BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

Appeal No. 86 of 2011

Date of decision: 25.4.2012

HB Stockholdings Limited
Plot No. 31, Echelon Institutional
Area, Sector – 32,
Gurgaon – 122001. ……Appellant

Versus

1. Securities and Exchange Board of India
   SEBI Bhavan, Plot No. C-4A, G Block,
   Bandra Kurla Complex, Bandra (East),
   Mumbai - 400 051.

2. DCM Shriram Industries Ltd.
   Kanchenjunga Building, 6th Floor,
   Barakhamba Road,
   New Delhi – 110001.

3. Bombay Stock Exchange Limited
   Phiroze Jeejeebhoy Towers,
   Dalal Street,
   Mumbai – 400 001.

4. Divine Investments Pvt. Ltd.
   Diamond Press Building,
   8-E, Rani Jhansi Road,
   Jhandewalan Extension,
   New Delhi – 110055.

5. Gentech Chemicals Pvt. Ltd.
   Diamond Press Building,
   Second Floor,
   8-E, Rani Jhansi Road,
   Jhandewalan Extension,
   New Delhi – 110055.

6. Super Ware Pvt. Ltd.
   Diamond Press Building,
   8-E, Rani Jhansi Road,
   Jhandewalan Extension,
   New Delhi – 110055.

7. Quick Lithographers Pvt. Ltd.
   Diamond Press Building,
   8-E, Rani Jhansi Road,
   Jhandewalan Extension,
   New Delhi – 110055.

8. Versa Trading Ltd.
   6th Floor, Kanchenjunga Building,
   18, Barakhamba Road,
   New Delhi – 110001.

9. Shri Tilak Dhar (Karta of Lala Bansi
   Dhar & Sons-HUF),
   Chairman and Managing Director,
   DCM Shriram Industries Ltd.
   R/o 27, Sardar Patel Marg,
   New Delhi – 110021.

10. DCM Hyundai Limited
    No. 2 (Ground Floor),
    Sri Ram Nagar,
    Prakash Nagar, Main Road,
    THIRUNINRAVUR,
    Tamil Nadu 602024. …… Respondents

Mr. E. P. Bharucha, Senior Advocate with Mr. Tarun Dua, Mr. Arzan Balsara, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Ajay Khaire, Advocate for Respondent no. 1.

Mr. P. N. Modi, Advocate with Mr. Ranjit Bhosale, Mr. Ravichandra Hegde, Mr. Khursheed Vajifdar, Advocates for Respondent no. 2.

Ms. Rachita Romani, Advocate for Respondent no. 3.

Ms. Neha Varhadi, Advocate with Ms. Tripti Gupta, Advocate for Respondents no. 4 to 10.

CORAM : P. K. Malhotra, Member & Officiating Presiding Officer
S. S. N. Moorthy, Member

Per : P. K. Malhotra, Member & Officiating Presiding Officer

The appellant before us is aggrieved by the order dated March 31, 2011 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) disposing of a complaint of the appellant. Allegation of the appellant before the Board was that respondent 2, its promoters and directors alongwith its subsidiary companies have played fraud on the shareholders of the company by issuing preferential warrants and underlying shares thereby contravening various regulatory provisions. The appellant claims to be the largest shareholder of respondent 2 in the category of public shareholders with current

shareholding of the appellant said to be 24.98 per cent of the expanded issued and paid up capital.

2. The Board looked into the complaints and, vide letter dated June 20, 2008, informed the appellant that respondent 2 had not committed violation of any of the provisions of the regulations under the Securities and Exchange Board of India Act, 1992 (the Act). The said communication reads as under :-

> **"Sub:- Your compliant in the matter of public offer for acquisition of 20.12% of equity share capital of DCM Shriram Industries Limited (DSIL) by HB Stockholdings Limited (acquirer) & Mr. H. C. Bhasin (PAC) in terms of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 (Regulations).**
>
> This has reference to your letters dt 02/01/2008, 04/01/2008, 15/02/2008, 04/04/2008 & 11/04/2008 in the captioned matter.
>
> In this regard, we advise that your complaints have been examined in light of provisions of the Regulations & SEBI Act and no violation of the provisions of the Regulations or the SEBI Act, by the Target Company, DSIL, has been noticed."

