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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 9846/2017 and CM Nos. 40071/2017 & 21290/2018**

JASPREET AULAKH ..... Petitioner

Through: Mr Deepak Jain with Ms Twisha Issar, Mr Tanpreet Gulati and Mr Ayush Acharjee, Advocates

versus

SEBI AND ANR. ..... Respondents

Through: Mr Neeraj Malhotra, Senior Advocate with Mr Anup Jain, Mr Praneet Das and Mr Abhishek Baid, Advocates for R-1/SEBI.

Mr Sandeep Sethi, Senior Advocate with Mr V.P. Singh, Mr A. Jha, Mr Raghav Seth and Mr Abhishek Singh, Advocates for R-2.

AND

\+ **W.P.(C) 11404/2017 and CM Nos. 46558/2017 & 21288/2018**

MRS. VIRAJ AGGARWAL AND ORS. ..... Petitioners

Through: Mr Deepak Jain with Ms Twisha Issar, Mr Tanpreet Gulati and Mr Ayush Acharjee, Advocates.

versus

SEBI AND ANR. ..... Respondents

Through: Mr Neeraj Malhotra, Senior Advocate with Mr Anup Jain, Mr Praneet Das and Mr Abhishek Baid, Advocates for R-1/SEBI.

AND

\+ **W.P.(C) 11427/2017 and CM Nos46638/2017 & 21289/2018**

MRS. RAJ KUMARI AND ORS. ..... Petitioners

Through: Mr Deepak Jain with Ms Twisha Issar, Mr Tanpreet Gulati and Mr Ayush Acharjee, Advocates.

versus

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SEBI AND ANR. ..... Respondents

Through: Mr Neeraj Malhotra, Senior Advocate with Mr Anup Jain, Mr Praneet Das and Mr Abhishek Baid, Advocates for R-1/SEBI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 06.12.2018

1. The petitioners are shareholders of respondent no.2, Bharat Nidhi Limited (a public company, hereafter referred to as 'BNL').

2. BNL was listed on the Delhi Stock Exchange limited (hereafter 'DSE') which has since been de-recognized as a stock exchange. BNL was placed on the Dissemination Board of the Bombay Stock Exchange Limited (hereafter 'BSE') by DSE on account of its de-recognition. BNL was, thereafter, removed as it had secured a listing on the Calcutta Stock Exchange Limited (hereafter 'CSE'). The petitioners are, essentially, aggrieved by the removal of BNL from the Dissemination Board of BSE.

3. All the above petitions raise similar issues and the prayers made are similarly worded. The prayers made in W.P. (C) No. 9846/2017 are set out below:-

> (i) Issue Writ of Mandamus and/or Certiorari or any other appropriate Writ for quashing and/or setting aside the clarification document dated 06.04.2017 issued by Respondent No. 1;
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> (ii) pass order declaring the removal of Respondent No. 2 from the Dissemination Board of BSE as illegal and void;
>
> (iii) pass an order directing the Respondent No.1 to remove the listing of Respondent no. 2 from CSE as the same was

not in accordance to exit circular;

iv. pass an order directing the Respondent No. 1 to bring back the Respondent No. 2 in Dissemination Board: pass an order directing the Respondent No. 1 to ensure Respondent No. 2 and/or direct Respondent No. 2to either list itself on stock exchange bearing Nationwide Trading Terminal or to provide exit route to the Petitioner as per the circulars issued by Respondent no. 1;

vi. pass orders directing Respondent No. 1 and Respondent No. 2 to follow the guidelines/directions in the circulars and exit procedure set out vide circulars of Respondent No.1 and provide an exit route/ nationwide trading terminal by ensuring that mandate of Section 11 is achieved;

vii. to direct the Respondent No. 1 to follow the mandate of the Section 11 of The Securities and Exchange Board Of India Act, 1992 and the circulars issued by Respondent No. 1 itself, and take appropriate actions accordingly;

4. On 29.12.2008, respondent no.1 (hereafter 'SEBI') issued guidelines for exit option to stock exchanges that had been de-recognized or had become non-operational.

5. On 30.05.2012, SEBI issued a Circular specifying the process for de-recognition and exit of such stock exchanges. In terms of paragraph 2.2 of the said circular, all stock exchanges where the annual turnover was less than ₹1000 crores, could apply to SEBI for voluntary surrender of recognition and exit within a period of two years from the date of issue of the said circular. The stock exchanges were provided a period of two years to achieve the prescribed turnover of ₹1000 crores on a continuous basis, failing which, it was provided that SEBI would proceed with compulsory exit of such stock exchanges. The stock exchanges that were already de-

recognized as on 30.05.2012, were required to make an application for exit within a period of two months from the date of the circular.

