

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 29.08.2019
Date of Decision : 04.09.2019

Appeal No. 401 of 2018

Kaushik Roy
20, Maitri Park Road,
Kolkata Municipal Corporation,
Regent Park, South 24,
Parganas, 700070.

..... Appellant

Versus

Securities and Exchange Board of India
Eastern Regional Office,
L&T Chambers, 3rd Floor,
16, Camac Street, Kolkata - 700017.

..... Respondent

With
Appeal No. 402 of 2018

Soumen Ghosh
201, Digra Road,
P. O. Saradapally, P. S. Bhadreswar,
District - Hooghly, Pin : 712124.

..... Appellant

Versus

Securities and Exchange Board of India
Eastern Regional Office,
L&T Chambers, 3rd Floor,
16, Camac Street, Kolkata - 700017.

..... Respondent

Mr. Nitendra Mohan Mukherjee, Advocate with Mr. Devasis Mitra, Advocate for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Anubhav Ghosh, Ms. Rashi Dalmia, Advocates i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Two directors of the company have filed separate appeals against two separate orders passed by the Whole Time Member (hereinafter referred to as, 'WTM') of Securities and Exchange Board of India (hereinafter referred to as, 'SEBI'). The issue is common and therefore, both the appeals are being decided together. For facility, the facts stated in Appeal No. 401 of 2019 (Kaushik Roy vs. SEBI) is being taken into consideration.

2. Sumangal Industries Ltd. (hereinafter referred to as, 'SIL') issued an advertisement in the newspaper Anand Bazar Patrika on September 11, 2012 soliciting funds from the public under potato purchase scheme promising huge returns to the investors. SEBI vide an interim ex-parte order dated April 10, 2012 directed the company not to collect any money from the investors or launch any scheme

and show cause as to why action should not be taken against them. By an order dated July 9, 2013, SEBI held that the scheme carried out by the company was a Collective Investment Scheme (CIS) and accordingly, directed the company and its directors to wind up the CIS and refund the money collected to the investors along with interest and further restrained them from accessing the securities market till the completion of the refund.

3. The company alongwith other directors filed an Appeal No. 210 of 2013, wherein the company submitted that they will comply with the order passed by SEBI and sought extension of time. The said appeal was accordingly disposed of extending time to comply with the directions of SEBI and to refund the amount. The appellants contended that pursuant to the order of SEBI dated July 9, 2013 the appellant represented before SEBI. But, subsequently, when a recovery notice was issued the appellant filed Appeal No. 290 of 2016 in which it was contended that no notice or opportunity of hearing was provided to the appellant before passing the impugned order. The Tribunal accordingly quashed the order dated July 9, 2013 in so far as it related to the appellant as well as the attachment order and directed the WTM of SEBI to pass a fresh order on merits

in accordance with law. The said order of the Tribunal dated January 9, 2017 is extracted hereunder :-

“1. This appeal is filed to challenge the order passed by the Whole Time Member (‘WTM’ for short) of Securities and Exchange Board of India (‘SEBI’ for short) on July 9, 2013.

2. In view of the fact that the impugned order is passed without hearing the appellant, counsel for SEBI, on instruction states that the impugned order dated July 9, 2013 be quashed and set aside qua the appellant with liberty to the WTM of SEBI to pass fresh order on merits after hearing the appellant. Accordingly, the impugned order dated July 9, 2013 is quashed and set aside qua the appellant with direction to the WTM of SEBI to pass fresh order on merits and in accordance with law.

3. In view of the above, attachment levied on the bank account of the appellant shall stand vacated forthwith.

4. Appeal as also the Misc. Application are disposed of in the aforesaid terms with no order as to costs.”

4. Pursuant to the order of the Tribunal, the impugned order indicates that the appellant was granted an opportunity of hearing on April 28, 2017 which was adjourned to May 5, 2017 and thereafter it was rescheduled to November 13, 2017 on which date the appellant appeared in person though an application for adjournment was filed on behalf of his advocate. The proceedings of November 13, 2017 indicates that the appellant was heard in person and thereafter was

granted time to file the written submissions with the rider that no further opportunity of personal hearing would be granted.

5. It has also come on record that the written submissions were filed alongwith an application praying that a further opportunity of personal hearing be granted. In the written submissions, it was categorically stated that the appellant did not receive any notice of the proceedings nor was ever heard. It was categorically stated that the appellant was not aware of any show cause notice being issued by SEBI to the appellant and consequently, contended that he had not been given any opportunity to rebut the allegations made against him. It was specifically urged that no material or evidence has been provided to the appellant which would show that the appellant was responsible for the CIS.

6. Without considering the aforesaid facts, the WTM passed an order making the appellant responsible for refund of the money on the ground that the appellants was a director at that point of time. The appellants being aggrieved by the order has filed the present appeals.

7. We have heard Shri Nitendra Mohan Mukherjee with Shri Devasis Mitra, the learned counsel for the Appellants and Shri Pradeep Sancheti, the learned senior counsel with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, the learned counsel for the respondent.

8. Having heard the learned counsel for the parties, we are of the opinion that the WTM has committed a manifest error in the manner in which the proceedings were conducted. When the Tribunal directed that an opportunity of hearing should be provided to the appellants, it did not mean that the WTM will only make a perfunctory exercise by granting an opportunity of hearing without providing him a copy of notice or material which is being relied upon by the respondent. The appellants have categorically stated in the earlier round of appeal before the Tribunal that no show cause notice was ever provided to him nor was he accosted with the charge and unless and until the material was placed before him, it was not possible for him to give a suitable reply. The same assertion was made in his written submissions to which the WTM has not adhered to.

9. In our opinion, it was the duty of the WTM to provide a copy of the show cause notice indicating the violation committed by the

appellant alongwith material if any, and thereafter an opportunity of hearing should have been given to the appellant to rebut such charges which, in the instant case, has not been done. Thus, the entire proceeding initiated by the WTM was in violation of principles of natural justice.

10. The impugned orders thus, cannot be sustained and are quashed. The appeals are allowed. The matters are remitted again to the WTM to issue a show cause notice and proceed from there onwards after giving an opportunity to the appellants to file their reply and after giving an opportunity of hearing. For the aforesaid purpose, the appellants shall appear before the WTM on October 10, 2019 on which date the WTM will serve a show cause notice and proceed from there onwards. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M. T. Joshi
Judicial Member

04.09.2019
Prepared & Compared by
PTM