BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 05.12.2013
Date of Decision : 12.12.2013

Appeal No. 106 of 2013

Rose Valley Real Estates And Construction Ltd.
RGM-25/3010, Raghunathpur,
V.I.P. Road, Kolkata – 700 059. … Appellant

Versus

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

Mr. Sudipto Sarkar, Senior Advocate with Ms. Moushami Bhattacharya, Mr. A. K. Chatterjee, Ms. Ravela D'souza, Ms. Natasha Wadia, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Pratham V. Masurekar, Advocate for the Respondent.

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

Per : Jog Singh

The present appeal is preferred by the appellant against impugned order dated March 26, 2013 passed by the respondent under the provisions of the SEBI Act, 1992 (for short the SEBI Act) read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (for short Adjudication Rules) seeking to impose a penalty of ₹ 1 crore under Section 15A(a) of the SEBI Act for not submitting

the complete information/records pursuant to letters dated July 14, 2011 and November 17, 2011 and submitting the remainder after service of notice dated February 6, 2013 thereby violating provisions of Sections 11C(2) and 11C(3) of the said Act. The appellant is a public limited company registered under the Companies Act, 1956 in the year 1999. It is mainly into the business of real estate development and construction of hotels, resorts, amusement parks, shopping malls, apartments and buildings etc.

2. The respondent is stated to have received a reference from the Registrar of Companies, West Bengal stating that the appellant had issued debentures between the years 2001-2008 to more than 49 persons in each financial year without filing the necessary documents either with the Registrar of Companies or the SEBI. Accordingly, summons dated July 14, 2011 was issued to the appellant under Section 11C(3) of the SEBI Act by the Investigating Authority (IA) requiring the appellant to submit certain information as mentioned in the annexure to the said summons. The appellant sent a reply dated July 29, 2011 giving certain details such as certified copies of the Memorandum and Articles of Association, Audited Balance Sheets of 2008-2009 and 2009-2010, names and addresses of various directors etc. The appellant stated that it had filed statement in lieu of prospectus for issuance of the secured debentures in question with the Registrar of Companies. Regarding mobilization of funds through such debentures, it was stated that the same was duly reflected in the Audited Balance Sheets pertaining to the years 2009-2010. However, accounts of 2010-2011 were under finalization and it was stated that they could be provided only on being duly audited and certified by the auditors. The appellant further stated that the company had already repaid the debentures to the tune of ₹ 3 crore out of the total amount of ₹ 9,97,92,000/-. It was also mentioned in the said reply dated July 29, 2011 in the following words that “if

you want any further information / clarification, we shall be glad to provide the same".

3. The respondent by letter dated November 17, 2011 again wrote to the appellant, interalia, asking for the following :-

1. Certified copies of the Memorandum of Association and Articles of Association of Rose Valley Real Estates & Constructions Ltd.
2. Audited Balance Sheet and Profit & Loss account for the last three financial years (2008-09, 2009-10, 2010-11) of Rose Valley Real Estates & Constructions Ltd.
3. Name, addresses and occupation of all the promoters and directors of Rose Valley Real Estates & Constructions Ltd.
4. A statement of mobilization of funds (since 2001-02 onwards) through issue of debentures duly certified by the Statutory Auditors.
5. Names and details of the Key Managerial Personnel of Rose Valley Real Estates & Constructions Ltd.
6. Information in respect of each and every series of debentures issued (since 2001-02 onwards) as given below:

   (a) Details regarding the filing of Prospectus/Red Herring Prospectus with RoC for issuance of debentures.
   (b) Date of opening and closing of the subscription list for the said debentures.
   (c) List of agents along with their addresses who have been appointed by the company.
   (d) Details regarding the number of application forms circulated inviting subscription for debentures.
   (e) Details regarding the number of applications received.
   (f) Details regarding the number of allottees for each debenture issue.
   (g) List of such allottees alongwith their addresses and contact nos.
   (h) Number of debentures allotted and value of such allotment against each allottees name
   (i) Details regarding subscription amount raised.
   (j) Date of allotment of the debenture.
   (k) Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment of debentures.
   (l) Date of dispatch of debenture certificates.
   (m) Copies of application forms, RHP, pamphlets, advertisements and other promotional material circulated for issuance of debentures.
   (n) Terms and conditions of the issue of debentures.

