

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 22.11.2019

Date of Decision : 26.11.2019

Appeal No. 566 of 2019

Cameo Corporate Services Limited
Subramanian Building, No. 1,
Club House Road,
Chennai – 600 002.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Joby Mathew, Mr. Abhishek Venkataraman and Mr. Nikhil Shah, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Vikram Nankani, Senior Advocate with Mr. Anubhav Ghosh, Ms. Rashi Dalmia and Ms. Akshata Timmapur, Advocates i/b The Law Point for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant is aggrieved by the *ex parte ad interim* order dated October 18, 2019 and confirmatory order dated November 7, 2019 passed by the Whole Time Member

(‘WTM’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) has filed the present appeal.

2. The facts leading to the filing of the present appeal is that the appellant is the Registrar to the Issue and Transfer Agent (‘RTA’ for short) of Indo National Ltd. A complaint was received by SEBI on May 14, 2019 on the SCORES platform alleging that the complainant is a legal heir / beneficiary of Late Sewratan Mundra, who is the complainant’s paternal grandfather, who had expired on May 15, 1975. It was contended that while clearing and sorting out the old documents, the complainant discovered certain shares of Indo National Limited held by his grandfather and accordingly applied to the appellant seeking information on transferring the said shares in his name. The Company informed that the said shares had already been transferred to one Mr. Sewaratan Mundra contending that Mr. Sewaratan Mundra had applied for duplicate shares and which was duly provided and thereafter Mr. Sewratan Mundra sold it to one Mr. Anil Kumar Shivratan Bhootra of Kolkata. It was alleged that due diligence was not exercised by the appellant in verifying the genuineness of the request sent by the alleged Sewratan Mundra in as much as the complainant’s

grandfather had passed away in the year 1975 and the question of issuance of duplicate shares after his death does not arise.

3. Even though the complaint was disposed of by the company on the SCORES platform, SEBI undertook the examination of the activities of the appellant with specific reference to the issue of exercise of due diligence in respect of issuance of duplicate shares. Based on the examination SEBI found that there were nine such similar instances of the same company from the financial year 2014 onwards where duplicate shares have been issued wherein following discrepancies was observed:-

- “a. The photos in the copy of documents submitted as proof of identity and proof for address for the different claimants found to be identical.*
- b. Transferees were having more than one PAN with different combinations of middle names and surnames.*
- c. Following modus-operandi was observed in all these cases:*
 - i. a request for change of address was sent by the claimants by providing a copy of PAN stating to be in the name of the original shareholder;*
 - ii. thereafter a request for issue of duplicate share certificates was made;*
 - iii. after receipt of the duplicate share certificates, the said shares were lodged for transfer in the name of the Noticees;*

iv. *then Noticees dematerialized these shares and sold these shares in the market.”*

4. Further examination and information sought from the claimant with regard to the appellant as RTA of other companies, discrepancies were found in six cases, namely that photocopies of the PAN card provided by the transferee were fake and that one transferee was having multiple PAN combination. There was mismatch of photo in the PAN card and other documents, etc.

5. Based on the aforesaid discrepancies, the WTM *prima facie* observed that the appellant did not exercise appropriate due diligence while processing various requests and *prima facie* found violating Clauses 2,3 and 16 of the Schedule III of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 ('Regulations of 1993' for short). Accordingly, the WTM exercised its powers under Section 11(1), 11(4) and 11B read with Regulation 19 of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) and Regulation 22 of the Regulations of 1993 and issued an *ex parte ad interim* order prohibiting the appellant from accepting fresh clients in respect of its activities till further directions.

6. The appellant upon receiving the *ex parte ad interim* order immediately applied for revocation of the said order and submitted a detailed reply to SEBI. The WTM of SEBI after considering the matter confirmed the *ex parte ad interim* order by issuing the following directions:-

“a. confirm the directions issued against the Noticee in the interim order dated October 18, 2019;

b. order SEBI to carry out a special purpose inspection of the Noticee inter alia to inspect the books of accounts of the Noticee including but not limited to the due diligence adopted by the Noticee in respect of unclaimed shares, the procedure being followed for issue of duplicate shares, the steps taken by the Noticee with regard to the rectification of the register of members pertaining to wrong transfer of shares etc. The Special purpose inspection is to be conducted by SEBI and a report to be submitted within ninety days from the date of this order. The interim order as mentioned in para 6 a. above shall continue till the expiry of ninety days from the date of this order.”

7. In view of the aforesaid, the present appeal has been filed.

8. We have heard Shri Somasekhar Sundaresan, the learned counsel for the appellant and Shri Vikram Nankani, the learned senior counsel for the respondent.

9. The learned counsel for the appellant contended that under Regulation 22 of the Regulations of 1993 if the RTA,

the appellant, fails to comply with any conditions subject to which registration has been granted or contravenes any of the provisions of the Act, Rules, Regulations or By laws of the Stock Exchange the said RTA shall be dealt with in the manner provided under Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations of 2008' for short). For facility, Regulation 22 of the Regulation of 1993 is extracted hereunder:-

*“22. Liability for action in case of default.—
A registrar to an issue or share transfer agent who-*

*(a) fails to comply with any conditions
subject to which registration has been granted;*

*(b) contravenes any of the provisions of the
Act, rules or regulations;*

*(c) contravenes the provisions of the
Securities Contracts (Regulation) Act, 1956 (42
of 1956) or the rules made thereunder;*

*(d) contravenes the provisions of the
Depositories Act, 1996 or the rules made
thereunder;*

*(e) contravenes the rules, regulations or bye-
laws of the stock exchange, shall be dealt with
in the manner provided under chapter V of the
Securities and Exchange Board of India
(Intermediaries) Regulations, 2008.”*

10. Regulation 23 and Regulation 27 of the Intermediaries Regulations of 2008 being relevant are also extracted hereunder:-

“Cancellation or suspension of registration and other actions.

