BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 25.04.2019
Date of Decision : 03.05.2019

Misc. Application No. 353 of 2017
And
Appeal No. 387 of 2017

Pagita Leasing & Finance Company Ltd.
Through Authorised Representative -
Sh. Shashikant Sharma
205 / 206, 2nd Floor, Amar Chand Sharma
Complex, S. P. Road,
Secunderabad - 500003 (Telangana). ….. Appellant

Versus

Bombay Stock Exchange
Floor 25, P. J. Towers,
Dalal Street, Mumbai - 400 001. …. Respondent

Mr. R. K. Sanghi, Advocate with Mr. Satyendra Kumar, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora, Mr. Vivek Shah, Advocates i/b ELP for the Respondent.

With
Misc. Application No. 189 of 2018
And
Misc. Application No. 190 of 2018
And
Appeal No. 226 of 2018

1. Padmaja Patil Lingaraj
   8-2-293/82/HH/83 & 84, HUDA Heights,
   MLA Colony, Road 12, Banjara Hills,
   Hyderabad 500 034, State of Telangana.

2. Lingaraj Shantalingappa Patil

8-2-293/82/HH/83 & 84, HUDA Heights,
MLA Colony, Road 12, Banjara Hills,
Hyderabad 500034, State of Telangana.

3. Shantalingappa Sharnappa Patil
1276, 18, Nehru Gunj, Gulbarga - 585104,
State of Karnataka. … Appellants

Versus

Bombay Stock Exchange Ltd.
Floor 25, P. J. Towers,
Dalal Street, Mumbai - 400 001. …Respondent

Mr. Aurup Dasgupta, Advocate with Mr. Shrey Sancheti, Ms. Sonam G., Advocates i/b Jhangiani, Narula & Associates for the Appellants.
Mr. Abhiraj Arora, Advocate with Mr. Vivek Shah, Advocate i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Since the issues are common, both the appeals are being decided together. For facility, the facts pleaded in Appeal No. 387 of 2017 are taken into consideration. The present appeal has been filed by the appellant questioning the legality and veracity of the order dated December 12, 2016 passed by the Delisting Committee of BSE Ltd. (hereinafter referred to as, “BSE”) by which the company was compulsorily delisted under Rule 21 of the Securities Contracts (Regulation) Rules, 1957 read with Regulation 22(4) of the Securities

and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as, "Delisting Regulations"). By the same order the promoters were directed to acquire the delisted equity shares from the public shareholders and were further restrained from accessing the securities market for a period of ten years.

2. The appeal was filed on December 27, 2017. There is a delay of 382 days in filing the appeal and an application for condonation of delay by way of abundant caution was also filed praying that the delay, if any, may be condoned. Since the ground urged in the application for condonation of delay as well as in the appeal revolves on a common issue, namely, as to whether the appellants were duly served with the summons, etc., the Tribunal with the consent of the parties have proceeded to decide the Misc. Application as well as the appeal.

3. It was contended that the certified copy of the impugned order was received by the appellant on December 18, 2017 and that the appeal was filed immediately thereafter on December 27, 2017 within 15 days and, therefore, there was no delay in filing the appeal either under Section 21A or under Section 23L of the Securities Contracts (Regulation) Act, 1956. It was urged that the impugned order was never served and that when the appellant came to know, a

letter dated November 15, 2017 was issued to the respondent, based on which the copy of the impugned order was received on December 18, 2017.

4. On the merits of the case, it was urged that the show cause notice dated May 20, 2016 was never served upon the appellant and that the public notice which was published in the English daily newspaper and the Marathi daily newspaper (which is provided under Regulation 22(4)) was not known to the appellant. It was urged that in any case, the impugned order which has far reaching consequences was passed ex-parte without giving an opportunity of hearing as provided under the proviso to Regulation 22(1) of the Delisting Regulations. It was, thus, urged that in the absence of any valid service of show cause notice and in the absence of providing an opportunity of hearing, the impugned order was violative of the principles of natural justice as embodied under Section 14 of the Constitution of India.

5. On the other hand, the learned senior counsel for the respondent contended that the impugned order dated December 12, 2016 was served upon the appellant on December 18, 2016 and, therefore, the appeal, if any, could have been filed within the stipulated period as provided under Regulations 21A and / or 23L of the Securities Contracts (Regulation) Act, 1956. On merits, it was

contended that the appellant company is a defaulter of the Delisting Regulations and for non-compliance of the Listing Agreement. The trading was suspended as far back as on May 13, 2002 and that the company and its promoters did not take any steps for the revocation of the suspension. It was further contended that Securities and Exchange Board of India (hereinafter referred to as, "SEBI") issued a circular dated February 12, 2016 providing a process for revocation of suspension, pursuant to which a letter dated February 18, 2016 was issued to the company at its registered office intimating them to utilize the liberal approach as per the requirement and initiate the process of revocation of the suspension which later on was refused by the company. Subsequently, a reminder was sent on March 10, 2016 which came back undelivered with the remark "Left". Subsequently, a show cause notice dated May 20, 2016 was sent by registered post at the last known address of the company, namely, the registered office and thereafter a public notice under Regulation 22(4) was published in the English Daily, Business Standard in all the editions on June 23, 2016 and in the Marathi Edition i.e. Navshakti on June 24, 2016 intimating the company of the intention of the respondent to compulsory delist the company and provide an opportunity to the company to make a representation, if any. The respondent further contended that since no representation was received, the impugned order was passed on December 12, 2016.

