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**(2023) 08 SEBI CK 0053**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Miscellaneous Application No. 868, 869, 870, 871, 872, 873 Of 2023,  
Appeal No. 604, 605, 606 Of 2023

Eros International Media Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

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**Date of Decision :** 22-08-2023

**Acts Referred:**

Securities And Exchange Board Of India Act, 1992 — Section 11, 11(2), 11B

**Citation :** (2023) 08 SEBI CK 0053

**Hon'ble Judges :** Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

**Bench :** Division Bench

**Advocate :** Vikram Nankani, Tushar Hathiramani, Aditya Ajgaonkar, Ameet Naik, Abhishek Kale, Harish Khedkar, Bhagyashree Lembhe, Shalvika Nachankar, Vidhur Malhotra Lembhe, Shalvika Nachankar, Naik Naik, J.P. Sen, Manish Chhangani, Samreen Fatima, Sumit Yadav, Abhay Chauhan, Somashekhar Sundersan

**Final Decision :** Disposed Of

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**Judgement**

Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against an ex-parte ad- interim order dated 22nd June, 2023 passed by the Whole Time Member (hereinafter referred to as "WTM") wherein the following directions were issued:

(a) Noticee 4 is restrained from holding the position of a director or a Key Managerial Personnel in any listed company, including Eros, or its Subsidiaries or any SEBI registered intermediary until further orders.

(b) Noticee 5 is restrained from holding the position of a director or a Key Managerial Personnel in any listed company other than Eros or any Securities and Exchange Board of India (hereinafter referred to as "SEBI") registered intermediary until further orders.

(c) Noticees 1 to 5 are restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders. If the said Noticees have any open position in any exchange-traded derivative contracts, as on the date of the order, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The said Noticees are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

2. The appellant, Eros International Media Ltd. (hereinafter referred to as "Eros") is Noticee no.1, the appellant, Mr. Sunil Arjan Lulla is Noticee no.4 and the appellant, Pradeep Kumar Dwivedi is Noticee no.5. The facts leading to the filing of the present appeal, in brief is, that the appellant Company Eros is carrying on the business of exhibiting, distributing and otherwise exploiting cinematograph and television films and motion pictures of all kinds. The Board of Directors comprises of Mr. Sunil Lulla, noticee no.4 and Mr. Pradeep Dwivedi, noticee no.5. For the financial year 2019-20, the appellant Company published its financial statement making the following disclosures:

"Company enters into agreements with production houses to develop future film content. Advances are given as per terms of agreements. Such content advances are monitored by the management of the Company for recoverability and appropriate write-offs are taken when film production does not seem viable and refund of advance is not probable basis management evaluation".

"The Group had entered into an agreement with some of the customers which entitled them to exploit the film rights for the period as specified therein. The amount receivable from such customers under the said agreement has been past due over a prolonged period. Due to disruption in the film business caused by the outbreak of COVID-19, the management does not have any reasonable expectation of recovering the amount due and therefore has terminated the agreement with such customers. Consequently, the receivables of Rs.51,998 lakhs have been written-off by the management and has disclosed the same under the exceptional item."

3. Pursuant to the aforesaid disclosure, NSE examined the financial statements and prepared a preliminary examination report prima facie observing that the Company was engaging in financial mis-reporting/ siphoning/diversion of funds. Based on the preliminary report, SEBI conducted a detailed investigation into the affairs of the Company broadly focusing on potential mis-statements in the books of accounts of the Company, diversion of funds and significant related party transactions, so as to ascertain if any provision of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act, 1992"), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the "LODR Regulations"), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities

Market) Regulations, 2003 (hereinafter referred to as the SEBI (PFUTP) Regulations”) etc., were violated by Eros.

4. During the course of the investigation which is still under progress, it revealed that the Company impaired/ written-off a sum of Rs.1320.40 crores towards content advance given to 87 entities out of which Rs.1172.41 crores related to 18 entities. Similarly, while examining trade receivables it was noted that the write off pertains to another 17 entities. The Company has entered into contracts/ agreements Trade Receivable Entities. These agreements pertained to the exploitation of “theatrical rights” and “Satellite/Videos on Demand Rights”. Depending on the rights assigned, these agreements could be classified as “distribution agreements” and “license agreements”. These agreements are for three years. The agreement provided a period of three years for making the payment. It was found that the Company had written off the entire outstanding amount in the financial year 2019-2020 even before the expiry of three years and also without taking any remedial measures for recovery. With regard to Content Advance Entities, it was found that a sum of Rs.1650.33 was reflected in the books of Eros out of which 1172.41 crores were written off which advance was given to 18 entities.

