

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date: 10.08.2017**

**Appeal No. 174 of 2017**

J. Kumar Infraprojects Ltd. ...Appellant

Versus

Securities and Exchange Board of India & Ors. ...Respondents

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ankit Lohia, Ms. Rishika Harish and Mr. Amit Dey, Advocates i/b Mindspright Legal for the Appellant.

Mr. Darius Khambata, Senior Advocate with Mr. Shyam Mehta, Senior Advocate, Mr. Tomu Francis and Mr. Vivek Shah, Advocates i/b ELP for Respondent No. 1

Mr. Rashid Boatwalla, Advocate with Ms. Rashi Agarwal, Advocate i/b Manilal Kher Ambalal & Co. for Respondent No. 2

Mr. Ajay Khaire, Advocate with Mr. Nair Ranjith Ramesh, Advocate i/b The Law Point for Respondent No. 3

**WITH**  
**Appeal No. 173 of 2017**

Prakash Industries Ltd. ...Appellant

Versus

BSE Limited & Ors. ...Respondents

Mr. Pradeep Sancheti, Senior Advocate with Mr. Prakash Shah and Mr. Robin Shah, Advocates i/b Prakash Shah & Associates for the Appellant.

Mr. Ajay Khaire, Advocate with Mr. Nair Ranjith Ramesh, Advocate i/b The Law Point for Respondent No. 1

Mr. Rashid Boatwalla, Advocate with Ms. Rashi Agarwal, Advocate i/b Manilal Kher Ambalal & Co. for Respondent No. 2

Mr. Vikram Nankani, Senior Advocate with Mr. Tomu Francis, and Mr. Vivek Shah, Advocate for the Respondent No. 3

None for Respondent No. 4

## ORDER:

1. These two appeals are filed by the appellants to challenge the communication issued by SEBI on 07.08.2017 to the three stock exchanges viz; Bombay Stock Exchange Limited (“BSE” for convenience), National Stock Exchange of India Limited (“NSE” for convenience) & Metropolitan Stock Exchange of India Limited, as well as the two orders both dated 07.08.2017 passed by BSE & NSE in compliance with the directions contained in the SEBI communication dated 07.08.2017.

2. Impugned communication of SEBI dated 07.08.2017 addressed to the three stock exchanges reads thus:-

**“Subject: Database of listed Shell Companies”**

*SEBI is in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 09, 2017 from the Ministry of Corporate Affairs (MCA) on the above captioned matter, vide which MCA has identified a list of 331 companies as suspected shell companies for initiating necessary action as per SEBI laws/regulations. Copy of the list of 331 companies is enclosed herewith.*

*1. In this regard exchanges are advised to identify the listed companies out of the list of 331 companies on their exchange and take following measures:*

*a) Trading in all such listed securities shall be placed in Stage VI of the Graded Surveillance Measures*

*(GSM) with immediate effect. If any listed company out of the said list is already identified under any stage of GSM, it shall also be moved to GSM stage VI directly. Under the Stage VI of GSM, trading in these identified securities shall be permitted to trade once in a month under trade to trade category. Further, any upward price movement in these securities shall not be permitted beyond the last traded price and Additional Surveillance Deposit of 200% of trade value shall be collected from the Buyer which shall be retained with Exchanges for a period of five months.*

- b) The shares held by the promoters and directors in such listed companies shall be allowed to be transferred by depositories only upon verification by concerned exchanges and they shall not be allowed to transact in the security except to buy securities in the said listed company until verification of credential/fundamental by Exchanges is completed.*
- c) Exchanges shall initiate a process of verifying the credentials/fundamental of such companies. Exchanges shall appoint an independent auditor to conduct audit of such listed*

*companies and if necessary, even conduct forensic audit of such companies to verify its credentials/fundamentals.*

*d) On verification, if Exchanges do not find appropriate credentials/fundamentals about existence of the company, Exchanges shall initiate the proceedings for compulsory delisting against the company, and the said company shall not be permitted to deal in any security on exchange platform and its holding in any depository account shall be frozen till such delisting process is completed.*

*2. Out of the said list of 331 shell companies, if securities of any of the listed companies are under suspension, the trading in such securities shall be placed under GSM Stage VI directly on revocation of suspension by Exchanges.*

*Yours faithfully,*

***Sunil Kadam***

***Enclosures:***

*List of 331 Companies”*

3. Relying on a decision of the Apex Court in case of NSDL v/s SEBI reported in (2017) 5 SCC 517 counsel for SEBI raised a preliminary objection regarding the maintainability of these appeals. They submit

that the impugned communication dated 07.08.2017 is an administrative direction issued to three stock exchanges and therefore this Tribunal has no jurisdiction to entertain the appeals filed by the appellants under Section 15T of the SEBI Act to challenge the administrative decision of SEBI dated 07.08.2017.

