

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 18.02.2021

Date of Decision : 23.02.2021

Appeal No. 296 of 2020

Shamlal Madanlal Khetan
B-4203, D.B. Woods,
Opp. Lakshchandi Appts,
Krishna Vatika Road,
Gokuldharm, Goregaon (East),
Mumbai – 400 063.

...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. Rajendra R. Mishra, Advocate i/b Raj & Associates for the
Appellant.

Mr. Kevic Setalvad, Senior Advocate with Ms. Nidhi Singh and
Ms. Kinjal Bhatt, Advocates i/b Vidhii Partners for the
Respondent.

WITH
Appeal No. 577 of 2020

Jitendra Shantilal Mehta
A-901, Mahindra Eminente,
Near Patkar College,
S V Road, Goregaon (West),
Mumbai – 400 104.

...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. Jitendra Shantilal Mehta, Appellant in person.

Mr. Kevic Setalvad, Senior Advocate with Ms. Nidhi Singh and Ms. Kinjal Bhatt, Advocates i/b Vidhii Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated July 30, 2020 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) restraining the Company, Chairman & Managing Director and two other Directors from accessing the securities market till the investors grievances pending against the Company are resolved. It was further directed that that till such time the complaints are not resolved the mutual funds shall remain frozen. The two directors are the appellants before us. Insofar as the appellants are concerned the said order was to take effect after one year from the date of the order and, in the meanwhile, the appellants were directed to take necessary steps to get the records of Ministry of Corporate Affairs ('MCA' for short) rectified with regard to their resignation from Directorship of the Company.

2. The facts leading to the filing of the present appeal is, that in order to dispense a better, speedy and proper redressal of investors' complaints pertaining to the listed companies an online portal / mechanism was evolved by SEBI which was known as SEBI Complaints Redress System ('SCORES' for short). SEBI in this regard issued various circulars dated June 3, 2011, August 13, 2012 and August 17, 2013 directing the listed companies to obtain SCORES authentication and take steps to resolve the complaints of the investors / shareholders within a stipulated period. The listed companies were advised to obtain SCORES authentication by September 14, 2012.

3. In spite of the aforesaid circulars the Company known as Raashi Fertilizers Ltd. failed to obtain this SCORES authentication and consequently investors' complaint remained un-redressed. Consequently, a show cause notice was issued to the Company, the Chairman & Managing Director and two appellants who were the Directors of the Company to show cause as to why directions including, restraining them from accessing the securities market should not be passed for non-compliance of the circulars of SEBI.

4. In response to the show cause notice the impugned order indicates that the Company as well as the Chairman &

Managing Director did not appear. The WTM has given a finding in paragraph 10 that the Company has not obtained the SCORES authentication nor has taken any steps to redress the complaints of the investors and in paragraph 11 the WTM has also observed that the Chairman & Managing Director is responsible for the overall affairs and management of the Company and is responsible for the alleged violations.

5. Insofar as Mr. Shamlal Madanlal Khetan, appellant in Appeal No. 296 of 2020 is concerned he contended that he ceased to be a director of the Company with effect from February 1, 1998. In support of his submissions he had submitted a copy of the resignation letter which was acknowledged by the Chairman & Managing Director of the Company. According to the appellant his resignation was duly accepted.

6. Insofar as Mr. Jitendra Shantilal Mehta, appellant in Appeal No 577 of 2020 is concerned he contended that he had resigned as the Company Secretary / Director of the Company in September 2006. He further contended that the responsibility to file Form-32 was on the noticee Company which the Company failed to do so. He also contended that he had tried to file Form-32 himself but could not do so as till such time the

Company status was changed from dormant to active. It was also contended that the Company became sick and proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA' for short) was initiated but subsequently pursuant to recovery proceedings initiated by SBI all the assets of the Company was taken over and therefore the substratum of the Company disappeared. In addition to the aforesaid, he also submitted that his letter of appointment as a Company Secretary / Director was from January 1986 to August 2006 and consequently on the expiry of the period he could not remain a Director unless a fresh resolution was passed by the Board of Directors which in the instant case was absent. In addition to the aforesaid, the appellant submitted that after he resigned as a Director he was employed with a Company called Taurian Iron and Steel Co. Pvt. Ltd. ('Taurian' for short) and thereafter with a Company called Kanakia Spaces Reality Pvt. Ltd. ('Kanakia for short) showing that he was employed in these two companies from November 2006 to February 2007 at Taurian, and from February 2007 to August 2017 at Kanakia respectively. Proof of his employment was filed along with Employees Provident Fund receipts issued by the employer and Income Tax returns as well as Form – 16 to substantiate that he was working with these Companies.