4. Pursuant to the abovesaid letter dated November 17, 2011, the appellant provided the following documents vide its letter dated November 30, 2011 :-

> "5. Certified copy of the Memorandum and Articles of the Association is enclosed as annexure "A"

^…Audited Balance sheet of 2008-2009 and 2009-2010 are enclosed as Annexure “B”, The Accounts of 2010-2011 is yet to be approved by the Shareholders in the Annual General Meeting and the Company had taken the requisite permission for the Extension of the Annual General Meeting from the Registrar of the Companies, West Bengal, When the Accounts will be approved by the AGM of the Company the same will provided to you.

7.. List of Name & Address of the promoters & Directions are enclosed as Annexure “C”

8.. Mobilization of funds through secured debenture are already reflected in the Audited Balance sheet and please refer the Annexure C of the Audited Balance Sheet of 2009-2010 for the same. The figures in the Balance sheet and duly certified by the Auditors.

9.. The Directors are themselves are the Key Managerial Person and details are annexed as Annexure “B”.

10.a) Since the Company had issued the debenture on the Private placement basis, not to public at large and has filed the Statement in lieu of prospectus along with form 62 vide **SRN – B 17146192 and 17147083** respectively with the ROC West Bengal, copy of form 62 is enclosed as annexure D.

b) As stated earlier, Debentures were issued to employees and their relatives / associates on Private Placement basis only therefore there was no such opening / closing dates for the said debentures.

c) As stated earlier that Debentures were issued to employees and their relatives/associates on Private Placement basis only, there were no such agents appointed by the Company.

d) As we stated earlier that Debentures were issued to employees and their relatives / associates on Private Placement basis only, there were no such circulation of the application.

e) The Company has totally allotted the debentures form whom the request was received, since it was only on the Private Placement through the employees and their relatives / associates.

i) The total amount was Rs.99792000/- only

j) As per the Form 10 attached annexure E

k) Copy of the Board minutes is enclosed as annexure F

l) Since the Debenture were issued on private placement basis to employees and their relatives /associates, the certificate were

> issued on individual basis within the prescribed time limit of Companies Act, 1956.
>
> m) Since the Debenture were issued on private placement basis to employees and their relatives / associates there were no advertisement, promotional material, circular etc issued by the Company.
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> n) Terms & Conditions were mentioned in the debenture trust deed, which is annexed as annexure G."

5. On February 6, 2013 the respondent, however, issued notice to the appellant under Rule 4(1) of the Adjudication Rules alleging that the appellant had not submitted any specific details regarding issues of secured redeemable non-convertible debentures during the year 2001-2006 and also provided incomplete information for the debentures issued in 2007-2008. It is also alleged in the said notice that details of other series of debentures issued by the appellant since 2001-2002 including the number of applications received, number of allottees for each issue of debentures, list of allottees alongwith their addresses, contact nos. etc. were not furnished. This was treated to be a violation of the provisions of Sections 11C(2), 11C(3) and 11C(6) of the SEBI Act.

6. Abovesaid Sections are relevant and reproduced hereinbelow for the sake of convenience :-

> "11C(2): Without prejudice to the provisions of sections 235 and 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power."
>
> "11C(3): The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person

> authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation."
>
> "11C(6): If any person fails without reasonable cause or refuses –
>
> (a) to produce to the Investigating Authority or nay person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or
> (b) to furnish any information which is his duty under sub-section (3) to furnish; or
> (c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or
> (d) to sign the notes of any examination referred to in sub-section (7),
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> he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five Lakh rupees for every day after the first during which the failure or refusal continues."

