

Eider-e-commerce Ltd Vs. Securities and Exchange Board of

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Jan-01-2001

Appellant : Eider-e-commerce Ltd

Respondent : Securities and Exchange Board of

Judgement :

1. M/s. Eider-e-Commerce Limited, the Appellant herein, is a public limited company incorporated under the Companies Act, 1956. It was registered on 13.7.1992 with its registered office at Eider House, S.C.O. 147-148, Sector 8C, Chandigarh. Though the Appellant company was originally registered under the name "Citywide Communications and Computers (India) Ltd", its name was changed to Eider-e-Commerce Ltd, on 10th February 2000. The main objects of the Appellant company, as per its Memorandum of Association include manufacturing and dealing in communication electronics, digital electronics etc.. According to the Appellant its business activities are proposed to be expanded and for that purpose part of the fund requirement is expected to be met by raising fresh capital from the public by issuing 96 lakhs equity share of Rs.10/- each for cash at a premium of Rs.160/- per share. The aggregate amount proposed to be mobilised from the public issue is to the tune of Rs.163.20 crores. For the purpose of public issue by issuing prospectus, the Appellant had appointed M/s.Aryaman Financial Services Ltd., a category I Merchant Banker registered with Securities and Exchange Board of India as the lead manager to the issue. The said lead manager filed with the Respondent a draft prospectus (offer document) along with due

diligence certificate as required under the governing regulations. The Respondent, on examination of the said draft offer document found the same deficient on several counts. The Respondent's findings thereon were communicated to the said lead manager vide letter dated 24.5.2000 and were asked to show cause as to why penal action should not be taken against them for their failure to exercise due diligence. By the said letter the lead manager was also asked not to proceed with the public issue or take any steps in connection with the said offer document. The lead manager vide letter dated 14.6.2000 submitted their explanation. The Respondent considered the explanation and found the same not satisfactory and informed the lead manager accordingly and also conveyed its decision to close the file in the circumstances. This was communicated on 1.8.2000. By the said communication the lead manager was again advised not to proceed with the issue. The Appellant feels aggrieved by the said decision of the Respondent as in effect the said decision affects its plan to raise funds from the public. The present appeal is an off shoot of the said decision.

2. Since the Respondent has raised preliminary objection as to the maintainability of the appeal, it is felt that the same should be considered and decided first before proceeding further in the matter.

3. According to the Respondent there is no order to be appealed against, as it has not passed any appealable order against the Appellant. The impugned communication is addressed to the lead manager asking them not to proceed with the Appellant's public issue based on the defective draft offer document. Further, what is to be appealed against under section 15T of the Securities and Exchange Board of India Act is an order by the SEBI Board or its Chairman and that under challenge in the present appeal is only a letter issued by a functionary of SEBI advising the lead manager, in a routine manner.

4. The Appellant has refuted the Respondent's contention stating that the letter dated 1.8.2000 was an order directing the lead manager not to proceed with the proposed public issue directly affecting the interests of the Appellant in as much as the Appellant is in need of funds for expanding the business and it had already done elaborate spade work incurring heavy expenditure to issue the prospectus.

Stalling the public issue at this stage is of considerable consequence to the Appellant than to anybody else. The lead manager is only a conduit with little stake in the matter.

5. Section 15T of the Securities and Exchange Board of India Act, 1992 (the Act) provides the right of appeal to any person aggrieved by an order of the Board or of the Adjudicating Officer appointed by the Board. Relevant portion of section 15T reads as under: - 15T. (1) Save as provided in sub-section (2), any person aggrieved, - by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or by an order made by an adjudicating officer under this act, may prefer an appeal to a Securities Appellate tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made - (c) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999; (3) Every appeal under sub-section (1) shall be filed within a period of fortyfive days from the date on which a copy of the order made by the Board or the adjudicating officer as the case may be is received by him and it shall be in such form, and be accompanied by such fee as may be prescribed: Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it within that period.