4. We see no merit in the preliminary objection raised by SEBI. In the case of NSDL (Supra) the Apex Court after considering the scope of the expression 'administrative orders' held that in that case the administrative circular issued by SEBI was referable to Section 11(1) of SEBI Act and hence falls outside the appellate jurisdiction of this Tribunal.

5. In the present case, the directions issued by SEBI to the three exchanges under the impugned communication are:-

- a) Identify as to whether any of the 331 companies suspected to be the shell companies by the MCA vide its letter dated 09.06.2017 are listed on their exchanges.
- b) If so, move the securities of those listed companies under Stage VI of GSM with immediate effect so that the said securities are not permitted to trade on daily basis but are permitted to trade once in a month under the trade to trade category.

- c) No upward price movement in the securities of those companies shall be permitted beyond the last traded price.
- d) While trading once in a month under Stage IV of GSM, Additional Surveillance Deposit of 200% of trade value shall be collected from the buyers of those securities which shall be retained with exchanges for a period of 5 months.
- e) The shares held by the promoters and directors in such listed companies shall be allowed to be transferred by depositories only upon verification by concerned stock exchanges regarding the credentials/fundamentals of such companies and they shall not be allowed to transact in the securities except to buy securities in the said listed company until verification of credentials/ fundamentals of those companies are completed by the exchanges.

6. Thus, the impugned communication is not a general direction given by SEBI to the three stock exchanges in the interests of investors or securities market as contemplated under Section 11(1) of SEBI Act, but a specific direction given in respect of only 331 listed companies which MCA suspected to be shell companies. Moreover, specific direction given in the impugned communication prejudicially affects the interests of only those companies covered under the list of 331 companies identified by the MCA as 'suspected to be shell companies'. Therefore,

in the facts of present case, the impugned communication of SEBI which has serious civil consequences cannot be said to be an administrative order. In other words, the impugned communication which prejudicially impairs the rights and obligations of the appellants, its promoters and directors would fall in the category of a quasi judicial order and hence appealable before this Tribunal under Section 15T of SEBI Act.

7. It is contended on behalf of SEBI that appeal under Section 15T of SEBI Act is maintainable only against an order passed by the Board or the Adjudicating Officer of SEBI and therefore, the impugned communication issued by the Chief General Manager of SEBI is not appealable under Section 15T of SEBI Act. We see no merit in the above contention, because, it is admitted by counsel for SEBI during the course of arguments that the impugned action was approved by the WTM of SEBI on 28.07.2017 and only thereafter on 07.08.2017 the Chief General Manager has issued the impugned communication. Since the impugned communication which is approved by the WTM of SEBI seeks to suspend the trading in the securities of the appellants, on day to day basis the impugned communication is in effect referable to a quasi judicial order passed under Section 11(4) of SEBI Act and not an administrative order passed under Section 11(1) of the SEBI Act. Accordingly, we see no merit in the preliminary objection raised by SEBI.

8. Mr. Dwarkadas and Mr. Sancheti, Learned Senior Advocates appearing on behalf of respective appellant submitted that SEBI has issued the impugned communication on 07.08.2017, without giving an opportunity of hearing to the appellants and the same is ex-facie,

