

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 12.6.2017
Date of Decision : 22.6.2017

Appeal No.94 of 2015

Nirmal Singh Bhangoo
Farm No.2, Creative Farm,
Near Parkland Retreat,
Silveroak Lane, Satbari,
South Delhi, Delhi – 110074.

...Appellant

Versus

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

...Respondent

Mr. Sameer Rohatgi, Advocate with Mr. Prakash Shah and Mr. Robin Shah,
Advocates i/b. Manish Jain, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Nirav Parmar and
Mr. Nishant Upadhyay, Advocates i/b. K. Ashar & Co. for the Respondent.

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

Per : Justice J.P. Devadhar

1. Appellant is 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 22nd August, 2014. By the said order PACL Ltd and its present and past directors including the appellant have been held guilty of running Collective Investment Scheme ('CIS' for convenience) in contravention of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) and Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 ('CIS Regulations, 1999' for short). By the said order, PACL Ltd. and its present directors have been directed to wind up all the existing CIS and refund the monies collected from the investors with promised returns. Moreover, the present and past directors including the appellant

have been restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market till all the Collective Investment Schemes of PACL Ltd. have been wound up and all the monies mobilised through such schemes have been refunded to the investors with returns which were due to them. Present appeal is filed by the appellant to challenge the direction issued against the appellant as a past director of PACL Ltd.

2. Appellant was a director of PACL Ltd. during the period from 3rd June, 1996 to 3rd February, 1998. During the said period PACL Ltd had floated certain schemes under which amounts were collected from investors with promised returns. Even after the appellant ceased to be a director of PACL Ltd., various schemes were floated by PACL Ltd and huge amounts were collected.

3. All the schemes run by PACL Ltd. from 1996 onwards were considered by SEBI to be CIS and accordingly proceedings were initiated against PACL Ltd. and its present and past directors including the appellant. On completion of the proceedings, impugned order was passed on 22.8.2014 holding that PACL Ltd and its present and past directors including the appellant have violated Section 12 (1B) of SEBI Act read with Regulations 5, 68 and 69 of CIS Regulations, 1999 and accordingly several directions have been issued against them under the SEBI Act.

4. Challenging the decision of SEBI dated 22.8.2014, PACL Ltd and its present directors had filed appeals before this Tribunal and all those appeals have been dismissed by this Tribunal on 12.8.2015. Thus, the decision of SEBI that PACL Ltd and its present directors have violated Section 12(1B) of SEBI Act read with Regulations 5, 68 and 69 of CIS Regulations, 1999 has been upheld by this Tribunal.

5. Present appeal filed by the appellant however, was not heard alongwith other appeals, because of the contention raised by the appellant that he ceased to be director of PACL Ltd even before the CIS Regulations, 1999 framed by SEBI came into force

on 15.10.1999 and therefore the appellant could not be said to have violated the CIS Regulations, 1999.

6. Counsel for the appellant submitted that as a director, the appellant was not involved with the day to day management and was merely carrying out his role as an advisor and therefore, for the violations committed by PACL Ltd and its present directors the appellant could not be held guilty of violating SEBI Act and the CIS Regulations, 1999. Moreover, the schemes run during the tenure of the appellant as director have already been closed and no outstanding liability existed on those schemes. In these circumstances, it is submitted that SEBI is not justified in issuing directions against the appellant. Apart from the above, it is submitted, that the appellant could not be said to have violated the CIS Regulations, as the appellant ceased to be director of PACL Ltd, even before CIS Regulations came into force.

7. Relying on a decision of the Apex Court in case of SEBI vs. Gaurav Varshney reported in (2016) 14 SCC 430 counsel for the appellant submitted that since PACL Ltd has been treated by SEBI to be an existing CIS, as held in the case of Gaurav Varshney, the appellant who had ceased to be director of PACL Ltd even before CIS Regulations came into force ought not to have been held guilty of violating the SEBI Act and the CIS Regulations, 1999. Accordingly, counsel for the appellant submitted that the directions issued against the appellant be quashed and set aside.

8. Counsel for SEBI, on the other hand, submitted that admittedly, appellant was a director of PACL Ltd when some of the CIS were floated and run by PACL Ltd. Since CIS was floated without obtaining registration from SEBI as stipulated under Section 12(1B) of the SEBI Act which came into force with effect from 25.1.1995, PACL Ltd and its directors including the appellant have been held guilty of violating Section 12(1B) of SEBI Act read with Regulations 5, 68 and 69 of CIS Regulations. As the decision of SEBI has already been upheld by this Tribunal qua PACL Ltd and its present directors it is submitted that the present appeal is liable to be dismissed.

