

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.155 of 2011

Date of Decision: 9.11.2011

M/s. Infomerics Valuation and Rating Pvt. Ltd.
Flat No.104/108, 1st Floor,
Golf Apartments, Sujan Singh Park,
New Delhi – 110001.

..... 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. Vinay Chauhan, Advocate with Mr. Anant Upadhyay and Mr. Prashant Ingle,
Advocates for the Appellant.

Mr. Vikram Nankani, Advocate with Ms. Aparna Kalluri, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

The appellant before us is a company having its registered office in New Delhi. It was promoted by three persons/entities namely Coment (Mauritius) Limited through ACE Step Management Ltd., V. Mallika & Associates, Chartered Accountants and Infomerics India Foundation. The appellant filed an application with the Securities and Exchange Board of India (for short the Board) for getting itself registered as a Credit Rating Agency in terms of the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (hereinafter called the regulations). Regulation 4(e) of the regulations provides that the Board shall not consider any application for registration unless the applicant is promoted by a company or a body corporate having a continuous net worth of minimum rupees one hundred crores as per its audited annual accounts for the previous five years prior to filing of the application with the Board for the grant of certificate under the regulations. An application for the grant of a certificate is to be

made in Form A as prescribed in the First Schedule to the regulations. It is not in dispute that the appellant filed the application in the prescribed form which lays down the eligibility criteria. According to this criteria, the applicant is required to enclose a Chartered Accountant's certificate certifying the continuous net worth to be of rupees one hundred crores for five years in the case of a promoter referred to in regulation 4(e). In other words, the applicant has to substantiate the fact that one of its promoters had a net worth of rupees one hundred crores for five years by submitting a certificate from the Chartered Accountant. It is pertinent to mention here that neither the regulations nor the eligibility criteria in Form A requires the applicant to produce the annual accounts of the promoter. On receipt of the application dated June 11, 2009, the Board issued a letter to the appellant requiring it to produce the annual accounts of one of its promoters for the five years preceding the date of the application. It is doubtful whether the Board could have asked for this information without doubting the veracity or correctness of the certificate of the Chartered Accountant that accompanied the application. Be that as it may, it is common ground between the parties that this information has since to be furnished. After the appellant furnished in March 2011 the annual accounts of its promoters for five years ending December 2008, the Board requires it to produce accounts for another two years for the period ending December 2010. The appellant insisted that it was not required to produce these accounts on which the whole time member by his order dated June 24, 2011 required the appellant to produce the same by July 15, 2011 failing which the application would be rejected. The appellant sought further time to produce the accounts which request was declined by the Board and by order dated July 21, 2011 the application has been rejected. It is against the orders dated June 24, 2011 and July 21, 2011 that the present appeal has been filed.

2. We have heard the learned counsel for the parties who have taken us through the record. An application was filed on June 11, 2009 and it is the requirement of regulation 4(e) that the net worth of one of the promoters of the applicant should be rupees one hundred crores as per the audited annual accounts for the pervious five years prior to the filing of the application. As already mentioned above, Form A prescribes that the applicant should produce a certificate from a Chartered Accountant to substantiate the fact regarding the net worth of its promoter which was done and the Board has at no stage

questioned its veracity. Without doing so it (the Board) could not have asked for the annual accounts of the promoter. However, the appellant produced those accounts as well which are for the five years preceding the date of the application. After these accounts were produced in March 2011, the Board now wants the appellants to produce accounts for another two years for the period ending December 2010. This is not the requirement of the regulations. Since the appellant did not produce the accounts for these two years the application for registration as a Credit Rating Agency as been rejected. We are clearly of the view that the ground on which the application has been rejected is erroneous and the impugned orders cannot be sustained. The learned counsel appearing for the Board drew our attention to regulation 7 of the regulations wherein the Board can require an applicant **“to furnish such further information or clarification as the Board may consider necessary, for the purpose of processing of the application.”** We do not think that this regulation would help the Board. Such further information as referred to in regulation 7 would mean any information in addition to the one already furnished by the applicant alongwith the application. Surely, the Board was not asking for any further information. It was only seeking the basic material on the basis of which the Chartered Accountant had furnished a certificate certifying that one of the promoters of the appellant had a net worth of rupees one hundred crores for the previous five years. This information could be asked for if the Board at any stage had doubted the correctness or veracity of the certificate of the Chartered Accountant. Learned counsel for the Board concedes before us that no clarification was sought from the appellant in regard to the certificate furnished by the Chartered Accountant. We have gone through the regulations and also the prescribed Form A in which the application for registration was required to be filed and find that wherever the regulations wanted the applicant to produce the annual accounts, a specific provision in that regard has been made in the regulations. For instance, clause 8 of Form A requires an applicant to produce his annual accounts for the period of three years. When it came to substantiating the fact that the promoter of the applicant had a net worth of rupees one hundred crores for the previous five years, the regulations do not require the annual accounts of the promoter to be produced. Instead, the regulations read with Form A prescribe that a certificate from the Chartered Accountant should be filed for this purpose. We are, therefore, satisfied that the Board

was not justified in requiring the appellant to produce the annual accounts of its promoters for the two years ending December 2010. Such a direction would require the appellant to produce the accounts of its promoters for a period of seven years preceding the date of the application which is contrary to the requirement of regulation 4(e) of the regulations. In this view of the matter, the impugned orders cannot be sustained.

In the result, the appeal is allowed and the impugned orders dated June 24, 2011 and July 21, 2011 set aside and the case remitted to the Board to consider the application of the appellant without requiring it to produce the accounts for the two years ending December 2010. Since the application has remained pending since June 2009, the Board is directed to dispose of the same expeditiously but not later than 8 weeks from the date of receipt of a copy of this order. There is no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

9.11.2011

Prepared and compared by
RHN