(2023) 02 SEBI CK 0008

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 187, 188 Of 2022

Kashyap K. Mehta And Others APPELLANT

Vs

BSE Ltd And Others RESPONDENT

Date of Decision : 06-02-2023

Acts Referred:

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 10
Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 — Regulation 31A, 102
Securities And Exchange Board Of India (Delisting Of Equity Shares) Regulations, 2021 — Regulation 24

Citation : (2023) 02 SEBI CK 0008

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

Bench : Division Bench

Advocate : Akansha Jain, Pesi Modi, Manish Chhangani, Samreen Fatima, Sumit Yadav, Pulkit Sukhramani, Vidhi Jhawar, Deepank Anand

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Both the appeals raise a common issue and are being taken up together. For facility, the facts stated in the appeal of Mr. Kashyap Mehta are being taken into consideration.

2. The appellants are aggrieved by the freezing of their demat accounts. The facts leading to the filing of the present appeals is, that the respondent Nos. 3 Matra Reality Ltd. is a listed company. The appellant purchased 42,909 shares of this company from the open market on September 11, 2006. As a result of this acquisition of shares, the obligation of making an open offer got triggered under Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘SAST Regulations’). Consequently, the appellant made a public

announcement on September 20, 2006. The opening of the open offer took place on March 21, 2007 and closed on April 9, 2007. The open offer failed as no shareholder offered their shares.

3. Prior to the making of the open offer and after the acquisition of the shares, the appellant entered into the memorandum of understanding on September 8, 2006 with the directors of the company to the effect that they will hand over the management and give control to the appellant which would be effective only after the open offer is made. Since the open offer failed the erstwhile directors refused to hand over the control.

4. As a result, the board of directors passed a resolution dated April 19, 2007 appointing the appellant as an additional director with the understanding that the appellant will not participate in the day to day affairs and would also not be liable for any compliances. For the quarter ending March 31, 2007, the appellant was shown as a promoter of the company in its shareholding pattern filed by the company before the Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE / stock exchange'). This fact was noticed by the appellant in June 2007 and immediately the appellant wrote a letter to the stock exchange intimating that he has wrongly been shown as a promoter and requested that the error should be rectified. In this regard, it transpires that the stock exchange wrote a letter to the company on June 22, 2007 asking for their comments based on which, the company wrote a letter dated July 2, 2007 and informed that as per Clause 35 of the Listing Agreement the appellant was shown as an acquirer and, consequently, as a promoter of the company and that the classification of the appellant as a promoter was done in accordance with the SAST Regulations. The company also requested BSE to advise as to how the appellant should be reclassified in the category of a public shareholder and accordingly, the company will file a revised holding pattern of the company.

5. It transpires that the appellant resigned on August 7, 2007 as an additional director. The company accordingly intimated the Registrar of Companies about his resignation.

6. We also find that the company for the quarter ending December 2007 did not show the appellant as a promoter or as a promoter group.

7. It has also been stated that on March 2008, the appellant reduced its shareholding to 26,908 shares which is equivalent to 0.22% of the total shareholding of the company. It is the case of the appellant that since his acquisition of the shares and consequently, control over the company had failed and subsequently, he had resigned as an additional director, he had nothing to do with the affairs and management of the company nor was he in control of the company.

8. After 10 years, the appellant contends that he received an intimation from his ICICI Bank on December 28, 2020 informing him that his demat account has been frozen pursuant to a circular of Securities and Exchange Board of India

(hereinafter referred to as 'SEBI') dated June 11, 2009 which deals against listed company for non-payment of annual listing fee. The appellant sent an e-mail dated May 1, 2020 requesting the company, respondent nos. 3 to rectify the shareholding. The appellant also wrote letters dated May 4, 2020 and June 7, 2020 to SEBI complaining about freezing of his demat account. Another letter was written to respondent nos. 3 on August 10, 2020.

9. Respondent nos. 3 by a letter dated September 9, 2020 informed BSE that the appellant is not a promoter of the company and that by a clerical mistake he was shown as a promoter in the shareholding pattern of the promoter and promoter group for various quarters ending up to December 2018. The company also informed that the company is now categorized in the public shareholding and the revised shareholding pattern for the quarter ending December 2018 was enclosed.

10. In spite of the aforesaid communication sent by the company, BSE refused to defreeze the demat account by a communication dated March 16, 2021, on the ground that the appellant's name is still continued to be shown as a promoter in the show cause notice that was issued on December 10, 2020 to the company under Regulation 24 of the Securities and Exchange Board of India (Delisting of the Equity Shares) Regulations, 2009 (hereinafter referred to as 'Delisting Regulations') wherein the said company was issued notice to show cause as to why the company should not be compulsorily delisted. By the communications dated April 6, 2021 and June 21, 2021, the demat account of the appellant was frozen on account of non-compliance by the company with regard to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations') as the company had failed to pay the outstanding annual listing fee in terms of the SEBI circular dated June 11, 2019. The stock exchange also informed the appellant that it is incumbent upon the company to take requisite steps to comply with the regulations for reclassification of the promoter in terms of Regulation 31A of the LODR Regulations.

