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**(2022) 04 SEBI CK 0007**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Appeal No.499, 500 Of 2019, Miscellaneous Application No. 554 Of 2019

Art Nirman Ltd

APPELLANT

Vs

National Stock Exchange Of India Limited And Others

RESPONDENT

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**Date of Decision :** 08-04-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 372  
Securities And Exchange Board Of India (?SEBI? For Convenience) (Issue Of Capital And Disclosure Requirements) Regulations, 2009 — Regulation 108, 108(2), 112  
Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018 — Regulation 104, 104(1)(a), 301  
General Clauses Act, 1897 — Section 6, 24  
Scheduled Districts Act, 1874 — Section 5, 5A  
Government Of India Act, 1935 — Section 292, 293  
Indian Independence Act, 1947 — Section 18  
Income Tax Act, 1922 — Section 10(2)(xi), 36(1)(vii), 36(2), 41(4)

**Citation :** (2022) 04 SEBI CK 0007

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

**Bench :** Full Bench

**Advocate :** Natasha Dhruman Shah, Pradeep Sancheti, Rashid Boatwalla, Aditya Vyas, Suraj Choudhary, Mihir Mody, Arnav Misra, Mayur Jaisingh, K. Ashar

**Final Decision :** Dismissed/ Disposed Of

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**Judgement**

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against two separate orders. The issue is the same and consequently both the appeals are being taken up together. Appeal No. 500 of 2019 is against the order of National Stock Exchange of India Limited ("NSE" for convenience) dated June 12, 2019, wherein a fine of Rs. 5,57,168 has been imposed for non-compliance of Regulation 108 (2) of the Securities and Exchange Board of India ("SEBI" for convenience) (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations, 2009" for

convenience). In Appeal No. 499 of 2019 the impugned order is dated June 12, 2019 wherein NSE has imposed a fine of Rs. 4,62,768 for violation of Regulation 108 (2) of the ICDR Regulations, 2009.

2. The facts leading to the filing of the present appeal is, that the appellant on May 02, 2019 made an allotment of 76,50,000 equity shares on preferential basis and applied to the Stock Exchange for listing of these 76,50,000 equity shares on June 10, 2019 under the ICDR Regulations, 2018. The NSE by the impugned order of June 12, 2019 imposed a fine of Rs. 5,57,168 on the ground that there was a delay of 23 days in applying for listing of the shares and, consequently, as per Regulation 108(2) of the ICDR Regulations, 2009 read with SEBI Circular dated June 15, 2017 an issuer was required to make an application to the Exchange for listing of the shares within 20 days from the date of the allotment which in the instant case was April 25, 2019 and, therefore, the appellant was required to make an application on or before May 15, 2019. Since the application was made on June 07, 2019 there was a delay of 23 days and in view of the Circular dated June 15, 2017 a fine of Rs. 20,000/- per day was leviable for non-compliance till the date of compliance.

3. Similarly, the appellant made an allotment of 51,30,000 equity shares on April 25, 2019 on preferential basis and applied to the Exchange for listing of these shares on June 07, 2019 under the ICDR Regulations, 2018. NSE by an order of June 12, 2019 imposed a fine of Rs. 4,62,768 for making a delayed application by 19 days under Regulation 108(2) of the ICDR Regulation, 2009 and imposed a fine under the Circular of June 15, 2017.

4. We have heard Ms. Natasha Dhruman Shah, the learned counsel for the Appellants and Mr. Pradeep Sancheti, the learned senior counsel for Respondent No. 1 and Mr. Suraj Choudhary, the learned counsel for Respondent No. 2.

5. The learned counsel for the appellant contended that earlier the listing of the securities on the Stock Exchange was being done under the provisions of the ICDR Regulations, 2009. These Regulations were repealed w.e.f. September 11, 2018 on which date ICDR Regulations, 2018 came into existence. The allotment was made on June 10, 2019 and June 07, 2019 and consequently the listing of these equity shares on the Stock Exchange was required to be done as per the provision under ICDR Regulations, 2018. It was urged that the impugned orders were passed under the 2009 Regulations which had been repealed and therefore no order could be passed on the basis of a regulation which has been repealed.

6. Before we proceed, it would be appropriate to consider a few provision of the 2009 and 2018 Regulations which reproduced hereunder. Regulation 108(2) of ICDR 2009 states as under:-

Application for Listing.

"108(2) The issuer or the issuing company, as the case may be, shall, make an application for listing, within twenty days from the date of allotment, to one or

more recognized stock exchange(s) along with the documents specified by stock exchange(s) from time to time.”

