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Before the Sole Arbitrator

In the matter of Arbitration under Master Circular for Online Resolution of Disputes in
the Indian Securities Market

Matter No: NSE-LC-2024-04-878624

CORD Case Id: SNSEI0624A0206

Between

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Applicant

And

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

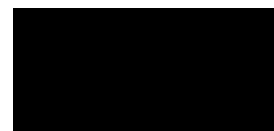
Respondent

ARBITRAL AWARD

CORD (Centre for Online Resolution of Dispute) is an independent institution facilitating and administering electronic Alternative Dispute Resolution via its online platform, <https://platform.resolveoncord.com>, also referred to as Online Dispute Resolution ("ODR") Institution, having its registered office at Bangalore.

CORD has been empanelled by the National Stock Exchange in accordance with the SEBI Master Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated August 11, 2023 ("SEBI Circular") as may be amended/modified from time to time, for undertaking time-bound online Conciliation and online Arbitration.

The above-mentioned matter was referred to CORD via SMARTODR.IN ("ODR Portal"), a common Portal established by the Market Infrastructure Institutions ("MII") in accordance with the SEBI Circular, for harnessing online Conciliation and online Arbitration for resolution of disputes arising in the Indian Securities Market. Further, the parties have accepted the terms and conditions of ODR Portal.



The undersigned has been appointed as Sole Arbitrator on 20th of August 2024 by CORD, in the present matter.

1. Brief Facts of the Case:

This case involves [REDACTED] (Applicant) and [REDACTED] (Respondent). [REDACTED] held 60,000 shares of [REDACTED] and was entitled to 14,285 Rights Entitlements (REs) during the company's Rights Issue in October 2022. He also purchased an additional 65,000 REs from the secondary market, bringing his total REs to 79,285. However, he failed to apply for shares through the ASBA mechanism by the closing date of **20th October 2022**, resulting in the extinguishment of his REs.

On **3rd November 2023**, [REDACTED] attempted to pay ₹1,70,513 as Call Money via a bank draft, which was subsequently refunded without prior notice. He claimed that he did not receive **Addendum 10** document and alleged he was not reminded like other investors were. [REDACTED] also requested access to the minutes of the Securities Issue Committee (SIC) meeting held on **29th March 2023**, but the company declined his request.

[REDACTED] argued that the Respondent's lack of communication and procedural lapses deprived him of a potential profit of ₹29,26,737. He cited his Call Money payment as proof of his intent to participate in the Rights Issue. The Respondent, on the other hand, maintained that they adhered to SEBI regulations and were not responsible for Mr. Bankoti's failure to apply for shares or his financial losses arising from secondary market transactions. The company refunded the Call Money on **16th January 2024** due to the fact that Mr. Bankoti did not hold any partly paid-up shares.

2. Hearing

The first virtual hearing took place on **13th September 2024** via Zoom under the SEBI-NSE empanelled ODR institution, CORD. However, the Applicant was unable to attend as his son informed the Case Manager that Mr. Bankoti had met with an accident.

The second virtual hearing was conducted on **4th October 2024** via Zoom, again under CORD. Despite multiple attempts to contact the Applicant, he failed to attend. After waiting for 15 minutes, the Tribunal proceeded with the hearing, allowing the Respondent to present its case.

Appearance in 1st and 2nd Hearing:

For Applicant:

None

For Respondent:

- i)
- ii)

3. Submissions made by the Applicant

Here are the key points from the Applicant's statement:

