

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 03.11.2017

Appeal No. 154 of 2017

Krishan Kumar Parwal,
A-28, Ramnagar, Shastri Nagar,
Jaipur- 302 016

...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. BSE Limited
Floor 25, Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai-400 001

...Respondents

Mr. Amol Vyas, Advocate for the Appellant.

Mr. Karan Bhosale, Advocate with Mr. Chirag Bhavsar, Advocate i/b
MDP & Partners for Respondent No. 1

Mr. Tomu Francis, Advocate with Mr. Vivek Shah, Advocate for
Respondent No. 2

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

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed by HRB Floriculture Limited (“Company” for convenience) through its Managing Director to challenge the order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short). By the said order the WTM of SEBI has confirmed the directions contained in the ex-parte order dated June 15, 2016. By the ex-parte order dated June 15, 2016 the WTM of SEBI had inter alia freezed the voting rights and corporate

benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/ promoter group shareholding (including persons allegedly shown as public shareholders) in the company, till the appellant company complies with the minimum public shareholding requirement.

2. Basic argument of the appellant is that in view of the family settlement arrived at by and between the promoters of the appellant in the year 2010, some of the promoters ceased to be promoters and therefore, their status changed from the “promoter” category to the “public” category. It is submitted that the Bombay Stock Exchange Limited (BSE) has accepted the above position and, therefore, it cannot be said that minimum public shareholding requirement set out in rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (“the SCRR”) and Clause 40A of the Listing Agreement have been violated by the appellant.

3. In the impugned order, the WTM of SEBI has recorded that the BSE vide its email dated October 10, 2016 had stated that the appellant has not informed the BSE that they have achieved minimum public shareholding requirement. Thus, it is evident that even according to BSE, the company has not complied with the minimum shareholding requirement. In these circumstances, in para 3.1.10 of the impugned order the WTM of SEBI has held that the promoters and persons related to the promoters continue to hold 90.06% of the total shareholding in the appellant company and, thus, the appellant company has failed to comply with the minimum public shareholding requirement. It is also recorded in

the impugned order that the promoters have failed to furnish any document in support of the contention that minimum public shareholding requirement have been complied with.

4. Although SEBI has held that the appellant company has failed to comply with the minimum public shareholding requirement, there is no finding recorded either by BSE or by SEBI on the plea raised by the appellant that on account of family settlement some of the promoters ceased to be the promoters and their status changed from the “promoter” category to “public” category. In these circumstances, we permit the appellant to make a representation to SEBI in support of its contention that on account of family settlement some of the promoters ceased to be promoters and consequently the minimum public shareholding requirement stands complied with.

5. If the appellant make such a representation within a period of two weeks from today, then SEBI shall consider the said representation and pass appropriate order thereon as it deems fit and proper.

6. Appeal is disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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