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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 09/03/2020
Order delivered on 16/09/2020

Writ Petition No. 230 of 2002

M/s Shrishrimal Plantation Limited having its Registered Office at Ravi Bhawan, Jaistambh, Raipur- 492 001, through its Director Shri Devichand, son of Maniklal, resident of Choubey Colony, Raipur.

---- Petitioner

Versus

1. Securities and Exchange Board of India, Mittal Court 'B' Wing, First Floor, 24, Nariman Point, Mumbai 400 021
2. Union of India, through the Secretary, Department of Company Affairs, New Delhi (India)

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate
For Respondents	:	Shri B. Gopa Kumar, Assistant Solicitor General of India.

Hon'ble Shri PR Ramachandra Menon,CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV ORDER

Per Parth Prateem Sahu, J

1. By this petition the petitioner has challenged the notice dated 12.5.2000 and Instructions/Directions dated 18.12.2000 issued by the Securities and Exchange Board of India (for short 'the SEBI') for refund of money collected under the collective investment scheme with returns which were due to the investors as per the terms of the offer within a period of one month and upon failure to follow, the initiation of prosecution under Section 24 of the Securities and Exchange Board of India Act, 1992 (for short 'the SEBI Act of 1992')

debarring of promoters / Directors / Managers from operating in the capital market for a period of five years, writing to the State Government / local police for registration of civil/criminal case and also to the Department of Company Affairs to initiate process of winding up of the company.

2. Facts of the case, in nutshell, are that the petitioner is a company incorporated under the Companies Act, 1956 and engaged in the business of bio-technology agriculture plantation and agro forestry related activities. The petitioner company was incorporated in the year 1992 and thereafter invited public investments by floating schemes for purchase of agro bonds. Floated bonds were having different period of maturity ranging from 01 to 06 years with an assured return on the investment and from it collected Rs.1,99,22,000/- in the name of 'Aditya Agro Companies'

3. The SEBI Act of 1992 has issued regulations in October, 1999 for regulating collective investment schemes in the markets, which is known as 'Securities and Exchange Board of India (Collective Investment Scheme) Regulation, 1999 (henceforth 'the SEBI Regulation of 1999'). Section 5 of the SEBI Regulation, 1999 provides for grant of certificate and Regulation 73 prescribes the mode of repayment by the companies, who failed to make an application for registration to the Board. Regulation 74 deals with the companies which are engaged in the scheme but not desirous of obtaining

registration certificate. The petitioner company intended to wind up its entire existing scheme in terms of Regulation 74 of the SEBI Regulation of 1999 and for that the petitioner company has formulated a scheme of repayment for its collective investment scheme after approval of the Board of Directors of the petitioner company. The petitioner has sent the information memorandum to all the investors under the postal certificate and this circulation of information memorandum was intimated to the respondent vide letter dated 18.3.2000. Regulation 73 (6) of the SEBI Regulation of 1999 provides for continuation of the existing schemes if positive consent of more than 25% of the investors is received and this has been mentioned in the memorandum circulated by the petitioner.

4. The petitioner company received show-cause notice No. MFD/ CIS/SAG/7229/2000 dated 12.5.2000 calling upon the petitioner to show cause as to why action under the SEBI Act of 1992 be not initiated against the petitioner for not complying with or failure to take steps under the SEBI Regulation of 1999. This show cause notice was replied vide letter dated 25.5.2000 mentioning that the memorandum of information was already circulated amongst all the investors and the company has also received replies, but during the process of taking action under the SEBI Regulation of 1999, the name of petitioner company has been published in the Economic

Times dated 23.9.2000 along with other companies who failed to adhere to the SEBI Regulation of 1999. The petitioner immediately wrote a letter on 27.9.2000 to the respondent mentioning that 60% of the bond holders have exercised their option and balance have not responded for which notices were again sent.

