

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 21.9.2018

**Review Application No.6 of 2018
And
Appeal No.236 of 2018**

The Calcutta Stock Exchange Limited
7, Lyons Range, Kolkata – 700 001.

..... Applicant
(Org. Respondent no.2)

Versus

1. IndiaNivesh Capitals Limited
Regd. Office: 1705, 17th Floor, Lodha Supremus,
Senapati Bapat Marg, Lower Parel (West),
Mumbai – 400 013.

....Respondent no.1
(Org. Appellant)

2. Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, “G” Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

... Respondent no.2
(Org. Respondent no.1)

3. BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai – 400 001.

... Respondent no.3
(Org. Respondent no.3)

Mr. Kashik Chaterjee, Advocate with Mr. Sagar Jadhav, Advocate for the
Applicant/(Org. Respondent no.2).

Mr. Prakash Shah, Advocate for the Respondent no.1/(Org. Appellant).
Mr. Gaurav Joshi, Senior Advocate with Mr. Tomu Francis, Advocate i/b.
ELP for Respondent no.2/(Org. Respondent no.1)
Ms. Vidhi Jhavar, Advocate with Mr. Pulkrit Sukhramani, Advocate i/b.
The Law Point for Respondent no.3/(Org. Respondent no.3)

CORAM: Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair (Oral)

1. This Review Application has been filed by the Applicant/(Org. Respondent no.2) seeking to review the order of this Appellate Tribunal dated August 7, 2018 passed in Appeal no.236 of 2018. By the said order, interalia, CSE was directed to pass a final order within 21 days from the date of the order i.e. August 7, 2018.

2. Appeal no.236 of 2018 has been filed challenging the communication issued by Securities and Exchange Board of India's ('SEBI' for short) dated August 7, 2017 directing three nationwide stock exchanges (NSE, BSE and MSEI) to take certain actions as specified therein. The name of the Appellant figures in the list of 331 companies annexed to this communication at serial no.50.

3. It is on record that subsequently, on September 7, 2017, SEBI wrote to the Calcutta Stock Exchange ('CSE' for short) advising the CSE to take certain measures in respect of 85 companies exclusively listed on CSE.

4. The submission of Shri Prakash Shah, learned Counsel for the Respondent no.1/(Org. Appellant) is that there is no trading in the shares of the Appellant Company which is listed on CSE. However, the Appellant Company is an NBFC doing genuine business and inclusion of the Appellant's name in the list of suspected shell companies is prejudicial to the business interest of the Appellant.

5. Learned counsel, Shri Kashik Chatterjee for Applicant/(Org. Respondent no.2) i.e. CSE on Review Application no.6 of 2018 submits that soon after the August 7, 2017 communication of SEBI obtained from public sources CSE took proactive action in informing SEBI that some of the companies whose names are given as part of the 331 suspected shell companies have been in fact listed on CSE. He further submits that following the letter dated September 7, 2017 and subsequent clarificatory

email dated September 21, 2017 the CSE submitted a report alongwith a copy of an independent Auditor's report in respect of the Appellant Company to SEBI on March 15, 2018. Therefore he contends that whatever directions have been given by SEBI vide communications dated September 7, 2017 and September 21, 2017 have been complied with. He further submits that a subsequent, July 19, 2018 communication of SEBI also was complied with by CSE on July 28, 2018 when CSE wrote to the Appellant Company to approach the Ministry of Corporate Affairs (MCA) in case they wish to get their name removed from the list of suspected shell companies.

6. In order to reinforce his argument Counsel for Respondent no.2 further relies on the order of the Whole Time Member (WTM) of SEBI dated September 7, 2018 in respect of JMD Alloys Ltd.

7. Learned Senior Counsel Shri Gaurav Joshi, on instructions, submits that the order dated September 7, 2018 on JMD (supra) very clearly specifies that as per that order, the August 7, 2017 communication was not applicable to companies exclusively listed on CSE. The relevant parts of the order are reproduced below:

“4)It is noted that the letter dated August 7, 2017 was issued by SEBI pursuant to identification of 331 companies as “shell companies” by Ministry of Corporate Affairs. The said letter was addressed by SEBI to all the Nationwide Stock Exchanges i.e. BSE, NSE and MSEI since active trading was happening only on these Stock Exchanges. Thus, the directions issued vide the said letter were applicable to companies which were listed at least on any one of these nationwide stock exchanges.

5)No specific directions were issued vide letter dated August 7, 2017 against companies exclusively listed on CSE or against their promoters / directors.

6)CSE vide letter dated August 14, 2017 informed SEBI that it has come across the letter of SEBI dated August 7, 2017 addressed to nationwide stock exchanges, and in that regard, it informed that out of the 331 suspected shell companies, 85 companies are exclusively

listed with CSE. CSE enclosed a list of the said companies and sought specific directions of SEBI in view of the fact that there were no specific directions to CSE in the aforesaid letter of SEBI dated August 7, 2017.

7) In response to CSE's letter, SEBI vide its Letter No. SEBI/HO/ISD/ISD/P/21403/1 dated September 07, 2017 advised CSE to take following measures w.r.t companies exclusively listed at CSE:

a) CSE shall initiate a process of verifying the credentials /fundamentals of such companies

b) CSE is requested to advise companies to produce the auditor's certificate giving the following information for the purpose of verification of credentials/fundamentals of the company

i. Status of filing its annual income tax return for last three years and status of any pending disputes with Income tax department, if any;

ii. Status of company's compliance with all the requirements of Companies Act and annual returns filing during last three years;

iii. Whether company is a going concern and description of its business model. Bank statement of last one year with active/dormant status

iv. Status of Company with respect to default to any bank/financial institution

v. Status of Company's compliance with all the listing regulation requirements for a period of last three years

c) CSE shall verify Auditor's Certificate along with these documents and give an opportunity of hearing to the companies before submitting the report to SEBI as soon as possible

d) Further, from the list of 331 companies, Exchanges shall identify the entities which are registered as clients with trading members and advice the trading members of these entities to verify the credentials/fundamentals. The verification of credentials/fundamentals of the clients by the trading members may exclude the companies which are being verified directly by exchanges as listed entity. In case, if on verification on credentials of these said clients is not found satisfactory, then their UCC should be temporarily disabled by exchanges and report on the same shall be submitted to SEBI."

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“B. Considering the representation made by JAL, whether any directions are required to be issued by SEBI in respect of JAL?”

1.

2. The identification of certain companies as “shell companies” (including JAL) was done by Ministry of Corporate Affairs. Since the said list of 331 shell companies was not prepared by SEBI, any amendment to the said list is not within the purview of SEBI.

3) Therefore, the appropriate authority for removal of any name from the list of 331 companies is Ministry of Corporate Affairs.”

8. In view of the above, the Review Application is allowed with a direction to CSE to give a copy of their report alongwith the copy of the Audit Report submitted to SEBI vide letter dated March 15, 2018 to the Appellant.

9. The Review Application is disposed of in the aforesaid terms with no order as to costs.

10. In the result, nothing survives in Appeal No.236 of 2018 which is also disposed of with no order as to costs.

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

21.9.2018

Prepared and compared by
RHN