

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 17.10.2018

Misc. Application No. 324 of 2018
In
Appeal No. 6 of 2018

1. Price Waterhouse & Co. now known as Price Waterhouse & Co. Bangalore LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 007567S/S200012 having address at 5th Floor, Tower D, The Millennia, #1 & 2 Murphy Road, Ulsoor, Bangalore 560008.
2. Price Waterhouse & Co. now known as Price Waterhouse & Co. Chartered Accountants LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 304026E/E300009 having address at Plot No. Y-14, Block EP, Sector V, Salt Lake Electronics Complex, Bidhan Nagar, Kolkata-700091.
3. M/s Lovelock & Lewes, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 301056E having address at Plot No. Y-14, Block EP, Sector V, Salt Lake Electronics Complex, Bidhan Nagar, Kolkata-700091.
4. M/s Lovelock & Lewes now known as Lovelock & Lewes LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 116150W/W100032 having address at 252, Veer Savarkar Marg, Shivaji Park, Dadar (West), Mumbai – 400028.
5. Price Waterhouse, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 301112E having address at Plot No. Y-14, Block EP, Sector V, Salt Lake Electronics Complex, Bidhan Nagar, Kolkata-700091.

6. Price Waterhouse now known as Price Waterhouse Chartered Accountants LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 12754N/N500016 having address at Sucheta Bhawan, 11A Vishnu Digambar Marg, New Delhi – 110002.
 7. Price Waterhouse & Co. a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No.50032S having address at 8th floor, Prestige Palladium Bayan, 129 – 140, Greams Road, Chennai – 600006.
 8. Price Waterhouse & Co. now known as Price Waterhouse & Co LLP a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 016844N/N500015 having address at Sucheta Bhawan, 11A Vishnu Digambar Marg, New Delhi – 110002.
 9. M/s Dalal & Shah now known as Dalal & Shah Chartered Accountants LLP a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 102020W/W100040 having address at 1701, 17th Floor, Shapath V. Opp. Karnavati Club, S.G. Highway, Ahmedabad 380051, Gujrat.
 10. M/s Dalal & Shah now known as Dalal & Shah LLP a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 102021W/W100110 having address at 252, Veer Savarkar Marg, Shivaji Park, Dadar (West), Mumbai – 400028.
-Appellants/
Applicants

Versus

Securities and Exchange Board of India
A statutory body constituted under the provisions of Securities and Exchange Board of India Act, 1992, having its office at SEBI Bhavan, Plot No. C-4A, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051.

.....Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Shyam Mehta, Senior Advocates, Mr. Somasekhar Sundaresan, Mr. Zerick Dastur, Ms. Sneha Sheth, Ms. Archana Uppuluri and Mr. Kunal Kothary, Advocates i/b Zerick Dastur Advocates & Solicitors for Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Ms. Shreya Parikh, Mr. Anupam Surve and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Dr. C. K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. By this Miscellaneous Application Applicants / Original Appellants seek extension of the period of interim relief granted by this Appellate Tribunal vide order dated 15.02.2018. By the said order Applicants / Appellants were allowed to continue with the auditing assignments of their existing clients till 31.03.2019 or till a newly constituted Bench takes an appropriate final decision in the matter, whichever is earlier, which is now sought to be extended till 31.03.2020 by this Miscellaneous Application..

2. Learned Senior Counsel for the Applicants / Appellants Shri Janak Dwarkadas argued in detail that the prayer to extend the period of interim relief till 31.03.2020 is because seven clients of the Applicants / Appellants follow calendar year as their accounting year and the remaining clients have financial year as their account year. The former set of clients need to take decision regarding appointment of their auditor any time now and the later set of clients also need to take a similar decision in the next few months. Further, decision regarding the appointment / change of auditor is a time consuming one with onerous procedural requirements. It is also submitted by the Applicants / Appellants that a few clients have already written to them seeking update of the appeal pending before this Appellate Tribunal so

that those clients could take an early decision relating to engaging their auditor for the ensuing accounting year.

3. Through the interim relief already granted by this Appellate Tribunal the Applicants / Appellants have been allowed to carry out the auditing assignments of only their existing clients, list of which was given to the Appellate Tribunal as ordered. As such, the Applicants / Appellants are already suffering huge financial loss as they are not allowed to take fresh / new clients. This itself is a huge burden imposed by a sweeping impugned order which has violated the premises set forth by the Bombay High Court. Further, there are serious questions of law which need to be addressed since the impugned order failed to establish any vicarious liability of the parties (Applicants / Appellants) because it was the Bengaluru firm that conducted the audit of Satyam Computers several years back. Accordingly, and in the absence of an appropriate Bench in SAT to hear the appeal now extending the interim relief already granted by this Appellate Tribunal while doing justice to the Applicants / Appellants would cause no harm or prejudice to SEBI or to public interest.

