

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 25.7.2023

Date of Decision: 4.8.2023

Misc. Application No.301 of 2021

And

Appeal No.601 of 2021

1. Late Sh. Y.N. Saxena (Dead)
Through Legal Representative No.1
Ms. Madhavi S. Bhickta
D/o. Late Sh. Y.N. Saxena
MG-31, Sector-C, Aliganj,
Lucknow – 226024, Uttar Pradesh.
2. Late Sh. Y.N. Saxena (Dead)
Through Legal Representative No.2
Dr. Chhavi Srivastava
D/o. Late Sh. Y.N. Saxena
MG-31, Sector-C, Shail Vihar,
Aliganj, Lucknow – 226024,
Uttar Pradesh.
3. Late Sh. Y.N. Saxena (Dead)
Through Legal Representative No.3
Ms. Rashmi Sahni
D/o. Late Sh. Y.N. Saxena
MG-31, Sector-C, Aliganj,
Lucknow – 226024, Uttar Pradesh.
4. Late Sh. Y.N. Saxena (Dead)
Through Legal Representative No.4
Ms. Anupam Kulshrehtha
D/o. Late Sh. Y.N. Saxena
MG-31, Sector-C, Aliganj,

Lucknow – 226024, Uttar Pradesh. ...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051. ...Respondent

Mr. Anshumaan Sahni, Advocate with Ms. Nupur Shah and
Mr. Amir Arsiwala, Advocates for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav
Misra, Ms. Shilpa Joshi and Mr. Harshvardhan Melanta,
Advocates i/b. M/s. K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.
2. The appellants have challenged the order dated 31st October, 2018 cum show cause notice as well as the order dated 21st January, 2020 passed by the Whole Time

Member (hereinafter referred to as the 'WTM') directing the appellants as legal representatives of Late Shri Y.N. Saxena, Director in Sahara India Commercial Corporation Ltd. (hereinafter referred to as 'SICCL/the Company') to discharge the liability of their late father under Section 73(2) and 62(1) of the Companies Act, 1956.

3. The facts leading to the filing of the present appeal is, that a show cause notice dated 20th February, 2015 was issued to SICCL and its Directors for violating the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the Companies Act, 1956 (hereinafter referred to as the 'Companies Act'), Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as the 'ICDR Regulations') and the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (hereinafter referred to as the 'Merchant Bankers Regulations').

4. It transpires that SICCL mobilized from the public, through the offer of Optionally Fully Convertible Debentures (hereinafter referred to as ‘OFCDs’) of SICCL and raised a sum of Rs.14,106 crores from 1,98,39,939 allottees in violation of the SEBI Act, the Companies Act and the ICDR Regulations etc. The show cause notice was issued against the Company and its Directors on 20th February, 2015 including Late Shri Y.N. Saxena, father of the present appellants. The WTM after considering the material evidence on record passed an order dated 31st October, 2018 issuing various directions under Section 11 and 11B directing the Company and its Directors including the father of the appellants to refund the money collected from the investors as they were found to be in violation of the SEBI Act and the Companies Act. The directions so issued are as under:

“87. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11,

11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

- (a) *SICCL, Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa as per applicable law, Legal Representatives of Late Shri P.S. Mishra as per applicable law, Legal Representatives of Late Shri Y.N. Saxena as per applicable law, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen. (Retd.) A.S. Rao, and Shri Ranoj Das Gupta shall jointly and severally, forthwith refund the money collected by the Company (SICCL for money collected till date and directors for the moneys collected during their respective period of directorship) through the issuance of OFCDs including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.*
- (b) *Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee and Shri C.B. Thapa and directors namely, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa as per applicable law, Legal Representatives of Late Shri P.S. Mishra as per applicable law, Legal Representatives of Late Shri Y.N. Saxena as per applicable law, Lt. Gen. (Retd.) A.S. Rao and Shri Ranoj Das Gupta jointly and severally are directed to deposit the money collected by the Company through the issuance of OFCDs along with the interest on*

the aforesaid amount calculated with an interest of 15% per annum, from the eighth day of collection of funds, till the date of actual payment, in an Escrow Account opened with a nationalized Bank. Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee and Shri C.B. Thapa and directors namely, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa as per applicable law, Legal Representatives of Late Shri P.S. Mishra as per applicable law, Legal Representatives of Late Shri Y.N. Saxena as per applicable law, Lt. Gen. (Retd.) A.S. Rao and Shri Ranoj Das Gupta are directed to compensate from the said deposit the investors in accordance with their subscription money along with interest.

