(2020) 03 SEBI CK 0010

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 287 Of 2019

Vinod Kedia APPELLANT

Vs

Securities & Exchange Board Of India And Others RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 SEBI CK 0010

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

Bench : Full Bench

Advocate : Monil Punjabi, Abhiraj Arora, Vivek Shah, Anubhav Ghosh, Rashi Dalmia

Final Decision : Disposed Of

Judgement

M. T. Joshi, J

1. Aggrieved by the decision of Respondent No. 1 Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??) dated February

27, 2019 thereunder communicating the inability of Respondent No. 2 BSE Ltd. (hereinafter referred to as â??BSEâ??) to proceed with the request

of the appellant for defreezing of his demat accounts, the present appeal has been preferred.

2. From the record, it appears that in terms of Securities Contracts (Regulation) Rules, 1957 and Securities and Exchange Board of India (Delisting of

Equity Shares) Regulations, 2009, respondent No. 2 BSE had earlier compulsorily delisted the securities of Moonbeam Industries Ltd., now known as

MBI Intercorp Ltd. Shareholding pattern disclosed by the company on the website of BSE for quarter ending 2017 showed the appellant in the list of

promoterâ??s shareholding. Therefore, the appellantâ??s demat account was frozen and his name was also published in the physical public notices.

Thereafter, the appellant applied to respondent No. 2 BSE for defreezing his demat account on the ground that he was never a promoter of the said

company. He has communicated that the company had issued him 2500 equity shares each of Rs. 10/- fully paid in the year 1995. Thereafter, he had

not received any correspondence from the company.

3. Respondent No. 2 BSE vide e-mail dated October 29, 2018 asked the appellant to submit the following documents :-

â??1. Company clarification regarding your exclusion of your name from promoterâ??s category along with reasons as to why your name was

included as one of the Promoter in the previous shareholding pattern filed with the Exchange and capacity in which you are holding shares in the

company (on the letterhead of the company)

2. Order from Court / Tribunal / Any statutory authority, which excluded you as a Promoter of the Company.

3. Filings with MCA or any other regulatory authorities, where you were not represented as a Promoter of the Company.

4. Relevant extracts of the Annual Report, wherein your name is excluded from the list of Promoters and reasons for such exclusion.â??

4. The appellant, in turn, vide letter dated November 6, 2018 requested the company to submit above referred documents. It is the case of the

respondent No. 2 BSE that it had also sought information from the company. However, the same is not received. Therefore, in absence of the

documents, respondent No. 2 BSE showed inability to accept the request of the appellant. The same was communicated to the appellant vide the

impugned communication. Hence the appeal.

5. We have heard Shri Monil Punjabi, the learned counsel for the appellant and Shri Abhiraj Arora alongwith Shri Vivek Shah, the learned counsel for

the respondent No. 1 and Shri Anubhav Ghosh, alongwith Ms. Rashi Dalmia, the learned counsel for the respondent No. 2.

6. The learned counsel for the appellant adverted our attention to the copy of the certificate issued by the company at â??Exhibit Lâ?? and the copies

of the annual reports of the company from the year 2010- 11 till 2015-16 to show that in the annual report the appellant is named neither as a director

nor as a promoter, which are filed in the appeal.

7. In response, the learned counsel for the respondent has pointed out that the purported certificate issued to the applicant by the company is undated.

â??Exhibit Pâ??, the master data information as found from the website of MCA would show that the appellant is included as promoter of the

company. It was additionally pointed out that in the appeal memo, the appellant himself has under the title â??brief factsâ?? in paragraph Nos. 3 and

4 submitted as under :-

â??3. The Appellant taking his friendâ??s advice and being lured with the prospects of the company, sought to purchase shares of the same.

However, as the shares of the company were not readily available, the Appellantâ??s friend arranged for him to purchase the physical shares

through the company.

4. The Appellant in and around 1995 purchased 2500 shares at Rs. 10/- from the company. The Appellant was provided with 2500 shares out of the

Promoter quota.â??

8. On the basis of the said information, it was argued by the respondents that the appellant was definitely during the relevant period holding shares

from the promoter quota. His name is, therefore, rightly included in the shareholding pattern of the promoter group. The certificate purportedly issued

by the company is doubtful.

9. Having heard both the sides, in our view, the impugned communications of respondent Nos. 1 and 2 cannot be faulted in view of the fact that the

appellant failed to provide with the respondent the necessary documents.

10. The impugned communication would show that the application of the present appellant is not dismissed on merit. The respondent No. 2 BSE had

only shown inability to proceed with the request of the appellant for defreezing the demat account for want of documents from the appellant or till the

company submits certification that the promoters have paid the full value to the public shareholders.

11. In the circumstances, the appeal is disposed of without any order as to costs in terms of following directions :-

The appellant would be at liberty to submit the necessary documents to respondent No. 2, showing that he was not at all the promoter of the company

during the relevant period or to make a fresh application in terms of second direction in the impugned communication which provided for submission of certification by the company that the promoters have paid the fair value with the public shareholders. If such documents are furnished, respondent No.

2 would be obligated to pass appropriate orders.

