

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 02.09.2022

Misc. Application No. 866 of 2022

And

Misc. Application No. 867 of 2022

And

Appeal No. 528 of 2022

Robert And Ardis James Company Limited
C/o IQ EQ Corporate Services
(Mauritius) Ltd.,
33, Edith Cavell Street,
Port Louis, 11324,
Mauritius

...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. Tamilnad Mercantile Bank Limited
Office 57, V.E. Road,
Thoothukudi- 628 002

...Respondents

Dr. Abhishek Manu Singhvi, Senior Advocate with
Mr. Avishkar Singhvi, Ms. Ankita Singhania, Mr. Kunaal Shah,
Ms. Shruti Rajan, Mr. Ashish Bhan, Mr. Mohit Rohatgi,
Mr. Anirudh Kapoor, Mr. Anubhav Ghosh, Mr. Kartik Adlakha,
Mr. Vivek Shah, Mr. Avirup Mandal, Ms. Aastha Kulshreshtha,
Mr. Kaustub Narendran and Ms. Lisa Mishra, Advocates i/b
Trilegal for the Appellant.

Mr. Akash Rebello, Advocate with Ms. Nidhi Singh, Ms. Deepti
Mohan, Ms. Binjal Samani, Ms. Moksha Kothari and Mr. Niket
Dalal, Advocates i/b Vidhii Partners for Respondent No. 1

Mr. Somasekhar Sundaresan, Advocate with Mr. P. Prabhakaran, Advocate i/b Consulta Juris for Respondent No. 2.

WITH
Misc. Application No. 868 of 2022
And
Misc. Application No. 869 of 2022
And
Appeal No. 529 of 2022

East River Holdings Limited
 C/o Navitas Management Services Limited
 Robinson Lane Navitas House
 Floreal Mauritius ...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. Tamilnad Mercantile Bank Limited
 Office 57, V.E. Road,
 Thoothukudi- 628 002 ...Respondents

Mr. M.S. Krishnan, Senior Advocate with Ms. Ankita Singhania, Mr. Kunaal Shah, Ms. Shruti Rajan, Mr. Ashish Bhan, Mr. Mohit Rohatgi, Mr. Anirudh Kapoor, Mr. Anubhav Ghosh, Mr. Kartik Adlakha, Mr. Vivek Shah, Mr. Avirup Mandal, Ms. Aastha Kulshreshtha, Mr. Kaustub Narendran and Ms. Lisa Mishra, Advocates i/b Trilegal for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Moksha Kothari and Mr. Niket Dalal, Advocates i/b Vidhii Partners for Respondent No. 1

Mr. Somasekhar Sundaresan, Advocate with Mr. P. Prabhakaran, Advocate i/b Consulta Juris for Respondent No. 2.

AND
Misc. Application No. 870 of 2022
And
Misc. Application No. 871 of 2022
And
Appeal No. 530 of 2022

1. Swiss Re Investors (Mauritius) Limited
5th Floor, Ebene Esplanade,
24 Bank Street, Cybercity,
Ebene, Mauritius
 2. FI Investments (Mauritius) Limited
5th Floor, Ebene Esplanade,
24 Bank Street, Cybercity,
Ebene, Mauritius
 3. Kamehameha Mauritius Limited
5th Floor, Ebene Esplanade,
24 Bank Street, Cybercity,
Ebene, Mauritius
 4. CUNA Group (Mauritius) Limited
5th Floor, Ebene Esplanade,
24 Bank Street, Cybercity,
Ebene, Mauritius
- ...Appellants

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. Tamilnad Mercantile Bank Limited
Office 57, V.E. Road,
Thoothukudi- 628 002
- ...Respondents

Mr. Janak Dwarkadas, Senior Advocate with Ms. Ankita Singhania, Mr. Kunaal Shah, Ms. Shruti Rajan, Mr. Ashish Bhan, Mr. Mohit Rohatgi, Mr. Anirudh Kapoor, Mr. Anubhav Ghosh, Mr. Kartik Adlakha, Mr. Vivek Shah, Mr. Avirup Mandal, Ms. Aastha Kulshreshtha, Mr. Kaustub Narendran and Ms. Lisa Mishra, Advocates i/b Trilegal for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Moksha Kothari and Mr. Niket Dalal, Advocates i/b Vidhii Partners for Respondent No. 1

