

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 15.05.2020

Misc. Application No.134 of 2020
And
Misc. Application No.129 of 2020
In
Appeal No.503 of 2019

Jayeshkumar Narottamdas Gandhi ...Applicant

In the matter of:-

Jayeshkumar Narottamdas Gandhi & Ors. ...Appellants

Versus

Securities and Exchange Board of India Respondent

Ms. Rinku S. Valanju and Pratham Masurekar, Advocates i/b
R. V. Legal - for the Applicant.

Mr. Kumar Desai a/w Mr. Abhiraj Arora, Mr. Vivek Shah,
Advocates i/b ELP for the Respondent, and Mr. Pradeep Kumar,
DGM, SEBI.

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. We have heard Ms. Rinku Valanju along with Mr. Pratham
Masurkar, Advocates for the Appellant, and Shri Kumar Desai

along with Mr. Abhiraj Arora, Mr. Vivek Shah, Advocates and SEBI official Mr. Pradeep Kumar.

2. The facts in brief are, that the Adjudicating Officer ("AO" for short) by an Order dated 24th June 2019 imposed a penalty of Rs.6,00,000/- for violation of Regulations 3 and 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The Appellant filed an appeal before this Tribunal and, during the pendency of the appeal, the Recovery Officer of SEBI recovered an amount of Rs.6,35,521/- on 17th December, 2019. Appeal No.503/2019 was heard and finally allowed by this Tribunal by Judgment dated 21/2/2020 and the order of the AO was set aside.

3. Pursuant to the order of this Tribunal, the appellant filed an application dated 27/2/2020 for refund of Rs.6,35,521/-. The Respondent instead of refunding the amount issued an email dated 13/3/2020 informing the appellant that SEBI intends to file an appeal before the Supreme Court against the order of the Tribunal and, therefore, the refund of the amount would be subject to the outcome of the appeal before the Supreme Court.

The appellant was further informed that there is no specific order for refund of the amount by the Tribunal.

4. The appellant thereafter filed a Misc. Application No.129/2020 before the Tribunal. This Tribunal directed SEBI to file a reply and posted the application for hearing on 4/4/2020. Before the application could be taken up for consideration, the Tribunal closed on account of the lockdown in view of the COVID-19 pandemic. The appellant has now filed an urgency application along with Misc. Application No.134/2020 praying that a direction be issued to SEBI to refund the amount of Rs.6,35,521/- along with interest. The applicant also contended that he is in dire need of money as he has to undergo a spinal surgery and, in this regard, has filed medical certificates.

5. The appellant on 5/5/2020 also gave an undertaking to SEBI that he would again place the amount within 15 days of any stay order being passed by the Supreme Court in the proposed appeal to be filed by SEBI.

6. The learned Counsel for the appellant contended that once the order of the AO has been set aside by the Tribunal, there was no justification for SEBI to withhold the money and that holding

of the money was wholly illegal and without any authority of law.

7. On the other hand, Shri Kumar Desai, learned Counsel contended that SEBI has taken a decision to file an appeal against the order of this Tribunal and that the appeal has been drafted but could not be filed on account of the lockdown. It was also urged that there is no direction of this Tribunal to refund the amount. The learned Counsel however, contended that in view of the undertaking given by the appellant, SEBI would refund the amount if such undertaking of the applicant is recorded by the Tribunal.

8. Having heard the learned counsel for the parties, we are of the opinion that once the order of the AO imposing a penalty was set aside, there was no justification for SEBI to withhold any amount which was recovered pursuant to the order of the AO. Such retention of the amount after the order of the AO has been set aside, is without any authority of law. The fact that no direction for refund of the amount was issued by the Tribunal is immaterial. Once the order has been set aside, there is no amount to be recovered and consequently any amount so recovered has to be refunded immediately.

9. The Respondent has a right to file an appeal before the Supreme Court against the order of the Tribunal. The appeal was allowed by the Tribunal on 21/2/2020. No steps were taken by SEBI to file an appeal before the lockdown i.e. 25/3/2020. Therefore, retention of the money by SEBI was wholly unwarranted, especially when the appellant has also given an undertaking to abide by the order of the Supreme Court, if any.

10. In view of the aforesaid and in view of the undertaking given by the appellant, we dispose of the Misc. Application No.129/2020 and No.134/2020 directing SEBI to refund the amount of Rs.6,35,521/- on or before 22/5/2020, failing which SEBI would be further liable to pay interest from the date of recovery till date of payment @ 12% per annum.

11. Accordingly, we dispose of the Misc. Application Nos.129/2020 and 134/2020 with no order as to costs.

12. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench

and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

15.05.2020
dg