

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 20.08.2019

Date of Decision : 04.09.2019

Appeal No. 270 of 2016

Sujoy Nandi
22A, Charu Chandra Place (E),
Kolkata - 700 033.

.... Appellant

Versus

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

2. GBC Enterprises Ltd.
Stephen House, Room No. 106,
6th Floor, 4, BBD Bagh,
Kolkata - 700 001.

.... Respondents

Mr. Yatin R. Shah, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Abhiraj Arora,
Advocate i/b ELP for the Respondent Nos. 1.

None for the Respondent Nos. 2.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Whole Time Member (hereinafter referred to as, 'WTM') who found that the GBC Enterprises Ltd. (GEL) were engaged in fund mobilizing activity from the public through its offer and issue of Redeemable Preference Shares (RPS) and had violated provision of Sections 56, 60 read with Sections 2(36), 73 of the Companies Act, 1956 as well as various provisions of the Companies Act, 2013 as well as Securities and Exchange Board of India (Issue and Listing of Non-convertible Redeemable Preference Shares) Regulations, 2013. The WTM accordingly issued a slew of directions directing that the company and other directors including the appellant shall jointly and severally refund the money collected by the company through the issuance of RPS alongwith interest at the rate of 15% p.a. compounded at half yearly intervals. The company and its directors including the appellant were also restrained from accessing the securities market.

2. We have heard Shri Mr. Yatin R. Shah, the learned counsel for the appellant and Shri Pradeep Sancheti, the learned senior counsel for the respondent No. 1.

3. The contention of the learned counsel for the appellant is, that the appellant was a small time investor in the shares of the company, but subsequently was appointed as a director on May 15, 2006 and submitted his resignation on December 5, 2008 which was accepted by the Board of Directors of the company on December 11, 2008. It was contended that the company had assured the appellant that his resignation in Form 32 would be sent to the Registrar of Companies (ROC) immediately, but subsequently, it was found that Form 32 was submitted by the company after six years on August 26, 2014.

4. It was urged that the preference shares were not allotted to any subscriber during the time when the appellant was appointed as a director i.e between 2006-08 and that the allotment was made by the company only in 2012-13 and 2013-14 as is reflected in the ex-parte interim order dated February 20, 2015. It was thus, urged that since no allotment was made during the period when the appellant was appointed as a director, no liability could be fixed upon the appellant and therefore, the appellant should be exonerated from the directions issued in the impugned order. In support of his submission, the learned counsel has place reliance upon a decision of the Bombay High Court in **Saumil Dilip Mehta vs. State of Maharashtra &**

Ors. [AIR 2002 Bombay 194] and another decision of the Karnataka High Court in **Mother Care (India) Ltd. vs. Prof. Ramaswamy P. Aiyar [(2004) 51 SCL 243 (KAR.)]**, wherein it was held that the resignation by a director comes into effect when act of such resignation is communicated to the Board and it was not necessary that the resignation has to be made effective from the date the resignation is communicated to the ROC.

5. It was also urged by the appellant that the direction to refund the entire amount was highly excessive and did not commensurate with the misconduct committed, if any, by the appellant. In support of his submission the learned counsel placed reliance upon the decision of the Supreme Court in **Ranjit Thakur vs. Union of India & Ors. [AIR 1987 SC 2386]**.

6. On the other hand, the learned senior counsel for the respondent contended that the RPS certificates were issued to the subscribers between the year 2006-08 which fact is reflected in the impugned order in paragraph 26(ix) of the impugned order wherein it has been categorically found the large number of certificates were issued between 2006-08 during the period when the appellant was a director. Thus, the contention of the appellant that the allotments

were made by the company in 2012-13 and 2013-14 during the time when the appellant has resigned as a director cannot be accepted.

7. The WTM has imposed a liability for refund of the money collected by the company alongwith interest which is joint and several with the company and other directors. We however, find that this direction of the WTM directing the appellant to pay the entire money collected by the company alongwith interest is incorrect and cannot be sustained as we find in the impugned order itself in paragraph 26(ix) that the resignation of the appellant was accepted by the company in December 2008. Thus, in view of this acceptance of the appellant's resignation in December 2008, the liability of the appellant gets fixed up to that period. The appellant cannot be penalized for the issuance of RPS by the company after his resignation. We, therefore, hold that the appellant is only liable to refund the money collected by the company during the time he became the director in 2006 upto December 11, 2008 when his resignation was accepted by the company.

8. In this regard, we find that in the ex-parte interim order dated February 20, 2015 as per the balance sheet for the year ending March 31, 2009, the company had issued redeemable preference shares

amounting to Rs. 17.39 crores. Thus, in our view, the appellant is jointly and severally liable to refund a sum of Rs. 17.39 crores alongwith interest at the rate specified in the impugned order and to that extent the impugned order is modified.

9. The appeal is partly allowed.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

04.09.2019
Prepared & Compared by
PTM