23. *Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –*

(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

“Action in case of default.

27. *After considering the representations, if any, of the noticee, the facts and circumstances of the case and applicable provisions of law or directions, instructions or circulars administered by the Board the designated authority shall submit a report, where the facts so warrant, recommending, –*

(i) suspension of certificate of registration for a specified period;

(ii) cancellation of certificate of registration;

(iii) prohibiting the noticee to take up any new assignment or contract or launch a new scheme for the period specified in the order;

(iv) debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;

(v) *debarring a branch or an office of the noticee from carrying out activities for the specified period;*

(vi) *warning the noticee.”*

11. In the light of the aforesaid provisions, it was urged that Regulations of 1993 clearly provides that any contravention of the provisions of the Act, Rules, Regulations etc. RTA would be dealt in accordance with the provisions of Chapter V of the Intermediaries Regulations of 2008 which provides a procedure for cancellation or suspension of the registration and other actions. It was contended that Regulation 27 provides for suspension, cancellation and, other action that can be taken but the same can only be taken after submission of a report made by the enquiry officer and after giving an opportunity of hearing. It was contended that in the instant case no opportunity was provided before passing an *ex parte ad interim* order and in any case the confirmatory order could not have been passed until the enquiry report was submitted which in the instant case has not been done. It was thus contended that the direction restraining the appellant from accepting fresh clients in respect of its activities was wholly arbitrary and, in any case, harsh which did not commensurate with the misconduct, if any, committed by the appellant.

12. On the other hand, the learned senior counsel Shri Vikram Nankani appearing on behalf of respondent SEBI contended that an *ex parte ad interim* order issued by the WTM of SEBI has not been passed under Regulation 27 of the Intermediaries Regulations of 2008 and that the power has been exercised under Section 11(1) and 11(4) of the SEBI Act. It was further contended that Regulation 23 of the Intermediaries Regulations of 2008 makes it apparently clear that in addition to the powers conferred under Regulation 27 SEBI could also exercise the powers under the Securities Laws, namely, Section 11 and 11B of the SEBI Act. The learned senior counsel for respondent SEBI thus contended that an *ex parte ad interim* order can be issued under Section 11 and 11B of the SEBI Act and, as and when the enquiry is completed, SEBI may take appropriate action, if any, under Regulation 27 of the Intermediaries Regulations of 2008. It was contended that discrepancies committed by the appellant are so glaring that appropriate action was taken which does not suffer from any error of law.

13. Having heard the learned counsel for the parties and having perused the *ex parte ad interim* order and the confirmatory order we find that except in the case of the

complainant where there is a *prima facie* case of a person impersonating the grandfather of the complainant all other discrepancies either relate to mismatching of photographs or signatures or that the PAN card being fake and not been verified from the Income Tax website / NSDL and accordingly a *prima facie* case of lack of basic due diligence was made out against the appellant. What is noticeable is that apart from the complainant's case no other investor has come forward to make a complaint relating to the wrongful transfer of the share certificates illegally to a third party. The discrepancies pointed out by SEBI do not reveal that the appellant made any gain by this wrongful transfer nor there is any finding of a loss being caused to an investor. Thus, exercising the powers under Section 11 and 11B restraining the appellant from accepting fresh clients for a period of three months for failing to exercise due diligence appears to be harsh and unwarranted in the facts and circumstances of the given case.

14. In *Appeal No. 80 of 2019 and other connected appeals, North End Foods Marketing Pvt. Ltd. vs SEBI decided on March 12, 2019* this Tribunal held:-

“13. Having heard the learned senior counsel at length, we find that it is no more res integra that SEBI has power to pass ex parte ad interim order, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed ex parte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex parte ad interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary when ex parte ad interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.

14. However, it does not mean that in every case, an ex parte ad interim order should be passed on the pretext that it was imminent to pass such interim order in order to protect the interest of the investor or the securities market. An interim order, however, temporary it may be, restraining an entity/person from pursuing his profession/trade may have substantial and serious consequences which cannot be compensated in terms of money.

15. Thus, *ex-parte interim order* may be made when there is an urgency. As held in ***Liberty Oil Mills & Ors. vs. Union of India & 18 Ors.*** [AIR (1984) SC 1271] decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital market.

16. The aforesaid principle of law is squarely applicable in the instant case. In our opinion, the impugned order is harsh and unwarranted. We are of the opinion that there was no real urgency in passing an *ex parte ad interim* restraint order which virtually amounts to passing a final order especially when a detailed enquiry has been ordered.

17. In our opinion, the respondent is empowered to pass an *ex-parte interim order* only in extreme urgent cases and that such power should be exercised sparingly. In the instant case, we do not find that any extreme urgent situation existed which warranted the respondent to pass an *ex-parte interim order*. We are of the opinion that the impugned order is not sustainable in the eyes of law as it has been passed in gross violation of the principles of natural justice as embodied in

Article 14 of the Constitution of India. The restraint order is in our opinion unjustified.

18. At this stage, we can stay the operation of the impugned order to a limited extent. We, however, find that no useful purpose would be served in keeping the appeals pending and directing the respondent to file a reply. Thus, we are deciding the appeal itself, without calling for a reply at the admission stage itself.

19. In view of the aforesaid, the impugned order insofar as it restrains the appellant from accepting fresh clients is quashed. Other directions issued by the WTM of SEBI will continue to operate against the appellant. The appeal is partly allowed. In the circumstances of the case, there shall be no orders as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

26.11.2019

Prepared and compared by:msb