(2023) 04 SEBI CK 0064

In the Securities Appellate Tribunal Mumbai

Case No : ???Miscellaneous Application No. 480, 481 Of 2022, Appeal No. 354 Of 2023

RV Lifestyle Ltd And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 6, 7, 8, 10, 11, 11(1), 12, 44

Citation : (2023) 04 SEBI CK 0064

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

Bench : Division Bench

Advocate : Abhiraj Arora, Deepanshu Agarwal, Misbah Dada, Shourya Tanay

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated March 16, 2023 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') directing the appellants to sell the shares in the target company which were acquired in violation of Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 which was in excess of 5% and further directed the appellants to deposit the proceeds of such sale in the Investors Protection Fund. The appellants by the same impugned order were further restrained from accessing the securities market for a period of one year.

2. The facts leading to the filing of the present appeal is, that the appellants and its promoters and promoter groups were holding 41.82% of the total shareholding of the company. The company issued warrants convertible into equity shares in favour of the promoter and promoter groups. Based on the

resolution, warrants were issued and subsequently, it was converted into equity shares. As a result of the conversion of the warrants into equity shares, there was as increase in the capital of the company and accordingly a show cause notice was issued alleging violation of the SAST Regulations. Show cause notice alleged that the acquirer had increased its shareholding by more than 5% in the financial year which was in violation of Regulation 11(1) of the SAST Regulations. The WTM after considering the matter passed an order dated September 30, 2019 finding the appellants to be guilty of violating the provisions of the SAST Regulations and accordingly directed the appellants to make an open offer. The said order was challenged by the appellants by filing an Appeal No. 576 of 2019 which was allowed and impugned order was quashed. This Tribunal held that considering the long lapse of time in culminating the proceedings, the direction to make an open offer was inappropriate in the circumstances of the case and accordingly remitted the matter to the WTM to issue an appropriate direction as provided under Regulation 44 of the SAST Regulations other than the direction to make an open offer.

3. SEBI, being aggrieved by the order of this Tribunal filed a Civil Appeal No. 1331 of 2022 before the Hon’ble Supreme Court of India which was dismissed by an order dated September 15, 2022.

4. Pursuant to the order of this Tribunal, the impugned order has been passed issuing directions under Regulation 44 of the SAST Regulations.

5. We have heard the learned counsel from M/s. RHP Partners for the appellants and Mr. Abhiraj Arora, the learned counsel with Mr. Deepanshu Agarwal, Ms. Misbah Dada, Mr. Shourya Tanay, the learned counsel for the respondent.

6. The learned counsel for the appellants contended that they are only aggrieved by the order of the WTM debarring them from accessing the securities market for a period of one year. It was contended that the matter is an old dispute where the warrants were converted into shares in 2009. Much water has flown since then and no useful purpose would be served in restraining the appellants from accessing the securities market for a period of one year.

7. We find that this Tribunal in its earlier order dated November 23, 2021 had remitted the matter to the WTM to issue an appropriate direction as provided under Regulation 44 of the SAST Regulations other than the direction to make an open offer. Regulation 44 of the SAST Regulations reads as under :-

““44. Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including: —

(a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale;

(b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange;

(c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12;

(d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12;

(e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board;

(f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;

(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8;

(h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;

(i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits."

8. Clause (e) of the Regulation 44 gives discretion to the authority to debar any person from accessing the capital market or dealing in securities for such period as may be determined by the board.

9. Admittedly, the appellants had violated Regulation 11(1) of the SAST Regulations. The direction to make an open offer has now been substituted by a direction to sell the shares in excess of 5% and deposit the proceeds of such sales in the investor protection fund. The appellants in the given circumstances considering the facts have also been debarred for a period of one year.

10. In our opinion, the direction given by the WTM is neither arbitrary nor harsh and is in accordance with Regulation 44 of the SAST Regulations. We do not find any infirmity in the directions so issued by the WTM.

11. The appeal fails and is dismissed.

12. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

