is falsified by the written complaint filed by the appellant on 6th June, 2017 to The Officer Incharge, Benia Pukur Police Station, copy of which is annexed by the appellant to the memo of appeal at page 105. In the said letter the appellant has categorically stated that he had joined Amrit Projects Ltd as an employee in the year 2004 and later on the appellant became one of the Directors that Company. Thus the very same document relied upon by the appellant falsify the case of the appellant that he was not a Director of Amrit Projects Ltd. Accordingly, the first contention is without any merit.

7. Second contention raised on behalf of the appellant is that as per the order passed by the Calcutta High Court in Company Petition No.220 of 2015, the Chairman and Managing Director of the company has agreed to take the entire responsibility to disburse the amount due to the investors and therefore, the liability fastened on the appellant does not survive. There is no merit in this contention, because, the Calcutta High Court in the aforesaid Company Petition No.220 of 2015 has neither considered nor modified the impugned order passed by the WTM of SEBI. Since the direction given in the impugned order to refund the amount is joint and several, if the Chairman and the Managing Director of the company discharges the entire liability, then obviously the appellant cannot be called upon to discharge the liability. However, fact that the managing director has agreed to discharge the liability cannot be a ground to exonerate the appellant who inspite of being a director of the Company has been falsely claiming that he was not director of the Company.

8. In the circumstances, both the appeals are dismissed with costs quantified at Rs.25000/- in each matter (total Rs.50,000/-) to be paid by the appellant to SEBI within a period of 8 weeks from today.

9. Both the appeals are disposed of accordingly.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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