

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 01.08.2018

Misc. Application No. 215 of 2018
And
Appeal No. 261 of 2018

Nirmal N. Kotecha

..... Appellant

Versus

Securities and Exchange Board of India

... Respondent

Mr. Gaurav Joshi, Senior Advocate with Mr. Ankit Lohia, Mr. Amit Bikram Dey, Mr. Jitendra Sharda, Advocates i/b Mindspright Legal for the Appellant.
Mr. Kevic Setalvad, Senior Advocate with Mr. Tomu Francis, Ms. Sneha Prabhu, Mr. Vivek Shah, Advocates i/b ELP for the Respondent.

ORDER :

Misc. Application No. 215 of 2018 in Appeal No. 261 of 2018 :

1. This misc. application has been filed by the applicant / original appellant seeking to sell the shares of Usher Agro Ltd. ('UAL' for short) held by him under SEBI's supervision and to keep the proceeds in an escrow account with SEBI and to facilitate payment of the disgorgement amount without prejudice. It is not in dispute that consequent to the ex-parte order dated April 23, 2009 and the final order dated March 22, 2018 passed by SEBI appellant has been restrained from dealing in the securities market either directly or indirectly for a period of 14 years from the date of the ex-parte order.

2. The learned Senior Counsel Shri Gaurav Joshi appearing for the applicant submits that the immediate reason for seeking such a relief as prayed for is initiation of Corporate Insolvency Resolution Process (CIRP) in respect of UAL. It is also confirmed by the counsel for the appellant that the appellant is not a promoter of UAL.

3. Learned Senior Counsel Shri Setalvad submits that the restraint order against the appellant has been operational since April 23, 2009 and the appellant chose not to exercise any option for 9 years; it is also not a matter of right for parties who have been charged with serious violation of securities laws to seek relief as sought for.

4. It is not in dispute that this Appellate Tribunal had passed a number of orders allowing parties who were restrained from the securities market to sell the shares that they were holding and keep the proceeds in escrow accounts with SEBI. Though the applicant herein has sought such a relief belatedly, I am of the view that no prejudice would be caused if such a relief is granted. Respondent SEBI also could not convince me on any prejudice, apart from stating that it is not a matter of right for appellant to seek and get such a relief. Accordingly, in view of the fact that the applicant is willing to sell the shares and deposit the proceeds in an escrow account with SEBI as well as to pay the disgorgement amount ordered by SEBI in its order dated March 22, 2018 without prejudice, relief sought would not be prejudicial to the interests of the securities market. Accordingly, the relief sought for is allowed.

5. The misc. application is disposed of on above terms with no order as to costs.

Appeal No. 261 of 2018 :

By consent, stand over to September 17, 2018.

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

01.08.2018
Prepared & Compared by
PTM