

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

APPEAL NO. 254 OF 2014 & MISC. APPLICATION NO.
104 OF 2014 & APPEAL NO. 255 OF 2014 & MISC.
APPLICATION NO. 105 OF 2014

17.09.2014

Pancard Clubs Limited, Prabhadevi, Mumbai 400025 & Ors. *... Petitioners*

v.

Securities and Exchange Board of India, Bandra (East), Mumbai 400051
... Respondent

Securities and Exchange Board of India Act, 1992 – Ex parte interim orders (Ss. 11(1), 11B, 11(4))– Non-satisfaction of emergent necessity – Classification of timeshare membership schemes as a Collective Investment Scheme yet to be conclusively determined – Powers to be exercised sparingly in truly urgent cases – No urgency shown to justify shutting down operations without hearing – Severe interim measures without affording opportunity to be heard contravene natural justice – Whether timeshare model is covered by CIS left for final decision after proper inquiry – Impugned order set aside for lack of demonstrated emergency.

Companies Act, 1956 – Timeshare membership schemes – Whether they constitute a Collective Investment Scheme requiring SEBI registration – Ex parte interim orders– Tribunal held that severe restrictions demand urgent threat justification – Natural justice– Final classification as a CIS left open for further inquiry.

Customs House Agents Licensing Regulations, 2004 – Suspension of License (Regs. 20, 22)– Invoked only in emergent situations requiring immediate action – Delay of one or two months in effecting suspension deemed fatal – Arbitrary or belated suspensions repeatedly quashed – Emphasized that suspension power must be exercised promptly when warranted.

Constitution of India – Dismissal of employee without enquiry (Second proviso to Art. 3(11)(2))– Exception to the general rule of a prior hearing – Clause (VI) of Standing Order 20– Permits immediate dismissal in grave and extraordinary circumstances – Supreme Court in Ajit Kumar Nag (2005) 7 SCC 764 and Tulsi Ram Patel (1985) 3 SCC 398 recognized that audi alteram partem, though fundamental, can be excluded in exceptional cases.

Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 – Time-share membership scheme (Ss. 11AA(1), 11AA(2), R. 65)– Whether it qualifies as a Collective Investment Scheme – Ex parte interim orders– No showing of an immediate threat to investors

— Prior indications that the scheme did not attract CIS Regulations — Urgency for ex parte action not demonstrated — Natural justice requires an opportunity of hearing — Interim orders set aside or modified pending full inquiry.

SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 — Ex parte interim orders (Rule 4 read with S. 15I of SEBI Act, 1992)— Requirement of demonstrable urgency — Severe restrictions set aside for lack of immediate threat — Natural justice compels a hearing before imposing drastic interim measures — Classification of timeshare scheme as CIS left for final determination after proper inquiry — Regulatory powers to be exercised only in exceptional circumstances.

FACTS. Pancard Clubs Limited and its directors operated a time-sharing membership business since around 2001. In 2013, following a complaint by a Member of Parliament alleging unregistered Collective Investment Scheme (CIS) activity, the Securities and Exchange Board of India (SEBI) investigated and, on July 31, 2014, issued an ex parte interim order barring the company from launching new schemes or raising further funds. The company contended that SEBI had earlier indicated timeshare businesses were not covered by CIS regulations and claimed no urgent threat existed to warrant an ex parte measure. Multiple show cause notices, appeals, and procedural steps followed, including references to comparable timeshare disputes and partial clarifications from SEBI. The dispute was taken before the Securities Appellate Tribunal, with the company challenging the classification of its schemes and objecting to restrictions imposed without a full hearing.

PRAYER.

ISSUES OF LAW.

Whether the company's long-standing timeshare arrangements qualify as a Collective Investment Scheme under SEBI's regulatory framework; whether ex parte interim orders were validly issued without providing an opportunity to be heard; whether earlier communications or estoppel principles bar SEBI from reclassifying timeshare businesses as CIS.

