

IN THE HIGH COURT OF KARNATAKA, MUMBAI BENCH
THE HON'BLE MR. JUSTICE J.P. DEVADHAR , THE HON'BLE MR. JUSTICE
JOG SINGH

MA NO. 200 OF 2015 & APPEAL NO. 298 OF 2015

15.06.2015

Alchemist Infra Realty Limited, 723, DLF Tower 'A', Jasola District Centre, New Delhi - 110044

... Petitioner

v.

Securities and Exchange Board of India, SEBI Bhavan, Plot No.C-4A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051

... Respondent

FACTS. The appellant, Alchemist Infra Realty Limited, was directed by SEBI's Whole Time Member (WTM) on June 21, 2013 to wind up a collective investment scheme (CIS) and refund the collected monies to investors within three months. The appellant filed an appeal, and this Tribunal, while upholding SEBI's order, granted an extension for compliance. Later, seeking a further extension, the appellant filed a fresh application before SEBI, which was rejected on May 27, 2015 due to non-submission of certain investor details. The appellant then challenged this rejection before the Tribunal, resulting in the present order disposing the appeal and the connected miscellaneous application.

PRAYER. By that order, application made by the Appellant seeking extension of 24 months for making refund to the investors in compliance with the order passed by WTM of SEBI on 21st June, 2013 has been rejected.

ISSUES OF LAW.

Whether the appellant, having failed to provide complete details as sought by SEBI, is entitled to a further extension of time to refund investors under the directions of the original order.

SUMMARY. In disposing of the appeal, the Tribunal allowed the appellant additional time to submit investor particulars and pay costs to SEBI. Should the appellant comply, SEBI will assess the data and consider granting additional time for refunds; otherwise, the rejection stands revived.

HELD. The Tribunal set aside the impugned order subject to the appellant paying costs and furnishing the required investor details within two weeks. If these details are supplied as directed, SEBI is to verify the information and issue an appropriate order. Non-compliance will automatically revive the order of May 27, 2015.

FINAL STATUS. The appeal and the miscellaneous application are disposed of.

COUNSELS

Mr. V.S. Nankani (for the Appellant)
Mr. I.J. Nankani (for the Appellant)
Mr. Rishad Madora (for the Appellant)
Ms. Sonia Dube (for the Appellant)
Mr. Shatadru Chakraborty (for the Appellant)
Mr. H.S. Khokhawala (for the Appellant)
Mr. Shyam Mehta (for the Respondent)
Mr. Rushin Kapadia (for the Respondent)

Judgment Pronounced on 15.06.2015

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of decision : 15/06/2015

**Misc. Application No.200 of 2015
And
Appeal No.298 of 2015**

Alchemist Infra Realty Limited
723, DLF Tower "A",
Jasola District Centre,
New Delhi – 110 044.

... Appellant

Versus

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

... Respondent

Mr. V.S. Nankani, Senior Advocate a/w Mr. I.J. Nankani, Mr. Rishad Madora,
Ms. Sonia Dube, Mr. Shatadru Chakraborty and Mr. H.S. Khokhawala,
Advocates i/b. Nankani & Associates for the Appellant.

Mr. Shyam Mehta, Senior Advocate a/w Mr. Rushin Kapadia, Advocate i/b
K.Ashar & Co. for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Justice J.P. Devadhar (Oral)

1. Appellant is aggrieved by order passed by the Whole Time Member (WTM) of Securities and Exchange Board of India ("SEBI" for short) on 27th May, 2015. By that order, application made by Appellant seeking extension of 24 months for making refund to the investors in compliance with the order passed by WTM of SEBI on 21st June, 2013 has been rejected. By order dated 21st June, 2013, WTM of SEBI had directed the Appellant to wind

up the scheme identified as CIS and refund the monies collected from the investors within a period of three months.

2. Challenging the aforesaid order, Appellant had filed an appeal before this Tribunal. While dismissing the said appeal and upholding the order of SEBI, this Tribunal on 23rd July, 2013 had extended the time to comply with the order of SEBI by 18 months and directed the Appellant to submit a report to SEBI every six months giving details of the progress made in relation to amounts refunded to the investors. Liberty was also given to Appellant to approach SEBI seeking extension of time in case the need arises.

3. Based on the bank certificates dated 21/2/2014, 12/9/2014 and 17/3/2015, Appellant claims to have refunded Rs.1127,05,80,926 out of the total amount of Rs.1916,39,43,857 refundable to the investors. Thus, leaving balance amount of Rs.789,33,62,931 refundable to the investors as on 31/3/2015.

4. The Appellant had filed an application before SEBI on 22/1/2015 seeking extension of time to refund the balance amount. That application is rejected by the impugned order mainly on the ground that despite letter dated 9/12/2014 and reminder letter dated 20/3/2015 the Appellant has failed to furnish registration number and address of the investors to whom the payments were made. Since requisite particulars were not furnished, it is held that the claim made by the Appellant regarding refund could not be verified and hence the application seeking extension of time has been rejected.

5. Admittedly, the requisite particulars called for have not been furnished till date. Without verifying the claim made by the Appellant, the WTM of SEBI could not have granted extension of time. Failure on part of the

Appellant to comply with the direction of WTM of SEBI without any reason is highly unjustified. However, looking to the fact that the Appellant claims to have paid Rs.1127,05,80,926 to the investors by relying on bank statements and Counsel for Appellant states that requisite particulars would be furnished within a period of two weeks from today, in the interest of justice, we set aside the impugned order dated 27/5/2015 subject to payment of cost of Rs.1 lac to be paid by Appellant to SEBI within a period of one week from today. Appellant is further directed to furnish the particulars demanded by SEBI vide letters dated 9/12/2014 and 20/3/2015 as also the particulars set out in para 13 of the impugned order within a period of two weeks from today. If the requisite particulars are furnished within the time stipulated herein, then the WTM of SEBI shall verify the same and pass appropriate order on the application filed by the Appellant in accordance with law, after giving an opportunity of hearing to the Appellant. If the Appellant fails to furnish requisite particulars within the time stipulated herein, the order passed on 27/5/2015 shall stand revived.

6. Appeal as well as the Misc. Application are disposed of in the above terms.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

15/06/2015
prepared & compared by-ddg