BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 37 of 2011

Date of Decision : 4.11.2011

1. V.T. Somasundaram
   No.25, Vasantha Avenue,
   MRC Nagar, R A Puram,
   Chennai – 600 028.

2. M/s. Trichy Distilleries and Chemicals Limited
   "Mahalakshmi Mansion", First Floor,
   No.14, First Main Road,
   Gandhi Nagar, Adyar,
   Chennai – 600 020. …… Appellants

Versus

1. Madras Stock Exchange Limited
   "Exchange Building", Post Box No.183,
   No.30, Second Line Beach,
   Chennai – 600 001.

2. Securities and Exchange Board of India
   Plot No.C4-A, 'G' Block,
   Bandra Kurla Complex,
   Bandra (East), Mumbai – 400 051. …… Respondents

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh, Advocate for the Appellants.

Mr. A.K. Sriram, Advocate for Respondent no.1.
Dr. Poornima Advani, Advocate with Ms. Aparna Kalluri, Mr. Ajay Khaire and Ms. Amrita Joshi, Advocates for Respondent no.2.

CORAM : Justice N. K. Sodhi, Presiding Officer
S.S.N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer

Whether ninety per cent of the public shareholders in number or shareholders holding ninety per cent of the public shareholding in value irrespective of their numbers should consent to the proposal to delist a small company under regulation 27(3)(d) of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as the regulations) is the sole question that arises for our consideration in this appeal filed under section 23L of the Securities Contracts (Regulation) Act, 1956. The dispute herein pertains to the delisting of equity shares of

M/s. Trichy Distilleries and Chemicals Limited, the second appellant herein (for short the company). Shri V.T. Somasundaram, the first appellant is one of the promoters of the company. The appeal is directed against the communication dated December 27, 2010 issued by the Madras Stock Exchange Ltd. (for short MSE) by which it has refused to delist the equity shares of the company. During the course of the proceedings the Securities and Exchange Board of India (for short the Board) was impleaded as the second respondent in the appeal.

2. We may briefly state why the company went in for delisting. The company is a public limited company whose shares are listed on MSE and these are not listed in any other stock exchange. With the advent of the National Stock Exchange of India Limited, regional stock exchanges like MSE have become defunct. The shares of companies which were exclusively listed on MSE cannot be traded and consequently there is no exit opportunity for the public shareholders of such companies. In short, the sine qua non of listing, namely, a trading platform for shareholders to transact in shares of a listed company is non existent on MSE. Equally, in the absence of any price discovery in the shares of such companies, it is impossible for any company which is listed on the defunct MSE to raise money or engage in securities transactions. The regulations provide for a simplified procedure for delisting which, in turn, would provide an exit route to the public shareholders. Since the shareholders of the company have remained stuck for the last few years as there has been no trading on the platform of MSE, the promoters decided to offer an exit opportunity to the public shareholders by getting the equity shares of the company delisted.

3. The regulations deal with compulsory delisting of equity shares by a recognized stock exchange and also with voluntary delisting on application of a company. Special provisions are contained in Chapter VII of the regulations which deal with delisting of small companies. Regulation 27 is a part of this chapter and the relevant parts thereof which concern us are reproduced hereunder for facility of reference:

> **"Special Provisions in case of small companies.**
>
> **27.** (1) Where a company has paid up capital upto one crore rupees and its equity shares were not traded in any recognized stock exchange in the one year immediately preceding the date of decision, such equity shares may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV.

> (2) Where a company has three hundred or fewer public shareholders and where the paid up value of the shares held by such public shareholders in such company is not more than one crore rupees, its equity shares may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV.
>
> (3) A delisting of equity shares may be made under subregulation (1) or sub-regulation (2) only if, in addition to fulfillment of the requirements of regulation 8, the following conditions are fulfilled:-
>
> (a) …….
> (b) …….
> (c) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with the justification therefor and seeking their consent for the proposal for delisting;
> (d) at least ninety per cent. of such public shareholders give their positive consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted;
> (e) ……..
> (f) ……..”

