(2020) 07 SEBI CK 0026

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 189 Of 2020 In Appeal No. 459 Of 2018

Securities And Exchange Board Of India — APPELLANT

Vs

Zenith Highrise Infracon Ltd And Others — RESPONDENT

Date of Decision : 17-07-2020

Acts Referred:
Companies Act, 1956 — Section 67(3)

Citation : (2020) 07 SEBI CK 0026

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Mihir Mody, Shehaab Roshan, K. Ashar, Ejaz Khan

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The Whole Time Member (hereinafter referred to as â??WTMâ??) passed an order dated July 27, 2018 observing that the redeemable

preferential shares was made to more than 50 persons in violation of Section 67(3) of the Companies Act, 1956 and accordingly directed the company

and its directors to refund the money collected through the redeemable preference shares alongwith interest at the rate of 15% p.a. The company as

well as some of the directors filed Appeal Nos. 459 and 460 of 2018 before this Tribunal which were allowed by judgment dated February 25, 2020

and the order of the WTM was set aside. A specific finding was given that the allotment was made to less than 50 persons and, therefore, it was a

private issue and not a public issue.

2. The respondent SEBI has now filed this application seeking speaking to the minutes of our order dated February 25, 2020 contending that some of

the directors had not been filed any appeal against the impugned order passed by the WTM and, therefore, the said order of the WTM still operates

against them. Through this application, the respondent SEBI has prayed that our order dated February 25, 2020 should be confined only to the

appellants who had filed the appeal. The respondent in this regard has relied on a â??vigilantibus non dormientibus jura subveniuntâ?? maxim

contending that the law assists those who are vigilant and not to those who sleep over their rights.

3. This principle advanced by the respondent in their application is patently misconceived especially when the impugned order of the WTM has been

set aside in its entirety and the company has not been found guilty of making a public issue under Section 67(3) of the Companies Act. The fact that

some of the directors had not filed the appeal is immaterial in as much as the directors will still get the benefit of the order passed by us. Consequently,

application filed by the respondent is patently frivolous and is rejected.

4. 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 Presiding Officer 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.