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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8731/2014 and CM APPL. 20066/2014, CRL.M.A. 7324/2015

M/S A P L INDUSTRIES LTD ..... Petitioner

Through: Mr. Rohit Choudhry, Advocate with Ms. Preeti Kohli, Advocate

versus

THE SECURITIES EXCHANGE BOARD OF INDIA & ORS. ..... Respondents

Through: Mr. Pratap Venugopal, Advocate with Ms. Surekha Raman and Mr. Purushottam Kumar Jha, Advocates for R-1/SEBI.
Mr. Vijay Kumar, Advocate for R-2/Canara Bank.
Mr. Sartaj Singh, Advocate for R-3/PNB.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

% 17.10.2016

1. The present petition has been filed by the petitioner praying *inter alia* for issuing a writ of certiorari, quashing a communication dated 17.11.2014 issued by the respondent No.1/Securities Exchange Board of India (in short 7'SEBI'), calling upon it to pay the principal and interest to the share applicants, who had applied for its shares under a Public Issue in terms of the order dated 14.01.2013 passed in an earlier petition filed by the company, registered as W.P.(C) 1261/2002. The second relief is for

directions to the respondent No.1/SEBI to in turn direct the respondent No.2/Canara Bank, respondent No.3/Punjab National Bank and respondent No.4/Registrar of the Issue to expedite refund of the application monies with interest to the share applicants. Lastly, the petitioner has prayed for directions to the respondents to refrain from "taking any illegal steps against it".

2. The case has a chequered history. The dispute between the petitioner and the respondent No.1/SEBI had started on 26th February, 1996, when the latter came out with a Public Issue of 30 lakh equity shares of Rs.10/- each for cash at par. The said issue had opened for subscription on 26.02.1996 and was closed on 29.02.1996. As per the certificate issued by the respondent No.4, the Registrar to the Issue, the said issue was oversubscribed 1.75 times on the date of its closure. However, subsequent withdrawals of applications resulted in the issue being undersubscribed. As the minimum prescribed subscription was not received for the issue, vide letter dated 07.6.1996, the respondent No.1/SEBI advised the petitioner/company to refund the application monies to the share applicants (Annexure P-2). Aggrieved by the said order, the petitioner filed an appeal before the Central Govt. under Section 20 of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as the SEBI Act). The said appeal was allowed vide order dated 20.11.1996, with a finding that the impugned order dated 07.06.1996 was not an order passed under any specific provision of the SEBI Act, but was a letter issued by the respondent No.1/SEBI advising the petitioner of its responsibilities under the provisions

of the Companies Act. Further, the petitioner was advised to approach the Chairman, SEBI for disposal of their grievances under the extant rules.

3. As a result, the petitioner submitted a representation dated 09.12.1996 before the Chairman of the respondent No.1/SEBI which was disposed of vide order dated 22.05.1998 (Annexure P-3). The operative para of the said order is reproduced hereinbelow for ready reference:-

> *"SEBI has been established with the object to protect the interests of the investors in the securities market and to promote the development of, and to regulate the securities market by such measures as it thinks fit. The receipt of minimum subscription amount as stated in the prospectus is a condition precedent for a valid allotment. No shares can be allotted unless atleast the amount of minimum subscription as stated in the prospectus has been subscribed. Section 69 provides for a prohibition of allotment unless minimum subscription is received. If such amount has not been received all monies received from the applicants shall be returned to the applicants. In the instant case on the basis of aforesaid findings, I find that the issue of APLIL was under subscribed. Therefore, in terms of section 11B read with section 11(1) of the SEBI Act, I hereby direct the M/s APL Industries Limited to refund all the monies collected in respect of the public issue from the applicants to the respective applicants with interest as applicable under the provisions of the Companies Act. The order shall come into force with immediate effect."*

4. Aggrieved by the aforesaid order dated 22.05.1998, the petitioner preferred an appeal under Section 20 of the SEBI Act before the Central Government which was allowed by the Appellate Authority vide order dated 18.10.2000 (Annexure-5). The operative paras of the aforesaid order are as under:-

> *"From the reading of Rule 2(e) of SEBI (Registrar to an Issue and Share Transfer Agent) Rules, 1993 and the agreement between the*

appellant company and the Registrar to the Issue, it appears that the Registrar to the Issue exceeded his brief in allowing withdrawal of applications – a power not vested in him under Rule 2(e) ibid. Thus he exercised a power which is not given to him under the law nor under agreement with the appellant company. The power for allowing withdrawal of applications is vested in the company or its management under the Companies Act and if the company does not allow withdrawal of the applications, the applicants have to seek relief from specified authorities designated for the purpose. Clearly the Registrar in the instant case is not such an authority.

In view of the aforesaid, the Appellate Authority sets aside the order of SEBI dated 22/05/1998 and directs that action, if any, as per due procedure of law should be taken."

