(2021) 12 SEBI CK 0072

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 395 Of 2021

M/s. BLB Ltd APPELLANT

Vs

BSE Ltd And Others RESPONDENT

Date of Decision : 23-12-2021

Acts Referred:

Securities And Exchange Board Of India (Delisting Of Equity Shares) Regulations, 2009 — Regulation 6, 7(3)

Citation : (2021) 12 SEBI CK 0072

Hon'ble Judges : Tarun Agarwala, Presiding Officer;M. T. Joshi, J

Bench : Division Bench

Advocate : Gaurav Kakar, Vikhyat Oberoi, Lakshay Raheja, Aksha Hudda, Shrey Shah, PN Modi, Tomu Francis, Zarnaab Aswad, Sumit Rai,, Abhiraj Arora, Karthik Narayan, Harshvardhan Nankani

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant no.1 is a listed public Company and appellant no.2 is the promoter of the Company. On 2nd August, 2018, the Board of Directors of the Company passed a resolution for delisting of its equity shares which was listed before the BSE Ltd. (hereinafter referred to as 'BSE'). Based on the said resolution, the Company sent an email to the BSE Ltd. on 30th October, 2019 requesting them to provide the checklist for voluntary delisting of their equity shares. A reminder email to this effect was sent on 1st November, 2019. On 6th November, 2019, BSE sent an email suggesting the appellant Company to reconsider its decision on voluntary delisting of equity shares of the Company from the BSE on the ground that it will leave the small investors in a very disadvantageous situation and increase the cost. It was also stated that as a matter of policy BSE does not recommend delisting of the equity shares.

2. The Board of Directors of the appellant Company reconsidered the matter and further resolved on 13th November, 2019 to continue with the voluntary delisting of its equity shares. This resolution was conveyed to the BSE on 16th November,

2019 and again requested them to provide the necessary documents for the purpose of delisting. Reminders are dated 25th November, 2019 and 11th December, 2019 and in response thereof BSE vide their email dated 12th December, 2019 intimated that they are looking into the matter and will get back on the same.

3. Inspite of the request no such checklist was provided. Further, the appellant continued to send reminders through email requesting them to provide the checklist but apparently it seems it fell on deaf ears.

4. On the other hand, the respondent started sending letters directing the appellant to pay the annual listing fee and threatened that they would freeze the demat account of the Company and its promoters if the annual listing fees was not deposited. At this stage, the appellant preferred this appeal praying for the quashing of various emails through which the respondent was demanding annual listing fees and further prayed that BSE be directed to decide the delisting application of the appellant in a time bound manner.

5. We have heard the Mr. Gaurav Kakar, Advocate assisted by Mr. Vikhyat Oberoi, Mr. Lakshay Raheja, Ms. Aksha Hudda and Mr. Shrey Shah, Advocates for the appellant and Mr. P.N Modi, Senior Advocate assisted by Mr. Tomu Francis and Ms. Zarnaab Aswad, Advocates for the respondent no.1 and Mr. Sumit Rai, Advocate assisted by Mr. Abhiraj Arora, Mr. Karthik Narayan and Mr. Harshvardhan Nankani, Advocates for the respondent no.2.

6. We find from the reply given by BSE that they admit that the checklist was not provided and in fact they suggested the appellant Company to reconsider its decision. The respondent further admits that after the appellants reconsidered the matter, they still did not provide the checklist and insisted that the annual listing fee should be provided before they proceed further.

7. We find it strange that instead of being helpful, a very rigid stand was adopted by the BSE in dealing with the delisting application. It is apparently clear that the respondent did not want a listed Company to be delisted as it would be disadvantageous for the stock exchange. However, in our opinion, this is not the way a business is done professionally and the stock exchange must remember that a delisting application is required to be processed in accordance with law. In this regard, Regulation 7(3) of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 states as under:

"Procedure for delisting where no exit opportunity is required

7. (1) In a case falling under clause (a) of regulation 6-

(a) ....

(b) ....

(c) ....

(d) ....

(2) ....

(3) An application for delisting made under clause (c) of sub regulation (1) shall be disposed of by the recognised stock exchange within a period not exceeding thirty working days from the date of receipt of such application complete in all respects."

8. The aforesaid provision makes it apparently clear that a delisting application is required to be decided within 30 days. Admittedly, this has not been done.

9. On the other hand, the matter is being prolonged by the respondent from one financial year to another financial year so that the respondent could force the appellant to continue to pay the annual listing fee.

10. We find that as per our order dated 17th June, 2021 we had directed the appellant to deposit the listing fee of Rs.2,95,000 which has been deposited and which was supposed to be a condition precedent for the requirement to process the listing application. Inspite of deposit of the listing fee the respondent has not decided the application for reasons best known and now are insisting that the delisting fee of Rs.12,50,000/- should be deposited.

11. In this regard, the learned counsel for the respondent submitted that the payment of Rs.12,50,000/- is exorbitant in as much as a sum of Rs.1,50,000/- is being charged by the NSE for delisting. In this regard a complaint was also made to SEBI which complaint is still pending.

12. Considering the aforesaid, we are of the opinion that the fee should be standardized as far as possible and SEBI should consider this aspect of the matter as to why there is such a large discrepancy with regard to charging of delisting fee by the two stock exchanges.

13. Therefore, without dwelling further into this matter we direct SEBI to decide the application after considering the discrepancy with the two stock exchanges and after taking into consideration the relevant factors.

14. However, we are constrained to observe that BSE was unprofessional while dealing with the request of the appellant for providing the checklist. The officials of BSE by replying to the emails of the appellant showed their high-handedness in the matter.

15. Without commenting any further and for the reasons stated aforesaid, we dispose of the appeal with a direction that the appellant will deposit the delisting fee of Rs.12.50 lakhs under protest and will also file an application before SEBI for reduction of this fee in view of the fact that the delisting fee before NSE, a fee of Rs.1.5 lakhs is charged. Such application filed by the appeal before SEBI would be decided within four weeks. Further, on deposit of the delisting fee, the application of the appellant for delisting shall be decided by BSE within four weeks from the date of deposit.

16. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.