- (i) For Application Money (₹2.50 per partly paid-up Rights Entitlement), only a single notice was sent to the investors, whereas for Call Money (₹2.50 per partly paid-up Rights Equity Share), five notices, including four reminders, were sent.
- (ii) The Applicant received only one notice on 5th Oct 2022 for Application Money and had his Rights Entitlements (REs) extinguished on 4th Nov 2022 without any reminders.
- (iii) Despite purchasing 65,000 REs (40,000 on 12th Oct and 25,000 on 14th Oct) and paying ₹1,70,513 on 3rd Nov 2023 towards Call Money with penal interest, the Applicant's REs were extinguished on 4th Nov 2022, and the amount was refunded on 16th Jan 2024.
- (iv) The Applicant neither withdrew his application nor renounced the REs, indicating his clear intention to invest in the Respondent's company.
- (v) The Applicant did not receive the document Addendum10 dated 10th Oct 2022, either in electronic or physical form.
- (vi) The Applicant referred to SEBI's FAQs on Rights Entitlement (RE) under Rights Issue Process, which confirmed that persons buying REs through on-market or off-market renunciation were eligible to apply for the shares or securities offered under the Rights Issue.
- (vii) The Applicant requested the Respondent to share the minutes of the Securities Issue Committee (SIC) Board Meeting held on 29th Mar 2023, where sending reminder-cum-forfeiture notices for Call Money payments was approved. This request is made under Sections 118 and 119 of the Companies Act, 2013.
- (viii) The Applicant requested for reversal of 79,285 extinguished REs. Alternatively, if the REs are not reinstated, the Applicant's monetary claim amounts to ₹29,26,737 based on the market value of 65,000 shares (₹47.65 per share as of 31st May 2024) minus the refunded Call Money (₹1,70,513).

4. Submissions made by the Respondent

- (i) The Respondent argued that they complied with SEBI regulations and provided all shareholders, including the Applicant, with clear instructions.
- (ii) The Respondent pointed out that the Applicant failed to apply for shares through the ASBA mechanism within the stipulated time, leading to the extinguishment of his REs.
- (iii) The Respondent argued that they had no obligation to issue further notices beyond the initial communication for the offer letter.

- (iv) The Respondent stated that since the Applicant did not hold any partly paid-up shares, the Call Money was rightfully refunded.
- (v) The Respondent contends that the Applicant's loss is purely speculative and does not represent an actual financial loss.
- (vi) The Respondent's refusal to share SIC meeting minutes is justified by stating that only directors or authorized officials are entitled to inspect such documents.

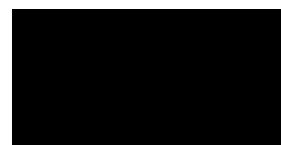
5. Issues for Determination

Based on the facts and arguments presented, the following issues have been identified for resolution:

- (i) Whether the Applicant's non-receipt of Addendum10 dated 10th October 2022 constituted a failure on the part of the Respondent to properly communicate the Rights Issue.
- (ii) Whether the Applicant's payment of ₹1,70,513 made on 3rd November 2023 constituted a valid subscription towards the Rights Issue.
- (iii) Whether the Respondent was justified in returning the Applicant's payment and extinguishing the Rights Entitlements (REs)
- (iv) Whether the extinguishment of the REs violated SEBI guidelines.
- (v) Whether the delay in refunding the Call Money without prior notice entitles the Applicant to any claims.
- (vi) Whether the refusal to grant access to the SIC meeting minutes violated the Applicant's rights.
- (vii) Whether the differential treatment regarding notices for Application Money and Call Money constitutes unfair treatment toward the Applicant.

6. Findings and Reasons

- (i) The Respondent claimed that the Letter of Offer and associated documents, forms and applications for subscribing to the Right Issues were dispatched to all shareholders via registered email or post, depending on whether their email was registered. The Applicant admitted that he received the Rights Entitlement Letter on 5th October 2022 at 10.52 AM by email. An offer was made by the Respondent. If the Applicant was interested in accepting the offer, he had to fill up the application form and make the payment within the due date i.e. 20th October 2022. The Entitlement Letter for Right Issue by the Respondent clearly stated:



Quote

PLEASE NOTE THAT CREDIT OF THE RIGHTS ENTITLEMENTS IN THE DEMAT ACCOUNT DOES NOT, PER SE, ENTITLE THE INVESTORS TO THE RIGHTS EQUITY SHARES AND THE INVESTORS HAVE TO SUBMIT APPLICATION FOR THE RIGHTS EQUITY SHARES ON OR BEFORE THE ISSUE CLOSING DATE AND MAKE PAYMENT OF THE APPLICATION MONEY. FOR DETAILS, SEE “TERMS OF THE ISSUE - PROCESS OF MAKING AN APPLICATION IN THE ISSUE” ON PAGE 299 OF THE LETTER OF OFFER.

