(2021) 06 SEBI CK 0041

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.617 Of 2021, Appeal No.378 Of 2021

Abhey Ram Dahiya And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 11B

Citation : (2021) 06 SEBI CK 0041

Hon'ble Judges : Tarun Agarwala, Presiding Officer;M. T. Joshi, J

Bench : Division Bench

Advocate : Rajesh Ranjan, Neeraj Matta, Mustafa Doctor, Anubhav Ghosh, Manish Chhangani

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against an order dated March 9, 2020 passed by the Whole Time Member (â??WTMâ?? for short) of the

Securities and Exchange Board of India (â??SEBIâ?? for short) directing the appellant to disgorge the balance open offer consideration amounting to

Rs. 11.82 crore.

2. There is a delay of 352 days in the filing of the appeal and accordingly an application for condonation of delay has been filed. We find that no

plausible explanation has been given as to why the appellant could not file the appeal earlier. However, in view of the order of Supreme Court dated

March 23, 2020 and April 27, 2021 in Suo Moto Writ Petition (Civil) No. 3 of 2020, the delay in the filing of the appeal is condoned. The application is

allowed.

3. The facts leading to the filing of the present appeal is, that pursuant to the acquisition of shares above the prescribed threshold, a show cause notice

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was issued in the year 2001 pursuant to which a final order was passed in August 2003 directing the acquirers to make a public announcement for

20% shares. This order was challenged which was dismissed on April 19, 2006 and affirmed by the Supreme Court in the year 2015. Thereafter a

review application and curative petition was also dismissed in the year 2017 After the dismissal of the curative petition, SEBI directed the acquirers to

comply with its order and make an open offer. The same was not complied by the appellants and they filed an appeal before this Tribunal. This

Tribunal by an order dated August 29, 2018 extended the time for four weeks to make an open offer.

4. In spite of the aforesaid directions no steps were taken by the appellants to make the open offer. It transpires a draft letter of open offer was made

before the SEBI in which certain observations were made by SEBI against which an appeal was filed before this Tribunal. This Tribunal by an order

dated February 15, 2019 upheld the order of SEBI and directed the appellant to make an open offer on the increased capital base. This order of the

Tribunal was again upheld by the Supreme Court on April 5, 2019.

5. Since the order was not been complied with, the WTM passed an order June 3, 2019 directing the acquirers / appellants to comply with the SEBI

order of August 1, 2003 and deposit Rs. 11,94,40,349/- in an escrow account. This order was again not complied and accordingly a final order dated

March 9, 2020 was passed by the WTM which has now been challenged.

6. Having heard Shri Rajesh Ranjan, the learned counsel for the appellant we are of the opinion that the appellants are not entitled for any

discretionary relief. Technical arguments are being raised as to whether the impugned order directing the appellants to disgorge the balance open offer

consideration could be passed by the WTM under Section 11B of the SEBI Act.

7. We are of the opinion that in the given case, previous orders are required to be implemented. The appellants do not have any equity in its favour.

More than 17 years have elapsed and the appellants have not complied with the order of 2003 which has been affirmed right up to the Supreme Court.

8. In view of the aforesaid, the appeal lacks merit and is dismissed summarily at the admission stage itself with no order as to costs.

9. 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

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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.

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