

(2021) 09 SEBI CK 0049

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 479 Of 2020, Appeal No. 434 Of 2020

Ashav Advisory LLP

APPELLANT

Vs

Securities And Exchange Board Of India And Others

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Securities And Exchange Board Of India (Securities Contracts (Regulation) Rules, 1957 — Rule 19A, 19A(5), 19(2), 19(2)(b)
Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements, 2018 — Regulation 160, 160(d), 170, 3000
Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 38, 101(2)
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulation, 2011 — Regulation 20, 20(1)
Insolvency And Bankruptcy Code, 2016 — Section 31
Securities And Exchange Board Of India Act, 1992 — Section 11, 11A

Citation : (2021) 09 SEBI CK 0049

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

Bench : Division Bench

Advocate : Mukul Rohatgi, Somshekhar Sunderasan, H.S. Chandhoke, Mahesh Agarwal, Prashant Mishra, Rugved More, Akhil Mahesh, Shalin Arthwan, Aimen Reshi, Shyam Mehta, Abhiraj Arora, Rashi Dalmia, Karthik Narayan, Etc.

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal questioning the validity and legality of the order dated 15th September, 2020 passed by the respondent no.1 Securities and Exchange Board of India (hereinafter referred to as "SEBI") as well as the order dated 14th July, 2020 passed by respondent no.3 BSE Ltd. (hereinafter referred to as "BSE") and the order dated 16th July, 2020 passed by the respondent no.4 National Stock Exchange Ltd. (hereinafter referred to as "NSE").

2. By the order dated 15th September, 2020, the application dated 29th July,

2020 submitted by Ruchi Soya Industries Ltd. seeking exemption from strict compliance of Regulation 170 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements, 2018 (hereinafter referred to as "ICDR Regulations")) in relation to preferential allotment of shares of Ruchi Soya Industries Ltd. to the appellant was rejected on the ground that the Company was not in compliance with Regulation 160(d) of the ICDR Regulations as the Company, while making a preferential issue, did not ensure that the Company was in compliance the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder.

3. By the order dated 14th July, 2020, BSE on the application of the Company Ruchi Soya's dated July 10, 2020, found that preferential allotment of 1,86,70,213 equity shares was not under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") but under Chapter V of SEBI ICDR Regulation 2018 and, therefore, the Company could not avail the exemption under IBC. In the same order, BSE further held that the preferential issue was not in compliance with the "conditions for preferential issue" as per Regulation 160(d) of the SEBI ICDR Regulation, 2018 and, consequently, the BSE directed the Company not to proceed with the allotment of equity shares under the preferential allotment.

4. By the order of 16th July, 2020, NSE also held that the Company was not in compliance with Minimum Public Shareholding ("MPS" for short) requirement as the promoters of the Company was holding 98.87% of the total capital of the Company and, consequently, directed the Company to refrain from making any preferential allotment in view of the circulars dated 30th November, 2015 and 22nd February, 2018 which was issued in relation to achieving MPS requirement.

5. The appellant also prayed that SEBI should be directed to allow Respondent No.2, ie, the Company Ruchi Soya Industries Ltd. to proceed with the allotment of 1,86,70,213 equity shares to the appellant and that SEBI should be directed to exempt the respondent no.2 Ruchi Soya from strict compliance of Regulation 170 of the ICDR Regulations.

6. The facts leading to the filing of the present appeal is, that the appellant is a limited liability partnership incorporated in 2019 under the Limited Liability Partnership Act, 2008. Respondent no.1 SEBI is the Regulator constituted under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"). Respondent no.2 is the Company Ruchi Soya Industries Ltd. Respondent no.3 is the BSE Ltd. and respondent no.4 is the National Stock Exchange Ltd.

7. On 15th December, 2017, the Standard Chartered Bank and DBS Bank filed applications before the National Company Law Tribunal, Mumbai (hereinafter referred to as "NCLT") for initiating Corporate Insolvency Resolution Process against the erstwhile Ruchi Soya Industries Ltd. The committee of creditors subsequently approved the resolution plan filed by the Patanjali group for

resolution of the erstwhile Ruchi Soya Industries Ltd. NCLT approved the resolution plan under Section 31 of the IBC on 24th June, 2019 subject to the filing of an additional affidavit. Upon filing of the additional affidavit, final approval was granted on 4th September, 2019 by NCLT.

