

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 28.06.2019

Appeal No. 283 of 2018

Dr. Jugal Kishore Satapathy
Plot No. A/7, Phase II,
Krishna Garden Complex, Barabari,
Bhuvaneshwar – 751 030. 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

Ms. Kainaz Irani, Advocate with Mr. Balram Mohanty,
Advocate i/b Mohanty & Associates.

Mr. Kevic Setalvad, Senior Advocate with Mr. Kunal Shah,
Advocate i/b MDP & Partners for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The Whole Time Member ('WTM' for short) of the
Securities and Exchange Board of India ('SEBI' for short) by
the impugned order dated June 5, 2018 found that the

Company, namely, Micro Finance Limited ('MFL' for short) had come out with an offer of Cumulative Convertible Preference Shares ('CCPS' for short) in violation of Sections 56, 60 and 73 of the Companies Act, 1956 read with the relevant provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000 ('DIP Regulations' for short) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations' for short). The WTM found that the appellant being a Director of the Company was an officer in default as per Section 5(g) of the Companies Act, 1956 was therefore responsible along with Company for making refunds along with interest under Section 73(2) of the Companies Act, 1956. The WTM accordingly directed that the appellant and other directors are jointly and severally liable with the Company to refund the money collected by the Company along with interest and other directions were also issued against the appellant.

2. We have heard Ms. Kainaz Irani, the learned counsel for the appellant and Shri Kevic Setalvad, the learned senior counsel for the respondent.

3. It was urged that the appellant was appointed as an honorary director after the issuance of the CCPS. It was urged that the appellant had never signed any resolution of the board of directors and that the main persons who were responsible in the issuance of CCPS were Mr. Ashok Kumar Patnaik and Mr. Durga Prasad Misra who have accepted their liability to repay the amount on behalf of the Company and other directors as held by the Chief Judicial Magistrate in its order dated June 29, 2017 and July 18, 2017. It was, thus, urged that the appellant should not be made responsible for refund of the money towards the CCPS which was collected by the Company and other directors.

4. Upon perusal of the record, we find that Mr. Durga Prasad Misra was a managing director of the Company and was also found to be responsible for the issuance of CCPS of the Company by the Chief Judicial Magistrate.

5. In the light of the aforesaid fact which is not disputed by the learned senior counsel for the respondent. We find that Section 5(g) of the Companies Act makes it apparently clear that if there is a Managing Director appointed in a company, he would be an officer in default. Further in the absence of a Managing Director all the Directors by a deeming fiction

would be an officer in default. Since in the instant case, there is a Managing Director, the appellant cannot be deemed to be a Managing Director.

6. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed. In the circumstances, there shall be no order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

28.06.2019

Prepared and compared by: msb