

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 23.11.2017

Appeal No. 97 of 2015

Mahendra G. Wadhwani
15, Linking Road,
Opposite Arya Samaj,
Santacruz (West),
Mumbai- 400 054

...Appellant

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. BSE LIMITED
Phiroze Jeejeebhoy Towers
Mumbai- 400 001

3. National Stock Exchange of India Limited
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E),
Mumbai- 400 051

...Respondents

Mr. Somasekhar Sundaresan, Advocate with Mr. Dhaval Kothari,
Mr. Ashok Chhabra and Mr. Devul Dighe, Advocates i/b S.D. Israni Law
Chambers for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Pulkit Sukhramani and
Ms. Vidhi Jhavar, Advocates i/b The Law Point for Respondent No. 1.

Ms. Amrita Joshi, Advocate i/b The Law Point for Respondent No. 2.

Ms. Charmi Chhadva, Advocate i/b Manilal Kher Ambala & Co. for
Respondent No. 3.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed basically to challenge two circulars issued by the Securities and Exchange Board of India (“SEBI” for short) on May 22, 2014 and on April 17, 2015 respectively. Apart from the above, the appellant seeks an order directing SEBI to ensure that the companies listed exclusively on regional stock exchanges get listed either on the Bombay Stock Exchange or on the National Stock Exchange automatically.

2. Appellant is an investor and has been investing in various companies listed on various stock exchanges in the country including several regional stock exchanges which are now de-recognized. Basic grievance of the appellant is that the impugned circulars do not provide any exit route for the shareholders of the companies exclusively listed on de-recognized/ non-operational stock exchanges.

3. Counsel for SEBI, however, raised a preliminary objection regarding the maintainability of the appeal. He submitted that the present appeal was filed by the appellant under Section 15T of SEBI Act by relying on a decision of this Tribunal in case of NSDL v/s SEBI reported in 2006 SCC online SAT 251 wherein it was held that the circulars issued by SEBI could be challenged before this Tribunal. Since the said decision of this Tribunal is reversed by the Apex Court in the case of SEBI v/s NSDL reported in (2017) 5 SCC 517 it is submitted that the appeal is not maintainable before this Tribunal.

4. Counsel for the appellant, however, submitted that the decision of the Apex Court in the case of the SEBI v/s NSDL (Supra) is not applicable to the facts of the present case. In support of the above contention counsel for the appellant relied on a decision of this Tribunal in the case of J. Kumar Infraprojects Ltd. v/s SEBI & Ors. (Appeal No. 174 of 2017 decided on 10.08.2017). Counsel for the appellant further submitted that the impugned circulars are nothing but the orders passed by SEBI under regulation 28(2) of the SEBI (Delisting of Equity Shares) Regulations, 2009 (“Delisting Regulations” for short). Merely because SEBI has referred the orders passed under regulation 28(2) of the Delisting Regulations as ‘circulars’ cannot be a ground to deny the appellant his right to file an appeal against the said circulars which are in fact orders passed under the Delisting Regulations.

5. In our opinion, the argument advanced on behalf of the appellant is wholly misconceived.

6. Impugned circulars issued by SEBI contain administrative directions given by SEBI to the stock exchanges in relation to all companies which are exclusively listed on de-recognized / non-operational stock exchanges. Since the directions contained in the said circulars are not restricted to any particular company but are generally applicable to all the companies exclusively listed on de-recognized/ non-operational stock exchanges, it is abundantly clear that the impugned

circulars are nothing but the administrative circulars issued in the interest of the investors in the securities market.

7. It is equally important to note that none of the companies to whom the directions contained in the impugned circulars apply have deemed it appropriate to challenge the impugned circulars and the appellant who is an investor in those companies has deemed it appropriate to challenge the impugned circulars. Assuming that the appellant has any grievance against the impugned circulars, in view of the decision of the Apex Court in case of NSDL (Supra) proper course to be adopted by the appellant is to take appropriate steps in judicial review proceedings and not by way of an appeal before this Tribunal.

8. Reliance placed by the counsel for the appellant on the decision of this Tribunal in case of J. Kumar Infraprojects Ltd. (Supra) is wholly misplaced. In that case, the Ministry of Corporate Affairs (MCA) had addressed a letter calling upon SEBI to investigate as to whether the 331 companies named therein which were suspected to be Shell Companies were in fact Shell Companies and whether the said companies had any credentials/ fundamentals. Without conducting any investigation SEBI had inter alia directed the stock exchanges to suspend the trading in the securities of those companies on daily basis. In that context this Tribunal held that the communication of SEBI which had serious Civil Consequences and prejudicially impaired the rights and obligations of the companies specified therein could not be said to be an administrative circular but would fall in the category of a quasi judicial order and hence

appealable before this Tribunal. In the present case, the impugned circulars are the general circulars issued to the stock exchanges in relation to all the companies exclusively listed on de-recognized/ non-operational stock exchanges and the said circulars do not in any prejudicially affect the rights of any particular company whose shares are exclusively listed on de-recognized/ non-operational stock exchanges. Thus, reliance placed by the appellant on the decision of this Tribunal in case of J. Kumar Infraprojects Ltd. (Supra) is totally misplaced.

9. Argument of the appellant that the impugned circulars constitute orders under regulation 28(2) of the Delisting Regulations is totally frivolous to say the least. By circular dated 22.05.2014 SEBI directed the stock exchanges to give various options specified therein to the companies exclusively listed on de-recognized/ non-operational stock exchanges to get listed on the nationwide exchanges. In view of the representation made by some of the companies exclusively listed on de-recognized/ non-operational exchanges, SEBI issued circular dated 17.04.2015 thereby giving extension of time to all the companies exclusively listed on de-recognized non-operational stock exchanges to get listed on nationwide stock exchanges. Thus, the appellant is wholly unjustified in arguing that the impugned circulars constitute orders under regulation 28(2) of the Delisting Regulations. Conduct of the appellant in pursuing the appeal by raising such frivolous grounds inspite of the decision of the Apex Court in NSDL (Supra) is reprehensible.

10. For all the aforesaid reasons, the appeal is dismissed with costs quantified at ₹ 10,000/- to be paid by the appellant to SEBI within four weeks from today.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

23.11.2017
Prepared & Compared By: PK