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## CORPORATE LAWS

### Company Law Update

#### Case Law No. 1

*(2013) 179 Comp Cas 421 ( SC) – In the Supreme Court of India – Bhagwati Developers P. Ltd vs. Peerless General Finance Investment Co. Ltd. And Another*

The provisions of SCRA is applicable to an unlisted public company and that term marketable is equated with the word "saleable" and being bought and sold in the market and that marketability is to be attached with the meaning of free transferability of a shares.

#### Brief facts

This application is made by Bhagwati Developers P. Ltd. (Applicant or Bhagwati) against the Calcutta High Court Judgment which has confirmed the order of the Company Law Board, Eastern Region ("CLB").

Applicant was approached by one Mr. Tuhin Kanti Ghose (TK) for a loan. The said loan was for purchasing 3,550 equity shares of Peerless Peerless General Finance Investment Co Ltd. and another (Respondent or R1). Applicant had given a loan to TK. A formal agreement to that effect was entered into, between both of them. Subsequently TK agreed to transfer the sharers of R1 in favour of applicant as repayment of loan. TK also

agreed to give all dividend and bonus shares in favour of applicant. While execution of transfer, even though TK had handed over the original shares to applicant, the execution of transfer deed was not proper. Applicant had made several requests to TK for re-execution of the fresh transfer deed and also to send him all dividend and bonus received from R1. However TK had not re-executed the fresh transfer deed. During these periods, R1 had twice announced allotment of bonus shares. TK, being a registered shareholder received all bonus shares. Thus, at the end TK owned 14,120 equity shares of R1.

Applicant had then filed a civil suit in the court and had obtained an interim order of injunction restraining TK from claiming any right, title or interest on said shares. Subsequently, both the parties made out of court settlement and applicant had agreed to pay additional consideration to TK and in turn, TK had agreed to give back shares to the applicant. This comprehensive settlement was part of the decree passed by the court.

Applicant then lodged a request for the transfer of shares in his favour with R1. The R1 *vide* its letter rejected the transfer application citing that the said transfer was

in violation of the provisions of Securities Contracts (Regulation) Act, 1956 (SCRA). As per R1, the contract for sale of shares was not a spot delivery contract and there were some other deficiencies in the transfer deed. Applicant, after correcting all defects in the transfer deed, re-lodged the application, which was rejected again. Again, R1 has rejected and aggrieved by this, applicant has filed the petition under section 111 of the Companies Act, 1956 (“Act”) before the CLB.

CLB, has rejected the petition and cited the regulations 13 and 16 of SCRA and observed as follows;

- a. The said transfer of shares is illegal.
- b. Shares of a public company which are not registered in the stock exchange also come under the purview of section 13, 16 & 17 of the SCRA.
- c. Since consideration for shares, which as per the applicant was made only to buy peace and having been paid the same much after the date on which the sale of shares had taken place, it does not fall within the “spot delivery contract” as defined under section 2(i) of SCRA.

The applicant then preferred an appeal before the High Court, contending that the shares of R1, being an unlisted company does not come under SCRA provisions. Further, the sale of shares between TK and itself is in kind of spot delivery and CLB on both the count has been erroneous. High Court has upheld the CLB’s order. High Court has also agreed to the CLB’s observation on applicability of SCRA to an unlisted public company and that part consideration was made much after the original transfer as TK was entitled for retaining dividends and bonus shares even after the original transfer agreement took place.

The present appeal is for challenging the above High Court Judgment.

### **Judgment and reasoning**

Court has rejected the application and upheld the High Court and CLB order.

Court has analysed the provisions of sections 13, 16 and 17 of SCRA.

Court has agreed that SCRA is applicable to an unlisted public company. Court has also considered the submission from the applicant as to the term “marketability” and that the said transactions does not fall under the definition of SCRA as securities are not marketable. In its submission, the judgments of the Bombay High court in *Dahiben Umedbhai Patel vs. Norman James Hamilton* [1985] 57 Comp Cas 700 and in *Brooke Bond India Ltd vs. U.B. Ltd* [1994] 79 Comp Cas 346 (*Bom*) are quoted. Applicant also quoted that Calcutta High Court’s judgment in *B.K. Holdings P. Ltd vs. Prem Chand Jute Mills* [1983] 53 Comp Cas 367 are contrary to Bombay High Court’s Judgments but he was of the view that Bombay High Court’s judgment is based on sound reasoning. Court has analysed the definition of the word “securities” under section 2(i) and interpretation of word “Marketable”. As SCRA does not define the word, dictionary meaning of the word “marketable” is taken from Black’s Law Dictionary as well as from Oxford English Dictionary. The court has views that the term marketable is equated with the word “saleable” and being bought and sold in the market. It was also of the view that even listed shares are also not purchased or sold and that does not mean they are not marketable. Court has views that marketability is to be attached with “free transferability”. The division bench of Calcutta High Court in *East Indian Produce Ltd. vs. Naresh Acharya Bhaduri* [1988] 64 Comp Cas 259 also observed the above interpretation. Court has also looked at Bombay High Court case in *Dahiben Umedbhai Patel* case, which was related to a transfer of shares of a private

company and not of a public company. Further, in Brooke bond case, it has relied on the Dahiben case, even though it was related to a private company and disagreed with the Calcutta High Court's judgment in East Indian Produce Ltd. Court has relied on its judgment in *Naresh K. Aggarwala and Co vs. Canbank Financial Services Ltd [2010] 6 SCC 178*. In said judgments, the term 'securities' under section 2(h)(i) and notification under section 16(2) has viewed that the definition does not make any distinction between listed securities and unlisted securities.