5. In this regard, SEBI vide various letters requested the Company to provide copies of the agreement entered with the Content Advance Entities and Trade Receivable Entities as well as details of efforts made by Eros to recover the amount from the defaulting entities. The impugned order reveals that in spite of various emails written to them, Eros did not supply the information as asked for and only supplied piecemeal information which upon examination led to the issuance of the summons to 17 Trade Receivable Entities and their Directors. These summons returned undelivered with the remark “no such addressee”. Some of the Trade Receivable Entities who responded to the summons provided basic information but could not substantiate as to what steps they had taken to exploit the commercial rights acquired from Eros. The statement recorded from the Directors indicates that they were only dummy Directors and that the Company was being controlled by others. The investigation further revealed that these Trade Receivable Entities were paper companies with no business operations. Further, GST registration certificate of most of these Trade Receivable Entities were cancelled. The investigation further revealed that upon examination of the ledger of these Trade Receivable Entities, it was prima facie noticed that 60% of the funds transferred by these entities to Eros were directly/indirectly funded by Eros itself and in some instances the amounts were paid back by these entities to Eros on the very day the funds were transferred to their account.

6. Insofar as Content Advance Entities are concerned, in the absence of appropriate replies being given by the Company, summons were issued to five such Content Advance Entities which came back undelivered with the remark “door locked” or “no such consignee”. Out of 25 past and present Directors of these entities that were summoned only one Director appeared who stated that

he was not aware of the fact that he was appointed as a Director of the Company and that he was paid Rs.500 per month for use of his KYC documents, etc. Upon examination of these entities it was also found that these entities were never in the business of movie content making.

7. The investigations thus revealed that neither the Company nor the Content Advance Entities could produce any material to show utilization of the funds transferred by Eros. With regard to one Content Advance Entity, officials of BSE Ltd. visited the registered office of Spicy Entertainment and Media Ltd., and found that the registered office was permanently closed and no employee was available. After the visit the said entity made an announcement that they had shifted the registered office to another place. This subsequent place was also visited by the team of the BSE which premises was also found to be closed. The investigation revealed that the Company has transferred 114.04 crores to Spicy Entertainment and Media Ltd., out of which Rs.92.20 crores was written off which had no business operation and was merely a paper Company.

8. The investigation further revealed that large funds were transferred by Eros to Content Advance Entities and that these Content Advance Entities has transferred the money to Overseas connected entities of Eros the details of which has been provided in table 20 of the impugned order. Further, 56.73 crores out of the funds transferred by Eros was also transferred by the Content Advance Entities to relatives of the promoters and, further, a sum of 46.71 cores were transferred to connected entities and to other group companies of Eros.

9. The investigation further revealed that even after impairment of 1290.15 crores to Content Advance Entities, Eros was further making content advances to these entities to the extent of 55 crores in the financial years 2020-21, 2021-22 and 2022-23. Details in this regard have been given in table 26.

10. Thus, the WTM came to a conclusion that there was continuing misrepresentation of the financials of the Company and the alleged diversion of funds was continuing even after making an impairment/write off in the financial year 2019-20. The WTM came to a prima facie conclusion that the books of accounts have been overstated and do not represent a true and correct picture of the financial health of the Company and that the transactions between the Content Advance Entities and the Trade Receivable Entities, raises the possibility that Eros was circulating funds whereby amounts transferred as content advances was recognized as revenue but subsequently was routed to Overseas entities of Eros and, thus, there was large scale diversion of funds. Consequently, the WTM thought fit that since the violations were still continuing it became necessary to pass an ad-interim ex-parte order pending completion of investigation.