Mr. Somasekhar Sundaresan, Advocate with Mr. P. Prabhakaran, Advocate i/b Consulta Juris for Respondent No. 2.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The appellants have filed separate appeals but the issue is common and consequently all the appeals are being decided together by a common order. All the appellants are aggrieved by the order dated May 12, 2022 passed by Securities and Exchange Board of India (“SEBI” for convenience) allowing the exemption application under Regulation 300 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations” for convenience) exempting Tamilnad Mercantile Bank Limited (hereinafter referred to as “the Bank”) from strict compliance of the ICDR Regulations.

2. We have heard Dr. Abhishek Manu Singhvi, the learned senior counsel, Shri M. S. Krishnan, the learned senior counsel and Shri Janak Dwarkadas, the learned senior counsel for the

appellants and Shri Pradeep Sancheti, the learned senior counsel, Shri Akash Rebello, the learned counsel and Shri Somasekhar Sundaresan, the learned counsel for the respondents.

3. The facts leading to the filing of the present appeals are that the shareholders of the Bank passed a special resolution in terms of Section 62(1)(c) of the Companies Act, 2013 on October 28, 2020 giving consent, approval and sanction for allot up to 1,58,40,000 equity shares of the Bank of face value of Rs. 10/- each pursuant to a fresh issue of equity shares and pursuant to the provisions of Section 28 of the Companies Act also gave consent and approval to transfer up to 71,25,570 equity shares, out of the issued and paid up share capital of the Company by way of an Offer for Sale (“OFS”) by certain existing equity shareholders of the Bank who were eligible for OFC in accordance with the SEBI ICDR Regulations. The shareholders further resolved that the Board of Directors of the Bank would have the right to make such modifications to the size of fresh issue, offer for sale and/ or Pre-Initial Public Offering (“IPO”) placement as may be necessary without seeking any further consent or approval from the shareholders of the Bank.

4. Based on the above Resolution a draft red herring prospectus (“DRHP”) was issued by the Bank on September 04, 2021 for issuance of 1,58,40,000 equity shares and offer for sale (OFS) up to 12,505 equity shares from existing shareholders. In the DRHP it was indicated that in view of outstanding litigation involving equity shares of the Bank 2,544 shareholders holding 49,963,275 equity shares representing 35.06% of the paid up equity share capital have not been invited to participate in the OFS.

5. As a result of the limitations indicated in the DRHP, the appellants holding equity shares of the Bank which were disputed were not allowed to participate in the OFS and, being aggrieved by such action of the Bank, filed a representation dated 08.11.2021 and again on 15.12.2021 before SEBI contending that they have a right to participate in the OFS pursuant to the resolution of the shareholders of the Bank dated 28.10.2020. The appellants prayed that directions should be issued to the Bank to allow the appellants to participate in the OFS.

6. Since no action was taken by SEBI on their representation the appellants separately filed Writ Petitions before the Bombay

which were all clubbed together and were heard by a Division Bench of the Bombay High Court wherein it was prayed that SEBI should be directed to accept the DRHP only after permitting the Petitioners to participate and offer for sale their shares on a proportionate basis. On January 21, 2022 the Bombay High Court passed the following order:-

“1. Mr. Rebello, learned Advocate for the SEBI, states on instructions that in relation to Draft Red Herring Prospectus or DRHP, SEBI has called for certain information from the 2nd Respondent company. That has not yet been received. Once that information is received, SEBI will proceed to consider it.

2. In regard to the representations made by the Petitioners to SEBI, Mr. Rebello’s instructions are to state that not all matters or issues raised in those representations may fairly be said to fall within SEBI’s remit. Thus, SEBI can and will consider only such part of those representations as it believes are within its statutory remit. We note this statement.

3. We direct SEBI to inform the Advocates on record for the Petitioners (including also by email) as soon as it has received the information that SEBI has sought from the 2nd Respondent. On such intimation, liberty to the Petitioners to apply for an urgent or priority listing, enclosing a copy of the communication from SEBI.

