

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on : 29.07.2020**

**Date of Decision : 11.08.2020**

**Appeal No. 155 of 2020**

JK Paper Limited  
with its registered office at  
P.O. Central Pulp Mills Fort Songadh,  
District Tapi, Gujarat - 394660

And Administrative office at  
Nehru House, 4 Bahadur Shah Zafar Marg,  
New Delhi 110002

...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. Janak Dwarkadas, Senior Advocate with Mr. Ameya Gokhale, Mr. Siddhant Kant, Ms. Radhika Indapurkar and Ms. Jasveen Kaur, Advocates i/b. Shardul Amarchand Mangaldas & Co. and Mr. R.S. Sachdeva, President (Legal) for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Shehaab Roshan, Advocates i/b K Ashar & Co. and Mr. Pradeep-SEBI for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Dr. C.K.G. Nair, Member  
Justice M.T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair, Member

1. This appeal has been filed aggrieved by the communication / order of the General Manager of the Securities and Exchange Board of India ('SEBI' for short) dated February 3, 2020 whereby SEBI rejected the application of the appellant for exemption / relaxation of Regulation 3(11), 26(2) read with Regulation 31(2)(b)(ii) of the SEBI (Share Based Employee Benefits) Regulations, 2014 ('SBEB Regulations, 2014' for short), sought by the appellant under Regulation 29 of the SBEB Regulations, 2014.

2. The main contention raised in the appeal is that without considering the relevant details submitted by the appellant and without assigning any reasons the application of the appellant seeking exemption / relaxation has been rejected. Therefore, in the process the rights of the appellant have been adversely affected as a non-speaking order has been issued by a regulatory authority.

3. Basic, relevant facts relating to the appeal are as follows: -  
The appellant company formed an Employee Welfare Trust, namely, "JK Paper Employees Welfare Trust" on January 15, 2004. About 97% of the assets of the Trust are the shares of the appellant Company, which is [presently] about 4.73% of the latter's share capital. On October 28, 2014 SBEB Regulations,

2014 were notified by SEBI. Thereafter, *vide* a series of communications to SEBI the appellant had been taking the plea that the said SBEB Regulations, 2014 were not applicable to the appellant as the Trust set up by it does not deal in securities directly or indirectly for the benefits of the employees of the appellant. The limited dealings it had done were only in terms of receiving certain shares of the appellant company at its early days and in selling part of it to refund the loans it availed. In any case, be it as it may: SEBI on December 29, 2015 asked the appellant company to seek guidance on the applicability of the SBEB Regulations under the Informal Guidance Scheme. On May 7, 2018 appellant submitted an application under the said Informal Guidance Scheme and *vide* letter dated June 29, 2018 SEBI provided a guidance stating that the SBEB Regulations, 2014 would apply to the said Trust and the Employee Welfare Scheme that the said Trust is running. On October 24, 2019 the appellant submitted an application to SEBI for exemption / relaxation from the strict compliance with Regulations 3(11), 26(2) read with Regulation 31(2)(b)(ii) of the SBEB Regulations, 2014. On February 3, 2020 SEBI rejected the appellant's application and issued the impugned communication / order. This communication was received by the appellant on

February 10, 2020 and aggrieved by the same the present appeal has been filed.

4. Since the basic contention of the appellant is whether a non-speaking order could be issued on the issue of exemption / relaxation as provided under the regulations, and that too when the rights of the appellant are gravely affected by the said Order, we proceed to specifically address the said question in terms of the relevant regulations and in the facts of this matter.

5. Since the issue relates to interpretation of certain provisions in the SBEB Regulations, 2014, for convenience, we reproduce those provisions as below: -

*“3(11) The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition:*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Limit</i>
<i>A</i>	<i>for the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations</i>	<i>5%</i>
<i>B</i>	<i>for the schemes enumerated in Part D, or Part E of Chapter E of Chapter III of these regulations</i>	<i>2%</i>
<i>C</i>	<i>for all the schemes in aggregate</i>	<i>5%</i>

*Explanation 1.- The above limits shall automatically include within their ambit the expanded capital of the*

*company where such expansion has taken place on account of corporate action including issue of bonus shares, split or rights issue.*

*Explanation 2.- If a company has multiple trusts and schemes, the aforesaid ceiling limit shall be applicable for all such trusts and schemes taken together at the company level and not at the level of individual trust or scheme.*

*Explanation 3.- The above ceiling limit will not be applicable where shares are allotted to the trust by way of new issue or gift from promoter or promoter group or other shareholders.*