6. This Tribunal had recently considered the scope and ambit of section 15T in a few cases. In Suman Motels Ltd., v. SEBI [(2000) 39CLA 15(SAT)]: [(2000) 27 SCL 441] the Tribunal had held as under: "On a perusal of the said section 15T it could be seen that an appeal lies only against an order of the Board (SEBI) or the adjudicating officer, What is an order? There is no definition of this expression in the Act. So it has to be understood in its generally accepted sense in the context in which it is used. As per the scheme of the Act, it is clear that an order thereunder covers commands or directions that some thing shall be done, shall not be done, discontinued or suffered. In any case, a simple expression of opinion or a piece of advise or guidance cannot be considered as an order for the purpose of section

15T".

7. The locus standi of a person to prefer an appeal to the Tribunal was gone into by the Tribunal in the matter of B.P.Kanani v.SEBI [(2000) 39 CLA 1]: [(2000) 29 SCL 308] . In the said case Shri B.P.Kanani, a Chartered Accountant, had preferred an appeal before the Tribunal against certain observations made by the Chairman, SEBI, in an order pertaining to a company. In the said order, Chairman had viewed that Shri B.P. Kanani had made misrepresentations before him about the use of funds by the company and felt that this amounted misconduct and viewed that the "matter be referred to the Institute of Chartered Accountants of India, to take appropriate action against the said Chartered Accountant". Shri Kanani was not a party to the inquiry proceedings in which the said observation was made. This Tribunal had in the said context held: "On a careful perusal of the said section 15T, it could be seen that an appeal can be preferred against an order of the Board by any person aggrieved by that order. So it is clear that there should be an order to start with. Then comes the impact of the order. If a person is aggrieved by that order he is entitled to file an appeal.

Since the section uses the wider expression "any person", right of appeal is not restricted only to the parties before the Board in the proceedings. Anybody, whether he was a party or not before the Board, is entitled to prefer an appeal, provided he is aggrieved by that order. Thus the first test is the existence of an order and then the impact of that order on a person".

8. Maintainability or otherwise of the present appeal, would therefore depend on the fulfillment of the two conditions discussed in the cases cited above.

9. In the instant case, it is seen that the Appellant has challenged the decision communicated by one of the functionaries of the Board to the lead manager on 1.8.2000. Since the said communication is crucial in this context, exact text of the same is extracted below: This has reference to the offer document of the captioned company filed by you.

Substantial deficiencies/irregularities in the draft offer document including your statement that the issue price is not justified was pointed vide our letter dated May

24, 2000. The explanations given vide your letter dated June 14, 2000 are not satisfactory.

In view of the above, you may note that the file is being treated as closed and you are advised that you cannot proceed with the issue.

10. On a perusal of the above-cited communication, it is clear that it is in the nature of a command or direction to the lead manager not to proceed with the public issue. It is also clear from the subject matter of the communication that the issue referred to therein is the public issue of the Appellant. It is also beyond doubt that "Aryaman Financial Services Ltd" to whom the communication is addressed is the lead manager to the Appellant's public issue. The Respondent's argument that the impugned communication is only a letter, and that too is not from the Board, is without any force. The fact that the communication is couched in a letterform does not matter much. What is relevant is the purport of the communication and not the format in which it is made. An order is primarily a decision which has the effect of a command whether called by such name or not and is distinguished from an advice or request, by the nature of the consequences that may flow from the non-implementation of the same. In this context it is pertinent to state that, to a specific query from the Tribunal, as to whether the impugned communication is an unauthorised one, the learned Representative answered in the negative. SEBI is a statutory body. The regulatory powers flowing from the Act are vested in the Board. Section 19 of the Act empowers the Board to delegate its powers to its officers also. The officers as such do not have any power under the Act independent of SEBI. The officers exercise those powers, which are delegated to them either generally or specifically by the Board. In the instant case in the absence of any submission from the Respondent, that the impugned communication is an unauthorised one and taking into consideration the purport of the communication, it is not possible to view that it is not an order attracting section 15T of the Act. Now, coming to the next question as to whether the Appellant is in any way aggrieved by the order, the answer is very clear. It is the Appellant who wants to raise money to meet the funding requirements for expansion of its business activities. For this purpose, it has already done the spadework to go to the public and the lead manager, etc. have been appointed for

the purpose, incurring expenditure. But by the impugned letter the lead manager has been prohibited from proceeding with the issue. The casualty in the context is none else than the Appellant's public issue. One cannot ignore the stark reality and admit the Respondent's version that the Appellant is not in the picture and remains unaffected by the Respondent's order. The fall out of the order is on the Appellant. Therefore, it cannot be said that the Appellant is ineligible to prefer the present appeal. The preliminary objection raised by the Respondent thus fails.

