(2023) 08 SEBI CK 0071

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 570, 571 Of 2023, Appeal No. 450 Of 2023

M/s. LML Ltd — APPELLANT

Vs

Securities And Exchange Board Of India And Others — RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Securities And Exchange Board Of India (Listing Obligationsand Disclosure Requirements) Regulations, 2015 — Regulation 33
Insolvency And Bankruptcy Code, 2016 — Section 14, 52, 60, 60(5), 60(5)(c)

Citation : (2023) 08 SEBI CK 0071

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

Bench : Division Bench

Advocate : Amit Gupta, Ayushi Misra, Anurag Tewari, Pradeep Sancheti, Ravishekhar Pandey, Amarpal Singh Dua, Rasika Ghate, Shefali Shankar, P.N. Modi, Rushin Kapadia, Manish Chhangani, Samreen Fatima, Sumit Yadav,m Abhay Chauhan

Final Decision : Allowed/Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant through its liquidator has filed the present appeal questioning the veracity of the email dated 23rd February, 2023 issued by respondent no.2, BSE Ltd. (hereinafter referred to as “BSE”) holding that they cannot defreeze the shares held by the appellant. The relevant extract of the email is extracted hereunder:

“As per the provisions of the said SEBI SOP circular, the freeze can be lifted after the company has completed the formalities for revocation of suspension of trading which includes complying with all the non-complied Regulations and payment of fines levied for non-compliance. In the case of VCCL Ltd, it may please be noted that the Company has not completed the formalities for revocation of suspension of trading. It may be further noted that in the case of VCCL Ltd the process of compulsory delisting in terms of SEBI Delisting Regulations would follow on account of continued non-compliance and non-completion of formalities.

In the given circumstances, the Exchange as per the current statutory framework is constrained to unfreeze the shares of VCCL Ltd held by LML Ltd unless the Company complies with unfreezing requirements as mentioned above."

2. The facts leading to the filing of the present appeal is, that the appellant was a public limited Company. Liquidation process was initiated against the Company vide order dated 23rd March, 2018 passed by the National Company Law Tribunal (hereinafter referred to as "NCLT"), Allahabad Bench. Some of the directions issued for public announcement stating that the corporate debtors, namely, the appellant Company, LML Ltd., is in liquidation is as under:

(a) "All the powers of the Board of Directors, Key managerial personnel andthe Partners of the Corporate Debtor shall cease to have an effect, andall those powers shall be vested in the Liquidator.

(b) The liquidator is directed to issue a public announcement stating thatthe Corporate Debtor, LML Limited, is in liquidation.

(c) The Moratorium order passed U/s 14 shall cease to affect.

(d) The Registrar is directed to send the copy of the order to ROC, by whichthe Corporate Debtor is registered.

(e) Subject to Section 52, when liquidation order has been passed, no suit or other legal proceedings should be initiated by or against the Corporate Debtor.

…………….."

3. Pursuant to the said order ShriArun Gupta was appointed as a Liquidator vide order dated 9th April, 2018. Consequent upon taking control of the assets and liabilities of LML Ltd in accordance with the applicable provisions of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC), the liquidator came to know that LML Ltd., held 15,36,000 shares of VCCL, another public limited Company. These 15,36,000 shares constituted36% shareholding in VCCL and, therefore, LML was the major promoter. This, shareholding pattern of VCCL was filed before the stock exchange for the quarter ending March, 2018.

4. TheLiquidator further found that LML Ltd., held shares in other companies through itsdemat accounts. The details are as under:

Name of Depository

DP ID

Client ID

Name of other listed companies

Equity shareholdi ng

NSDL

IN30127

15109680

Reliance Home

109 Shares

through

Finance Limited

Stock

EQ

Holding

Reliance Home

300 Shares

Corporation

Finance Limited

of India

EQ

Reliance Home

109 Shares

Finance Limited

EQ

Escorts Limited

EQ

50 Shares

BS Appliance

Limited EQ

100 Shares

BST Limited EQ

100 Shares

5. VCCL Ltd., is a public limited Company in which 32% of its shareholding is controlled by LML Ltd. On account of non-compliance of Regulation 33 of the Securities and Exchange Board of India (Listing Obligationsand Disclosure Requirements)Regulations, 2015 (hereinafter referred to as the "LODR Regulations") trading in the securities of the Company VCCL was suspended by the BSE Ltd., with effect from 26th November, 2018. As per the Standard Operating Procedure (SOP) prescribed by Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide circular dated 30th November, 2015, the shareholding of the promoters stood frozen. LML/the appellant being a promoter of VCCL, its shareholding in VCCL stood frozen. Subsequently, pursuant to the SEBI circular dated 1st August, 2019, the Depositories were directed to freeze the demat accounts of the promoters. As a result, the demat account of the appellant was also frozen.

6. The Liquidator wrote several letters to the stock exchanges as well as to SEBI seeking exemption from clause 3(b) of the SOP of 2015 pertaining to restriction and transfer of shares held by LML in VCCL Ltd. and made various correspondence with Depositories and Depository Participants for defreezing of the demat accounts of LML Ltd. These applications fell on deaf ears as no action was taken. It seems that some complaint was also made on the SCORES platform which was disposed of without any reasons. The Liquidator thereafter made an application to the NCLT for appropriate orders but subsequently withdrew the same with liberty to file it before the appropriate forum and, consequently, thereafter filed the present appeal. In the meanwhile, the impugned communication dated 23rd February, 2023 was made by the BSE refusing to defreeze the demat accounts till compliance under the provisions of Regulation 33under the LODR Regulations were made by the appellant.