6. The learned senior counsel submitted that the summons was sent at the last known address of the company at the registered office as per the Section 20 of the Companies Act, 2013. It was contended that the show cause notice was sent by registered post at the registered office and, therefore, there was substantial compliance of the provisions of Section 20 of the Companies Act. It was further contended that the requirements under the Companies Act is to serve the summons at the registered office and, that no other mode of service is contemplated nor is required to be followed. In support of the submissions, the learned senior counsel has relied upon the decision in **M/s. Madan & Co. vs. Wazir Jaivir Chand [(1989) 1 SCC 284] decided on November 28, 1988**, wherein the Supreme Court has held as under :-

> *"..... The statute prescribes only one method of service for the notice and none other. If, as we have held, the dispatch of the notice by the registered post was sufficient compliance with this requirement, the landlord has fulfilled it. But, if that is not so, it is no compliance with the statute for the landlord to say that he was served the notice by some other method. To require any such service to be effected over and above the postal service would be to travel outside the statute. Where the statute does not specify any such additional or alternative mode of service, there can be no warrant for importing into the statute a method of service on the lines of the provisions of CPC."*

7. It was, thus, contended that since the statute provided only one method of service and the same was sent by the respondent to the

appellant at the registered office of the company, there was sufficient compliance. It was further contended that the appellant has left the last known address, namely, the registered office to an unknown place and had not intimated the stock exchange and, therefore, even if the summons were returned undelivered there was substantial compliance on behalf of the respondent as it was sent on the last known address as per the exchange records. In support of the submissions the learned counsel for the respondent has placed reliance on the judgment of this Tribunal in **Mother Mira Industries Ltd. vs BSE Ltd. in Appeal No. 93 of 2017 decided on April 13, 2017,** wherein the ex-parte order of compulsorily delisting was confirmed on the ground that the appellant had failed to seek revocation of suspension of trading in its securities which had been suspended since 2002.

8. We have heard Shri R. K. Sanghi, the learned counsel for the appellant and Shri Gaurav Joshi, the learned senior counsel for the respondent. Having heard the learned counsel for the parties at some length, we find that no proof has been filed by the respondent to indicate that the copy of the impugned order was delivered to the appellant. Pursuant to the request made by the appellant vide a letter dated November 15, 2017, a copy of the impugned order was provided. Considering the aforesaid, we are of the opinion that sufficient cause has been shown by the appellant in filing the appeal

belatedly. In any case, the appeal was filed within the stipulated period from the date of certified copy was received afresh by the appellant. We consequently, condone the delay in filing the appeal.

9. In so far as the impugned order is concerned, we find that the respondent proceeded ex-parte without ensuring service of the summons which is an essential requirement to proceed with the delisting of the company. We find that a categorical assertion was made by the appellant that the show cause notice dated May 20, 2016 was never served upon the appellant. The said show cause notice is alleged to have been sent by registered post A.D. but no proof has been filed with regard to service. The acknowledgment card has also not been filed nor anything has been indicated to show that the said show cause notice was duly served. The presumption of service on the ground that it was sent by registered post A.D. is a rebuttable presumption and when the appellant has categorically asserted that the appellant was never served, the onus falls upon the respondent to show and prove that the show cause notice was duly delivered / served upon the company. In the instant case, there is nothing on record to suggest that the show cause notice was duly served.

10. In **Chandresh Narottam Mehta vs. V. K. Chopra, Whole Time Member, Securities And Exchange Board of India [2008 SCC Online SAT 216] dated December 17, 2008,** this Tribunal has

held that even though a notice of hearing was served upon the appellant, it still does not cure the defect of non-service of the show cause notice and, thus, on that limited ground the impugned order in that appeal was set aside.

11. The contention of the respondent that service was made as per Section 20 of the Companies Act and, therefore, substantial compliance was made is erroneous. In order to proceed further, it would be essential to have a look at Section 20 of the Companies Act, 2013. For facility, the said provision is extracted hereunder :-

> *"**20.** (1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:*
>
> ***Provided** that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.*
>
> *(2) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:*
>
> ***Provided** that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.*

Explanation.—For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery."