Two types of companies qualify for delisting under Regulation 27, namely:

(i) listed companies that have a paid up capital upto rupees one crore and no trading in the shares has taken place for one year preceding the date of decision to delist.

(ii) listed companies whose paid up capital held by all the public shareholders put together is rupees one crore or less and such shareholders are three hundred or less in number.

For the purposes of this appeal, public shareholders mean the holders of equity shares other than the promoters. The company before us has a paid up capital of ` 1.2 crore with 12 lakh shares of ` 10 each. Of these, the promoter shareholding represents a paid up share capital of ` 69,67,500 being 58.06 per cent of the total capital of the company and the paid up capital held by public shareholders is ` 50,32,500 representing 41.94 per cent. It is, thus, clear that the paid up value of shares held by the public shareholders is less than ` 1 crore. It is not in dispute that the total number of public shareholders of the company is 196. In view of this factual position the company for delisting would attract the provisions of regulation 27(2) reproduced above. Delisting of equity shares under regulation 27(2) could be done only after fulfilling the requirements of regulation 8 of the regulations which falls in chapter III. Under regulation 8, the company is required to obtain the approval of its shareholders by way of a special

resolution passed through postal ballot. It is the requirement of regulation 8(1)(b) that the votes cast by "public shareholders" in favour of the proposal to delist should be atleast two times the votes cast against such proposal. The company carried out this exercise through postal ballot. The result of the postal ballot is as under:

		No.of Postal Ballot Forms	No. of Shares	Vote%
Total Postal Ballot Forms received	:	51	423960	
Less: invalid Postal Ballot Forms	:	1	100	
Net Valid Postal Ballot Forms	:	50	423860	
Postal Ballot Forms with assent for the Resolution	:	48	423850	99.9976%
Postal Ballot Forms with dissent for the Resolution	:	2	10	0.0024%

It is clear from the aforesaid results that the votes cast in favour of the resolution are more than ninety nine per cent of the total valid votes and the votes cast against the resolution are less than one per cent of the total valid votes polled and consequently the special resolution in terms of regulation 8(1)(b) had been passed with the requisite majority. Thereafter, the company sought in-principle approval of MSE as per its letter dated May 3, 2010 under regulation 8. MSE gave its in-principle approval for delisting as per its letter of May 18, 2010. It is pertinent to mention that MSE did not, at this stage, raise any controversy about whether the votes of the public shareholders should be counted on the basis of the value of share capital held by them or on the basis of the number of public shareholders. Regulation 27(3)(c) which deals with delisting of small companies requires that one of the promoters of the company should write individually to all public shareholders informing them of its intention to get the shares delisted and seek their consent for the proposal to delist. Clause (d) of regulation 27(3) further requires that "at least ninety per cent of such public shareholders" are required to give their positive consent for the proposal to delist and may consent either to sell their shares at the price offered or continue to hold their shares in the delisted company. Accordingly, the company sent to each public shareholder a letter dated March 18, 2010 offering to purchase their shares at ` 367 per share and sought their consent for delisting. It is not in dispute before us that the public shareholders tendered their shares and some of them agreed to the proposal to delist but decided to hold on to their shares. As on the date of the letter, there were 196 public shareholders of the company holding 5,03,250 shares out

of which the promoters acquired 3,51,005 shares held by 123 shareholders. Two shareholders holding 1,20,200 shares consented for delisting but decided to hold on to their shares. It is, thus, clear that 125 public shareholders holding 4,71,205 shares had given their positive consent. Two shareholders holding 14000 shares have since given their consent. The promoters of the company had also confirmed that they would keep the exit option available to the public shareholders for a further period of one year from the date of final delisting. It is, thus, clear that there are in all 204 shareholders of the company 8 of whom are promoters. When we exclude them, the total public shareholders are 196 in number. Out of the public shareholders, 125 have given their positive consent for delisting. Two shareholders holding 14000 shares constituting 1.17 per cent of the total paid up capital of the company are yet to give their consent/shares to the promoters. These could be excluded. The remaining 69 shareholders holding 18,045 shares constituting 1.5 per cent of the total share capital of the company and 3.58 per cent of public shareholding have not given their consent either way. In other words, they have not given their positive consent. In brief, the factual position boils down to this. There are in all 196 public shareholders who hold 5,03,250 shares. Out of these, only 125 shareholders holding 4,71,205 shares have given their positive consent. The remaining 71 shareholders holding 32,045 shares have not given their consent. Has the requirement of regulation 27(3)(d) been met is the question.

