

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 01.02.2019

Date of Decision : 25.02.2019

Misc. Application No. 414 of 2018

And

Appeal No. 469 of 2018

Synergy Cosmetics (Exim) Limited
806, Saffron Building,
Panchvati to Ambawadi Road,
Ambawadi, Ahmedabad- 380 006

...Appellant

Versus

BSE Limited
25th Floor, P J Towers,
Dalal Street, Fort,
Mumbai- 400 001

...Respondent

Mr. Akshit Jain, Advocate with Ms. Rinku Valanju, Advocate i/b R.V.
Legal for the Appellant.

Mr. Jitendra Motwani, Advocate with Mr. Abhiraj Arora, Mr. Vivek
Shah and Mr. Chirag Shetty, Advocates i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice Tarun Agarwala

1. The appellant is a listed company and its securities got delisted on the platform of the respondent on 25.06.2001. The respondent vide its notice dated 18.10.2016 suspended the trading in securities of the appellant company for non-compliance of listing requirements. Since no steps were taken by the appellant company for revocation of the

suspension, a show cause notice dated 26.04.2018 was issued calling upon the appellant to show cause as to why the securities of the appellant company should not be compulsorily delisted from the platform of the respondent. The respondent BSE Limited by the impugned order dated 26.06.2018 issued an order compulsorily delisting the securities of the appellant company. The appellant being aggrieved by the computation of the fair value of the shares at ₹ 9.07 per equity share has filed the appeal under Section 23L of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”).

2. There is a delay of 73 days in filing the appeal. An explanation has been given by the appellant in the application for condonation of delay giving reasons for not filing the appeal within the stipulated period. The application for condonation of delay has been vehemently opposed by the learned counsel for the respondent contending that the appeal was required to be filed under Section 21A of the SCRA and not under Section 23L. It was further contended, that the period for filing the appeal cannot be extended by the Tribunal under Section 21A and, therefore, the appeal is not maintainable and is required to be dismissed. It was further urged, that when a specific provision has been provided for filing an appeal under Section 21A of the SCRA, the said provision being specific would govern the provision relating to the filing of the appeal and would override the general provision, namely, Section 23L on the basis of the principles involved in the latin maxim ‘*generalia specialibus non derogant*’ which means that the general law yields to special law. It was thus contended that if there are two provisions relating to the filing

of the appeal then on the basis on the principle of harmonious construction, merely, that where there is a specific provision of law dealing with the same subject would prevail over the general. In support of his submission, the learned counsel for the respondent has placed reliance upon the decision of the High Court of Calcutta in *Ashoka Marketing Limited & Anr. Vs. The Calcutta Stock Exchange Limited & Ors.* 2017 SCC Online Cal 15508 decided on 16.11.2017 wherein the Calcutta High Court held that the provision of Section 21A(2) and Section 23L operate in different fields and that the provision of Section 23L are not attracted to an appeal filed against the decision of the stock exchange taken in the delisting process and that such a decision would attract the provision of Section 21A(2) for the purpose of filling an appeal.

3. On the question of principle of harmonious construction the learned counsel placed reliance upon a decision of Supreme Court in *St. Stephen's College v. University of Delhi, (1992) 1 SCC 558* and in the matter of *South India Corporation (P) Ltd. Vs. Secretary, Board of Revenue Trivandrum and Another, (1964) 4 SCR 280.*

4. It was also contended that if an appeal is preferred under Section 21A(2) the said appeal can be preferred only with the stipulated period prescribed therein and that the delay in filing the appeal beyond the stipulated time cannot be condoned by the Tribunal. In support of this contention the learned counsel placed reliance on a decision of the Supreme Court in the matter of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur And Others (Civil Appeal No. 5949 of*

2007), decided on 14.12.2007 and in the matter of S.P. Perumal Vs. V. Ramasamy and Others (Company Appeal (AT) No. 263 of 2018) decided on 08.01.2019, the National Company Law Appellate Tribunal, New Delhi.

5. We have heard Shri Akshit Jain the learned counsel for the appellant and Shri Jitendra Motwani the learned counsel for the respondent

6. Before dealing with the submissions raised by the learned counsel for the respondent it would be essential to peruse the provisions of the SCRA.

7. Section 21A provides for delisting of securities. For facility, the said provision is extracted hereunder:

“Delisting of securities.

