(2020) 02 SEBI CK 0020

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 419 Of 2019

Pacific Finstock Limited APPELLANT

Vs

BSE Limited RESPONDENT

Date of Decision : 21-02-2020

Acts Referred:

Citation : (2020) 02 SEBI CK 0020

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Prakash Shah, Rinku Valanju, P. N. Modi, Nihar Mody, Anubhav Ghosh, Ravishekhar Pandey

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant, being aggrieved by the order dated August 02, 2019 passed by the BSE Limited (â??BSEâ? for convenience) rejecting the listing

application has filed the present appeal.

2. The facts leading to the filing of the present appeal is, that the appellant was a listed company on the Vadodara Stock Exchange and Ahmedabad

Stock Exchange but subsequently it came on the Dissemination Board of the BSE and remained on the Dissemination Board for the last several years.

Securities and Exchange Board of India (â??SEBIâ? for convenience) issued a Circular dated October 10, 2016 by which the companies which were

on the Dissemination Board were required to get their company listed on nationwide stock exchange or provide an exit opportunity to existing

shareholders. In terms of this Circular, the appellant submitted a plan of action to BSE on February 16, 2017 and a revised plan of action was submitted on June 28, 2017. In the meanwhile, the appellant vide notice dated August 07, 2017 was identified as a suspected shell company. Against

this notice, the appellant filed an Appeal No. 264 of 2017 before this Tribunal which was disposed of by an order dated September 29, 2017 directing

the appellant to make a fresh application for direct listing of its securities which would be considered by BSE and which would further be subject to

any order that may be passed by SEBI.

3. It transpires that the appellant filed a fresh listing application. During the pendency of the application the Whole Time Member (â??WTMâ?)

passed an order dated October 26, 2017 directing BSE to consider the outcome of the forensic audit while considering the listing application.

Accordingly, the appellantsâ?? application was kept in abeyance till the submission of the Forensic Audit Report. The WTMâ??s order dated

October 26, 2017 was subsequently confirmed by a confirmatory order dated August 02, 2018 against which the appellant filed an Appeal No. 295 of

2018 which was eventually dismissed as infructuous by an order dated March 07, 2019.

4. In the meanwhile, the promoters/ directors of the appellant company were debarred from accessing the securities market vide SEBIâ??s order

dated September 28, 2019 passed in the matter of Kavit Industries Ltd. This fact was brought to the notice of the appellant and sought clarification as

to how the company is required to comply with the requirements for direct listing of its securities. It transpires that the company vide letter dated May

18, 2019 intimated that two of its directors have resigned with effect from April 15, 2019 and that SEBI vide its order dated February 13, 2019 has

removed the tag of â??suspected shell companyâ?. BSE after considering the aforesaid response, found that one of its promoters Shri Jayesh

Raichandbhai Thakkar, continued to remain as the promoter of the company inspite of being debarred by SEBI vide order dated September 28, 2018

and, therefore, the direct listing requirements norms had not been complied with. Accordingly, the listing application was rejected.

5. Before the Tribunal the only ground urged is that the law which was applicable on the date when the listing application was filed on July 29, 2017

could alone be considered. There is no dispute on this proposition namely that the listing norms that was in force on the date when the application was filed was alone required to be considered. Subsequent norms or amended norms or regulations are not required to be considered. However, the status

of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application. If on the

date when the listing application was being considered the promoters/ directors of the company committed default and thereby incurred a debarment

from accessing the securities market then it was imperative upon the authority to consider such debarment while considering the listing application. In

the instant case, the debarment was in direct conflict when the norms stipulated for considering the listing agreement. Such order of SEBI of

debarment of one of the promoters was brought to the knowledge of the company. The said listing requirements norms were not rectified and

consequently the BSE had no option but to reject the listing application. The said order does not suffer from any manifest error of law and requires no

interference. The appeal fails and is dismissed.