5. Aggrieved by the aforesaid decision taken by the Appellate Authority, the respondent No.1/SEBI filed a writ petition initially before the High Court of Bombay, on an objection raised by the petitioner with regard to the territorial jurisdiction, which was subsequently withdrawn vide order dated 09.01.2002. Thereafter, the respondent No.1/SEBI filed a writ petition in this Court, registered as W.P.(C) 1261/2002. Vide judgment dated 14.01.2013, the captioned writ petition was allowed (Annexure P-6). Reproduced herein below is the operative para of the said decision:-

"11. Having regard to the aforesaid, I am of the view that the order of the SAT deserves to be set aside. It is ordered accordingly. In that view of the matter, the order of the Chairman SEBI dated 22.05.1998 would have to be sustained and the directions contained therein for refund of the money to the share applicants would have to be implemented. It is ordered accordingly. The SEBI shall ensure that refund is made to the share applicants, as expeditiously as possible, in accordance with law. Any interest earned on the interregnum amongst the applicants in accordance with law. Deficiency, if any, shall be

recovered from respondent no.1/company, once again, by taking recourse to the relevant provisions of law."

6. It is an undisputed position that the aforesaid judgment was not taken in appeal by any of the parties and has attained finality.

7. In terms of the judgment dated 14.01.2013, the petitioner/company was required to refund the money to the share applicants alongwith interest. It was also clarified that the shortfall in the interest payable to the share applicants shall be recovered from the petitioner/company for payment to them.

8. Since the petitioner/company failed to comply with the judgment dated 14.01.2013, the respondent No.1/SEBI issued a letter dated 16.07.2014, advising the petitioner to refund the monies collected from the applicants in respect of the public issue along with interest, as per law. On receiving the aforesaid letter dated 16.07.2014 from the respondent No.1/SEBI, the petitioner/company wrote letters dated 23.07.2014 and 11.08.2014 to the respondents No.3/Punjab National Bank and respondent No.2/Canara Bank respectively, requesting them to refund all the monies to the applicants alongwith accrued interest under intimation to the respondent No.1/SEBI. In response, the respondent No.2/Bank despatched a letter dated 28.08.2014 to the petitioner/company, calling upon it to provide the complete list of all the share applicants and their updated addresses alongwith the supporting documents and arrange to pay interest @15% per annum on the application monies lying with the bank. Respondent No.2/Bank also clarified that it had not earned any interest on the application

money aggregating to Rs.26,66,449/-, due to the bar placed under Section 73(3A) of the Companies Act, 1956 and stated that the company and its Director are jointly and severally liable to repay the money to the share applicants with interest. In the penultimate para of the letter dated 28.08.2014, the respondent No.2/Bank informed the petitioner that the application money lying with the Bank was to the tune of Rs.26,66,449/-, whereas on the date of issuing the said letter, an amount of Rs.75,32,726/- would be required for refunding the application monies.

9. On receiving the communication dated 28.08.2014 from the respondent No.2/Bank, the petitioner dashed off a letter dated 24.11.2014 to the respondent No.1/SEBI alleging *inter alia* that the respondents No.2 and 3/Banks were illegally withholding the application monies and denying payment of interest accrued on the deposits, for which legal action had been initiated against them. Further, the respondent No.1/SEBI was requested to intervene and resolve the matter. Before receiving the aforesaid letter, respondent No.1/SEBI had addressed a letter dated 17.11.2014 to the petitioner/company reiterating an earlier request made on 16.07.2014 for release of the principal amount with interest to the share applicants in terms of the judgment dated 14.01.2013, in W.P.(C) 1261/2002.

10. Instead of complying with the advise of the respondent No.1/SEBI, as above, the petitioner approached the High Court by filing the present petition in December, 2014. Notice was issued on the petition on 14.01.2015. A detailed order was passed on 01.05.2015, recording the respective stands of the parties and as an interim measure, respondents No.2

and 3/Banks were directed to deposit the monies available with them in an interest bearing account. Further, it was noted that as per the affidavit filed by the respondent No.2/Bank, 909 applicants were to be refunded the application monies. The respondent No.3/Bank was also directed to ascertain as to whether the list of applicants was available with it.

11. Pursuant to the aforesaid order, the respondent No.3/Bank had filed an affidavit stating inter alia that a total of 631 applications had been received by it in respect of the public issue floated by the petitioner/company. Further, the respondent No.3/Bank in its subsequent affidavit dated 13.02.2015, stated that a sum of Rs.27,45,298/- was available with it as on 08.05.2002, the date from which the FDR had not been renewed.

12. Though the petitioner/company did file a reply to the aforesaid affidavit of the respondent No.3/Bank, learned counsel for the petitioner states that a letter dated 08.05.2002, addressed by the respondent No.3/Bank to the petitioner/company could not be filed at that time as it was not traceable and the said letter, copy whereof is now available, talks of renewal of the FDR with effect from 08.10.2001 to 08.11.2002. A copy of the aforesaid letter dated 8.5.2002 is handed over by learned counsel for the petitioner and taken on record with a copy furnished to the counsel for the respondent No.3/Bank.

