

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 08.10.2014

Date of Decision : 14.10.2014

Appeal No. 244 of 2014

Arun Goenka
703, Meadows, Sahara Plaza Complex
Andheri-Kurla Road,
Andheri (E),
Mumbai- 400 059

...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. Nirma Industries Private Limited
Nirma House, Ashram Road,
Ahmedabad- 380 009
3. Nirma Chemical Works Private Limited
Nirma House, Ashram Road,
Ahmedabad- 380 009
4. PL Capital Markets Private Limited
3rd Floor, Sadhana House,
570, P.B. Marg, Worli,
Mumbai- 400 018
5. Shree Rama Multitech Limited
603, Shikhar Shreemali Society,
Near Vadilal House,
Mithakhali, Navrangpura,
Ahmedabad- 380 009
6. LKP Shares and Securities Limited
(Now merged with LKP Securities Limited)
203, Embassy Centre,
Nariman Point,
Mumbai- 400 021
7. Karvy Computer Share Private Limited
Plot No. 17 to 24, Vithalrao Nagar,
Hi-Tech City Road,
Madhapur, Hyderabad- 500 081

...Respondents

Mr. B. B. Parekh, Advocate with Ms. Bhavna Bhartia, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Rushin Kapadia, Advocates for Respondent No. 1

Mr. Somasekhar Sundaresan, Advocate with Mr. Ravichandra Hegde, Advocate for Respondent Nos. 2, 3, 4 & 6.

None for Respondent Nos. 5 & 7.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar

1 Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) by his order dated May 26, 2014, while rejecting the representation made by the appellant has held that the appellant is not entitled to interest on the amount received by the appellant towards shares of the Target Company sold by appellant to the acquirers in the offer which opened on January 16, 2014 and closed on January 16, 2014. Challenging that order present appeal is filed.

2. Facts relevant for the present appeal are:-

- a) Shree Rama Multi-Tech Ltd. (“Target Company” for convenience) is a company incorporated under the Companies Act, 1956. Shares of the Target Company are listed on the Bombay Stock Exchange (“BSE”) and The National Stock Exchange of India Ltd. (“NSE”).
- b) Three closely held unlisted companies belonging to promoter group of the target

company namely East-West Polyart Limited, Shree Rama Polysynth Private Limited and Ideal Petro Products Limited (“Issuer Companies” for convenience) had issued Secured Redeemable Optionally Fully Convertible Premium Notes (“Premium Notes” for short) to Nirma Industries Private Limited (“NIPL” for short) in terms of a subscription agreement dated March 22, 2002. As per the public announcement, Premium Notes were held by both NIPL and Nirma Chemical Works Private Limited (“Acquirers” for convenience).

- c) In order to secure the Premium Notes issued to NIPL, promoters of the Target Company had pledged 1,42,88,700 shares (“the Pledged Shares” for convenience) of the Target Company in favour of NIPL in terms of the deeds of pledge dated March 22, 2002.
- d) As the Issuer Companies failed to redeem the outstanding Premium Notes, acquirers vide their respective notices dated June 10, 2005 intimated the Issuer Companies to redeem the outstanding Premium Notes within 30 days from the date of notice, failing which they

would exercise their rights in respect of pledged shares.

- e) Consequent to the invocation of pledge, 1,42,88,700 shares were transferred to the demat account of NIPL on July 22, 2005 which represented 24.25% of the paid up and voting capital of the Target Company. Since the above acquisition of shares triggered regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“Takeover Regulations, 1997” for short) the acquirers were obliged to make a public announcement for acquiring the shares.
- f) Accordingly, on July 25, 2005 the acquirers made a public announcement in terms of regulation 10 of the Takeover Regulations, 1997.
- g) On August 8, 2005 the acquirers submitted draft letter of offer to SEBI for its comments.
- h) On April 26, 2006 SEBI offered its comments on the draft letter of offer, wherein the acquirers/their merchant banker were called upon to incorporate certain additional factors in the letter of offer.

- i) Instead of making public offer by incorporating the comments made by SEBI, the acquirers on September 22, 2006 sought withdrawal of their open offer on ground that they have discovered fraudulent embezzlement of funds in the Target Company.
- j) By its letter dated April 30, 2007, SEBI rejected the application of the acquirers seeking withdrawal of the open offer. Challenging the aforesaid rejection acquirers filed an appeal before this Tribunal which was dismissed on June 5, 2008. Further appeal filed by the acquirers against the order of this Tribunal was dismissed by the Apex Court on May 9, 2013.
- k) In the light of the order passed by the Apex Court, acquirers filed revised letter of offer with SEBI on August 6, 2013. On January 2, 2014 SEBI issued its comments on the revised draft letter of offer. In compliance with the comments of SEBI, the merchant banker of the appellant made requisite changes in the letter of offer. Thereafter, the offer opened on January 16, 2014 and closed on February 4, 2014.

