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(2023) 11 SEBI CK 0026

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1374, 1375, 1376, 1377 Of 2023, Appeal No. 888 Of 2023

Aushim Khetarpal APPELLANT

Vs

Securities & Exchange Board Of India RESPONDENT

Date of Decision : 30-11-2023

Acts Referred:

Citation : (2023) 11 SEBI CK 0026

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Amit Gupta, Pradeep Sancheti, Manish Chhangani, Abhay Chauhan, Atul Kumar Agrawal

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer, J

1. Misc. Application No. 1375 of 2023 for waiver to pay the court fee has become infructuous as the registry informed that the appellant has paid the court fee. The Misc. application is dismissed as infructuous.

2. The present appeals have been filed against a common order dated January 23, 2020 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI').

3. The facts leading to the filing of the present appeals is, that two show cause notices dated October 29, 2008 for violation of Regulation 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and show cause notice dated March 24, 2008 for violation of Regulations 10 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') were issued. During the pendency of these proceedings,

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the appellant filed a consent application which was disposed of by SEBI Consent Order dated July 23, 2013 with the following directions :-

"I. "Aushim Khetarpal shall make an open offer to the shareholders of Orient Tradelink as specified in the Takeover Regulations, as existed at the time of alleged violation, including the applicable interest, if any, as decided by SEBI…..

II. Aushim Khetarpal …(is) prohibited from buying, selling or dealing in securities for a period of four years from the date of this Consent Order. However, this would not affect the obligation of Aushim Khetarpal to make an open offer to the shareholders of Orient Tradelink Limited … as agreed upon by him."

4. In spite of directing the appellant to make an open offer within a stipulated period, the same was not done and several extensions were granted from 2013 onwards till 2019. Eventually, the appellant made an open offer which opened on July 5, 2019 and closed on July 18, 2019. The offer which was accepted by the shareholders were required to be paid the consideration within the stipulated period under Regulation 18(10) of the SAST Regulations which till date the acquirer, namely, the appellant failed to pay and, therefore, violated Regulation 18(10) of the SAST Regulations. Accordingly by the impugned order, an amount of Rs. 14 lakh deposited by the appellant in the escrow account was attached towards payment of consideration to eligible and identifiable investors who had tendered their shares in acceptance of the open offer and further, the appellant was directed to disgorge the balance open offer consideration an amount of Rs. 4,90,39,000/- along with the interest at the rate of 10% p.a.

5. We have heard Mr. Amit Gupta, the learned counsel for the appellant and Mr. Pradeep Sancheti, Senior Advocate with Mr. Manish Chhangani, Mr. Abhay Chauhan, Mr. Atul Kumar Agrawal , the learned counsel for the respondent.

6. The only ground urged is that the appellant was still willing to comply with the open offer and wanted three years' time to comply with the open offer.

7. In our opinion, such plea cannot be considered by this Tribunal. In the first instance, we find that there is an undue delay of more than three years in approaching the Tribunal against the order dated January 23, 2020. No plausible explanation has been filed as to why the said order could not be challenged earlier. In the absence of any plausible explanation, we are of the opinion that there is an undue delay in the filing of the appeal and the same is liable to be dismissed on the ground of laches.

8. In addition to the aforesaid, we find that enough latitude was given to the appellant to comply with the open offer. As per the Consent Order of 2013, more than 10 years have elapsed and the open offer has not been complied with till date. The intention of the appellant is very clear that he does not wish to comply with the open offer and want to delay the proceedings as long as possible. Consequently, the appellant is not entitled for any discretionary relief from this Tribunal.

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9. Both the appeals fail and are dismissed.

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