5. The petitioner company received another show cause notice dated 18.12.2000 issued by respondent No.1 with a direction to the petitioner company to refund the money collected under the schemes with returns to the investors within a period of one month, failing which appropriate legal and administrative measures would be initiated against the petitioner company and its Directors. After notice dated 18.12.2000, name of the petitioner company has been shown as defaulting company, who had failed to act as per SEBI Regulation of 1999, in news item of Hindustan Times dated 14.1.2001. The notice/letter dated 18.12.2000 was replied by the petitioner company vide letter dated 16.1.2001 elaborately pointing out the steps taken by petitioner company pursuant to coming into force of the SEBI Regulation of 1999 and correspondences made by the petitioner company with respondent No.1 and also requested for personal hearing for withdrawal of notice dated 18.12.200 and for removal of name of petitioner company from the list of defaulting companies. In December, 2001 the petitioner learnt about the press release of the respondent stating about

launching of criminal prosecution against the defaulting companies and their Directors. This made the petitioner to file this writ petition seeking for following reliefs:-

> "(i.) issue an appropriate writ, order or direction quashing the SEBI Regulations, 1999 as ultra vires the constitution of India;
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> (ii.) issue an appropriate writ, order or direction that Regulation 73 (8) of the SEBI Regulations, 1999 is ultra vires the constitution of India as being arbitrary and unreasonable and set aside.
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> (iii.) issue a writ an appropriate order or direction restraining the Respondent from initiating or continuing with any legal or administrative action against the petitioner company or any of its Directors for the alleged violation of SEBI Regulation, 1999.
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> (iv.) issue an appropriate writ, order or direction quashing the impugned show cause notice dated 12.5.2000 (Annexure P-3) and 18.12.2000 (Annexure P-6) as void, arbitrary and illegal; and
>
> (vi.) issue any other writ, order or direction which the Hon'ble Court deems just and proper may also be passed in the facts and circumstances of the case as also in the interest of justice."

6. When the case came up for hearing, respondent No.3 was directed to submit its reply, but when the reply on behalf of the respondent could not be filed within time as granted by this Court, an interim order in favour of the petitioner company was passed on 14.3.2002, operative portion of which reads as under:-

> "Accordingly the further proceedings in the proceedings initiated against the petitioner company shall remain stayed until further orders."

7. Respondent No.1 thereafter on 11.9.2003 submitted affidavit along with application for vacating the interim order, raising preliminary objection with regard to availability of alternative remedy to the petitioner under Section 15T of the SEBI Act of 1992. In reply to the writ petition, respondent No.1 has stated that on coming to notice of the Government of India that the entities which are issuing instruments in the name of agro, plantation bonds etc. are offering very high rates of return, which are not consistent with normal returns in such schemes and concerning of the high risk associated with such scheme, felt it necessary to set-up an appropriate regulatory framework for regulating the entities floating such schemes. It was decided to treat such schemes as "Collective Investment Schemes".

8. The Central Government by its press release dated 18.11.1997 had communicated the decision and directed the SEBI to formulate draft regulations. Further, it was informed vide press release dated 26.11.1997 that till issuance of Notification of regulation in terms of Section 12 (1-b) of the SEBI Act of 1992, no person can sponsor or cause to be sponsored any new collective scheme. The notification has been issued on 18.12.1997 informing the public about the decision of the Central Government treating the schemes

floated earlier by issuing agro bonds, plantation bonds etc. to be collective investment scheme and falling within the ambit of the SEBI Act of 1992. The SEBI constituted a committee to frame regulation for the plantation companies. The companies already engaged in the collective scheme were also directed to submit the details to the SEBI and to abide the code of advertisement sent by the SEBI for the investors' protection.

9. The SEBI received complaints across the country informing that the cheques issued by various plantation companies have been dishonoured and number of companies are untraceable. Thereafter, under the orders of the SEBI, audit was conducted of about 35 companies running collective investment schemes on which they found that the companies have offered very high and unrealistic return without any basis and the investors' money has been put to great risk. The SEBI filed 05 public interest litigations against the companies, who had raised maximum amount of money from the public, and the Bombay High Court issued orders of appointment of Administrators, prohibition of transfer of assets of company etc. against those companies and certain interim orders were also passed by the Delhi High Court in PIL between SD Bhattacharya & ors vs UOI & ors. The name of Petitioner Company was found in the notification issued by the respondent in compliance with the order passed by the Delhi High Court.

