

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
TRANSFER COMPANY APPLICATION NO. 62/621A/CLB/MB/2016
PRESENT: B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL) AND
V. NALLASENAPATHY MEMBER (TECHNICAL)

In the matter of Section 621A of the Companies Act, 1956 read with Section 441 of the Companies Act, 2013.

In the matter of **M/s. RBL Bank Ltd.**, having its Registered Office at Shahupuri, Kolhapur- 416 001.

PRESENT FOR THE APPLICANT: -

Lokanath Mishra, Advocate for the Applicants.

Date of Hearing: 12.08.2016

ORDER

Applicants in Default: -

M/s. RBL Bank Ltd. (Company), Mr. Vishwavir Ahuja (Managing Director & CEO), Mr. S. G. Kutte (EX-Managing Director & CEO).

Section Violated; -

Section 56, 60, 60B, 64, 67(3), 68B, 72 of the Companies Act, 1956.

Nature of Violation; -

1. As per the submission made in the Report of ROC, Pune and as per the submissions made in the Compounding Application that the Reserve Bank of India (RBI) in its circular dated June 29, 1998 mandated all banks to have a minimum capital requirement of Rs. 50 Crores within the next 3 years. Separately RBI also gave specific directions to the RBL Bank ('Bank' or 'the Bank') to increase the net worth to Rs. 50 crores. In addition, RBI via 'Guidelines on Ownership and Governance in private sector Banks' dated February 28, 2005 revised the capital requirement to Rs. 300 crores for all existing private sector Banks in India. To meet the statutory directions as received from RBI as well as to boost its capital adequacy, the Bank conducted five right issues (Right issue 6- Right issue 10) and one preferential issue of shares during the period April 1, 2000 to March 31, 2011.

All the aforesaid right issues were under subscribed and pursuant to the provisions of Section 81(1)(d) of the Companies Act, 1956 and available authority in the letter of offer for Right issue(s), the un-subscribed portion of the Right Issue(s) was disposed-off by the Board in the best interest of the Bank and public.

While doing the allotment of Un-subscribed part of the 6th and 7th Right Issue(s)/ Preferential Issue as the case may be as mentioned in below table the Bank had allotted equity shares to more than 49 persons. Further, Right Issue 8, 9 and 10 Shareholders also had a right of renunciation. Accordingly, it can be said that in respect of these allotments, the Bank did not comply with the provisions relating to a public offering of securities:

Date of allotment	Type of issue	Number of allottees	Number of equity shares issued	Face Value (Rs.)	Issue Price (Rs.)	Amount raised (Rs.)
February 19, 2003	Allotment of unsubscribed portion of the 6 th Rights Issue	2,591	4,82,898	100	At Par	4,82.89.800.00
March 13, 2006	Allotment of unsubscribed portion of the 7 th Rights Issue	1,969	11,20,746	100	At Par	11,2074,600.00
March 13, 2006	Preferential Allotment	259	1,59,900	100	At Par	1,59,90,000.00
March 13, 2006	Preferential Allotment	73	55,850	100	At Par	55,85,000.00
February 9, 2007	Rights Issue ("8 th Rights Issue")	5,153	10,95,984	100	At Par	10,95,98,400.00
March 26, 2007	Rights Issue ("9 th Rights Issue")	160	15,41,260	100	450	69,3567,000.00

January 9, 2011	Rights Issue ("10 th Rights Issue")	1,726	7,58,12,652	10	67	5,07,94,47,684.00
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While doing these allotments, the Applicant had violated Section 67(3) of the Companies Act, 1956 by virtue of which consequential violation were continued with reference to sections 56, 60, 60B, 64, 67(3), 68B, 72 73(1), 73(3) of the Companies Act, 1956 read with Rule 6 of Unlisted Public Companies (Preferential Allotment) Rules, 2003, consequently, it also violated applicable SEBI guidelines relating to Public offering of securities.

This non-compliance with provisions relating to a public offering of securities were discovered by the Bank as part of the due diligence exercise conducted by the Bank in preparation for its Initial Public Offer (IPO). The Bank voluntarily disclosed the violations in the Draft Red Herring Prospectus (DRHP) filed with SEBI on June 23, 2015 and committed to resolve the matter with SEBI as well as compound these violations with Registrar of Companies/ Ministry of Corporate Affairs

Accordingly, the Applicants have filed the captioned compounding Application for violation of the provision of Section 56, 60, 60B, 64, 67(3), 68B, 72 of the Companies Act, 1956. The Registrar of Companies, Pune forwarded the compounding application vide letter No. ROCP/STA/621A/2016/3223 dated 05.05.2016 and the same has been treated as Company Application No. 62/621A/CLB/MB/MAH/2016.

