

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 18.10.2019

Date of Decision : 14.11.2019

Appeal No. 428 of 2019

1. Ashok Dayabhai Shah
20, Alli Chambers, 2nd Floor,
Tamarind Lane, Fort,
Mumbai – 400 023.
2. Rupal Ashok Shah
20, Alli Chambers, 2nd Floor,
Tamarind Lane, Fort,
Mumbai – 400 023.
3. Pina Shah
Flat 10, 4th Floor,
Jolly Center, Tilak Road,
Santacruz (West),
Mumbai – 400 054.
4. Kuntal Hasmukhlal Shah
104, 1st Floor, Panchsheel,
Plot No. 53, C Road,
P.M. Shukla Marg,
Churchgate,
Mumbai – 400 020.
5. Hasmukhlal Vrijlal Shah
104, 1st Floor, Panchsheel,
Plot No. 53, C Road,
P.M. Shukla Marg,
Churchgate,
Mumbai – 400 020.
6. Shilpa Ajay Shah
107/4, Natwar House,
V.P. Road, Near Girgaon P.O.
Mumbai – 400 004.

7. Nita Shailesh Shah
104, 1st Floor, Panchsheel,
Plot No. 53, C Road,
P.M. Shukla Marg,
Churchgate,
Mumbai – 400 020.
8. Pooja P. Goradia
104, 1st Floor, Panchsheel,
Plot No. 53, C Road,
P.M. Shukla Marg,
Churchgate,
Mumbai – 400 020.
9. Mihit Nimish Shah
104, 1st Floor, Panchsheel,
Plot No. 53, C Road,
P.M. Shukla Marg,
Churchgate,
Mumbai – 400 020.
10. Gautam Kantilal Pandhi
Royal Garden, Flat No. 303,
3rd Floor, 203, New Palasia Indor,
Madhya Pradesh,
Indore – 452 001.
11. Madan Lal Narula
162, Venus Apartment,
Cuffe Parade, Near President Hotel,
Colaba, Mumbai – 400 005.
12. Sneha Anil Whabi
Krishna Kunj, P. No. 41,
Parkland Society, Near Bajaj Finserv,
Viman Nagar, Pune – 411 014.
13. Anil Vithaldas Whabi
Krishna Kunj, P. No. 41,
Parkland Society, Near Bajaj Finserv,
Viman Nagar, Pune – 411 014.
14. Pravin Hiralal Jain
Flat No. 301, Queens Court Housing
Society Ltd., Narangi Baugh Road,
Off Boat Club Road,
Pune – 411 001.

15. Jain Pravinlal Hiralal HUF
Flat No. 301, Queens Court Housing
Society Ltd., Narangi Baugh Road,
Off Boat Club Road,
Pune – 411 001.
16. Lokesh Pravin Jain
Flat No. 301, Queens Court Housing
Society Ltd., Narangi Baugh Road,
Off Boat Club Road,
Pune – 411 001.
17. Vandana Pravin Jain
Flat No. 301, Queens Court Housing
Society Ltd., Narangi Baugh Road,
Off Boat Club Road,
Pune – 411 001.
18. Asha Manik
12 A II Palazzo Little Gibbs Road,
Mumbai – 400 006.
19. Rohan Manik
12 A II Palazzo Little Gibbs Road,
Mumbai – 400 006.
20. Jayshree Gokal
12 A II Palazzo Little Gibbs Road,
Mumbai – 400 006.
21. Pankaj Shah
10/12, 4th Floor,
Jolly Center, Tilak Road,
Santacruz (West),
Mumbai – 400 054.
22. Prasham Shah
10/12, 4th Floor,
Jolly Center, Tilak Road,
Santacruz (West),
Mumbai – 400 054.
23. Gandhi Securities and Investment Pvt.
Ltd.
9, Haji Kasam Building,
66, Tamarind Lane,
Fort, Mumbai – 400 001.

