BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 8.8.2019

Misc. Application No.286 of 2018
And
Appeal No.392 of 2017

Satyajeet Kumar Singh
9/6, Haricharan Banerjee Street,
Belurmath, Howrah – 711202. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400051. …… Respondent

Mr. Mukesh Sukhija, Advocate with Ms. Pooja Bhatia, PCS for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Abhiraj Arora and Mr. Vivek Shah, Advocate i/b. ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi (Oral)

1. Aggrieved by the impugned order of the respondent Securities and Exchange Board of India (hereinafter referred to as "SEBI') dated 8th November, 2017 of issuing direction under Section 11, 11(4), 11A and 11B of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') the present appeal is preferred by appellant Satyajeet Kumar Singh. The present appellant, the public Limited company RTC Properties India Limited (hereinafter referred to as 'RTC/Company) and other directors were jointly and severally directed to refund the money collected during their respective period of their directorship by giving inventory etc as detailed in the order. All of them were also restrained from accessing and dealing securities market for a period of four years.

2. The facts on record would show that RTC during the period 2009-2012 had issued various public securities (wrongly described as Redeemable Preference Shares (RPS) as three RPS only were issued in 2009-2010 while rest of the securities were the public issue of securities for the year 2010-2012). The issuing of public securities was found to be in violation of the requirement under Section 60, read with Section 23(6), Section 56, Section 73(1), 73(2) and 73(3) etc of the SEBI Act in respect of the offer of the public securities.

The appellant submits that he is not concerned with issue of public securities. His sole contention before the

WTM who had passed the impugned order was that he was not director of the Company during the relevant period. According to him, while the Company was incorporated on 12th February, 2010 at that time he became the promoter of the Company on the persuasion of another director/noticee Mr. Karunamay Roy. However, finding some suspicious transaction of the Company he had resigned as a director of the Company on 19th June, 2010. Mr. Karunamay Roy told him to tender the resignation undated so that he would be required to submit it with the Registrar of Companies within eight days of signature. Said Karunamay Roy however later on put the date of resignation letter as 4th April, 2011 which could be found on the portal of ROC. Therefore, the appellant cannot be held liable for the subsequent acts of the Company from the date of actual resignation i.e.19th of June, 2019. In support of his contention he had placed on record the copy of the resignation with him which bears the hand written date as 19th June, 2010. Further, he also relied on the preliminary investigation made by the Joint Director cum Inspecting Officer of Ministry of Corporate Affairs dated 1st May, 2017 (Annexure A15). This report inter alia would show that the appellant's case that he had actually resigned as a director from the Company on 19th June, 2010 was accepted. As per MCA record the tenure of the appellant was however till 4th April, 2011.

3. Learned counsel for the appellant submitted before us that after the investigation by the Department of Corporate Affairs prosecution is launched against the Company and its directors. In view of the investigation report the appellant is not arrayed as accused in the case. He additionally points out the copy of the Balance sheet filed on record to show that though the online filing would show that the present appellant has signed the Balance sheet the hard copy of the same would show a different signature than the normal signature of the appellant.

On the other hand, learned counsel for the respondent submits that the MCA records has presumptive value and merely because during the preliminary investigation the officer did not find any material against the present appellant, would not mean that the appellant was not a promoter of the Company during the relevant period. During the course of the hearing he filed a copy of the financial investigation report dated 24th July, 2018 issued by the Joint Director in the Ministry of Corporate Affairs. Upon reading of the said report it is clear that as regards non disclosure of Key Managerial Personnel for the year 2009-2010 the present appellant was found to be in violation to that extent only. But the case of the appellant with regard his resignation was accepted. Not only this the copy of the criminal complaint filed by the Registrar of Companies in the Court of second Special Judge Kolkata - Annexure A2 to rejoinder affidavit would show that the present appellant was not arrayed as accused in the case arising out of the present episode.

4. Upon hearing both the sides in our view while the Department of Company Affairs has come to the conclusion that the present appellant is not liable for the acts of issuing public securities and other misdemeanor, the respondent SEBI relied only on the portal of ROC to draw the presumption that the present appellant was director of the Company till 4th April, 2011. The presumption that has arisen from of the record of the ROC clearly stands rebutted in view of the investigation and ultimate launching of prosecution by ROC itself. In that view of the matter the order as against the present appellant passed by the WTM cannot be sustained.

5. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed in so far as the appellant is concerned. No order as to costs. The Misc. Application no.286 of 2018 for interim relief becomes infructuous and is also disposed of.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

8.8.2019
Prepared and compared by
RHN