8. The resolution plan broadly provided for the Company to infuse funds to the tune of Rs.1,104.75 crores towards equity and Rs. 3,245.25 crores towards the debt portion. Under the resolution plan the Patanjali group was required to maintain the Company as a running concern.

9. It transpires that the Patanjali group was short of funds and required funds to execute the resolution plan. It is alleged that the Company executed various commitment letters, memorandum of understanding, inter corporate deposits, pledge, agreements etc. with the appellant pursuant to which the appellant paid a sum of Rs.5 crores to Patanjali Ayurveda Ltd. and Rs.4 crores to Patanjali Parivahan Private Limited on 27th November, 2019. The appellant further paid a sum of Rs. 35 crores to Patanjali Ayurveda Ltd. and another sum of Rs.11,25,00,000 to Patanjali Parivahan Private Ltd. on 10th December, 2019. Further, payment of Rs.2,55,00,000 was made to Patanjali Ayurveda Ltd. on 19th December, 2019. In this way, the appellant advanced loans to the Company. However, these loans were not towards the share application money.

10. The Board of Directors of the Company passed a resolution on 17th January, 2020 approving allotment of 1,86,70,213 equity shares of face value of Rs.2 per share at the rate of Rs.7 per share on preferential basis to the appellant, subject to passing of a special resolution by the shareholders. Based on the aforesaid resolution, a special resolution was passed the shareholders of the Company in the extraordinary general meeting on 20th February, 2020 authorising the Company to issue preferential allotment of the aforesaid equity shares at the aforesaid price to the appellant subject to the consent to be given by the lenders/ creditors of the Company. The aforesaid resolution was placed before BSE and NSE. The BSE by letter of 5th March, 2020 granted in-principle approval for the aforesaid allotment subject to ensuring compliance of various Acts and Regulations, namely, the SEBI Act, Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"), Securities and Exchange Board of India (Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCR Rules"), ICDR Regulations, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (hereinafter referred to as "LODR Regulations"), listing agreement, circulars, guidelines etc. NSE by letter dated 26th March, 2020 also granted in-principle approval to the aforesaid allotment.

11. The nationwide lockdown was declared by the Government of India on account of Covid pandemic with effect 25th March, 2020. In view of the lockdown, the appellant by letter dated 8th April, 2020 informed the Company Ruchi Soya that they are unable to complete the formalities for the proposed allotment and sought further time to complete the formalities. In turn, the

Company wrote letters dated 9th April, 2020 to NSE and BSE seeking extension for completion of the formalities under the ICDR Regulations etc. for allotment of the shares in view of the lockdown. This request of the Company vide letters dated 9th April, 2020 was rejected by BSE by an order dated 8th July, 2020. BSE informed that allotment is required to be made within the time frame as required under Regulations 170 of the ICDR Regulations which cannot be relaxed and if the allotment is not made within the stipulated period then the Company is required to have a revised approval from the shareholders with a revised relevant date and revised preferential price.

12. Similarly, NSE by order dated 13th April, 2020 also informed the Company that granting exemption or giving further time for completion of formalities was outside NSE's jurisdiction but informed the Company that they could make a representation to SEBI.

13. Accordingly, the Company Ruchi Soya made a representation to SEBI on 15th April, 2020 for relaxation from the approval of Regulation 170 of the ICDR Regulations.

14. In the meanwhile, the appellant on 26th May, 2020 made a payment of Rs.13,06,91,421 towards the share price of the preferential allotment of shares.

15. On 25th June, 2020, NSE sought clarification from the Company Ruchi Soya regarding its compliance with the MPS requirements as specified under Regulation 38 of the Listing Regulations, 2015 and Regulation 160(d) of ICDR. Similar clarification was sought by BSE. The Company vide letters dated 30th June, 2020 and 10th July, 2020 issued clarifications to the two stock exchanges and specifically stated that the proposed preferential allotment would not be counted for the purpose of approved mechanism of reducing the minimum promoter's shareholding and that the Company will undertake to reduce the promoter's shareholding to the desired level upon successful implementation of the resolution plan under the IBC.