11. Shri Sekhar Naphade, learned Counsel, appearing for the Appellant submitted that as per the provisions of the SEBI guidelines on disclosure and investor protection, the Respondent has no power or authority to stall a public issue for any reason. There is no requirement or provision in law for obtaining the Respondent's approval for a public issue. The Respondent can only direct the lead manager to add, delete or amend any of the contents of the draft offer document and it is for lead manager to bring out the public issue offer effecting the suggestions, if any, made by the Respondent. In support of this, the learned Counsel cited clause No.2.1.1 of the SEBI (DIP) Guidelines 2000.

12. According to him the impugned order is just a summary order and not a speaking order as it is silent on the reasons and grounds based on which the public issue has been stopped. Further that the order has been made without giving any opportunity to the lead manager or the Appellant to present their viewpoint. He further submitted that even if there had been any deficiency/irregularity in the offer document proper and reasonable course would be to give the party concerned a reasonable opportunity to make good the deficiencies. Gauging the extent and sufficiency of disclosure in an offer document submitted to the Respondent is a matter of purely individual assessment and there can be as many different assessments as there are individuals. An offer document can be exhaustive but can never be a complete biography of the Issuer Company or the promoters or a full report of the project and by its very nature can never contain a totally satisfying disclosure statement in all respects for all individuals. In case it is found that the offer document is deficient, the proper course is to take corrective steps and not to bar the public issue as such. He pointed out that as per DIP Guidelines 2000, existing companies with three year track record of consistent

profitability can freely price the issue and list their securities and the Appellant being a company so qualified, should have been allowed to fix the issue premium and go public. The learned Counsel submitted that the objections raised by the Respondent on the factual position disclosed in the offer document are devoid of any merit as they are based on wrong assumptions and presumptions. The rejoinder to the Respondent's reply was referred to explain the factual position to demolish the Respondent's version.

13. The learned Counsel further submitted that the Appellant had complied with all the requirements including the requisite disclosures necessary to access market to raise funds. The Appellant was not wanting in furnishing any information/detail called for by the Respondent through the lead manager. According to him in the offer document filed with the Respondent, as required under the SEBI guidelines full and complete disclosures were made as per the understanding and perception of the Appellant and after due diligence carried out by the lead manager. According to the learned Counsel, since the Appellant is an eight year old company making profits during all the previous years with good track record the Respondent should not have arbitrarily stopped its public issue.

14. Ms Poonam A Bamba, Authorised Representative of the Respondent took me through various provisions of the Act to show that the Respondent is mandated with the duty of protecting the interests of the investors and vested with requisite powers for the purpose. Her main thrust in the context was on the preamble to the Act and the provisions of section 11.

The preamble clearly states that the Act is to provide for the establishment of a Board to protect the interests of the investors etc.

etc. In section 11 (1) it has been clearly stated that it shall be the duty of the Respondent to protect the interests of investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit. That, in exercise of the powers for effective discharge of its functions the Respondent has taken several measures. The SEBI (DPI) Guidelines, 2000 is one such measure. The said guidelines amongst other things, specifies the standards of disclosure required to be made by the issuer companies in the offer document.

The Issuer Company and the lead manager are under obligation to make and ensure disclosures as required by the SEBI Guidelines, Companies Act, etc. She submitted that the disclosures assumed great importance in view of the fact that the companies are now free to price their issue and there is no control on the same as was the case earlier. In the absence of controls, proper and adequate disclosures are essential in the case of every public issue to enable the prospective investors to arrive at a well-informed decision with regard to investment in the securities offered for public subscription.

