

# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No.212 of 2012**

**Date of decision: 20.11.2012**

1. PNB Investment Services Limited  
Dalamal House, 11<sup>th</sup> Floor,  
Nariman Point,  
Mumbai – 400 021.
2. Shri L. P. Agrwal  
Former M.D. & CEO of PNB Investment  
Services Ltd., House No.29/601,  
Eastend Apartments, Co-op. Hsg. Scy.,  
Mayur Vihar Extension, Phase-1,  
New Ashok Nagar Metro Station,  
Delhi – 110 096.

... Appellants

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A, G-Block,  
Bandra Kurla Complex,  
Mumbai – 400 051.

... Respondent

Mr. R. S. Loona, Advocate with Mr. Ankur Loona, and Ms. Roochi Hatangdi,  
Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody,  
Advocate for the Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)  
S. S. N. Moorthy, Member

Per : P. K. Malhotra (Oral)

This appeal has been filed against the order dated September 7, 2012 passed by the whole time member of the Securities and Exchange Board of India, under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 confirming the directions issued against the appellants vide ad-interim ex-parte order dated December 28, 2012 restraining the appellants from taking up any fresh assignment or involvement in any new issue of capital including IPO, follow-on issue etc. till further directions in the IPO matter on Taksheel Solutions Limited (the company).

2. The appellant no.1 is a wholly owned subsidiary of Punjab National Bank, a public sector bank and is engaged in the business of merchant banking. Appellant no.2 was the managing director and CEO of appellant no.1 at the relevant time.

3. The company came out with initial public offering of 55 lac equity shares of Rs.10 each through booking building process. The issue was kept open for the period from September 29, 2011 to October 4, 2011. The allotment price, on the basis of bids received, was fixed at Rs.150. The appellant no.1 acted as book running lead manager to the IPO of the company.

4. It was noted by the Board that there was huge volatility in the price and significant transaction volume in the scrip of the company on the day it was listed on the stock exchange. The investigations carried out by the board further indicated that the company and its directors had made various misstatements in the offer documents, concealed vital information and siphoned off a part of the IPO proceeds to certain entities. The Board passed an ad-interim ex-parte order dated December 28, 2011 against a large number of entities, including the company and its directors, prohibiting them from buying, selling or dealing in securities in any manner till further directions. The said ad-interim ex-parte order also alleged that the appellant no.1 had failed to carry out adequate and independent due diligence required by it under Regulation 64 of the Issue of Capital and Disclosure Requirement Regulations, 2009. Therefore, the appellant no.1 and its then managing director and CEO i.e. appellant no.2, were also prohibited from taking up fresh assignment or involving in any new issue of capital including IPO, follow-on issue, etc. till further directions. The said impugned order was also a show-cause notice to the appellants asking them to file their objections to the action being taken against them. The appellants filed their detailed reply. They were also afforded an opportunity of hearing after which the whole time member of the Board, passed the impugned order and confirmed the directions issued against the appellants vide the ad-interim ex-parte order dated December 28, 2011.

5. It is the grievance of the appellants that while passing the impugned order, the Board has not considered the submissions made by the appellants. According to the appellants, the lead merchant banker is required to exercise due diligence to verify the veracity and adequacy of disclosures in the offer documents which was duly done by the appellants in the case of the company and in support they had placed on record the relevant material. However, the whole time member of the Board, without considering that material, has confirmed the ad-interim ex-parte order against the appellants. The appellants have been under the restraint order for a period of almost 11 months now and the Board has not yet completed its investigation. There has been inordinate delay on the part of the Board to complete the investigation and it is not justified in continuing with the restraint order against the appellants, more so, when full explanation with regard to the due diligence exercised by the appellants has already been furnished. It is, therefore, prayed that the impugned order dated September 7, 2012 be set aside and the respondent be directed to complete the investigation expeditiously.

6. Learned senior counsel for the Board supported the order passed by the whole time member of the Board and stated that the matter is still at the investigation stage and the same is likely to be completed within another eight weeks time. The whole time member of the Board, while passing the impugned order, has duly considered the submissions made by the appellants and, therefore, no interference is called for by the Tribunal at this stage. It was further submitted by him that if, as a merchant banker, the appellants had exercised due diligence with regard to the statements made by the company in its prospectus, the misstatements in the offer document could have been detected/avoided and investors would have been able to take an informed decision with regard to their investments in the IPO.

7. We have considered the rival submissions and also seen the documents placed on record. We are unable to agree with the learned counsel for the appellants that the whole time member of the Board has either passed the order mechanically or not considered the submissions made by the appellants in response to the ad-interim ex-

parte order cum show-cause notice dated December 28, 2011. It needs to be appreciated that we are concerned with the justifiability of continuation of the ad-interim order pending investigation by the Board. At this stage, what we have to look into is whether a prima facie case for continuation of the interim order against the appellants is made out or not and whether the submissions made by the appellants have been duly considered while passing the order. We find that the whole time member of the Board, while passing the impugned order dated September 7, 2012, has met with these requirements. It is not necessary for him to give a final decision on each of the issues raised by the appellants. Such decisions will come only when, after the investigation, the Board comes to a conclusion on the issue of initiating proceedings against the appellants under the Act or the Regulations framed thereunder.

8. However, we are also conscious of the fact that the appellant no.1 is a merchant banker and it has been restrained from carrying out its activity of handling of new issue of capital including IPO and follow-on issue, etc. The matter is still under investigation for almost a year now and the appellants are restrained from carrying out their business during all this period under the investigation. A specific query was put to the learned senior counsel for the Board as to how much time it is likely to take a final view in the matter. Learned senior counsel was unable to give any time frame for the same. The primary charge against the appellant is of non-exercising due diligence while working as a book running lead manager to the issue. The allegations in the impugned order against the other entities are different. Keeping in view the fact that the appellants have already undergone restraint for a period of 11 months and the Board is likely to take another eight weeks time to complete the investigation without any further commitment with regard to the time frame within which the proceedings against the appellants will be concluded, we issue the following directions:-

- (i) The Board shall complete the investigation, qua the appellants, within a period of eight weeks from today and take further appropriate necessary action, if any, within four weeks thereafter.

- (ii) In case the Board fails to adhere to this time limit, the interim order dated December 28, 2011 as confirmed by the order September 7, 2012 qua the appellants, shall stand vacated.

9. We make it clear that we are not expressing any view on merits of the case and the Board can continue with its investigation in accordance with law.

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

Sd/-  
P. K. Malhotra  
Member &  
Presiding Officer (*Offg.*)

Sd/-  
S.S.N. Moorthy  
Member

20/11/2012  
Prepared & compared by-ddg