11. The appellant being aggrieved by the communications dated April 6, 2021 and June 21, 2021 has filed the present appeal.

12. Similar is the case of Rupal Mehta who is the wife of Kashyap Mehta. She is not a promoter in the company but her demat account has been frozen because the demat account was in joint name with her husband.

13. We have heard Ms. Akansha Jain, Practicing Company Secretary for the appellants and Mr. Pesi Modi, the learned senior counsel with Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, the learned counsel for BSE and Mr. Pulkit Sukhramani, the learned counsel with Ms. Vidhi Jhawar, Mr. Deepank Anand, the learned counsel for the respondent Nos. 2.

14. The aforesaid facts as narrated in the preceding paragraphs are admitted by the respondents. In spite of the service upon respondent nos. 3, no one

appeared nor filed any reply. The only contention raised by the learned senior counsel for the respondent is that the stock exchange cannot reclassify the promoter shareholding unless it is done by the company in accordance with the provisions of Regulation 31A of the LODR Regulations. It was urged that in the event, the company is not coming forward to file an appropriate application under Regulation 31A, in that case, the appellant can make an appropriate representation for exemption under Regulation 102 of the LODR Regulations.

15. In order to deal with the aforesaid submission, it would be relevant to consider the definition of the word 'promoter' as defined under the SAST Regulations which is extracted hereunder :-

"promoter" means –

(a) any person who is in control of the target company;

(b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;

………………………."

16. A perusal of the aforesaid indicates that the promoter is a person who is in control of the target company or who is a person whose is named as a promoter in the offer document. In the instant case, admittedly, the appellant acquired shares and made an open offer in order to take control over the company. The offer document clearly indicated that he would take over the control and management of the company. A Memorandum of Understanding was also issued to that effect. The record indicates that the open offer failed and existing board of directors refused to give control and management of the company to the appellant Kashyap Mehta. The record also indicates that he was made an additional director with a specific stipulation that he would have no role to participate in the day to day affairs of the company and would not be liable for any compliances of the company. All these facts are admitted by the respondents.

17. It has also come on record that the appellant resigned on August 7, 2007 and his shareholding reduced to 0.22% of the total shareholding of the company.

18. Thus, we are of the confirmed view that the appellant is not in control of the company as his acquisition of the shares to take control over the company had failed.

19. It has also come on record that when his name was shown as a promoter in 2007. He had protested based on which, his name was not shown as a promoter in the shareholding pattern of the company in the quarter ending December 2007.

20. There is also a letter of the company dated September 9, 2020 written to the stock exchange intimating that the appellant Kashyap Mehta is not a promoter and that due to a clerical mistake he was wrongly shown as a promoter in the

shareholding pattern of the promoter and promoter group of the company and that he has now been categorized as a public shareholder. In spite of this letter being written by the company to the stock exchange, the stock exchange continued to show him as a promoter and consequently allowed the freezing of the demat account to continue.

21. We are of the view that if the company has defaulted in the payment of the annual listing fee, then action against the company can be taken under Regulation 24 of the Delisting Regulations. But freezing of the appellant's demat account cannot be done as the appellant is not a promoter of the company. It was contended that reclassification can only be done under Regulation 31A of the LODR Regulation. In the first instance, the re-classification is required to be done by the listed company. The appellant cannot be penalized merely because the company is not following the procedure provided under Regulation 31A of the LODR Regulations. We are of the opinion that when the letter of September 9, 2020 written by the company to the stock exchange is not disputed, then the stock exchange should act upon it and de-freeze the demat accounts instead of taking a technical stand that the same can only be done after SEBI passes an appropriate order under Regulation 31A of the LODR Regulations. In our view, the appellant should not be harassed for such a technical objection raised by BSE.

22. We are further of the opinion that the freezing of the demat account of Rupal Mehta who is not even the promoter was wholly unwarranted and unauthorized. The mere fact that Kashyap Mehta was a second holder does not entitle BSE to defreeze her demat account.

23. In view of the aforesaid, the impugned communications dated April 6, 2021 and June 21, 2021 cannot be sustained and are quashed. We issue a direction to BSE and NSDL to defreeze the demat account of the appellants Kashyap Mehta and Rupal Mehta forthwith. We also direct the respondent nos. 1 to rectify the shareholding pattern and re-classify the appellant as a public shareholder of the company in term of the letter of the company dated September 9, 2020. The appeals are allowed. In the circumstances of the case, parties shall bear their own costs.

24. 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.