

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 22.01.2020
Date of Decision : 07.02.2020

Appeal No. 254 of 2019

Dr. Venkadasamy Venkataramanujan
Old No. 2, New No. 22,
26th Cross Street,
Besant Nagar,
Chennai- 600 090

...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. Shubharanjani Ananth, Advocate with Mr. Avik Sarkar,
Advocate i/b Kamal & Co. for the Appellant.

Mr. Anubhav Ghosh, Advocate i/b The Law Point for the
Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice Tarun Agarwala

1. The present appeal has been filed against the order of the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) dated May 09, 2016 holding that the scheme floated by the company Assure Agrowtech Limited was nothing else but a Collective Investment Scheme (“CIS”) in

terms of Section 11AA of the SEBI Act, 1992 without obtaining certificate of registration as required under Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999. The WTM accordingly directed the company and its directors including the appellant to abstain from collecting any money from the investors or to carry out any Collective Investment Scheme including the scheme which have been identified as a Collective Investment Scheme and further return the money so collected and further restrained the appellant and others from accessing the securities market and prohibited them from buying, selling or otherwise dealing in securities market for a period of 4 years. The appellant being one of the directors and being aggrieved by the impugned order has filed the present appeal.

2. The facts leading to the filing of the appeal is, that the appellant was appointed on February 26, 2015 as an independent director and within a few months resigned on July 21, 2015, which resignation was accepted by the company on August 31, 2015 and intimated to the Registrar of Companies on October 05, 2015.

3. The contention of the appellant before the WTM and before us was that he was appointed as an independent director

in view of the requirements under CIS Regulations for appointment of a professional as an independent director. The appellant was not a shareholder in the company and was not directly associated with the persons who were running the aforesaid company nor was involved in the day to day running of the aforesaid company. It was also urged that in view of the Section 149(12) of the Companies Act, 2013 an independent director cannot be held liable for such misfeasance which occurred without his knowledge.

4. On the other hand, reliance was made on a decision of the Madras High Court in *Madhavan Nambiar vs. Registrar of Companies [2002] 108 Comp Cas 1 (Mad)* from where a paragraph was extracted to show that “a director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company”.

5. We also find from the impugned order that the appellant has been held responsible only on the ground that part of the mobilization of the fund was also collected during the period when the appellant was appointed as a director and therefore have been held liable.

6. Having heard the learned counsel for the appellant Ms. Shubharanjani Ananth and learned counsel appearing for the respondent Shri Anubhav Ghosh at some length we are of the opinion that the impugned order in so far as it relates to the appellant cannot be sustained. There is no dispute of the fact that the appellant was appointed as an independent director by the company in order to comply with the eligibility criteria for CIS application under the relevant Regulations. We also find that a specific assertion was made that he did not attend any Board meeting which fact has not been disputed by the respondent. We also find that the appellant was not directly associated with the persons having control over the affairs of the company nor was involved in the running of the company and this fact has been stated by the company itself. We also find that the appellant was not holding any shares in the company.

7. In the light of the aforesaid admitted facts, the mere fact that the company had mobilized certain funds under the CIS during the short period when the appellant was inducted as an independent director will not by itself make the appellant liable for the misfeasance committed by the company unless it is shown that he was also involved in the decision making process

or in the collection of the funds. Neither of the two elements are present in the instant case.

8. Further, Section 149(12) of the Companies Act, 2013 provides as under:-

“149(12) Notwithstanding anything contained in this Act,-

- (i) an independent director;*
- (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.”*

A perusal of the aforesaid provision makes it clear that an independent director shall be held liable only in respect of such acts of omission or commission by a Company which had occurred with his knowledge, attributable through a Board processes, and with his consent or connivance or where he had not acted diligently. In the instance case, there is no finding by the WTM that the acts of the Company in the collection of the funds had occurred with the appellant's knowledge or that the appellant was part of the decision making processes through Board's resolution or that the funds and the activities of the

Company was being done with his consent or connivance. Further, we find that there is no finding that the appellant had not acted diligently. In fact, the record indicates the appellant was only appointed for a period of 5 months and had not attended any meeting of the Board.

9. We are also of the opinion that Madras High Court (Supra) in its decision in fact exonerates the ex-officio chairman of the company on the ground that there was no negligence committed by the said ex-officio chairman. The said decision is clearly not applicable to the facts and circumstances in the instant case.

10. In the light of the aforesaid, the impugned order in so far as the appellant is concerned cannot be sustained and is quashed. The appeal is allowed to that extent.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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