11. We have heard Mr. Vikram Nankani, Senior Advocate assisted by Mr. Tushar Hathiramani, Mr. Aditya Ajgaonkar, Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Harish Khedkar, Ms. Bhagyashree Lembhe, Ms. Shalvika Nachankar and Mr. Vidhur

Malhotra, Advocates for the appellant in Appeal no.604 of 2023 and Mr. Somashekhar Sundersan, Advocate assisted by Mr. Tushar Hathiramani, Mr. Aditya Ajgaonkar, Ms. Yugandhara Khanwilkar, Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Harish Khedkar, Ms. Bhagyashree Lembhe, Ms. Shalvika Nachankar and Mr. Vidhur Malhotra, Advocates for the appellants in Appeal nos.605 and 606 of 2023 and Mr. J.P. Sen, Senior Advocate assisted by Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav and Mr. Abhay Chauhan, Advocates for the Respondent.

12. The contention of the learned counsel for the appellant and the Company is, that the appointment of a Director and his removal is occupied by the Companies Act and therefore SEBI has no power to remove a Director or restrain him from the functioning as a Director or from holding a position of a Director. It was also urged that the transactions which was taken into consideration from the financial year 2012 onwards and the impairment was shown in the financial statement of the Company in the financial year 2019-20. It was contented that there was no urgency in passing the impugned ad-interim ex-parte order and if an opportunity was given, the appellant would have shown that the impairment in the books of account were for valid and for cogent reasons and that there has been no diversion of funds. In support of the submissions, the learned counsel has placed reliance upon various decisions of this Tribunal namely:

(a) Affluence Fincon Services Pvt. Ltd. and Ors v. SEBI, Appeal No. 269 of 2020 dated September 07, 2020;

(b) Dr. Udyant Malhoutra v. SEBI, Appeal No.145 of 2020 dated June 27, 2020;

(c) North End Foods Marketing Pvt. Ltd. v. SEBI, Appeal No. 80 of 2019 dated March 12, 2019, and;

(d) Arshard Warsi v. SEBI, Appeal No. 284 of 2023 dated March 27, 2023

13. It was urged that there is no conceivable ground warranted for issuance of an ad-interim ex-parte order especially when there is no evidence to show even prima facie that the appellants were engaged in market manipulation. The contention that the appellant had indulged in potential transgression is patently erroneous and does not establish market manipulation. It was urged that there was no need for the respondent to pass an ad-interim ex-parte order. It was also urged that even though the appellants may have written off certain content advance and trade receivable entities yet they proceeded to recover and made such recoveries which had been written off but such facts have not been considered by the respondent while passing the impugned order.

14. The learned counsel for noticee nos.4 and 5 contended that insofar as noticee no.5 was concerned, he joined as a Chief Executive Officer of the Company in July, 2020 and, therefore, was not part of the alleged misrepresentation of the financials which was depicted in the financial statement of 2019-20.

15. On the other hand, the learned senior counsel for the respondent contended that the investigation prima facie revealed continuing misrepresentation of the financial statement and that the funds paid by the Company Eros to these content advance entities were potentially diverted to Overseas connected entities of Eros. Further, till date the Company has not provided documents detailing the efforts taken by Eros to recover the dues from the defaulting entities nor has provided details of legal action taken by them. It was contended that prima facie Eros was engineering in misrepresentation, siphoning and diversion of funds.

16. Having perused the impugned order, we find that the ad-interim ex-parte order was passed to prevent continuing misrepresentation of the financials and possible diversion of funds to Overseas entities and connected entities of Eros. The charges leveled against the appellants are prima facie serious in nature. Before us nothing has been provided to indicate that the figures shown in the impugned order with regard to the possible diversion of funds, rerouting of funds are incorrect. We also find that inspite of writing off the content advance, payments continued to be made to these entities. This fact cannot be ignored at this stage especially when no forthcoming replies or clarifications is made before us. The contention that adequate response would be indicated to the authority if an opportunity was given but without giving an opportunity the impugned order has been passed in violation of the principles of natural justice cannot be accepted.

17. Having heard the learned counsel for the parties at some length, we find that the power to pass ex-parte ad interim order, pending investigation, 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 an interim order and such interim order can also be passed ex parte in order to prevent further possible mischief of tampering with the securities market. If during the course of investigation, it is found prima-facie, that the person is violating the securities laws or is siphoning of the funds of the listed company to the detriment of its shareholders, 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.

18. 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. However, 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.

19. In *Anand Rathi and Others vs Securities and Exchange Board of India*, 2002 (1) Mh.L.J. 522, a Division Bench of the Bombay High Court while interpreting the provisions of Section 11 and 11B of the SEBI Act held:-

"31. It is thus clearly seen that pre decisional natural justice is not always necessary when adinterim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. In this regard the following observations of Chinnappa Reddy J. in *Liberty Oil Mills* case are pertinent: (SCC page 490 para 20).

