

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 15.07.2016

Appeal No. 206 of 2016

Adventz Finance Pvt. Ltd.
31, B.B.D. Bagh (S),
Hong Kong House,
Kolkata – 700 001.

..... Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

2. Jai Annanya Investments Pvt. Ltd.
BIA Merline Chambers, 18, Abdul
Hamid Street, Floor, Room No. 101/A,
Kolkata – 700 069/

..... Respondents

Ms. Vaneesa Agrawal, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Nishit Dhruva, Mr. Rohan
Agrawal, Advocates i/b MDP & Partners for the Respondent No. 1.

Mr. Jaikishan Lakhwani, Advocate for the Respondent No. 2.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C. K. G. Nair, Member

Per : Justice J. P. Devadhar (Oral)

1. This appeal reveals the shoddy manner in which the directions of this Tribunal are dealt with by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short).

2. This Tribunal on May 6, 2016 disposed of Appeal nos. 90 (appellant herein) and 97 of 2016 by recording the statement made by counsel of SEBI that the representations made by the appellants therein would be heard and disposed of within seven weeks from that day.

3. Although one WTM of SEBI gave opportunity of hearing to the appellant on June 21, 2016, no order was passed till June 24, 2016, the date on which seven weeks from May 6, 2016 expired. The WTM of SEBI did not bother to seek extension of time from this Tribunal for passing the order.

4. It is only when the present appeal was mentioned on July 7, 2016 seeking urgent circulation, counsel for SEBI orally applied for extension of time to pass an order. We rejected the said oral application and directed that the appeal be placed for admission on July 12, 2016.

5. On July 12, 2016 when the appeal was taken up for hearing, counsel for SEBI tendered a letter dated July 8, 2016 and submitted that the said letter contains the reasons on the basis of which the competent authority viz the WTM of SEBI has rejected the representation of the appellant herein. On perusal of the said letter it was seen that it was not an order passed by the WTM of SEBI but only a communication issued by the Chief General Manager of SEBI recording the gist of the order allegedly passed by the WTM of SEBI. With a view to enable SEBI to furnish a copy of the order passed by the WTM of SEBI, we adjourned the matter to the post lunch session at 2.15 P.M. AT 2.15 P.M. no such order could be produced and, therefore, we adjourned the matter to July 13, 2016.

6. On July 13, 2016 when the appeal was taken up for hearing, Senior Counsel for SEBI fairly stated that there is no order passed by the WTM of SEBI and submitted that the letter dated July 8, 2016 was issued by the Chief General Manager, on the basis of the endorsement made by the WTM of SEBI on the office note put up by a junior officer (AM) of SEBI on June 23, 2016. Copy of the office note (without annexures) was tendered by the

counsel for SEBI. With a view to consider the scope and ambit of the said file noting, we adjourned the matter to July 15, 2016.

7. Today, when the appeal is taken up for hearing, counsel for SEBI tendered affidavit filed by the Chief General Manager of SEBI. In the said affidavit it is stated that the WTM had instructed that a note be prepared and accordingly, a note was prepared and put up for approval of WTM on June 23, 2016. It is further stated in the said affidavit that alongwith the said note, draft letters to be sent out to the appellant were also placed before the WTM of SEBI. The said note as also draft letters were approved by the WTM on June 27, 2016 and, accordingly, letter dated July 8, 2016 was issued to the appellant, thereby communicating the decision of the WTM of SEBI disposing off the representation of the appellant.

8. When questioned as to whether there is any order passed by the WTM of SEBI, counsel for SEBI fairly stated that there is no order passed by the WTM of SEBI.

9. Thus, it is evident that the WTM of SEBI permitted the Chief General Manager to issue a letter to the appellant that the representation made by the appellant has already been disposed off by the WTM of SEBI, when in fact no order was passed by the WTM of SEBI.

10. In these circumstances, it is apparent that the WTM of SEBI sought to represent that he has already passed an order, when in fact there was no order passed by the WTM of SEBI.

11. As per the order passed by this Tribunal on May 6, 2016, the WTM of SEBI was required to pass an order by June 24, 2016. Accordingly, having heard the appellant on June 21, 2016, the WTM of SEBI was duty bound to pass an order by June 24, 2016. If for any administrative

constraints it was not possible to pass an order within the stipulated time, then the WTM of SEBI ought to have sought extension of time, which the WTM of SEBI has failed to do. Instead, the WTM of SEBI resorted to a totally impermissible mode of representing that an order has been passed when in fact no order was passed by him. In such a case, informing the party that an order disposing of the representation is already passed, without actually passing an order, is nothing but an attempt to mislead in the matter. We strongly condemn the irresponsible approach adopted in the matter.

12. Since the WTM of SEBI has not passed any order, we would have directed the WTM of SEBI who had heard the appellant on June 21, 2016 to pass an order immediately. However, we are informed that the said WTM of SEBI is travelling.

13. In these circumstances, we quash the letter issued by the Chief General Manager on July 8, 2016 and direct SEBI to assign the matter to any other responsible WTM of SEBI who shall pass an order on the representation of the appellant within two weeks from today after giving an opportunity of hearing to the appellant. It would be open for such WTM of SEBI to hear the representation of the appellant as also the representation made by the Respondent No. 2 together and pass appropriate order thereon.

14. Since we are distressed with the manner in which the WTM of SEBI has discharged his quasi judicial duties which is highly detrimental to the interests of the securities market, we direct the registry to forward a copy of this order to the Hon'ble Finance Minister and also to the Chairman of SEBI for information.

15. Since the appellant is made to run around on account of apathy on part of WTM of SEBI, we disposed of the appeal in the aforesaid terms subject to payment of costs quantified at ₹ 1 lac to be paid by SEBI to the appellant within one week from today.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

15.07.2016
Prepared & Compared by
PTM