(2020) 12 SEBI CK 0057

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 202 Of 2020

Chandra Prakash Tripathi APPELLANT

Vs

Securities And Exchange Board Of India And Others RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 8(2)(e), 8(16)

Citation : (2020) 12 SEBI CK 0057

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

Bench : Division Bench

Advocate : Neha Sonawane, Ms. Prachi Oza, Pradeep Sancheti, Abhiraj Arora, Rashi Dalmia, Somasekhar Sundaresan, Indranil Deshmukh, Ruetveij Pandya, Dipti Bajaj

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal against the order of the Whole Time Member (hereinafter referred to as â??WTMâ??) of Securities and

Exchange Board of India (hereinafter referred to as â??SEBIâ??) dated June 22, 2020 whereby the appellantâ??s application for payment of

interest has been rejected.

2. The facts leading to the filing of the present appeal, in brief, is that Tenecco Inc. respondent No. 2 (hereinafter referred to as â??Teneccoâ??)

entered into a Membership Interest Purchase Agreement dated April 10, 2018 with Icahn Enterprise L.P. (IELP) which is the holding company for

American Entertainment Properties Corp. and Federal Mogul LLC (FML). By this agreement, the acquirer agreed to acquire 100% ownership of

FML. In view of the aforesaid acquisition, respondent No. 2 become owner of 74.98% of the holdings of the target company which trig gered the

requirements of making a public announcement under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers)

Regulations, 2011 (hereinafter referred to as â??SAST Regulationsâ??). Accordingly, a public announcement was made for acquisition of 25.02%

shareholdings of the minority shareholders which was made on April 16, 2018.

3. The shares of the target company were infrequently traded in the stock exchange and, therefore, the valuation of the shares was required to be

done in accordance with Regulation 8(2)(e) of the SAST Regulations. The acquirer determined the valuation of the shares at Rs. 400/- per share and

on October 9, 2018 published a detailed public statement based on which a draft letter of offer was given to SEBI on November 16, 2018. SEBI, in

turn, appointed a chartered accountant M/s. Haribhakti & Co. LLP (hereinafter referred to as â??Haribhaktiâ??) to value the shares under

Regulation 8(16) of the SAST Regulations. Haribhakti determined the shares at Rs.600/- per share, on the basis on which SEBI on March 20, 2019

advised the acquirer to raise the share price to Rs. 608.46 per share.

4. Respondent No. 2 Tenecco filed appeal No. 108 of 2019. The appellant also filed appeal No. 182 of 2019 before this Tribunal. Both respondent No.

2 and the appellant questioned the determination of the valuation made by SEBI. This Tribunal by an order dated May 16, 2019 directed SEBI to

provide an opportunity of hearing to the parties before revising the offer. Based on the aforesaid directions of this Tribunal, SEBI passed a fresh order

on June 4, 2019 fixing the price at Rs. 608.46 per share.

5. Tenecco respondent No. 2, the appellant and another minority shareholder Bhavook Tripathi filed appeal Nos. 352, 359, 458 and 459 of 2019 before

this Tribunal. All these appeals were dismissed by the judgment dated November 7, 2019. Respondent No. 2 filed an appeal before the Honâ??ble

Supreme Court of India which was disposed of by an order dated December 16, 2019 and the order of this Tribunal was affirmed. Thereafter, the

appellant filed a Misc. application before the Honâ??ble Supreme Court which was disposed of by an order dated March 2, 2020 permitting the

appellant to file an application before SEBI with regard to the determination of the period on which interest was to be paid by the company respondent

No. 2.

6. Based on the aforesaid directions of the Honâ??ble Supreme Court, the appellant filed an application dated March 16, 2020 praying for

compensatory interest from April 10, 2018 till the date of actual payment. This application was rejected by the impugned order dated June 22, 2020

against which the present appeal has been filed. The appellant has prayed for compensatory interest at the rate of 10% per annum on increased offer

price to be paid from April 10, 2018 to October 9, 2018 and 18% compensatory interest from January 31, 2020 till date of payment.

7. We have heard Ms. Neha Sonawane, the learned counsel for the appellant and Shri Pradeep Sancheti, the learned senior counsel for the

respondent No. 1 and Shri Somasekhar Sundaresan, the learned counsel for the respondent No. 2 through video conference.

