BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 62 of 2008

Date of decision : 13.10.2008

1. Arun Kumar
2. K. R. Ravishankar
3. Arcolab India Private Limited
4. Caryl Pharma Private Limited ..... Appellants

Versus

Securities and Exchange Board of India ..... Respondent

Mr. Anand Desai Advocate with Mr. Karthik Somasundram Advocate for Appellants.
Mr. Kumar Desai Advocate with Ms. Foram Shah Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

The shareholders of Strides Arcolabs Limited (for short the company) in an Extra-ordinary General Meeting (EGM) held on March 18, 2002, approved and authorized the board of directors to issue and allot 30,68,875 warrants on preferential basis to its promoters (Appellants no. 1 and 2) and their associate companies (Appellants no. 3 and 4). Each warrant would entitle the holder to subscribe for and be allotted one equity share of Rs.10/- each fully paid-up at a price not less than Rs.70/- per share including a premium of Rs.60/- per share. The warrant holders could exercise their right to get their warrants converted into equity shares within a period of 18 months from the date of their issue. The premium payable per share by the warrant holder was to be increased by an amount equivalent to 7 per cent per annum of the issue price of Rs.70/- from the date of issue of warrants till the date of subscription of equity shares arising out of those warrants. In pursuance to the mandate given by the shareholders in the EGM, the board of directors allotted and issued 30,68,875 warrants to the appellants on June 17, 2002. It

is common case of the parties that the appellants exercised their option on December 11, 2003 and got their warrants converted into equity shares upon payment of the outstanding amount in respect of the warrants.

2. At this stage it would be relevant to refer to the total number of shares held by the appellants prior to and after the issue of warrants on 17.6.2002. It is not in dispute that prior to the issue of warrants, they held 39,40,411 shares carrying voting rights which constituted 12.84 per cent of the total paid-up capital of the company. The warrants issued to them on 17.6.2002 did not carry any voting rights and, therefore, those rights did not increase upon the issue of warrants. After the warrants were converted into equity shares, the total shares held by the appellants carrying voting rights rose to 70,09,286 constituting 20.76 per cent of the paid-up capital of the company. Since the total number of shares held by the appellants acting in concert with each other entitled them to exercise more than 15 per cent of the voting rights in the company, Regulation 10 of the Securities and Exchange Board of India (Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) got triggered and they were required to make a public announcement to acquire shares of the company in accordance with that code atleast 4 working days prior to the acquiring of voting rights. As they did not come out with a public announcement, the Securities and Exchange Board of India (for short the Board) initiated adjudication proceedings against them alleging violation of Regulation 10 read with Regulation 14(2) of the takeover code. A show-cause notice dated October 16, 2007 was issued calling upon them to show cause why an enquiry be not held against them and why penalty be not imposed under section 15(H)(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter called the Act). The appellants filed their reply dated November 16, 2007 denying all the allegations in the show-cause notice and placed reliance on the provisions of Regulation 3(1)(c) of the takeover code and pleaded that the preferential allotment of warrants to them on 17.6.2002 were exempt from the provisions of Regulation 10 of the takeover code and, therefore, they were not required to make a public announcement. They further pleaded that because of the exemption available to

them under Regulation 3(1)(c), they were required to report the acquisition under Regulation 3(4) but they did not do so because clause (c) in Regulation 3(1) stood omitted from Regulation 3(4) of the takeover code in December 2003 when the warrants were converted into equity shares. On a consideration of the material available on the record and after taking into consideration the reply filed by the appellants, the adjudication officer came to the conclusion that the former had violated Regulation 10 of the takeover code inasmuch as they failed to make a public announcement to acquire shares in accordance with the takeover code and thereby violated section 15H (ii) of the Act. Accordingly, by his order dated February 27, 2008 he imposed a monetary penalty of Rs.25 lacs on them. It is against this order that the present appeal has been filed under section 15T of the Act.

3. The short question that arises for our consideration in this appeal is whether the appellants were required to make a public announcement in terms of Regulation 10 of the takeover code. It will be useful to refer to the provisions of this Regulation which read as under:

> "**Acquisition of fifteen per cent or more of the shares or voting rights of any company.**
>
> 10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

A plain reading of the aforesaid provision makes it clear that this Regulation gets triggered when the acquirer becomes entitled to exercise 15 per cent or more of the voting rights in a company. It does not get triggered when an acquirer acquires shares which do not take his voting rights to 15 per cent or more. The word 'shares' has been defined in Regulation 2(1)(k) of the takeover code to include a security which would entitle the holder to receive shares with voting rights. A warrant entitling the holder to an equity share(s) is one such security. A warrant by itself does not give any voting right. It is only when it is converted into an equity share that the holder gets the voting rights. In

the case before us, the appellants acquired warrants on 17.6.2002 and even though these warrants were 'shares' within the meaning of the takeover code as defined in Regulation 2(1)(k), these did not confer any voting rights on them with the result that their voting rights continued to remain 12.84 per cent which they already had prior to the issue of warrants. Since the voting rights of the appellants were less than 15 per cent even on the acquisition of warrants, Regulation 10 did not get triggered when these were issued. These warrants were converted into equity shares on 11.12.2003. On the acquisition of these shares which carried voting rights, the total voting rights of the appellants increased to 20.76 per cent of the paid-up capital of the company and this triggered Regulation 10 as the acquisition entitled the appellants to exercise more than 15 per cent of the voting rights in the company. According to the mandate of Regulation 14(2), the acquirers were required to make a public announcement atleast four working days before they acquired the voting rights upon the conversion of the warrants. Not having done so, they violated the provisions of Regulation 10 read with Regulation 14(2) of the takeover code and made themselves liable for the imposition of penalty under section 15H(ii) of the Act.