10. A contempt petition was filed against the companies including petitioner company for not complying with the directions issued by the Delhi High Court and the High Court issued directions for furnishing details vide orders dated 7.10.1998 & 13.10.1998. The High Court of Delhi on the affidavit filed by the SEBI mentioning names of all the erring companies, directed the banks to freeze bank accounts of all those companies / entities including the petitioner company and its Promoters & Directors as per direction dated 22.1.2002. The petitioner company did not comply with the provisions of the Regulations in spite of receiving show-cause notice dated 12.5.2000, then direction dated 7.12.2000 was issued by the Chairman, SEBI as a last opportunity to repay the investors. Reply dated 25.5.2000 submitted by the petitioner to show-cause notice dated 12.5.2000 does not address the issue mentioned in the show-cause notice. The letter dated 25.5.2000 / reply to show-cause notice shows that they are in process of compiling of the options and have not repaid till date the investments along with its return to the investors. Taking into consideration that the petitioner failed to address any of the issues of show cause notice, the letter dated 25.5.2000 was not considered to be reply to the show-cause notice and the order/letter has been issued on 18.12.2000. It has been pleaded that the understanding of the petitioner and mentioning in the writ petition the letter dated 18.12.2000 to be the show-cause notice is not correct, as it is not the show-

cause notice but it is only a letter of direction to the petitioner company on non-compliance of the SEBI Regulations, 1999. As per admissions made in the writ petition, the petitioner has only paid Rs.93,10,425/- to its investors by 31.3.2001, which is suggestive of the fact that the petitioner company failed to comply with the Regulations and directions dated 7.12.2000. When there is non-compliance of the SEBI Regulations, 1999 and the direction dated 7.12.2000, there was no question of withdrawal of direction or removal of name of the petitioner company from the list of defaulting companies. The petitioner within prescribed time has not initiated proceeding of winding-up of the company under the Regulation 73 of the SEBI Regulation, 1999. Respondent No.1 has also initiated criminal prosecution before the date of filing of writ petition and the summons were also issued by the concerned Magistrate.

11. Mr. Manoj Paranjpe, learned counsel representing petitioner submits that the petitioner is not pressing the challenge to the vires of the SEBI Regulation of 1999, particularly Regulation 73 (8). It is contended that the petitioner very specifically pleaded that since March, 1998 the petitioner company has stopped accepting investments and till March, 2000 amount of Rs.74,09,939/- was repaid to the investors. He also argued that repayment of amount has not been disputed by respondent No.1. The petitioner company has issued memorandum of information informing the investors about the

scheme floated by the company for repayment of all its collective investment schemes under the provisions of Regulation 73 (2) & (3) of the SEBI Regulation of 1999. There were about 2268 investors under different schemes of the petitioner company and they were given options mentioned therein specifically mentioning implications to the investors as it was not practically possible for the petitioner to repay the entire amount of investments at one go, therefore, it was necessary to differ this payment in four equal annual installments. When the petitioner company was in the process for compliance of the provisions of the SEBI Regulations of 1999, respondent No.1 had issued a show-cause notice on 12.5.2000 which was replied but without considering the reply submitted by the petitioner, respondent No.1 has issued another notice/letter on 27.9.2000. The petitioner company has informed about the steps taken for winding up of their scheme and thereafter letter dated 18.12.2000 was issued. He points out that respondent No.1 in its reply has categorically stated that the reply submitted by the petitioner mentioning that repayment will start to the investors as per memorandum sent to them vide letter dated 30.9.2003 has been held to be against the provisions of the SEBI Regulation of 1999 and consequently held that the petitioner failed to address the issue of show cause notice. It is also pointed out that respondent No.1 has stated in its reply that the letter dated 25.5.2000 was not considered to be reply of show-cause notice and the impugned letter dated 18.12.2000 was issued. He submits that when admittedly the reply of the petitioner has not been taken into consideration, even then letter dated 18.12.2000 was issued, which is against the principles of natural justice, the petitioner may be afforded an opportunity to explain the action taken by the petitioner company in compliance of the SEBI Regulation of 1999. He also submits that the petitioner company has refunded maximum amount of investments made by the investors. It is further pointed out that as per notice dated 12.5.2000, the information of memorandum is to be sent by 28.2.2000. He submits that one opportunity may be afforded to the petitioner company so that the petitioner may place all the proceedings and action taken in compliance of the SEBI Regulations of 1999 for winding up of the company. He submits that proper opportunity of hearing was not afforded to the petitioner and prays that this petition may be considered and allowed to that extent only i.e. of providing opportunity of hearing.

12. We have heard learned counsel for the petitioner and perused the pleadings and documents brought on record by respective parties.