4. The Applicants / Appellants, while pressing for extending the interim relief relied on the judgment of *Sham Sunder and Others vs State of Haryana*, (1989) 4 SCC 630 and *Jai Berham and Ors. vs Kedarnath Marwari and Ors.* decided by the Privy Counsel on 19.06.1922 [MANU/PR/0085/1922] and submitted that there is no vicarious liability in criminal law; all partners are not liable for the offence of some partners and it is the duty of the Court to act rightly and fairly to all the parties concerned.

5. Learned Senior Counsel for the respondent SEBI Shri Kevic Setalvad opposed granting any further extension of the interim relief which they had

opposed earlier too. Relying on the Judgments of (a) *McGladrey & Pullen, LLP vs. North Carolina State Board of Certified Public Accountant Examiners* decided by the Supreme Court of the United States on August 4, 2006; (b) *Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited*, (2011) 10 SCC 420; (c) *P. Dasa Muni Reddy vs. P. Appa Rao*, (1974) 2 SCC 725; (d) *State of Punjab and Others vs. Dhanjit Singh Sandhu*, (2014) 15 SCC 144 and (e) *Champalal Binani vs. The Commissioner of Income Tax, West Bengal and Ors.* decided by the Hon'ble Supreme Court of India on 04.12.1969 he submitted that PWC network is a unique brand; Applicants / Appellants cannot seek relief on the same ground as they cannot "approve and reprobate" and the appellants waived their right to further interim relief when they failed to take advantage of presenting the appeal before an available appropriate Bench.

6. Since the chronology of events is crucial in deciding this Miscellaneous Application the same is given below:-

- (a) **10.01.2018** – SEBI issued the order impugned in Appeal No. 6 of 2018 (as well as in Appeal No. 7 of 2018). The said order, inter alia, directed that entities / firms practicing as Chartered Accountants in India under the brand and banner of PW, shall not directly or indirectly issue any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof, the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI for a period of two years. However,

Applicants / Appellants were allowed to complete their ongoing tasks till 31.03.2018.

- (b) **17.01.2018** – Appeal mentioned by counsel for the Applicants / Appellants, seeking early hearing.
- (c) **19.01.2018** – Interim prayers heard and disposed of by this Appellate Tribunal giving relief in continuing to provide auditing services to existing clients till 31.12.2018.
- (d) **13.02.2018** – Prayer for extending the interim relief to 31.03.2019.
- (e) **15.02.2018** – Interim relief extended from 31.12.2018 to 31.03.2019 or till a Division Bench hears and decides the matter. Also fixed the next date of hearing before an “appropriate Bench” on 23.03.2018.
- (f) **23.03.2018** – The then Presiding Officer agreed to hear the matter along with Member Dr. C.K.G. Nair if the parties agree.
- (g) **5 & 6.04.2018** – Respondents and Applicants / Appellants respectively gave their written consent agreeing to plead the matter before the Bench consisting of the then Presiding Officer and Member Dr. C.K.G. Nair.
- (h) **06.04.2018** – Parties agreed to take a suitable date and to inform the Court Master during the course of the day.
- (i) **18.06.2018** – An administrative order issued by SAT directing the Registry to place these appeals on 19.06.2018 for direction since the parties did not inform their convenient date so far.

- (j) **19.06.2018** – By consent, parties took 06.08.2018 as the next date for hearing and thereafter sought various dates due to lack of quorum.
- (k) **08.10.2018** - Miscellaneous Application No. 324 of 2018 filed seeking extension of time of relief from 31.03.2019 to 31.03.2020

7. As is evident from the above chronology / timelines given the urgency pressed by the Learned Senior Counsel for the Applicants / Appellants, prayer for interim relief was urgently heard and disposed of in terms of two orders of this Appellate Tribunal dated 19.01.2018 and 15.02.2018 soon after filing the appeal. The operational part of the order by this Appellate Tribunal dated 15.02.2018, reads as follows:-

“11. We have carefully considered the rival submissions of the parties at length and we are of the considered opinion that if the request of the appellants for further interim relief is not considered by a Division Bench today or at least tomorrow, a Single Member may not be in a position to decide the whole matter because of the Securities Appellate Tribunal (Procedure) Rules, 2000 read with the relevant provisions of SEBI Act, 1992. In this fact situation, ends of justice would be met with if the cut-off date prescribed in the impugned order, i.e., 31.12.2018 is extended till 31.03.2019 or till the newly constituted Division Bench takes an appropriate final decision in the matter, whichever is earlier. Till then, the appellants shall be allowed to carry on the audit / certification work of their existing clients. We modify our order dated 19th January, 2018 because of the peculiarity of situation which has arisen on account of one of us is demitting the office on 19th February, 2018 and only a Division Bench will be in a position to hear the matter. (emphasis added)

12. Shri Ravi Kadam and Shri Kevic Setalvad, learned Senior Counsel at the end of the matter have prayed for stay of this additional interim relief. We do not find any good reason to stay the present order. Ordered accordingly.

