BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 34 of 2008

Date of decision : 6.6.2008

Mawana Sugars Ltd.
(Formerly SIEL Ltd.) …… Appellant

Versus

The Bombay Stock Exchange Ltd. …… Respondent

Mr. Shyam Mehta Advocate with Mr.Vinay Chauhan Advocate for the Appellant.

Mr. P. N. Modi Advocate with Mr. Sagar Divekar Advocate for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

Mawana Sugars Limited (hereinafter referred to as MSL) was a public limited company incorporated under the provisions of the Companies Act, 1956 whose shares were listed on the Bombay Stock Exchange (BSE). SIEL Limited (for short SIEL) is also a public limited company and its shares are also listed on BSE. The board of directors of MSL and SIEL passed resolutions on March 28, 2007 approving the scheme of arrangement whereby MSL was to merge in SIEL and the scheme envisaged a reduction in the share capital of SIEL after amalgamation. MSL which had taken loans from different banks and financial institutions had defaulted in the repayment of its debts as a result of which the financial institutions decided in May 2007 to refer its case to the Corporate Debt Restructuring Cell (for short CDR) of the Reserve Bank of India for restructuring its debts.

2. Meetings of the shareholders and creditors of MSL and SIEL were held in June 2007 under the orders of the High Court of Delhi and the scheme of arrangement was

approved by them with the requisite majority. Company petitions no. 156 and 157 of 2007 were filed by the two companies in the Delhi High Court seeking its approval to the scheme of arrangement which was granted on September 11, 2007. A certified copy of the order of the High Court together with a copy of the scheme was filed with the Registrar of Companies on 15.10.2007 on which date the scheme of arrangement became effective. The board of directors of MSL and SIEL then fixed October 31, 2007 as the record date for determining the entitlement of their respective shareholders in terms of the scheme. At this stage it is relevant to refer to the key features of the scheme of amalgamation. 43 per cent of the equity capital of SIEL which was held by MSL would get extinguished and for every two shares of MSL, three shares of SIEL shall be allotted. The share capital of SIEL shall be reduced to 1/3rd after merger. Upon coming into effect of the scheme, every shareholder of SIEL was to get one share in the amalgamated company for every three pre-amalgamation shares held by him. In January 2008, after amalgamation SIEL changed its name to Mawana Sugars Ltd. which is the appellant before us.

3. While the scheme of arrangement was still pending in the High Court, the State Bank of India, the lead banker, made a reference on August 22, 2007 to CDR for restructuring the debts of MSL. The report clearly mentioned that the promoters of MSL shall be required to bring in further cash in the form of equity to meet the shortfall in the internal cash accruals of MSL. The reference was considered by the empowered group of CDR on September 26, 2007 and it approved a package for restructuring the debts of MSL. One of the conditions imposed in the package with which we are concerned in this appeal was that “The promoters’ contribution of Rs.15.00 crores in the form of equity for the shortfall in internal accruals to be brought in before 30.9.07.” As per the condition imposed by CDR, M/s. Greenfields Commercial Pvt. Ltd., one of the promoters of MSL, deposited on September 29, 2007 a sum of Rs.15 crores with SIEL. In pursuance to the decision taken by CDR, a formal letter dated October 11, 2007 was

sent by it to the State Bank of India conveying its approval to the restructuring package with the aforesaid condition.

4. As one of the promoters of MSL had deposited Rs.15 crores with SIEL, its board of directors resolved on October 26, 2007 to issue and allot equity shares to that promoter on preferential basis at a price not less than Rs.25.35 per share of the face value of Rs.10/- each of the aggregate value not exceeding Rs.15 crores. This price, according to SIEL, was fixed in terms of clause 13.1.1.1 of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (for short the guidelines) taking September 26, 2007 as the relevant date. The calculation of this price as such has not been disputed by BSE except that it wanted a different relevant date on the basis of which the share price becomes still lower. This dispute need not detain us because it is not a serious issue between the parties. Since the shares of SIEL were to be allotted to the promoter of MSL and before that could be done, it was necessary for the former to seek approval of its shareholders in an extraordinary general meeting as required by section 81(1A) of the Companies Act and this would have taken time, SIEL wrote to CDR on October 26, 2007 seeking a clarification as to whether the issuance of its shares to the promoter of MSL which had deposited Rs.15 crores would be sufficient discharge of its obligation under the CDR package. This became necessary because by that time MSL had merged with SIEL and was no longer in existence. CDR by its letter of November 1, 2007 responded to the communication and advised SIEL "that the issuance of shares by SIEL Ltd to the promoters of MSL can be treated as complete and due compliance of CDR approved package in respect of condition of promoter's bringing in contribution of Rs.15 corres by September 30, 2007." After the receipt of this communication from CDR, SIEL convened an extraordinary general meeting of its shareholders on December 12, 2007 and passed a special resolution approving the issuance and allotment of equity shares on preferential basis to the promoter of MSL as proposed by its board of directors on October 26, 2007. It is, thus, clear that the price of Rs.25.35 per share as fixed by the board of directors had been approved by the