7. Under Regulation 112 of the ICDR Regulations 2009 Circulars have been issued. In this regard a Circular dated June 15, 2017 has been issued with regard to non-compliance of certain provisions of the ICDR Regulations, 2009 wherein stock exchange(s) were required to impose fines for non-compliance of certain provisions of ICDR Regulations. The relevant extract of the Circular dated June 15, 2017 is extracted hereunder:-

2. Stock exchanges shall impose fines on the companies for non-compliance with certain provisions of ICDR Regulations as under:-

Regulation

Violation

Fine

108(2)

Issuer not approaching the exchange for listing of equity shares within 20 days from date of allotment

Rs. 20,000 per day of non-compliance till the date of compliance. If non-compliance continues for more than 15 days, additional fine of 0.01% of paid up capital of the entity or Rs. 1 crore, whichever is less. Paid-up capital for this purpose shall be the paid up capital as on first day of the financial year in which the noncompliance occurs.

From a perusal of Regulation 108(2) of the 2009 Regulations read with the Circular of June 15, 2017 the issuer or the issuing company was required to make an application for listing within 20 days from the date of allotment before the stock exchange(s) failing which a fine @ Rs. 20,000/- per day could be imposed.

8. The relevant provision for listing of the securities on the platform of the Stock exchange under the ICDR Regulations, 2019 is Regulation 104 which is extracted hereunder:-

“General conditions

104. (1) An issuer making a further public offer shall ensure that –

(a) it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange, in terms of Schedule XIX;

(b) it has entered into an agreement with a depository for dematerialisation of specified securities already issued and proposed to be issued;

(c) all its existing partly paid-up equity shares have either been fully paid-up or have been forfeited;

(d) it has made firm arrangements of finance through verifiable means towards seventy five per cent of the stated means of finance for the specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty five per cent of the amount being raised by the issuer.

Explanation:- For the purposes of this regulation, "project" means the object for which monies are proposed to be raised to cover the objects of the issue."

A perusal of Regulation 104(1)(a) states that an application to the Stock Exchange for listing would be done in terms of Schedule XIX. Under Clause(2) of Schedule XIX the application for listing is required to be made from the date of the allotment within such period as may be specified by the Board from time to time. For facility, Clause (2) of Schedule XIX is extracted hereunder:-

"Application for listing

(2) The issuer shall make an application for listing, from the date of allotment, within such period as may be specified by the Board from time to time, to one or more recognized stock exchange(s)."

9. The period for making an application was specified by SEBI vide its Circular dated August 19, 2019. Relevant extract of the Circular dated August 19, 2019 is extracted hereunder:-

"As per Schedule XIX- Para (2) under heading Application for listing, it is stated that: "The issuer shall make an application for listing, from the date of allotment, within such period as may be specified by the Board from time to time, to one or more recognized stock exchange(s)".

In regard to above, it is specified that issuer shall make an application to the exchange/s for listing in case of further issue of equity shares from the date of allotment within 20 days (unless otherwise specified)."

Under the Circular the issuer was required to make an application for listing before the appropriate Stock Exchange within 20 days from the date of the allotment. This Circular was issued in supersession of the earlier Circular dated June 15, 2017 and came in force w.e.f. August 19, 2019.

10. It was urged by the respondent that the Circular dated June 15, 2017 was not repealed and, therefore, in view of Section 24 of the General Clauses Act, the said Circular will be applicable and the fine was, thus, rightly imposed under the said Circular.

11. In order to appreciate the submissions of the rival parties, we find that the 2009 Regulations were repealed on September 11, 2018 on which date the new Regulations of 2018 came into force. However, the Circular issued under the 2009 Regulations, namely, the Circular of June 15, 2017 was not rescinded/ repealed and continued to remain in force by virtue of Section 24 of the General Clauses Act. For facility, the said provision is extracted hereunder:-

24. Continuation of orders, etc., issued under enactments repealed and re-enacted.—Where any [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].

12. The consequences of repeal of a statute is very drastic. A statute after its repeal is completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality by before the repeal, no proceeding under the repealed statute could be commenced or continued after the repeal.

13. Repeal of a law takes effect from the date of repeal and the law repealed remains in operation for the period before its repeal without assistance of any saving clause for transactions past and closed. A saving clause is used to preserve from destroying certain rights, remedies or privileges already existing. Saving clauses are introduced in the Acts/ Regulations which repeal others to safeguard rights which, but for saving, would be lost. Section 6 of the General Clauses Act also plays the role of a savings clause.

14. Regulation 301 of ICDR Regulations, 2018 provides for repeal and savings. For facility, Regulation 301 of ICDR Regulations, 2018 is extracted hereunder:-

#### Repeal and Savings

"301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

15. A submission was made that the words “anything done” would include action taken even after the repeal of the regulations. In support of his contention, respondent has relied upon a decision of the Supreme Court in *Shri Ram Prasad vs. State of Punjab* (1966) 3 SCR 486.

