BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 129 of 2011

Date of decision: 30.8.2011

Eider Technologies Limited
S.C.O. 914, NAC, Manimajra,
Chandigarh. ……Appellant

Versus

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

None for the Appellant.
Ms. Daya Gupta, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

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

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

This appeal deserves to be dismissed on the short ground that the appellant has not approached this Tribunal with clean hands and has made false averments. Another fact which goes to show that the appellant had the intention to play dirty is that every time it addressed a communication to the respondent, its letterhead had a different address in a different State. On some letterheads the address given is of Manimajra, Chandigarh and in some others it is Panchkula in the State of Haryana and in the latest communication dated June 26, 2010 the address is of Kala Amb, District Sirmour in the State of Himachal Pradesh. One of the letterheads mentions that the corporate office of the company is in Manimajra, Chandigarh though it had temporarily shifted to Industrial Area, Panchkula and the registered office is in District Sirmour in the State of Himachal Pradesh. Despite service, no one has appeared in support of the appeal.

2. Challenge in this appeal is to the order dated February 24, 2011 passed by the adjudicating officer imposing a monetary penalty of Rs.11 lacs on the appellant for violating regulation 54 of the Securities and Exchange Board of India (Depositories and

Participants) Regulations, 1996 (for short the Regulations). The appellant is a public limited company whose shares are listed on the Bombay Stock Exchange Limited, Mumbai (BSE). The shares of the appellant-company were held by the shareholders in the physical form. They applied through the participants for dematerialization. Regulation 54(5) of the Regulations provides that within 15 days of the receipt of the certificate of security from the participant, the issuer company shall confirm that the shares had been dematerialized and immediately mutilate and cancel the certificate of security and substitute the name of the depository as the registered owner and send a certificate to this effect to the depository and to every stock exchange where the security is listed. We have on record that when the shareholders of the appellant-company applied for the dematerialization of their shares, the appellant-company did not dematerialize those shares within the stipulated period and the request of the shareholders remained pending for more than 2000-3000 days. In other words, the requests for dematerialization from the shareholders remained pending with the appellant-company for years together. This obviously hampered the shareholders from trading in the scrip. This is, indeed, a serious lapse on the part of the company for which action could be taken against it. The Securities and Exchange Board of India (for short the Board) initiated adjudication proceedings and notice dated September 26, 2007 was issued calling upon the appellant to show cause why appropriate penalty be not imposed on it for violating regulation 54 of the Regulations. Interestingly, the appellant filed a reply dated October 19, 2007 failing to respond to the charge levelled against it and submitted that its corporate office had been sealed by the Municipal Corporation of Chandigarh as a result whereof it could not file any reply on merits. A prayer was made that no enquiry be held against the appellant. On a consideration of the material on the record the adjudicating officer found that the demat requests from the shareholders remained pending for years together and thereby the appellant violated the mandatory provisions of the Regulations. By the impugned order he imposed a monetary penalty of Rs.11 lacs. Hence this appeal.

3. We have gone through the memorandum of appeal and find that at the outset in para 5(iii) of the memorandum of appeal, it is stated that the appellant-company is a sick company since the year 2001 and that the matter is now pending before the appellate authority under that Act. There is nothing on the record to substantiate this plea. In any

case, in its reply dated October 19, 2007 it did not mention that it was a sick company. The learned counsel appearing for the Board informs us that there is nothing on the record available with it to show that the appellant was a sick company. As already observed, we are satisfied that the company has not made a true statement of fact. We have also seen the letterheads of the company which contained different addresses and every time it sends a communication, the address on the letterhead is different. The appellant has nowhere disputed in the memorandum of appeal that there was long delay in dematerializing the shares held by the shareholders in the physical form. As a matter of fact, the shares have not been dematerialized till date. In these circumstances, no fault can be found with the impugned order imposing a monetary penalty of Rs.11 lacs. Section 19D of the Depositories Act, 1996 provides for penalty for delay in dematerializing the shares held in the physical form. It provides a penalty of Rs.1 lac for each day during which the failure continues subject to a maximum of Rs.1 crore. In the present case, the adjudicating officer has imposed a sum of Rs.11 lacs only. There is no scope for us to reduce the same.

In the result, the appeal fails and the same is dismissed with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

30.8.2011
Prepared and compared by-ddg