7. On March 11 , 2013, the appellant submitted a reply to the abovesaid notice and stated that it had already submitted most of the information / documents by its earlier letters to the respondent and further stated that it had refunded all the monies collected by way of the debentures in question. Without prejudice to the aforesaid, the appellant also furnished other remaining information and documents as mentioned in the notice dated February 6, 2013. On March 12, 2013, a representative of the appellant appeared before the adjudicating officer and explained the whole situation stating that the appellant was willing to produce any further documents required by the adjudicating officer.

8. After considering the various letters and the submissions made by the representative of the appellant during the personal hearing, the learned adjudicating officer held the appellant guilty of not furnishing information/records as required by the letters dated July 14, 2011 and

November 17, 2011 thereby imposing a monetary penalty of ₹ 1 crore on the appellant.

9. After a minute perusal of the pleadings and documents annexed therewith and also hearing the learned senior counsel Shri Sudipto Sarkar for the appellant and Shri Shiraz Rustomjee, learned senior counsel for the respondent, we note that the only issue which requires consideration by this Tribunal is whether or not in the facts and circumstances of the present case there was a total defiance by the appellant with respect to production of documents warranting a monetary penalty of ₹ 1 crore.

10. At the outset, we note that the appellant has provided the requisite information / documents as required by the respondent in three stages. Firstly; in response to the summons dated July 14, 2011, the appellant submitted various information / documents by its letter dated July 19, 2011 as discussed hereinabove. Secondly; in response to the respondent's letter dated November 17, 2011, the appellant submitted substantial information / documents alongwith its letter dated November 30, 2011. However, some of the documents which were also considered necessary for investigation of the case were furnished by the appellant after the notice dated February 6, 2013 was issued by the respondent under Rule 4(1) of the Adjudication Rules. It is, thus, evident that all the information/record had already been submitted by the appellant before the impugned order was actually passed on March 26, 2013.

11. The law does indeed impose a duty on the designated authority of minutely going through all the information available before it presumes to pass any judgment. It is important to note that the appellant while providing various information / documents on July 19, 2011 itself made a categorical statement in the covering letter to the effect that it was prepared to cooperate

with the respondent by submitting any other / further documents or information as and when may be required in future for the purpose of the investigation. Moreover, from the records we note that the debenture scheme in question has been wound up and all the monies collected under the same have been repaid.

12. In its initial reply appellant furnished certain particulars and in the subsequent reply, appellant once again reiterated that the debentures were issued on private placement basis and not from the public through public issue of debentures. In support of above contention appellant furnished certain documents. Thus, it is evident that when the appellant has issued debentures on private placement basis without following the procedure prescribed for issuing debentures through public, the question of furnishing documents which are applicable to issuance of debentures through public does not arise at all. In such a case, the appellant could not be held guilty of not furnishing documents.

13. The underlying idea behind Sections 11C(2), 11C(3) and 11C(6) is that all relevant information and documents be made available for the purposes of a holistic investigation before any conclusion can be drawn. As noted earlier, all the information was in fact provided before the impugned order was passed. In these circumstances, looking to the fact that the appellant has been willing to furnish documents relating to issuance of debenture through private placement from time to time and has in fact fully furnished particulars though belatedly in the adjudication proceedings which were also initiated belatedly, in our opinion, it would be just and proper to restrict the penalty to ₹ 10 lac.

14. Therefore, keeping in view the overall conduct of the appellant, we are inclined to modify the impugned order dated March 26, 2013 and to reduce the monetary penalty to ₹ 10 lac to be paid by the appellant within two months from the date of passing of this order while upholding the rest of the impugned

order failing which the respondent shall be at liberty to recover the same as per law.

The appeal, thus, stands party allowed.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

12.12.2013
Prepared & Compared by
PTM