SUMMARY. The appeals concern whether Pancard Clubs Limited's timeshare membership schemes require registration under Collective Investment Scheme regulations and whether SEBI's ex parte interim orders were justified without a prior hearing. SEBI asserted that investor interests warranted immediate intervention, while the company argued no emergent threat existed and referenced earlier indications that its activities were outside CIS rules. Multiple notices, complaints, and procedural steps followed, including alleged fabrication of a letter, comparisons to the Rose Valley matter, and the Gauhati High Court's partial stays in similar cases. The Tribunal ultimately set aside or modified the interim orders for lack of demonstrated urgency and directed a full examination on whether the timeshare model constitutes a CIS.

HELD. The Securities Appellate Tribunal set aside or modified SEBI's ex parte

restrictions in multiple appeals, emphasizing the absence of a demonstrated emergency to justify halting operations without a prior hearing. The Tribunal underscored that natural justice must be observed before imposing severe interim measures. Whether the timeshare business actually constitutes a Collective Investment Scheme was left for further inquiry and final determination after a proper hearing. The Tribunal's guidance highlights the importance of affording fair process and cautions that regulatory powers must be exercised only under exceptional urgency, offering a precedent for future disputes of this nature.

FINAL STATUS. Disposed.

CASES REFERRED

Ajit Kumar Nag vs General Manager (PJ) Indian Oil Corporation Ltd. Haldia (2005) 7 SCC 764

Babaji Shivram (WP (LOD) No. 694 of 2011 decided by Bombay High Court on April 21, 2011)

Babaji Shivram Clearing & Carriers Pvt. Ltd. vs. Union of India 2011 (269) E.L.T. 222 (Bom)

Commissioner of Customs (General) vs. Burigih International 2008 (226) E.L.T. (Bom)

Commissioner of Customs (General) vs. S.D. Dalal & Co. 2008 (221) E.L.T. 488 (Bom)

Commissioner of Customs vs. National Shipping Agency 2008(226) E.L.T. (Bom)

Commissioner of Customs, Mumbai vs. Toyo Engineering India Limited 2006 (201) E.L.T. 513 (S.C.)

Cosmic Radio vs. Union of India & Another 1983 (12) E.L.T. 84 (Bom)

Institute of Chartered Accountant of India vs. L.K. Ratna & Others (1986) 4 Supreme Court Cases 537

Interim order dated August 1, 2013 and November 6, 2013 in M/s. Rose Valley (Gauhati High Court W.P.(C) No. 4298 of 2013)

Karnataka Public Service Commission vs B.M. Vijaya Shankar (1992) SCC 206

Krishna Shipping Agency vs. Commissioner of Cus (Airport & Admn) 2014 (306) E.L.T. 352

M.I. Builders P. Ltd. vs Radhey Shyam Sahu (1999) 6 SCC 464

M/s. P.G.F. Ltd. & Ors. vs Union of India and Anr. AIR 2013 Supreme Court 3702

Maharshi Dayanand University vs Surjeet Kaur (2010) 11 SCC 159

Mohindhr Singh Gill & Another vs. Chief Election Commissioner of New Delhi and Others (1978) 1 Supreme Court Cases 405

Order of SEBI in the case of M/s. Rose Valley dated July 10, 2013

Oryx Fishers Private Ltd. vs. UOI 2011 (266) E.L.T. 422 (S.C.)

SACI Allied Products Ltd. vs. Commissioner of C. Ex Meerut 2005 (183) E.L.T. 225 (S.C.)

SBQ Steels Ltd vs. Commissioner of Cus. C. Ex and S.T. Guntur 2014 (300) E.L.T. 185 (A.P.)

SEBI vs. Rose Valley in SLP (C) No. 3725 of 2014 (SC order dated April 15, 2014)

Securities and Exchange Board of India vs. Zenith Infotech Ltd. & Ors. (Order dated 19.8.2014 SC)

Siemens Ltd. vs. State of Maharashtra 2007(207) E.L.T. 168 (S.C.)

Zenith Infotech (Appeal No. 59 of 2013 decided on July 23, 2013)

Zenith Infotech Limited vs. Securities and Exchange Board of India (Order dated 23.7.2013 SAT, Mumbai)

COUNSELS

Mr. Pradeep Sancheti, Senior Counsel for the Appellant
Mr. Shyam Mehta, Senior Counsel for the Respondent

Judgment Reserved on 04.09.2014 and Pronounced on 17.09.2014