16. In our opinion the words “anything done” under the repealed Act will also preserve the continuance of Rules and Bye-laws or circulars as held in *State of Nagaland vs. Ratan Singh* AIR 1967 SC 212 as under:-

22. We may here dispose of one argument which is somewhat independent of the others. It is contended that the Rules of 1937 did not survive the repeal of the Scheduled Districts Act, 1874 by the Adaptation of Laws Order, 1937, notwithstanding the saving clause in the Adaptation of Laws Order. This argument is based on the submission that the savings clause (reproduced earlier by us) did not mention rules as such. We do not agree. The saving clause preserved all notifications. The Rules of 1937 were enacted by notification and if notifications were saved the Rules in the notification were also saved. After the passing of the Government of India Act, 1935, the Rules of 1937 would be successively preserved by Sub-section 292 and 293 of the Government of India Act, 1935, Section 18 of the Indian Independence Act, 1947 and Article 372 of the Constitution. The real questions are whether they were invalid for any reason to start with or became void after the Constitution.

17. Once a statute is repealed, the consequence is that the subordinate legislation made under the statute ceases to have effect after the repeal of the statute. However, this can be avoided by insertion of a saving clause providing to the contrary in the absence of a savings clause, Section 24 of the General Clauses Act 1897, provides for continuance of any appointment, notification, order, rule, bye-law etc. made or issued under the repealed statute in so far as it is not inconsistent with the provisions reenacted. Such notification, rule, circular etc. would be deemed to be made under the corresponding provisions of a new statute and continue in force unless superseded by new notification, rules, circulars, made under the new statute. Continuance of subordinate legislation under Section 24 of the General Clauses Act is subject to the qualification that it is not inconsistent with the provisions reenacted.

18. In *Poonjabhai Varmalidas vs. Commissioner of Income Tax* AIR 1991 SC 1 an order of the Income Tax officer under Section 10(2)(xi) of the Income Tax Act, 1922 declaring certain debt as bad debt was held to continue by virtue of Section 24 of the General Clauses Act under Section 36(1)(vii) of the Income Tax Act, 1961 and the amount of the debt subsequently recovered was held to be taxable under Section 41(4) of the Income Tax Act, 1961. The facts in the aforesaid case is that for the Annual Year 1964-1965, 1965-1966 and 1966-1967, the assessee received certain amounts and were assessed under Section 41(4) of the Income Tax Act, 1961. The contention of the assessee was that he was not assessable under Section 41(4) of the Income Tax Act, 1961 because these amounts were written off as bad debts in the year 1959-60 and his claim for deduction was allowed. It was contended that the amounts when received were not assessable to income-tax under Section 41(4) of the Income Tax Act, 1961 as that the Section was not *pari materia* with Section 10(2)(xi) of the Income Tax Act, 1922 in terms of which the amounts were written off as bad debts.

19. The question before the Supreme Court was whether the amounts which were written off in terms of Section 10(2)(xi) of the 1922 Act but subsequently received after the repeal of that provision would be brought to tax in terms of the relevant reenacted provisions. The contention of the assessee that the two enactments are not in *pari materia* and what was allowed as deduction in terms of Section 10(2)(xi) of the 1922 Act cannot be brought to tax under Section 41(4) of the 1961 Act was not accepted. The Supreme Court held that the repealed Section 10(2)(xi) was a composite section and its ingredients are contained in reenacted Section 36 (1)(vii), 36(2) and 41(4). Consequently, when a debt is written off by an order in terms of Section 10(2)(xi) of the 1922 Act, the Income Tax Officer exercises the same power under Section 36(1)(vii) of the 1961 Act. These two provisions are consistent with each other. The Supreme Court held that in view of Section 24 of the General Clauses Act, the relevant order made under Section 10(2)(xi) of the 1922 Act would be deemed to be an order made under Section 36(1)(vii) of 1961 Act and such order is what is contemplated under Section 41(4) of the 1961 Act.

20. In view of the aforesaid, it is clear that even though the Regulations 2009 has been repealed, the Circular of 2017 remains in force in view of Section 24 of the General Clauses Act and continued to remain in force still it was rescinded by the Circular of August 19, 2019.

21. In view of the decision of the Supreme Court in *Poonjabhai Varmalidas* (Supra) the Circular of 2017 would apply to Regulation 104 of the 2018 Regulations and even though the impugned order refers to violation of Regulation 108 of the 2009 Regulations, the same is a misnomer and would be read as Regulation 104 of the 2018 Regulations.

22. We are also of the opinion that the provisions of the Regulation 108 of the repealed 2009 Regulations and the Circular of 2017 is not inconsistent with the provisions which have been re-enacted by Regulation 104 of the 2018

Regulations read with the 2019 Circular. The listing application was required to be made before the stock exchange(s) within 20 days from the date of the issuance of the allotment. Consequently, even though the impugned order refers to Regulation 108 of the 2009 Regulations by virtue of Clause 24 of the General Clauses Act would deem to apply to Regulation 104 of the 2018 Regulations.

23. In the light of the aforesaid, we do not find any error in the imposition of fine made by the two stock exchanges. The appeals fails and are dismissed with no order as to costs. Misc. Application is disposed of accordingly.

24. 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. Certified copy of this order is also available from the Registry on payment of usual charges.