(2022) 01 SEBI CK 0056

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 38 Of 2022, Appeal No. 9 Of 2022

Pushpanjali Investrade Private Limited APPELLANT

Vs

Securities & Exchange Board Of India And Others RESPONDENT

Date of Decision : 19-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Companies Act, 1956 — Section 67
Securities And Exchange Board Of India Act, 1992 — Section 15T

Citation : (2022) 01 SEBI CK 0056

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

Bench : Division Bench

Advocate : Zubin Behramkamdin, Amit Mishra, Vijay Purohit, Kumarjit Ray, Mitakshara Goyal, Nikita Bangera, Pratik Jhaveri, Siddhanth Bajaj, Harshil Wason, Chander Uday Singh, Mihir Mody, Arnav Misra, Mayur Jaisingh, K. Ashar, Janak Dwarkadas, Nitesh Jain, Etc.

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellant whereby Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??) has

disposed of the complaint of the appellant which was filed on the SEBI Complaints Redress System (hereinafter referred to as â??SCORESâ??)

platform by an order dated January 4, 2022.

2. The facts leading to the filing of the present appeal is, that the appellant is a shareholder in respondent nos. 2 company, ISMT Ltd. The appellant

filed a complaint with SEBI on the SCORES platform on December 19, 2021 alleging that the respondent nos. 2 is a public listed company and is a

stressed enterprise which is highly indebted to several banks and financial institutions and has been classified as a non-performing asset for several

banks and financial institutions. It was contended that respondent nos. 2 and 3 which is also a public listed company have entered into a Share

Subscription Agreement (hereinafter referred to as â??SSAâ??) on November 25, 2021 for issue of 15,40,00,000 equity shares for a total

consideration of Rs. 476 crores at a rate of Rs. 30.95 per share by preferential allotment. By these proposed transactions, respondent nos. 3â??s

shareholding in respondent nos. 2 company would come to 51.25%.

3. It was further alleged in the complaint that under this SSA respondent nos. 3 would extend an unsecured loan of Rs. 194 crores subject to fulfilment

of all the conditions precedent contained under the SSA. The complaint alleges that acquisition and the unsecured loan given by respondent nos. 3 are

intrinsically linked and had been structured as one composite transaction and, therefore, it is a part of the same package, namely that there is no loan

without the acquisition. It was, thus, contended that this kind of transaction is violative of Section 67 of the Companies Act, 1956.

4. The aforesaid complaint was disposed of by SEBI on January 4, 2022 with the following observation :-

â??Your complaint was forwarded to relevant entities seeking their response. The entities have provided the response to the same. Upon perusal, it is

noted that the response is satisfactory.â??

5. The appellant being aggrieved by the disposal of the complaint has filed the present appeal contending that order is cryptic and had been passed in a

mechanical manner without recording any reason for disposing of the complaint of the appellant and without considering the glaring illegality in the

proposed transaction which have been pointed out in the complaint.

6. We have heard Mr. Zubin Behramkamdin, the learned counsel with Mr. Amit Mishra, Mr. Vijay Purohit, Mr. Kumarjit Ray, Ms. Mitakshara Goyal,

Ms. Nikita Bangera, Mr. Pratik Jhaveri, Mr. Siddhanth Bajaj, Mr. Harshil Wason, the learned counsel for the appellant and Mr. Chander Uday Singh,

the learned senior counsel with Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, the learned counsel for the respondent Nos. 1 and Mr. Janak

Dwarkadas, the learned senior counsel with Mr. Nitesh Jain, Mr. Hridhyay Khurana, Mr. Adrish Guha, Ms. Vidhi Barot, the learned counsel for the

respondent Nos. 2 and Mr. Zal Andhyarujina, the learned senior counsel with Ms.

Ishani Khanwilkar, Mr. Satish Kishanchandani, Mr. Sohil Shah, Mr.

Rushad Irani, Mr. Soham Banerjee, the learned counsel for the respondent Nos. 3 through video conference.

7. At the outset, the common submission of the respondents are that the present appeal is a misuse of process of the Court and the appeal should be

thrown out at the threshold. The learned senior counsel for SEBI pointed out that the appeal is not maintainable against the order disposing of the

complaint of the SCORES platform and further SEBI is not required to give any reason while disposing of the complaint. It was contended that if the

appellant is aggrieved by the disposal of the complaint, it could take the matter to the next level, namely, the supervisory level where the complaint

would be dealt with by giving a reasoned order. It was also contended that SEBI is receiving a large number of complaints from the SCORES

platform and it was not humanly possible for SEBI to deal with each and every complaint and dispose of the same by giving a reasoned order.

8. The SCORES platform was created by SEBI for the purpose of allowing the investors to lodge their complaints pertaining to the securities market

against the listed companies and SEBI registered intermediaries. All complaints received electronically by SEBI against the listed companies was

required to deal with in accordance with the circulars issued by the respondent.

9. Time and again, this Tribunal has held repeatedly that a complaint which is disposed of by SEBI on the SCORES platform is appealable before the

Securities Appellate Tribunal (hereinafter referred to as â??SATâ??) under Section 15T of the Securities and Exchange Board of India Act, 1992. In

a number of appeals, we have also held that while disposing of the complaint, SEBI is not required to give an opportunity of hearing to the complainant

but is required to give reasons, however brief, it may be. The reason being is that the complainant is required to know the reasons for the disposal of

the complaint which is an essence of Article 14 of the Constitution of India.

10. Some of the orders passed by this Tribunal was carried to the Honâ??ble Supreme Court by SEBI contending that that no appeal was

maintainable before SAT and that, in any case, no reason was required to be given while disposing of the complaint. Such submission raised by SEBI

before the Honâ??ble Supreme Court was rejected.

11. In one such case, Ashok Dayabhai Shah & Ors. vs. SEBI & Ors. in appeal no.

428 of 2019 dated November 14, 2019, the Tribunal observed that

the disposal of the complaint indicated the non- application of mind and non-consideration of the interest of the investors and that SEBI as a regulator

has not performed its duty. The tribunal directed SEBI to pass a reasoned order. The aforesaid order of the Tribunal was challenged by SEBI in Civil

Appeal No. 363 of 2020 SEBI vs. Ashok Dayabhai Shah & Ors. and the order of the Tribunal was affirmed by the Honâ??ble Supreme Court by its

decision dated January 27, 2020 and SEBI was required to deal with the complaint positively and objectively in accordance with law.

12. In view of the aforesaid, it is no longer open for SEBI to contend that the disposal of the complaint is not appealable for the reason which is

required to be given. The Honâ??ble Supreme Court has clearly held that SEBI is required to deal with the complaint positively and objectively. In

the instant case, the same has not been done in that perspective.

13. Thus, without going into the merits of the submissions made by the parties, we quash the impugned order. The appeal is allowed at the admission

stage. The matter is remitted to SEBI to pass an appropriate order giving reasons.

14. 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.

