(2007) 08 MAD CK 0001

In the Madras High Court

Case No : O.S.A. No. 403 of 2002

Madras Stock Exchange Ltd. — APPELLANT

Vs

Agate Finance Ltd. and Others — RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:
Contracts (Regulation) Rules, 1957 — Rule 19(2)

Citation : (2007) 08 MAD CK 0001

Hon'ble Judges : R. Banumathi, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A.K. Sriram, for A.S. Kailasam and Associates, for the Appellant; R. Subramanian and Shivakumar, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—This Original Side Appeal has been preferred by the Madras Stock Exchange Limited (for short, MSE), as

against the order of the learned single Judge dealing with Company cases in Company Application No. 576 of 202 in Company Petition No. 79 of

2001, dated 20.9.2002.

2. The first respondent-Transferee Company as part of the Scheme of Amalgamation originally ordered on 20.7.2001, sought for a direction to the

appellant-MSE for compliance of Clause (4)(2) of the Scheme of Amalgamation and consequently grant exemption to the first respondent-

Transferee Company from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 (for short, ""the Rules"") for listing of its shares in the

appellant-MSE. While seeking for the above direction, the first respondent-Transferee Company also brought to the notice of the learned single

Judge with particular reference to Clauses 8.3.5.1 and 8.3.5.3 of the Securities and Exchange Board of India (for short, SEBI) Guidelines for the purpose of grant of relaxation of Rule 19(2)(b) of the Rules and stated that such requirement under the above referred to Clauses 8.3.5.1 and

8.3.53 of the SEBI Guidelines was duly complied with.

3. It is in the light of the above stand taken on behalf of the first respondent-Transferee Company, the learned Judge directed the appellant-MSE

for compliance of Clause 4(2) of the Scheme of Amalgamation and consequently grant exemption to it from Rule 19(2)(b) of the said Rules for the

purpose of listing its shares with the appellant-MSE.

4. In the course of the submissions, learned Counsel for the appellant-MSE brought to our notice that in accordance with the new Guidelines

governed by Clause 8.3.5.1(iii) issued by the newly impleaded fifth respondent herein, namely SEBI, at least 25% of the paid-up capital of the

unlisted Transferee Company is allotted to the public share-holders of listed Transferor Company, as has been pointed out in the fifth respondent-

SEBT''s communication dated 31.3.2004 addressed to the appellant-MSE. In fact, in the said communication, the appellant-MSE has been

directed to ensure that the first respondent-Transferee Company complied with the above stipulation as contained in Clause 8.3.5.1(iii) of the new

Guidelines issued by the fifth respondent-SEBI. The said communication of the fifth respondent-SEBI also made it clear that subject to compliance

of the said requirement, the relaxation of strict enforcement of Rule 19(2)(b) of the Rules would be carried out.

5. After the issuance of the communication dated 31.8.2004 by the fifth respondent SEBI, the first respondent-Transferee Company in its letter

dated 21.9.2004 addressed to the appellant-MSE has given an undertaking to the effect that, ""Meanwhile, we undertake to conclude the case

against your exchange under CMP. No. 16571 of 2002 and 1731 of 2004 in OSA. No. 403 of 2002 at the Hon''ble High Court of Chennai, as

per the guidelines of the above referred SEBI letter."" Even subsequently, the said undertaking was reiterated in their communication dated

1.2.2005 in no uncertain terms which reads that, ""We are taking steps to convene our Annual General Meeting shortly to discuss and decide,

among other things, the necessary steps to increase the public holding in our Company to more than 25% either by way of right shares or through

book building process or by Initial Public Offering. We undertake to strictly comply with all the criteria as set out in SEBI''s letter

CFD/DIL/YG/19324/2004 dated 31.08.2004, addressed to you under copy to us.

6. Having regard to such a categoric undertaking letters issued by the first respondent-Transferee Company, there is no reason as to why the first

respondent-Transferee Company should not be directed to ensure that the compliance reported by it before the learned single Judge which

persuaded the learned Judge to pass the impugned order, should not be directed to be carried out to its full extent without any deviation, by

prescribing a time limit in order to enable the appellant-MSE herein to comply with the direction of the learned single Judge in the order dated

20.9.2002 passed in Company Application No. 576 of 2002 in Company Petition No. 79 of 2001 for listing of the first respondent-Transferee

Company.

7. With that view, we direct the first respondent-Transferee Company to comply with its undertaking as agreed in the above referred to passages

of the communications referred to therein, within a period of three months from the date of receipt of a copy of this judgment and on such

compliance, the appellant-MSE is directed to comply with the order of the learned single Judge dated 20.9.2002 in Company Application No.

576 of 2002 in Company Petition No. 79 of 2001, within four weeks thereafter.

8. The Original Side Appeal stands disposed of on the above terms. No costs.