16. Upon receipt of the aforesaid clarification given by the Company, the BSE by the impugned order dated 14th July, 2020, held that the preferential allotment of shares was not under the resolution plan of IBC but under Chapter V of the ICDR Regulations and, therefore, the Company cannot avail the exemption as provided under the provisions of the IBC. The BSE further held that the preferential allotment was not in compliance with the "conditions for preferential issue" as per Regulation 160(d) of the ICDR Regulations and, therefore, directed the Company not to allot equity shares under preferential allotment to the appellant. Similar order was passed by NSE on 16th July, 2020 holding that the Company was not in compliance with the MPS requirement as the promoters held 98.87 percent of the total capital of the Company and, consequently, directed the Company to refrain from making the preferential allotment in view of the circulars dated 30th November, 2015 and 22nd February, 2018.

17. On 15th September, 2020, SEBI rejected the request of the Company Ruchi

Soya Industries Ltd. seeking exemption from strict compliance of Regulation 170 of ICDR Regulations on the ground that the Company was not in compliance of Regulation 160 (d) of the ICDR Regulations.

18. The appellant being aggrieved by the order dated 14th July, 2020 passed by BSE, 16th July, 2020 passed by NSE and 15th September, 2020 passed by SEBI has filed the present appeal.

19. We have heard Mr. Mukul Rohatgi, Senior Advocate assisted by Mr. Somshekhar Sunderasan, Mr. H.S. Chandhoke, Mr. Mahesh Agarwal, Mr. Prashant Mishra, Mr. Rugved More, Mr. Akhil Mahesh, Mr. Shalin Arthwan, and Ms. Aimen Reshi, Advocates for the Appellant and Mr. Shyam Mehta, Senior Advocate assisted by Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates for the Respondent no.1, Mr. Pradeep Sancheti, Senior Advocate assisted by Mr. Satwinder Singh, Mr. NPS Chawla, Mr. Sujoy Datta, Mr. Melvyn Fernandes, Mr. Karan Bhosale, Mr. Surekh Kant Baxy and Mr. Robin Singh Rathore, Advocates for the Respondent no.2, Mr. Pesi Modi, Senior Advocate assisted by Mr. Arka Saha and Ms. Zarnaab Aswad, Advocates for the Respondent no.3 and Mr. Shiraz Rustomjee, Senior Advocate assisted by Mr. Rashid Boatwalla and Mr. Aditya Vyas, Advocates for the Respondent no.4.

20. The contention of Shri Mukul Rohatgi, learned senior counsel for the appellant is that the Company was short of funds and in order to implement the resolution plan had entered into various agreements with the appellants, based on which more than Rs.50 crores was given to the Company as a loan. The Company itself came out with a resolution to issue preferential shares at a premium of Rs.5 per share in favour of the appellant which for vested reasons the Company has backtracked and are now not keen to comply with their own resolution for the reason that in the meanwhile the price of the shares has risen considerably. The contention of the learned senior counsel is, that once in-principle approval is granted by the stock exchanges, the said exchanges could not backtrack and contend later on by the impugned orders that the Company was not in compliance with Regulation 160(d) of the ICDR Regulations. Such action taken by the stock exchanges was an afterthought mainly because after the announcement of the resolution of the Board of Directors and the special resolution the price of the shares of the Company rose considerably. The learned senior counsel further contended that there was a nationwide lockdown with effect from 25th March, 2020 in view of the Covid pandemic and it was not possible for the appellant to adhere to the time line prescribed under Regulation 170 of the ICDR Regulations and, therefore, the request for extension and waiver of the strict compliance under Regulation 170 of the ICDR Regulations being genuine should have been allowed instead of rejecting it which action as wholly arbitrary. The learned senior counsel further contended that Regulation 38 of the LODR Regulations read with Rule 19A(5) of the SCR Rules, 1957 could not come in the way of the Company issuing a preferential allotment, in as much as, as per the resolution plan dated 19th November, 2019 granted under the IBC, the