4. On December 22, 2010, the company informed MSE that consent had been received from 125 out of 196 public shareholders either by sale of their shares or by consenting to the proposal for delisting. MSE was also informed that 2 public shareholders holding 1.17 per cent (14000 shares) of the total share capital of the company were in the process of giving consent and the balance 69 public shareholders who held 1.5 per cent (18045 shares) of the total share capital had not given their positive consent. On receipt of this letter, MSE by the impugned communication declined to delist the equity shares of the company on the ground that “it is mandatory to obtain the consent from 90% of the public shareholders i.e. 176”. Hence this appeal.

5. We have heard the learned counsel for the parties who have taken us through the provisions of the regulations and the records of the case. What is contended by Mr. Somasekhar Sundaresan, Advocate on behalf of the appellants is that since the

shareholders holding more than ninety per cent of the public shareholding had given their positive consent, the requirements of regulation 27(3)(d) were complied with and MSE was not justified in declining to delist the equity shares of the company. Dr. Poornima Advani, learned counsel appearing for the Board argued that ninety per cent of the total number of public shareholders irrespective of the percentage of shares held by them ought to have given their positive consent which has not happened in the present case. She pointed out that there are in all 196 public shareholders out of which only 125 have given their consent and this does not constitute ninety per cent of the total number of public shareholders. She sought to justify the impugned communication on this basis. The learned counsel appearing for MSE only stated that the first respondent (MSE) had acted in accordance with the regulations while declining to delist the equity shares of the company.

6. Having given our thoughtful consideration to the rival contentions of the parties we are inclined to agree with the learned counsel for the appellants. The learned counsel for the Board laid great stress on the words “such public shareholders” as used in clause (d) of regulation 27(3) of the regulations and urged that it refers to all public shareholders to whom the promoter of the company had individually written about the intention to get the equity shares delisted. The argument is that the word ‘such’ refers to all the individuals referred to in clause (c) of regulation 27(3) and, therefore, the requirement of clause (d) would be met only if ninety per cent of the total number of public shareholders give their positive consent to the proposal for delisting. She pointed out that in the instant case the total public shareholders were 196 out of which 176 ought to have given their positive consent and since this did not happen and only 125 of them gave their positive consent, the company is non compliant with regulation 27(3)(d). The argument, at first flush sounds plausible but when examined in depth, cannot be accepted. The requirement of clause (d) is to obtain consent of ninety per cent of such public shareholders, that is, ninety per cent of such persons who hold shares and are not part of the promoter group. The word ‘such’ can only have reference to the shareholders who hold shares and are classified as public shareholders and to whom letter would have been written under regulation 27(3)(c) of the regulations. This is not a case where the regulations contain an enumeration of specific words followed by general terms which

have to be read in the same context and, therefore, the principle of ejusdem generis would not apply. Normally, when the words of a statute are clear, plain or unambiguous which are susceptible to only one meaning, the courts are bound to give effect to that meaning. However, to decide whether certain words are clear and unambiguous, they must be studied in their context. If the plain meaning rule leads to absurdity or strange consequences not intended by the framers of the statute then such a construction should be avoided. In that event, a purposive interpretation which advances the object of the provision under consideration should be resorted to. In the present case, if the interpretation as sought to be given by the respondents is adopted it would lead to chaotic results as discussed hereunder.

