

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 03.08.2023

**Misc. Application No. 892 of 2023
And
Appeal No. 614 of 2023**

1. Mr. K. L. A. Padmanabhasa & Anr.
2. K L A Padmanabhasa HUF

No. 9/1, Seshadri Road,
Gandhinagar, Bangalore – 560009.

..... Appellants

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Khoday India Ltd.
Brewery House, 7th Mile,
Kanakapura Road,
Bangalore – 560 062.

... Respondents

Mr. Joby Mathew, Advocate with Ms. Tanya Gupta, Ms. Nitiksha Parmar, Ms. Sristi Nimodia, Advocates i/b Joby Mathew & Associates for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Ms. Shefali Shankar, Mr. Amarpal Singh Dua, Advocates i/b MDP & Partners for the Respondent Nos. 1 (SEBI).

Mr. Somasekhar Sundaresan, Advocate with Mr. Robin Shah, Advocate i/b Bodhi Legal for the Respondent Nos. 2 (Khoday India).

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The appellants are aggrieved by the disposal of their complaint dated April 19, 2023 on the SEBI Complaint Redressal System (hereinafter referred to as 'SCROES').

2. The facts leading to the filing of the appeal is, that appellant nos. 1 is a promoter and director of the company Khoday India Ltd. (hereinafter referred to as 'the company') holding 4,36,471 equity shares which is about 1.21% of the paid up equity share capital of the company. Appellant nos. 2 is a Hindu Undivided Family (HUF) and is also a promoter of the company holding 58,11,580 equity shares which is 18.56% of the paid up equity share capital of the company.

3. Vide letter dated November 2, 2022, the appellants requested the board of directors of the company to dematerialize the shares held by the appellants and credit the same to the beneficiary account of the appellants. The company vide its reply dated November 9,

2022 stated that the physical share certificates will be sent to the appellants by registered post. The company also advised that the physical share certificates would have to be submitted to the Depository Participant for dematerialization. It is alleged that the appellants did not receive the physical shares as promised by the company and, consequently, the appellants wrote a letter dated November 17, 2022 to the Registrar and Share Transfer Agent (hereinafter referred to as 'RTA') of the company requesting for issuance of duplicate physical share certificates for dematerialization. It seems that the RTA forwarded the request of the appellants to the company. The board of directors by its resolution dated November 26, 2022 refused the request of the appellants to dematerialize their shares on the ground that the appellants would sell their shareholding after dematerialization of the shares and, therefore, it was not in the larger interest of the company. This resolution of the company was intimated by the RTA vide letter dated November 29, 2022.

4. Since the refusal of the company to dematerialize the shares was not in compliance of Regulation 31(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations'), the appellants filed a complaint on the SCORES portal

on March 15, 2023. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') forwarded the complaint of the appellants to the company which was replied vide their letter dated March 20, 2023 contending that the LODR Regulations does not apply to the company and that the board of directors had passed a resolution dated November 26, 2022 preventing the appellants from dematerializing their shareholding in larger interest of the company.

5. SEBI forwarded the reply of the company to the appellants and closed the complaint. The appellants, being aggrieved by the closure of their complaint, have filed the present appeal.

6. We have heard Mr. Joby Mathew, the learned counsel with Ms. Tanya Gupta, Ms. Nitiksha Parmar, Ms. Sristi Nimodia, the learned counsel for the appellants and Mr. Sumit Rai, the learned counsel with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Ms. Shefali Shankar, Mr. Amarpal Singh Dua, the learned counsel for the respondent nos. 1 and Mr. Somasekhar Sundaresan, the learned counsel with Mr. Robin Shah, the learned counsel for the Respondent nos. 2.

7. The learned counsel for the appellants contended that under Regulation 31(2) of the LODR Regulations, it is mandatory for the

promoters of a listed entity to dematerialize its shares. It was also contended that the contention of the company that it is not a listed company is incorrect as the website of the Ministry of Corporate Affairs shows the status of the company as a listed company. It was contended that even otherwise under the Companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as 'Rules of 2014'), even an unlisted company is required to facilitate dematerialization of its existing securities in accordance with the provisions of the Depositories Act and Regulations made thereunder. In this regard, the learned counsel referred to Rule 9 and 9A of the Rules of 2014.

