

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 05.08.2019**

**Date of Decision : 18.10.2019**

**Appeal No. 49 of 2017**

Ion Exchange Enviro Farms Ltd.  
Ion House, Dr. E. Moses Road,  
Mahalaxmi,  
Mumbai – 400 013. .... 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. Somasekhar Sundaresan, Advocate with Mr. Amey Nargolkar, Advocate i/b Vox Law for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed aggrieved by various orders and recovery certificates issued by Securities and Exchange Board of India (“SEBI’ for short) directing the appellant to

either deposit a specific sum and / or attaching various assets of the appellant with a further direction not to alienate or transfer any of the assets etc. The impugned recovery certificates / attachment notices / orders issued by the concerned authority in SEBI are the recovery certificates, bank account attachment notice, demat account attachment notice all dated December 30, 2015 as well as the orders dated August 12, 2016, September 14, 2016 and recovery certificate dated January 27, 2017.

2. Vide the impugned order dated August 12, 2016 appellant was directed to pay an amount of Rs. 3 crore to SEBI within one week from the date of receipt of the order; pay Rs. 5 crore per month commencing from September 20, 2016 till the completion of payments due to the investors and to submit all original title deeds of all the properties owned by the appellant to SEBI with PAN details etc. The impugned order dated January 27, 2017 prohibited the appellant from disposing, transferring, alienating or charging in respect of immovable properties held by the appellant including a list of properties specified in the order as well as all other movable properties held by the appellant. The appellant was also prohibited from taking any benefit under such disposal, transfer, alienation or charge as well as directed to furnish a

complete list of movable and immovable properties to SEBI within two weeks from the date of the order.

3. Basically, all these orders are emanating from the initiation of recovery proceedings against the appellant consequent to the disposal of the appeal filed by the appellant by the Hon'ble Supreme Court of India vide its judgement dated February 26, 2013. This appeal therefore has a long and chequered history, as follows. Vide order dated November 27, 2003 SEBI directed the appellant to refund the amount collected from the investors since the appellant was carrying on the business of Collective Investment Scheme ('CIS' for short) without obtaining a certificate of registration from SEBI. This order was challenged by the appellant before this Tribunal and the appeal was dismissed by this Tribunal on May 5, 2006. Thereafter, a Civil Appeal was filed before the Apex Court which affirmed the order of this Tribunal by its judgement dated February 26, 2013. Pursuant to this, a recovery certificate (no. 847 of 2015) was issued by the Recovery Officer of SEBI on December 30, 2015 which was challenged by the appellant in Appeal No. 383 of 2016. This Tribunal allowed the appellant to withdraw the said appeal on January 10, 2017 with liberty to file a fresh appeal. The

present appeal before us is the same filed by the appellant on February 3, 2017 thereby challenging various directions relating to depositing specific amount and / or various directions relating to attachment and / or alienating the properties etc.

4. The basic contention of the appellant is that it was conducting a genuine weekend farming business wherein 891 contributors provided funds for acquisition of land, developing it and transferring it to the contributors. A total sum of Rs. 23.44 crore was collected from these 891 contributors. Vide its order dated November 23, 2003 SEBI held that the scheme mooted by the appellant was a CIS and directed that the contributions made to the scheme must be returned. Though the appellant has challenged this order questioning the decision that it was a CIS the same was dismissed by this Tribunal and the Tribunal's order was subsequently upheld by the Hon'ble Supreme Court. The appellant now challenges the various recovery certificates and the orders relating to the recovery / attachment notices passed by the Recovery Officer on the ground that the appellant had already returned either money or conveyed the parcels of land due to majority of the investors / contributors and only an

amount of Rs. 2.37 crore remains to be paid. In a nutshell appellant submits as follows:

- (a) 690 contributors who had contributed Rs. 17.84 crore have actually been conveyed the parcels of land due to them;
- (b) 122 contributors to whom Rs. 3.23 crore were to be paid, have been returned the monies contributed by them in terms of the Original SEBI order; and
- (c) 79 contributors who had contributed Rs. 2.37 crore remain to be paid – land for these contributors is ready and available, but being agricultural land and such contributors not being agriculturists, the land is incapable of being conveyed.

5. Therefore, the appellant's contention is that even prior to the order of the Apex Court (supra) whereby the issue of CIS was finally settled, the appellant had distributed land or returned monies to majority of the contributors / investors and only 79 such contributors who had contributed Rs. 2.37 crore remains to be paid. Even for this purpose land is readily available but such land being agricultural land and the contributors being non-agriculturalists the land cannot be

distributed amongst them. Therefore, the direction of SEBI by the recovery notice dated December 30, 2015 to remit an amount of Rs. 20,06,42,109/- (20.06 crore approximately) and the consequential directions subsequently issued vide various impugned orders is arbitrary and unsustainable.

6. Shri Somasekhar Sundaresan, learned counsel for the appellant submits that appellant, unlike many other CIS was not constituted with a purpose of mobilizing funds by promising high returns. It was a group of informed entrepreneurs trying to fulfill an aspiration of people to do weekend farming and hence mooted the idea of developing and managing the farm land for each of the contributor by aggregating the same. That is the reason why it did not enroll a large number of people and total number of enrolment was only 891 contributors. Moreover, it had applied for and obtained an initial / provisional registration from SEBI for the scheme.

7. Learned counsel for the appellant further contended that the objective of Section 226 of the Income Tax Act, 1961 is not to be dogmatic about the certificate once drawn up; the Recovery Officer has the power to cancel or modify the certificate issued by him in the case of fresh evidence.

