

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 07.07.2022

Date of Decision : 13.07.2022

Misc. Application No. 978 of 2021
And
Appeal No. 587 of 2021

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. Pradeep Sancheti, Senior Advocate with Mr. Ameya Gokhale, Ms. Radhika Indapurkar and Mr. Harit Lakhani, Advocates i/b. Shardul Amarchand Mangaldas & Co. for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaising, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated November 10, 2020 passed by the General Manager of the Securities and Exchange Board of India ('SEBI' for short) rejecting the exemption / relaxation application dated October 24, 2019 under Regulation 29 of the SEBI (Share Based Employee Benefits) Regulations, 2014 ('Regulations of 2014' for short).

2. The facts leading to the filing of the present appeal is, that the appellant Company formed an Employee Welfare Trust known as "JK Paper Employees Welfare Trust" on January 15, 2004. Approximately 97% of the assets of the Trust are the shares of the appellant Company, which works out approximately 4.73% of the total share capital of the appellant's Company.

3. On October 28, 2014 the Regulations of 2014 were notified. The appellant through a series of communication sought information with regard to the applicability of the Regulations of 2014. SEBI vide letter dated December 29, 2015 required the appellant Company to seek guidance on the applicability of the Regulations of 2014 under the Informal Guidance Scheme. Accordingly, an application was made on May 7, 2018 under the Informal Guidance Scheme. SEBI vide

letter dated June 29, 2018 submitted that the Regulations of 2014 would apply to the Trust and the Employees Welfare Scheme.

4. The appellant on October 24, 2019 submitted an application seeking exemption / relaxation from the strict compliance of Regulation 3(11), 26(2) read with Regulation 31(2)(b)(ii) of the Regulations of 2014. This application was rejected by the Competent Authority on February 3, 2020 against which Appeal no. 155 of 2020 was filed before this Tribunal which was allowed by an order dated August 11, 2020. This Tribunal held that the order passed by the Competent Authority was a non-speaking order and that the Authority was required to give reasons while rejecting the application. The Tribunal accordingly directed the Authority to pass a fresh order after considering all relevant facts within 3 months.

5. Based on the aforesaid directions a fresh order was passed by the Competent Authority on November 10, 2020 again rejecting the application against which the present appeal has been filed.

6. The application seeking exemption / relaxation from the strict compliance of Regulation 26(2) read with Regulation

31(2)(b)(ii) was on the ground (a) that the Regulations of 2014 are not applicable to the Trust, and (b) exemption / relaxation from the strict compliance of Regulation 26(2) read with Regulation 31(2)(b)(ii). The grounds seeking exemption / relaxation were that no shares were acquired by the Trust after 2011 and that some of the shares of the appellant Company was sold only to repay the loans. Further, the scheme of the Trust does not provide share based benefits for the employees which is a requisite under the Regulations of 2014. Further, if strict compliance of Regulation 26(2) is made, the corpus of the Trust would be heavily diluted which would severely dent the income of the Trust which in turn would not be beneficial to the employees. Further, the Trust would undertake not to deal in the securities of the Company.

7. The application of the appellant Company was rejected on the ground that the Regulations of 2014 are applicable. The appellant was informed through the informal guidance letter that the Regulations of 2014 were applicable and no steps were taken by the appellant to challenge the decision given under the Informal Guidance Scheme. Further, the appellant Company has violated the Regulations of 2014 by not reducing the shares as per Regulation 26(2) and that the Trust did not comply with the

Regulations of 2014 for a considerable period of time and only filed an exemption application just before the expiry of the 5 years timeline for compliance of the provisions of the Regulations of 2014. The Authority rejected the application basically on the ground that no demonstrable steps were made by the Trust in reducing the shareholding of the Trust so as to comply with the 10% threshold as prescribed as per Regulation 26(2) of the Regulations of 2014 and further on account of lack of efforts by the Company in complying with the Regulations of 2014.

8. We have heard Shri Pradeep Sancheti, the learned senior counsel assisted by Shri Ameya Gokhale, Ms. Radhika Indapurkar and Shri Harit Lakhani, the learned counsels for the appellant and Shri Kevic Setalvad, the learned senior counsel assisted by Shri Mihir Mody, Shri Arnav Misra and Shri Mayur Jaising, the learned counsels for the respondent.

9. Regulation 29 of Regulations of 2014 provides as under:-

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 direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or]by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board.”

10. A perusal of the aforesaid Regulations indicates that the Board may *suo motu* or on an application made by the Company for reasons to be recorded in writing grant relaxation from the strict compliance with any of the Regulations. The relaxation so granted by the Board, if any, would be subject to such conditions as the Board may deems fit to impose in the interest of investors in securities and the securities market. The aforesaid provision makes it clear that the power to relax strict enforcement of the Regulations can be issued by the Board at any time. Further, the application can be made by the Company at any moment of time. It is not necessary that the application seeking relaxation / exemption from the strict compliance of the Regulations of 2014 is required to be filed within the timeline of 5 years for compliance of the Regulations of 2014 but can be filed even thereafter.