8. On the other hand, the learned counsel for the respondent nos. 1 SEBI submitted that the respondent company is still a listed company and since there were certain *inter se* disputes, SEBI only intimated the reply of the company to the appellants and closed the complaint. The learned counsel conceded that the communication made by SEBI to the appellants was not happily worded and in the event the matter is remitted, they will pass an appropriate order considering the Regulation 31 of the LODR Regulations.

9. The learned counsel for the company submitted that the appeal is not maintainable and that the appropriate remedy for the

appellants is to file an appeal either under Section 58(3) and 58(4) of the Companies Act, 2013 (hereinafter referred to as 'Companies Act') before the National Company Law Tribunal (hereinafter referred to as 'NCLT'). It was urged that the appellants has an efficacious alternate remedy which can be invoked and that no cause of action arises before SEBI under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') or its regulations by filing the complaint under the SCORES portal. In the alternative, it was urged that as per paragraph nos. 19 of the Master Circular of SEBI dated November 7, 2022 with regard to redressal of the grievances on the SCORES platform, the complaint should have been addressed to the stock exchange as the first recourse for redressal and without resorting to this forum, the complaint under the SCORES platform could not have been filed. In the end, it was urged that Article 15 of the Article of Association of the company provides absolute discretion to the board of directors refuses to register any transfer of shares in exceptional circumstances where it is felt that the transferor / transferee is not a desirable person from the larger point of view of interest of the company as a whole.

10. Having heard the learned counsel for the parties at some length, we find that the contention raised by the learned counsel for

the company is untenable. The contention so raised appears to be only a ploy to defeat the appeal of the appellants for vested reasons.

11. In the first instance, we are constrained to observe that SEBI is required to address the investors' grievance on the SCORES platform. The purpose of this redressal system so launched by SEBI in 2011 was to provide a platform for the aggrieved investors whose grievance pertaining to the securities market remained unresolved by the concerned listed company, registered intermediary or recognized Market Infrastructure Institutions. Merely seeking a reply from the company and passing it on to the appellants and thereby closing the complaint is not sufficient compliance of redressal of the investors' grievance. SEBI is required to consider whether the complaint infringes any provision of SEBI Act and its regulations and if it finds that the complaint is genuine which violates the SEBI Act and its regulations then it is an onerous duty of SEBI to direct the company, registered intermediary or recognized Market Infrastructure Institution to sort out the complaint or initiate proceedings for violation of the securities laws.

12. This procedure was apparently not done by SEBI and without applying its mind has mechanically disposed of the complaint

without considering as to whether the provision of the LODR Regulations was violated or not.

13. Section 58 of the Companies Act provides as under :-

“58. Refusal of registration and appeal against refusal.—

(1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of

transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order —

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.”

14. The aforesaid provision relates to transfer of securities and where the company refuses to register the transfer of securities, the transferee may appeal to the NCLT. This provision, in our opinion, is not applicable as it is not a case of transfer of shares from one entity to another entity. In the instant case, the issue was for dematerialization of the shares of the appellants and / or for the issuance of duplicate shares and, therefore, Section 58 of the

Companies Act is not applicable in the instant case. The contention that the appellants have an alternate remedy to file an appeal before NCLT is, thus, patently erroneous.

15. The contention that no complaint could have been filed before SEBI on the SCORE platform in as much as the SEBI's Master Circular dated November 7, 2022 directs investors to first file a complaint before the stock exchange under Clause 19 of the said circular is immaterial. No doubt, the master circular permits an investor to raise the grievance before the stock exchange but that does not mean that SEBI does not have jurisdiction to deal with the complaint. Thus, the contention that this Tribunal should relegate the matter to the stock exchange is not tenable at this stage especially when SEBI has dealt with the matter. The objection so raised is, thus, untenable and is rejected.

