

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 123 of 2008

Date of decision : 12.1.2009

Mr. Hameed Ullah Lalji alias Tony Ullah

..... Appellant

Versus

1. The Securities and Exchange Board of India
2. Orbit Corporation Limited
3. Ravi Kiran Agarwal
4. Pujit Agarwal
5. Mr. Prithvi Raj Jindal
6. Mr. Devendra Ahuja
7. Mr. Shailesh B. Vaidya
8. Mr. Hafeez Contractor
- 9 Mr. Kuldip Bhargava
- 10.Mr. Deepak Dhawan
- 11.Ms. Vijayata Chowhan
- 12.Mr. Ramshrya Yadav

..... Respondents

Mr. Bharat B. Merchant Advocate with Mr. Hitesh Jain Advocate for the Appellant.

Dr. Poornima Advani Advocate with Ms. Harshada Nagare Advocate for Respondent no.1

Mr. Ravi Kadam Advocate General with Mr. Yadunath Chaudhari Advocate for Respondents no. 2 to 4.

None for Respondents no. 5 to 12

Coram : Justice N.K. Sodhi, Presiding Officer
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

Challenge in this appeal is to the communication dated August 12, 2008 sent by the Securities and Exchange Board of India (for short the Board) to the Advocate of the appellant informing the latter that the issues raised by him in his complaint dated July 7, 2008 were disputes of a civil nature which could appropriately be decided by the Civil Court and, therefore, the Board could not entertain the complaint. Facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

Respondent no.2 is a public limited company incorporated under the provisions of Companies Act, 1956 and is carrying on its business as real estate developers. It shall be referred to hereinafter as the company. Orbit Construction and Realtors Private Limited was a subsidiary of the company which has since been amalgamated with it. On March 8, 2007 the Company came out with a public issue of 91 lac equity shares of Rs 10 each with a price

band of Rs 108 to Rs 117 per equity share. In the Red Herring Prospectus which was vetted by the Board, the company had assured the public investors that it had made all reasonable inquiries and accepts responsibility for all that was stated in the prospectus. It had also given an assurance that all statements and information contained therein were true and correct in all material aspect and were not misleading in any manner and that the opinions and intentions expressed therein were honestly held by the company. The issue opened on March 20, 2007 and closed on March 23, 2007. It is common case of the parties that the public issue had gone through and that shares were allotted to the public shareholders which were subsequently listed on the National Stock Exchange and the Bombay Stock Exchange some time in April, 2007. It is also not in dispute that the shares of the company are being traded in the market for nearly two years. It is again admitted that the company and its subsidiary companies have undertaken a series of projects including one by the name of Orbit View which is known as Kishori Court. The company had made it known to the investors through the prospectus that it proposed to utilise the issue proceeds towards investments in various projects including Orbit View. The details of this project were furnished in the prospectus as under :-

Name and Address of the Project	Description of Current Status	Contracts Awarded and details thereof (if any)	Amount Already Invested as on December 31, 2006 (Rs.mn.)	Project Executed by	Expected Completion Date
Orbit View Maulana Khan Abdul Gaffar Khan Road, Worli Sea Face, Mumbai 400 018	Process of Conveyance at final stage		10.50	Orbit Constructions & Realtors Pvt. Ltd.	December, 2008

As can be seen from the details of the project, its current status at the time of the issue of the prospectus was that the building known as Kishori Court was in the process of conveyance at the final stage. It is the case of Respondent 2 that the property known as Kishori Court situate at Maulana Khan Abdul Gaffar Khan Road, Worli Sea Face, Mumbai was in the process of being purchased by the company. According to the company, the appellant through his constituted attorney Mr. Shamim Ahmed through his constituted attorney Mr. B.V. Pasha executed a Memorandum of Understanding (MOU) on April 13, 2006 with one of its subsidiary companies which, as already observed, has amalgamated with the company.

The total purchase consideration as mentioned in the MOU is Rs 31.5 crores out of which a sum of Rs 25 lacs had been paid by cheque which payment had been acknowledged by Shri. B.V. Pasha who holds a power of attorney from the appellant to deal with the said property. According to the company, the appellant is trying to wriggle out of the transaction by alleging that there was no authorized transaction. The appellant, on the other hand, claims that he is the owner of the property and that he had not entered into any transaction with the company.

Long after the public issue had gone through, the appellant as per his letter dated July 7, 2008 made a complaint to the Board alleging that his property was being usurped by the company on the basis of which it had made a wrong statement in the prospectus to lure the public to invest in the shares of the company. The prayer made in the complaint was that the Board should prosecute the directors of the company and that the company should be permanently debarred from accessing the capital market and that the shares be delisted. The residuary prayer made in the complaint was that the Board may take such other further action against the company as may be deemed appropriate. The complaint was considered by the Board along with the relevant statements made by the company in the prospectus along with the documents furnished therewith and came to the conclusion that the issues raised by the appellant were disputes of a civil nature and that it could not settle those issues. The appellant was advised to approach the Civil Court. Hence this appeal.

We have heard the learned counsel for the parties and are of the view that the appeal is wholly misconceived and that the appellant has no locus standi to file the same. It must be understood that the Board is a statutory regulator set up under the Securities and Exchange Board of India Act, 1992 (for short the Act) primarily to protect the interests of investors in securities and to promote the development of and to regulate the securities market. In the very nature of things, it cannot adjudicate civil disputes which have to be settled by the Civil Courts in terms of section 9 of Code of Civil Procedure. The appellant before us is not an investor. He claims to be the owner of the property which, according to the company, is in the process of being conveyed to it through the documents which have been executed between the company and the duly constituted attorneys of the appellant. A copy of the MOU was filed along with the prospectus and was kept open for inspection by

all concerned. The power of attorney allegedly executed by the appellant in favour of Mr. Shamim Ahmed and the other power of attorney executed by Shamim Ahmed in favour of Mr. B.V. Pasha were both filed along with the prospectus and were kept open for inspection. We asked the learned counsel for the appellant as to what was his locus to file the present appeal. His reply was that the main grievance of the appellant is that the company made wrong statements in regard to the property in the prospectus and thereby misled the public. Assuming this was so, the appellant has no locus to make such a grievance as he is not an investor. He is claiming to be owner of the property which, according to the company, is in the process of being transferred to it and that some documents including the MOU had been executed with his constituted attorneys. The appellant is disputing this fact though in the rejoinder he admits that negotiations were going on between the parties beyond the date of issue of the prospectus regarding the conveyance of the property. If the appellant feels that his property is being usurped by the company the remedy is not by way of a complaint to the Board. These disputes are obviously of a civil nature and can appropriately be decided by a Civil Court. The Board cannot adjudicate such disputes. It can only regulate the market. This apart, we are not satisfied that the company made any wrong statement in its Red Herring Prospectus. All that has been stated therein is that the project by the name of Orbit View is one of the projects undertaken by it and regarding its status what has been pointed out in the prospectus is that the property is at the final stage of conveyance. There may be disputes between the company and the appellant regarding the property but the statement made in the prospectus cannot be said to be misleading. In view of the disputes raised by the appellant, the Board was right in observing that such disputes were not within its domain and that the appellant should avail his remedies in a Civil Court. No fault can thus be found with the impugned communication. The appeal is without any merit and the same stands dismissed leaving the parties to bear their own costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Utpal Bhattacharya
Member

12.1.2009

bk/-