



## Noteworthy Rulings In Corporate Laws

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### **SEBI prohibits Brooks Laboratories, its Senior Management from raising any further capital / dealing in securities market for 5-years, observes grave disclosure lapses in IPO document**

#### **Case Details:**

1. In the matter of Brooks Laboratories Limited, its Chairman, Managing Director, CEO, CFO & CS ('Noticees')
2. Order passed by Mr. S Raman, SEBI, Wholetime Member
3. Order dated September 10, 2015

#### **Facts:**

1. Brooks Laboratories Ltd. ('Brooks') came out with an IPO to raise Rs. 63 crores through the issue of equity shares and appointed D&A Financial Services (P) Ltd. as Book Running Lead Manager ('BRLM') for the IPO shares;
2. SEBI received several complaints w.r.t IPO, wherein it was alleged that on listing day, the scrip price went down and that a fraud was committed by Brook's management in collusion with BRLM and therefore, SEBI conducted investigation for the period;
3. The investigation revealed that Brooks suppressed material facts, made mis-statements in its RHP/Prospectus, siphoned off and diverted IPO's proceeds. Investigation also revealed that BRLM had failed to exercise due diligence regarding veracity and adequacy of disclosure in the offer documents, wherein it issued due diligence certificates to Brooks without sufficiently verifying the facts;
4. SEBI issued show cause notice to Brooks, its Chairman, Managing Director, CEO, CFO & CS wherein it was alleged that the Brooks had failed to make disclosures of material facts in the RHP/Prospectus w.r.t. funds raised through inter-corporate deposits, appointment of a company as 'project contractor' and advance payment of full amount of the contract to them, siphoning off /diverting IPO proceeds, etc.;

5. SEBI observed that Brooks had raised funds through ICDs, prior to the IPO and routed the funds through a web of inter-connected entities in the guise of ICDs and the liability of the same was attached to the proceeds of IPO. As a result, the Noticees were able to divert IPO proceeds to the tune of Rs. 8 crores.

#### **Final Decision and its basis:**

1. SEBI rejected Noticees contention all the acts done by them were bona-fide in nature, under the supervision / instructions of the Management and that there was nothing in the Show Cause Notice to prove that they made any gains or derived any unfair advantage and that the violations as alleged were 'technical, venial and unintentional'. SEBI held that some of the Noticees were part of the board meetings when the resolutions were passed for raising funds through ICDs and were also involved in decisions of transferring the funds (siphoning off funds), in appointing project contactors, etc;
2. SEBI held that violations were fraudulent in nature and held that Brooks, though a legal entity, could not act by itself, and it could act only through its board of directors / Management / Key Managerial Personnel etc. With respect to the allegation of siphoning off of funds, SEBI held that the persons in charge of day-to-day affairs of the company i.e. Chairman, Managing Director, CEO, CFO & CS, are responsible for such fraudulent activities;
3. SEBI rejected Noticees' contention that BRLM's advised against disclosing the relevant facts, and held that Noticees cannot absolve themselves of their responsibility from making prompt, true and fair disclosure of all material developments in RHP/Offer Document;
4. Accordingly, SEBI prohibited the Noticees from raising any further capital / dealing in securities market for 5 years for its grave disclosure lapses in IPO Offer Document amounting to non-compliance of SEBI (ICDR) Regulations & SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations.



**CLB imposes heavy cost on former employee for filing frivolous mismanagement petition against Co., term petition as 'abuse of law'**

**Case Details:**

1. In matter of M/s Neyveli Lignite Corporate Limited
2. Order passed by Mr. Kanthi Narhari, Judicial Member, CLB, Chennai Bench.
3. Order dated June 19, 2015.

**Facts:**

1. Petition under Section 237(b), 397, 398 and 408 of the Companies Act, 1956, was filed by the former Senior Manager of Neyveli Lignite Corporation Ltd. ('Neyveli') against Neyveli's Chairman and MD, Director Finance, CS and Principal Director of Commercial Audit;
2. The Petitioner had prayed before the CLB Bench that a Special Committee be formed to investigate and direct CBI authorities to conduct effective investigation into huge corruption and loss to the public exchequer running into several crores of rupees and directed registration of FIRs and prosecute those implicated by such independent and impartial enquiry in accordance with law;
3. During petitioner's tenure in Neyveli, he found several irregularities in Neyveli's accounting statements and stated that Board of Directors were wholly responsible for effectively carrying out and discharging the day-to-day activities including financial activities;
4. The Petitioner also sought direction to call for entire records, documents from CBI and sought direction to CBI and other enforcement authorities to produce regular and periodic status report in matter of Rs. 1000 crore scam;
5. The Petitioner alleged that Annual Report and Balance Sheet were concocted, manipulated and forged with an intention to cause wrongful loss to the public exchequer and also to Neyveli. Petitioner also submitted that there is no other alternate except to approach CLB for the grievances made in the petition.

**Final Decision and its basis:**

- 1) CLB noted that Neyveli has 96,639 shareholders and 1,67,77,09,600 shares, whereas petitioner held merely 200 shares, wherein he does not meet with the eligibility criteria to file petition under section 397 and 398 of Cos. Act, 1956. CLB held that the petition is not maintainable and liable to be dismissed;
- 2) CLB observed that the petition is a sheer abuse of process of law, as the petitioner has not made company as 'party' to the petition and has made futile exercise by impleading retired employees and individuals who are nothing to do with the affairs of the company, amounting 'misjoinder of parties';
- 3) CLB held that even otherwise, the petition needs to be dismissed on the merits of the case for the reason that petitioner has made irrelevant averments and sought various irrelevant reliefs, which this Bench cannot even prima facie look into those allegations made by the petitioner;
- 4) CLB held that it is a fit case for imposing heavy cost on petitioner for wasting the valuable time of CLB Bench.

**Note:**

1. The Article is compilation of noteworthy and impactful orders or judgments in Corporate Laws passed by Courts /Tribunals in recent past;
2. Authors feels that these Orders / judgment have very significant impact in day to day working of CS and urges every Student / Member (either in Employment or Practice) to go through the same;
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