

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 114 of 2017

IN THE MATTER OF:

AMREX Marketing Pvt. Ltd. & Anr. ... Appellants

Versus

B&A Packaging (India) Ltd. ... Respondent

**Present: For Appellants : Shri Nikhil Singhvi with Ms. Nikita
Pandey, Advocates**

**For Respondent : Shri Ratnanko Banerji, Senior Advocate
with Shri Ratnesh Rai, Ms. Vanita
Bhargava, Shri Jeevan Bhallav Panda
and Ms. Shalini Sati Prasad, Advocates**

ORDER

26.07.2017 This appeal has been preferred by appellants against order dated 17th January, 2017 passed by National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Kolkata Bench, Kolkata in Company Application No. 1613/2015 in C.P. No. 177 of 2013, whereby and whereunder the petition preferred by the respondent company under Section 111-A of the Companies Act, 1956 has been allowed and the appellants/respondents have been directed to hand over share certificates and Share Transfer from within 30 days of the order to the Company and in response to that, the respondent/petitioner has been directed to pay the buy-back price which shall be the value of shares, as was prevailing on the date of the presentation of the petition or the market value, whichever is higher.

2. Learned counsel for the appellants submitted that the petition under Section 111-A of the Companies Act, 1956 was time-barred as the petition was not filed within the time prescribed under sub-Section (3) of Section 111-A of the Companies Act, 1956. On the other hand, according to the learned counsel for the respondent, the respondent had no knowledge of acquisition of shares by appellants prior to June, 2013. The respondent having come to know illegal action on 12.06.2013, the petition under Section 111-A was filed on 10.07.2013.

3. Learned counsel for the appellants next contended that buy-back, as ordered by the Tribunal, will amount to reduction of the shareholding of the 1st appellant company, which is against Regulation 29(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which is punishable under Section 15-A(b) of the 'Securities and Exchange Board of India Act', 1992 (hereinafter referred to as 'SEBI Act') only for certain technical violation, the 1st appellant company should not suffer.

4. From the perusal of the impugned order, we find that the appellants have already violated provisions of the SEBI Regulations, for which they have been punished by Securities and Exchange Board of India (SEBI) in terms of Section 15A(b) of the SEBI Act. The aforesaid fact has been taken into consideration by the Tribunal while deciding

the question of transfer under Section 111-A of the Companies Act, 1956, which reads as follows :

“In this case, admittedly respondent nos.1 and 2 have committed violation of SEBI Regulations for which penalty has been imposed by Adjudicating Authority under the SEBI Act the mischief remains undone, for which proceeding lies under section 111-A(3) of the Companies Act as the power exercised by the Company Law Board and the power exercised by the SEBI fall in different and distinct jurisdictional fields. Undoubtedly, SEBI has imposed penalty for the violation of SEBI regulations but section 111-A(3) empowers the Tribunal to direct the parties so that the mischief is undone. In the present case, respondent nos. 1 and 2 have acquired shares in excess of 5% of the shareholding in violation of regulation 29(1) of the Takeover Regulations 2011, which is punishable under section 15A(b) of SEBI Act. Therefore, whatever shares which have been acquired in excess of 5% in violation of SEBI regulations, in the interest of justice, should be offered for buyback to

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the company at the market value of the share which was on the date of the presentation of the petition under section 111A(3). Therefore company petition deserves to be allowed.

ORDER

Company petition is hereby allowed and the company is authorised to buyback the shares at the rate which was prevailing on the date of presentation of the petition or market value, whichever is higher. The respondent nos. 1 and 2 are directed to hand over the share certificate and Share Transfer Form within 30 days of the order to the Company and in response to that petitioner will be liable to pay the buyback price which shall be the value of shares which was prevailing on the date of the presentation of the petition or market value whichever is higher. As a sequel to the disposal of the Company Petition, C.A. no. 1613/2015 shall stand disposed of as infructuous."

5. In view of the fact that the appellants have violated the provisions of the SEBI Act, and having been already punished, we are not inclined to sit in appeal over the order passed by SEBI to decide whether violation was technical in nature or not. In so far as the transfer of shares in the name of the respondent is concerned, we find no illegality in the impugned order. In the absence of any merit, the appeal is dismissed. However, in the facts and in the circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)