

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 7.8.2014

Date of Decision: 7.8.2014

Appeal No.204 of 2014

R.M. Shares Trading Private Limited.,
PM-8 & 22, Rotunda Building,
Mazzanine Floor, Bombay Samachar Marg,
Fort, Mumbai – 400 001.

..... Appellant

Versus

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

..... Respondent

Mr. Ravikumar Varanasi, Advocate with Mr. Deepak Rane, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis, Advocate for the Respondent.

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

Per : Justice J. P. Devadhar (Oral)

1. This appeal is filed to challenge Adjudication order dated 28th April, 2014, whereby Mr. A. Sunil Kumar, Adjudicating Officer of Securities and Exchange Board of India (SEBI) has imposed penalty of Rs.10 lac on Appellant under section 15HA of the Securities and Exchange Board of India Act, 1992.

2. Although counsel for Respondent had sought time to file reply, in our opinion, impugned order deserves to be set aside without going into the merits of the case.

3. In paragraph 17 of the impugned order the Adjudicating Officer of SEBI has held thus:-

“17. I note that the Noticee has relied upon order dated November 27, 2013 passed by an Adjudicating Officer. In this regard, I note that the decision of another Adjudicating Order may not have any binding effect on me and I would, rather, prefer to form an independent view considering the merits of the matter. Therefore, I have not considered the same while arriving at any conclusion in the facts and circumstances of the instant case before me.”

4. In our opinion, refusal on the part of the Adjudicating Officer to consider decision of another Adjudicating Officer of SEBI is highly improper. Orders passed by the Adjudicating Officers' of SEBI are quasi judicial orders where the adjudicating authority is required to consider the rights and obligations of charged persons and impose penalty, if found guilty. Object of conferring penal powers upon the Adjudicating Officer is to ensure that the market players who violate the provisions of SEBI Act and the Rules and Regulations made there-under are brought to book and punished if found guilty, so that the order acts as a deterrent to other market players and carry on their trades in securities market in accordance with law.

5. In an Adjudication proceedings, if a party relies on adjudication order passed in an another case, then, judicial discipline demands that the Adjudicating Officer considers that order and thereafter passes an order either to follow or distinguish the earlier order or disagree with the order by recording reasons as to how that order is erroneous and ought not to be followed.

6. In the present case, the Adjudicating Officer has flatly declined to consider the order passed by another Adjudicating Officer on ground that such an order does not have binding effect and that he would prefer to form an independent view. If every Adjudicating Officer of SEBI passes independent order without bothering to consider decision taken by another Adjudicating Officer of SEBI in similar set of circumstances, then there would be complete chaos and total lawlessness. SEBI being market regulator of the securities market, Adjudicating Officers' of SEBI cannot afford to pass adjudication orders in each case depending upon the whims

and fancies of each Adjudicating Officer. Unless facts and circumstances set out in an order passed by Adjudicating Officer are materially different from the facts and circumstances of the case in hand, it would be just and proper for the Adjudicating Officer to follow the earlier order so that there is uniformity in the quasi judicial orders passed by the Adjudicating Officers' of SEBI.

7. In the present case, since the Adjudicating Officer of SEBI has committed impropriety of refusing to consider the decision of another Adjudicating Officer which according to the Appellant has direct bearing on the facts of present case, without going into the merits of the case we set aside the impugned order and direct SEBI to pass fresh order by entrusting the matter to any Adjudicating Officer other than the Adjudicating Officer who has passed the impugned order.

8. The Adjudicating Officer, to whom the matter may be assigned by SEBI, shall hear the matter afresh and pass appropriate order on merits as expeditiously as possible.

9. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

7.8.2014

Prepared and compared by
RHN