4. At this stage all contentions are left open.

5. All concerned will act on production of a digitally signed copy of this order.”

7. The Division Bench of the Bombay High Court recorded the statement made by the learned counsel for SEBI that they

are awaiting certain information from the Bank and would consider the representations of the appellants after they receive the information from the Bank. The Writ Court further observed that SEBI would inform the advocates of the Petitioners (appellants) and as soon as it receives the information from the Bank and liberty was given to the Writ Petitioners to apply for urgent or priority listing and further directing that all contentions raised by the Writ Petitioners was left open.

8. In the meanwhile, six shareholders of the company representing 12,505 shares of the Bank filed an application to the Bank requesting for withdrawal of their OFS. Their request was accepted by the Board of Directors by passing a resolution on May 11, 2022. By the same resolution, the Board of Directors further resolved to make an application to SEBI to seek an exemption from filing fresh DRHP in accordance with the ICDR Regulations and further resolved that consequent changes to the DRHP already filed would be submitted for SEBI's review and response.

9. Based on the resolution passed by the Board of Directors of the Bank, an application dated May 11, 2022 was filed before

the SEBI seeking withdrawal of the OFS and seeking deletion to all references of the OFS in the DRHP and further seeking exemption to file a fresh draft document in accordance with Section 25(6) read with Schedule XVI (f)(ii) of the SEBI ICDR Regulations. The aforesaid application was allowed and necessary exemption was granted by the impugned order dated May 12, 2022.

10. By a letter dated June 01, 2022 SEBI informed the appellants through their counsel regarding withdrawal of OFS by the Bank and consequently complying with the order of the Writ Court. In response, the appellants vide letter dated June 16, 2022 replied that their representation has not been disposed of and that SEBI is required to consider their representation as their contention is, that they should be allowed to participate in the OFS pursuant to the resolution of the shareholders of the Bank dated October 28, 2020 and further contended that the exemption given was incorrect and is required to be reconsidered. In response thereto SEBI vide letter dated July 28, 2022 provided reasons for exempting the Bank from the strict requirement of the ICDR Regulations and, consequently, decided the representation.

11. The contention of Mr. Singhvi, the learned senior counsel for the appellant Robert and Ardis James Company Limited is, that the impugned order has been passed without any application of mind; no reasons whatsoever has been given; nor any satisfaction has been recorded while granting exemption under Regulation 300 of the ICDR Regulations. It was contended that subjective satisfaction was essential which was required to be recorded while granting exemption and failure to provide satisfaction makes the impugned order wholly illegal. In support of his submission the learned senior counsel has relied upon a decision of Supreme Court *in Shanti Devi (Smt) vs. State of U. P. And Ors. (1997) 8 SCC 22* and a decision of this Tribunal in *JK Paper Limited vs. SEBI 2020 SCC OnLine SAT 320* wherein it was held that satisfaction is required to be recorded.

12. It was also urged by the learned senior counsel that once the OFS has been withdrawn a fresh resolution is required to be passed by the shareholders under Section 62(1)(c) and under Section 28 of the Companies Act which has not been done and consequently exemption under the ICDR Regulations could not have been given. The learned senior counsel further contended that against the impugned order an appeal lies before this

Tribunal under Section 15T of the SEBI Act and, in any case, the appellant undertakes to withdraw the Writ Petition from the Bombay High Court and, therefore, there should not be any impediment upon this Tribunal to entertain the present appeals. It was also contended that even though the proceedings have been initiated by the Directorate of Enforcement under the Foreign Exchange Management Act (“FEMA Act”), there is no restraint order from any court of law or authority restraining the appellants from disposing of the shares in question.

13. Similar arguments were made by Shri Dwarkadas, the learned senior counsel for Swiss Re Investors Mauritius Limited and Shri Krishnan, the learned senior counsel for the remaining appellants contending that in the absence of any restraint order from any court or authority the appellants should be allowed to participate in the OFS.

14. Shri Somasekhar Sundaresan, the learned counsel appearing for the Bank contended that the resolution of the shareholders dated October 28, 2020 gave authority to the Board of Directors to modify the size of the issue of fresh allotment of shares and as well as of the OFS. It was urged that since the 12,505 shares which were offered for sale by way of

transfers from the existing shareholders were withdrawn, the Board of Directors validly approved the withdrawal and, further, resolved to apply for exemption from SEBI under the ICDR Regulations. It was further contended that the appellants have no *locus standi* as they are not aggrieved and that their shares were not eligible for OFS and were rightly not included in the DRHP.