Company had three years to comply with the minimum public shareholding requirement, namely, till December, 2022 as per Rule 19A(5) of the SCR Rules. It was urged that there was sufficient time for the Company to comply with the minimum requirement of 25% and, therefore, Regulation 160(d) could not come in the way of issuance of preferential allotment. It was contended that the stock exchange could not say that first comply with the listing obligations under the LODR Regulations and Regulation 160(d) of the ICDR Regulations before issuing the preferential allotment of shares. It was also urged that the circulars dated 30th November, 2015 and 22nd February, 2018 issued by SEBI which provides for the manner in achieving the MPS requirement did not include preferential allotment and, therefore, the said circulars are not applicable. The learned senior counsel, thus, contended that the reliefs claimed in the appeal should be allowed and necessary direction should be issued.

21. Mr. Shyam Mehta, learned senior counsel appearing for SEBI contended that the contention of the appellant that they had three years to achieve the MPS requirement till December, 2022 is patently erroneous. The learned senior counsel contended that the public shareholding in the Company fell below 10% as on December 18, 2019 since the promoters held 98.87% of the total shareholding. The learned senior counsel contended that in view of the proviso to Rule 19A(5) of the SCR Rules of 1957, the Company was required to achieved the minimum of 10% within 18 months which was till June, 2021. It was contended that this period has now expired and the Company has not taken any steps to achieve this MPS requirement which is mandatory under the proviso to Rule 19A(5). The learned senior counsel further contended that the resolution of the Board of Directors dated 17th January, 2020 and special resolution dated 20th February, 2020 of the shareholders was done without taking SEBI's approval and in view of the circulars dated 30th November, 2015 and 22nd February, 2018 prior consent was required to be taken before resolving to dispense preferential allotment of shares. It was urged that since no prior consent was taken the resolution of the Board of Directors and the special resolution of the shareholders could not be given effect.

22. Mr. Pradeep Sancheti, learned senior counsel appearing for respondent no.2 Company, namely, Ruchi Soya Industries Ltd. contended that the special resolution dated 20th February, 2020 was subject to lenders/creditors consent which was not given by the lenders and, consequently, the special resolution could not be relied upon. The learned senior counsel further contended that the decision of the Board of Directors dated 8th July, 2020 holding that the special resolution is required to be implemented in a time bound manner under Regulation 170 of the ICDR Regulations and if the special resolution is not implemented within 15 days then a fresh special resolution is required to be passed and that no relaxation could be given to this provision. The learned senior counsel contended that this direction was duly accepted by the appellant based on which the allotment money given by the appellant was refunded. It was also contended that even otherwise the appellant did not deposit the allotment money

within the stipulated period and that the amount was deposited on 26th May, 2020 after more than three months of the passing of the special resolution dated 20th February, 2020. On this ground also the Company could not implement the special resolution. The learned senior counsel contended that the loan amount as well as the preferential allotment amount has already been refunded along with interest and nothing is due to the appellant. It was contended that the Company has accepted the decision of the stock exchanges and that of SEBI and that they cannot be forced to implement the resolution which has lost its life. The learned senior counsel contended that the appellant has no locus standi to question the orders which were passed on the application filed by the Company and which has been accepted by them and, consequently, the appeal should be dismissed as not maintainable.

23. Shri P.N. Modi, learned senior counsel appearing for BSE and Shri Shiraz Rustomjee, learned senior counsel appearing for NSE made similar contention, namely, that the total shareholding of the Company fell to 1.13% and, therefore, preferential allotment of shares could not be issued in view of Regulation 160(d). It was urged that the period to cure the defects could not be excluded while issuing the preferential allotment and that the direction of the stock exchange granting in principle approval was still existing. It was contended that once the Company complies with the provisions of Regulation 160(d) of the ICDR Regulations the in-principle approval could be carried out. It was further contended that in-principle approval was subject to the compliance of the SEBI Act, SCR Rules, ICDR Regulations, LODR Regulations, Listing agreement, guidelines and the circulars issued by SEBI from time to time and, thus, the contention that the stock exchanges backtracked after finding that the price of the shares rose considerably is patently erroneous. It was contended that the appellant has no locus standi to challenge the orders passed by the stock exchanges or SEBI upon the application filed by the Company and, therefore, the appeal should be dismissed on this ground itself.

