

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 31.10.2017

Appeal No. 72 of 2016

Sahara Asset Management Company Private Limited
97-98, 9th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021.

.....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. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Mr. Sahil Gandhi and Mr. Feroze Patel, Advocates i/b Markand Gandhi & Co. for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Nishant Upadhyay, Advocate i/b K Ashar & Co. for Respondents.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. This appeal is preferred by the appellant aggrieved by the order of the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) dated December 30, 2015. By the said order, an application filed by the appellant for reconsideration of an earlier order of the WTM of SEBI dated February 27, 2015 cancelling the license of the appellant for being not fit and proper to act as a Portfolio Manager was rejected.

2. Facts relevant to the matter are the following:-

- (a) The appellant has been functioning as a Mutual Fund Manager and a Portfolio Manager having received certificates of registration from SEBI under the SEBI (Mutual Funds) Regulations, 1996 and SEBI (Portfolio Managers) Regulations, 1993 ('PMS Regulations' for short) respectively since 2006 (details prior to this that this business was carried out in the name of First India Mutual Fund since 1996 which was later on acquired by Sahara India Financial Corporation Ltd. in 2003 etc. are not relevant to the matter).
- (b) Since the certificate of registration of Portfolio Manager is to be renewed in every three years, an application for renewal was submitted in 2009 by the appellant and the certificate was renewed by SEBI from 16.10.2009 to 15.10.2012.
- (c) The appellant submitted the next application to SEBI on 06.07.2012 for renewal of the certificate of registration as Portfolio Manager for beyond the period October 15, 2012.
- (d) Instead of renewing the certificate of registration, SEBI raised certain queries as to why actions taken against the applicant / its promoters / its directors etc. were not disclosed in the application for renewal submitted on July 6, 2012.
- (e) In this context, it is relevant to note that on November 24, 2010 ex-parte ad-interim orders had been passed by SEBI against two Sahara Group Companies namely, Sahara India Real Estate Corporation Ltd. (SIRECL) and Sahara Housing

Investment Corporation Ltd. (SHICL) and its Directors restraining them from issuing any prospectus and to raise money from the public, etc.

- (f) SEBI issued final orders on these matters i.e. SIRECL and SHICL on June 23, 2011 which was upheld by this Appellate Tribunal on October 18, 2011 and by the Hon'ble Supreme Court on August 31, 2012.
- (g) In the order of the Apex Court it has been stated that Shri Subrata Roy Sahara is the only person that matters in the affairs of the Sahara Group. Shri Sahara holds substantial stake in the appellant herein as well as in the other promoter companies of the appellant.
- (h) The appellant was found to be not fit and proper under Regulation 10 of the PMS Regulations read with Schedule II of SEBI (Intermediaries) Regulations, 2008. Since Regulation 10(3) of PMS Regulations provides for an application to the Board for reconsideration, the appellant applied for the same and that application was rejected by the impugned order dated December 30, 2015.

3. This Appellate Tribunal had considered all the relevant facts relating to the ownership and control of the appellant company by Shri Subrata Roy Sahara, other promoter holding in the appellant company etc. while deciding Appeal No. 428 of 2015 on July 28, 2017. In that order, on examination of complete details, we came to the conclusion that Shri Sahara, irrespective of whether he continues to be a Director or not in the appellant company, continues to hold substantial stake in the appellant company as well as in other promoter group companies of the appellant and exerts absolute control

over these entities by virtue of his ownership and hence the appellant company (who was the appellant in Appeal No. 428 of 2015 as well) is not a fit and proper person to hold a mutual fund license. The said decision of this Appellate Tribunal has been upheld by the Hon'ble Supreme Court on October 23, 2017 in the matter of Sahara Asset Management Company P. Ltd. & Ors. vs. Securities and Exchange Board of India & Ors. (Civil Appeal No. 12854 of 2017).

4. The question now is whether an entity which was not found fit and proper under SEBI (Mutual Funds) Regulations because of its promoters being not fit and proper can be extended to PMS Regulations as well. Shri Gaurav Joshi, Learned Senior Counsel appearing on behalf of the appellant also raised the question as to whether the same WTM could adjudicate on the reconsideration application particularly when the appellant requested SEBI to place the matter before another WTM to adjudicate on the reconsideration application. According to the Learned Senior Counsel of the appellant the reconsideration application should have been adjudicated by another WTM to avoid any bias.

5. Question as to whether the application for reconsideration ought to have been considered by another WTM becomes academic in the facts of present case, because, the issue of the appellant being not fit and proper person to act as a Portfolio Manager has attained finality by the decision of the Apex Court dated October 23, 2017. In other words, in view of the decision of the Apex Court dated October 23, 2017, the decision of SEBI that the appellant is not a fit and proper person to act as a Portfolio Manager stands affirmed and in such a case, reconsideration of the question by any officer of SEBI does not arise at all.

6. In the result, we see no merit in this appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

31.10.2017

Prepared and compared by: msb