12. A perusal of the aforesaid provision indicates that there are other modes provided for service, namely, that apart from making service at the registered office of the company by registered post or speed post or courier service, service can also be made by electronic mode or such other modes as may prescribed. The word 'may' also indicates that it is only an enabling provision under the Companies Act with regard to the manner in which the documents may be served on the company or on an officer. In addition to the modes prescribed under Section 20 of the Companies Act, other modes could also be utilized such as Order XXIX Rule 2 of the Civil Procedure Code or under the Securities and Exchange Board of India (Manner of Service of Summons and Notices Issued by the Board) (Amendment) Regulations, 2007 which has been issued in exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 which provides various modes for tendering notice to a person which also includes service by electronic mail service.

13. From the aforesaid and from a perusal of Section 20 of the Companies Act, it is apparently clear that service by registered post at the registered office of the company is not the only method of service nor is the intention of the legislature that the service has to be

effected by sending it only by registered post at the registered office of the company. If that is so, the intention of this Section 20 of the Companies Act, in our view, would have been worded differently. We, therefore, are of the opinion that Section 20 of the Companies Act is only an enabling provision as to the manner in which a document may be served on the company or on an officer.

14. The decision cited by the learned counsel for the respondent in the matter of M/s. Madan & Co. (supra) is distinguishable and not applicable in the instant case. The said decision is under the Jammu And Kashmir Houses and Shops Rent Control Act, 1966 and not under the Companies Act and, in any case, under the said Act, there was only one service mode by registered post and not different modes of service as provided under Section 20 of the Companies Act.

15. There is an another aspect. Regulation 22(4) of the Delisting Regulations provides as under :-

> *"22(4). The recognised stock exchange shall while passing any order under sub-regulation (1), consider the representations, if any, made by the company as also any representations received in response to the notice given under sub regulation (3) and shall comply with the criteria specified in Schedule III."*

16. Clause (1) of Schedule III of the Delisting Regulations provides as under :-

> *"(1). The recognized stock exchange shall take all reasonable steps to trace the promoters of a company whose equity shares are proposed to be delisted, with a view to ensuring compliance with sub-regulation (3) of regulation 23."*

17. From a perusal of the aforesaid, it becomes clear that the recognized stock exchange is required to take all reasonable steps to trace the promoters of a company whose equity shares are proposed to be delisted. In the instant case, we find no such steps have been taken except to send the show cause notice to the registered office of the company inspite of knowing that the appellant had left that address.

18. In the light of the aforesaid, we are of the opinion that no valid service of the show cause notice was ever made to the appellants nor any opportunity was given to the appellants to file objection.

19. Regulation 22(1) of the Delisting Regulations provides as under :-

> *"22. (1) A recognised stock exchange may, by order, delist any equity shares of a company on any ground prescribed in the rules made under section 21A of the Securities Contracts(Regulation) Act, 1956 (42 of 1956):*
>
> *Provided that no order shall be made under this sub Regulation unless the company concerned has been given a reasonable opportunity of being heard."*

20. A perusal of the aforesaid provisions indicates that no order of delisting shall be passed unless the company is given a reasonable opportunity of being heard. Thus, even though the public notice has been published in the daily newspapers under Regulation 22(4) asking the company to file objection, if any, it is still imperative for the Delisting Committee to provide an opportunity of hearing before passing the impugned order. By not giving an opportunity of hearing, the impugned order is violative of the principles of natural justice and cannot be sustained.

21. In the light of the aforesaid, the impugned order compulsorily delisting the appellant company cannot be sustained and is quashed. The matter is remitted to the respondent stock exchange to provide an opportunity of hearing and thereafter, it would be open to the respondent to pass a fresh order in accordance with law. Since the service is not being made upon the appellant and its promoters, we direct the appellant company and its promoters to appear before the respondent stock exchange on May 14, 2019 at 11:30 A.M. from where the Delisting Committee will proceed further.

22. We find that admittedly, the appellant company and its promoters have not taken any steps for revocation of the suspension of trading of its securities since 2002, thereby depriving the shareholders of the company an opportunity to deal with the

securities thereof. We also find that admittedly the respondent has not adhered to the listing agreement nor complied with the circulars relating to revocation of the suspension. The appellant has also not informed the authorities about the change of its registered office. Considering the fact that for 14 long years the appellant has not taken steps for revocation of the suspension order, we deem it fit to impose costs as a condition precedent before the matter is heard afresh by the Delisting Committee.

23. We, therefore allow the appeals subject to the condition that the appellants shall pay costs of Rs. Five lac to the respondent before May 14, 2019. If such an amount is deposited, the Delisting Committee will proceed and hear the matter after giving an opportunity of hearing. In the event, the amount of Rs. Five lac is not deposited before May 14, 2019, the impugned order dated December 12, 2016 will continue to operate.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

03.05.2019
Prepared & Compared by
PTM