

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 09.01.2018

Appeal No. 191 of 2017

Patwa Investment & Finance Ltd.
410, Wallstreet 1, Gujarat College Road,
Ellisbridge, Ahmedabad : 380 006.

..... Appellant

Versus

1. BSE Ltd.
P J Towers, Dalal Street,
Mumbai – 400 001.

2. Securities & Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.

..... Respondents

Mr. Deepak Shah, Advocate for the Appellant.

Mr. Manish Chhangani, Advocate for the Respondent No. 1.

Mr. Gaurav Joshi, Senior Advocate with Mr. Tomu Francis, Mr. Vivek Shah, Advocates for the Respondent No. 2.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C. K. G. Nair, Member

Per : Jog Singh, Member (Oral)

1. In the present appeal, the appellant is aggrieved of the impugned order dated February 10, 2017 passed by the Respondent No. 1, i.e., the Bombay Stock Exchange (for short 'BSE') whereby the In-principle approval granted to the appellant vide its letter dated July 26, 2016 for listing of 40,00,000 Equity shares of Rs. 10/- each on the Exchange under Direct Listing was withdrawn and an amount of Rs. 25,00,000/- paid by the appellant to the Respondent no. 1 towards Listing Processing Fees stood forfeited. The appellant has also challenged the order dated

November 28, 2016, passed by the Respondent No. 2, i.e., Securities and Exchange Board of India (for short 'SEBI'), declining the relaxation sought by the appellant under Regulation 38 of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (Erstwhile Clause 40A of the Listing Agreement) as the appellant had not obtained prior approval from SEBI for adopting a methodology other than those prescribed in the Circular dated November 30, 2015 for meeting the requirement of Minimum Public Shareholding of 25%.

2. The appellant, namely – Patwa Investment and Finance Limited, a company having its registered office at 410, Wall Street-1, Gujarat College Road, Ellisbridge, Ahmedabad -380015, initially listed on Ahmedabad Stock Exchange applied to the Respondent No. 1, i.e., the Bombay Stock Exchange, for listing of its shares so that the same could be traded on the platform of the Bombay Stock Exchange. The Internal Listing Committee of the Respondent No. 1 considered the said application on June 01, 2016 and granted an In-principle approval to the appellant's application seeking listing and permission of its equity shares on the Bombay Stock Exchange vide letter dated July 26, 2016. One of the conditions that was imposed on the appellant by the Respondent No. 1 was receipt of SEBI's clearance with regard to relaxation under Regulation 38 of Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 [for short '**SEBI (LODR) Regulations**']. The said In-principle approval granted to the appellant on July 26, 2016 was, however, withdrawn by the Respondent No. 1 vide impugned order dated February 10, 2017 inasmuch as SEBI declined to grant the above relaxation as per Regulation 38 of SEBI (LODR) Regulations, 2015 by the impugned order dated November 28, 2016.

3. The appellant has, therefore, approached this Tribunal for the following reliefs :

“(a) The Hon’ble Tribunal be pleased to quash and set aside the impugned order dated 10th February, 2017 passed by the BSE.

(b) The Hon’ble Tribunal be pleased to quash and set aside the impugned order dated 28.11.2016 passed by the SEBI.

(c) Direct the SEBI in relaxing the requirement under Regulation 38 of the SEBI (LODR), 2015.

(d) Direct the BSE to refund the amount of Rs. 25,00,000/- to the appellant if the listing permission is not to be granted.

(e) Such further and other order/s as deemed fit and proper be passed and appropriate directions be given to the respondent by this Hon’ble Tribunal.

(f) To award cost of this appeal.”

4. We have heard the learned counsel for both the parties at length and have perused the pleadings along with the documents produced at the time of hearing.

5. From the pleadings it is evident that the appellant company was law compliant as far as Minimum Public Shareholding (for short ‘MPS’) norms were concerned inasmuch as the promoter shareholding was exactly 75% till September 2013. However, on October 01, 2013, one of the promoters/directors of the appellant company, namely – Shri Parimal Suryakant Patwa, got 44,600 shares comprising of 2.9% of the paid up capital of the appellant from his elder brother, Shri Kirit Suryakant Patwa, a non-promoter. This is how the promoter holding was increased to 77.9% and the appellant company breached Rule 19 (A) of the Securities Contracts (Regulation) Rules, 1957 and various SEBI circulars w.e.f. October 01, 2013. However, on April 14, 2014 and June 20, 2014 respectively the appellant issued 15,80,000 and 8,80,000 equity shares of

Rs. 10/- each on preferential basis to persons other than promoters. Thus, the paid-up capital of the appellant got increased to Rs. 4 Crores of 40,00,000 equity shares of Rs. 10/- each. This is how the promoter holding was reduced to 29.99% on August 08, 2014 and the public shareholding was increased to the tune of 70.01%, which is stated to have been held by 733 shareholders. Thereafter, the appellant seems to have started correspondence with the Respondent No. 1 in January, 2015 for listing of its shares on the platform of BSE too. As hereinabove noted, the In-principle approval granted by Respondent No. 1 to the appellant on July 26, 2016 was subject to SEBI's clearance with regard to relaxation under Regulation 38 of the SEBI (LODR) Regulations, 2015. On August 20, 2016, the appellant made an application to SEBI for relaxing the requirement of Regulation 38 of SEBI (LODR) Regulations, 2015 as the appellant has decreased the promoter shareholding in the year 2015, as stated above, which was not in compliance with SEBI's circulars in this regard. SEBI, considering the same, rejected the request of the appellant for grant of post facto relaxation by the impugned order dated November 28, 2016 on the ground that the appellant was required to seek prior approval from SEBI for adopting a method other than those prescribed in the circular dated November 30, 2015. Based on this, the Respondent No. 1 also withdrew its in-principle approval for listing of 40,00,000 equity shares on its Exchange under direct listing by the impugned order dated February 10, 2017.