"We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however temporarily say, from pursuing his profession or line of business, may have substantial serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice sufficient to enable the affected person to make an adequate representation (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right; See *Chingleput Bottlers v. Majestic Bottling Company*. That may be and in some cases it can only be after an initial exparte interim order is made."

32. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded. In the present case the order of 12-3-2001 itself provided a post decisional hearing on 21-3-2001. The same was availed of by the petitioners. At the post-decisional hearing, full opportunity was given to them to produce evidence and documents and the ex parte order was confirmed only after considering the submissions made by them. In these circumstances, the plea of Dr. Singhvi that there was violation of principles of natural justice, cannot be accepted."

20. In *Gautam Thapar & Ors. vs Securities and Exchange Board of India*, Appeal no. 413 of 2019 decided on October 1, 2019 this Tribunal held:-

"14. There is no doubt that an ex-parte ad-interim order can be passed only when there is an urgency.

In *Liberty Oil Mills & Ors. vs. Union of India & Ors.* AIR (1984) SC 1271, the Supreme Court held that the urgency must be infused by a host of circumstances and further held that the regulatory agency must move quickly in order to curb further mischief and take action immediately in order to instill and restore confidence in the capital market. There is no doubt that only under emergent circumstances and spelling out a case of urgency that an ad interim ex parte orders can be passed. Such exercise of regulatory measures in the form of ad-interim ex-parte orders can only be done upon the existence of circumstances warranting such a drastic measure.

15. Applying the aforesaid test, we find that considering the allegations spelled out in the exparte ad-interim order which we need not refer on merits at this stage, we find that upon the examination of the evidence, a prima facie opinion was correctly arrived at by the WTM based on objective facts indicating diversion of funds from a listed Company which was not in the interest of its shareholders. It was thus extremely necessary that an action on urgent basis was required to stop further defalcation/ diversion/ siphoning of the funds of the Company and to protect the interest of the investors and its shareholders and to instill confidence in the securities market. Such measures if not taken while the iron was hot would defeat the regulatory measures that has been provided to SEBI under the SEBI Act. We are of the opinion that, in the instant case, there was ample evidence to show urgency and, considering the material that has been brought on record, the matter being serious, warranted an inference by the regulator. Whether such transactions indicated in the ex-parte adinterim order was dully authorized or not by the RAC or whether such transactions were approved by a resolution of the Board of Directors is a matter to be considered on merit by the appropriate authority and it is not appropriate for this Tribunal to consider such documents at this stage as consideration of these documents may prejudice not only the investigation but also the parties."

21. We also find that the WTM while passing the ad-interim ex-parte order also directed the appellants and other entities to file their replies/objections within 21 days and could avail an opportunity of personal hearing. Thus, post decisional hearing was provided which in the given circumstances was not unreasonable.

22. In our opinion, the contention that no prima facie case existed in passing of the impugned order is wholly erroneous. The investigation has prima facie revealed siphoning of funds to various entities of the appellant Company which cannot be lost sight of and in the absence of any cogent reply being given we also find that some of the content advance entities being not existent also leads to a presumption of diversion of funds in the form of content advance and trade receivable.

23. Considering the aforesaid and without going into the merits at this stage we

are of the opinion that the appellants should file an appropriate reply/objection to the ad-interim ex-parte order and apply for vacation/modification of the ad-interim ex-parte order.

24. In view of the aforesaid, we do not find any reason to interfere with the impugned order at this stage and we dispose of the appeal directing the appellants to file reply/objection along with a stay vacation application to the ad-interim ex-parte order dated 22nd June, 2023 within three weeks from today. If such a reply along with the stay vacation application is filed, the WTM will fix a date within a week from date of filing the reply by the appellants. The WTM will provide an opportunity of hearing to the appellants and after considering the material evidence that has been placed by them will pass appropriate order within three weeks thereafter.

25. We also make it clear that any observation made by this Tribunal in our order is only prima facie and will not be utilized by either of the parties.

26. In view of the aforesaid, the appeals are disposed of. All the miscellaneous applications are also disposed of.

27. 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.