

LEGAL UPDATES

SAT: CAN NOT ENTERTAIN SEBI'S PLEA FOR ORDER RECONSIDERATION IN THE ABSENCE OF EXCEPTIONAL GROUND

A review application was filed by SEBI to SAT requesting a review of the orders based on two grounds: that there was an error that was obvious from the record and that, as a result, the case qualified for the use of the review authority granted by Sec. 15U of the Securities and Exchange Board of India Act, 1992. The bench comprised Justice Tarun Agarwala, Presiding Officer, and Justice M.T. Joshi, Judicial Member. The claim was made by the original respondent that the original appellants were conscious of the pledging of the GDR proceeds with Banco, the escrow agreement, the account charge agreement, and the loan obtained by Fresia, and that they were aware of the entire fraud committed by the Company is demonstrably false. Regarding the credit arrangement between Fresia and Banco, the appellant had made a number of particular denials. Additionally, they said that the Supreme Court of India had changed the law regarding the responsibility of Directors who sign board resolutions concerning the deposit of GDR proceeds in its judgement dated September 21, 2021, in the case of SEBI vs. Adi Cooper. SAT discarded the statement given by SEBI that the Respondents (Actual Appellants) were aware of the fraud committed by the Company towards them, including keeping their GDR (Government Depository Receipts) as collateral, the account charge agreement, the escrow agreement, the loan taken by Fresia, etc. Further, the claim that the Supreme Court Judgement in SEBI v/s Adi Cooper Case had reformed the law relating to the liability of Directors for signing board resolutions involving deposits of GDR proceeds, was also marked erroneous. SAT stated that this Contention is fallacious and no such reform in law has been enacted by the Supreme Court. SAT highlighted the fact that both cases are different; in Adi Cooper's case, the Appellant was a Whole Time Director of the Company whereas in this case, the appellant was a non-executive independent director. SAT clarified that the role and involvement of the original appellants are distinct and, thus justifies the SC's decision as different. Further, a subsequent judgement of the SC is not a valid ground to opt for the review. SAT further explained Order 47 Rule (1) of the Code of Civil Procedure that provides the grounds under which review can be favoured, like disclosing

crucial or new information which earlier was not acknowledged after exercising due diligence or when an order was passed or on behalf of certain error evident on records or in support of any other reason. SAT concluded that no such ground for reconsideration was present. SAT dismissed the appeal of SEBI.