Aggrieved by the said response, the appellant preferred appeal before this Tribunal (Appeal No. 96 of 2008) which was disposed of on July 1, 2009 as under :-

> " Arguments in this case had been partly heard on June 25, 2009. The learned counsel appearing for the respondent Board at the outset had raised a preliminary objection that the impugned communication conveying to the appellant the decision of the Board that it found no merit in the representation(s) was not an appealable order within the meaning of Section 15T of the Securities and Exchange Board of India Act, 1992 and, therefore, the present appeal was not maintainable. We heard the counsel for the parties at some length on this objection. During the course of the arguments, it was put to Shri Shiraz Rustomjee learned counsel for respondent no. 1 whether the respondent Board would like to consider the memorandum of appeal and the response filed thereto by the respondents before this Tribunal as their respective representations and pass a reasoned order. This suggestion was made keeping in view the fact that the impugned communication does not contain reasons. The learned cousnel for the respondent Board has sought instructions and states that, in the peculiar facts and circumstances of the present case, the respondent Board is agreed to consider the memorandum of appeal and the response of the respondents as their respective representations and pass a reasoned order. He has further clarified that in order to put an end to the issue, the Board shall not afford personal hearing to any of the parties. We are in agreement with the learned cousnel for the respondent Board in this regard. However, the responent Board shall be free to seek any further clarification, if it deems necessary, from any of the parties. It goes without saying that none of the parties before us in this appeal shall be entitiled to file any further representation

before the respondent Board. Let the Board pass an appropriate order in accordance with law expeditiously.

The Appeal stands disposed off as above. No costs."

In compliance with the aforesaid order, the Board passed a detailed order observing that the allegations made by the complainant do not call for any regulatory intervention by the Board. It is against this order that the present appeal has been filed.

3. At the outset, Mr. Kumar Desai, learned counsel for the Board raised a preliminary objection that the impugned order passed by the Board is not an appealable order within the meaning of Section 15T of the Act and, therefore, the present appeal is not maintainable. It was submitted by him that every decision by the Board cannot be a subject matter of appeal. The Board receives hundreds of complaints every day which are investigated by it and action taken wherever violation of regulatory framework is noticed. The orders issued or decisions taken while disposing of such complaints and not affecting rights of the parties are not appealable under Section 15T of the Act. In support of his submission, learned counsel for the Board relied on the following decisions :-

1. Northern Projects Limited vs. Adjudicating Officer (Appeal no. 55 of 2011 decided on 29.8.2011). (SAT)
2. B. P. Kanani vs. SEBI (Appeal no. 6 of 2000 decided on 31.8.2000). (SAT)
3. Jassbhai Motibhai Desai vs. Roshan Kumar AIR 1976 Supreme Court 578.
4. Adi Pherozshah Gandhi vs. H. M. Seervai (1970) 2 SCC 484.
5. Harinarayan G. Bajaj vs. SAT (2003) 42 SCL 548 Bom. (HC)

4. Mr. P. N. Modi, learned counsel for respondent 2 supported the stand taken by the respondent Board and also relied on the decision of this Tribunal in the case of BPL Limited vs. SEBI (Appeal no. 14 of 2001 decided on June 20, 2002). It was submitted by him that a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietory rights. When a complaint is examined by the Board with regard to violation of regulatory framework and the Board, after examining the complaint, comes to the conclusion

that there is no violation of regulatory framework, such an order cannot be said to operate directly and injuriously upon the personal, pecuniary or proprietory rights of the appellant. Therefore, the communication conveying decision of the Board while disposing of a complaint which does not affect the personal, pecuniary or proprietory rights of an individual is not an appealable order within the meaning of Section 15T of the Act. Counsel appearing for other respondents also adopted the same arguments and submitted that the impugned order is not an appealable order. It was also submitted that the issues raised by the appellant in his complaints are also pending before the Company Law Board. The appellant had also filed Civil Suit before the Delhi High Court raising the same issue which has been dismissed by that Court. It is not a case that the appellant is without remedy. He is agitating the same issue before the Company Law Board which has jurisdiction in the matter. The appellant is indulging in forum shopping, a practice that needs to be curbed.

5. Mr. E. P. Bharucha, learned senior counsel appearing for the appellant, strongly argued in favour of the maintenance of appeal stating that the appellant is holding as much as 24.9 per cent shares in the company and is substantially interested in the affairs of the company. The appellant is neither a busy body of meddlesome interloper nor acting in the name of pro bono publico. The impugned order is affecting the rights of the appellant. The Board has given its findings in the impugned order and thus, it becomes an appealable order. In support of his contention, learned senior counsel relied on the order passed by this Tribunal in the case of National Securities Depository Limited (Appeal no. 207 of 2005 decided on September 29, 2006) and submitted that there is no limitation in Section 15T of the Act and it has to be interpreted in its widest term making every order passed by the Board appealable, whether it be in exercise of its administrative, legislative or judicial/quasi judicial powers. He has also placed reliance on the order passed by this Tribunal in the case of Gammon India Limited (Appeal no. 32 of 2007 decided on June 20, 2008) where on a complaint by a shareholder, the Board took action against the company and this Tribunal entertained the appeal filed by the company on the decision taken by the Board on the basis of the complaint of the shareholders.

