Ä2ITEM NO.30 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2049 OF 2010

SECURITIES & EXCHANGE BOARD OF INDIA Appellant (s)

VERSUS

S.KUMARS NATIONWIDE LTD.& ANR. Respondent(s)
(With appln.(s) for permission to file rejoinder affidavit
and office report)
[For Orders]

Date: 26/11/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN
HON'BLE MR. JUSTICE SWATANTER KUMAR

For Appellant(s) Mr. Goolam E. Vahanvati,AG.
Mr. Pratap Venugopal,Adv.
Ms. Surekha Raman,Adv.
Mr. Dileep P.,Adv.
Mr. P.K. Jha,Adv.
Mr. Varun Singh,Adv.
Ms. Namrata Sood,Adv.
for M/s. K.J. John & Co.,Advs.

For Respondent(s) Mr. Harish N. Salve,Sr.Adv.
Mr. Atul Yeshwant Chitale,Sr.Adv.
Ms. Suchitra Atul Chitale,Adv.
Ms. Sunaina Dutta,Adv.
Ms. Ankita Singhania,Adv.
Mr. Shashank Bijapur,Adv.

Mr. P.S. Sudheer,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

The civil appeal is disposed of.

[Alka Dudeja] [Madhu Saxena]
A.R.-cum-P.S. Assistant Registrar

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2049 OF 2010

Securities and Exchange Board of India ...Appellant(s)

Versus

S. Kumars Nationwide Ltd. and Anr. ...Respondent(s)

O R D E R

Heard learned counsel on both sides.

Respondent No.1 had assailed before the SAT, a decision of the Bombay Stock Exchange [for short, 'BSE'] dated 1st December, 2008, declining the grant of in-principle approval for the listing and allotment of shares. It is not disputed that SEBI was made a proforma party to the Appeal as no relief was sought against SEBI.

The Tribunal has recorded a finding that the alleged violations of Clauses 13.3.1(f) of the SEBI (Disclosure and Investment Protection) Guidelines, 2000 (for short, 'Guidelines') on account of the shares not being de-materialized and of Clause 13.3.1(g) of the Guidelines.

Guidelines for failure to give documentary proof regarding the lock-in of shares were both caused for reasons beyond the control of the First Respondent and for that reason has set aside the impugned order. SEBI does not seek to question the correctness of the orders of the Tribunal thus far.

...2/-

However, the Tribunal has made observations to the effect that if the provisions for exemption under Clause 17.2.A.1 of the Guidelines needed to be invoked it could be done by the SAT as the Appellate Authority.

In coming to this conclusion, the SAT has purported to itself exercise powers under Clause 17.2.A.1 of the Guidelines.

The Tribunal had observed:

> "We are satisfied that the technical default on the part of the appellant Company was for reasons beyond its control. We could have remitted the case back to the Board to consider the request of the appellant but, in the circumstances, we do not think it necessary to adopt that course and in the background of the aforesaid factual situation, we can issue the same direction and exercise the same powers which the Board could."

It has been contended by the SEBI that these powers cannot be directly exercised by the SAT since these powers are conferred only upon the Board, more so when there was no order passed by SEBI itself. SEBI submits that the impugned order of SAT insofar as it pertains to the exercise of powers under Clause 17.2.A.1 amounts to passing an order on an issue not agitated before it and further is an exercise of jurisdiction not vested in the SAT and needs to be set aside to this extent.

This contention of the SEBI appears to be correct. The observations to the contrary in the impugned order do not appear to be correct in law. However, since pursuant to the Order dated 7th August, 2009, the BSE has already listed the shares, no further orders are called for in this appeal and

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this civil appeal is disposed of with the aforesaid clarification.

We make it clear that we have not interfered with the directions to the BSE to consider the listing of the shares nor with the subsequent decision of the BSE to permit listing of shares.

.....CJI.
[S.H. KAPADIA]

.....J.
[K.S. PANICKER RADHAKRISHNAN]

.....J.
[SWATANTER KUMAR]

New Delhi,
November 26, 2010.