4. What is contended by the learned counsel for the appellants is that they were not required to make a public announcement in view of the exemption which was then available to them under Regulation 3(1)(c) of the takeover code. The argument is that the word 'shares' includes warrants as defined in Regulation 2(1)(k) of the takeover code and on the acquisition of these warrants, Regulation 10 got triggered on 17.6.2002 when Regulation 3(1)(c) of the takeover code was in place exempting a preferential allotment under section 81(1A) of the Companies Act, 1956 from the provisions of Regulation 10 of the takeover code. It is contended that the allotment having once been exempted from the provisions of the code, Regulation 10 could not get triggered again when the warrants were converted into equity shares on 11.12.2003. Reliance in this regard is sought to be placed on two decisions of the respondent Board in the case of Ramco Industries Ltd. and others, and Flex International Pvt. Ltd. and others wherein also convertible warrants were issued by those companies on preferential basis and the said allotment was held to be

exempt under Regulation 3(1)(c) of the takeover code which was then in place. Before we deal with this contention, it is necessary to refer to the provisions of Regulation 2(1)(k) and 3(1)(c) which was in force at the relevant time. These provisions read as under :

> "**Definitions.**
> 2(1) In these regulations, unless the context otherwise requires;-
> (a) to (j)……
> (k) "shares" means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights but shall not include preference shares;
>
> **Applicability of the regulation.**
> 3(1) Nothing contained in regulations 10,11 and 12 of these regulations shall apply to:
> (a) …….
> (b) ……..
> (c) Preferential allotment, made in pursuance of a resolution passed under section 81(1A) of the Companies Act, 1956 (1 of 1956);
>
> ……."

Clause (c) of Regulation 3(1) was however omitted from the takeover code w.e.f. 9.9.2002. There is no doubt that a warrant is a security which would entitle the holder to receive share(s) with voting rights in the future and is included in the word 'shares' as defined in the takeover code. However, a warrant, as already observed, does not carry any voting right(s) and when these were issued on 17.6.2002, Regulation 10 did not get triggered because the voting rights of the appellants did not reach or cross the threshold limit prescribed by this Regulation. It is wrong to say that Regulation 10 got triggered but the appellants were exempt from making a public announcement under Regulation 3(1)(c) which was then in place. To repeat, the appellants were not required to make a public announcement when they acquired the warrants not because of the exemption then available under Regulation 3(1)(c) of the takeover code but because Regulation 10 on its own did not apply. Regulation 10 became applicable for the first time only when the warrants were converted and equity shares allotted to the appellants on 11.12.2003 taking their voting rights beyond the threshold limit. The view that we have taken also finds support from the language of Regulation 14(2) of the takeover code. Regulation 14

prescribes the timing of the public announcement of offer. Clause (2) thereof which is relevant reads as under:

> "14.(1)……..……
> (2) In the case of an acquirer acquiring securities, including global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be."

This clause makes it clear that where acquisition of securities by an acquirer would entitle him to voting rights exceeding the percentage specified in Regulation 10, he is required to make a public announcement "not later than four working days **before he acquires voting rights on such securities upon conversion or exercise of option, as the case may be**". The words highlighted by us are of significance and are a clear pointer that a public announcement is to be made four days before the conversion of the securities into equity shares. It is, thus, clear that the four working days commenced not from the date when the securities are acquired but from the date when they are converted into equity shares. We have already noticed that the warrants were converted on 11.12.2003 and the appellants were required to make a public announcement atleast four days prior thereto. As this was not done, the takeover code stood violated. For the view that we have taken, the argument of the learned counsel for the appellants cannot be accepted. In the two decisions of the Board on which reliance was placed by the learned counsel for the appellants, the view expressed by the whole time member is not correct and is contrary to the provisions of the takeover code and we are not bound to follow the same. No fault can thus be found with the impugned order of the adjudicating officer.

5. Lastly, it was urged that rights vested and/or accrued to the appellants to acquire shares without triggering the takeover code could not be denied to them by a subsequent omission of Regulation 3(1)(c) from the takeover code. There is no merit in this submission either. The appellants were never exempted under Regulation 3(1)(c) and no

rights ever accrued to them as contended. We have already held that they were not required to make a public announcement on the issue of warrants because Regulation 10 did not get triggered.

6. No other point was raised.

In the result, there is no merit in the appeal and the same stands dismissed with no order as to costs.

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Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

13.10.2008
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