- l) Appellant participated in the open offer and his offer to sell 2,83,046 of the Target Company was accepted. Acquirers while making payment in respect of shares acquired in the open offer, have paid interest at the applicable rate to the eligible shareholders. Interest was not paid to the appellant on ground that appellant is not eligible for interest.
- m) In the meantime, appellant had made several complaints to SEBI vide e-mails commencing from May 16, 2013 raising various objections to the open offer made by acquirers. Basic contention of the appellant was that interest on the delayed payment of consideration should be paid to all the shareholders as per regulation 44(i) of Takeover Regulations, 1997 w.e.f. September 9, 2002 and no distinction can be made between the shareholders.
- n) Since SEBI on January 2, 2014 offered its comments on the revised letter of offer without deciding the objections raised by the appellant, the appellant filed Appeal No. 19, 2014 before this Tribunal, inter alia challenging the SEBI's comments dated January 2, 2014.
- o) On March 4, 2014 this Tribunal disposed of the said Appeal No. 19 of 2014 with a

direction to the appellant to make fresh representation before SEBI and directed SEBI to pass appropriate order on merits on the said representation within the time stipulated therein.

- p) Accordingly appellant made fresh representation of his grievances on March 15, 2014 and after hearing the appellant, WTM of SEBI by impugned order dated May 26, 2014, inter alia relying on the decision of the Apex Court in case of Clariant International Limited & Anr. Vs SEBI reported in (2004) 8 SCC 524 rejected the representation made by the appellant. Challenging the said order present appeal is filed.

3. Counsel for appellant submitted that the impugned order cannot be sustained for the following three reasons:-

- a) WTM of SEBI committed an error in holding that regulation 10 of Takeover Regulations, 2011 triggered on July 22, 2005 and not on March 22, 2002 when the pledge was created.
- b) Decision of Apex Court in case of Clariant International (Supra) could not be applied to the present case, because, the Apex Court in that case has considered the issue only from

the shareholders angle and not from the capital market angle.

- c) Under regulation 22(12) read with regulation 44(i) introduced to Takeover Regulations, 1997 with effect from 9/9/2002, acquirer is liable to pay interest to all the shareholders who were shareholders on the trigger date as well as persons who became shareholders subsequent to the trigger date and offered to sell shares in the open offer.

4. We see no merit in the above contentions.

5. Admittedly, shares of the Target Company were acquired by the appellant after July 22, 2005 that is the date on which the pledge was invoked and pledged shares were transferred to the name of the acquirers. Therefore, whether the trigger date should be taken as March 22, 2002 or July 22, 2005 would make no difference to the case of the appellant, because, admittedly appellant has acquired shares of the Target Company after July 22, 2005. In any event, language of regulation 10 makes it abundantly clear that the said regulation gets triggered only when acquisition of shares entitles such acquirer to exercise 15% or more of the voting rights of the Company. When shares were pledged, on March 22, 2002, shares being not transferred, appellant was not entitled to voting rights and hence March 22, 2002, could not be considered as the date on which regulation 10 of Takeover Regulations, 1997 got triggered. It is only on July 22, 2005 when the

shares were transferred acquirer became entitled to exercise 15% or more of the voting rights on account of transfer of shares, regulation 10 of Takeover Regulations, 1997 got triggered.

6. Question then to be considered is, whether appellant is entitled to interest on the amount which the appellant has received on account of shares sold to the acquires under the open offer. Liability to pay interest under regulation 22(12) of Takeover Regulations, 1997 arises only when the acquire fails to pay the consideration to the shareholders within 15 days from the date of the closure of the offer. In the present case, consideration was offered and paid to the appellant within the date specified under regulation 22(12) of Takeover Regulations, 1997. Hence paying interest to the appellant does not arise at all.

7. Similarly paying interest to the appellant under regulation 44(i) of Takeover Regulations, 1997 does not arise because liability to pay interest under that regulation arises only when the acquirer has failed to make a public offer or delayed the making of public offer within the time specified under Takeover Regulations, 1997 from the trigger date. Object of regulation 44(i) is to compensate the shareholder who has suffered delay on part of acquirer. Since appellant was not the shareholder on the trigger date i.e. on July 22, 2005, appellant cannot be said to have suffered on account of delay and consequently question of paying interest to the appellant does not arise at all.

8. Apex Court in the case of Clariant International Ltd.(Supra) has held that the shareholders contemplated under regulation 44(i) of Takeover Regulations, 1997 must be those shareholders whose shares

have been accepted upon public announcement of offer and who had suffered loss owing to blockage of amount by not being able to sell shares held by them. In the present case, appellant was neither the shareholder of the Target Company on the trigger date nor on date when public announcement was made on July 25, 2005 and hence question of paying interest to the appellant does not arise at all.

9. Argument of the appellant that the decision of the Apex Court in the case of Clariant International Ltd. (Supra) could not be applied to the present case on ground that the Apex Court in that case has considered the issued only from the shareholders angle and not from the capital market angle is totally fallacious. Once a decision is rendered by the Apex Court, it is not open to any person or to any authority to contend that the ratio laid down by the Apex Court cannot be applied on ground that the Apex Court has not considered the matter from any particular angle.

10. For all aforesaid reasons, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

14.10.2014
Prepared & Compared By: PK