

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 17.07.2020

Misc. Application No. 189 of 2020
In
Appeal No. 459 of 2018

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051.

..... Applicant
(Org. Respondent)

Versus

1. Zenith Highrise Infracon Ltd.
Narhuya Dharammataala Dakshin,
Chandernagore, Hooghly – 712136.

2. Mr. Kalyan Banerjee
Narhuya Dharammataala Dakshin,
Chandernagore, Hooghly – 712136.

... Respondents
(Org. Appellants)

Mr. Mihir Mody, Advocate with Mr. Shehaab Roshan, Advocate i/b K.
Ashar & Co. for the Applicant.

Mr. Ejaz Khan, Advocate for the Respondents.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The Whole Time Member (hereinafter referred to as 'WTM') 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 ‘*vigilantibus non dormientibus jura subveniunt*’ 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.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M. T. Joshi
Judicial Member

17.07.2020
PTM