- (c) The repayments, compensation amount and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.*
- (d) If the Company had repaid the investors as per their submissions as per section 73(2) of the Companies Act, the above directions in (a) and (b) shall be applicable as modified herein, for the amounts claimed to have been returned to the investors: Such prior repayments should have been made by the Company as per the requirements laid down in paragraph 87(c) above and the same shall be certified by peer reviewed Chartered Accountants, as directed in paragraph 87(j) below.*

- (e) *Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen. (Retd.) A.S. Rao, Shri Ranoj Das Gupta, Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee and Shri C.B. Thapa are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form. Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa, Late Shri P.S. Mishra, Late Shri Y.N. Saxena as per applicable law are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/ shares/securities, if held in physical form and demat form, inherited from the Late Lt. Col. (Retd) D. S. Thapa, Late Shri P.S. Mishra, Late Shri Y.N. Saxena respectively.*
- (f) *SICCL is directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.*
- (g) *In view of the order of Hon'ble Supreme court mentioned at paragraph 86, SICCL and Shri Subrata Roy Sahara are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in the SEBI Sahara Refund Account. Such proceeds shall be*

utilized, with the permission of Hon'ble Supreme Court of India, for the purpose of making refund/repayment to the investors of SICCL.

- (h) *Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen. (Retd.) A.S. Rao, Shri Ranoj Das Gupta, Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee and Shri C.B. Thapa are prevented from selling their assets, properties and holding of mutual funds/ shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment/ payment as directed above is made.*
- (i) *SICCL, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen. (Retd.) A.S. Rao, Shri Ranoj Das Gupta, Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad, Shri A.N. Mukherjee, Shri C.B. Thapa, Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa as per applicable law, Legal Representatives of Late Shri P.S. Mishra as per applicable law, Legal Representatives of Late Shri Y.N. Saxena as per applicable law shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and*

contact details, within 15 days of this Order coming into effect.

- (j) *After completing the aforesaid repayments, SICCL, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen.(Retd.) A.S. Rao, Shri Ranoj Das Gupta, Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee, Shri C.B. Thapa, Legal Representatives of Late Lt. Col. (Retd) D. S. Thapa as per applicable law, Legal Representatives of Late Shri P.S. Mishra as per applicable law, Legal Representatives of Late Shri Y.N. Saxena as per applicable law, shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants Of India ("ICAI") holding such certificate.*
- (k) *In case of failure of respective entities to repay as per applicable law as per the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from respective entities to repay, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

- (l) *SICCL, Shri Subrata Roy Sahara, Shri O.P. Shrivastava, Shri J.B. Roy, Lt. Gen. (Retd.) A.S. Rao, Shri Ranoj Das Gupta are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.*
- (m) *Shri C. B. Thapa, Shri I. Ahmad, Shri O.P. Dixit, Shri Asad Ahmad and Shri A.N. Mukherjee are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner till the expiry of 4 (four) years from the date of completion of compensation to investors as directed above. The above said persons are also restrained from associating themselves with*

any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this order till the expiry of 4 (four) years from the date of completion of compensation to investors as directed above.

- (n) *M/s Sahara India is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. It is also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this Order.*
- (o) *The entities who are subject to the order of Hon'ble Supreme Court of India mentioned in paragraph 86 of this order shall, in accordance with the directions of the said order deposit the sale proceeds of the assets in the SEBI Sahara Refund Fund. The said fund shall be utilised for the repayment of the investors of this Company with the prior permission of the Hon'ble Supreme Court.*

88. The above directions shall come into force with immediate effect subject to paragraph 86.

89. As noted above, Shri Y.N. Saxena has expired on 1.11.2013, Shri P.S. Mishra has expired on 1.07.2012 and Lt. Col. (Retd.) D.S. Thapa expired on 5.9.2005. However, their legal representatives have not been brought on record. Therefore, the directions against Shri Y.N. Saxena, Shri P.S. Mishra and Lt. Col. (Retd.) D.S. Thapa are made contingent on SEBI serving this order to their legal representatives. Therefore, this order will take effect as final order against Legal Representatives of Shri Y.N. Saxena, Shri P.S. Mishra and Lt. Col. (Retd.) D.S. Thapa only on the expiry of 60 days from the date of service of this order to their Legal Representatives, unless legal representatives of Shri Y.N. Saxena, Shri P.S. Mishra and Lt. Col. (Retd.) D.S. Thapa, file reply or seek, by a written request, personal hearing receivable by SEBI within such period of 60 days from the date of service of this order. If reply/request for personal hearing is filed by legal representatives of Shri Y.N. Saxena, Shri P.S. Mishra and Lt. Col. (Retd.) D.S. Thapa, the directions passed herein against their Legal Representatives shall be made applicable subject to the determination on the objections/reply. In the meantime, the Legal Representatives of Shri Y.N. Saxena, Shri P.S. Mishra and Lt. Col. (Retd.) D.S. Thapa shall not buy, sell or otherwise deal in such manner for creation of any third party rights in regards the property so inherited, from the date of this order till the disposal of the objections/reply, if such objections or reply are filed, or till the date of discharge of the liability of refund, if no objections/replies are filed.”