24. Before proceeding further it would be appropriate to extract the relevant provisions of the Rules and Regulations which are necessary for effective adjudication of the issues raised in the present appeal.

Regulation 160 of the ICDR Regulations

"Conditions for preferential issue

160. A listed issuer making a preferential issue of specified securities shall ensure that:

- a) all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
- b) a special resolution has been passed by its shareholders;
- c) all equity shares held by the proposed allottees in the issuer are in dematerialised form;

d) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, as amended, and any circular or notification issued by the Board thereunder;

e) the issuer has obtained the Permanent Account Numbers of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account Number for transacting in the securities market by the Board."

Regulation 38 of the LODR Regulations

"Minimum Public Shareholding.

38. The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time:

Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue."

Rule 19(A) of the SCR Rules

"Continuous Listing Requirement.

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

.....

(5) Where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India:

Provided that, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of eighteen months from the date of such fall, in the manner specified by the Securities and Exchange Board of India."

SEBI Circular dated 30th November, 2015

"CIRCULAR

CIR/CFD/CMD/14/2015

November 30, 2015

To

The Listed Entities

The Recognized Stock Exchanges

Dear Sir/Madam,

Sub: Manner of achieving minimum public shareholding

1. Regulation 38 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that the listed entity shall comply with minimum public shareholding requirements in the manner as specified by the Board from time to time.

2. In order to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, the Listed Entity shall adopt any of the following methods :-

- 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 1, 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 listed entities may approach SEBI with appropriate details. SEBI would endeavor 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.

3. The Stock Exchanges are advised to bring the provisions of this circular to the notice of the listed entities and also to disseminate the same on its website. This circular shall come into force on December 01, 2015.

4. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulation 38 and Regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

5. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Continuous Disclosure Requirements".

Yours faithfully,

B N Sahoo

General Manager

Compliance and Monitoring Division

Corporation Finance Department"

Circular dated 22nd February, 2018

"CIRCULAR

SEBI/HO/CFD/CMD/CIR/P/43/2018

February 22, 2018

To,

1. The listed entities
2. The recognised Stock Exchanges

Subject: Manner of achieving minimum public shareholding

1. Please refer to Circular No. CIR/CFD/CMD/14/2015 dated November 30, 2015 on the captioned subject, which allowed for various methods that may be used by a listed entity to achieve compliance with the minimum public shareholding requirements mandated under rules 19(2) (b) and 19A of the Securities Contracts (Regulation) Rules, 1957 ("the SCRR") read with regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

2. With a view to further facilitate listed entities to comply with the minimum public shareholding requirements, the following additional methods are allowed:-

a) Open market sale: Sale of shares held by the promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to five times' average monthly trading volume of the shares of the listed entity;

b) Qualified Institutions Placement: Allotment of eligible securities through Qualified Institutions Placement in terms of Chapter VIII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

3. Conditions for open market sale:

a) In respect of the method mentioned at paragraph 2(a) above, the listed entity shall, at least one trading day prior to every such proposed sale, announce the

following details to the stock exchange(s) where its shares are listed:

- i. the intention of the promoter/promoter group to sell and the purpose of sale;
- ii. the details of promoter(s)/promoter group, who propose to divest their shareholding;
- iii. total number of shares and percentage of shareholding proposed to be divested; and
- iv. the period within which the entire divestment process will be completed.

b) The listed entity shall also give an undertaking to the recognized stock exchange(s) obtained from the persons belonging to the promoter and promoter group that they shall not buy any shares in the open market on the dates on which the shares are being sold by promoter(s)/promoter group as stated above.

c) The listed entity, its promoter(s) and promoter group shall ensure compliance with all applicable legal provisions including that of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

4. Pursuant to the above, a compilation of all methods allowed for achieving compliance with the minimum public shareholding requirements is placed at Annexure for reference.

5. This Circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with regulations 38 and 101(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and shall supersede the Circular No. CIR/CFD/CMD/14/2015 dated November 30, 2015.

