

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI.

Arguments heard on 29.11.2016

Orders passed on 11.01.2017

CA No.112 of 2013 (CLB)

(TCA 58 of 2016 – NCLT)

u/s 621A r/w 629A pertaining to violation of Sec.67(3) of the Companies Act, 1956.

Applicants : Regenix Drugs Ltd. and another,

Represented by Shri P.H.Arvinth Pandian, Senior Counsel for
Shri Rabi Narayan, PCS

Vs

Respondent : SEBI represented by counsels M/s.Shivakumar & Suresh

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

Ch Mohd Sharief Tariq, Member (Judicial) (Oral)

1. Under adjudication is an application that came to be filed before the CLB as C.A.No.112 of 2013 which stood transferred to NCLT and renumbered as T.C.A.58 of 2016. The Application has been filed u/s 621A of the Companies Act, 1956 for compounding the violation of Section 67(3), which is punishable u/s 629A of the Companies Act, 1956.

2. The brief factual position stated in the Application is that the Company, *suo moto*, received investments predominantly from doctor fraternity and their family members of their own accord (who are otherwise as being domestic concern of the allottees) in small trenches and over a period of time due to

accumulation of all investments, the size of investors in numbers has grown over 50 persons. However the petitioner Company at any point of time not offered invitation to general public inviting them to offer for subscription of the equity shares. It was not practically possible for the petitioner company to allot shares as often on receipt of the investment, therefore the petitioner company to avoid the multiplicity of allotment in short interval, accumulated the proceeds of investment over a period of time and allotted the shares to person from whom the investments were received during relevant period of time. As a result, on six occasions as detailed below, the number of persons to whom the shares were allotted exceed above 50 and hence amounted to contravention of provisions of Section 67(3) of the Companies Act, 1956:-

Date	No. of persons	No. of shares allotted
14.12.2007	50	97500
20.03.2008	1668	3370730
20.09.2008	94	1853020
28.03.2009	164	1281760
20.03.2010	199	476994
08.12.2010	133	2131103

3. The CLB, while hearing the application, directed the applicant company to serve notice on Securities Exchange Board of India (SEBI) and accordingly the company served a notice dated 13.05.2013 on SEBI. In turn, SEBI after collecting relevant documents and other information from the Registrar of Companies, Chennai, had on 13.01.2014 issued a show cause notice to R1 company and its directors Mr. Ayyavu Ramamurthy, Mr. Vishwas Vasanth Pathak, Mr. Raju Gunasekaran, Ms. Malathy Ramamurthy, Mr. Aravind Devanathan, Mr. Govindarajan Venkatakrishna and Mr. Natarajan Arun. In response to the show cause notice, the Applicant company and its directors have

explained their position by defending themselves. The explanation offered by the company was not found satisfactory, by the SEBI and therefore vide its order dated 10.11.2014 the following directions were given:-

(a) Regenix Drugs Limited and its directors Mr. Ayyavu Ramamurthy, Mr. Vishwas Vasanth Pathak, Mr. Raju Gunasekaran, Ms. Malathy Ramamurthy, Mr. Aravind Devanathan, Mr. Govindarajan Venkatakrishna and Mr. Natarajan Arun, shall within three months from the date of this order, jointly and severally refund the money collected pursuant to the allotment of shares on December 14, 2007, March 20, 2008, September 20, 2008, March 28, 2009 to the allottees with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.

(b) Such refund shall be made only in cash through a Demand Draft or Pay Order.

(c) Regenix Drugs Limited shall issue a public notice, in all editions of one English National Dailies and one vernacular newspaper with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this order coming into effect.

