

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved: 18.1.2022**

**Date of Decision: 21.1.2022**

**Misc. Application No.9 of 2020**

**And**

**Appeal No.33 of 2022**

1. R.T. Agro Private Limited  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.
2. Mr. Rashmi Bhimjyani  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.
3. Ms. Rekha Bhimjyani  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.
4. Rashmi C. Bhimjyani HUF  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.
5. Mrs. N.H. Popat  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.
6. Mr. Bhavik Bhimjyani  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021.

7. Neelkanth Realtors Pvt. Ltd.  
508, Dalamal House,  
J.B. Road, Nariman Point,  
Mumbai – 400 021. ...Appellants

Versus

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

Mr. Pesi Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Anshuman Sugla and Ms. Tanya Gupta, Advocates i/b. Joby Mathew and Associates for the Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora, Mr. Karthik Narayan, Mr. Harshvardhan Nankani and Mr. Shourya Tanay, Advocates i/b. ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.
2. The present appeal has been filed against the order of the Adjudicating Officer (hereinafter referred to as 'AO') dated 19<sup>th</sup> September, 2019 whereby the

appellants have been penalised a cumulative sum of Rs.35 lakhs for violation of Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, (hereinafter referred to as 'LODR Regulations').

3. The facts leading to the filing of the present appeal is, that the Company R.T. Exports Ltd. proposed to enter into a transaction with Neelkanth Realtors Pvt. Ltd. for purchase of 40,000 sq.ft. of residential space. This proposal was treated as a material related party transaction in view of clause 49 of the Listing Agreement and, accordingly, such proposal was required to be approved by the shareholders of the Company. Accordingly, a special resolution was approved by R.T. Exports Ltd. on 15<sup>th</sup> July, 2014 in relation to a Memorandum of Understanding with Neelkanth Realtors Pvt. Ltd. In terms of Section 188 of the Companies Act, 2013, the related parties abstained from voting on the special resolution.

4. Thereafter, an extra ordinary general meeting was held on 16<sup>th</sup> December, 2016 for rescinding the resolution of 15<sup>th</sup> July, 2014 in which related party entities voted. Prior to voting, the related party entities took opinion from a company law expert who opined that related party entities could cast their votes in view of the fact that Section 188 of the Companies Act only prescribed that related parties shall not participate in the voting process only for entering into a related party transaction and not for rescinding a related party transaction.
5. Based on a complaint, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') took up the matter and issued a notice alleging that the appellants had violated Regulation 23 of the LODR Regulations. The AO after considering the replies found that the appellants being related party entities have violated Regulation 23 of the LODR Regulations and, accordingly, imposed a penalty of Rs.5 lakhs on

each of the appellants. The appellants being aggrieved by the said order has filed the present appeal.

6. We have heard Mr. Pesi Modi, Senior Advocate assisted by Mr. Neville Lashkari, Mr. Anshuman Sugla and Ms. Tanya Gupta, Advocates for the appellants and Mr. Gaurav Joshi, Senior Advocate assisted by Mr. Abhiraj Arora, Mr. Karthik Narayan, Mr. Harshvardhan Nankani and Mr. Shourya Tanay, Advocates for the respondent.

7. The short question that arises for consideration is whether the appellants were justified in voting for rescinding the resolution dated 15<sup>th</sup> July, 2014 inspite of being related party entities. In order to understand the controversy, it would be appropriate to refer to certain provisions of the Companies Act and the LODR Regulations. Section 188 of the Companies Act, 2013 stipulates as follows:

***“188. Related party transactions.—***

*(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any*

*contract or arrangement with a related party with respect to—*

*(a) sale, purchase or supply of any goods or materials;*

*(b) selling or otherwise disposing of, or buying, property of any kind;*

*(c) leasing of property of any kind;*

*(d) availing or rendering of any services;*

*(e) appointment of any agent for purchase or sale of goods, materials, services or property;*

*(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and*

*(g) underwriting the subscription of any securities or derivatives thereof, of the company;*

*Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:*

*Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:*

*Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:*

.....”

***“Regulation 2(zc) of the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015.***

*“2(zc) — “related party transaction” means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:*

*Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);”*

8. From a perusal of Section 188 of the Companies Act it is apparently clear that no member of the Company shall vote on such resolution to approve any contract or arrangement which may be entered into by the Company, if such member is a related party. Admittedly, in the instant case, when the resolution of 15<sup>th</sup> July, 2014 was passed, the appellants being related party had abstained from voting and, therefore, they had complied with Section 188 of the Companies Act as well as Regulation 23(7) of the LODR Regulations.

9. Section 188 of the Companies Act as well as Regulation 23 of the LODR does not prohibit related party entities from voting for recalling/rescinding resolution which was passed earlier by the Company. In the absence of any such prohibition it was open to the appellants to participate in the resolution of 16<sup>th</sup> December, 2016. The bar under Section 188 of the Companies Act and Regulation 23(7) of the LODR Regulations is that no related party can vote to approve any contract or arrangement in which he is a related party.
10. In the light of the aforesaid clear provisions in Section 188 of the Companies Act and Regulation 23 of the LODR Regulations, we find that the appellants did not commit any violation. The AO committed an error in holding that they had violated Regulation 23 of the LODR Regulations.
11. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed with no order as to costs.



12. 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 Private Secretary 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

Justice M.T. Joshi  
Judicial Member

21.01.2022  
RHN