15. Shri Sancheti, the learned senior counsel for SEBI contended that SEBI has merely exempted the Bank from refilling the offer document on account of withdrawal of the OFS portion from its public issue. It was also contended that the shares of the appellants were never part of the OFS proposed by the Bank, hence they are not aggrieved persons and, consequently, their appeal is not maintainable under Section 15T of the SEBI Act.

16. Having heard the learned senior counsel/ learned counsel for the parties and having perused the documents filed before this Tribunal, we find that admittedly the appellants had made a representation to SEBI being aggrieved by their non-inclusion to participate in the OFS. The DRHP issued by the Bank was challenged by the appellants in their Writ Petitions before the

Bombay High Court where they sought inclusion of their participation to sell shares through OFS. The said Writ Petition is still pending. Thus, all matters relating to DRHP; whether the appellants are eligible to participate in the OFS or not are questions to be considered by the Bombay High Court and cannot be considered by this Tribunal at this stage in view of the pendency of the Writ Petition before the Bombay High Court. The undertaking given by the learned senior counsel for withdrawal of the Writ Petition cannot be a ground for this Tribunal to consider the veracity and legality of the DRHP and the veracity of their contention that the appellants should be allowed to participate to sale shares through OFS as no such relief has been sought of this nature before this Tribunal. There is no prayer for inclusion of their participation to sell shares through OFS under the DRHP in the prayer clause in the appeal filed before this Tribunal. There is also no challenge to the resolution of the Board of Directors accepting the request of six shareholders to withdraw their OFS. In the absence of such prayer being made such plea cannot be entertained coupled with the fact that the Writ Petition filed by the appellants are still pending. It is thus not open for the appellants to raise such plea which has been raised before the Writ Court.

17. The Bombay High Court in its order dated January 21, 2022 had clearly held that SEBI would communicate their decision on the representation of the appellants. SEBI communicated its decision by letter dated June 01, 2022 and July 28, 2022. These decisions have not been challenged before this Tribunal and since liberty was given to the appellants to bring on record the said communication given by SEBI before the Writ Court, the veracity of such decision in our opinion cannot be considered so long as the Writ Petition is pending.

18. Considering the aforesaid, we are of the opinion that when the Writ Petition was pending it was not open to the appellants to file the present appeals questioning the DRHP and or its withdrawal by some of the shareholders with regard to OFS.

19. In so far as the order dated May 12, 2022 passed by SEBI is concerned the appellants has a right to file the appeal under Section 15T of the SEBI Act provided the appellants is a “person aggrieved”. In the instant case, we find that the DRHP did not permit the appellants to participate in the OFS. The OFS stood withdrawn by the Board of Directors through their resolution dated May 11, 2022. The application seeking exemption from filing fresh DRHP and seeking permission to

modify the existing DRHP was allowed by the impugned order of SEBI. In our view the appellants cannot be aggrieved by the granting of exemption by SEBI. No legal right of the appellant has been infringed. No injury or legal wrong has been suffered by the appellants and, therefore, in our opinion the appellants not being an “aggrieved person” could not have filed the appeals questioning the legality and veracity of the order dated May 12, 2022 passed by SEBI granting exemption to the Bank under Regulation 300 of the ICDR Regulations.

20. We are further of the opinion, that SEBI follows a disclosure based regime and does not regulate on merits or approve an offer document such as the DRHP but only mandates true and fair adequate disclosures. The Bank withdrew the OFS. The application of the Bank seeking exemption from strict enforcement from Regulation 300 of the ICDR Regulations for withdrawal of OFS without filing a fresh DRHP under Section 25(6) read with Schedule XVI (f)(ii) of the ICDR Regulations was considered in accordance with the aforesaid provisions with a view to ensure that adequate disclosures in the DRHP is made to enable the investors to make an informed decision.

21. For the reasons stated aforesaid, all the appeals lacks merit and are dismissed with no order as to costs. All the Misc. Applications are disposed of accordingly.

22. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

02.09.2022
PK