

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 14.03.2018

Misc. Application No. 45 of 2018
And
Appeal No. 73 of 2018

Amalendu Mukherjee
DSM- 340,
DLF Trade Tower, Shivaji Marg,
New Delhi- 110 015

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Manik Dogra, Advocate with Mr. Sidhartha Das and Mr. Rohan Jaitley, Advocates for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Tomu Francis and Mr. Vivek Shah, Advocates 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 ex-parte ad-interim order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on February 12, 2018. By the said order several entities including the appellant are inter alia restrained from accessing the securities market or buying, selling or otherwise dealing in the securities in any manner whatsoever, either

directly or indirectly until further orders. The said order permitted the appellant to file reply, if any, within 21 days from the date of receiving the impugned order and also seek opportunity of hearing if deemed fit.

2. Instead of filing reply on merits, the appellant by a letter dated February 15, 2018 addressed to the WTM of SEBI denied involvement of the appellant in the investigation being conducted by SEBI and further stated that detailed reply would be filed only after copies of requisite documents were made available to the appellant.

3. Counsel for the appellant submitted that impugned ex-parte order dated February 12, 2018 deserves to be quashed qua the appellant for the following reasons:-

- a) *Financial irregularities allegedly committed by Ricoh India Limited (“Company” for convenience) in the year 2015 is being investigated by SEBI in the last two years. In these two years SEBI has not chosen to issue any notice/ summons to the appellant and, therefore, passing ex-parte order after delay of more than two years is wholly unjustified.*
- b) *Out of the seven persons against whom the impugned order is passed, six persons were heard before passing the impugned order. However, in case of the appellant, order is passed without giving any opportunity of hearing which is in gross violation of*

the principles of natural justice. In support of the above contention reliance was placed on the decision of this Tribunal in Appeal No. 254 of 2014 (Pancard Clubs Ltd. v/s SEBI) decided on 17.09.2014.

- c) SEBI is conducting investigation in the case of Ricoh India Limited and the appellant had never been a part of the management of that company and, therefore, the ex-parte order passed against the appellant is wholly unjustified.*

- d) In spite of the letter addressed by the appellant on February 15, 2018 copies of the documents set out therein including the report submitted by Pricewaterhouse Cooper (“PWC” for short) have not been furnished to the appellant so far. It is submitted that without furnishing a copy of the report submitted by PWC against whom restraint order is passed by SEBI on January 10, 2018, SEBI is not justified in continuing the ex-parte order against the appellant.*

Accordingly, counsel for the appellant submitted that while the appellant is ready to appear before SEBI, for the reasons stated above, the impugned order qua the appellant deserves to be quashed and set aside.

4. We see not merit in the above contentions.

5. At the outset, it is relevant to note that the impugned order is passed on the basis of facts gathered during the course of investigation carried out by SEBI and not solely on the basis of the report submitted by PWC. Therefore, the argument that without receiving a copy of the report of PWC, appellant cannot reply is without any merit.

6. In any event, on perusal of the impugned order it is seen that the WTM of SEBI has formed prima facie opinion that the appellant had indulged in fraudulent and unfair practice, inter alia based on the tax returns filed by Fourth Dimension Solutions Limited (“FDSL” for short) in which the appellant is the Managing Director and in the case of Redhex IT Solutions Pvt. Ltd., in which the brother of the appellant was the Director at the relevant time.

7. Apart from the above, decision of the WTM of SEBI is also based on analyzing the bank account statements of FDSL for the relevant period. Since the investigation revealed, prima facie, that the financial fraud allegedly committed by the key managerial personnel of Ricoh India Ltd. was in collusion with the appellant, SEBI was justified in passing the ex-parte order against the appellant.

8. Grievance of the appellant that key managerial personnel Ricoh India Ltd., have been heard before passing the impugned order, but no hearing was given to the appellant is without any merit. Investigation in the present case commenced on receiving a letter from Ricoh India Ltd., that its key managerial personnel have committed financial fraud on the company. Accordingly, the said key managerial personnel were heard

and thereafter on analyzing various documents including the tax returns/ bank statements of FDSL in which the appellant was the Managing Director, the WTM of SEBI has formed a prima facie view that the appellant has violated the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short).

9. Reliance placed by counsel for the appellant on a decision of this Tribunal in case of Pancard Club (Supra) is misplaced. Observations made therein were in the context of the decision of the Gauhati High Court which was in favour of Pancard Club. In the present case, facts set out in the impugned order prima facie establish involvement of the appellant in the alleged fraud. Hence, decision of this Tribunal in case of Pancard Club does not support the case of the appellant.

10. Thus, in the facts of present case we see no reason to entertain the appeal at this stage and it would be open to the appellant to appear before SEBI and put forth his contention for vacating the ex-parte order passed against the appellant. If the appellant appears before SEBI, then SEBI shall consider the plea of the appellant and pass appropriate order thereon as expeditiously as possible.

11. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

12. In view of dismissal of the appeal, Miscellaneous Application No. 45 of 2018 becomes infructuous and the same is disposed of accordingly with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

14.03.2018
Prepared & Compared By: PK