13. From the pleadings placed on record by the respective parties, it is clear that looking to the need of control action against the action of companies engaged in issuing agro and plantation bonds etc. showing attractive returns. Upon audit it was found

that the investments made by the public at large were at high risk and under the SEBI Act of 1992. In exercise of the powers conferred under Section 30 read with Sections 11 & 19 of the Act of 1992, the SEBI Regulations of 1999 has been framed. Regulation 5 provides for application for registration of the existing collective investment scheme. Regulation 10 envisages for issuance of certificate to the scheme. Regulation 73 prescribes for mode of refund to the companies who failed to get themselves registered and obtain certificate. The powers to issue direction have been granted to the Board under Section11B of the SEBI Act of 1992. Section 15T provides for appeal to Securities Appellate Tribunal. Relevant portion of Section 15T of the SEBI Act of 1992 is reproduced below:-

> "15T. Appeal to the Securities Appellate Tribunal.—(1) Save as provided in sub-section (2), any person aggrieved,—
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> (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder, or
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> (b) by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.] 2 [(2) No appeal shall lie to the Securities Appellate Tribunal from an order made—
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> > (a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;
> >
> > (b) by an adjudicating officer, with the consent of the parties.]...."

14. Respondents in their reply have very categorically pleaded about the turn of events from 1997 till December, 2000. It was

also pleaded in very categorical terms that public interest litigations were filed before the Delhi High Court and certain directions were also issued against the petitioner company and that, contempt proceedings were also drawn but the petitioner company has not taken any action, as provided under the SEBI Regulations of 1999.

15. We have perused Annexure P-3, which is show-cause notice, wherein it is mentioned that petitioner has not complied with the provisions of the SEBI Regulations of 1999. Petitioner company has not made any effort for getting itself registered under the SEBI Act of 1992 nor taken any step for winding up of the schemes in terms of the SEBI Regulations of 1999. Notice for violation of provisions of Section 12 (1) (b) of the SEBI Act of 1992 and Regulation 5 (1) read with Regulations 68 (1), 73 & 74 of the SEBI Regulation of 1999 was issued. Notices have been issued mentioning the actions to be taken against the petitioner for non-compliance of the SEBI Regulations of 1999. Perusal of the directions/ instructions vide letter dated 18.12.2000 (Annexure P-6) reveals that show-cause notice dated 12.5.2000 was not replied by petitioner company nor has responded and taken action against newspaper publication. Whereas, learned counsel for the petitioner vehemently argued and pointed out that the petitioner vide Annexure P-4 & P-5 i.e. letter dated 12.5.2000 & 27.9.2000 had replied the notice and given explanation but

the same was not considered by adjudicating authority i.e. respondent No.1, therefore, appropriate opportunity be provided to the petitioner for considering the reply and also to give personal hearing to the petitioner.

16. In the affidavit/reply filed by respondent No.1, an objection with regard to maintainability of writ petition has been raised on the ground of availability of efficacious alternative remedy of filing of appeal before the Securities Appellate Tribunal, as provided under Section 15T of the SEBI Act of 1992.

17. Considering the turn and events, as mentioned in the reply filed by respondent No.1, which was not controverted by the petitioner by filing rejoinder to reply, and further considering the fact that Annexure P-6, covering letter dated 18.12.2000 of directions issued to the petitioner company for refund of money collected under the schemes, is not a show-cause notice, but it is a direction with consequential proposed actions to be taken against the petitioner company and the submission made by learned counsel for the petitioner that he is not pressing the relief of declaring the provisions of the SEBI Regulation of 1999 to be ultra vires, we do not find any reason to entertain this writ petition at this stage in view of provision of Section 15T of the SEBI Act of 1992. However, looking to the pendency of case before this Court since the year 2002 and also considering the fact that there is interim order in favour of the petitioner passed by this Court on

14.3.2002, we find it appropriate to grant liberty to the petitioner company to approach the appellate tribunal as per provision of Section 15T of the SEBI Act of 1992 within a period of six weeks from the date of passing of this order and till then the interim order dated 14.3.2002 shall remain in force.

18. If the petitioner files an appeal within the prescribed time, then the Tribunal shall consider the appeal filed under Section 15T of the SEBI Act of 1992 on its own merits keeping in mind the proviso to Section 15T (3) of the SEBI Act of 1992.

Sd/-
(P. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-