(d) within seven days of completion of refund as directed hereinabove, Regenix Drugs Limited shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorised so by the Institute of Chartered Accountants of India (ICA)

(e) Regenix Drugs Limited and its directors Mr. Ayyavu Ramamurthy, Mr. Vishwas Vasanth Pathak, Mr. Raju Gunasekaran, Ms. Malathy

Ramamurthy, Mr.Aravind Devanathan, Mr.Govindarajan Venkatakrishna and Mr.Natarajan Arun, are directed not to directly or indirectly, access the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner till the refund of the money is made to the allottees as directed hereinabove

(f) Mr. Ayyavu Ramamurthy, Mr.Vishwas Vasanth Pathak, Mr.Raju Gunasekaran, Ms.Malathy Ramamurthy, Mr.Aravind Devanathan, Mr.Govindarajan Venkatakrishna and Mr.Natarajan Arun, are further restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till the refund of the money is made to the allottees as directed hereinabove.

4. The SEBI has also filed a reply before the Company Law Board stating that CLB has no jurisdiction to compound the offence. The Applicants on 20.10.2016 have filed an affidavit, the copy of which was served on SEBI wherein it has been averred that notices have been sent to the investors informing them to get their money back as per the directions of the SEBI. In response to the said notice, 1464 out of 1978 investors have filed affidavits stating that they are not ready and willing to take back their money but want to remain as shareholders in Applicant No.1 company. In this connection, the Applicants on 31.10.2016 have filed specimen affidavit before the CLB received from one of the investors. Based on this, this Tribunal directed the SEBI to enlighten the Bench about the practice/procedure that has been followed in the cases of the like nature. SEBI in its response dated 19.12.2016 stated that it is satisfied to the extent of the investors who have filed their affidavits to remain as shareholders of the Applicant No.1 company. However, if any of rest of the investors approaches the company for refund of his/her money, then his/her amount shall be returned

to him/her with 15% interest as was ordered by the SEBI. In case the left over amount is not claimed by the investors, then the same shall be transferred to the “Investors Education Protection Fund” as per the provisions of the Companies Act, 2013. Based on these arrangements, the counsel for SEBI stated that they have no objection if the offence is allowed to be compounded.

5. The Applicants have violated Section 67(3) of the Companies Act, which is punishable under section 629A of the Companies Act, 1956 and the same can be compounded under Section 621A of the Companies Act, 1956. They have made an application before the Registrar of Companies, Tamil Nadu, for compounding the offence. The ROC forwarded the application with their comments that has been received by the CLB on 11th April 2013. The Deputy Registrar of Companies stated that they have no objection if the offence committed by the Applicant company and its directors (officers in default) is compounded. Under Section 629A of the Companies Act, an officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs.5000/- and where the contravention is a continuing one with a further fine which may extend to Rs.500/- for every day after the first during which the contravention continues. As per the order dated 10.11.2014 passed by the SEBI, the company and its directors Messrs (1) Ayyavu Ramamurthy (2) Vishwas Vasanth Pathak (3) Raju Gunasekaran (4) Malathy Ramamurthy (5) Aravind Devanathan (6) Govindarajan Venkatakrishna and (7) Natarajan Arun, constituting the Board of Directors of Applicant No.1 company, authorised the issuance of shares on 12.12.2007, 20.3.2008, 20.9.2008, 28.3.2009, so they are stated to be the officers who are in default. However, as per the meaning of the term “Officer who is in default” as defined under Section 5 of the Companies Act, 1956, the Managing Director was Dr.Ayyavu Ramamurthy who is Applicant No.2 and an officer who is in default. Therefore, the application is allowed. It is made clear that it is the first offence and no

prosecution is pending and the order of the SEBI is also followed by Applicant No.1 company. Therefore, a fine of Rs.5,000/- is imposed on Applicant No.1 and a fine of Rs.3,000/- is imposed on Dr.Ayyavu Ramamurthy, who is Applicant No.2 [being the Managing Director of Applicant No.1 company]. The Applicant No.1 shall pay the fine from its own account. The Applicant No.2 who is officer in default shall pay the fine from his own resources. This order shall be complied with by the Applicants within three weeks from today by depositing the amount of fine. The company is directed to file ^{form INC, 28} ~~e-form 21~~ along with the order, before the Registrar of Companies, Tamil Nadu, Chennai. Accordingly, the application is disposed of.



K.ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)



CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)