2. The captioned Compounding Application was first listed before the erstwhile, CLB Mumbai Bench on 18.05.2016, and on the basis of the report dated 05.05.2016 of ROC, Pune and also on submission made by Advocate for applicants at the time of hearing and noted that application made by the applicants for compounding of offence committed under Section 56, 60, 60B, 64, 67(3), 68B, 72 of the Companies Act, 1956, merited consideration. Accordingly, having regard to the facts and circumstances of the case, the offence committed under Section 56, 60 60B, 64, 67(3),

68B, 72 of the Companies Act, 1956 as stated and explained herein above was compounded against the Company & its 2 directors on payment of Rs. 5,00,000/- by M/s. RBL Bank Ltd. (Company), Rs. 3,00,000/- Mr. Vishwavir Ahuja (Managing Director & CEO) and Rs. 2,00,000/- Mr. S. G. Kutte (EX-Managing Director & CEO).

3. However, vide Notification No. A-45011/14/2016-Ad. IV dated 01.06.2016, issued by the Ministry of Corporate Affairs, New Delhi, the Central Government has constituted the National Company Law Tribunal and dissolved the erstwhile Company Law Board w. e. f. 01.06.2016.

4. Subsequently, the Applicant Company has filed Misc. Company Application and additional affidavit with the newly constituted National Company Law Tribunal, Mumbai Bench on 13.06.2016. seeking to set aside the penalty of Rs. 3,00,000/- imposed on Mr. Vishwavir Ahuja (P-3) vide CLB, Mumbai Bench order dated 18.05.2016 and also for rectification of the mistake appeared on the record and for recall of the order dated 18.05.2016 passed against P-3. The captioned Company Application was heard by the newly constituted NCLT, Mumbai Bench on 11.07.2016 and subsequently on 28.07.2016 on the report dated 27.07.2016 sent by ROC, Pune. However, vide order dated 28.07.2016, the matter was further adjourned to 12.08.2016, directing the ROC, Pune to place a report within 10 days as to whether the Company has violated any provisions of law in respect of 10th Rights Issue of 2011 or not. Accordingly, the ROC, Pune has furnished its report dated 10.08.2016, reporting that Company has complied with Section 81 of the Companies Act, 1956 and has not violated the provisions of Section 67(3) of the Act, in respect of 10th Right Issue of 2011. The said report dated 10.08.2016 of ROC, Pune has been taken on record on the hearing of the matter held on 12.08.2016. On perusal of the report given by ROC, Pune, this bench has come to the conclusion that the Mr. Vishwavir Ahuja (P-3) who has joined the Applicant Company as MD & CEO on 30.06.2010, has not violated any of the provisions of Companies Act, 1956 on proceeding with 10th Right Issue dated 09.01.2011, and he

could not have been imposed compounding fees for the offence he has not committed. Hence, vide order dated 12.08.2016 this bench by invoking power under Section 420 (2) of the Companies Act, 2013, has rectified the mistake apparent from the order dated 18.05.2016 and also made it clear that the remaining order in respect of P-1 & P-2 is not recalled and further ordered that the compounding fee paid by the P-3 be refunded by the authority concerned.

5. However, subsequently Mr. Lokanath Mishra, Advocate for the Applicants vide his forwarding letter dated 18.10.2016, enclosed a letter dated 17.10.2016 of Mr. Vishwavir Ahuja (P-3) informing that the said Mr. Vishwavir Ahuja (P-3) does not wish to claim the refund of Rs. 3,00,000/- as mentioned in the above referred order dated 12.08.2016.

6. Pursuant to the CLB, Mumbai Bench order dated 18.05.2016 the Applicant Company (P-1) and Mr. S. G. Kutte (P-2) has already remitted Rs. 5,00,000/- & Rs. 2,00,000/- on 14.06.2016 towards their part of compounding fees with the newly constituted NCLT, Mumbai Bench.

7. In view of the above, this Bench direct the ROC, Pune to take further action as provided under Section 621A(3)(c)(d) of the Companies Act, 1956 read with Section 441 (3) (c) (d) of the Companies Act, 2013.

Ordered Accordingly

Dated this November 25, 2016

sd/-
B. S.V. PRAKASH KUMAR
Member (Judicial)

sd/-
V.NALLASENAPATHY
Member (Technical)