Therefore, when 690 contributors were actually provided with parcels of land through registered sale deeds and some of those who received the land have further sold those land pieces (105 of the 690) and made profits with an appreciation of 422% of the amounts contributed by them, the Recovery Officer could not have directed refund of the amount collected from these contributors. One cannot direct to give the land as well as to return the amount collected for the same. Further, 122 contributors have been paid cash soon after the SEBI order in 2003.

8. As regards the remaining 79 contributors with a total due of Rs. 2.37 crore the said amount has been deposited with the Recovery Officer. In addition, title deed for free and marketable land worth Rs. 5.95 crore has also been deposited with the Recovery Officer. Accordingly, the appellant has already returned the amount collected to 122 contributors, land to 690 contributors and deposited sufficient money / assets for paying to the remaining contributors. Therefore a further direction to deposit Rs. 20 crore set out in the recovery certificate and consequential directions are not sustainable.

9. The learned counsel for the appellant further submitted that various documents such as conveyance deeds, bank

statements etc. were produced before the Recovery Officer to show that land has been indeed given to a number of original contributors but the Recovery Officer has not considered all such documents and passed the impugned directions. This is neither in tune with the law of the land nor as held in various judgments that orders should clearly deal with the objections being raised. The appellant has relied on *Bhavan Vaja and Others vs Solanki Hanuji Khodaji Mansang and Another (1973) 2 SCC 40*, *Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan and Others (2003) 1 SCC 197* and *Parayya Allayya Hittalamani vs Sri Parayya Gurulingayya Poojari and Others (2007) 14 SCC 318*, to emphasize its contentions.

10. The learned senior counsel for the respondent SEBI Shri Gaurav Joshi, on the other hand, contended that stating some reason or other, the appellant has been dithering on their responsibility of refunding the monies due to the investors for more than 16 years. When the appellant took provisional registration for a CIS it in fact had admitted that it was running a CIS. Despite this, they withdrew the provisional registration and when SEBI passed the refund order in 2003 decided to appeal against the same and when this Tribunal upheld the refund part of the order in 2006 the appellant decided to go on appeal in the Supreme Court. When the

Supreme Court rejected their appeal in 2013 and the Recovery Officer drew up the certificate in December 2015 they challenged it by stating that they had already returned the monies and / or land to majority of the investors. The value of the land was only 1/6<sup>th</sup> of the amount collected and the balance amount was for development. The appellant has been given multiple chances by this Tribunal itself to prove the veracity that they in fact returned the money or land which is not forthcoming and the appellant keep on giving some piecemeal information relating to the same to SEBI. The respondent SEBI also relied on this Tribunal's order in the case of *PACL Ltd. vs SEBI, 2015 SCC OnLine SAT 1*.

11. In 2003 the appellant never stated that part of the amount collected was returned to the investors in cash nor they had given any land, neither before SEBI nor when they came on appeal before this Tribunal. Such a stand was not taken even before the Supreme Court. After more than 16 years, in the present appeal, they are taking this stand for the first time. Therefore, the submissions of the appellant lack veracity and credibility. Multiple opportunities have been given to them to show the relevant documents to SEBI. What is available on the other hand is evidence relating to the fact

that the land supposedly given to 690 investors are mostly being held under the overall management of the appellant. In this context, it is important to note that the amount collected for buying, developing and maintaining the land and what is supposed to be returned in the form of land is only the raw land, not the developed one as per the scheme floated. Therefore, the appellant's contention that money or land has been given to majority of the investors and therefore the investors rights have been fully extinguished is not correct both on account of the fact that the land is mostly under the management of the appellant and what is refunded is only the cost of land not the gross amount including for development and maintenance which was collected upfront. That is the reason why the appellant is not forthcoming with all the documents and evidence as directed.

12. Moreover, we note that the provisional registration of the appellant for running a CIS was withdrawn and direction to refund the monies was issued by SEBI in November 2003 on account of the appellant defaulting in complying with the provisions of Regulation 71 of the CIS Regulations which required the appellant to send an information memorandum to its investors. Further, while upholding the order of SEBI in

May 2006, this Tribunal directed the appellant to refund the amount to the investors. The direction was not to return land but to refund the amount collected. At that time the appellant did not make any representation stating that part of the monies had been already refunded or some investors had been given land. This stand was not taken before the Hon'ble Supreme Court as well, which dismissed their appeal in 2013.

13. Dehors the same this Tribunal had given ample opportunities to the appellant to prove the veracity of their statements with documents before SEBI. The appellant is not able to prove that. Therefore, just making bold statements with part documentation by which no conclusion can be reached do not prove refund of money to the investors in full or refund in the form of land with full transfer of ownership and all rights. We also note that the impugned orders dated August 12, 2016 and September 14, 2016 deal with the documents furnished by the appellant in detail and we are not able to find fault with the same.

14. The appellant is not able to prove whether land has been given to the investors in accordance with the terms and conditions i.e. after development of the land etc. and what happens to the maintenance aspect. In fact, we are told by the

learned counsel for the SEBI that a large number of plots are still being maintained by the appellant which is not disputed. If that be the case the contention that land parcels have been handed over to the investors as ultimate beneficiaries and as full and final transfer is not correct. Therefore, in the absence of appropriate and complete evidence relating to full refund of the investors' amount, either in the form of money or in the form of developed land and maintenance amount we are unable to interfere with the impugned directions in the various orders.

15. In the result, appeal fails and is dismissed. No orders on costs.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

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

Sd/-  
Justice M.T. Joshi  
Judicial Member

18.10.2019

Prepared and compared by:msb