BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Misc. Application No.43 of 2016
With
Misc. Application No.151 of 2015
And
Appeal No.180 of 2015

1.   Shree Sai Spaces Creations Ltd.
      Sai Villa Bungalow, CDC-50,
      Vir Sawarkar Road, Purna Nagar,
      Behind H.P. Petrol Pump,
      Chinchwad, Pune – 411 019.

2.   Suresh Lal Shrivastav
      Sai Villa Bungalow, CDC-50,
      Vir Sawarkar Road, Purna Nagar,
      Behind H.P. Petrol Pump,
      Chinchwad, Pune – 411 019.

3.   Ms. Laxmi Suresh Lal Shrivastav
      Sai Villa Bungalow, CDC-50,
      Vir Sawarkar Road, Purna Nagar,
      Behind H.P. Petrol Pump,
      Chinchwad, Pune – 411 019.

4.   Ritesh Kumar Shrivastav
      Sai Villa Bungalow, CDC-50,
      Vir Sawarkar Road, Purna Nagar,
      Behind H.P. Petrol Pump,
      Chinchwad, Pune – 411 019.

5.   Vivek Kumar Shrivastav
      Sai Villa Bungalow, CDC-50,
      Vir Sawarkar Road, Purna Nagar,
      Behind H.P. Petrol Pump,
      Chinchwad, Pune – 411 019.

6.   Rajkumar Laxman Konde
      PL No.312, SCT-28, PL No.06,
      Pradhikaran Nigadi,
      Pune – 411 044.   … Appellants

Versus

Securities and Exchange Board of India
having its registered office at
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.   … Respondent

Mr. Sharan Jagtiani a/w Mr. Sukrut Mahatre, Advocates i/b Mindspright
Legal for Appellants.

Mr. Vikram Nankani, Senior Advocate a/w Mr. Tomu Francis, Advocate for
the Respondent.

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 is filed to challenge the order passed by the Whole Time

Member of Securities and Exchange Board of India ("WTM of SEBI" for short)

on 24th November, 2014. By the said order, it is held that the schemes floated

by the appellants constitute Collective Investment Scheme ("CIS" for short)

under the SEBI (Collective Investment Scheme) Regulations, 1999 ("CIS

Regulations" for short) and the appellants, inter alia, have been directed to

refund the monies collected by the company under the schemes with returns

which are due to its investors as per the terms of offer within the time

stipulated therein.   Appellants have filed Misc. Application No.151 of 2015

seeking stay of order dated 24th November, 2014.

2.   During the pendency of the appeal, Recovery Officer of SEBI issued a

recovery certificate on 24th February, 2016, wherein it is stated that as the

appellants have not taken any steps to refund the amounts to the investors as

per the order dated 24th November, 2014, the appellants are liable to pay Rs.39,22,03,162 and with a view to protect the interests of investors, it is stated that the assets of the appellants have been attached. Appellants have filed Misc. Application No.43 of 2016 seeking stay of the recovery certificate inter alia on the ground that the refundable amount quantified under the recovery certificate is incorrect. By our order dated 11th March 2016, we had directed that no coercive steps shall be taken to implement the impugned order till the next date of hearing and that order has been continued from time to time.

3. It is not in dispute, that the Recovery Officer of SEBI has considered the grievance of the appellants and has agreed to amend the recovery certificate by recording that the amount refundable by the appellants to the investors would be Rs.3,92,20,316 and not Rs.39,22,03,162 as originally stated in the Recovery Certificate dated 24th February 2016. It is also not in dispute, that during the pendency of the appeal, the appellants with a view to put an end to the controversy have agreed to implement the impugned order by refunding the amount to the investors and accordingly the Recovery Officer of SEBI has granted three weeks time to the appellants to submit a proposal setting out the modalities for refunding the amount to the investors.

4. Since the appellants, during the pendency of the appeal, have agreed to implement the impugned order, the basic dispute raised in the appeal that the schemes floated by the appellants are not covered under CIS becomes academic. In such a case, depending on the proposal to be submitted by the appellants, the dispute if any, will only be in relation to the implementation of the impugned order.

5.   In these circumstances, we pass the following order:-

(a)   In view of the appellants agreeing to implement the impugned order, the question as to whether the schemes floated by the appellants are covered under CIS or not, becomes academic and hence need not be answered in this appeal.

(b)   If the proposal to be submitted by the appellants within three weeks as directed by the Recovery Officer, is accepted, then the impugned order shall be implemented as per the approved proposal.

(c)   If the proposal submitted by the appellants is rejected, then the appellants shall be at liberty to challenge the same before his Tribunal.

(d)   If the appellants submit the proposal for implementation of the impugned order within the stipulated time, the Recovery Officer of SEBI shall consider the said proposal of the appellants within one week of receiving the proposal. In the event of the Recovery Officer rejecting/modifying the proposal, in order to enable the appellants to move this Tribunal, we extend the interim order granted on 11th March 2016 for a period of six weeks from today.

(e)   It is made clear that if the appellants fail to submit the proposal for implementation of the impugned order within the stipulated time or fail to implement the proposal as approved by the Recovery Officer or as directed by this Tribunal, then SEBI shall

be entitled to implement the impugned order in toto as more particularly set out in para 9 & 11 of the impugned order.

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

7.   In view of the disposal of appeal, two Misc. Applications filed by the appellants become infructuous and hence those Misc. Applications are disposed of as infructuous.

                                        Sd/-
                                        Justice J.P. Devadhar
                                        Presiding Officer

                                        Sd/-
                                        Jog Singh
                                        Member

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

20/04/2016
Prepared & compared by ddg