In the case of companies making maiden offer, as in the case of the Appellant, such disclosures are of great significance for the reasons that the public is completely unaware of the identity of the company, its promoters, track record, projects etc. Ms Bamba submitted that besides the requirements of Schedule II to the Companies Act, 1956 insistence upon material disclosures has been made by the Respondent with a view to ensuring protection of the interests of the investors.

Any company wishing to access the capital market by making a public issue of shares etc. has to do so in compliance with the SEBI (DIP) Guidelines. Clause 2.1.1 of the said guidelines stipulates that no company shall make any public issue of securities unless a draft prospectus has been filed with the Board through an eligible Merchant Banker, at least 21 days prior to the filing of Prospectus with the Registrar of Companies and if SEBI suggests any changes in the offer documents the issuer company or the lead manager is required to carry out such changes in the draft prospectus before filing prospectus with Registrar of Companies.

15. The learned Representative extensively referred to the counter filed by the Respondent to explain the extent and gravity of the omissions and commissions and factual inaccuracies in the offer document. She submitted that in the instant case the Respondent felt that there were gross misstatements and inadequate disclosures on certain important aspects like pricing, etc., to the detriment of the investors.

16. During the course of the arguments Ms Bamba reiterated that as the issuer company failed to make proper disclosures in the draft offer document, to the extent required to protect the interests of the investors, it was not possible for the

Respondent to allow it through.

The lead manager was therefore advised not to proceed with the public issue through such a deficient offer document. The Appellant has not been stopped from accessing the market. There is no blanket ban as alleged.

17. Ms Bamba submitted that it is totally incorrect to say that the Issuer Company and the lead manager were not given opportunity to make good the deficiencies in the offer document. She pointed out that since the offer document is required to be filed by issuer companies through a recognized Merchant Banker, the Respondent interacts with the concerned Merchant Banker and they in turn deal with the issuer companies. Merchant Banker, who is amenable to SEBI regulations, is the intermediary in the process. She pointed out that the Appellant knew the deficiencies in the offer document as pointed out to the lead manager by the Respondent and the Appellant had also put forth its point of view as is evident from the correspondence filed with the Appeal.

She urged that the impugned communication need be read along with the show cause notice issued to the lead manager and the reply filed by them along with the Appellant's views. Since the Respondent was not satisfied with the extent of disclosure made and the adequacy and accuracy of the information furnished in the offer document, and the issuer company /lead manager was not forthcoming with the offer document with the deficiencies cured, the lead manager was advised not to proceed further with the public issue, based on such a deficient document.

18. On a query from the Tribunal, the learned Representative clarified that the prohibition was not to operate in perpetuity. It was not the Respondent's intention to ban the Appellant raising funds from the public to meet its financial requirements. The objection is in the context of inaccurate and inadequate disclosures made in the prospectus inviting public subscription. She made it clear that in case the Appellant is ready to furnish the requisite disclosures and authentic information to the satisfaction of the Respondent, Appellant's public issue offer document will be cleared.

19. I have carefully weighed the pros and cons of the submissions made by the parties. It is an admitted fact that the Appellant proposes to issue 96 lakhs equity shares of Rs. 10/- each for cash at a premium of Rs.160/- per share. This would mean that the issue price of a ten rupee share in the hands of the subscriber would be rupees one hundred and seventy rupees. The aggregate issue amount is Rs. 163.20 crores. Public issue of such a magnitude, that too with such a high premium, need be put under the magnifying glass, to ensure that there is no misstatement or omission of material information to lure the public to invest in the shares. Concerned authorities are expected to act diligently in dealing with the matter. How the reckless promoters exploit the gullible public by promising moon on earth is well known. The market has witnessed enough casualties in the recent past. To prevent such repeat shows any reasonable action under the law from the authorities vested with the duty of protecting the interests of the investors should be viewed as a welcome measure.

20. Public issue of shares is subject to certain requirements provided under the Companies Act and the regulations/guidelines issued by the Respondent. Format of the prospectus has been designed in the Companies Act and provided in Schedule II thereto providing for disclosure of certain relevant materials to enlighten the public to make an informed decision to invest or not in the securities offered for subscription. A well-informed investor is well protected. The whole purpose of making detailed disclosure in the offer document is to enable the investor to take a considered view as to whether the offer is worth investing.