8. According to the appellant, Securities and Exchange Board of India Act, 1992 (hereinafter referred to as â??SEBI Actâ??) has been enacted

mainly to protect the interest of the investors and that the Board is required to act in benefit of the investors. According to the appellant, the Board has

wide powers to regulate and enforce the intent of the SEBI Act. SAST Regulations has been enforced to regulate the direct and indirect acquisition of

the listed company. It was contended that the object of the regulations is to treat the minority shareholders at par with the majority shareholders and to

ensure that the minority shareholders are given a fair value for the shares held by them. It was contended that the Board has the discretion to act in

the interest of the shareholders and when there is a delay in the payment of the money by the acquirer, the Board is empowered to issue directions to

the acquirer to pay interest and make good the loss suffered by the shareholders for the delay caused by the acquirer. It was contended that as per

the post open offer report the due date for making payment of consideration to the shareholders was December 27, 2018 whereas the actual payment

was made on January 30, 2020 after more than one year and, therefore, the company is required to pay interest for this period. It was contended that

respondent No. 2 with a malafide intention adopted the modus operandi to initiate legal proceedings with a view to delay payment and, on the other

hand, enjoyed total control over the target company on completion of the primary transaction by filing the draft letter of offer.

9. On the other hand, SEBI as well as the respondent No. 2 contended that interest has been paid and no further amount was liable to be paid. It was

contended that interest has been paid as per provisions of the SAST Regulations.

10. Having heard the learned counsel for the parties at some length, we find admittedly that after the passing of the order by the Honâ??ble Supreme

Court on December 16, 2019 the rate fixed by SEBI at Rs. 608.46 per share became final, based on which the company respondent No. 2 made the

payments to the minority shareholders on January 30, 2020 which included payment of interest for the period of April 10, 2018 to October 9, 2018 and

October 21, 2019 to January 30, 2020. These facts are admitted by the appellant.

11. The learned counsel for the appellant further contended that interest for the period October 10, 2018 to July 4, 2019 is also required to be paid

which in the instant case has not been paid. According to the respondents, no interest is payable for this period under the Regulations.

12. In this regard, we find that interest starts running from the date when respondent No. 2 entered into an agreement to acquire 100% ownership of

FML which is April 10, 2018. The period of interest stops when respondent No. 2 submitted the draft letter of offer which was published on October

9, 2018. For this period, namely, April 10, 2018 to October 9, 2018 interest has been paid. After SEBI finalized the price of the shareholders on July 4,

2019 interest becomes payable and which has been paid in accordance with the provisions of the Regulations from August 21, 2019 to January 30,

2020 when the amount was eventually paid.

13. The reason for not paying the interest by respondent No. 2 for the intervening period i.e. from the date when the draft letter of offer was published

on October 9, 2018 till the date of finalizing the price by SEBI on July 4, 2019 is, that this period was not in the hands of the respondent No. 2. We are

of the opinion that the respondent No. 2 cannot be saddled with payment of interest for the period when the price was required to be finalized by SEBI

under Regulation 8(16) of the SAST Regulations. It would be unfair on the part of SEBI as well as on the part of the Tribunal to saddle payment of

interest upon the acquirer respondent No. 2 for the period when the price was being determined by SEBI.

14. The contention that the shareholders should not suffer due to long pending litigation initiated by the acquirer and, therefore, the acquirer should be

directed to pay to the shareholders the interest is erroneous. Reliance on paragraph Nos. 36 and 55 of the decision of the Honâ??ble Supreme Court

in Clariant International Ltd. Vs. SEBI [2004 (8) SCC 524 i]s misplaced and is not applicable in the instant case. The discretionary jurisdiction cannot

be exercised by SEBI to give advantage to the appellant who was himself litigating regarding the valuation of the price fixed by SEBI. It may be

stated here that when SEBI had directed the acquirer to raise the share price from Rs. 400/- to Rs. 608.46 on March 20, 2019, the appellant himself

filed appeal No. 182 of 2019 and again filed appeal No. 359 of 2019 when SEBI passed a fresh order fixing the price on July 4, 2019. Thus, in our

view no interest is payable from the date of filing of the publication of the draft letter of offer, ie, from October 10, 2018 to July 4, 2019 when SEBI

eventually fixed the price of the shares.

15. In view of the aforesaid, we do not find any error in the order of SEBI rejecting the application for grant of interest. The appeal fails and is

dismissed with no order as to costs.

16. 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 Presiding Officer 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.

