(2020) 01 SEBI CK 0026

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.125 Of 2018

Purity Flexpack Ltd APPELLANT

Vs

BSE Limited And Others RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Citation : (2020) 01 SEBI CK 0026

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

Bench : Division Bench

Advocate : Somashekar Sundaresan, Yugandhara Khanwilkar, Anshuman Sugla, Nikhil Shah, P.N. Modi, Manish Chhangani, Vivek Shah

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant commenced its business in the year 1988 as a private limited Company and became a public limited Company in the year 1989. The

shares of the appellant are listed on the BSE Limited (hereinafter referred to as â??BSEâ??) and Vadodara Stock Exchange (hereinafter referred to

as â??VSEâ??).

2. In order to wipe out the past losses the appellant passed a resolution at its Board meeting dated 26th August, 2004 proposing the reduction of the

share capital of the Company to the extent of Rs.8.50/- per share thereby reducing the share capital from Rs.5,20,00,000/- to Rs.78,00,000/-. The said

resolution of the Board of Directors was approved by the shareholders in a special resolution dated 27th September, 2004 and thereafter the Company

filed a Company petition before the Gujarat High Court for its approval. The High Court of Gujarat by its order of 2nd December, 2004 approved the resolution of the shareholders and affirmed the reduction of the share capital of the Company. The said order of the Gujarat High court was duly

intimated to the BSE.

3. The appellant in March 2005 acquired 1,53,300 shares of Vaikunth Packing Limited. The Board of Directors of the appellant Company and

Vaikunth Packing Limited proposed an amalgamation of both the companies. A scheme of amalgamation was prepared and filed before the Gujarat

High Court who by it order dated 1st March, 2006 sanctioned the scheme of amalgamation.

4. Pursuant to the scheme of amalgamation and the order of the Gujarat High Court, a resolution was passed by the appellant dated 18th May, 2006

allotting 2,93,400 fully paid equity shares to the erstwhile shareholders of the transferor Company. Based on the said resolution the appellant vide letter

dated 20th May, 2006 filed an application before BSE requesting that the aforesaid shares pursuant to the amalgamation scheme be listed on the stock

exchange. BSE for various reasons as recorded in their orders refused to list the said shares and, in this regard, there is a series of correspondence.

5. The appellant in its Board meeting dated 6th August, 2014 proposed the issuance of 21,46,800 bonus shares at a face value of Rs.10 each with a 2:1

ratio which was approved by the shareholder by a special resolution dated 27th September, 2014. The appellant sought approval from BSE which was

not accepted and in this regard there is a series of correspondence with BSE since 2013.

6. Vide one such letter of BSE dated 23rd May, 2017 the stock exchange reiterated its inability to accede to the request of listing of 2,93,400 equity

shares or issuance of 21,46,800 bonus shares. Another letter was again sent by BSE vide letter dated 30th January, 2018 pursuant to a letter dated

12th January, 2018 written by the Company. The communication dated 23rd March, 2017 and 30th January, 2018 by BSE has been challenged in this

appeal praying for its quashing and for an issuance of a direction to the BSE to list 2,93,400 fully paid up equity shares on BSE and also for issuance of

bonus shares.

7. We have heard Mr. Somashekar Sundaresan, Advocate assisted by Ms. Yugandhara Khanwilkar, Mr. Anshuman Sugla and Mr. Nikhil Shah,

Advocates for the Appellant, Mr. P.N. Modi, Senior Advocate assisted by Mr.

Manish Chhangani, Advocate for the Respondent no.1 and Mr. Vivek

Shah, Advocate i/b. ELP for the Respondent no.2.

8. In our view, the appeal is grossly barred by time. The scheme of amalgamation was approved on 1st March, 2006.

The resolution was passed by the Company on 18th May, 2006 allotting 2,93,400 fully paid equity shares to the erstwhile shareholders of the transferor

Company. The appellant made an application on 20th May, 2006 requesting BSE to list the shares which had been refused and finally rejected on 20th

September, 2013. Similarly, the bonus shares were approved in September, 2014 which was not accepted by BSE immediately thereafter.

9. In our view, if the equity shares were not being listed on the platform of the BSE and if approval was not being given for issuance of bonus shares

the remedy available to the appellant was to question the veracity of the action of the respondent at that stage itself. Making various correspondences

with the stock exchange from time to time will not enlarge the time of filing an appeal before this Tribunal.

10. In our view, no plausible or valid explanation has been given for condoning the inordinate delay in questioning the action of the respondents. The

suggestion made that costs may be imposed is not an acceptable solution. Delay can be condoned on sufficient, valid and legal grounds which in the

instant case is not in existence. In the absence of any valid legal ground, we do not find it to be a fit case to entertain this appeal at this belated stage.

11. Consequently, for the reasons stated aforesaid, the appeal is dismissed on the ground of laches.