21A (1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections

22B to 22E of this Act, shall apply, as far as may be, to such appeals:

***Provided** that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.”*

Section 21A(2) provides that a listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision. The proviso to Section 21A(2) states that the Securities Appellate Tribunal may further extend the period for filing the appeal not exceeding one month, if sufficient cause is shown. Thus, a specific provision for filing an appeal has been provided under Section 21A(2) against the decision of the recognised stock exchange delisting the securities. We are further of the opinion, that the Tribunal being a creature of statute has no jurisdiction to condone the delay beyond this stipulated time provided under the Act. The appeal is therefore required to be filed within fifteen days from the date of the decision which can be extended not exceeding one month. After one month, the Tribunal has no power to extend the period or condone the delay where an appeal is filed after the stipulated period. In this regard, provision of Section 22D of the Act will not be helpful which provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

8. A perusal of Section 21A(2) and the proviso makes it clear that a period of limitation is prescribed which is different from the period prescribed in the Limitation Act. Therefore, Section 22D of the SCRA cannot be come to the aid in extending the period of limitation under 21A(2) because the provision of the Limitation Act only apply “as far as may be”. For facility, the provision of Section 22D of SCRA is extracted hereunder:

“Limitation.

22D. *The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.”*

9. In view of the aforesaid, we are of the view that when there is a special provision for filing an appeal within a stipulated period the provision of Section 5 of the Limitation Act will not apply. Our view is fortified by a decision of the Supreme Court in ***Bengal Chemists & Druggists Association Vs. Kalyan Chowdhury (2018) 3 SCC 41 decided on 02.02.2018.*** The Supreme Court held:

“4) A cursory reading of Section 421(3) makes it clear that the proviso provides a period of limitation different from that provided in the Limitation Act, and also provides a further period not exceeding 45 days only if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Section 433 obviously cannot come to the aid of the appellant because the provisions of the

Limitation Act only apply "as far as may be". In a case like the present, where there is a special provision contained in Section 421(3) proviso, Section 5 of the Limitation Act obviously cannot apply."

10. Section 23L provides a provision for an aggrieved person to file an appeal to the Securities Appellate Tribunal. For facility, the said provision is extracted hereinunder:-

"Appeal to Securities Appellate Tribunal.

23L. (1) *Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under 4B [or sub-section (3) of section 23-I], may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.*

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided *that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.*

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard,

pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

A perusal of the aforesaid provisions indicates that any person aggrieved by an order or decision of the recognized stock exchange or adjudicating officer or any order made by Securities and Exchange Board of India may prefer an appeal before this Tribunal within forty five days. The proviso to Section 23L further indicates that the appeal can be entertained after the expiry of the forty five days if the Tribunal is satisfied that there was sufficient cause for not filing the appeal within the stipulated period. Thus, a wide discretion is given to the Tribunal to condone the delay after forty five days for which purpose the provision of Section 24D would apply.

11. In this regard, at this stage it may be pointed out that Section 21A and Section 23L were both inserted in the SCRA by the Securities Laws (Amendment) Act, 2004, w.e.f. 12.10.2004. Both the provisions came into force simultaneously w.e.f. 12.10.2004. Section 21A and Section 23L provides a provision for filing an appeal against the decision of a

stock exchange. At this stage, we also need to take a look at the provisions of *Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000* (hereinafter referred to as the Rules of 2000) which have been framed in exercise of the powers conferred by Section 30 read with Section 22A of the SCRA, 1956. Rule 2(b) of the Rules of 2000 defines “appeal” as under:-

“2(b) "appeal" means an appeal filed under section 21A or section 22A or section 23L of the Securities Contracts (Regulation) Act, 1956 or under sub-rule (5) of rule 19 or sub rule (5) of rule 20 of the Securities Contracts (Regulation) Rules, 1957;]”

Rule 3 provides the period of limitation for filing an appeal. For facility, the said provision is extracted hereunder:-

“Limitation for filing appeal.

3 [(1)] Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal and may,—

(a) within 15 days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange had omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereinafter in this rule referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on

the stock exchange, within 15 days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Appellate Tribunal may, on sufficient cause being shown, allow, appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be.

[(2) Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order, against which the appeal is filed, of a recognised stock exchange withdrawing admission to dealings or suspending admission to dealings which continues for a period exceeding three months in any security/units or other instruments of a "collective instrument scheme", as defined under the Securities and Exchange Board of India Act, 1992 (15 of 1992), is received by the appellant:

***Provided** that the Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.]”*

A perusal of the aforesaid Rule 3 makes it apparently clear, that an appeal against the decision of a stock exchange shall be filed within forty five days and that the period beyond forty five days can be condoned if sufficient cause is shown to the Tribunal.

