

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 193 of 2010**

**Date of decision: 1.8.2011**

JVL Agro Industries Limited  
(Formerly known as Jhunjhunwala Vanaspati Ltd.)  
Jhunjhunwala Bhawan, Nati Imli,  
Varanasi – 221001.

.....Appellant

Versus

Bombay Stock Exchange Limited  
Phiroze Jeejeebhoy Towers,  
Dalal Street,  
Mumbai – 400 001.

..... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Ravichandra S. Hedge and  
Ms. Farah Karachiwala, Advocates for the Appellant.

Mr. Faraz Alam Sagar, Advocate with Mr. Hilaaur Vaswani, 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)

Whether in the facts and circumstances of this case, the appellant failed to comply with Regulation 74(1) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as the Regulations) is the short question arising for our consideration in this appeal. Facts giving rise to this appeal are as under:

2. The appellant is a public limited company having its registered office at Varanasi in the State of Uttar Pradesh. Its shares are listed on the Bombay Stock Exchange Ltd. (BSE), Delhi Stock Exchange and Uttar Pradesh Stock Exchange. Among the three exchanges on which the appellant is listed, BSE is the only exchange having nationwide trading terminals. On May 11, 2010 a meeting of

the board of directors of the appellant was held in which they recommended to the shareholders preferential allotment of 40 lacs warrants to promoters as well as non-promoters at an issue price of ₹ 190 convertible into equivalent number of equity shares of the face value of ₹ 10 at a premium of ₹ 180 each. The minutes of this meeting were sent to BSE on the same day i.e. on May 11, 2010. An extraordinary general meeting of the shareholders of the appellant company was held on June 9, 2010 to consider the recommendation of the board of directors recommending preferential allotment to promoters and non-promoters. A special resolution under Section 81(1A) of the Companies Act, 1956 was passed and a copy of the same was immediately sent to BSE on the same day. Clause 24(a) of the Listing Agreement which has a statutory force requires that a listed company before issuing further shares or securities must obtain 'in-principle' approval for listing of those shares/securities from the exchange having nationwide trading terminals. In accordance with this clause, the appellant applied on June 15, 2010 to BSE for the in-principle approval for the listing of 40 lacs convertible warrants. The application alongwith the relevant documents was dispatched from Varanasi to BSE by post under a certificate of posting a copy of which is on the record. It is the case of the appellant that through its consultants it continuously on telephone followed up with BSE to confirm the status of its application and the documents. The appellant learnt that the application had not been received by BSE and, therefore, on July 6, 2010 it once again sent a copy of the application alongwith the relevant documents for the in-principle approval of BSE. According to Regulation 74 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (for short the Regulations) allotment pursuant to a special resolution has to be completed within a period of 15 days from the date of passing of such resolution. The first proviso to this Regulation provides that where any application for exemption from the applicability of the takeover regulations or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of 15 days is counted from the date of the order on such application or the

date of approval or permission as the case may be. If the allotment is not completed within 15 days from the date of special resolution, a fresh special resolution has to be passed and the relevant date for determining the price of specified securities under chapter VII of the regulations is taken with reference to the date of the later special resolution. By its letter dated July 26, 2010 BSE observed that the appellant had failed to comply with Regulation 74 (1) of the Regulations and that it will now have to comply with Regulation 74(2) under which a fresh special resolution will have to be passed. BSE did not examine the application on merits. It is against this communication that the present appeal has been filed.

3. We have heard the learned counsel for the parties who have taken us through the record. In the present case if the application sent by the appellant on June 15, 2010 had been received by BSE, there would have been no problem. However, this application did not reach BSE though it was sent by the appellant by post under a certificate of posting. It is clear from the record that the appellant had been pursuing the application with BSE and it is only then that it discovered that the earlier application had not reached it. Even if the subsequent application dated July 6, 2010 is taken to be slightly belated, we are satisfied that there was no ulterior motive with the appellant in delaying the matter. On the contrary, it was in the interest of the appellant to get in-principle approval at the earliest so that the allotment could be made particularly when it was in favour of the promoters. There is no reason why they should have delayed the allotment in their own favour. Moreover, the slight delay in the application has caused no prejudice either to the investors or to the securities market. Learned counsel for the respondent drew our attention to Regulation 109 of the Regulations whereunder the Securities and Exchange Board of India (the Board) has the power to relax the strict enforcement of the Regulations. He also cited the order of the Supreme Court in *Securities and Exchange Board of India v. S. Kumars Nationwide Ltd.* and another Civil Appeal No. 2049 of 2010 decided on November 26, 2010 to contend that the appellant should approach the Board to seek relaxation. Without

examining the contentions raised by either party and without going into the question whether the provisions of the Regulations are mandatory in nature, and exercising our powers under Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000 we direct BSE to consider the application filed by the appellant on merits and in accordance with law making it clear that it shall not be rejected only on the ground that it was filed belatedly. Rule 21 enables this Tribunal to make such orders or give such directions as may be necessary or expedient to secure, among others, the ends of justice. We also direct that this order of ours shall not be treated as a precedent as we have issued the aforesaid direction having regard to the peculiar facts and circumstances of this case.

The appeal stands disposed of as above with no order as to costs.

Sd/-  
Justice N. K. Sodhi  
Presiding Officer

Sd/-  
P.K. Malhotra  
Member

Sd/-  
S.S.N. Moorthy  
Member

01.08.2011  
Prepared and compared by-ddg