BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 29.04.2014

Appeal No. 208 of 2013

1. Mr. Dushyant N. Dalal
   4A Chandan, 62B Peddar Road
   (Dr. Gopalrao Deshmukh Marg)
   Mumbai–400026

2. Mrs. Puloma D. Dalal
   4A Chandan, 62B Peddar Road
   (Dr. Gopalrao Deshmukh Marg)
   Mumbai–400026 …Appellants

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. Ravichandra S. Hegde, Advocate for Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the communications dated November 11, 2013 and April 16, 2013 passed by Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short), whereby appellants were called upon to attend personal hearing on the dates specified therein. In the said communications it was also recorded that their request for cross-examination/inspection cannot be considered in view of order of this Tribunal passed in Miscellaneous Application No. 51 of 2013 on September 6, 2013.

2. Relevant facts are that by an order dated October 4, 2012 passed in Appeal No. 184 of 2011 *(Dushyant N. Dalal & Anr. vs SEBI)* this Tribunal had set aside the adjudication order passed against the appellants on June 2, 2011 and directed the AO to pass fresh order after considering the application of the appellants relating to (one) inspection of records which are relevant and being relied upon in the supplementary show cause notice and (two) cross-examination of Purshottam G. Budhwani and Nimisha Kakadia.

3. Since the application filed by the applicants was rejected by impugned communications, appellants had filed Miscellaneous Application No. 51of 2013 in Appeal No. 184 of 2011, seeking inspection of documents/ cross-examination. That application was disposed of by this Tribunal on September 6, 2013 without going into correctness of the impugned communications by allowing the appellants to withdraw the said Miscellaneous Application and by recording a statement that the appellants shall file their reply to the show cause notice/supplementary show cause notice within the period specified therein and by recording statement of counsel for respondent that final order would be passed within the time specified therein.

4. It is not in dispute that in-compliance of aforesaid order dated September 6, 2013 appellants have filed their reply to the show cause notice/ supplementary show cause notice, however, before any final order could be passed on the said show cause notice/ supplementary show cause notice, concerned AO has changed and new AO has been appointed to adjudicate the matter in question.

5. By filing present appeal, appellants once again seek to challenge impugned communications. Since correctness of the impugned communications were not considered in our decision dated September 6, 2013 and since new AO has been appointed, counsel for respondent fairly states that the new AO is willing to pass fresh order on the application of the appellants referred to in our order dated October 4, 2012 without being influenced by impugned communications.

6. In these circumstances, we direct the new AO to pass fresh order on the application of the appellants referred to in the order of this Tribunal dated October 4, 2012 without being influenced by the impugned communications dated November 11, 2013 and April 16, 2013 and thereafter proceed to pass final order on the show cause notice/ supplementary show cause notice issued to the appellants. Appellants shall cooperate with the newly appointed AO in disposing of the matter expeditiously. Newly appointed AO shall pass final order after giving an opportunity of hearing to the appellants.

7. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

29.04.2014
Prepared & Compared By: PK