24. BRICS Securities Limited
Office No. 72, 7th Floor,
Maker Chambers – IV,
Nariman Point, Mumbai – 400 021.

..... Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.
2. Bharat Nidhi Limited
First Floor, Express Building,
9-10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
3. PNB Finance and Industries Limited
First Floor, Express Building,
9-10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
4. Camac Commercial Company Limited
First Floor, Express Building,
9-10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
5. Mr. Vineet Jain,
15, Motilal Nehru Marg,
New Delhi – 110 001.
6. Mr. Samir Jain,
15, Motilal Nehru Marg,
New Delhi – 110 001.
7. Calcutta Stock Exchange of India
Limited
7, Lyons Range,
Dalhousie, Kolkata – 700 001,
West Bengal.
8. National Stock Exchange of India
Limited
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051.

....Respondents

Mr. Navroj Seervai, Senior Advocate with Mr. Gaurav Joshi, Senior Advocate, Ms. Arti Raghvan, Mr. Vikram Raghavi, Mr. Pulkit Sukhramani and Ms. Vidhi Jhavar, Advocates i/b J. Sagar Associates for Appellants.

Mr. Fredun DeVitre, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocate i/b K. Ashar & Co. for Respondent No. 1.

Mr. Venkatesh Dhond, Senior Advocate with Mr. V. Shetty, Mr. Nishant Upadhyay and Mr. Aditya Shivram, Advocates i/b AZB & Partners for Respondent No. 2.

Mr. Darius Khambata, Senior Advocate with Ms. Shruti Rajan, Mr. Rushin Kapadia and Mr. Pratham Measurekar, Advocates i/b Cyril Amarchand Mangaldas for Respondent No. 3.

Mr. Zal Andhyarujina, Advocate with Ms. Shruti Rajan, Mr. Rushin Kapadia and Mr. Pratham Measurekar, Advocates i/b Cyril Amarchand Mangaldas for Respondent No. 4.

Mr. Rohan Rajadhyaksha, Advocate i/b Sonu Tandon for Respondent No. 5.

Mr. Rashmin Khandekar, Advocate with Ms. Shruti Rajan, Mr. Rushin Kapadia and Mr. Pratham Measurekar, Advocates i/b Cyril Amarchand Mangaldas for Respondent No. 6.

Mr. Kaushik Chatterjee, Advocate for Respondent No. 7.

Mr. Rashid Boatwalla, Advocate with Ms. Shreya Anuwal, Advocate i/b Manilal Kher Ambalal & Co. for Respondent No. 8.

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. The appellants are aggrieved by the disposal of their complaints on the SCORES platform by the Securities and

Exchange Board of India ('SEBI' for short) against which the present appeal has been filed.

2. The facts leading to the filing of the present appeal is, that the appellants are minority public shareholders of Bharat Nidhi Limited ('BNL' for short), Respondent No. 2 Company, PNB Finance and Industries Limited ('PNBF' for short), Respondent No. 3 Company and Camac Commercial Company Limited ('Camac' for short), Respondent No. 4 Company.

3. BNL, Respondent No. 2 was a listed entity, whose shares at the relevant time, were listed on the Delhi Stock Exchange. The recognition of this Exchange was withdrawn by SEBI on November 19, 2014 and thereafter the shares of the BNL were listed on the Calcutta Stock Exchange on February 19, 2015. It has been stated that the equity shares of BNL were moved to the dissemination board of BSE Limited ('BSE' for short) and subsequently was transferred to dissemination board of the National Stock Exchange of India Limited ('NSE' for short). PNBF, Respondent No. 3 and Camac, Respondent No. 4 are also a listed Company whose shares were listed on the Calcutta Stock Exchange.

4. BNL, PNB and Camac hold 24.41%, 9.29% and 13.30% shares respectively in Bennett, Coleman & Co. Ltd. ('BCCL' for short) which is alleged to be India's largest media conglomerate. Mr. Vineet Jain and Mr. Samir Jain, Respondent Nos. 5 and 6 are the Managing Directors of BCCL through inheritance.

5. It is the case of the appellants that Respondent Nos. 2, 3 and 4 Companies are under the effective control of Respondent Nos. 5, 6 and their family members. However, Mr. Vineet Jain and Mr. Samir Jain, Respondent Nos. 5 and 6 exercise control over BCCL by virtue of their ownership / control of Respondent Nos. 2, 3 and 4 Companies and 8 other entities who are the shareholders of BCCL.

