

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision: 28.03.2022**

**Misc. Application No. 1399 of 2021  
And  
Misc. Application No. 1400 of 2022  
And  
Appeal No. 116 of 2022**

Gurbaksh Singh  
VPO Nathpura,  
Distt. Bathinda,  
Bathinda,  
Punjab- 151 001

...Appellant

Versus

1. Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai- 400 051
2. M/s Capacious Farming Pvt. Ltd.  
9144, Biker Singh Ahluwalia Complex,  
Mini Secretariat Road,  
Back Side New Bus Stand,  
Bathinda.  
Punjab- 151 001
3. Gaurav Yadav, Director,  
Dasmesh Nagar,  
Goniana Mandi,  
Bathinda.  
Punjab- 151 001
4. Narmin Kaur Yadav,  
Dasmesh Nagar,  
Goniana Mandi,  
Bathinda.  
Punjab- 151 001

...Respondents

Mr. Puneet Kansal, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent no. 1 SEBI.

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

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against the order dated July 12, 2021 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) restraining the appellant from carrying out any ‘Collective Investment Scheme’ (“CIS” for convenience) and further restraining the appellant from accessing the securities market for a period of four years and further directing the appellant and other entities to refund the money so collected under the CIS.

2. The facts leading to the filing of the present appeal is, that the WTM had earlier passed an order dated June 16, 2015 against the appellant and other entities including the Company holding that the Company had launched a CIS without obtaining a certificate of registration of SEBI and thus contravened the

provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 (CIS Regulations). The appellant along with others were restrained from collecting money from the investors and were also directed to wind up the existing schemes and refund the money so collected.

3. Against the said order Appeal No. 405 of 2015 was filed in which this Tribunal set aside the order of the WTM dated June 16, 2015. This Tribunal further allowed the appellant to furnish various documents and SEBI was directed to consider the same and pass appropriate orders in accordance with law. This Tribunal further made it clear that if the documents were not submitted then the impugned order stood revived and SEBI would be entitled to enforce the said order, namely, the order dated June 16, 2015. For facility, paragraph 3 of the order of this Tribunal November 07, 2017 is extracted hereunder:-

*“In these circumstances, we set aside the impugned order and direct the appellants to furnish documents e.g. agreements executed under the schemes floated by the company, details of sales returns, details of amounts received and refunded to the customers etc. within a period of 4 weeks from today. If the above documents are furnished within a period of 4 weeks from today,*

*SEBI would consider the same and pass appropriate order in accordance with law. If the appellants fail to submit the documents within 4 weeks from today, then the impugned order shall stand revived and SEBI would be entitled to enforce the said order.”*

4. Based on the aforesaid directions, the appellants furnished various documents before the respondents. We also find that the respondent filed a Review Application No. 08 of 2017 which was disposed of in view of the statement that was recorded, namely, that the appellants had furnished whatever documents that was available with them to SEBI and, therefore, the Review Application did not survive.

5. By the impugned order, we find that the WTM has considered its earlier order of June 16, 2015 which is reflected in paragraph 3, 8 and 14 of the WTM as hereunder:-

*“3. In view of the above, I note that the scope of the present proceedings would be limited to examining the findings made by SEBI in the order dated June 16, 2015....*

*8. I have considered the SEBI Order dated June 16, 2015....*

*14. In view of the above, I am of the opinion that the details furnished in the form of the sales ledger account and copies of agreements entered into with customers are not sufficient to come to a conclusion that the Company was engaged in the outright sale of livestock and related products as opposed to running a CIS scheme as held in the SEBI Order. I am therefore inclined to ratify the findings in the SEBI order dated June 16, 2015.”*

From the perusal of the aforesaid, it is clear that the WTM in the impugned order has only considered the findings given in its earlier order of June 16, 2015 and came to the conclusion that the evidence led by the appellant was not sufficient to take a different view.

6. In our view, the WTM has committed an error in proceeding in this fashion. Once an order of the WTM is set aside by this Tribunal the said order is no longer in existence and cannot be utilized in any manner.

7. When an order is quashed or set aside, the said order is wiped out from its existence. It is annulled. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed as held in ***Shree Chamundi Mopeds Ltd. vs. Church Of South India***

*Trust Assn. (1992) 3 SCC 1*. Thus, once the order is wiped out from its existence, the question of considering the findings of that order which is no longer in existence does not arise.

8. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order after giving an opportunity of hearing without taking into consideration the earlier order passed by the WTM dated July 12, 2021. In this regard, the appellant shall appear on April 08, 2022 before the WTM. Misc. Applications are accordingly disposed of.

9. 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

Justice M. T. Joshi  
Judicial Member

Meera Swarup  
Technical Member