11. Viewed from this angle, we are of the opinion that the impugned order has been passed mechanically with this mindset

that the appellant has not complied with the provisions of the Regulations of 2014 within the timeline prescribed under the Regulations and was therefore not entitled for any discretion by the Competent Authority.

12. We also find from a reading of the impugned order that the only effort made by the Competent Authority was to find fault either of the Company or of the Trust with regard to non-compliance of certain provisions of the Regulations and based on such non-compliance the rejection order has been passed which in our opinion is patently erroneous.

13. We are of the opinion that an application seeking relaxation / exemption under Regulation 29 has to be dealt with on merits on the reasoning given by the appellant in its application. The application seeking exemption / relaxation cannot be rejected on the ground that appellant was not in compliance with the Regulations. We are of the opinion that if such ground is taken into consideration, namely, non-compliance of the Regulation then no such application would be considered or allowed seeking relaxation / exemption from the strict compliance of the provisions of the Regulation of 2014. Such approach in our view given by the Competent Authority was patently erroneous.

14. The learned senior counsel for the respondent contended that the impugned communication is not an appealable order under Section 15T of the SEBI Act, 1992 and therefore the appeal is not maintainable. It was urged that appeal can only be filed against an order of the Board whereas in the instant case the General Manger of SEBI has passed the order which is not an order of the Board. This submission is patently erroneous and bereft of any merit. In this regard Section 15T of the SEBI Act is extracted hereunder:-

“15T. Appeal to the Securities Appellate Tribunal. –

(1) Save as provided in sub-section (2), any person aggrieved,-

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act,

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made -

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer,

with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which [a copy of the order made by the Board or the adjudicating officer, as the case may be,] is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the [Board, the parties] to the appeal and to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

15. A perusal of the aforesaid provision indicates that any person aggrieved by an order of the Board may prefer an appeal before the Securities Appellate Tribunal. Regulation 29 of the Regulations of 2014 provides that the Board may *suo motu* or an application made by the Company grant relaxation from the strict compliance with any of these Regulations. The respondent

admits that the impugned order was passed by the Board through its General Manager and therefore it does not lie in their mouth to suggest that the appeal is not maintainable. The Board having delegated the power to its General Manager to decide the exemption application under Regulation 29 is an order of the Board which is appealable under Section 15T of the SEBI Act. This submission made by the learned senior counsel of the respondent, so raised with regard to the maintainability of the appeal is rejected.

16. On the aforesaid issue we had permitted the respondent, on the request of the learned senior counsel, to file a note in support of his submission on the issue of maintainability of the appeal. The additional submission which has been filed has taken a different ground altogether. There is a total somersault adopted by the respondent.

17. In the additional written submissions it is now urged that the impugned order is not an appealable order under Section 15T of the SEBI Act in as much as the impugned order does not adversely affect the rights of the appellant. It was urged that where a party is adversely affected by an order but the damage or prejudice caused to him is not direct or immediate, then such

order would not be appealable. In this regard, the respondent has relied upon a decision of this Tribunal in *HB Stockholdings Limited vs Securities and Exchange Board of India & Ors.* (Appeal no. 86 of 2011 decided on April 25, 2012) and a decision of the Supreme Court in *Shah Babulal Khimji vs Jayaben D. Kania & Anr.*, (1981) 4 SCC 8.

18. The aforesaid contention so raised in the additional submissions is patently erroneous. Section 15T provides that any person aggrieved by an order of the Board may prefer an appeal to this Tribunal. The word “aggrieved” does not mean that the person can only be aggrieved if the order causes any damage or prejudice. The words “an order” means primarily a decision which has the effect of a command whether called by such name or not. The words “an order” is comprehensive enough to include every order or decision taken by the Board which affect the rights of the parties as has been held in *HB Stockholdings Limited (supra)*.

19. In *Bhargav Ranchhodlal Panchal & Anr. vs Securities and Exchange Board of India* (Appeal no. 471 of 2020 decided on July 5, 2022), this Tribunal held:-

“The word ‘order’ has also been defined in the same Black’s Law Dictionary Seventh Edition as a command, direction or instruction, a written direction or command delivered by a court or judge.”

20. In ***Bharat Jayantilal Patel vs Securities and Exchange Board of India & Anr. (Appeal no. 126 of 2020 decided on September 15, 2010)***, this Tribunal held that the words “an order” appearing in Section 15T is comprehensive enough to include every order or decision taken by the Board which adversely affects the rights of the parties.

21. Thus, an appeal under Section 15T can be filed against an order which affects the rights of the parties. The contention that an appeal can only be filed if it causes damage or prejudice otherwise the appeal cannot be filed cannot be accepted. The decision cited by respondent in ***HB Stockholdings Limited (supra)*** is distinguishable. In that case a specific finding was given that the order of the Board did not adversely affect the rights of the complainant and therefore, the appeal was not maintainable. Similarly, the decision in ***Shah Babulal Khimji (supra)*** has no application to the present controversy as the said decision revolved on the issue whether an order passed by a Single Judge on the original side of the Bombay High Court refusing to grant an injunction on an interlocutory application

was appealable before the Division Bench of the Bombay High Court under Clause 15 of the Letters Patent.