6. It is the further case of the appellants that since 2013 some of the appellants have jointly or individually filed several complaints before SEBI, Respondent No. 1 urging SEBI to investigate and take action in respect of two violations, namely:-

- (i) Incorrect disclosures being made by BNL, PNB and Camac regarding their promoter shareholding thereby failing to disclose the true promoters;

- (ii) Consequently, failure by these companies to comply with Minimum Public Shareholding norms prescribed under applicable securities laws;

7. It is the further case of the appellants that Respondent No. 1 SEBI has time and again taken varying stands wherein SEBI has either not responded to the complaints at all or adopted a position that investigation in the matter is underway or treated the complaints as market intelligence, without concluding such investigations or passing any reasoned order while disposing of the complaints of the appellants.

8. The contention of the appellant is that BNL, PNBFI and Camac are Companies which are owned and controlled by Mr. Vineet Jain, Mr. Samir Jain and their family members who are the Managing Directors of BCCL, more commonly known as the Times Group. In this regard, the complaints filed by the appellants can be detailed as under:-

- (i) On August 17, 2013 a complaint was filed with SEBI relating to non-disclosure of promoter shareholding of BNL and the violations of minimum public shareholding requirements by BNL. It is stated that till date no response has been received from SEBI on this complaint.

- (ii) Another complaint was filed on May 15, 2017 on the SCORES platform of SEBI raising issues relating to violation of minimum public shareholding requirements by BNL.
- (iii) On June 28, 2017 a complaint was filed with SEBI in relation to violation of minimum public shareholding requirements by BNL.
- (iv) Another complaint was filed on September 25, 2017 on the SCORES platform of SEBI in relation to the violation of minimum public shareholding requirements by BNL.
- (v) Emails as reminders were sent to SEBI on September 12, 2018, September 26, 2018, October 1, 2018, October 13, 2018, October 25, 2018, May 15, 2019, June 17, 2019 and July 25, 2019.
- (vi) On May 6, 2019 another complaint was filed on SCORES platform of SEBI with regard to violation of the minimum public shareholding requirements of BNL.

- (vii) Another complaint dated June 27, 2019 was filed relating to minimum public shareholding requirements by BNL.
- (viii) On August 9, 2019 a detailed complaint was filed with SEBI and with the Ministry of Corporate Affairs and the Ministry of Finance relating to non-disclosure of promoter shareholding of BNL.
- (ix) Complaint dated August 3, 2019 was filed against BNL and on August 16, 2019 individual complaints were filed against Camac and PNBFI on the SCORES platform of SEBI.

9. It is alleged that all the complaints as stated aforesaid remained unaddressed except complaint dated May 15, 2017, September 25, 2017, May 6, 2019 and August 3, 2019 filed on the SCORES platform. The last complaint dated August 3, 2019 was disposed of by the impugned order against which the present appeal has been filed.

10. It was contended that the minimum public shareholding of 25% by a listed company was not followed as per Rule 19A of the Securities Contracts (Regulations) Rules 1957

(‘SCRR’ for short) read with Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (‘LODR Regulations’ for short) and that SEBI for reasons best known was neither actively considering nor investigating the matter. It was urged that the repeated inaction of SEBI to deal with the complaints filed by the appellants since 2013 is writ large. It was also contended that the manner in which the complaints of the appellants have been disposed of in a mechanical and summary manner shows total non-application of mind and which has caused great prejudice to the complainants who are minority public shareholders of BNL, PNBFI and Camac. It was lastly urged that the impugned order does not disclose any sound reasons and a computer generated order has been passed mechanically without any application of mind.

11. It was contended that Respondent Nos. 2, 3 and 4 have concealed their actual promoter shareholding and have failed to comply with the minimum public shareholding norms. It was further urged that Respondent Nos. 5 and 6 Mr. Vineet Jain and Mr. Samir Jain exercise total control over these three companies and are the ultimate beneficial owners of the Company and have wrongly classified themselves as public shareholders of these companies which facts are so glaring,

but for the reasons best known, SEBI has turned a blind eye and has disposed of the complaints in a cursory manner.

