BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 20.07.2022
Date of Decision: 26.07.2022

Appeal No. 71 of 2022

Samsher Ranjit Garud
R-4, 18th Floor, Palm Springs,
Off. GD Somani Marg,
Cuffe Parade,
Mumbai- 400 005 …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

Mr. Nausher Kolhi, Advocate i/b Mr. Vignesh Iyer, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Abhiraj Arora and Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated January 20, 2022 passed by the Whole Time Member

("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) whereby the appellant who was noticee no. 3 was restrained from accessing the securities market for a period of six (6) months and was also imposed a penalty of Rs. 1,12,500/-.

2. The brief facts leading to the filing of the present appeal is, that the appellant was appointed as an Independent Director in Landmarc Leisure Corporation Ltd. ("LLCL") from March 29, 2010 to October 10, 2016. The alleged violation in the show cause notice is categorized as under:

> *"A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts;*
>
> *B. Non-furnishing of information/ non-cooperation by LLCL;*
>
> *C. Violation of provisions of PFUTP Regulations, 2003."*

3. The WTM after considering the material evidence on record and after considering the reply of the appellant and other noticees found that the Company and its Directors had violated various provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" for convenience) due to misrepresentation

including of financials and misuse of funds/ books of accounts and also violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience).

4. We have heard Shri Nausher Kolhi, the learned counsel for the appellant and Shri Akash Rebello, the learned counsel for the respondent.

5. The contention of the appellant is, that he was an Independent Director and was not in-charge of day to day affairs nor was involved in the decision making process of the Company as he was neither a promoter or a shareholder or a connected person. It was specifically contended that the allegations made in the show cause notice with regard to misrepresentation in the financial statement of the Company regarding the deposits made by the Company were all made prior to the appellant’s joining as an Independent Director in 2010 and, consequently, the appellant had no role to play with regard to the violation of the provisions of the LODR Regulations or of the PFUTP Regulations as the violation so

committed by the Company had occurred prior to the appellants' joining as an Independent Director.

6. Inspite of finding that the appellant was not privy to the alleged violations at the time when the violations were committed as he was not a Director at that moment of time, the WTM, nonetheless, proceeded to penalize him on the ground that the said violations were continued to be shown in the annual reports for the financial year 2015-2016, 2016-2017, 2017-2018 and, therefore, it was the fiduciary responsibility of the appellant as a Director to exercise due care and ensure that the financial statements were not misrepresented.

7. Admittedly, the appellant was appointed as an Independent Director on March 29, 2010 and continued till October 10, 2016. The irregularities committed by the Company and the misrepresentation made was prior to March 29, 2010. This fact is admitted by the respondent. Thus, penalizing the appellant of some violations committed by the Company before he was inducted as an Independent Director cannot survive. The appellant cannot be penalized of any violation committed by the Company prior to the date of his appointment.

8. In this regard, Section 27 of the SEBI Act, 1992 is extracted hereunder:-

> ***"Contravention by companies.***
>
> ***27.*** *(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where a contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation: For the purposes of this section,—*
> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*

(b) "director", in relation to a firm, means a partner in the firm."

9. A perusal of the aforesaid provision indicates that if any contravention is committed by a Company then every person who was responsible for the conduct of the business of the Company shall be liable to be proceeded against and punished accordingly. The word "offence" was substituted by the word "contravention" w.e.f. March 08, 2019. Be that as it may. The purpose of Section 27 of the SEBI Act is that where a contravention/ offence is made by a Company then proceedings can be initiated against that person who was responsible to the Company for the conduct of the business of the Company. In the instant case, the appellant was not appointed as a Director and, therefore, was not responsible to the Company for the conduct of the business of the Company which had occurred prior to his tenure.

10. In view of the aforesaid, the appellant cannot be held responsible for any violation committed by the Company prior to his appointment as a Director as he was not responsible for the affairs of the Company during the period when the violation was committed.

11. Viewed from this angle, the impugned order passed by the WTM in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed.

12. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

26.07.2022
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