21. Securities and Exchange Board of India Act, 1992, was put in position to meet the long felt necessity of protecting the investors in securities from such wrongs for which remedy under the prevailing legal regime was found illusory and ineffective. There was no centralised body with wholesome powers, in position to regulate the capital market and protect the interests of the investors. This deficiency was felt all the more in the context of the calamities in the capital market witnessed over a period of time. In January, 1992, taking into consideration the urgency of the matter an Ordinance viz. ' The Securities and Exchange Board of India Ordinance, 1992, "to provide for the establishment of a Board to protect the interests of the investors in securities and to promote the development of, and to regulate, the

securities market and for matters connected therewith or incidental thereto" was issued. The Ordinance was converted into the Securities and Exchange Board of India Act, 1992 by Parliament in April, 1992.

What prompted the Government to bring in a legislation focussed on investor protection and entrusting that task to an independent authority outside Government is evident from the 'objects and reasons' of the Bill presented in the Parliament, as extracted below: " The capital market has witnessed tremendous growth in recent times characterised particularly by the increasing participation of the public. Investors confidence in the capital market can be sustained largely by investor protection. With this end in view Government decided to clothe SEBI immediately with statutory powers required to deal effectively with all matters relating to capital market.

Section 3 of the Act provides for establishment of a Board namely the Securities and Exchange Board of India for the purposes of the Act".

22. The purposes of the Act, as already stated in the preamble cited above include protection of the interests of the investors. The agency entrusted with this duty is the Securities and Exchange Board of India.

23. In chapter IV of the Act, powers and functions of the Board for achieving the purposes of the Act have been enumerated. Sub section (1) of section 11 provides that "subject to the provisions of the Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit".

24. Sub section (2), provides without prejudice to the generality of sub section (1) certain specific measures for the purpose. One of the specific measures provided therein is the provision for registering and regulating the working of several types of capital market intermediaries including Merchant Bankers. The Respondent has made several regulations to regulate the conduct of the business of the intermediaries, in the specified areas. The regulation binding on Merchant Bankers is the one viz. Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

25. The Respondent has also issued under section 11 of the Act, the SEBI (Disclosure and Investors Protection) Guidelines, providing extensive guidelines to be followed for accessing the market. The guidelines are quite exhaustive from the disclosure point of view. It also deals with the post issue obligations and certain other issue requirements. Chapter II of the said guidelines deals with the eligibility norms for companies issuing securities offered through an offer document. In terms of para 2.1.1 26. "No company shall make any issue of a public issue of securities unless a draft prospectus has been filed with the Board, through an eligible Merchant Banker at least 21 days prior to the filing of the prospectus with the Registrar of Companies (ROC).

27. Provided that if, within 21 days from the date of submission of draft prospectus, the Board specifies changes, if any, in the draft prospectus (without being under any obligation to do so) issuer or the Lead Merchant Banker shall carry out such changes in the draft prospectus before filing the prospectus with Registrar of Companies".

(emphasis supplied) 28. In terms of regulation 18 of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 all public issues should be managed by at least one Merchant Banker functioning as lead Merchant Banker. Only a Merchant Banker holding a valid registration with the Respondent is eligible to act as a Merchant Banker. One of the conditions of registration is that the Merchant Banker shall abide by the rules and regulations made under the Act in respect of the activities carried on by the Merchant Banker. The Appellant has appointed M/s. Aryaman Financial Services Ltd., a registered Merchant Banker as the lead manager to the public issue.

the Lead Manager, responsible for the issue is required to furnish to the Board the following documents, namely: draft prospectus or where there is an offer to the existing shareholders, the draft letter of offer any other literature intended to be circulated to the investors, including the share holders; and such other documents relating to prospectus or letter of offer as the case may be.

The documents referred to in sub-regulation (1) shall be furnished at least two weeks prior to the date of filing of the draft prospectus or the letter of offer as the

case may be with the Registrar of Companies or with the Regional Stock Exchanges, or with both.

