

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 20.06.2017

Appeal No. 260 of 2016

Mr. Girishchandra Mukundram Baluni
L-112, Swatantra Senaninagar,
Near Akhbarnagar, New Dadaj,
Ahmedabad – 380013.

...Appellant

Versus

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

...Respondent

Ms. Vaneesa Agrawal, Advocate with Ms. Surbhi Purohit, Advocate i/b
Suvan Law Advisors for the Appellant.

Mr. Aditya Chitale, Advocate with Mr. Pulkit Sukhramani and Mr. Siddha
Pamecha, Advocates i/b The Law Point for the Respondent.

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

Per : Dr. C.KG. Nair, Member (Oral)

1. Appellant is aggrieved by the order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) dated June 2, 2016. By the said order the appellant, along with other Directors and the Company (M/s. Neesa Technologies Limited) have been directed to refund jointly and severally the monies collected by means of Non-convertible Debentures (NCDs) issued by the Company. The appellant (and others) are also restrained from dealing in securities from the date of the order till the expiry of 4 years from the date of completion of refund of the monies collected from the investors.

2. The decision of the Board of Directors for issuing the NCDs was taken on November 21, 2011 though the actual issue was done in multiple

tranches between April 8, 2013 and August 22, 2013. Ms. Vaneesa Agrawal, learned counsel for the appellant, stated that the appeal filed by the Company has been dismissed by this Tribunal vide its order dated April 28, 2017 (Appeal No. 311 of 2016). In the present appeal the question raised is, why all Directors of the Company including the appellant are held responsible for refund of the monies collected from the investors. The appellant herein was a Director from January 21, 2014 to March 30, 2014, for less than three months. Though he was a Director earlier during September 12, 2011 – April 24, 2012 he did not participate in the meeting wherein decision to issue NCDs was taken. Further, when NCDs were issued and money collected between April 8, 2013 to August 22, 2013 the appellant was not a Director in the company. Though he rejoined the Company on January 21, 2014, he resigned on March 30, 2014. Accordingly, the appellant herein had no role in the collection of money though issue of NCDs.

3. The learned counsel for the appellant further argued that in the case of a similarly placed Director, Shri Nimain Charan Biswal, this Tribunal had remanded the matter to SEBI to pass a fresh order vide order dated July 14, 2016 (Appeal No. 204 of 2016). SEBI vide its order dated September 7, 2016 held that Shri Nimain Biswal was not liable for the violations committed by the company and certain Directors because he was not a Director when the NCDs were issued and therefore discharged him from any liabilities. Since the present appellant's case is similar to that of Shri Biswal, he should also get the same benefit.

4. Learned counsel for SEBI Shri Aditya Chitale submitted that in the case of the appellant, unlike the case of Shri Biswal, there is a prior period of Directorship during September 12, 2011 – April 24, 2012 during which approval for issue of NCDs was done on November 21, 2011. Moreover,

though it is stated by the appellant that he resigned from the second stint of Directorship on March 30, 2014 as per records available with the Registrar he continues to be a Director and as such it is continuing liability.

5. The impugned order has not clearly stated whether the appellant has been found guilty on account of his role as Director during earlier period (i.e. September 12, 2011 – April 24, 2012) or subsequent to his rejoining on January 21, 2014. We also note from the statement given by the appellant relating to the tenure of various Directors including the appellant herein that many Directors would join for a short period then resign and thereafter rejoined again after sometime. Whether this is a part of a strategy also needs to be considered. Therefore, in the facts and circumstances of the matter we set aside the impugned order dated June 2, 2016 qua the appellant and direct SEBI to consider the matter afresh and pass fresh order on merit as expeditiously as possible and in any event within a period of three months from today.

6. 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/-
Dr. C.K.G. Nair
Member

20.06.2017
Prepared and compared by:
msb