2024 INSC 992

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4707 OF 2022

JYOTI LIMITED .....APPELLANT(s)

Vs.

BSE LIMITED & ANR .....RESPONDENT(s)

O R D E R

Heard learned counsel for the parties.

Under challenge in this statutory appeal is the judgment and order dated 21.12.2021 passed by the Securities Appellate Tribunal, Mumbai in Appeal No. 224 of 2019 titled as "Jyoti Limited Vs. BSE Limited and Anr.".

The appellant-Jyoti Limited applied for listing of certain equity shares to the Bombay Stock Exchange[1] but the application to that effect was not accepted for the reason that the appellant had not taken in principle approval from the Stock Exchange and that the appellant had not even taken the approval of the shareholders for the allotment of the shares to the Asset Reconstruction Private Limited[2]. The above order of the BSE rejecting the application of the appellant for the listing of shares was upheld and confirmed by the Securities Appellate Tribunal by the order impugned.

1 BSE for short
2 RARE for short

In assailing the above orders, the submission of learned counsel appearing for the appellant is that Section 9(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002[3] permits the RARE to take measures such as conversion of any portion of debt into shares of the borrower company i.e., the appellant herein and once such power is exercised, the shares have to be listed on the Stock Exchange. Further submission of the learned counsel for the appellant is that it is only where the company, i.e., the appellant herein, proposes to increase the subscribed capital, the consent/ the resolution/approval of the shareholders is required, as mandated by Section 62(1)(c) of the Companies Act, 2013. Since in the case at hand the appellant company had not proposed to increase the subscribed capital rather it is the RARE that has done it, no such approval of the shareholders is necessary.

Section 9 of the SARFAESI Act authorizes RARE to convert portion of the debt into shares of the borrower company but such authority is subject to Section 62 of the Companies Act, 2013 which in turn requires a resolution of the shareholders of the company. However, when such a proposal is not by the appellant company, the approval of the shareholders may not be necessary.

3 SARFAESI Act for short

Notwithstanding the above, in the case at hand, it is evident that the appellant company had entered into discussion with RARE and it was agreed upon between the parties to convert part of its outstanding debts of Rs.32.80 Crore into equity shares. Accordingly, a resolution of the Board of Directors of the appellant company was passed to the above effect on 02.05.2018 but such an action was never endorsed by the shareholders of the company. Thereafter, the appellant company itself filed an application before the BSE on 15.05.2018 for listing of the shares i.e. 59,63,636 equity shares allotted to the RARE.

Having considered the relevant provisions of the law and the submissions advanced by the learned counsel for the appellant, we find that the conversion of the debt into additional shares had taken place with the agreement of the appellant company and RARE, and it is on the basis of such an agreement between the parties that a resolution was passed on 02.05.2018 by the Board of Directors of the appellant company accepting the proposal to convert the debt into shares and to allot them in favor of RARE, thus, resulting in increase of the equity capital of the appellant company. Even the application for listing of the aforesaid additional shares was made by the appellant company to the BSE meaning thereby that the proposal for increasing the subscribed capital of the company by converting part of the

debt into equity shares, as aforesaid, was initiated by the appellant company itself and not actually by RARE. Therefore, the proposal was that of the company only. Accordingly, as contemplated by Section 62(1)(c) of the Companies Act, 2013, the approval of the shareholders would be mandatory before the shares are accepted for listing on the BSE.

Insofar as the other ground for rejection of the application is concerned, that is to say, for want of approval of the BSE, the Securities Appellate Tribunal has returned a clear finding that the approval of the BSE is necessary in view of Regulation 28 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and we do not have different opinion on it rather we accept the said finding which is not perverse in any manner.

In view of the aforesaid facts and circumstances, we are of the opinion that no error or illegality has been committed either by the BSE or the Securities Appellate Tribunal in refusing to accept the request of the appellant company for the listing of the shares at the Stock Exchange inasmuch as Section 62 of the Companies Act stands duly attracted and in the light of sub-clause (c) of sub-section (1) of Section 62 of the Companies Act, special resolution of the shareholders is necessary which is lacking in the instant case.

The aforesaid order has been passed by us in the peculiar facts and circumstances of this case where the appellant company itself has passed the resolution and applied for the listing of shares and as such is deemed to be the proposer for increasing the share capital.

Accordingly, this statutory appeal under Section 22 F of Securities Contracts (Regulation) Act, 1956 is devoid of merit and is dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(PANKAJ MITHAL)

.....J.
(SANDEEP MEHTA)

New Delhi;
DECEMBER 10, 2024.

ITEM NO.30 COURT NO.16 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 4707/2022

JYOTI LIMITED **Appellant(s)**

VERSUS

BSE LIMITED & ANR. **Respondent(s)**

(IA No. 94381/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-12-2024 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PANKAJ MITHAL
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Appellant(s) **Mr. Lakshmeesh S. Kamath, AOR**
Mrs. Samriti Ahuja, Adv.
Ms. Aditi Prakash, Adv.

For Respondent(s) **Mr. Pratap Venugopal, Sr. Adv.**
Ms. Surekha Raman, Adv.
Mr. Amarjit Singh Bedi, Adv.
Mr. Shreyash Kumar, Adv.
Mr. Yashwant Sanjenbam, Adv.
Mr. Imilikaba Jamir, Adv.
M/S. K J John And Co, AOR

Mr. Rahul Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

The present statutory appeal is dismissed in terms of the signed reportable order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS) **(RAM SUBHAG SINGH)**
SENIOR PERSONAL ASSISTANT **COURT MASTER (NSH)**