(3) The lead manager shall ensure that the modifications and suggestions, if any, made by the Board on the draft prospectus or the Letter of Offer as the case may be with respect to information to be given to the investors are incorporated therein.(emphasis supplied) 30. As per regulation 23 the lead manager, who is responsible for verification of the contents of a prospectus or the letter of offer in respect of an issue and the reasonableness of the views expressed therein, shall submit to the Board at least two weeks prior to the opening of the issue for subscriptions, a due diligence certificate in the prescribed format.

31. For failure on the part of the Merchant Banker in complying with the requirements of the regulations, penalty has been provided, which includes even cancellation of the registration itself. Such a severe penalty for default is indicative of the extent of the responsibility vested in the Merchant Banker in dealing with public issues.

32. It is true that the Act does not empower the Respondent to prevent directly an issuer company from accessing the market. The decision as to the quantum of funds to be raised and the price at which the shares are to be issued is left to the issuer company. Such decisions are attendant on the business requirements, etc. of the issuer company and the issuer company is considered to be the best judge to decide the same as it is a management decision. But once it is decided to raise the funds from the public then the public interest comes in and the matter is not left exclusively to the discretion of the issuer. The Issuer Company is required to maintain certain standards of disclosure relating to various matters having a bearing on the investment decision of the investors. The Respondent has already prescribed the disclosure requirements and an issuer company in its own interest is required to fulfil those requirements, lest the public issue will not be through.

The lead manager is also required to ensure that the information furnished in the offer document is not in any way exaggerated or deficient and that the material facts are not suppressed to the disadvantage of the subscribers.

33. The purpose of filing the offer document through the lead manager with the Respondent is not a mere ritual or formality. It is to ensure that requisite disclosures have been made in the offer document to enable the prospective investors to come to a decision. As could be seen from the DIP guidelines the lead manager /issuer company is duty bound to carry out the changes in the prospectus suggested by the Respondent before issuing the same. The Appellant's public issue is not outside the said regime.

34. It is clear from the various statutory provisions discussed above that the Respondent is empowered to ensure adequate disclosure by issuer before accessing the market. The Appellant's submission that the Respondent has the power only to make observations and such observation is purely a matter of individual assessment and there can be as many different assessments as there are individuals and hence the same be discarded, is untenable. The Respondent is a statutory body established to protect the interests of the investors at large. The Respondent's views and deeds need be looked at from the said angle. An issuer company on the other hand is concerned about its interest and this need not necessarily be in tune with the interest of the investors. What the issuer feels sufficient at times will be sufficient only to further its cause. Whereas the Respondent mandated to protecting public interest, views the matter dispassionately from a larger perspective. The Respondent is more concerned about the interest at the macro level and not at the micro level. To discount the view of such a statutory authority and equate the same with the individual perception of interested people is not possible. In the absence of any charge of malafides against the Respondent, the assessment of the adequacy or inadequacy of the disclosure in the offer document, made by the Respondent should sustain. The Respondent is not short of power under the Act, to command proper disclosure as a pre-condition to access the market. The Respondent has rightly exercised the power vested in it.

35. The contention that the Respondent had taken the decision arbitrarily in the matter is incorrect. In fact the said contention stands demolished by the documents filed and relied on by the Appellant itself, in the present appeal. Since the offer document was received by the Respondent through the lead manager,

after verification with due diligence, the Respondent had rightly addressed the lead manager in the matter pointing out the deficiencies in the draft prospectus on 24.5.2000. This letter is available at Annexure 4 to the appeal. The lead manager had apparently passed on the said letter to the Appellant and the Appellant in its letter dated 31.5.2000 available at Annexure 5 to the appeal, had explained its viewpoint in the matter. Based on the said letter the lead manager vide letter dated 14.6.2000 also had submitted their submission to the Respondent. A copy of the said reply is also available at Annexure 6 to the appeal.

36. The Respondent in the communication dated 1.8.2000 has referred to its letter dated 24.5.2000 and the lead manager's reply thereto and stated that the explanation furnished by them was found unsatisfactory and therefore the file on the Appellant's public issue was closed. It is not that the matter was closed arbitrarily and unilaterally by the Respondent, as has been alleged by the Appellant. It is clear that sufficient opportunity was given to the concerned party, and that opportunity has also been made use of by the parties by furnishing written explanation. Only after considering the explanation, decision was taken to close the file.