6. The companies that were listed exclusively on such stock exchanges could list on another recognized stock exchange. In the event such companies failed to do so, they would be moved to the Dissemination Board. This was in the interest of investors of such exclusively listed companies.

7. Para 3.3 of the said circular dated 30.05.2012 indicated the provisions relating to the Dissemination Board. The said paragraph is set out below:-

> 3.3 **Dissemination Board**:
>
> Under this mechanism, a willing buyer and seller will be given an opportunity to disseminate their offers using the services of brokers of stock exchanges hosting dissemination board. The mechanism of dissemination board shall be given wide publicity for the benefit of the
>
> investors of exclusively listed companies. Every stock exchange hosting a dissemination board shall clearly bring out the guidelines in respect of the Dissemination Board on its website.
>
> **Features of Dissemination Board**;
>
> i. Exiting Stock Exchanges will be required to enter into an agreement with at least one of the stock exchanges with nationwide trading terminals providing the Dissemination Board. The exiting stock exchange shall pay a one-time fee for the arrangement as may be decided in the agreement. The fee may be based on number of companies moving on to the dissemination board, number of public shareholders in those companies, their paid up capital etc.
>
> ii. Exchanges having nationwide trading terminal will not have listing agreement with these companies. However,

information received from such companies will be disseminated.

iii. The buyers/ sellers will be required to register with broker of the exchange where the dissemination board is set up.

iv. No contract note is required to be issued for such transactions.

v. The matched trades will not be settled through the stock exchange/Clearing Corporation mechanism and hence, there will be no recourse to the Settlement/ Trade Guarantee Fund and Investor Protection Fund of the Exchange for the trades on Dissemination Board

vi. The exiting Stock Exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily. The stock exchanges hosting dissemination board shall issue uniform operational guidelines for the dissemination board."

8. Thereafter, SEBI issued another Circular dated 22.05.2014. The said Circular was applicable to those stock exchanges which had not achieved the prescribed turnover of ₹1000 crores on a continuous basis on or before 30.05.2014. This was in conformity with the earlier circular dated 30.05.2012 whereby all such stock exchanges which had not achieved the threshold level of turnover were provided a period of two years to achieve the same. Admittedly, DSE was one such stock exchange that did not fulfil the criteria of being recognized and thus, it was required to comply with the directions as set out in the Circular dated 22.05.2014. The said directions are set out below:-

"**Directions to Stock Exchanges to deal with companies exclusively listed on non-operational stock exchanges**

3. In line with the above provisions, the following shall be applicable:-

i. The exclusively listed companies of such non-compliant stock exchanges may opt for listing in nation-wide exchanges after complying with listing norms of main board or the diluted listing norms, if any, on or before the exit of the exchange, either on voluntary or compulsory basis. Nation-wide stock exchanges shall facilitate the listing of these companies on priority basis in a time bound manner. For this purpose, these nation-wide stock exchanges shall immediately create a separate dedicated cell to expedite processing the listing requests from such companies.

ii. Such exclusively listed companies may also opt for voluntary delisting before the de-recognition of the stock exchanges by following the existing delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.

iii. With a view to facilitate voluntary delisting, if they so desire, it is clarified that for such companies as referred to at Para 2(ii) above, the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, shall not be applicable.

iv. In case of companies exclusively listed in the non-operational stock exchanges that are not traceable or where the data available is more than three years old,

the process of inclusion in list of companies identified, as 'Vanishing' (maintained by Ministry of Corporate Affairs) may be initiated by the respective stock exchanges.

v. As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed company and will be moved to the dissemination board by the existing stock exchange. It shall be the responsibility of the exchanges which are being derecognized either on voluntary or compulsory basis, to place their exclusively listed companies on the dissemination board. These exchanges shall ensure that the database of the exclusively listed company is transferred to SEBI and to those stock exchanges on whose dissemination board, the shares of these companies are available."

