

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 03.08.2020

Misc. Application No. 221 of 2020
And
Appeal No. 158 of 2020

Siel Financial Services Limited
12-B, Soni Mention,
Ratlam Kothi,
Indore – 452001
Madhya Pradesh.

...Appellant

Versus

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

...Respondent

Mr. P.K. Bhalla, Advocate for the Appellant.

Mr. Venkatesh Dhond, Senior Counsel with Mr. Nishit Dhruva,
Mr. Chirag Bhavsar and Mr. Harshad Vyas, Advocates i/b MDP
& Partners for the Respondent.

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 appellant has filed the present appeal being aggrieved
by the order of the General Manager of Securities and Exchange
Board of India ('SEBI' for short) dated June 15, 2020.

2. We have heard Shri P.K. Bhalla, the learned counsel for the appellant and Shri Venkatesh Dhond, the learned senior counsel along with Shri Nishit Dhruva, Shri Chirag Bhavsar and Shri Harshad Vyas, the learned counsel for the respondent.

3. The facts leading to the filing of the present appeal is, that the appellant is a public limited company in which 93.56% of the shares are held by the promoters Mawana Sugars Limited and the balance 6.44% is held by approximately 20,000 public shareholders. In 2010 Securities Contracts (Regulations) Rules ('SCR Rules' for short) were amended and Rule 19A was incorporated which reads as under:-

'Continuous Listing Requirement'

19A Every listed company (other than public sector company) shall maintain public shareholding of at least twenty five percent.

Provided that any listed company which has public shareholding below twenty five percent on the commencement of the Securities Contracts (Regulations)(Amendment) Rules, 2010 (SCRR), shall increase its public shareholding to at least twenty five percent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India .

4. The appellant was thus required to increase its minimum public shareholding to at least twenty five percent of the paid up

equity capital within a prescribed period of three years as per Rule 19A of the SCR Rules.

5. For the purpose of achieving the minimum public shareholding requirement of twenty five percent, the respondent came out with a circular dated December 16, 2010 which provided the following methods for complying with the minimum public shareholding requirement, namely:

- Issuance of shares to the public through prospectus.
- Offer for sale of shares held by promoters to public through prospectus.
- Sale of shares held by promoters through the secondary market i.e. through Stock Exchange.

The aforesaid circular was again modified by circular dated August 29, 2012 which provided additional methods to comply with the minimum public shareholding requirement, namely:

- Rights issues to public shareholders, with promoters/promoter group shareholders foregoing their rights entitlement.
- Bonus issue to public shareholders, with promoters/promoter group shareholders foregoing their bonus entitlement.

- Any other method that may be approved by SEBI on a case to case basis.

6. The appellant did nothing to achieve the minimum public shareholding requirement in the manner prescribed by SEBI. The appellant made a representation dated May 17, 2013 and another representation dated June 17, 2013 praying that they may be allowed to sell their shares in off-market to one investor (unconnected person) in order to achieve the minimum public shareholding requirement. This representation was rejected by the respondent by its order dated August 26, 2014.

7. Thereafter the respondent issued another circular dated January 30, 2015 providing additional methods in order to achieve the minimum public shareholding requirement and, eventually another circular dated February 22, 2018 was issued providing additional methods for the purpose of achieving the minimum public shareholding requirement which is extracted hereunder:-

“ANNEXURE

In order to achieve the minimum level of public shareholding mandated under rules 19(2)(b) and rule 19A of the Securities Contracts (Regulation) Rules, 1957, a listed entity shall adopt any of the following methods:-

- i. Issuance of shares to public through prospectus;*
- ii. Offer for sale of shares held by promoters to public through prospectus;*

- iii. *Sale of shares held by promoters through the secondary market in terms of Circular reference No.CIR/MRD/DP/18/2012 dated July 18, 2012;*
- iv. *Institutional Placement Programme (IPP) in terms of Chapter VIIIA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;*
- v. *Rights Issue to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;*
- vi. *Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;*
- vii. *Sale of shares held by promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to conditions specified under this Circular;*
- viii. *Allotment of eligible securities under Qualified Institutions Placement in terms of Chapter VIII of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;*
- ix. *Any other method as may be approved by the Board on a case to case basis. For this purpose, the listed entity may approach the Board with appropriate details to obtain prior permission. The Board would endeavor to communicate its decision within 30 days from the date of receipt of the proposal or the date of receipt of additional information as sought from the listed entity.”*

8. The appellant did not choose any of the methods and eventually on January 10, 2020 made an application contending that it was not possible for the appellant to comply with the requirement of minimum public shareholding and therefore requested to allow them to sell the shares in the open market

without issuing prospectus at a negotiated price to an interested investor. The respondent by the impugned order dated June 15, 2020 rejected the appellant's request to adopt a method other than the method provided in the circular.

9. Having heard the learned counsel for the parties we find that the appellant is holding on to its shareholding of 93.56% since 1997 and no effort whatsoever has been made since 2010 when the SCR Rules were amended and Rule 19A was incorporated which gave a timeline of three years to comply with the minimum public shareholding requirement providing various methods for any listed company to reduce its shareholding and increase the shareholding of the public. We find that the appellant has not made any effort to reduce its shareholding for vested reasons. The request of the appellant that they should be allowed to sell their shares at a negotiated price to an interested investor is an eye-wash since there would no meaningful transfer of shares to the public. The reason for bringing in the minimum public shareholding requirement was to ensure that there is no concentration of shares at the hands of single person or a group of persons. The idea is that if there are a large number of shareholders then there is less scope of price manipulation and further provides liquidity to the investors and

helps in discovery of fair price. Considering the aforesaid the request of the appellant was rightly rejected by the impugned order which we do not find any infirmity.

10. For the reasons stated aforesaid, we do not find any merit in this appeal and is dismissed with no order as to costs.

Misc. Application is accordingly disposed of.

11. 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.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

03.08.2020
msb