7. The WTM held that these are not impeccable evidence and that the record of the MCA continues to show the appellants as Directors and therefore such entries which has impeccable evidentiary value cannot be set aside on the ground of secondary evidence which has been led by the appellants. The WTM further came to the conclusion that it is the onerous duty of the appellants to show that their resignation letters were accepted by the Company and subsequently forwarded to the MCA. The WTM also came to the conclusion that the appellants failed to discharge their obligations and therefore they are deemed to continue as Directors of the Company and are responsible for non-redressal of the complaints of the investors.

8. Having heard Shri Rajendra R. Mishra, the learned counsel for the appellant, Shri Jitendra Shantilal Mehta, appellant in person and Shri Kevic Setalvad, the learned senior counsel for the respondent, one is constrained to observe that the WTM has completely lost sight of the fact that the entry in the MCA records are required to be done by the Company and not by the appellants. No proof has been filed by SEBI to show that the appellants were continuing as Directors on the date when the circulars were issued by SEBI in 2012 for directing the Companies to obtain SCORES authentication. Reliance on

an annual report of the year 2002-03 is insufficient. Nothing has been indicated as to why the annual report of 2012-13 was not considered.

9. The WTM has also again erred in treating the signatures of the Chairman & Managing Director as suspicious. There was no material before the WTM to treat the signature as suspicious. When the resignation letter has been submitted as an evidence the burden has been discharged by the appellants and the onus shifts upon SEBI to find out as to whether the resignation was duly accepted by the Company and to find as to whether the signatures on the acknowledgement was that of the Chairman & Managing Director of the Company. Such burden could have been easily discharged if some attempt was made to inspect the records of the Company and compare the signatures with other documents which SEBI in the instant case has miserably failed to do so. It may also be stated here that under Section 303 of the Companies Act, 1956 a Company is required to maintain a register of its Directors, Managing Director etc. which contains the details of the date of appointment and resignation etc. Section 303(2) provides that it is the Company who is required to send a return in a prescribed form to the Registrar depicting the particulars specified in the register. Sub-section (3) of

Section 303 further indicates that if the default is made the Company then every officer of the Company who is in default would be punishable with a fine till such time the default continues. In the instant case no steps have been taken by SEBI to find out the veracity of the resignation submitted by the appellants. No steps have been taken by the SEBI to inspect the register maintained by the Company under Section 303 of the Companies Act.

10. One of the appellants has given proof of his subsequent employment which indicates that he was not employed in the Company but was employed in some other Company. This evidence was sufficient to buttress the submission of the appellant that he had in fact resigned from the Company. Such evidence could not be rejected on the mere ground that it is not impeccable evidence. In our view this secondary evidence is impeccable and goes to the root of the matter which should have been investigated by SEBI. There is another aspect which has come on record that the Company became sick under the SICA and subsequently the assets of the Company was taken over by SBI which fact has not been disputed and has not been considered by the WTM. If the substratum of the Company has

been taken away then nothing remains and question of compliance of the circulars would thus not arise.

11. Finally, Section 5 of the Companies Act indicates that all the Directors of the Company would be responsible for the affairs of the Company and would be an officer in default unless there is a Managing Director who then would be overall responsible for the affairs of the Company. In the instant case the WTM acknowledges that Mr. Chandru Jaisingh Ramsinghani was the Chairman & Managing Director of the Company and has also given a finding that he was overall responsible for the affairs of the Company. Once this finding is given then all the compliances are required to be done by the Chairman & Managing Director. The WTM has issued a restraint order against the Chairman & Managing Director and thus there was no requirement to further issue the restraint order against the appellants who in any case had resigned much earlier to the issuance of the circulars.

12. Consequently, for the reasons stated aforesaid, the impugned order cannot be sustained and is quashed insofar as it relates to the appellants. Appeals are allowed. In the circumstances of case parties shall bear their own costs.

13. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

23.02.2021
msb