BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No.24/2002
And
Application No.15/2002

In the matter of

Raksha Plantation Pvt. Ltd Appellant/Applicant
Vs.
Securities and Exchange Board of India Respondent

Appearance

Shri H. Karthik Seshadri
Advocate for Appellant/Applicant

Shri J. Ranganayakulu
Jt. Legal Adviser,
SEBI

Shri Praveen Trivedi
Asst. Legal Adviser,
SEBI for Respondent

(Appeal arising out of the order dated 2.7.2001 made by the Chairman, Securities and Exchange Board of India)

ORDER

The present appeal is directed against the order dated 2.7.2001 made by the Chairman, Securities and Exchange Board of India. This is a common order directed to 490 entities. The Appellant is one among them. Core portion of the order is as under:

> "DIRECTIONS UNDER SECTION 11 B OF THE SEBI ACT 1992 READ WITH REGULATIONS 65,73 & 74 OF SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 ISSUED TO THE ENTITIES WHOSE NAMES ARE MENTIONED HEREINBELOW:-
>
> Vide Order dated December 7, 2000, directions under Section 11B of the SEBI Act, 1992 read with Regulations 65 & 73 Of SEBI (Collective Investment Schemes) Regulations, 1999 were issued to you as you, having failed to make an application for grant of registration, had failed to wind up your existing collective investment schemes and make repayments to your investors in accordance with the provisions of the SEBI (Collective Investment Schemes) Regulations, 1999. As per the said Order, you were directed to refund the money collected under the scheme(s) with returns which is due to the investors as per the terms of the offer within a period of one month from the date of the said Order.
>
> As you have failed to comply with the directions of the said Order, you have violated the provisions of Regulation 5 read with Regulations 68(1), 68(2), 73 and 74 of the SEBI

(Collective Investment Schemes) Regulations, 1999.

Now, therefore, in exercise of the powers conferred under Section 11B of the SEBI Act, 1992, I hereby debar you/your promoters/your directors/ your managers/ persons in charge of the business of your schemes from operating in the capital market for a period of 5 years from the date of this Order."

In terms of Section 15T of the Securities and Exchange Board of India Act, 1992 (the Act), any person aggrieved by an order made by the Respondent on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (the amendment) order made by an adjudicating officer under the Act is entitled to prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter, with in a period of forty five days from the date on which a copy of the order is received by him. However the Tribunal is empowered to entertain an appeal after the expiry of the said period of forty five days it is satisfied that there was sufficient cause for not filing it with in that period. The amendments have come into force with effect from 16.12.1999. The appeal against the order dated 2.7.2001 has been filed on 7.5.2002. According to the Appellant, the order was transmitted by the Respondent vide its letter dated 10.7.2001 which reached the Appellant on 16.7.2001. Since the appeal was filed involving a delay of 250 days, the Appellant has sought condonation of the delay vide application No.15/2002. The Appellants main submission in this regard is as under:

"it had received the Impugned Order only on 16.7.2001 and the time for filing an Appeal against the said Order expired 45 days from the date namely on 31.08.2001. The Applicant was totally confused about the very applicability of the Order itself. The Order was passed in respect of 490 Companies at a time and there was no particular reference to any of the Promoters, Directors or Managers of the Applicant. The Directors of the Applicant had no intention of operating in the Capital Market. The Directors of the Applicant and the Applicant were involved in only maintaining the Plantations and ensuring that the interest of its Investors were adequately protected more so when more than 35% of the Investors in Scheme A had given their positive consent for continuation of the Schemes and 60% of the Investors of Scheme B had given their positive consent.

The Applicant submits that no investor had sought for refund of any of their monies nor had they preferred any complaint to any authority seeking refund or accusing the Applicant of not refunding the amounts. The Applicant had acted bona fide and had the interest of its Investors in their mind. However the Applicant was shocked to find out that the Respondent had initiated steps for Prosecuting the Promoters of the Applicant and the Applicant for allegedly violating the provisions of the CIS Regulations, 1999 on 30.04.2002. The Applicant submits that it had complied with each and every provision of the CIS Regulations, 1999. There was no cause for the Respondent to have continued with the exercise of its powers and to take steps to initiate prosecution. The Applicant is feeling the effect of the Orders of the Respondent only now.....

The Applicant submits that no one would be prejudiced if the Application for condoning the delay in filing the above Appeal is allowed and the Appeal is taken on file. On the other hand the Applicant would be gravely prejudiced if the Application is not allowed. It is settled principle of law as laid down by the Hon'ble Supreme Court of India that while considering an Application for condoning the delay there is no requirement to explain each and every day's delay.

Learned Counsel reiterated the above submissions. Shri Ranganayakulu, representing the Respondent objected to condoning the delay. He submitted that the Appellant has not complied with the requirements of Regulations despite several requests from the Respondent. The fact that they did not even bother to file an appeal against the order within the prescribed time itself is indicative of the attitude of the party.

I have carefully considered the rival submissions. The impugned order debars the Appellant and its officers from operating in the capital market for 5 years. Learned Counsel for the Appellant has fairly admitted during the course of the arguments that the Appellant has no intention of operating in the capital market, that at present the Appellant is mainly concerned about the prosecution launched against it.

I do not find any merit in the submission made by the Appellant in this regard. Submission that the Appellant was totally confused about the very applicability of the order itself is baseless. I do not find any scope for one to get confused on the scope of the order as it is very clear and unambiguous as could be seen from the text of the order extracted above. The argument that the Appellant has substantially complied with the requirements of the SEBI (Collective Investment Schemes) Regulations, 1999 is not a reasonable excuse to file an appeal at its sweet will at any time beyond the prescribed time limit. The Appellant itself has stated as to why it has preferred to file at this juncture in the following words in its application that " The Applicant is feeling the effect of the orders of the Respondent only now". I am

not satisfied by the explanation put forth by the Appellant seeking condonation of the delay. The Appellant has not put forth any convincing reason to extend the time limit by 250 days to file the appeal. It was Appellant's own decision not to file the appeal with in the stipulated time.

I am not satisfied by the reasons put forth by the Appellant to condone the delay and entertain the appeal at this point of time. The appeal is time barred and not maintainable. Therefore, the appeal is dismissed.

(C. ACHUTHAN)
PRESIDING OFFICER

Place: Mumbai
Date: June 11, 2002