

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 20.12.2017

Appeal No. 268 of 2016

1. Krishnendu Das
21/1, Flat A-4, Central Park,
Jadavpur,
Kolkata – 700032.
West Bengal.
2. Sugata Bal Das
21/1, Flat A-4, Central Park,
Jadavpur,
Kolkata – 700032.
West Bengal.

...Appellants

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. Registrar of Companies
Nizam Palace, 2nd MSO Building,
2nd Floor, 234/4, AJC Bose Road,
Kolkata – 700 020, West Bengal.
3. GBC Enterprise Limited
Stephen House, Room No. 106,
6th Floor, 4, BBD Bagh (East),
Kolkata – 700 001.

...Respondents

Mr. Ranit Basu, Advocate i/b Triptymoy Talukdar & Co. for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Vivek Shah, Advocate for
Respondent No. 1.

None for Respondent Nos. 2 & 3.

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

Per : Justice J.P. Devadhar (Oral)

1. Appellants are aggrieved by the order passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) on May 6, 2016. By the said order GBC Enterprise Limited and its Directors including the appellants are, inter alia, directed to refund the money collected from the investors with interest at 15% per annum from the date of collecting the amount till the date of repayment.

2. Counsel for the appellants while admitting the liability to refund the amounts to the investors submits that the Company itself is directed to be wound up by an order passed by the Hon'ble High Court of Calcutta on November 15, 2015 and therefore the impugned order passed by SEBI cannot be enforced against the appellants.

3. We see no merit in the above contention.

4. Admittedly, the appellants were the Managing Director and Director of the Company when the amounts were collected by the Company from the investors.

5. This Tribunal in the case of Manoj Agarwal vs SEBI (Appeal No. 66 of 2016 decided on 14.07.2017) has held that all the Directors of the Company are also jointly and severally liable to refund the amount to the investors along with the Company. Accordingly, appellants who were the Managing Director and Director of the Company cannot escape joint and several liabilities to refund the amount to the investors.

6. Fact that the Company is directed to be wound up would neither absolve the Company nor absolve the Directors of their obligation to refund the amount to the investors. While the liquidator would liquidate the assets

of the Company, inter alia, for paying the dues of the investors, order passed against the appellants under the securities laws can be enforced by SEBI.

7. In these circumstances, we see no merit in this appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

20.12.2017

Prepared and compared by:msb

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 12.01.2018

Appeal No. 268 of 2016

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21/1, Flat A-4, Central Park,
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West Bengal.

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Mr. Ranit Basu, Advocate i/b Triptymoy Talukdar & Co. for Appellants.

Mr. Vivek Shah, Advocate i/b ELP for Respondent No. 1.

None for Respondent Nos. 2 & 3.

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

Per : Justice J.P. Devadhar (Oral)

1. By a praecipe it is brought to our notice that in our order passed in aforesaid appeal on December 20, 2017, in paragraph 2, inadvertently the words 'November 15, 2015' are typed instead of the words 'October 15, 2015'. Above inadvertent error be corrected accordingly.
2. Praecipe filed by respondent is disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

12.01.2018

Prepared and compared by:msb