arbitrary, unreasonable, whimsical and is issued without application of mind. It is submitted that without investigating into the suspicion entertained by MCA that 331 companies could be shell companies, SEBI could not have issued the impugned communication without giving an opportunity of hearing to the appellants who are covered under the list of 331 companies. It is submitted that by no stretch of imagination SEBI could consider the appellants as suspected shell companies especially when the appellants do not satisfy any one of the 10 criteria prescribed by the Ministry of Finance for considering a company to be a shell company. It is submitted that the GSM framework even according to SEBI (set out in the notice of SEBI dated 23.02.2017) is applicable to companies that witness abnormal price rise that is not commensurate with financial health and fundamentals of the company which inter- alia includes factors like earning, book value, fixed assets, net worth, P/E multiple, etc. In the present case, it is neither alleged that there was any abnormal price rise nor the financial health and fundamentals of the company have been gone into by SEBI before issuing the impugned communication. Even BSE and NSE have not investigated as to whether appellants could be considered as shell companies. Counsel for the appellants submitted that the appellants have impeccable track record and their annual turnover in last 3 years is in excess of ₹ 1000 crore and in the last 3 years appellants have paid more than ₹ 100 crore per year as income tax/ excise duty. It is submitted that the orders in hand are also to the tune of several thousands crores of rupees. In these circumstances, considering the appellants as suspected shell companies' has seriously prejudiced the reputation of the appellants in the securities market.

Accordingly, it is submitted by counsel for appellants that the impugned decision of SEBI deserves to be quashed or stayed forthwith.

9. Counsel for SEBI on the other hand submit that in the present case SEBI has merely implemented the directions contained in the letter dated 09.06.2017 received from the Ministry of Corporate Affairs (“MCA”) and no independent investigation has been carried out by SEBI. Therefore, in the facts of present case, since SEBI has only implemented the decision of the MCA, instead of challenging the decision of MCA before an appropriate forum, appellants are not justified in filing the present appeal.

10. Mr. Nankani, Learned Senior Advocate for SEBI furnished a copy of the letter dated 09.08.2017 addressed by SEBI to the three stock exchanges. By that letter, the three stock exchanges have been requested to seek the documents specified therein from the 331 companies for the purpose of verification of their credentials/ fundamentals. It is further stated in that letter that the companies may be advised to produce auditors certificate giving detailed information in respect of the items specified therein. In view of the above letter issued by SEBI, it is submitted that if the appellants submit auditor’s certificate containing requisite information, then appropriate order would be passed in case of the appellants.

11. During the course of arguments, counsel for SEBI submitted that SEBI would consider the representations made by the appellants either on 09.08.2017 or on 10.08.2017 in the morning. Accordingly, hearing of

these appeals were adjourned till 2:15 p.m. on 10.08.107 i.e. today. Counsel for SEBI were called upon to take instruction as to when the letter of MCA dated 09.06.2017 was placed before the Chairman of SEBI or the Board and when decision was taken to issue the impugned communication dated 07.08.2017.

12. Today when both appeals are taken up for hearing it is submitted that the WTM of SEBI has heard the appellants and the order is awaited subject to the appellants furnishing additional information sought by the WTM of SEBI. Since the delay in disposal of the representation is causing serious prejudice to the appellants we proceed to consider the plea of the appellants for grant of interim relief.

13. As rightly contended by counsel for appellants, letter addressed by MCA on 09.06.2017 merely required SEBI to investigate as to whether the 331 companies named therein which were suspected to be shell companies, were in fact shell companies and whether the said companies had any credentials/ fundamentals and if so SEBI was required to take action in accordance with SEBI Act and the regulations framed thereunder.

14. Without conducting any investigation in respect of 331 companies which as per the letter of MCA dated 09.06.2017 were suspected to be shell companies, SEBI on 07.08.2017 (nearly after two months) sought to take action on the letter of MCA, by directing the three stock exchanges to suspend the trading in the securities of those companies on daily basis, by moving the securities of those companies under Stage VI of GSM

against all those companies out of the 331 companies which were listed on their exchanges. Thus, it is apparent that SEBI passed the impugned order without any investigation.

15. Even if the letter of MCA dated 09.06.2017 was considered by SEBI to be a direction given for implementation without investigation, very fact that SEBI took nearly two months to comply with the directions given by the MCA clearly shows that there was no urgency in issuing the impugned communication without even investigating the credentials/fundamentals of those companies.

16. In the facts of these two appeals, we are prima facie of the opinion, that the impugned communication issued by SEBI on the basis that the appellants are 'suspected shell companies' deserves to be stayed. Accordingly while staying the communication of SEBI dated 07.08.2017, qua the two appellants, we direct BSE and NSE to forthwith reverse their decisions both dated 07.08.2017 in case of these two appellants.

17. Stand over to September 04, 2017.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

Sd/-  
Jog Singh  
Member

Sd/-  
Dr. C.K.G. Nair  
Member