shareholders on the basis of which a total of 59,17,169 shares were to be allotted to the promoter. Having passed the special resolution, SIEL approached BSE for obtaining in-principle approval under clause 24(a) of the listing agreement for listing the shares proposed to be allotted to the promoter M/s. Greenfields Commercial Pvt. Ltd. at a price not less than Rs.25.35 per share. As already noticed earlier, the price of Rs.25.35 per share was arrived at by taking September 26, 2007 as the relevant date in terms of clause 13.1.1.1 of the guidelines. It may be mentioned that September 26, 2007 was taken as the relevant date as it was on this date that CDR had approved the package for restructuring the debts of MSL and reference to this date is made in the proviso to Explanation (a) to clause 13.1.1.2 of the guidelines which is also applicable to clause 13.1.1.1. On receipt of the application from SIEL the matter was placed before the internal committee of BSE in its meeting held on January 10, 2008. The committee took the view that since CDR had on November 1, 2007 modified its earlier approved package and permitted SIEL to allot shares to the promoter of MSL, the relevant date in terms of the guidelines should be November 1, 2007 on the basis of which the price of the share works out to Rs.23.62. The committee was further of the view that since SIEL was allotting shares which were then listed and traded and were being allotted post merger, the proposed preferential shares should be issued on such terms as would place the allottee, as practicable as possible, in the same position in which it would have been had SIEL allotted shares to it prior to merger of the aforesaid two companies. For the view that the committee took, it granted in-principle approval subject to the condition that the price of each share shall not be less than Rs.70.86. This price was worked out by the committee after taking note of the changed capital structure of SIEL after merger. This decision of the committee was communicated to the appellant as per letter dated February 7, 2008. Feeling aggrieved by this communication, SIEL (now Mawana Sugars Ltd.) has filed the present appeal under section 23L of the Securities Contracts (Regulation) Act, 1956.

5. We have heard the learned counsel for the parties at length. It is strenuously argued by Mr. Shyam Mehta the learned counsel for the appellant that BSE was not justified in imposing the condition that the preferential allotment be made to the allottee at a rate not less than Rs.70.86 as, according to him, the price of Rs.25.35 per share was worked out strictly in accordance with clause 13.1.1.1 of the guidelines. It is urged that BSE could not interfere in the matter of pricing the preferential allotment as the guidelines prescribed a clear method of determining the same which had been adopted in the present case. It is also contended that the price at which the preferential allotment is sought to be made in favour of the promoter has been approved by the shareholders in the extraordinary general meeting. Shri P. N. Modi learned counsel appearing for BSE was equally emphatic in contending that even though the price of Rs.25.35 per share had been calculated as per clause 13.1.1.1 of the guidelines, the appellant while fixing that price had not taken into consideration the changed capital structure of SIEL after merger. He pointed out that in terms of the scheme of arrangement as approved by the shareholders of the two companies (MSL and SIEL) and also by the High Court of Delhi, the share capital of SIEL after merger had been reduced to 1/3rd and, therefore, to bring the allottee of the preferential allotment at par with other shareholders of SIEL, it was necessary that the price be raised so as to put the allottee at par with other shareholders of SIEL. The argument is that the worth of each share of SIEL after merger had increased and the preferential allottee who was to be allotted shares of MSL to begin with, could not take advantage of that enhanced share value, without paying for the same.

6. From the rival contentions of the parties, the short question that arises for our consideration in this appeal is whether BSE was justified in fixing the price of the preferential shares at not less than Rs.70.86 per equity share which is admittedly not in accordance with the pricing formula prescribed by the guidelines.

7. Having given our thoughtful consideration to the contentions of the parties we are inclined to answer the question in the negative. Whenever a company comes out

with a preferential issue or decides to issue shares to a select group of persons under section 81(1A) of the Companies Act the price of the preferential shares has to be determined in accordance with chapter XIII of the guidelines. This is the mandate of clause 13.0 of the guidelines which have been issued by the market regulator under section 11 of the Securities and Exchange Board of India Act, 1992. Clause 13.1.1.1 prescribes the manner in which the price is to be worked out. This clause reads as under:

> **“13.1.1.1 Pricing of the issue**
>
> 13.1.1.1 Where the equity shares of a company have been listed on a stock exchange for a period of six months or more as on the relevant date, the issue of shares on preferential basis shall be made at a price not less than higher of the following:
> (i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; or
>
> (ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.
>
> 13.1.1.2 …………………….
>
> Explanation:
> (a) “relevant date” for the purpose of (clauses 13.1.1.1 and 13.1.1.2) means the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81 (1A) of the Companies Act, 1956, to consider the proposed issue **provided however that in respect of shares issued on preferential basis pursuant to a scheme approved under the Corporate Debt Restructuring framework of Reserve Bank of India, the date of approval of the Corporate Debt Restructuring package shall be the relevant date**;
>
> (b) ……………………”