16. It was urged that the resolution passed by the board of directors refusing to dematerialize the shares of the appellants was passed in larger interest of the company as per Article 15 of the Article of Association of the company is patently erroneous. For facility, Article 15 is extracted hereunder :-

“15. Subject to the right of appeal under Section 108 of the Act, the Board may in its absolute discretion and

without assigning any reason whatsoever, refuse to register any transfer of share where,

- a) The Company has a lien on such shares,*
- b) The transferee is a minor, insolvent or person of unsound mind.*
- c) In exceptional circumstances when it is felt that the transferor / transferee is not a desirable person from the larger point of view of interest of the Company as a whole.*

Provided that the registration of a transfer shall not be refused on the ground of the transferor being alone or jointly with any other person / persons indebted to the Company on any account whatsoever, except a lien on the shares.

The Board shall specifically pass a resolution when exercising their right to refuse to register any transfer of shares and shall advise both the transferor and the transferee in writing shall advise both the transferor and the transferee in writing within one month from the date on which the instrument of transfer was lodged with the company the fact of such refusal.”

17. A perusal of the aforesaid provision clearly indicates that it applies with regard to registration of the shares pursuant to the transfer of shares from one entity to another entity. Clause (c) of the Article 15 provides that in exceptional circumstances where the transferor or transferee is not a desirable person then in the larger interest the company may refuse to register any transfer of shares. This provision is clearly not applicable as it involved only transfer of

shares from one entity to another entity and does not involve either issuance of duplicate shares or a request for dematerialization of the shares. Further, there is nothing to indicate that the appellants who are also promoters of the company are undesirable persons. Thus, the resolution of the company that the request for dematerialization is refused in larger interest of the company is patently erroneous and is a deliberate attempt in not allowing the appellants to dematerialize its shares which is mandatorily required to be dematerialized under the LODR Regulations.

18. The apprehension of the company that once the shares are dematerialized, the appellants may transfer it to another entity which will not be in the interest of the company cannot be considered at this stage nor can that be a ground to refuse the request for dematerialization of the shares or for issuing a duplicate share. Thus, the contentions raised by the respondent company which was vehemently argued at some length are patently erroneous and rejected in limine.

19. The question now remains is, that whether any provision of SEBI laws has been violated by the company. In this regard, Regulation 31(2) of the LODR Regulations is extracted hereunder :-

“31(2). The listed entity shall ensure that hundred per cent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the Board”

20. A perusal of the aforesaid provision indicates that the listed company shall ensure that 100% of the shareholding of the promoter is in dematerialization form. The appellant admittedly is a promoter of the company and, therefore, there is a mandate upon the registered company to ensure that the shareholding of the promoters are kept in a dematerialize form. SEBI was required to ensure that its laws are followed by the company, namely, Regulation 31(2) of the LODR Regulations. By not doing so, SEBI has failed to carry out their duty while disposing of the complaint of the appellants.

21. Similarly, Rule 9 and 9A of the Rules of 2014 provides as under :-

Dematerialization of securities.

“9. The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form:

Provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such

offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.”

Issue of securities in dematerialised form by unlisted public companies.

"9A. (1) Every unlisted public company shall –

- a) issue the securities only in dematerialised form;*
- and*
- (b) facilitate dematerialisation of all its existing securities,*

in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

(3) Every holder of securities of an unlisted public company, –

- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or*
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.*

(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that _

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

(b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and

(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the

Securities and Exchange Board of India (Depositories and Participants) [Regulations, 2018] and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.

[(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialized form.]

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority.

(10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.”

22. A perusal of the aforesaid provisions also indicate that even an unlisted public company is required to facilitate dematerialization of its existing securities in accordance with the provisions of the Depositories Act.

23. In view of the aforesaid, the refusal by the company to dematerialize the shares of the appellants and / or to issue duplicate shares was patently erroneous and against the provisions of Regulation 31(2) of the LODR Regulations.

24. In view of the aforesaid, the impugned communication issued by SEBI dated April 19, 2023 is set aside. The appeal is allowed.

25. We direct SEBI to pass appropriate orders directing the company to take steps to dematerialize the shares of the appellants under Regulation 31(2) of the LODR Regulations. Such direction should be passed within four weeks from today.

26. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

03.08.2023
PTM