(2021) 06 SEBI CK 0106

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 423 Of 2021

PNB Housing Finance Limited APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Companies (Share Capital And Debentures) Rules, 2014 — Rule 13
Companies Act, 2013 — Section 62(1)(c)
Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018 — Section 164

Citation : (2021) 06 SEBI CK 0106

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

Bench : Division Bench

Advocate : Janak Dwarkadas, Rohan Rajyadhaksha, Prashant Gupta, Anuj Berry, Manjiri Tyagi, Deepika Goyal, Aryan Agarwal,, Shardul Amarchand Mangaldas, Mustafa Doctor, Mihir Mody, Arnav Misra, Mayur Jaisingh, K. Ashar

Judgement

1. An urgent mention was made by Shri Janak Dwarkadas, the learned senior counsel for the appellant in the morning today when the Tribunal

assembled seeking urgency in a matter. Considering the urgency we directed the Registry to issue a supplementary cause list and list the appeal for

admission at 3.00 p.m. today.

2. We have heard Shri Janak Dwarkadas, the learned senior counsel along with Shri Rohan Rajyadhaksha, Shri Prashant Gupta, Shri Anuj Berry, Ms.

Manjiri Tyagi, Ms. Deepika Goyal, PSS Bhargava and Shri Aryan Agarwal for the appellant and Shri Mustafa Doctor, the learned senior counsel

along with Shri Mihir Mody, Shri Arnav Misra and Shri Mayur Jaisingh for the respondent at some length

3. The appellant is a registered housing finance company and is engaged in the

business of providing retail and corporate loans. It is alleged that they

were running into some financial difficulties and were seeking investors for the purpose of raising their capital. It is also alleged that three of the

existing shareholders along with an outsider proposed to pump in certain amount of funds into the Company. Based on this the board of directors

issued a resolution dated May 31, 2021 approving issuance and allotment of equity shares and warrants to the proposed allottees by way of

preferential allotment on a private placement basis for cash consideration in accordance with the SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2018 (â??ICDR Regulationsâ?? for short). The said resolution also directed to convene an Extra Ordinary General

Meeting (â??EGMâ?? for short) on June 22, 2021 to seek approval from the members of the Company in accordance with Section 62(1)(c) of the

Companies Act, 2013.

4. By the impugned order of the General Manager of the respondent SEBI dated June 18, 2021 which seems to have been communicated to the

appellant through e-mail in the late hours of June 18, 2021. The respondent has directed the Company not to consider Item No. 1 of the EGM notice

dated May 31, 2021 till such time as an independent valuation of the shares is done by a registered independent valuer and thereafter the matter is

placed before the board sof directors afresh for deciding the preferential allotment based on the valuation given. The appellant has filed the present

appeal being aggrieved by this direction.

5. After hearing the learned counsel for the parties the crux of the matter is as to whether a valuation report from registered valuer is required to be

done as per the Articles of Association of the Company of whether the valuation of the shares required to be done as per Section 164 of the ICDR

Regulations. It has been contended that under Section 62(1)(c) of the Companies Act a provision has been made for valuation through a registered

valuer but under Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 this requirement has been dispensed with where preferential

allotment of shares is being issued by a listed company. We also find that electronic voting of Item No. 1 of the agenda has already commenced since

the morning of June 18, 2021 and would continuing till 5.00 p.m. of June 21, 2021.

6. In the light of the aforesaid, when the electronic voting has already commenced it would not be fair to stay the consideration of agenda no. 1 of the

EGM notice dated May 31, 2021 which is going to be held on June 22, 2021.

7. Considering the aforesaid that no factual dispute exists and only an interpretation of the provisions of the ICDR Regulations and Companies Act

read with Articles of Association is required to be considered we direct the respondent to file a reply on or before June 26, 2021. Rejoinder, if any,

may be filed by July 4, 2021. The matter would be taken for admission and for final disposal on July 5, 2021 as the first case in the cause list after the

admission cases.

8. In the meanwhile, we direct that the EGM would be held on June 22, 2021 and the members of the Company would consider agenda no. 1.

However, the results would not be declared and would be kept in a sealed cover. In this regard the Company would issue specific directions to NSDL

who is in-charge of the electronic voting not to reveal the results and keep the same in a sealed cover till further orders of this Tribunal.

9. Parties are directed to take instructions from the Registrar 48 hours before the date fixed in order to find out as to whether the matter would be

taken up for hearing through video conference or through physical hearing.

10. 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.