7. The argument on behalf of the Board that ninety per cent of the shareholders in number must agree and give their positive consent rather than ninety per cent of the public shareholders in value, if accepted, would lead to absurd results and run counter not only to the scheme of the corporate law but also to the very scheme of the regulations. The regulations are special provisions that operate against the backdrop of the Companies Act, 1956 which is the basic law governing the functioning of companies in India. One of the basic features of the Companies Act is that it provides a democratic set up in a company by which each share in the share capital of that company carries one vote. Reference in this regard can be made to section 87 of the Companies Act which provides that every member of a company limited by shares and holding any equity share capital therein shall have a right to vote in respect of such capital on every resolution placed before such company and his voting right on a poll shall be in proportion to his share of the paid up equity capital of that company. Regulation 2(3) of the regulations recognises the basis of the regulations deriving their meaning, inter alia, from the Companies Act. When the Companies Act recognises the principle of “one share, one vote” it would be contrary to the scheme of the law and public policy to interpret regulation 27(3)(d) of the regulations otherwise. The interpretation canvassed by the learned counsel for the respondents could lead to various absurdities which could not be intended by the framers of the regulations. We may now illustrate how such an absurdity could arise. If a small listed company, of the kind we are dealing with, has a paid up capital of ` 1 crore with a total of 100 shareholders of which promoter shareholders are 20 in number and hold

share capital worth ` 50 lacs, the remaining 80 public shareholders in number would be holding the balance ` 50 lacs of the capital. If out of the 80 public shareholders, 20 public shareholders were to hold 45 per cent out of the 50 per cent public shareholding and vote in favour of the delisting proposal, then according to the respondents, although such shareholders would represent ninety per cent of the votes of the public shareholders, the company would not qualify for delisting under Regulation 27(3)(d) of the regulations. It would mean that shareholders holding a mere 10 per cent of the public shareholding in terms of the voting capital would be able to hold up the delisting on the premise that they are 60 in number as compared to the 20 public shareholders holding 90 per cent of the public shareholding and who support the delisting. In this very example, if the 60 shareholders holding 5 per cent of the company's capital and representing only 10 per cent of the public shareholding vote in favour of the delisting, then according to the respondents, the company would qualify for delisting under Regulation 27(3)(d) despite the public shareholders holding ninety percent of the public shareholding being opposed to the delisting. This would mean, a miniscule percentage of the shareholding can force a delisting although majority as vast as ninety per cent may be opposed to the delisting. As a matter of fact, the interpretation sought to be placed by the respondents on the provisions of Regulation 27(3)(d) could lead to yet another situation which could be more absurd. A public shareholder who holds only 100 shares could distribute his holding across 100 persons to bloat up the total number of public shareholders and thereby hold the rest of the majority public shareholders to ransom. Such an approach would be wholly undesirable apart from being untenable. An interpretation leading to such results cannot be countenanced and the same could not have been intended by the framers of the regulations. Absurdities of the kind noticed above would not arise if the provisions of regulation 27(3)(d) are interpreted to mean that a company would become eligible for delisting if the public shareholders, irrespective of their numbers, holding ninety per cent or more of the public shareholding give their positive consent to delisting. In the present case, as will be seen from the discussion in the earlier part of the order, shareholders holding more than ninety per cent of the public shareholding had given positive consent to the proposal for delisting and this, in our view satisfies the

requirements of clause (d) of regulation 27(3) of the regulations. The appellants are, therefore, entitled to get the equity shares of the company delisted.

8. Before concluding, we may mention that prior to the promulgation of the regulations, the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003 were in force which did not have any special provisions for small companies. The special provisions were brought in the regulations only with a view to provide an exit route to the public shareholders who otherwise could not exit by trading in the market. The interpretation that we have placed on clause (d) of regulation 27(3) would advance the object of the framers of the regulations and would provide an exit opportunity to the stranded public shareholders on account of MSE not providing them with a trading platform.

In the result, the appeal is allowed and the impugned communication declining delisting of securities set aside. The appellants shall now approach MSE which shall allow delisting of the equity shares of the company after complying with the procedural requirements, if any. There is no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
S.S.N. Moorthy
Member

4.11.2011
Prepared and compared by
RHN