A reading of the aforesaid provision leaves no room for doubt that the method prescribed is clear and unambiguous. Where the shares of a company have been listed on a stock exchange for six months or more from the relevant date, the average of the weekly high and low of the closing prices of the shares quoted on the stock exchange during the six months preceding the relevant date and during two weeks preceding that date are to be worked out and the higher of the two shall be the price at which the preferential allotment shall be made. The term 'relevant date' for the purposes of this clause has been defined in the Explanation and in a case where preferential shares are issued pursuant to a scheme approved by CDR, the date of approval by CDR of the restructuring package shall be the relevant date. In the case before us it is not in dispute that the shares of SIEL are being allotted and its shares have been listed on BSE for more than six months. Thus, the price of the preferential shares to be issued by SIEL has to be determined strictly in accordance with clause 13.1.1.1 of the guidelines. Further, it is also not in dispute that the price of Rs.25.35 as worked out by the appellant is in terms this clause, taking September 26, 2007 as the relevant date because it was on that date that the CDR package was first approved, though it was slightly modified subsequently on November 1, 2007 when the appellant was informed that the issuance of shares by SIEL to the promoter of MSL would be treated as due compliance of the approved package. When the price was worked out by the appellant in accordance with the aforesaid clause, we do not think that BSE could introduce any other methodology to raise the price of the preferential shares on the ground that the changed capital structure of SIEL after merger had to be taken into account. What BSE has done is that it has worked out the price of the share as per clause 13.1.1.1 taking November 1, 2007 as the relevant date and the price on that basis comes to Rs.23.62 per share (which is lower than the price as worked out by the appellant) and has multiplied the same by 3 because the share capital of SIEL after merger has been reduced to one-third. The logic is that the worth of each share after merger has gone up three times and the preferential allottee must take the shares at that value. This may be a good method to determine the fair intrinsic value of the shares but we cannot lose sight of the fact that it is not the requirement of the guidelines to allot preferential shares at their intrinsic value. Those have to be allotted at a market related price determined in accordance with clause 13.1.1.1. This clause prescribes a precise and clear cut formula and that alone has to be followed in pricing the preferential shares. It is a matter of common knowledge that a share is quite often traded in the market at a price different from its intrinsic worth and that the difference between the market price and its intrinsic value is well understood in the securities market. It is true that as per the scheme of arrangement the share capital of SIEL after merger has been reduced to 1/3rd but the guidelines do not provide that the altered capital structure has to be taken into account for fixing the price of the preferential shares. It was pointed out by Shri Modi, the learned counsel for BSE that the guidelines do not envisage a situation with which we are faced in this case and, therefore, on equitable grounds it was necessary for BSE to intervene in the matter and direct the appellant to raise the price to a level so that the preferential allottee does not steal an advantage over the other shareholders of SIEL. We cannot accept this contention of the learned counsel because the guidelines, as already observed, are clear and unambiguous and do not permit any equitable consideration to be taken into account for the fixation of the price of the preferential shares. The learned counsel for BSE relied on the following observations made in Kanwar Singh vs. Delhi Administration (1965) 1 SCR 7 to contend that the guidelines should be interpreted in a manner which advances the intention of the framers and suppresses the mischief.

> "It is the duty of the court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will 'advance the remedy and suppress the mischief;. (see Maxwell on Interpretation of Statutes, 11th edn. Pp. 221-224 and 266."

There can be no quarrel with the dictum laid down by the learned judges but this dictum does not apply to the present fact situation. If we give literal meaning to the words used in clause 13.1.1.1 of the guidelines which we ought to, it does not defeat the object of the framers. The object is clear that the price of preferential shares should be market related and not that it should be based on its intrinsic worth. Moreover, we see no mischief that needs to be suppressed. For the same reasons, the observations in K.P. Varghese v. Income tax Officer AIR 1981 S.C. 1922 and Raipur Development Authority V. Anupam Sahakari Griha Nirman Samiti (2004) 4 SCC 357 also do not apply to the case before us. Since the price was fixed in accordance with clause

13.1.1.1, we cannot uphold the decision of BSE in directing the appellant to raise the price of the preferential shares to Rs.70.86 per equity share.

8. In view of our findings recorded hereinabove, it is not necessary to deal with the other contention raised by Shri Shyam Mehta, Advocate based on Rule 19(4) of the securities Contracts (Regulation) Rules, 1957.

9. Before concluding, we may mention that BSE in the impugned communication has stated that the relevant date for the purposes of clause 13.1.1.1 of the guidelines should be November 1, 2007. The appellant has, however, taken September 26, 2007 as the relevant date. If the price of the preferential shares is worked out on the basis of November 1, 2007 as the relevant date then the same works out to Rs.23.62 per share which is more beneficial to the appellant. Mr. Shyam Mehta learned counsel for the appellant fairly stated before us that he will not raise any issue in this regard and that on the basis of the relevant date as already fixed by the appellant, the allotment shall be made at the rate of Rs.25.35 per share.

For the reasons recorded above, the appeal is allowed, the condition imposed by BSE that the price of the preference shares shall not be less than Rs.70.86 per equity share set aside and the in-principle approval sought by the appellant granted. There is no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

6.6.2008
ddg/-