22. Time and again, this Tribunal has held repeatedly that a complaint which is disposed of by SEBI is appealable before the Securities Appellate Tribunal (hereinafter referred to as 'SAT') under Section 15T of the Securities and Exchange Board of India Act, 1992.

23. Some of the orders passed by this Tribunal was carried to the Hon'ble Supreme Court by SEBI contending that that no appeal was maintainable before SAT.

24. In one such case, *Ashok Dayabhai Shah & Ors. vs. SEBI & Ors. in appeal no. 428 of 2019 dated November 14, 2019*, the Tribunal directed SEBI to pass a reasoned order. The aforesaid order of the Tribunal was challenged by SEBI in *Civil Appeal No. 363 of 2020 SEBI vs. Ashok Dayabhai Shah & Ors.* contending that the appeal before the Tribunal was not maintainable. The order of the Tribunal was affirmed by the Hon'ble Supreme Court by its decision dated January 27, 2020 and SEBI was required to deal with the complaint positively and objectively in accordance with law.

25. In view of the aforesaid, it is no longer open for SEBI to contend that the disposal of the complaint is not appealable for the reason which is required to be given. The Hon'ble Supreme Court has clearly held that SEBI is required to deal with the complaint positively and objectively.

26. In the instant case, the application of the appellant seeking exemption / relaxation from the strict compliance of the Regulations was rejected. The rights of the appellant was adversely affected. The appellant is clearly an aggrieved person and has a right to challenge the action of the respondent by filing the appeal under Section 15T of the Act. The appeal, in our opinion, is clearly maintainable.

27. It was also urged that the conduct of the appellant was such that the Competent Authority rightly exercised its discretion in rejecting the application. It was urged that the Regulations came into force in 2014 and the appellant delayed the matter and only sought informal guidance under the SEBI (Informal Guidance) Scheme, 2003 in the year 2018 after a considerable delay and consequently there was no justifiable reason for the Competent Authority to grant the exemption. It was also urged that once SEBI intimated the appellant that the

Regulations were applicable it was incumbent upon the appellant to comply with the provisions and the filing of the application under a Regulation 29 was done under a colorable exercise to delay compliance of the provisions of the Regulations.

28. In our opinion such submissions are patently erroneous. The decision given by SEBI under the Informal Guidance Scheme of 2003 is not binding on the Board. Clause 12 of the SEBI Informal Guidance Scheme cannot be construed as a conclusive decision or determination of any question of law or fact nor it can be construed as an order of the Board and consequently not appealable under Section 15T of the SEBI Act as per Clause 13 of the Informal Guidance Scheme of 2003. For facility, Clause 12 and 13 of the Informal Guidance of 2003 is extracted here under:-

“12. A no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the Board, though the Board may generally act in accordance with such a letter.

13. The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable.”

29. In view of the aforesaid, the finding given in the impugned order that the appellant should have taken appropriate action once decision was conveyed under the Informal Guidance Scheme is patently erroneous. In our view the decision given under the Informal Guidance Scheme was not binding on SEBI and the question always remained open which the appellant has raised now while filing an application under Regulation 29 of the Regulations of 2014.

30. We are further of the view that a decision of SEBI under the Informal Guidance Scheme cannot pre-empt the appellant from raising the plea of non-applicability of the Regulations under Regulation 29 of the Regulations. Further, the mere fact that the application was filed in the year 2018 does not mean that the appellant had deliberately delayed the filing of the application under the Informal Guidance Scheme or had delayed seeking exemption under the Regulations of 2014. The exemption application has to be treated on merits on the grounds raised by the appellant in its application. Considering the aforesaid, we are of the opinion that the contention that the conduct of the appellant debars the appellant from seeking relaxation / exemption is patently erroneous.

31. The Competent Authority considered the selling of the shares by the Trust as one of the mitigating factors for rejecting the application without considering the fact that the shares were sold in order to pay the loans which fact has not been disputed by the respondent. We also find that shares can be sold under Regulation 3(15)(e) of the Regulations of 2014. The Competent Authority has also not considered the undertaking given by the appellant regarding not to buy or sell any shares in future which according to us was a crucial consideration.

32. Consequently for the reasons stated aforesaid the impugned order cannot be sustained and is quashed. The matter is remitted to the Authority of SEBI to pass a fresh order in accordance with law within 3 months from today considering the application of the appellant seeking exemption / relaxation from the strict compliance of the Regulations of 2014 on merits. Since we have set aside the order on the ground that the application seeking exemption / relaxation has not been correctly decided we are not dealing with the aspect of applicability or non-applicability of the Regulations as raised by the appellant which issue shall remain open and will be reconsidered by the Competent Authority. In the circumstances

of the case, parties shall bear their own costs. Misc. Application is disposed of.

33. 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

13.07.2022
msb