*Explanation 4.- In the event that the options, shares or SAR granted under any of the schemes exceeds the number of shares that the trust may acquire through secondary acquisition, then such shortfall of shares shall be made up by the company through new issue of shares to the trust in accordance with the provisions of new issue of shares under the applicable laws.*

*26 (2). At no point in time. the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or/air value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS."*

*29. (1) The Board may suo motu or on an application made by a company, for reasons recorded in writing, grant relaxation from strict compliance with any of these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.*

*(2) A company making an application under sub-regulation (1), shall pay a non-refundable fee of rupees one lakh by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board."*

31. (1) *Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 are hereby repealed.*

(2) *Notwithstanding such repeal, -*

(a) .....

(b) *all listed companies having existing schemes to which these regulations apply are required to comply with these regulations in their entirety within one year of the same coming into effect, subject to the following exceptions:*

(i) .....

(ii) *trusts holding shares, for the purposes of implementing GEBS or RBS, which exceed ten per cent of the total value of the total assets of the trust(s) as provided under these regulations, shall have a period of five years to bring down its holding in shares to such limits”*

6. Similarly, we reproduce the text of the impugned communication / order dated February 3, 2020 as below since the contention is that the said communication does not give the reasons for rejecting the application of the appellant.

“Dear Sir/Madam,

This has reference to your letter dated Oct 24, 2019 and subsequent correspondences whereby, exemption has been sought from the strict enforcement of the Regulation 26(2) r/w Regulation 31(2)(b)(ii) of SEBI (Share Based Employee Benefit) Regulations, 2014 (“SBEB Regulations”).

The SBEB Regulations prescribe a time frame of five years for compliance with Regulation 26(2) read with Regulation 31(2)(b)(ii) of SBEB Regulations. The

five-year period ended on October 27, 2019. Through the informal guidance letter dated June 29, 2018, it has been notified that the schemes implemented by the Trust for the benefit of employees falls squarely within the purview of SBEB Regulations. Pursuant to the above, it is observed that no demonstrable effort has been made to comply with the regulations.

Given the above, the request for exemption from the strict enforcement of the Regulation 26(2) r/w Regulation 31(2)(b)(ii) of SBEB Regulations is thus found unsustainable and therefore it is being rejected. Also, SEBI may take action, as deemed fit, against the concerned entities for non-compliance with SBEB Regulations.”

7. The learned senior counsel Shri Janak Dwarkadas appearing for the appellant vehemently argued that the respondent SEBI has passed direction to the appellant without assigning any reasons whatsoever only on the ground that the five-year window for compliance of SBEB Regulations has expired. Relying heavily on *Institute of Chartered Accountants of India vs L.K. Ratna & Ors. (1986) 4 SCC 537* the learned senior counsel strongly contended that “*in fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have*

*already pointed out that a finding by the Council is the first determinative finding on the guilt of the member.... The Council must, therefore, state the reasons for its finding.*” Accordingly, the learned senior counsel submitted that neither the appellant knows the reason for rejecting the application nor this Tribunal knows the reason so as to effectively address the issue of whether the rejection has been done following the applicable law and the due process. Therefore, while a provision for appeal has been provided to the appellant, effectively the appeal process has been vitiated. Apart from emphasizing the fact that no reasons have been given the learned senior counsel contended that an opportunity is hearing is also required as ***L.K. Ratna (supra)*** is fully applicable to the matter. The learned senior counsel also contended that the order relied on by the respondent, ***Nirma Industries Limited & Anr. Vs. Securities and Exchange Board of India (Civil Appeal No. 6082 of 2008 dated May 9, 2013)*** is not applicable to the present matter since the basic facts in ***Nirma*** relate to takeover regulations and the ruling is in that context and the relevant Takeover Regulation specifically states that no reasons need to be given. In short, the learned senior counsel submitted that before passing a quasi-judicial order affecting the rights and privileges of a party, the party is entitled to have a personal hearing and the reasons for



rejecting its application have to be clearly stated in the order thus passed by a regulatory authority not only for the appellant to know the reasons but also for her to effectively exercise her right to appeal against the said decision.