37. The Appellant has questioned the authority of the Respondent to question the quantum of the issue price (i.e. Rs.160/- per share of Rs.10/- each). In fact Respondent has not questioned the premium rate.

The Respondent wanted the Appellant only to justify in the offer document the issue price of Rs.170/- (Rs.10+Rs.160) per share, especially in view of the lead manager's observation thereon that "neither the past EPS nor the NAV figures of the company are justifying the issue price of Rs.170". If the Appellant has sufficient justification to quote such a higher premium why it is feeling shy to disclose the same? In this context it is also pertinent to mention that the Appellant, though registered in 1992, is coming out with a public issue for the first time and as such it is a "stranger", as far as the investing public is concerned. So it is all the more necessary that such a new comer need be presented properly and clearly. The offer document is meant to serve the said objective. It is not possible to hold that it is the prerogative of the issuer company to decide as to whether it should make

adequate disclosure of the basis of deciding the issue price. The investing public has a right to know the basis for arriving at such a high premium and the Appellant is required to state the same. The Respondent cannot be blamed for insisting that adequate disclosure on this be made in the offer document.

38. The Respondent has pointed out several instances of erroneous information furnished in the prospectus. I do not consider it necessary for me to investigate and ascertain the accuracy or otherwise of the conclusion arrived at by the respondent in its wisdom based on the material available before it. The Respondent is a statutory body with sufficient expertise at its command to collect the details and analyse the same and draw conclusions without any bias. The Appellant has not made any allegation that the Respondent had acted malafide or that its findings are motivated. The Appellant's grievance is that the Respondent has not viewed the offer document the way the Appellant wants! 39. From the pleadings and oral submissions made by the parties, it appears that the Appellant has failed to appreciate the true purport of the impugned order. The Appellant appears to be under the apprehension that the Respondent has blocked its public issue permanently and no longer it can access the market to raise funds to expand the business.

This is not correct. The Respondent has not imposed any such permanent ban. Since the offer document was found wanting in several aspects, the lead manager was asked not to proceed with the public issue with such a deficient document. It is clear that the Respondent has no objection to the Appellant raising funds from the public by making proper and adequate disclosure in the offer document in tune with SEBI guidelines to the Respondent's satisfaction. This is clear from the Respondent's reply at pages 14 and 15 as reflected in the following words: " That from the above it is clear that the issuer company failed to make disclosures in compliance with the Companies Act, 1956/ SEBI (DIP) Guidelines, 2000 and the draft offer document suffered from substantial deficiencies and misstatements. Thus the Lead Manager was advised not to proceed with the issue for such non compliance, in the interest of the investors. The appellant company in terms of clause 2.1.1 of SEBI (DIP) Guidelines, 2000 is free to file with SEBI a fresh offer document with all the required disclosures, through an eligible Merchant Banker.

Further SEBI communicates with various intermediaries on various issues as the facts of each case may necessitate to meet the requirements of the Respondents".

(emphasis supplied).

40. The Respondent's objection is only to the Appellant accessing the market with a deficient offer document. I do not see any reason as to why the Appellant should desist from making adequate disclosures and furnish material facts in the offer document, as required by the Respondent, in case the Appellant is genuinely interested in raising funds from the public.

41. In view of the Respondent's clear submission that the Appellant is at liberty to submit to the Respondent fresh offer document meeting the requisite requirements, through any eligible Merchant Banker, now it is for the Appellant to do so, to the satisfaction of the Respondent.

There is no prohibition on the Appellant, submitting the fresh offer document through a lead manager of its choice including Aryaman Financial Services Ltd., provided they are still eligible to act as a Merchant Banker as per the governing regulations.

42. It is made clear that this order does not in any way be construed as absolving M/s. Aryaman Financial Services Ltd. from its failure, if any, in exercising due diligence while submitting the Appellant's draft prospectus on 4.5.2000. The Respondent is at liberty to proceed against the said Merchant Banker as per law.

43. For the reasons stated above, the appeal does not survive. The appeal is therefore dismissed.

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