

(1999) 10 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10811 of 1998 (O and M)

APL Industries Limited and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Securities and Exchange Board of India Act, 1992 — Section 11(1), 20

Citation : (2000) 125 PLR 567 : (2000) 2 RCR(Civil) 191

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : P.B. Menon and Anand Chhibbar, for the Appellant; M.S. Guglani, Additional Central Government Standing Counsel for Respondent No. 1, O.P. Goyal and S.K. Jaiswal, for the Respondent

Judgement

N.K. Sodhi, J.—By an order dated 22.5.1998 the Chairman, Securities and Exchange Board of India (for short the Board) exercising the powers of the Board held that the public issue of 30 lacs equity shares floated by the petitioner-Company was under subscribed and, therefore, in terms of Section 11-B read with Section 11(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter called the SEBI Act) a direction was issued to the petitioners to refund all the monies collected in respect of the public issue from the applicants with interest as applicable under the provisions of the Companies Act, 1956. It is this order which is now under challenge before us in this petition filed under Article 226 of the Constitution. A mandamus is also sought for a direction to the Union of India to hear the appeal filed by the petitioners u/s 22 of the Securities Contracts (Regulation) Act, 1956 (referred to as the 1956 Act).

2. In response to the notice of motion the respondents have put in appearance. Respondent No. 2 has filed its written statement and put in appearance through its counsel. It is pleaded that the impugned order is appealable u/s 20 of the SEBI Act which remedy the petitioner has not availed. It is also averred that the Central Government has not received any appeal alleged to have been filed by

the petitioners u/s 22 of the 1956 Act.

3. Since an alternative remedy is available to the petitioners u/s 20 of the SEBI Act we decline to interfere in the matter in the exercise of our extraordinary jurisdiction and relegate the petitioners to the remedy under the aforesaid provisions. We, therefore, decline to examine the merits of the impugned order. An application for condonation of delay, if any, and if filed will be disposed of by the Appellate Authority on its own merits and in accordance with law. As regards the appeal said to have been filed u/s 22 of the 1956 Act, there is controversy between the parties whether the same was even filed or received by the Central Government. However, if any such appeal was filed, the Central Government will dispose of the same in accordance with law.

4. Learned counsel appearing for the Central Government has brought to our notice the notification dated 13.9.1994 issued by the Central Government u/s 29-A of the 1956 Act whereby Central Government has issued directions that the powers exercisable by it u/s 22 of the said Act would also be exercisable by the Board. In view of this notification, it will be open to the Central Government to transfer the appeal, if pending, to the Board for its disposal in accordance with law.

5. The writ petition is disposed of in the above terms.