5. The directions was that the Company and its Directors including Late Shri Y.N. Saxena shall jointly and severally refund the money collected by the Company through OFCDs along with interest at the rate of 15% p.a.
6. The WTM while passing the impugned order found that Late Shri Y.N. Saxena had died on 1st November, 2013 and instead of abating the proceedings insofar as Shri Y.N. Saxena was concerned, the WTM directed that the said order, namely, the order dated 31st October, 2018 would be treated as a show cause notice and the directions to refund the money would be contingent upon any reply/objection being filed the by the legal representatives of Late Shri Y.N. Saxena.
7. Based on the aforesaid order, the legal representatives were duly served with the order dated 31st October, 2018 and after considering the submissions the impugned order was passed on 21st January, 2020 directing refund of money collected by the Company.

8. We have heard Mr. Anshumaan Sahni, Advocate assisted by Ms. Nupur Shah and Mr. Amir Arsiwala, Advocates for the appellants and Mr. Sumit Rai, Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi and Mr. Harshvardhan Melanta, Advocates for the Respondent.
9. The admitted facts before us is, that Late Shri Y.N. Saxena was a Director/Non-Executive Director in SICCL. He died on 1st November, 2013. The show cause notice was issued against a dead person, namely, Shri Y.N. Saxena on 20th February, 2015, much after the death of Shri Y.N. Saxena. An order dated 31st October, 2018 was passed against Shri Y.N. Saxena indicting him and other Directors along with the Company for violation of the Companies Act and directing them to refund the money collected by the Company. The WTM while passing the order dated 31st October, 2018 was aware that Late Shri Y.N. Saxena had died.

10. Benjamin Franklin in 1789 wrote “nothing is certain except death and taxes”. This was referred to by Justice Shri Nariman in *Shabina Abraham and Ors. vs. CCE and Customs, (2015) 10 SCC 770*, wherein the Supreme Court held that “*to tax the dead is a contradiction in terms. Tax Laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person’s property*”.
11. The issue before us is, whether the respondents are justified in recovering the amount collected by the Company from a dead person’s property in the form of his estate without there being any provision in the Act. Another question which arises for consideration is, whether proceedings can continue against the legal representative after he is dead under the SEBI Act.
12. In our opinion, the answer to the aforesaid issues is ‘No’. In the instant case, Shri Y.N. Saxena died in 2013. The show cause notice was issued in 2015 much after his death. The proceedings which were initiated by the

WTM and which culminated in the order dated 31st October, 2018 was an order passed against a dead man, which is wholly illegal and impermissible in law. As soon as the WTM came to know about the death of a noticee, namely, Shri Y.N. Saxena the proceedings should have abated there and then and could not have continued against him. In the instant case, inspite of having knowledge that Shri Y.N. Saxena had died the WTM chose to continue with the proceedings. The order passed by the WTM is a non est order. The order is a nullity in the eyes of law. There is no provision in the SEBI Act to continue proceedings against a dead person or against the legal representatives/heirs of the deceased. In the absence of any provision, proceedings could not continue after the death of the noticee.

13. In *CIT vs. Mr. Ellis C. Reid, AIR 1931 Bom.333*, the Bombay High Court held that where an assessee failed to make a return under Section 22(2) of the Income Tax Act, it was not legal for the assessing officer to make an

assessment under Section 23(4) after the assessee's death. The proceedings abate since there is no provision in the Act to recover the monies from the estate of the deceased. The said decision of the Bombay High Court was affirmed in *CIT, Bombay City vs. Amarchand N. Shroff, (1963) SCR Supl.1 SCC 699*, wherein the Supreme Court held that an individual assessee has to be a living person and there can be no assessment on a dead person. It was again reaffirmed by the Supreme Court in *CIT vs. James Anderson, AIR (1964) SC 1761*. As recent in 2015, the aforesaid decision of the Bombay High Court was again reaffirmed in *Shabina Abraham and Ors. vs. CCE and Customs, (2015) 10 SCC 770*, wherein the Supreme Court framed the following issues which arose for consideration, namely,

“This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against

the legal representatives/estate of a sole proprietor/manufacturer after he is dead.”

