BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 126 of 2012

Date of decision: 18.09.2012

Radheyshyam Agarwal
C/o Amol Vyas,
Advocate,
78A, Vrindavan Colony,
Jhotwara,
Jaipur – 302 012. ……Appellant

Versus

1. The Bank of Rajasthan Limited
   (Now known as ICICI Bank Limited)
   BORCD, Central Office, C-3,
   Sardar Patel Marg C-Scheme,
   Jaipur – 302 001.

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

Mr. Amol Vyas, Advocate for the Appellant.

Mr. Deepak Dhane, Advocate for Respondent no. 1.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mobin Shaikh, Advocate for Respondent no. 2.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra (Oral)

This appeal was disposed of by an ex-parte order dated July 16, 2012. The said order has been recalled by us by a separate order today in Miscellaneous Application No. 121 of 2012 for hearing the matter afresh.

2. The facts of the case, in brief, are that the appellant is one of the shareholders of the Bank of Rajasthan Ltd., now merged with ICICI Bank Ltd., pursuant to

sanction of scheme of amalgamation approved by the Reserve Bank of India under the provisions of Section 44A of the Banking Regulation Act, 1949. The Securities and Exchange Board of India (for short the Board) carried out investigations against the erstwhile Bank of Rajasthan Ltd. regarding dealings in the scrip of the bank. It was noted that the promoter group of Bank of Rajasthan Ltd. had, by way of their continuous disclosures, announced that their stakes in the bank were coming down from 44.18 per cent during the quarter ending June 2007 to 28.61 per cent during the quarter ending December 2009. However, it was noted by the Board that their shareholding had in fact increased and no disclosures relating to increase in the shareholding were made to the stock exchange or to the public by any of the concerned entities. Pending investigations, the Board passed an ex-parte ad-interim order dated March 8, 2010, restraining 100 entities from accessing the securities market and further prohibiting them from buying, selling or dealing in securities in any manner till further directions. On completion of the investigations, the Board came to a *prima-facie* conclusion that out of the 100, entities 92 entities are involved in violation of regulatory framework and no material could be found against the remaining 8 entities. Therefore, by its order dated March 26, 2012, the Board recommended initiation of the adjudication proceedings against the 92 entities. However, it revoked the ex-parte ad-interim order passed on March 8, 2010 against all the entities observing that all these entities have been debarred for the last two years and that there is no need to continue the directions any further. The grievance of the appellant is that the prohibitory order issued on March 8, 2010 against these entities should have been continued as the proceedings are still continuing and charges against entities are of violating of the takeover code.

3. We have heard Mr. Amol Vyas, counsel for the appellant and Mr. Shiraz Rustomjee, senior counsel for the respondent Board. We are of the view that the preliminary objection raised by learned senior counsel for the Board that the appellant is not an “aggrieved person” within the meaning of Section 15T of the Securities and Exchange Board of India Act, 1992 (the Act) and hence appeal is not maintainable

needs to be upheld. The appellant before us is only a shareholder and that by itself will not make him a person aggrieved. The impugned order does not wrongfully deprive the appellant of any of his rights and no such case has been made out by the appellant in the appeal. Under identical situation, similar view has been taken by this Tribunal in the case of Mr. Bharatbhai Baldevbhai Shah vs. Securities and Exchange Board of India, (Appeal no. 142 of 2008 decided on October 6, 2009).

4. Learned counsel for the appellant has placed reliance on the order passed by this Tribunal in the case of Ramprasad Somani vs. The Chairman, SEBI (decided on September 27, 2002) and submitted that in a similar matter pertaining to the Bank of Rajasthan Ltd. itself, this Tribunal has concluded that a shareholder holding even one share can be a "person aggrieved". Therefore, the present appeal is maintainable. We are not inclined to accept this argument. In the said order, relying on the judgment of the Supreme Court in the case of **Bar Council of Maharashtra vs. M. V. Dabholkar and Ors. [(1975) 2 SCC 702],** it was observed that the meaning of the word 'person aggrieved' will have to be ascertained with reference to the purpose and the provisions of the statute. It was also observed that the meaning of the word "person aggrieved" may vary according to the context of the statute and must be construed with reference to the context in which it appears. In the case of Ramprasad Somani (supra), the appellant was considered to be a person aggrieved as the issue related to making of public announcement under the takeover code where interest of the shareholders was involved as they could participate in the open offer to be made by the acquirer. However, in the case in hand the prayer of the appellant, as a shareholder, is for a direction to the regulator to continue restraint order against the promoter group entities from dealing in a market during the pendency of the adjudicating proceedings. We are of the view that in such a circumstance, the appellant cannot be considered to be a person aggrieved by the decision of the Board. Whether a delinquent should be debarred from dealing in the market during pendency of adjudicating proceedings is to be decided by the regulator in the facts and circumstances of each case and a shareholder cannot have any say in the matter. We

have perused the impugned order and find that the whole time member of the Board, while passing the order, has given sufficient reasons justifying the revocation of interim order during the pendency of adjudicating proceedings.

5. A doubt was expressed by learned counsel for the appellant that in case it is decided by the Tribunal that the appellant is not a "person aggrieved", he will lose his right to file an appeal even when the adjudicating officer passes an order against the delinquents on the issue of violation of provision of the regulations. We are of the view that this apprehension of the appellant is totally misplaced. As already stated, the word "person aggrieved" is to be construed with reference to the context in which it appears and its meaning may vary according to the facts and circumstances of each case.

6. In the facts and circumstance of the present case, we are of the view that no case is made out by the appellant to show that he is a "person aggrieved" within the meaning of Section 15T of the Act with reference to the impugned order. We, therefore, uphold the preliminary objection of the Board and hold that the present appeal is not maintainable since the appellant is not a "person aggrieved" by the impugned order.

No costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

18.09.2012
Prepared & Compared by
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