BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 12.06.2017
Date of Decision: 14.06.2017

Misc. Application No. 210 of 2016
And
Misc. Application No. 100 of 2017
And
Appeal No. 261 of 2016

Mrs. B. Shyamala
Pocket-A, Flat-41A,
SFS Flats, Mayur Vihar- 3
Delhi-110 096 …Appellant

Versus

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

2. M/s. Taneja Aero Space and Aviation Ltd.

3. Mr. Salil Taneja, Chairman

4. Mr. C.S. Kameswaran, Managing Director

   Address of the Respondent Nos. 2 to 4
   M/s. Taneja Aero Space and Aviation Ltd.
   Belagondapalli-Village,
   Thally-Road, Denkanikottai TK,
   Belagondapalli- 635 114(TN) …Respondents

Mr. V. S. Balasubramaniam, Authorised Representative for the Appellant.

Mr. Rajesh Nagori, Advocate with Mr. Pulkit Sukhramani, Ms. Siddha Pamecha and Ms. Vidhi Jawar, Advocates i/b The Law Point for Respondent No. 1.

Mr. Chirag Shetty, Advocate for Respondent No. 2.

Mr. Kumar Desai, Advocate for Respondent Nos. 3 & 4.

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

Per: Justice J.P. Devadhar

Misc. Application No. 210 of 2016

There is delay of 27 days in filing the appeal. By this Miscellaneous Application, applicant seeks condonation of the said delay. For the reasons stated in the application, delay is condoned.

Miscellaneous Application is disposed of accordingly.

Appeal No. 261 of 2016

1. Appellant is aggrieved by the order passed by the Whole Time Member ("WTM" for short) of Securities and Exchange Board of India ("SEBI" for short) on January 11, 2016. By the said order, the complaint filed by the appellant against the respondent no. 2 company i.e. Taneja Aero Space and Aviation Limited ("TAAL" for short) and its Chairman, Mr. Salil Taneja (respondent no. 3) and its Managing Director, Mr. C. S. Kameswaran (respondent no. 4) has been disposed of by holding that it is not a fit case for issuance of any direction under Section 11(4) and 11B of SEBI Act and under Section 12A of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for short).

2. Although, maintainability of an appeal against the above order is questioned by the respondents, in the facts of present case, without going into the question of maintainability, we deem it proper to dispose of the appeal on merits.

3. Appellant at the relevant time held 14300 shares of respondent no. 2 company.

4. It is the case of the appellant that the respondent no. 3 & 4 as Chairman & Managing Director of respondent no. 2 have during the period from 2007 to 2009 acted in a mala fides manner and thereby the respondent no. 3 & 4 have unjustly enriched themselves to the detriment of investors of the respondent no. 2 including the minority investors like the appellant.

5. It is contended by the Authorised Representative of the appellant, that the fraudulent transactions carried out by respondent no. 3 & 4 in the name of respondent no. 2 were repeatedly brought to the notice of the Registrar of Companies ("ROC"). However, no action was taken by the ROC. Hence, the appellant moved SEBI seeking redressal in the matter. However, it is contended that the WTM of SEBI has failed to consider the case of the appellant in the proper perspective and therefore the present appeal is filed to challenge the impugned order.

6. Although several issues are raised in the Memorandum of Appeal, the Authorised Representative of the appellant restricted his argument to the following issues, viz:-

a) In the Year 2009-2010 the respondent no. 3 & 4 had written off the inventories of the respondent no. 2 to the extent of ₹ 19.46 crore without any justification to the detriment of the interests of shareholders.

b) In the Year 2008-2009 respondent no. 2 company had transferred ₹ 20 crore from the revaluation reserve to

the profit and loss account in violation of the prescribed accounting standards.

c) In the Year 2009 decision was taken to merge TAAL Technologies Private Limited ("TTPL" for short), a subsidiary of the respondent no. 2 company with the respondent no. 2 without convening the shareholders meeting and without obtaining shareholders approval.

d) During the Year 2007-2009 various funds of the respondent no. 2 company were transferred to the subsidiary company of respondent no. 2 in gross violation of Clause 36 of the Listing Agreement.

7. It is contended by the Authorised Representative of the appellant that the WTM of SEBI has failed to consider the above grievances raised by the appellant in the proper perspective and therefore, the impugned order be quashed and set aside and restored to the file of WTM of SEBI for fresh decision on merits and in accordance with law. Alternatively, it is submitted that the impugned order be quashed and set aside and that appropriate action be taken against respondent no. 3 & 4 as this Tribunal deems feet and proper.

8. We see no merit in the above contentions.

9. At the outset, it is relevant to note that the violations allegedly committed by respondent no. 2 to 4 basically relate to the violation of the provisions contained in the Companies Act and not the violation of the

securities laws. However, since, it is contended that the interests of the minority shareholders like the appellant have been prejudicially affected by the acts of respondent no. 3 & 4, the WTM of SEBI has looked into the grievances made by the appellant against respondent no. 2 to 4.

10. First and the second violation alleged by the appellant relate to writing off the inventories of the respondent no. 2 to the extent of ₹ 19.46 crore during the Year 2009-2010 and transfer of ₹ 20 crore during the Year 2008-2009 from the revaluation reserve to the profit and loss account in violation of the prescribed accounting standards.

11. In para 38 of the impugned order, the WTM has recorded a finding that the scheme sanctioned by the Madras High Court for merger of TTPL with TAAL permitted use of revaluation profits to write off all the amounts debited to P & L account and also to write off any diminution in the value of assets and appreciation in the value of the liabilities of TAAL & TTPL. It is further recorded in the impugned order that as per the sanctioned scheme, balance of excess revaluation profits could be transferred to General Reserve. Nothing is brought on record to demonstrate that the accounting treatment in the present case is contrary to the sanctioned scheme. Therefore, the first and the second grievance of the appellant that the write off of the inventories and transfer of funds from the revaluation reserve being not in consonance with the accounting standard cannot be accepted as they are in accordance with the scheme sanctioned by the Madras High Court.

12. Third violation alleged by the appellant is that in the Year 2009 decision to merge TTPL with TAAL was taken without convening shareholders meeting and without obtaining shareholders approval. From the complaint addressed by the appellant on 06.03.2012 (Page 61 of the Appeal Memo) it is seen that the Madras High Court by its order dated November 03, 2009 had dispensed with convening the meeting of the shareholders/ creditors etc. for merger of TTPL with TAAL (respondent no. 2). In view of the aforesaid order passed by the Madras High Court no fault can be found with respondent no. 2 to 4 in not convening shareholders meeting to seek approval for merger of TTPL with TAAL.

13. Fourth violation alleged by the appellant is that during the Year 2007-2009 funds of respondent no. 2 were transferred to the subsidiary company of respondent no. 2 in violation of Clause 36 of the Listing Agreement. In para 44 & 46 of the impugned order the WTM has recorded a finding that the allegation is based on mere probabilities and is not supported by any basis and that adjudication proceedings would be initiated under Section 23(I) of the SCRA if in the future it is found that Clause 36 of the Listing Agreement has been violated by respondent no. 2 to 4. In the absence of any specific instance pointed out by the appellant to demonstrate that there is violation of Clause 36 of the Listing Agreement, the WTM was justified in rejecting the fourth violation alleged by the appellant.

14. In these circumstances, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

15. In view of the disposal of the Appeal, the Misc. Application No. 100 of 2017 becomes infructuous and is disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

14.06.2017
Prepared & Compared By: PK