

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 07.03.2022

Date of Decision : 24.03.2022

Appeal No. 458 of 2020

Empower India Limited
25/25A, 2nd Floor,
327, Nawab Building,
D.N. Road, Fort,
Mumbai – 400 001.

..... Appellant

Versus

1. BSE Limited
Floor 25, Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai – 400 001.
2. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

... Respondents

Mr. Prakash Shah, Advocate with Mr. Kushal Shah, CA i/b
Prakash Shah & Associates and Mr. Rajgopalan Iyengar,
Executive Director of the Appellant.

Mr. Manish Chhangani, Advocate with Mr. Ravishekhar
Pandey and Ms. Samreen Fatima, Advocates i/b The Law
Point for Respondent No. 1.

Mr. Abhiraj Arora, Advocate with Mr. Harshvardhan
Nankani, Mr. Shourya Tanay and Ms. Anshu Mehta,
Advocates i/b ELP for Respondent No. 2.

AND
Appeal No. 472 of 2021

Avance Technologies Limited
Office No. 7, 5th Floor,
Block – A, Aidun Building,
1st Dhobi Talao Lane,
Near Metro, New Marine Lines,
Mumbai – 400 002.

..... Appellant

Versus

3. BSE Limited
Floor 25, Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai – 400 001.

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

... Respondents

Mr. Prakash Shah, Advocate with Mr. Kushal Shah, CA i/b Prakash Shah & Associates and Mr. Srikrishna Bhamidipati, Managing Director of the Appellant.

Mr. Manish Chhangani, Advocate with Mr. Ravishekhar Pandey and Ms. Samreen Fatima, Advocates i/b The Law Point for Respondent No. 1.

Mr. Abhiraj Arora, Advocate with Mr. Harshvardhan Nankani, Mr. Shourya Tanay and Ms. Anshu Mehta, Advocates i/b ELP for Respondent No. 2.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Even though separate orders have been passed, the issue involved is the same, and accordingly, both the appeals are being decided by a common order. For facility, the facts stated in Appeal no. 458 of 2020 Empower India Limited vs BSE Limited & Anr. is being taken into consideration.

2. The facts leading to the filing of the present appeal is, that the Securities and Exchange Board of India ('SEBI' for short) vide letter dated August 7, 2017 forwarded a list of 331 suspected shell companies to the Stock Exchange and directing the Exchange to take actions / steps against such companies as per SEBI Act and Regulations. Based on the aforesaid letter BSE vide order dated February 12, 2018 recommended a forensic audit of the Company and accordingly appointed an audit firm to carry out the forensic audit of the Company.

3. It was observed that the appellant failed to cooperate and failed to provide requisite documents / clarifications as sought by the audit firm. Accordingly, BSE vide an order dated September 25, 2020 directed that the trading in securities of the appellant Company be shifted to 'Stage VI' of Graded Surveillance Measures framework to be followed with further consequential actions. Subsequently, vide order

dated October 28, 2020, the Stock Exchange suspended trading in the securities of the appellant Company. The aforesaid two orders dated September 25, 2020 and October 28, 2020 have been assailed in the present appeal. Similar is the controversy in the Appeal of Avance Technologies Limited vs BSE Limited & Anr.

4. We have heard Shri Prakash Shah, the learned counsel for the appellant, Shri Manish Chhangani, the learned counsel for Respondent no. 1 BSE and Shri Abhiraj Arora, the learned counsel for Respondent no. 2 SEBI.

5. By an interim order dated November 18, 2020 we had directed that the effect and operation of the impugned dated October 28, 2020 shall remain stayed till the next date of listing. Having heard the learned counsel for the parties and having perused the record we find that the impugned orders were basically passed on the ground of non-cooperation and non-furnishing of the required documents and clarifications sought by the audit firm. It was contended by the appellant that a large number of documents and information as sought by the forensic auditor was supplied from time to time and the last such information that was supplied was on February 15, 2019. The forensic report was submitted on August 14, 2020

after 16 months in which it was indicated that the appellant did not cooperate. Had any further information was required the appellant would have given. It was thus contended that the findings of non-cooperation and non-furnishing is not correct as a large number of documents were supplied.

6. In this regard we had directed the respondent to file a reply in which the respondent would indicate as to what documents were sought by the forensic auditor and what were the documents that were supplied and the documents which was not supplied by the appellant.

7. From the reply we find that a substantial number of documents have been supplied by the appellants though some of the documents have not been supplied. However, non-supply of documents cannot be treated as non-cooperation by the appellants. Further, we find that the last information sought was on February 15, 2019 and the report was submitted by the forensic auditor in August 2020. Much water had flown between this period and the forensic auditor could have easily asked for further documents or could have sent a reminder to supply the remaining documents.

8. The learned counsel for the appellants further submitted that the Company will supply all the necessary documents. The learned counsel for the respondent has also stated on instructions that upon receipt of the documents fresh order would be passed within six weeks.

9. In view of the aforesaid, we are of the opinion that the action of the respondent that the appellants did not provide a satisfactory response to the observation contained in the forensic audit report and consequently trading in the securities of the Company was suspended by the impugned orders dated October 28, 2020 cannot be sustained and are set aside.

10. The appeals are allowed in part. The matter is remitted to the authority concerned with a direction that the appellants will supply the requisite documents that were sought by the forensic auditor and the authority would pass an appropriate order within six weeks from the date of receipt of the documents. Till the passing of the fresh order, the order of September 25, 2020 directing that the trading in securities of the Company is being reverted to 'Stage-VI' Graded Surveillance Measure will continue to operate. In the circumstances of the case, parties shall bear their own costs.

11. 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

Justice M.T. Joshi
Judicial Member

24.03.2022
msb