14. The Supreme Court held that since the taxing provision does not provide for recovery of money from the dead man's property the same cannot be recovered from the legal representatives of the deceased. Further, since no assessment was made during the life time of the deceased, the assessment proceedings cannot continue against the legal representatives after the death of the deceased.
15. The said decision is squarely applicable in the instant case. Shri Y.N. Saxena died in 2013 and no proceedings were initiated during his life time. The show cause notice was issued in 2015 when he had already died. The proceedings so initiated by the WTM vide his notice of 2015 was non est and the order cum show cause notice that was passed in the year 2018 against the legal representative of the deceased was a nullity in the eyes of law.

16. Since no proceedings were initiated against Shri Saxena during his life time, proceedings against the legal representatives could not be initiated nor continued and, therefore, the impugned order is a nullity in the eyes of law and cannot be sustained.

17. Section 11B gives power to the WTM to issue directions. For facility, Section 11B is extracted hereunder:

“Power to issue directions and levy penalty.”

1. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,-

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.

Explanation.- For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”

18. A perusal of the aforesaid indicates that the directions can be issued to any persons or class of persons referred to in Section 12 or associated with the securities market. The ‘class of persons’ has been specified in Section 12

but the term 'person' has not been defined under the SEBI Act.

19. Section 3(42) of the General Clause Act, 1897 defines 'person' to mean that '*persons shall include any Company or association or body of individuals, whether incorporated or not*'.

20. The aforesaid definition clearly indicates that it does not include legal representative of persons who are since deceased and, therefore, we are of a definite opinion that in the absence of any provision in the SEBI Act to recover monies from the estate of the deceased, no such directions can be issued to the legal representatives of the deceased. Unless and until there is a specific provision to recover the monies under the Act no directions can be issued to recover the monies from the estate of the deceased. We are further of the opinion that the money was to be recovered from the Company. Upon the death of the Director assuming that he was an officer in default as per 5(g) of the Companies Act, the right to sue will not

survive against the legal representatives in case of personal actions, i.e, the actions where the relief sought is personal to the deceased. In this regard, the maxim '*actio personalis moritur cum persona*' is fully applicable, namely, that personal action dies with the death of the person and the right to recover survives only when it is crystallized before the death of the deceased.

21. In the light of the aforesaid, we are of the view that the finding of the WTM that the show cause notice is valid as it did not have the knowledge of the death of Shri Y.N. Saxena and that the proceedings were not null and void is patently erroneous and against misappreciation of law. The finding that no liability was determined against Shri Y.N. Saxena is patently erroneous in as much as the order dated 31st October, 2018 clearly indicts and directs the Company and its Directors including Shri Y.N. Saxena to refund the money. Post decisional hearing to the legal representatives cannot cure the initial defect of initiating proceedings against a dead person.

22. A feeble attempt was made by the respondent that proceedings could continue against the legal representative and the amount could be recovered under Section 28B of the SEBI Act. The argument is attractive but cannot be accepted. In this regard, Section 28B of the SEBI Act is extracted hereunder:

“28-B. Continuance of proceedings.-

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),-

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation - For the purposes of this section "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued."

23. A perusal of the proviso makes it clear that a legal representative shall only be liable to pay where the penalty has been imposed before the death of the deceased person. In the instant case, Shri Y.N. Saxena

died much earlier and the penalty has been imposed subsequently by the impugned order which is not permissible. Further, Section 28B was inserted by Act No.13 of 2018 with effect from 8th March, 2019. The impugned order is dated 31st October, 2018 and, therefore, Section 28B will not apply in the instant case.

24. In view of the aforesaid, continuation of proceedings against the legal representatives of Shri Y.N. Saxena was without any authority of law and a misuse of the process of the law. We find that the WTM instead of abating the proceedings upon coming to know of the death of Shri Y.N. Saxena further restrained the legal representatives of the deceased from buying, selling or creating any third party rights of the property so inherited by them. Such direction in our opinion was totally perverse and, consequently, we are of the opinion that cost is liable to be imposed for the harassment caused to the legal representatives of the deceased.

25. In view of the aforesaid, the impugned order cum show cause notice dated 31st October, 2018, insofar as it relates to the appellants and the resultant order dated 21st January, 2020 passed by the WTM cannot be sustained and are quashed. The appeal is allowed with cost which we compute at Rs.5 lakhs which shall be paid by SEBI to the appellants within four weeks from today.

26. 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

Ms. Meera Swarup
Technical Member

4.8.2023

RHN