

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 08.01.2018

**Misc. Application No. 294 of 2017
And
Appeal No. 79 of 2017**

Kanwal Jit Singh
C 603 Mithras Park,
Rahatani Road, Pimple Saudagar,
Pune - 411027.

...Appellant

Versus

1. The Whole Time Member
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.
2. The Executive Trustee
UTI Mutual Fund,
UTI Tower, 'Gn' Block,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.
3. The Vice President Operations
Department of Operations,
UTI Asset Management Company Ltd.
UTI Tower, 'Gn' Block,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.
4. The Managing Director
UTI Trustee Company P Ltd.
UTI Tower, 'Gn' Block,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

...Respondents

Mr. Kanwal Jit Singh, Appellant in person.

Mr. Chirag Bhavsar, Advocate with Mr. Pranav Jain, Advocate i/b MDP
Partners for Respondent No. 1.

Mr. P.N. Modi, Senior Advocate with Mr. Vishal Talsania, Advocate i/b
R V Legal for Respondent 2 to 4.

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

Per : Justice J.P. Devadhar (Oral)

1. Although the appellant herein seeks to challenge the decision of the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI') dated October 3, 2016, the reliefs claimed in the appeal relate to the claim of several similarly situated unit holders whose names are not disclosed in the memorandum of appeal. Moreover, appellant wants this Tribunal to grant fees at 10% plus service tax to the appellant on the quantum of amount that may be determined as payable to the investors whose names are not even disclosed in the memorandum of appeal. Jurisdiction of this Tribunal under Section 15T of SEBI Act is restricted to deal appeals filed by any person aggrieved by an order passed by the Board or by the Adjudicating Officer (AO) of SEBI. As the appeal is filed by appellant alone, the appellant is not justified in claiming relief on behalf of several other undisclosed investors.

2. Facts relevant to the present case are that on January 13, 1997 appellant had invested Rs. 12,800/- in a scheme floated by the then Unit Trust of India ('UTI' for short). By a press release dated January 08, 2008 investors in the above scheme including the appellant were informed that the said scheme would be terminated with effect from February 18, 2008. By the said press release, the investors including the appellant were called upon to opt either for any alternate scheme and exit the scheme by repurchasing the remaining units or opt for repurchasing the outstanding units at the prevailing NAV as on February 18, 2008. As per the said press

release last date for receiving the option form along with other documents, as applicable, was February 4, 2008.

3. Admittedly the appellant failed to exercise the option within the stipulated time. However, on September 6, 2014, that is, after lapse of more than 6 years appellant exercised his option by seeking redemption of the units to which he had subscribed to on January 13, 1997 and also claimed interest on the redemption amount. Immediately thereafter on September 13, 2014, the redemption amount of Rs. 52,290.91 was paid to the appellant by UTI MF.

4. As the interest on redemption amount claimed by the appellant was denied by UTI MF, appellant lodged a complaint before SEBI on November 12, 2014 inter alia alleging that the scheme in which appellant had invested has been terminated in violation of various provisions of law and that interest on delayed payment of redemption amount has been wrongly denied to the appellant.

5. By a communication dated August 12, 2015 SEBI rejected the complaint filed by the appellant, inter alia, by recording that the scheme which was launched prior to the SEBI (Mutual Fund) Regulations, 1996 ('1996 Regulations' for short) being an assured return scheme which is not allowed under the 1996 Regulations, by a press release the UTI MF had rightly decided to close the scheme by giving option to the unit holders.

6. Appellant filed Appeal No. 6 of 2016 before this Tribunal to challenge the said communication of SEBI dated August 12, 2015. On April 26, 2016 when the above appeal was taken up for hearing, in view of the grievance made by the appellant that all contentions raised by the appellant

in his complaints filed from time to time have not been considered, SEBI agreed to withdraw the communication dated August 12, 2015 and pass fresh order. Accordingly, the communication dated August 12, 2015 was quashed by this Tribunal with liberty to SEBI to pass fresh order on the complaints filed by the appellant on November 12, 2014 and thereafter.

7. Thereafter the appellant was heard and by the impugned order dated October 3, 2016 the WTM of SEBI rejected the issues raised by the appellant. The WTM of SEBI has also held that UTI MF has paid the redemption amount within few days of the appellant choosing to claim the redemption amount and therefore, there being no delay on part of UTI MF, the appellant is not justified in claiming interest on redemption amount.

8. Above facts on record clearly show that the appellant who has failed to exercise the option within the stipulated time is not justified in claiming interest on redemption amount. However, during the course of hearing, we had enquired from the respondent nos. 2 to 4 as to whether the redemption amount due to the appellant was invested upto September 13, 2014 when the redemption amount was paid to the appellant.

9. By an affidavit dated January 6, 2018, respondent nos. 2 to 4 have stated that the amount due to the appellant was invested and the gross investment income on the redemption amount of Rs. 52,290.91 as on September 13, 2014 would be approximately Rs. 25,700/-.

