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(2023) 09 SEBI CK 0020

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1176, 1177, 1223 Of 2023, Appeal No. 762 Of 2023

Pegasus Holdings III, LLC — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Citation : (2023) 09 SEBI CK 0020

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

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Abishek Venkatrama, Prabhav Shroff, Dhaval Vora, Rohan Satija, Pradeep Sancheti, Mihir Mody, Arnav Misra, K. Ashar, Dharam Jumani,, Ravichandra S. Hegde, Mitravinda Chunduru, Shonan Bangera

Judgement

1. We have heard the learned counsel for the applicant on the intervention application. In our view the lis is between SEBI and the appellant. The intervention application is misconceived and is rejected. The interest of the intervener is adequately protected by SEBI.

2. The present appeal has been filed questioning the veracity of the directions issued in the communication dated August 30, 2023 passed by the respondent SEBI appointing a Chartered Accountant to value the shares of the Target Company in accordance with Regulation 8(16) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (‘SAST Regulations’ for short).

3. Admittedly, it is an indirect acquisition of the shares and that the shares are also frequently traded on the Stock Exchange. The offer price has to be determined under Regulation 8(3) and 8(5). We find that by the impugned communication appointment of a Chartered Accountant for valuation of the shares has been made under Regulation 8(16) which comes into play for the purpose of Regulation 8(2)(e) and 8(4).

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4. Regulation 8(2)(e) relates to determination of the price in case of direct acquisition of shares and therefore prima facie the provision of Regulation 8(2) is not applicable.

5. Regulation 8(4) provides that where the offer price is incapable of being determined under Regulation 8(3) or 8(5) then the Board i.e. SEBI may appoint a Merchant Banker or Chartered Accountant for valuation of the shares of the Target Company under Regulation 8(16).

6. We find that the provision of Regulation 8(4) will only come into play only if the offer price as per Regulation 8(3) and 8(5) is incapable of being determined. We find from the impugned order that there is no consideration that respondent have come to a conclusion that the price of the shares cannot be determined under Regulation 8(3) or 8(5).

7. In view of the aforesaid, let a reply be filed by the respondent within 10 days. Rejoinder to be filed within a week thereafter. The matter would be listed for admission and for final disposal on October 9, 2023 including on the question of maintainability of the appeal.

8. In the meanwhile, the effect and operation of the impugned communication dated August 30, 2023 shall remain stayed.

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