6. This Circular is available at www.sebi.gov.in under the link "Legal" and "Circulars".

7. The recognized Stock Exchanges are advised to disseminate the contents of this Circular on their website.

Pradeep Ramakrishnan

Deputy General Manager

ANNEXURE

In order to achieve the minimum level of public shareholding mandated under rules 19(2)(b) and rule 19A of the Securities Contracts (Regulation) Rules, 1957, a listed entity shall adopt any of the following methods :-

- 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 Circular reference No. CIR/MRD/DP/18/2012 dated July 18, 2012;
- iv. Institutional Placement Programme (IPP) in terms of Chapter VIIIA of the Securities and Exchange Board of India (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. Sale of shares held by promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to conditions specified under this Circular;
- viii. Allotment of eligible securities under Qualified Institutions Placement in terms of Chapter VIII of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- ix. Any other method as may be approved by the Board on a case to case basis. For this purpose, the listed entity may approach the Board with appropriate details to obtain prior permission. The Board would endeavor 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 listed entity."

Regulation 170 of the ICDR Regulation

"Allotment

170.(1) Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution:

Provided that where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of the order on such application or the date of approval or permission, as the case may be:

Provided further that where the Board has granted relaxation to the issuer in terms of the Securities and Exchange Board of India (Substantial Acquisition of Shares and

Takeovers) Regulations, 2011, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation:

Provided further that requirement of allotment within fifteen days shall not apply to allotment of specified securities on preferential basis pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank of India or a resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016.

(2) If the allotment of the specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter shall be taken with reference to the date of the latter special resolution.

(3) Notwithstanding anything contained in this regulation, where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, and there is no offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be considered from the expiry of the period specified in sub-regulation (1) of regulation 20 or date of receipt of all statutory approvals required for the completion of an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

Provided that if an offer is made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, the period of fifteen days shall be counted from the expiry of the offer period as defined in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011:

Provided further that the provisions of this sub-regulation shall not apply to an offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, pursuant to a preferential allotment.

(4) Allotment of the specified securities shall be made only in dematerialised form.

Explanation: The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities."

Regulation 300 of the ICDR Regulation

"Power to relax strict enforcement of the regulations

300.(1) 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 or a particular class of industry or issuer; or

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

(2) For seeking relaxation under sub-regulation (1), an application, giving details and the grounds on which such relaxation has been sought, shall be filed with the Board.

(3) The application referred to under sub-regulation (2) shall be accompanied by a non-refundable fee of rupees one lakh payable by way of direct credit in the bank account through NEFT/RTGS/ IMPS or any other mode allowed by RBI or by way of a demand draft in favour of the Board payable in Mumbai."

25. A perusal of the aforesaid provisions indicate that a preferential allotment can be issued by the issuer Company, namely, Respondent no.2 Ruchi Soya Industries Ltd. Before issuance of preferential allotment certain conditions are required to be complied which is mandatory as per Regulation 160 of the ICDR Regulations. Regulation 160(d) provides that the issuer is required to be in compliance with the LODR Regulations. Regulation 38 of the LODR Regulations requires the issuer to comply with the MPS requirement as specified under Rule 19A of the SCR Rules. Rule 19A provides that the minimum public shareholding in a Company should be 25% at all times. Rule 19A(5) provides that if a resolution plan is issued under the provisions of the IBC which results in the fall of the public shareholding below 25% then the issuer is required to ensure that the minimum public shareholding of 25% is achieved within three years from the date of the fall. The proviso to Rule 19A(5) further indicates that if the MPS falls below 10%, then the MPS of 10% is required to be achieved within 18 months from the date of such fall.

26. The circulars issued by SEBI provides the manner of achieving the MPS requirement. In clause (ix) of the Annexure to the SEBI circular dated February 22, 2018, a residual clause has been provided, namely, "any other method" which can be adopted by the issuer for the purpose of achieving the minimum public shareholding requirement. The only embargo under this clause is, that prior permission from SEBI is required by the issuer before proceeding with that method.

27. In view of the aforesaid provisions as elucidated above, the contention of the appellant that the requirement of achieving the minimum 25% of the public shareholding in the Company had not kicked in as the Company had time till December 2022 to achieve the requirement under Rule 19A in view of the resolution plan dated 19th December, 2019 passed under the provisions of IBC which, in our view, is patently erroneous. The alleged timeline to cure the defect would not in our opinion absolve the appellant from its obligation to maintain minimum public shareholding.