10. While we were considering the question as to whether the respondent nos. 2 to 4 could be directed to pay the aforesaid investment income of Rs. 25,700/- to the appellant, the appellant appearing in person submitted that the reliefs claimed in the appeal is not restricted to seeking interest on the redemption amount payable to the appellant alone but the reliefs claimed

extend to considering civil and criminal charges levelled by the appellant against SEBI, UTI MF, other respondents and the claim of other similarly situated unit holders whose names are not even disclosed in the memorandum of appeal. Further, the appellant wants this Tribunal to award fees @ 10% plus service tax (as applicable) from the amounts that may be determined as payable to the unit holders whose names are not even disclosed in the memorandum of appeal. Appellant also wants this Tribunal to permit the appellant to audit the books of UTI MF relating to the scheme in which the appellant had invested and submit a report to this Tribunal.

11. The issues that the appellant has framed in para 5.15 of the memorandum of appeal for consideration of this Tribunal read thus:-

- (i) Does SEBI have the authority or jurisdiction to waive compliance with the Regulations to a mutual fund registered under the Regulations for a particular scheme?
- (ii) Does SEBI have the authority or jurisdiction to over ride the mandate of an act of the Parliament – the Repeal Act to grant waiver of compliance to the Regulations, when the Repeal Act mandates compliance.
- (iii) If SEBI does not have the authority,
 - (a) Then the approval dated Dec 26, 2007 granted by SEBI is null and void.
 - (b) The redemption of SCUP units post Feb 18, 2008 is illegal.

- (c) Penalty as per provisions of Section 15A, 15A, 15C, 15D, 15E, 15HA, 15HB and 24 of the SEBI Act are imposed on each of the Respondents.
- (iv) Is the procedure followed in termination of SCUP as per procedure followed in terminating RUS 92 arbitrary, unreasonable and unfair to the Group 1 unit holders?
- (a) Can a unit be redeemed after the scheme has been terminated, even where the Regulations do not apply?
- (v) Is there a criminal breach of trust (Section 405 and Section 409 IPC) in UTI MF, UTI AMC and UTI TC not sharing any revenue from the earning on the investment of unit holder funds pending encashment?
- (vi) Is there a breach of the fundamental rights of EI B unit holders when the Class B unit holders were sub divided into two parts – Group 2 and EI B prior to the effective date for purposes of extension of the insurance cover?
- (vii) Has UTI MF, UTI AMC and UTI TC violated the provisions of Section 188 and Section 211 of Indian Contract Act in not negotiating appropriately with NIAC for arriving at the onetime insurance premium payable for this class of investors while / after negotiating for Group 2 investors?
- (viii) Are UTI MF, UTI AMC, UTI TC and SEBI and their appropriate officials guilty of criminal activity as alleged by the appellant under sections 119, 166, 157, 218, 219 IPC?

- (ix) Is UTI TC guilty of hiding material facts in the Abridged Annual Report for 2004-2005 for SCUP when it stated that SCUP is being managed in compliance with the Regulations, while in the submissions of UTI MF and UTI AMC to SEBI and GoI, it held a diametrically opposite view?
- (x) Has SEBI discharged its statutory duty to protect the interest of investors in management and termination of SCUP and Unit Growth and Value fund?
- (xi) Has SEBI discharged its statutory duty to protect the interest of the investors during the termination of RUS 92 in Sept 2000 – under the provisions of SEBI Act, by ignoring the loss suffered by investors when they did not receive any compensation on the funds lying with UTI post termination?
- (xii) Whether penal provisions of Para 14.1 of SEBI Master Circular of October 01, 2014 providing for payment of compensation of EI A unit holders and other unit holders of Schemes of Respondent 2 are applicable? If yes, will the compensation be on the basis of compounding of interest on annual basis, considering the fact that the transactions are in the securities markets – where annual accretions to the asset value are included while arriving at the NAV of any mutual fund scheme and Respondents 2, 3 & 4 are enjoying the fruits of compounding on the investment of such funds?
- (xiii) Is relief available to the appellant for services rendered to the Eligible Unit holders and other Unit holders and to the Government considering provisions of Section 70 of the Indian

Contract Act, 1972 and provisions of the Constitution invoked by the appellant?

(xiv) Are the activities of the Respondents enumerated in the appeal covered by the definition of fraud as per provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Indian Contract Act?

(xv) Are the victims entitled to additional relief from the penalties levied on the respondents under Article 300 of the Constitution?

(xvi) Can the appellant and his team be permitted to audit the books of SCUP scheme since 2005 and submit report to SAT for consideration on the material issues in the management and termination of SCUP?

12. Apart from above, the appellant has filed Misc. Application No. 294 of 2017 to amend the memorandum of appeal by adding some more issues for consideration of this Tribunal. By the additional issue framed, the appellant wants this Tribunal to hold that all the respondents are liable for negligence and tortious liability as the unit holders have suffered on account of their negligence.

13. As noted earlier the jurisdiction of this Tribunal is restricted to entertaining appeals filed by persons who are aggrieved by the order passed by the Board or by the AO under the SEBI Act. Since the appellant wants relief on behalf of the unit holders whose names are not even disclosed in the memorandum of appeal, and since the appellant wants this Tribunal to

take action against SEBI, UTI MF and other respondents on the basis of civil and criminal charges levelled by the appellant against SEBI and other respondents, in our opinion, the appeal is wholly misconceived and beyond the powers conferred on this Tribunal under the SEBI Act.

14. For all the aforesaid reasons, the appeal as also Misc. Application are 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

08.01.2018

Prepared and compared by:msb