12. Some of the respondents have raised a preliminary objection that the appeal is not maintainable under Section 15T of the SEBI Act, 1992 as no order has been passed. It was urged that an appeal lies only against an order passed by an Authority. In the instant case, a computer generated communication disposing of the complaints is impugned which cannot be termed as an appealable order. One of the respondents further contended that a composite complaint against Respondent No. 4 on a common issue cannot be challenged in a single appeal and therefore the appeal is not maintainable. Issue of mis-joinder of necessary parties was also raised and it was also contended that since there was no order as such no appeal could be filed. Respondent No. 7 Calcutta Stock Exchange of India Ltd. also appeared and submitted that a report on this issue was submitted to SEBI which prima facie showed that the Respondent Nos. 2, 3 and 4 had violated the SEBI LODR which provides for requirement of maintaining minimum public shareholding of 25% by a listed company ('MPS Norms') and that the said Company wrongly had shown it as public shareholders.

13. On the issue of maintainability of the present appeal the respondents have placed reliance upon a decision of this Tribunal in the matter of *Mr. Deepak Mehra vs Securities and Exchange Board of India & Ors. in Appeal No. 140 of 2009 decided on August 28, 2009* wherein the Tribunal held that the appeal was premature as no final decision in the matter was taken by the Authority. Reliance was also made upon a decision of the Supreme Court in the matter of *National Securities Depository Limited vs. Securities and Exchange Board of India (2017) 5 SCC 517* wherein the question raised was whether an administrative circular issued by SEBI under Section 11(1) of the SEBI Act could be a subject matter of appeal under Section 15 of the SEBI Act. The Supreme Court held that the circulars issued by SEBI are outside the appellate jurisdiction of the Tribunal and cannot be questioned. Further reliance was made upon a decision of this Tribunal in the matter of *M.Z. Khan S/o M.A. Khan vs Securities and Exchange Board of India decided on September 8, 2009 MANU/SB/0113/2009* wherein this Tribunal held that in the absence of any order of SEBI, no appeal could lie. It was found that inaction on the part of SEBI will not allow a party to file an appeal.

14. On the other hand, the appellants have placed reliance upon a decision in the matter of *Amit Bhagvatprasad Barot vs Securities and Exchange Board of India & Ors. in Appeal No. 157 of 2012 decided on September 3, 2013* wherein the Tribunal held that a complaint which has been disposed of is appealable under Section 15T by a person aggrieved. The Tribunal held that an investor whose complaint is arbitrarily rejected is a person aggrieved and is entitled to file an appeal under Section 15T of the SEBI Act. Further reliance was made by the appellants upon a decision of this Tribunal in the matter of *Victor Fernandes & Anr. vs Securities and Exchange Board of India & Ors. in Appeal No. 42 of 2017 decided on June 22, 2018* where the disposal of the complaint alleging non-compliance of Clause 36 of the Listing Agreement was found to be appealable before this Tribunal.

15. Having heard the learned senior counsel for the parties at some length we are of the opinion that an order / communication by the respondent disposing of the complaint of the appellants on the SCORES platform is an appealable order under Section 15T of the SEBI Act. If the complainants are aggrieved by the disposal of the complaint on the SCORES platform the said complainants have a right to file an appeal under Section 15T of the SEBI Act. We are further

of the opinion that the computer generated communication by the respondent on the SCORES platform, even though it may be an administrative communication is nonetheless an order since it disposes of the lis between the parties and disposes of the complaint and the issues raised by the complainants. The said communication / order as the case may be, in our opinion, is appealable. In the light of the aforesaid, the decisions cited by the respondents are distinguishable and not applicable in the instant case. The preliminary objection thus raised by the respondents is rejected.

