

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 21.04.2017

Date of Decision : 28.04.2017

Appeal No. 311 of 2016

Neesa Technologies Limited
9th Floor, Cambay Grand,
B/h, PERD Center, Near Sola Overbridge,
Thaltej, Ahmedabad (Gujarat)......Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051......Respondent

Mr. R.K. Jha, Advocate for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Anubhav Ghosh, Advocate
i/b The Law Point for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. This appeal is preferred by the appellant aggrieved by the order of the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) dated June 2, 2016. By the said order it was held that the appellant company and some of its Directors have violated certain provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ('ILDS Regulations' for short) and, inter alia, ordered to refund the money collected through the issue of Non-Convertible Debentures ('NCDs' for short) and restrained the appellant company and

some of its Directors from dealing in securities market for a period of 4 years from the date of completion of refund to the investors.

2. The appellant, Neesa Technologies Limited is an IT company. It is an admitted fact that during the financial year 2013-14 they issued NCDs worth Rs. 10 crore and collected Rs.5.96 crore from 341 persons.

3. We have heard the arguments put forth by the Learned Counsel for appellant Shri R.K. Jha as well Shri Mustafa Doctor, the Learned Senior Counsel for the respondent SEBI.

4. The argument of the Counsel for the appellant is that the NCD issue was a private placement issued to only less than 50 persons at a time. The total number of subscribers come to 341 since they have issued multiple (8) tranches of NCDs. Being a private placement the respondent SEBI had no jurisdiction on the matter as Registrar of Companies ('RoC' for short) and Company Law Board (now NCLT) are the authorities having jurisdiction in the matter. The RoC had declared that the NCD issue was deposits under Section 58 A of the Companies Act, 1956 and therefore having the jurisdiction of RoC only. It was further argued that the NCDs were issued under the trusteeship of IDBI Trusteeship Services Ltd. ('IDBI Trustee' for short) with rating from M/s. Brickworks Rating India Pvt. Ltd. and therefore it was a well-intentioned private placement with a genuine purpose of starting a TV channel.

5. We note that the impugned order has considered all these contentions made by the appellant before the Ld. WTM of SEBI. It is held in the impugned order that various Sections of Companies Act, 1956 is violated because the company issued the securities to more than 49 persons and hence it is a public issue and the provisions of Section 56 were not followed. In terms of Section 67(3) of the Companies Act any issue to "50 persons or

more” is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning. Similarly, the appellant has also violated provisions relating to redemption reserve as provided under Section 117C of the Companies Act, 1956. The argument that the appellant had engaged IDBI Trustee as custodian for the issue absolves them from the charge of violation has no merit. In fact, the IDBI Trustee in its letter dated November 27, 2014 confirmed that though the appellant had taken their consent for acting as the trustee for the NCD issue aggregating an amount of Rs. 10 crore the appellant had issued the same in tranches without even any intimation to them. It was also stated by the IDBI Trusteeship that the appellant has defaulted on various other compliances particularly with respect to timely payment of quarterly interest and furnishing periodical information and reports and no responsible officer of the appellant was available in the company to ensure the compliances.

6. The argument of the appellant that SEBI has no mandate in the matter is completely wrong as SEBI has been mandated under section 55A of the Companies Act, 1956 to administer various provisions of the said Act with respect to issue and transfer of securities of listed companies, companies that intend to list as well as companies that are required to list its securities while making offer and issue of securities to the public. While examining the scope of this section in the matter of Sahara India Real Estate Corporation Limited & Ors. vs Securities and Exchange Board of India reported in (2013) 1 Supreme Court Cases 1 it was held by the Apex Court as follows:-

“We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and nonpayment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India.”

“SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange.”

The question relating to what constitutes a public issue is also clarified in the order of Sahara (supra) as follows:

“... .. that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ...”.

7. Thus, the present appeal is squarely covered by the order of the Hon’ble Supreme Court in the Sahara (supra) matter and undoubtedly the appellant went for a public issue in a truncated manner. Given this the finding in the impugned order that the appellant company failed to comply with the provisions relating to public issue such as issue of prospectus, listing, provision of redemption reserve in terms of sections 56, 60, 73 and 117C of the Companies Act, 1956 as well as provisions of the ILDS Regulations while issuing the NCDs cannot be faulted.

8. Accordingly, appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

28.04.2017

Prepared and compared by:

msb