8. On the other hand, Shri Shyam Mehta, learned senior counsel representing SEBI contended that the impugned communication / order dated February 3, 2020 has to be read with the communication providing informal guidance dated June 29, 2018 wherein detailed reasons were given why the SBEB Regulations, 2014 were applicable to the appellant. Moreover, in the impugned order itself it is stated that the appellant had a five-year window to comply with the regulations which has not been utilized and it is over on 27 October, 2019. Further, the appellant took its own time even in seeking informal guidance. Despite being asked to do so on 29<sup>th</sup> December 2015, the appellant exercised it only on 27<sup>th</sup> May 2018. Even after the informal guidance was received on 28 June, 2018 the appellant applied for relaxation on 24 October, 2019, just three days before expiry of the five-year window for compliance. Therefore, it was contended that the appellant is belatedly taking shelter under an assumed limitation of the impugned order that it does not contain reasons for rejection

while the appellant has all along known the full applicability of the SBEB Regulations and the need for compliance on or before October 27, 2019.

9. Further, emphasizing Regulations 29(1) as reproduced below for greater clarity-

*“29. (1) The Board may suo motu or on an application made by a company, for reasons recorded in writing, grant relaxation from strict compliance with any of these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.”*

the learned senior counsel for SEBI contended that only on providing exemption / relaxation SEBI is duty bound to furnish the reasons for the same; not when an application for exemption / relaxation is rejected. This is to ensure, the learned senior counsel contended, that such exemption / relaxation has been granted on *bona fide* consideration and in terms of the regulations which is not a requirement for rejection of an application. He further emphasized the ratio in the matter of *Nirma (supra)* as laid down by the Hon’ble Supreme Court that no reasons need to be given while rejecting an application for relaxation.

10. We do not agree with the interpretation of the regulatory provision as contended by the learned senior counsel for the

respondent. Regulation 29(1) makes it abundantly clear that exemption / relaxation could be provided subject to conditions; that would imply that even a rejection has to provide reasons as to why no relaxation can be granted. It could also state why a conditional exemption / relaxation / extension of time could or could not be provided to the appellant as per the facts and circumstances of each application. Moreover, we also note that the appellant had been taking the view that the SBEB Regulations, 2014 was not applicable to them because of certain specific provisions in the Trust Deed and in terms of their own assessment which might or might not have been correct. Therefore, only through the informal guidance on 28 June, 2018 the appellant was clearly told that the said regulations were indeed applicable to them and hence the application for exemption / relaxation since it did not effectively had a five-year window. While we agree with the contention of the respondent that the appellant is responsible for delay in seeking the informal guidance as well as in applying for relaxation, such a delay cannot support issuing a non-speaking order against the appellant. Further, though the Trust holds 97% of its assets in the form of shares of the appellant company which needed to be brought down to below 10%; reasons given in the informal guidance; also cannot support the same because of the language

of Regulation 29(1) which provides for conditional relaxation, including granting some more time for the appellant to comply. Therefore, we agree with the contention of the appellant that a non-speaking communication / order has adversely impacted their right to appeal. And indeed, it has affected this Tribunal's own capacity to assess the merit of the rejection. It is true that the rejection order has quoted the requirement that the Trust cannot have more than 10% of its portfolio of assets as the shares of the appellant company and the five-year window for compliance had elapsed. These, are known facts / conditions; despite which the appellant sought exemption / relaxation under the applicable regulations which needed to be addressed in the impugned communication which is not done. Therefore, this Tribunal is of the considered view that the rights of the appellant has been impacted by the said order because of its non-speaking nature and Regulation 29(1) requires an application of mind, explaining the reasons for rejection as well as for relaxation.

11. We would also like to reiterate at this stage that implementation of the Right to Information Act, 2005 and the various judgments emanating on/from the same have emphasized the need for greater transparency as well as for

providing reasons, at least in brief, in even in ordinary administrative communications issued by various authorities. Therefore, application of such transparency requirements on the part of quasi-judicial authorities has to be of a much higher order.

12. In the light of the above reasons, we quash the impugned communication / order and remit the matter to an Appropriate Authority of SEBI. The said Authority will issue a reasoned order afresh after considering all the relevant facts, preferably within three months from the date of this order. However, we make it clear that we are not expressing any opinion on the merit of the matter and the fresh Order shall not be impacted by any observation that may be construed to that effect.

13. Having quashed the impugned Order on the basis of its non-speaking nature it is not necessary for us to go into the second issue raised by the appellant as to whether invariably personal hearing is required to be given before passing any such directions. This question will be dealt in an appropriate matter as and when it arises before us.

14. The appeal is allowed on above terms with no order as to costs.

15. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Dr. C.K.G. Nair  
Member

Justice M.T. Joshi  
Judicial Member

11.08.2020  
msb