On spot delivery of shares, Court has noted that said contract is not a spot delivery. Court noted that original contract was for delivery of 3,550 equity shares. Subsequent agreement for comprehensive decree mentioned about the additional payment of ₹ 10 lakhs and that TK is also entitled for dividend and bonus shares till that date. In SCRA definition under section 2(i), the word 'spot delivery contract' means actual delivery of securities and payment thereof on the same day or on the next day. Court observed that there are two agreements between TK and the applicant. In first agreement, it has agreed to transfer 3,550 equity shares for repayment of loan. The subsequent agreement which formed part of the compromise decree, sale of shares took place at a later date by which applicant had paid additional amount as well as allowed TK to retain dividend up to certain period. Thus, as per Court, the views of CLB as well as High Court are correct that the said contract is not a contract for spot delivery.

## Case Law No. 2

[2013] 179 Comp Cas 390 (SC) – *In the Supreme Court of India – Integrated Finance Co. Ltd vs. Reserve Bank of India, etc.*

By virtue of non obstante clause in section 45Q, Chapter III of the RBI Act, 1934 will

prevail over sections 391-393 of the Act. Chapter IIIB is a self-contained code and being a later enactment clearly prevails upon the provisions of the Companies Act, 1956.

### Brief case

These appeals arise out of S.L.P. (Civil) directed against the judgment of Division bench of Madras High Court. The Integrated Finance Co. Ltd ("Applicant") is a non-banking finance company ("NBFC") engaged in the business of hire-purchase and leasing. It is a listed company having wide network. Initially, the said Applicant Company was profitable and had been declaring dividends also. Subsequently, 1997 onwards, RBI has issued various circulars regulating the activities of NBFC and imposing certain conditions on such companies. As per RBI direction, NBFCs which do not comply with the aforesaid directions and circulars were directed to stop accepting deposits and also to repay the deposits. Based on the inspection of the applicant company, RBI had found various irregularities.

After inspection, RBI had directed the company not to accept further deposits and also imposed certain other conditions. Due to the RBI's direction, applicant had started facing financial problems and to overcome these problems, it had proposed a scheme of arrangement ("Scheme") with its creditors who are the deposit holders as well as bond holders. As per the said Scheme, applicant had agreed to repay deposits up to ₹ 20,000/- as and when they get matured. Further, dues of the other deposit holder and bond will be converted into secured convertible debenture with 6% interest. Before expiry of one year, the said debenture will be converted into equity shares based on SEBI valuation norms.

The company petition under section 391 of the Companies Act, 1956 ("Act") for seeking approval of the above Scheme was

presented before the High Court. After completing all process and formalities, the petition was heard for final disposal. The depositors' association and several other depositors had filed their objection and raised several contentions. RBI had also filed its objection. The single judge overruling the entire objection had approved the Scheme. The above order was challenged before the division bench. The division bench has set aside the order of the single judge.

The applicant has submitted that the Scheme was approved by the deposit holders and bond holders which is more than the requirement under the Act for its approval. It also submitted that it has complied with all statutory requirements relating to the said Scheme. There is no such procedural requirement observed by single judge or division bench. The only issue is whether (1) the non obstante clause in section 45Q of the RBI Act, 1934 prohibits the High Court from sanctioning any scheme for the deposit holders of NBFC (2) And whether applicant has failed to disclose RBI letter before the company judge. The submission in favour of approval was made including various court judgments, where minority has objected to the scheme. The judgments in *J.K. (Bombay) P. Ltd vs. New Kaiser-I-Hind Spinning and Weaving Co. Ltd.* and *Administrator of the specified undertaking of the Unit Trust of India vs. Garware Polyester Ltd.* are referred. The applicant has summarised the provisions of RBI Act and Companies Act and submitted that both acts operate in different fields and both the Acts are to be read together harmoniously and there is no inconsistency between the two and that the legislature did not intend to exclude the application of sections 391-394 of the Act for NBFC.

### **Judgment and reasoning**

Court has upheld the judgment of division bench on rejecting the petition for Scheme. Court has observed that the submission of the applicant that the provisions of section 45 of the RBI Act is not a bar to a scheme under sections 391-394 of the Act is not acceptable. It has also noted that the observation of the division bench, which has stated that by virtue of non obstante clause in section 45Q, Chapter III of the RBI Act, 1934 will prevail over sections 391-393 of the Act. Court has referred to various judgments including judgments in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* It also observed that Court does not act as a rubber stamp and has to consider that such scheme does not violate any provisions of law. Court has also noted that the objects and reasons of inserting Chapter IIIB into the RBI Act, 1934 in 1997 and after considering the same it has opined that Chapter IIIB is a self-contained code. Court observed that Chapter IIIB, inserted in 1963 being a later enactment clearly prevails upon the provisions of the Act.

Court has also noted that the applicant has not disclosed the material facts with regards to RBI Notice sent under section 45MB(1), which has pointed out various discrepancies and non-compliances and violations in the business of the applicant and that RBI has the power to prohibit the NBFC from accepting any deposits. Thus, court has observed that the non-disclosures of material information, which could have major influence and impact on decision as to approval of scheme is non-compliance of requirement of section 391(1) read with section 393(1) of the Act.