12. Having given our thoughtful consideration in the matter and upon perusing the provisions of Section 21A and Section 23L, we are of the opinion that the provision of Section 23L are wide enough to embrace an

appeal filed against a decision of delisting. Section 23L cannot be given a narrow interpretation so as to exclude the exercise which are covered by Section 21A. The argument of the respondent that, if the matter is covered by Section 21A then Section 23L would be inapplicable by necessary implication especially when there is a specific provision cannot be accepted. There is no doubt that when there is a specific provision then it must be governed by that provision and not by the general provision (in terms of the latin maxim “*generalia specialibus non derogant*”) i.e. to say whenever a specific remedy is made available in law, the other remedy, more general in nature, necessarily gets excluded. In our view, this principle of a specific remedy would exclude the general remedy would not be applicable in the instant case. This sound principle of jurisprudence, namely, that a special provision on a matter excludes the matter of a general provision on that matter cannot be applied in a situation when there are two provisions dealing with remedies in filing an appeal. When there is a plurality of remedies, the principle of specific provision excluding the general provision by necessary implication will not be applicable. In the instant case, there is no conflict between the two provisions namely Section 21A and Section 23L. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them. In this regard, the doctrine of election will come into play and the aggrieved person has the remedy either to file an appeal under Section 21A or under Section 23L.

13. In *Bihar State Co-operative Marketing Union Ltd., Vs. Uma Shankar Sharan and Anr.* AIR 1993 SC 1222 the question which was

considered was whether a matter, if it comes within the scope of Section 40 of the Bihar and Orissa Co-operative Societies Act, 1935 has to be excluded from the purview of Section 48 of the Act. The Supreme Court held that both the provisions were applicable for the purpose of filing an appeal and that both the provisions were held to be available to the appellant. The Supreme Court held:-

“6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. In the present case there is no such problem as no steps under S.40 were ever taken by the appellant. The provisions of S.48 must, therefore, be held to be available to the appellant for recovery of the loss.”

The said decision is squarely applicable in the instant case and consequently the decision of the Calcutta High Court in the matter of *Ashoka Marketing Limited & Anr. Vs. The Calcutta Stock Exchange Limited & Ors. 2017 SCC Online Cal 15508 decided on 16.11.2017* stands impliedly overruled.

14. The contention that there has to be a harmonious construction of the two Rules would not be applicable in the instant case as there is no conflict in the two provisions. The principle of harmonious construction would be applicable when there is a conflict between two provisions. The Rule of construction is well settled namely, that when there are, in an enactment, two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, effect should be given to both. This is known as harmonious construction. A familiar approach in such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one so as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in a particular situation. The principle is expressed in the maxim 'generalia specialibus non derogant' which means general things do not derogate from special things and 'generalia specialibus derogant' which means that special things derogate from general things i.e. to say if a special provision is made on a certain matter, that matter is excluded from the general provision.

15. There is another aspect. Securities and Exchange Board of India (Delisting of Equity Shares) Regulation, 2009 (hereinafter referred to as the Regulation of 2009) have been framed in exercise of the powers conferred by Section 31 read with Section 21A of SCRA. Under Chapter V, Regulation 22 provides compulsorily delisting of the equity shares of a company by a recognized stock exchange. Regulation 23 provides that

after the equity shares of a company are delisted, the stock exchange shall appoint an independent valuer for determining the fair value of the delisted equity shares. The promoter of the company, if aggrieved by the determination of the fair value can only file an appeal under Section 23L and not under Section 21A of SCRA. In the instant case, a composite order under Regulation 22 and 23 of the Regulation of 2009 has been passed by the stock exchange. Thus, an appeal determining the fair value can be challenged in an appeal filed under Section 23L of the SCRA.

16. In the light of the aforesaid, when two provisions deal with the remedies of filing an appeal the doctrine of election will come into play and it is open to an appellant to file an appeal either under Section 21A or under Section 23L. We consequently hold that an appeal can be filed against delisting of the securities under Section 23L. The appeal filed by the appellant is thus maintainable.

17. There is a delay of 73 days in filing the appeal. It has been urged that the reason for the delay is that the appellant company has its registered office at Ahmedabad, in Gujarat and it took them some time to find a specialized lawyer dealing in securities market. Thereafter, it took some time to collect, compile as well as collate various documents as required by the advocate. It was also urged that the appellant is in financial difficulties and that they had to pool the resources to file the appeal which also took time. It was contended that they are not aggrieved by the order of delisting but are only aggrieved by the determination of the fair value as determined by the independent valuer at

₹ 9.07 per equity share for which purpose they approached the respondent to provide the details with regard to the determination of the fair value. It was contended that since no information was supplied the present appeal was filed along with an application for condoning the delay.

18. Having heard the learned counsel for the parties, on this aspect we are of the opinion that sufficient cause has been explained by the appellant which is adequate as well as satisfactory and, therefore, we are of the opinion, that the delay of 73 days in filing the appeal should be condoned. The Supreme Court in *Ram Nath Sao alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors (2002) 3 SCC 195* held that the expression “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party. Consequently, the delay in filing the appeal is condoned and the application for condonation of delay is allowed.

19. List the appeal for admission on 28.02.2019.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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