Learned senior counsel for the appellant also distinguished the cases cited by the learned counsel for the respondents.

6. After hearing learned counsel for the parties, we consider it necessary to deal with the issue of maintainability of the appeal before we go into the merits of the case. We have considered the rival submissions and have also looked at the orders/decisions cited by counsel on both sides. The relevant part of Section 15T of the Act reads as under:-

> **"15T. Appeal to the Securities Appellate Tribunal.** – (1) Save as provided in sub-section (2), any person aggrieved,-
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> (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder, or
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> (b) by an order made by an adjudicating officer under this Act,
>
> may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
>
> (2) No appeal shall lie to the Securities Appellate Tribunal from an order made-
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> (a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;
>
> (b) by an adjudicating officer,
>
> with the consent of the parties."

The words "an order" are not defined in the Act. Black's Law Dictionary (Sixth Edition) defines the word "order" to mean " a mandate; precept; command or direction authoritatively given; rule or regulation; direction of a court or judge made or entered in the writing, and not included in a judgment which determines some point or directs some step in proceedings." An order is primarily a decision which has the effect of a command, whether called by such name or not and is distinguishable from an advise or request by the nature of the consequence that may flow from the non implementation of the same. Therefore, the words "an order" used in the aforesaid provision are comprehensive enough to include every order or decision taken by the Board **which adversely affect the rights of the parties** (*emphasis supplied*). We have also looked at the orders/decisions cited by learned

counsel on both sides. In brief, the ratio on the issue under consideration in all these orders/decisions is that orders which are merely procedural cannot be appealed against and it is only those orders or decisions taken by the Board which adversly affect the rights of the parties will fall within the purview of an appealable order under Section 15T of the Act. To ascertain whether a communication or decision amounts to an order within the meaning of the above noted provision, its substance and not its form has to be seen. If a particular direction, request or observation is binding and has penal consequence for its violation, the same will have to be treated as an order within the meaning of the above noted provision. It is immaterial whether the communication through which the decision is conveyed is in the form of a letter or order or a note. We are of the considered view that the orders/decisions of this Tribunal in the case of NSDL and Gammon India Limited, referred to by the learned senior counsel for the appellant, are of no help to him. After the NSDL order, this Tribunal in the case of Bharat Jayantilal Patel vs. SEBI (Appeal no. 126 of 2010 decided on September 15, 2010) has categorically held that the words "an order" appearing in Section 15T are comprehensive enough to include every order or decision taken by the Board **which adversely affect the rights of the parties** (*emphasis supplied*). It has been categorically stated in the said order that procedural orders which do not affect the substantive rights of the parties are not appealable. Similarly, in case of Gammon India Limited the appeal was preferred not by the complainant but by the company against whom action was initiated by the Board on the basis of complaint.

7. Let us have a look at the background in which the impugned order was passed by the Board. The appellant made certain complaints to the Board against respondent 2, its promoters and the promoter group in respect of allotment of warrants by the company to certain entities, who, according to the appellant, were the promoters/promoter group of the company or persons acting in concert with them and the subsequent allotment of shares to them against the share warrants so issued. The Board passed a detailed order examining all the allegations made by the appellant against the respondents 2 to 10 and came to the conclusion that there is no violation of the regulatory framework or the provisions of the Act. The Board also

noted that the procedure laid down in the Companies Act for allotment of warrants to promoter groups on preferential basis was followed by the company. The said order of the Board which was passed in compliance with the directions given by this Tribunal in its order dated July 1, 2009 in any way does not impinge on any right of the appellant. The impugned order is merely a reply from the Board to the issues raised by the appellant in its complaint. It is neither an order nor a decision of the Board which adversely affects any right of the appellant. In this view of the matter, we are inclined to agree that the impugned order does not adversely affect the rights of the appellant and hence not an appealable order within the meaning of Section 15T of the Act. We have also noted that this is not a case where the appellant is without a remedy. The appellant is already pursuing its grievance on the same issue in its petition filed before the Company Law Board which is still under consideration. The appellant has approached Delhi High Court also on the same set of allegations and the suit filed by it against the respondents was dismissed by the Court.

8. We, therefore, uphold the preliminary objection raised by the respondents and hold that the appeal is not maintainable under Section 15T of the Act against the impugned order. Since we are rejecting the appeal on the preliminary objection raised by the respondents, we are not going into the merits of the case.

In the result, the appeal is dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Officiating Presiding Officer

Sd/-
S. S. N. Moorthy
Member

25.4.2012
Prepared & Compared by
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