28. In any case, admittedly, the MPS fell below 10% in the issuer Company. The

public shareholding was only 1.13%. The proviso to Rule 19A(5) clearly stipulates that if the public shareholding falls below 10% then the issuer is required to bring it back to 10% within 18 months from the date of such fall. 18 months have expired on June, 2021 and no steps have been taken by the Company till date to comply with the MPS requirement under the proviso to Rule 19A(5) and, consequently, the Company is not in compliance with Regulation 160(d). Since the issuer Company was not in compliance with Regulation 160(d), the preferential allotment could not be issued as the condition imposed under Regulation 160 was not complied with.

29. In this regard, Regulation 160 of the ICDR Regulations prescribes conditions for issuance of preferential allotment. These conditions are mandatory and are required to be strictly adhered to by the issuer Company. Regulation 160(d) clearly stipulates that the issuer Company must be in compliance with Regulation 160 of the LODR. Admittedly, the issuer Company was not in compliance as it held 98.87% of the total shareholding and only 1.13% was with the public.

30. The circulars issued by the Board provided various method for reducing the promoter's shareholding and increasing the public shareholding. Under the residual category "any other method" the issuer could have applied through preferential allotment but in the instant case the Company has specifically stated that these allotment of preferential shares would be outside the purview of the MPS requirement.

31. Further, clause (ix) of the circular dated February 20, 2018 stipulated that under the category of any other method prior permission was required to be taken from SEBI. In the instant case, issuance of preferential allotment without taking prior permission from SEBI was erroneous and, consequently, the Board of Director's resolution dated 17th January, 2020 and special resolution of the shareholders dated 20th February, 2020 could not be given effect to.

32. We also find that in-principle approval given by the two stock exchanges was subject to compliance by the issuer Company of the ICDR Regulations, LODR Regulations, SCR Rules, guidelines and circulars issued by SEBI from time to time. We find that the issuer Company failed to comply with the ICDR Regulations, LODR Regulations, SCR Rules and, consequently, the special resolution in our view could not be acted upon.

33. We also find that under Regulation 170 of the ICDR Regulations, a special resolution with regard to allotment of shares is required to be carried out within 15 days failing which a fresh special resolution is required to be passed taking into consideration the relevant date specified which shall be taken into consideration for determining the fresh price of the shares. Admittedly, no fresh resolution has taken place and, consequently, the special resolution dated 20th February, 2020 has lost its efficacy and, at this stage, it cannot be given effect to. Further, we find that the issuer Company has accepted the direction of BSE as per the letter dated 8th July, 2020. Thus, the special resolution at this stage

cannot be acted upon nor could any direction be issued to the Company to hold fresh special resolution, nor can the life of the special resolution could be extended.

34. We also find that consent of the lender was a pre requisite for the allotment of the shares to the appellant on preference basis. In the instant case, the State Bank of India, being a lender, refused permission for allotment of shares on a preferential basis to the appellant. Thus the special resolution could not be given effect to.

35. In view of the aforesaid, the application filed by the issuer Company under Regulation 3000 of the ICDR to relax the requirement stipulated under Regulation 170 was rightly rejected by SEBI. We do not find it to be arbitrary as the same was passed in accordance with law.

36. The contention of the respondents that the appeal is not maintainable as the appellant has no locus standi is a moot point. Admittedly, the application for extension of time for relaxation of the condition mentioned under Regulation 170 was filed by the Company which was duly rejected. To that extent the aggrieved person, if any, was the issuer Company but they have accepted the decision of the stock exchange and SEBI. We further find that that the appellant is also an aggrieved person as the preferential allotment which was issued in his favour has ultimately been declined by the stock exchange and SEBI and, therefore, to that extent the appellant has the right to question the decision of the stock exchange and of SEBI. We, thus hold that the appeal is maintainable.

37. For the reasons stated aforesaid, we do not find any error in the impugned orders passed by the two Stock Exchanges and SEBI. No direction can be issued to the issuer Company Respondent no.2. In view of the aforesaid, the appeal fails and is dismissed with no order as to costs. Misc. application no.479 of 2020 is also accordingly disposed of.

38. 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 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.