13. By consent, stand over to 23rd March, 2018. Registry is directed to list these appeals before an appropriate Bench on the said date.” (emphasis added)

8. It is very clear that the 15.02.2018 order provided only a pro tem benefit to the Applicants / Appellants since the interim benefit was till 31.03.2019 or a Division Bench takes an appropriate final decision in the matter. The question of “appropriate Bench” had arisen since the then Presiding Officer had recused himself from hearing the appeals when the matter was mentioned on 17.01.2018. Therefore, these appeals were heard and the interim prayers disposed of by a Division Bench consisting of Member Shri Jog Singh and Member Dr. C.K.G. Nair vide two orders dated 19.01.2018 and 15.02.2018. On 19.02.2018 Shri Jog Singh demitted office. On 23.03.2018 the then Presiding Officer, along with Member Dr. C.K.G. Nair had agreed to hear the matter since the reason to continue with the recusal of the then Presiding Officer did not exist anymore. Both the Applicants / Appellants and the Respondent SEBI gave their written consent for the Bench consisting of the then Presiding Officer and Member Dr. C.K.G. Nair for hearing the matter vide their letters dated 06.04.2018 and 05.04.2018 respectively. On 06.04.2018, while seeking adjournment, counsel for the parties stated that they would intimate a convenient date to the Court Master during the course of the day. However, no date was communicated by the parties to the Court Master. Therefore through an administrative order dated 18.06.2018, appeals were kept for directions on 19.06.2018. Since this administrative order is crucial to the proceedings, the same is quoted below:-

“ORDER

1. On April 6, 2018 when these two appeals placed before Dr. C.K.G. Nair, Member 1 were mentioned before the Bench consisting of PO & Member 1 for adjournment, the Bench agreed to hear the appeals on any day convenient to the parties. Thereupon, counsel for the parties stated that they are agreeable for the Bench hearing the appeals and stated that they would intimate the convenient date to the Court Master during the course of the day. However, till date

counsel for the parties have not intimated to the Court Master date suitable for hearing these appeals.

2. In these circumstances, the Registry is directed to place the aforesaid two appeals for directions tomorrow i.e. June 19, 2018.”

9. Clearly an “appropriate Bench” was available from 23.03.2018 or at least from 06.04.2018 onwards when the parties had given their written consent, till 11.07.2018 the date on which the then Presiding Officer demitted office. Thus a window for hearing and disposing of the matter was available for more than three months. The counsel for the parties, particularly, the counsel for the Applicants / Appellants for whom early hearing the appeal was very crucial as they had approached this Appellate Tribunal within a week of the impugned order and interim reliefs were also given in a very short time frame, neither availed this window of three months plus nor even intimated a date to the Registry as stated in the Court on 06.04.2018.

10. Responding to the administrative order dated 18.06.2018 the Applicants / Appellants in an affidavit submitted that the counsel for the parties could not fix an immediate future date of hearing because of the vacation of the Hon’ble Bombay High Court during 07.05.2018 to 02.06.2018 and the vacation of the Hon’ble Supreme Court between 20.05.2018 to 01.07.2018. Therefore, on 19.06.2018 when the matter was taken up 06.08.2018 was sought as the convenient date under the expectation that a new Presiding Officer would be in position soon after the earlier Presiding Officer demitted office. They also pleaded that there were only 29 working days available during 06.04.2018 – 19.06.2018, the vacation period.

11. I find no merit in the above submissions of the Applicants / Appellants. Even by their own submissions there were 29 working days during the vacation of the Supreme Court / High Court. This Appellate Tribunal has had no vacation at all. Even assuming that the Applicants / Appellants were really in trouble finding a convenient date not coming back to the Court was a serious misbehavior since a date had to be given as per the decision on 06.04.2018 even to complete SAT's own records including the cause list. In any case no fresh ground has been brought in this Miscellaneous Application. The fact that some of the clients follow the calendar year and others the financial year and the timelines relating to appointment of auditors etc are well known to the Applicants / Appellants. It was on the same grounds that this Appellate Tribunal granted interim relief by order dated 19.01.2018 and 15.02.2018 (supra). The judgment relied upon by the Applicants / Appellants may be relevant in deciding the merit of the matter / appeals. That is all the more reason that a detailed hearing of the appeal was necessary. Given the fact that the Applicants / Appellants failed to take advantage of the availability of an appropriate Bench of this Appellate Tribunal for more than three months in arguing their appeals, the Miscellaneous Application citing grave urgency has no merit; particularly when the grounds raised in this Miscellaneous Application had already been considered in our January / February orders (supra).

12. For all the aforesaid reasons, I see no merit in the Miscellaneous Application and the same is hereby dismissed. No order on costs.

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

17.10.2018

Prepared and compared by:msb