Unquote

The Tribunal finds that non-receipt of Addendum10 dated 10th October 2022 does not in any way alter the Offer Letter of 5th October 2022. The contents of Addendum10 were more relevant to the foreign investors under the “U.S. Securities Act”. In no way, this Addendum comes in the way of taking a decision on the Offer Letter dated 5th October 2022. Non-receipt of the Addendum does not constitute a failure on the part of the Respondent. The Respondent fulfilled its duty to communicate the Rights Issue, and the Applicant’s non-receipt of the Addendum10 does not constitute a failure of communication.

- (ii) The Rights Issue closed on 20th October 2022, as clearly stated in the offer document. The Applicant made a payment of ₹1,70,513 on 3rd November 2023, well after the stipulated deadline. The Applicant’s late payment, even with interest, cannot be deemed a valid subscription to the Rights Issue, as the offer had expired. The Applicant’s failure to apply within the stipulated timeframe bars any claim to the REs. The Applicant’s payment after the Rights Issue closure does not constitute a valid subscription, and the Respondent was within its rights to reject the payment.
- (iii) The Applicant’s REs were extinguished due to non-payment of Application Money. The Respondent’s right to extinguish REs due to non-compliance with payment timelines is consistent with the terms outlined in the offer document. Additionally, since the Applicant did not hold any partly paid-up shares at the time of the Call Money deadline, the Respondent’s return of ₹1,70,513 was justified. The extinguishment of REs and return of payment was justified due to non-compliance with the payment terms.
- (iv) SEBI regulations allow investors who purchase REs from the secondary market to apply for shares under the Rights Issue. However, the Applicant did not follow the proper application process within the prescribed timeline. As such, the Respondent’s extinguishment of the Applicant’s REs does not violate SEBI guidelines. The Respondent complied with SEBI guidelines, and the extinguishment of the REs was valid.

- (v) The delay in refunding ₹1,70,513 without prior notice is an unfortunate oversight by the Respondent. While it does not entitle the Applicant to any specific rights under the Rights Issue, it demonstrates a lack of diligence on the part of the Respondent in processing the refund in a timely manner. The Respondent should have communicated the refund decision earlier, but the delay does not give rise to any claims to the Right Shares by the Applicant.
- (vi) The Applicant's request for the minutes of the SIC meeting held on 29th March 2023 was denied. Under the Companies Act, only certain categories of individuals, such as directors or authorized officials, have access to board meeting minutes. The Applicant does not fall within those categories. The refusal to grant access to the SIC meeting minutes was lawful and does not constitute grounds for a claim.
- (vii) The Applicant asserts that he was unfairly treated by not receiving multiple reminders for Call Money. However, the evidence shows that such reminders were sent only to shareholders who had applied for shares on or before 20th October 2022. Since the Applicant did not apply for the shares, there was no requirement for the Respondent to send him the reminders. Offer was made only once to all the shareholders including the Applicant. There is no requirement to send reminders of offer letters to the shareholders. There is no different treatment by the Respondent.

7. Conclusion

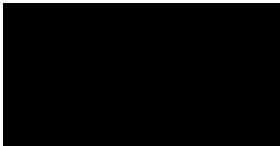

Based on the evidence and arguments presented, the Tribunal concludes that the Respondent's actions were justified and in compliance with SEBI regulations and the terms of the Rights Issue. The Applicant's claim for the reinstatement of 79,285 extinguished REs or an alternative compensation of ₹29,26,737 does not have any basis.

8. Award

In light of the facts, circumstances, and reasoning stated above, the Tribunal issues the following Award:

- (i) The Applicant's claim is dismissed.
- (ii) Each party shall bear its own costs related to this arbitration.

Place: 
Date: 15th October 2024



(Sole Arbitrator)