

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 07/06/2018

Appeal No.324 of 2017

Abhijit Dutta
Flat No. B + B1
Pushpahar Appt., 193
Shanti Pally Kasba
Kolkata – 700 017.

... Appellant

Versus

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

... Respondent

Mr. P.N. Modi, Senior Advocate a/w Mr. Kunal Katariya, Mr. Manish Chhangani and Ms. Enakshi Jha, Advocates i/b Khaitan & Co. for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate a/w Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per : Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Whole Time Member ("WTM", for short) of Securities and Exchange Board of India ("SEBI", for short) on 15/11/2017. By the said order, while directing Rose Valley and Entertainments Limited ("company" for convenience) and its present directors to wind up the Holiday Membership Plan (HMP scheme) and to refund the amounts to the

investors within the time stipulated therein, the WTM of SEBI has restrained the past directors of the company including the appellant from accessing the securities market for a period of four years and further disqualified them from holding or assuming position as directors or key managerial personnel of any listed company for a period of four years from the date of that order.

2. Admittedly, appellant was a director and Chief Executive Officer (CEO) of the company during the period from 1/8/2011 to 31/1/2012.

3. Fact that the appellant has been the Managing Director and CEO of Nicco Parks and Resorts Limited a listed company, for the last 28 years barring a brief period of six months from 1/8/2011 till 21/1/2012 during which period the appellant was the director and CEO of the company is not in dispute. It is a matter of record that the Central Bureau of Investigation (CBI) and also the Enforcement Directorate (ED) have investigated the issue relating to the funds raised by the company and its directors. Neither in the report of CBI nor in the report of ED the appellant is found to have played a role in the company raising funds in violation of the regulations framed by SEBI. Even in the impugned order except recording that the appellant was a past director of the company, SEBI has not found the appellant had a role in the company raising funds in violation of SEBI Regulations.

4. In these circumstances, without going into the merits of the case in detail, we deem it just and proper to modify the impugned order

passed by the WTM of SEBI dated 15/11/2017 qua the appellant, by restricting the restraint order from 15/11/2017 till date only. In other words, restrictions imposed on the appellant in the impugned order dated 15/11/2017 shall come to an end with immediate effect.

5. Appeal is 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

07/06/2018
prepared & compared by-dg