

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 02.03.2209

Date of Decision : 06.03.2020

Appeal No. 287 of 2019

Mr. Vinod Kedia
72, Dreamqueen Premises,
V. P. Road, Off Linking Road,
Santacruz (W), Mumbai - 400 054.

..... Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.
2. BSE Ltd.
Floor 25, P. J. Towers,
Dalal Street,
Mumbai - 400 001.
3. MBI Intercorp. Ltd.
Regd Office : 3/14A, 1st Floor, Vijay Nagar,
Double Storey,
New Delhi - 110 009.

... Respondents

Mr. Monil Punjabi, Advocate i/b Taurus Legal for the Appellant.

Mr. Abhiraj Arora, Advocate with Mr. Vivek Shah, Advocate i/b
ELP for the Respondent Nos. 1.

Mr. Anubhav Ghosh, Advocate with Ms. Rashi Dalmia, Advocate i/b
The Law Point for the Respondent Nos. 2.

None for the Respondent Nos. 3.

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

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the decision of Respondent No. 1 Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated February 27, 2019 thereunder communicating the inability of Respondent No. 2 BSE Ltd. (hereinafter referred to as 'BSE') to proceed with the request of the appellant for defreezing of his demat accounts, the present appeal has been preferred.

2. From the record, it appears that in terms of Securities Contracts (Regulation) Rules, 1957 and Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, respondent No. 2 BSE had earlier compulsorily delisted the securities of Moonbeam Industries Ltd., now known as MBI Intercorp Ltd. Shareholding pattern disclosed by the company on the website of BSE for quarter ending 2017 showed the appellant in the list of promoter's shareholding. Therefore, the appellant's demat account

was frozen and his name was also published in the physical public notices. Thereafter, the appellant applied to respondent No. 2 BSE for defreezing his demat account on the ground that he was never a promoter of the said company. He has communicated that the company had issued him 2500 equity shares each of Rs. 10/- fully paid in the year 1995. Thereafter, he had not received any correspondence from the company.

3. Respondent No. 2 BSE vide e-mail dated October 29, 2018 asked the appellant to submit the following documents :-

- “1. Company clarification regarding your exclusion of your name from promoter’s category along with reasons as to why your name was included as one of the Promoter in the previous shareholding pattern filed with the Exchange and capacity in which you are holding shares in the company (on the letterhead of the company)*
- 2. Order from Court / Tribunal / Any statutory authority, which excluded you as a Promoter of the Company.*
- 3. Filings with MCA or any other regulatory authorities, where you were not represented as a Promoter of the Company.*
- 4. Relevant extracts of the Annual Report, wherein your name is excluded from the list of Promoters and reasons for such exclusion.”*

4. The appellant, in turn, vide letter dated November 6, 2018 requested the company to submit above referred documents. It is the case of the respondent No. 2 BSE that it had also sought information from the company. However, the same is not received. Therefore, in absence of the documents, respondent No. 2 BSE showed inability to accept the request of the appellant. The same was communicated to the appellant vide the impugned communication. Hence the appeal.

5. We have heard Shri Monil Punjabi, the learned counsel for the appellant and Shri Abhiraj Arora alongwith Shri Vivek Shah, the learned counsel for the respondent No. 1 and Shri Anubhav Ghosh, alongwith Ms. Rashi Dalmia, the learned counsel for the respondent No. 2.

6. The learned counsel for the appellant adverted our attention to the copy of the certificate issued by the company at 'Exhibit L' and the copies of the annual reports of the company from the year 2010-11 till 2015-16 to show that in the annual report the appellant is named neither as a director nor as a promoter, which are filed in the appeal.

7. In response, the learned counsel for the respondent has pointed out that the purported certificate issued to the applicant by the company is undated. 'Exhibit P', the master data information as found from the website of MCA would show that the appellant is included as promoter of the company. It was additionally pointed out that in the appeal memo, the appellant himself has under the title 'brief facts' in paragraph Nos. 3 and 4 submitted as under :-

- “3. The Appellant taking his friend's advice and being lured with the prospects of the company, sought to purchase shares of the same. However, as the shares of the company were not readily available, the Appellant's friend arranged for him to purchase the physical shares through the company.*
- 4. The Appellant in and around 1995 purchased 2500 shares at Rs. 10/- from the company. The Appellant was provided with 2500 shares out of the Promoter quota.”*

8. On the basis of the said information, it was argued by the respondents that the appellant was definitely during the relevant period holding shares from the promoter quota. His name is, therefore, rightly included in the shareholding pattern of the promoter

group. The certificate purportedly issued by the company is doubtful.

9. Having heard both the sides, in our view, the impugned communications of respondent Nos. 1 and 2 cannot be faulted in view of the fact that the appellant failed to provide with the respondent the necessary documents.

10. The impugned communication would show that the application of the present appellant is not dismissed on merit. The respondent No. 2 BSE had only shown inability to proceed with the request of the appellant for defreezing the demat account for want of documents from the appellant or till the company submits certification that the promoters have paid the full value to the public shareholders.

11. In the circumstances, the appeal is disposed of without any order as to costs in terms of following directions :-

The appellant would be at liberty to submit the necessary documents to respondent No. 2, showing that he was not at all the promoter of the company during the relevant period or to make a

fresh application in terms of second direction in the impugned communication which provided for submission of certification by the company that the promoters have paid the fair value with the public shareholders. If such documents are furnished, respondent No. 2 would be obligated to pass appropriate orders.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

06.03.2020
Prepared & Compared by
PTM