(2020) 09 SEBI CK 0020

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.298 Of 2020, Appeal No.284 Of 2020

Supriya Pharmaceuticals Ltd APPELLANT

Vs

BSE Ltd And Others Vs RESPONDENT

Date of Decision : 24-09-2020

Acts Referred:

Securities Contract Regulation Act, 1956 — Section 21A(2), 23L(2)

Citation : (2020) 09 SEBI CK 0020

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

Bench : Division Bench

Advocate : Manoj Mishra, Nimisha Rathod, Tomu Francis, Arka Saha, Abhiraj Arora

Judgement

Dr. C.K.G. Nair, Member

1. This appeal has been filed against the order of delisting the securities of the appellant company, passed by the Delisting Committee of BSE Ltd.

(â??BSEâ?? for short) on August 22, 2017. The appeal has been filed on September 8, 2020 along with Misc. Application seeking condonation of delay

of purportedly 428 days.

2. The learned counsel Shri Manoj Mishra appearing on behalf of the appellant company submits that the earlier management of the company was

mismanaging its affairs which led the company to BIFR etc. and presently before the NCLT. It was also submitted that the assets of the company

were taken over by UCO Bank in the year 2014 and hence the registered office of the company was not in the possession of the company. It was

further contended that the current management has been taking all efforts in reviving the company, including filing this appeal. It was further

contended that though the delisting order was passed by BSE on August 22, 2017, and that too without giving a personal hearing, the appellant

received the said order only on May 24, 2019. Since in terms of Section 23L(2) of the Securities Contract Regulation Act, 1956 (â??SCRAâ? for

short) an appeal has to be filed within 45 days of receiving the Order, there is a delay of 428 days. Further, it was submitted that â??the delay is an

unintentional one and management of the company has been terribly engaged in compliances and getting the company back into the shape, which has

resulted in unwanted delay.â?? Proviso to section 23L(2) of the SCRA, quoted below for convenience, has also been relied upon by the appellant.

â??That the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty- five days if it is satisfied that there was

sufficient cause for not filing it within that period.â??

3. The learned counsel for respondent no. 1 BSE, on the other hand, submits that the shares of the appellant company was suspended for trading on

22 September, 2005 and the Company neither made any efforts in removing the suspension nor even filed any mandatory returns or paid mandatory

fees etc.as per the listing obligations since 2011, resulting in the issue of the impugned delisting order on 22 August, 2017. It is also clear from the

impugned Order that various notices were issued to the appellant in known addresses-which returned undelivered- and through print media.

4. On perusal of the Misc. Application seeking condonation of delay we are of the considered view that the said application has been filed in a very

casual manner without assigning any credible reasons at all. It was contended by the learned counsel that the appellant became aware of the

Impugned Order only on 24 May 2019. However, the appeal Memo states that 24 may, 2019 was the date of receiving the certified copy and at page

17 of the appeal Memo we note that the letter of the BSE dated 24 May, 2019 forwarding the certified copy refers to appellantâ?s e-mail dated 23rd

May requesting the certified copy of the delisting order. Therefore, it is obvious that the appellant was aware of the impugned order certainly prior to

24 May 2019. Even assuming that the appellant became aware of the impugned order around May 24, 2019 no credible reason has been given in the

MA for the subsequent delay in filing the appeal. On a specific query to the counsel for the appellant it was admitted that the new management had

taken over charge in the year 2018. Obviously, even the new management also did not consider filing the appeal in a reasonable period of time a

priority.

5. Though it is the considered stand of various court orders, including that of the Apex Court, that application for condonation of delay has to be

considered in a flexible manner, based on the facts of each case, in order to serve justice; those orders also emphasise the need for having legitimate

reasons for condoning inordinate delays. In the instant case, the condonation application does not give any legitimate reasons. A statement to the

effect that even the new management which came to manage the affairs of the company in 2018 â??has been terribly involved in various

compliancesâ? is not a ground for condoning extraordinary delay of 428 days, that too as claimed by the appellant. Further, the appellant has taken

recourse to sub-section 23L(2) of SCRA which deals with the appeal process in respect of an order passed by a recognized stock exchange or an AO

or any order passed by the SEBI etc. which provides for 45 days time frame for such appeals. However, in the case delisting of securities such

appeals have to be filed under Section 21A (2) of SCRA, within 15 days from the date of the order. Neither the calculation of delay nor the section of

SCRA relied upon by the appellant while calculating the delay and preferring the appeal is correct. In any case, a delay of 3 years from the date of the

impugned order and 16 months from the date of the admittedly receiving the certified copy of the impugned order is an extraordinary delay and no

cause has been shown for condoning such an inordinate delay. Delay cannot be condoned just mechanically.

6. Cause shown is not sufficient and accordingly the Misc. Application seeking condonation of delay is rejected. Consequently, the appeal is dismissed

with no order as to costs.

7. 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 Presiding Officer 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.