16. In the instant case, we find that written complaints made to SEBI from 2013 onwards has not been disposed of as yet but complaints filed on the SCORES platform has been disposed of without deciding / settling the issue that was raised in the complaints. Thus, disposal of the complaints by the respondents on the SCORES platform is no disposal in the eyes of law. It is merely an eye wash without disposing of the complaints and without settling the controversy involved in the complaints.

17. SCORES is an online platform designed to help investors to lodge their complaints pertaining to the securities market. These complaints are filed online with SEBI against

listed companies and SEBI registered intermediaries. All complaints received by SEBI against listed companies are dealt through SCORES. The complaint made by the appellants on SCORES has been disposed of by the impugned order in the following manner.

“Dear Sir / Madam,

With reference to your captioned complaint, Kindly be informed that the same has been disposed of in SCORES (www.scores.gov.in) with the following remarks:

The information provided by you will be treated as market intelligence. This information shall be treated as confidential. This information will be analysed and if found necessary, further action will be taken. The status of information cannot be ascertained as SEBI conducts the investigations confidentially in a holistic manner. In order to aid SEBI to carry out its surveillance activity, you are encouraged to provide correct and complete information. SEBI will neither confirm nor deny the existence of any investigation. Any regulatory actions taken by SEBI are published at SEBI website.

You may contact the Dealing officer for clarification if any (Details of Dealing Officer SEBI is available under “view complaint status” by logging in to SCORES website i.e. www.sebi.gov.in or you may contact SEBI toll free helpline: (1800 22 7575 / 1800 266 7575)

*Yours faithfully,
For SECURITIES AND EXCHANGE BOARD OF INDIA*

(Authorised Signatory)”

18. The complaint made by the appellants was a serious issue with regard to incorrect disclosures being made by three companies regarding their promoter shareholding and

consequently failure of these three companies from complying with the minimum public shareholding requirement as per Rule 19A of the SCRR read with 38 of the LODR Regulations. The disposal of the complaint does not refer to the issues raised by the complainants / appellants with regard to the non-disclosure of the promoters' shareholding or violation of the minimum public shareholding requirement under the Rules and Regulations. On the other hand, the communication intimated to the appellants has closed the complaint in a roundabout manner intimating the appellant that the information provided by the complainants would be treated as market intelligence and would also be treated as confidential. Why would the complaint of the appellants be treated as market intelligence or be treated as confidential is not known nor in our view the complaint is such which requires SEBI to treat it as market intelligence or confidential. It is not a price sensitive matter which requires SEBI to keep such matters under wraps or confidential in nature.

19. We also find it strange to note that SEBI in the said order / communication states that the information submitted by the appellants would be analyzed and investigation would be made in a holistic manner but, on the other hand, in the

same breath states that SEBI would neither confirm nor deny the existence of any investigation conducted by them. We find that before the Delhi High Court SEBI informed that the matter is under investigation by them. We find it strange that while disposing of the complaint SEBI would neither confirm nor deny as to whether investigation in the complaint is going on or not.

20. We find the approach adopted by the respondents to be a strange one. Such computer generated disposal of a serious complaint speaks volume on the conduct of the respondents in treating the minority shareholders in this shabby manner. It seems that the respondents have lost sight of the mandate provided to them under Section 11 of the SEBI Act which mandates SEBI to safeguard the interest of the investors. Disposal of the complaint in this manner in the instant case indicates non-application of mind and non-consideration of the interest of the investors. We have no hesitation in stating that the SEBI as a regulator in the instant case has not performed its duties and has kept the complaint pending for more than six years which speaks volumes by itself. The Tribunal fails to fathom as to why the complaint could not have been decided unless SEBI officials had a vested interest in not deciding the matter.

21. In the light of the aforesaid, we set aside the communication / order passed by the SEBI on the SCORES platform. The appeal is allowed. We direct the appellants to file a consolidated representation / complaint before SEBI annexing the earlier complaints within four weeks from today. If such an application is filed SEBI will consider and decide the matter by a reasoned and speaking order within six weeks from the date of the presentation of the complaint along with the certified copy of our order. It would be open to SEBI to grant an opportunity of hearing to the parties if they think it appropriate. In the circumstances of the case, parties shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

14.11.2019

Prepared and compared by:msb