13. This court is inclined to agree with the submission made by Mr. Venugopal, learned counsel for the respondent No.1/SEBI that merely because the petitioner/company has raised a dispute with the respondents No.2 and 3/Banks with regard to its liability to pay the interest component

on the share applications, cannot be a ground for not releasing the share monies payable to the applicants, which have been retained for the past twenty years.

14. Here is a case where the parties have been in litigation for two decades over refund of share money, but the real stake holders, who are the share applicants, have remained in the background for the simple reason that they can ill afford to sue the petitioner/company for a few thousand rupees when they are aware that the litigation expenses can be prohibitive and would amount to throwing good money after bad. By now most of the them would have written off the amount as a dead loss. But that cannot detract from the fact that the respondent No.1/SEBI has been espousing their cause in absentia and constantly reminding the petitioner/company to refund the monies collected pursuant to the public issue. The principal amount of share money that is payable to 909 share applicants, who had applied to the respondent No.2/Bank for allotment of shares in February, 1996 comes to Rs.25,28,000/- and the amount in respect of 631 share applicants, who had applied to the respondent No.3/Bank comes to Rs.16,71,500/-. Admittedly, interest on the application money is payable @ 15% per annum.

15. After pronouncement of the judgment dated 14.01.2013 in W.P.(C) 1261/2002, the refund warrants ought to have been issued forthwith to the share applicants along with interest payable under the relevant provisions of law. However, no such steps have been taken. Instead, the petitioner/company has filed the present petition by taking a plea that it is for the respondents No.2 and 3/Banks to pay the interest on the principal

amount to the share applicants. The only redeeming fact is that in terms of the interim order dated 01.05.2015, passed in the present proceedings, the respondents No.2 and 3/Banks have placed the amounts available with them in interest bearing accounts, so that future loss of interest could be curtailed.

16. The legal proceedings, if any, initiated by the petitioner/company against the respondents No.2 and 3/Banks cannot be a ground to explain non-compliance of the order dated 14.01.2013. It was the duty of the petitioner/company to have made available adequate funds to the respondents No.2 and 3/Bank for them to issue refund warrants to the share applicants towards the principal and the interest accrued thereupon, as per law. If the petitioner/company ultimately succeeds against the respondent No.2 and 3/Bank, then it can always seek recovery of the amount paid by it towards the shortfall of the interest component distributed to the share applicants. But issuance of refund warrants cannot brook any further delay.

17. It is therefore deemed appropriate to direct the respondents No.2 and 3/Banks to calculate the interest that would have accrued on the amounts received by them from each of the share applicants and file an affidavit with such computation reflecting column-wise, the names of the applicants, the principal amount received from them and the amount of interest payable on the principal amount till 31.10.2016. The affidavit shall also indicate the interest earned on the amounts retained by the Banks and the extent of shortfall in the interest component. Needful shall be done within three weeks from today with copies to the counsels for the petitioner and the respondent No.1/SEBI.

18. The petitioner shall simultaneously approach the respondent No.4, Registrar of Shares for gathering relevant details of the share applicants alongwith their upto date addresses. As counsel for the petitioner claims that his client has not been able to trace the current address of the respondent No.4 and learned counsel for the respondent No.3/Bank informs the court that the bank has been able to do so, counsel for respondent No.3 / Bank shall furnish the relevant details to the counsel for the petitioner in the course of the day. The petitioner shall thereafter approach the respondent No.4 at the earliest for obtaining a complete list of the share applicants under its seal and signatures, for being furnished in turn to the respondents No.2 and 3/Banks within two weeks from today.

19. On being supplied the said list of share applicants with their upto date addresses, and on receipt of the affidavits from the respondents No.2 and 3/Banks intimating the extent of shortfall in the interest component, in the first instance the petitioner shall make good the said shortfall including the expenses to be incurred by the Banks for refunding the application monies to the share applicants. The said amounts shall be deposited by the petitioner with the respondents No.2 and 3/Banks respectively within two weeks from the date of receipt of the affidavits of the Banks.

20. Upon receiving the list of share applicants and the shortfall of the money that the petitioner/company has been directed to pay towards the interest component, calculated @15% per annum alongwith the expenses, the respondents No.2 and 3/Banks shall take immediate steps to start the process of dispatching the refund warrants to the share applicants and

endeavour to complete the entire process within four weeks from the date of commencement.

21. Once the process of issuing refund warrants in favour of the share applicants is completed, respondents No.2 and 3/Banks shall give a written intimation in that regard to the petitioner and the respondent No.1/SEBI. The petitioner shall separately file a compliance report with the respondent No.1/SEBI, in accordance with the rules stipulated in that regard.

22. The petition is disposed of alongwith the pending applications. Liberty is however granted to the petitioner to pursue its remedies for recovery of the shortfall of the interest amount from the respondents No.2 and 3/Banks, if so permissible in law. There shall be no orders as to costs.

HIMA KOHLI, J

OCTOBER 17, 2016
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