9. Counsel for SEBI further submitted that the decision of the Apex Court in the case of Gaurav Varshney (supra) is distinguishable on facts. In that case SEBI had erroneously considered that the CIS run by the company in which Gaurav Varshney was the director was an existing CIS entitled to run CIS till the CIS Regulations were framed and as that company failed to apply for registration even after the CIS Regulations came into force, criminal proceedings were initiated against Gaurav Varshney as a director of the company, for violating the CIS Regulations. Since Gaurav Varshney had ceased to be a director of the company before the CIS Regulations came into force, Apex Court held that Gaurav Varshney could not be said to have failed to apply for registration under the CIS Regulations. Accordingly, the criminal proceedings initiated against Gaurav Varshney were quashed. In the present case, it is specifically held that PACL Ltd and its directors have violated Section 12(1B) of SEBI Act read with Regulations 5, 68 and 69 of the CIS Regulations. Accordingly, it is submitted by Counsel for SEBI that the decision of the Apex Court in case of Gaurav Varshney is distinguishable on facts, because, in the present case, directions are issued against the appellant, inter alia on the ground that the appellant is liable for violating Section 12(1B) of SEBI Act.

10. We have carefully considered the rival contentions.

11. It is relevant to note that SEBI had issued a common show cause notice to PACL Ltd and its present and past directors including the appellant on 14.6.2013 wherein it was alleged, firstly, that during the period from 30.5.1996 till 1.5.2009 several schemes run by PACL Ltd were in the nature of CIS and since the said CIS were run without obtaining registration from SEBI as contemplated under Section 12(1B) of SEBI Act which came into force with effect from 25.1.1995, PACL Ltd and its directors including the appellant have violated Section 12(1B) of SEBI Act. Secondly, it was alleged that even after the CIS Regulations, 1999 came into force, PACL Ltd was specifically called upon to apply for registration as CIS under the CIS

Regulations, however, PACL Ltd and its directors failed to apply for registration as provided under Regulation 5 and failed to obtain provisional registration as provided under Regulation 68 of the CIS Regulations, 1999. Thirdly, it was alleged that even after the CIS Regulations came into force, PACL Ltd had launched new schemes/plans without obtaining registration as CIS and thereby violated Regulation 69 of the CIS Regulations, 1999.

12. In para 34(w) of the impugned order, the WTM of SEBI has held that PACL Ltd. violated Section 12(1B) of SEBI Act read with Regulations 5, 68 and 69 of the CIS Regulations, 1999. In para 36(c) of the impugned order, the WTM of SEBI has held that for the aforesaid violations committed by PACL Ltd, the present and the past directors of PACL Ltd. including the appellant are liable. Thus, all the charges levelled against PACL Ltd have been held to be proved and accordingly directions have been issued to PACL Ltd and its present and past directors including the appellant.

13. In the present case, it is not in dispute that the appellant ceased to be a director of PACL Ltd. even before the CIS Regulations came into force and hence, there was no question of the appellant discharging any of the obligations set out in the CIS Regulations. In such a case, fact that PACL Ltd and its present directors failed to comply with the obligations set out in the CIS Regulations, 1999 could not be a ground to hold that the appellant is guilty of violating the CIS Regulations, 1999.

14. Fact that the appellant cannot be held guilty of violating the CIS Regulations would not mean that the appellant cannot be held guilty of violating Section 12(1B) of SEBI Act. Admittedly, the schemes run by PACL Ltd during the period when the appellant was a director, were without obtaining registration from SEBI as contemplated under Section 12(1B) of SEBI Act. Therefore, the WTM of SEBI was justified in issuing directions, inter alia, against the appellant for violating Section 12(1B) of SEBI Act.

15. Argument of the appellant that no direction could be issued against the appellant, because he was not involved in the day to day management of PACL Ltd and that the schemes run by PACL Ltd during his tenure have already been closed and that there are no outstanding liabilities from those schemes is without any merit. In our order dated 12.8.2015 we have already held that running CIS without obtaining registration from SEBI is a serious violation and for such violation not only PACL Ltd but its directors are also liable. Admittedly, some schemes were run by PACL Ltd when the appellant was a director of PACL Ltd. All those schemes run by PACL Ltd have been found to be CIS and run without obtaining registration from SEBI in violation of Section 12(1B) of SEBI Act. Therefore, issuing directions against the appellant for violating Section 12(1B) of SEBI Act cannot be faulted.

16. Reliance placed by the counsel for appellant on the Apex Court decision in the case of Gaurav Varshney (*supra*) is misplaced. That decision does not lay down any proposition of law that where a director of a company violates Section 12(1B) of SEBI Act, but resigns as a director before the CIS Regulations, 1999 came into force, then, no action can be taken against that director. Therefore, fact that the Apex Court in case of Gaurav Vashney has quashed the criminal proceedings initiated against Gaurav Varshey on ground that he had ceased to be a director of the company before the CIS Regulations came into force, would not preclude SEBI from taking action against the appellant for violating Section 12(1B) of SEBI Act.

17. In the result, we uphold the impugned decision of the WTM of SEBI to the extent it holds that the appellant is liable for violating Section 12(1B) of SEBI Act and set aside the impugned decision to the extent it holds that the appellant is liable for violating the CIS Regulations, 1999. Consequently, qua the appellant, the impugned direction is modified and the appellant is restrained from accessing the securities market and prohibited from buying, selling or dealing in securities market for a period of 5 years from the date of the impugned order i.e. from 22.8.2014 or till

the amounts due to the investors with promised returns are refunded by PACL Ltd and its present directors to the investors, whichever is earlier.

18. Appeal is disposed of in the aforesaid 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

22.6.2017

Prepared and compared by
RHN