7. We have heard the Liquidator for the appellant and Mr. PradeepSancheti, learned senior counsel for SEBI and MrModi senior counsel for BSE.

8. At the outset, the learned senior counsel contended that the respondent SEBI had no quarrel with the appellant on the merits of the issue. The learned senior counsel submitted that under the IBC, 2016, the Official Liquidator has a right to proceed under Section 52 of the IBC to recover and realiseany security of the Company under liquidation and, further,submitted that IBC will prevail over the SEBI laws. The learned senior counsel, however, submitted that this Tribunal has no jurisdiction to dwell into this issue in view of the decision of the Supreme Court in Gujarat UrjaVikas Nigam Ltd. vs. AmitGupta and Ors. (2021) 7 SCC 209,and consequently,NCLT alone has jurisdiction when it comesto applicationand proceedings by or against a corporate debtor and that no other forum has jurisdiction to entertain or dispose of any such application or proceedings. It was, thus, contended that the appropriate forum for adjudication of the present dispute is before NCLT and, therefore, the Liquidator is required to move an appropriate application before NCLT and that no appeal lies before this Tribunal. Reliance was also made to an order of National Company Law Appellate Tribunal

(hereinafter referred to as “NCLAT”) in Hemant Mehta vs. Asst. Commissioner of State Tax and Ors.decided on 5th August, 2022,wherein NCLAT after considering the provisions of Section 60 of the IBC held that residuary jurisdiction of NCLT under Section 60(5)(c) of the IBC gives a wide jurisdiction which can be exercised as long as the matter is not dehors the insolvency proceedings.

9. We find it strange that SEBI is taking a technical or rather hyper technical objection in urging that this Tribunal does not have any jurisdiction. The upshot of the argument of the respondent is, that whereas they agree that the shares should be defreezed so that the Liquidator can complete the liquidation of the Company in liquidation, but contends that the appropriate jurisdiction for passing such an order would be to move an application under 60(5)(c) of the IBC before NCLT. We find it very strange that the intention of the respondent is not to resolve the issue but to keep it lingering and waste time of the Courts/Tribunal and money of the public exchequer.

10. On the other hand, we find that the objections so raised also has no merit. Section 60(5) of the IBC is extracted hereunder:

“Section 60: Adjudicating Authority for corporate persons –

xxx xxx xxx

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India;and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

11. NCLAT in Hemant Mehta’s case (supra) has held that Section 60(5)(c) is a residuary jurisdiction of NCLT which jurisdiction can be exercised so long as the matter is not dehors the insolvency proceedings, namely, that if any question of priorities or any question of law or facts which arises out of or in relation to insolvency resolution or liquation proceedings of the corporate debtor under the Code could be considered by NCLT.

12. Section 60(5) of the IBC starts with the words “notwithstanding anything to the contrary contained in any of the other law for the time being in force.” The non-obstante clause clearly indicates that the jurisdiction of other Courts or Tribunal is not ousted and that is only a residuary clause allowing NCLT to also deal with the matters in relation to any insolvency resolution or liquidation proceedings. We observe here that complete jurisdiction of other Courts or

Tribunals, under any other law is not ousted by this provision, namely, Section 60(5) of the IBC.

13. In Gujarat UrjaVikas Nigam Ltd. (supra) the Supreme Court held :

"Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist."

14. The aforesaid decision of the Supreme Court clearly indicates that NCLT and NCLAT does not usurp the legitimate jurisdiction of other Courts/Tribunals where dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor.

15. In the instant case, the demat account of the Company in the liquidation i.e. the appellant has been frozen on account of non-compliance of Regulation 33 of the LODR which has nothing to do with the insolvency process or liquidation process under IBC. Thus, the appeal was rightly filed by the Liquidator before this Tribunal. We, therefore, hold that in view of the interpretation of Section 60(5) of the IBC and the decision of the Supreme Court in Gujarat UrjaVikas Nigam Ltd. (supra),the jurisdiction of this Tribunal is not ousted under Section 60(5)of the IBC. The appeal is maintainable.

16. We further find that the Company went in liquidation in March, 2018 prior to the suspension of the securities of the VCCL Company which occurred on 26thNovember, 2018. All subsequent action by SEBI would be in contravention to Section 52 of the IBC and direction (e) of NCLT order dated 23rd March, 2018 as extracted in the earlier part of the order.

17. In view of the aforesaid and in view of the concession made by the respondents, the impugned communication issued by the respondent no.2 is quashed. The appeal is allowed. The misc. applications are also accordingly disposed of.

18. A direction is given to respondent nos.1 and 2 to defreeze the demat account of the appellant forthwith. Further, the respondents will ensure and pass appropriate orders permitting the Liquidator to sell the shares of VCCL and shares of other listed companies held in its demat account. Such orders will be passed within two weeks.

19. In the circumstances of the case, parties shall bear their own costs.

20. 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.