6. The Learned Counsel for the appellant submits that the acquisition of 2.99% shares by one of the promoters in excess of already existing 75% promoters' quota is a technical breach and SEBI was obliged to grant post facto approval by relaxing its norms with respect to the method employed

by the appellant to reduce the promoters' quota mainly by issuance of preferential allotments to members of public other than the promoters.

7. After hearing the Learned Counsel for the parties, it is noted that the statutory requirement of attaining and maintaining the MPS emanates from Rule 19 A of the Securities Contracts (Regulation) Rules, 1957, which reads as under:

Continuous Listing Requirement.

19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.:

[Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.]

(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent. within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.]

8. These provisions were inserted by way of two amendments effected on 04.06.2010 and 09.08.2010 in the SCRR. After these amendments came into effect all the listed companies were required to maintain a consistent public shareholding of 25%. The companies, whose public shareholding was below the 25% benchmark, as on 09.08.2010, were directed to satisfy the requirement within a period of three years from 04.06.2010 when the

SCRR was first amended to prescribe a minimum threshold of 25% as a pre-requisite for a company to get its shares listed with any recognized stock exchange.

9. SEBI in furtherance of the above amendments of SCRR issued various circulars to facilitate companies to achieve MPS norms and prescribed certain definite methods to do so. These circulars, mainly prescribe following methods for the attainment of 25% public shareholding :

Circular dated 16.12.2010

- i. Issuance of shares to the public through prospectus;
- ii. Offer for sale of shares held by promoters to public through prospectus;
- iii. Sale of shares held by promoters through the secondary market i.e. OFS through Stock Exchange.

Circulars dated 08.02.2012 and 29.08.2012

- i. Rights Issues to public shareholders, with promoters/promoter group shareholders foregoing their rights entitlement;
- ii. Bonus Issues to public shareholders, with promoters/promoter group shareholders foregoing their bonus entitlement;
- iii. Any other method as may be approved by SEBI, on a case to case basis.

Circular dated 30.11.2015

- i. Issuance of shares to public through prospectus;
- ii. Offer for sale of shares held by promoters to public through prospectus;
- iii. Sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 01, 2012;

- iv. Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- v. Rights Issue to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
- vi. Bonus issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
- vii. Any other method as may be approved by SEBI on a case to case basis. For this purpose, the list entities may approach SEBI with appropriate details. SEBI would endeavour to communicate its decision within 30 days from the date of receipt of the proposal or the date of receipt of additional information as sought from the company.

10. At this stage, it is relevant to note that the amendments of SCRR effected on 04.6.2010 also introduced the definitions of ‘public’ and ‘public shareholding’ in the said Rules which are as under:-

“2(d) “public” means persons other than –

- i. the promoter and promoter group;*
- ii. subsidiaries and associates of the company.*

Explanation.- For the purpose of this clause the words “promoter” and “promoter group” shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

2(e) “public shareholding” means equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas.”

11. Thus, the object of the abovesaid SCRRs, ICDR Regulations and various SEBI Circulars, is the increasing and maintaining of “public shareholding” and not of “promoters’ shareholding”.

12. Furthermore, we may also look at the regulation 109 of the ICDR Regulations which reads as under:

“109. The Board may in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

a) The requirement is procedural in nature; or

b) Any disclosure requirement is not relevant for a particular class of industry or issuer; or

c) The non-compliance was caused due to factors beyond the control of the issuer.”

13. The above analysis of the law and various circulars issued by SEBI from time to time giving repeated opportunities to companies to comply with the Minimum Public Shareholding norms make it clear that the method adopted by the appellant company to reduce the promoters' quota illegally acquired by some promoters is not in consonance with the prescribed mode of law. The aim of the law in this case is to ensure that the modus operandi adopted by a company is accepted by SEBI before the said methodology is out into practice for increasing the public shareholding to reach the benchmark of 25%. Therefore, SEBI was right in passing the impugned order dated November 28, 2016 rejecting the application of the appellant for post facto approval to its actions which were against the law. Similarly, the action of the Respondent No. 1 in withdrawing its In-principle approval cannot be faulted with and the same is hereby upheld.

14. Lastly, we may turn to the prayer of the appellant for refund of the processing fee of Rs. 25 Lac paid by the appellant to the Respondent No. 1. This prayer is also misconceived inasmuch as the Respondent No. 1 has indeed processed the case of the appellant as per law. The fee was not for grant of final listing invariably but for consideration. The fee was simply

for the purposes of processing the appellant's application which was in fact done. It is not the case of the appellant that the Respondent No. 1 has not at all considered or processed the application of the appellant for direct listing of its 40,00,000 equity shares, which is clear from the correspondence between the appellant and the Respondent No. 1. The appellant was very well aware that the amount of Rs. 25 Lac was towards the Listing Processing fees and that the same was non refundable. It is, however, noted that the Respondent No. 1 has not refused to refund the Annual Listing Fees and Initial Listing Fees paid by the appellant.

15. In view of the abovesaid, the appeal stands dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C. K. G. Nair
Member

09.01.2018
Prepared & Compared
PTM