9. On 10.10.2016, SEBI issued another Circular, *inter alia*, providing two options to the companies that were placed on Dissemination Board: the said companies could either raise capital to list on a Nation-wide Stock Exchange or provide exit to the investors in the manner as specified in Annexure A to the said Circular. Paragraph 4 of the said circular dated 10.10.2016 is relevant and is set out below:-

"4. SEBI has been receiving representations seeking clarifications on raising of further capital and the process of exit of ELCs from the DB. Therefore, SEBI, in the interest of the investors of such ELCs, clarifies as follows;

a. The respective nationwide stock exchanges hosting the ELC on its DB would hereinafter be referred as 'designated stock exchange'.

b. The ELCs on the DB would be required to exercise one of the two options as mentioned in Para 4.c or 4.d of the circular.

c. Raising capital for listing on Nationwide Stock Exchanges. In order to facilitate listing on nationwide stock exchanges, the ELCs on the DB shall be allowed to raise capital for meeting the listing requirements through preferential allotment route in terms of the provisions under the Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR).

i. For the above purpose the procedures as specified under ICDR shall be followed to the extent possible. Towards this purpose, the designated stock exchange shall be according in principle approval and monitoring compliance with the same.

ii. In the process of raising capital through preferential allotment, if the allotment is made to promoters/public such that it is in excess of the threshold limits (5% or 25%) of the SEBI (Substantial Acquisition of Shares and Takeovers Regulations), 2011 (SAST), the provisions of SAST Regulation shall not be applicable for the proposed acquisition subject to the overall holding of the promoter group not exceeding 75% of the paid up capital of the company.

iii. The ELCs which fail to list on the nationwide stock exchanges under the aforesaid mechanism shall provide exit to its investors as per para 4.d of the circular.

d. Procedure to provide exit to investors:
In order to protect the interest of all shareholders of such ELCs, an exit mechanism to investors of such ELCs shall be as prescribed in **Annexure-A** to this circular. Accordingly, all ELCs shall be required to

ensure compliance with the procedure for exit. The oversight and monitoring of such exit mechanism shall be carried out by the designated stock exchange.

i. Designated stock exchanges shall further ensure that the promoters have made adequate efforts in terms of the above provisions for providing exit to their shareholders before removing ELCs from the DB.
ii. The designated stock exchange shall display the list of companies willing to provide exit to their investors on their website on a monthly basis."

10. The principal controversy raised in the present petition relates to compliance with the aforesaid Circular dated 22.05.2014 and 10.10.2016.

11. The relevant facts necessary to appreciate the controversy are briefly stated as under:

11.1 DSE was derecognised on 19.11.2014 and on 13.07.2015, DSE sent BNL on the Dissemination Board of BSE.

11.2 In the meanwhile, on 19.02.2015, BNL was listed on the Calcutta Stock Exchange (CSE). It is stated that BNL sent several communications stating that it was not required to be placed on the Dissemination Board of BSE as it was listed on a recognized exchange, namely, CSE.

11.3 On 15.03.2017, BNL was removed by BSE from its Dissemination Board on account of company listed on CSE.

12. The petitioners claim that in terms of a Circular dated 0.10.2016 BNL could either raise capital for listing on a Nation-wide Stock Exchange or provide an exit to the investors as specified in Annexure-A to the said Circular. Therefore, removal of BNL from BSE Dissemination Board is contrary to the Circular dated 10.10.2016. It is also the petitioner s case that removal of BNL is in violation of the Circular dated 10.10.2016.

13. The petitioners are further aggrieved by the Circular dated 06.04.2017, issued by SEBI inasmuch as it permits a company listed on a de-recognized stock exchange, which is also listed on Calcutta Stock Exchange Limited to be removed from the Dissemination Board. The petitioners allege that this circular has been issued to favour such companies, including BNL.

14. It is contended on behalf of BNL that in terms of sub-paragraph (v) of paragraph 3 of the Circular dated 22.05.2014, only such companies as exclusively listed on a derecognised stock exchange that were not listed on any other recognised stock exchange, were required to be moved to the Dissemination Board. According to BNL, it had secured the listing on CSE and therefore was not required to be shifted to the Dissemination Board of BSE. *Prima facie*, this contention is unmerited for two reasons. First, that such companies, which were exclusively listed on a derecognised stock exchange were required to be listed on the Nation-wide Stock Exchange on or before the exit of the derecognised stock exchange. And, second, the provisions of sub-paragraph (v) of paragraph 3 of the Circular dated 22.05.2014 has to be read in conjunction with sub-paragraph (i) of paragraph 3 of that Circular; which means that the listing must be on a Nation-wide Stock Exchange. Admittedly, CSE is not one such Stock Exchange. However, it is not necessary to examine this issue any further, in view of the events that have transpired subsequent to the filing of the present petitions.

15. On 20.03.2018, the learned ASG appeared for SEBI and made a statement that BNL was one of the 63 companies, which was listed on CSE which has now been re-transferred to the Dissemination Board of BSE/NSE and therefore, the petitioners' grievance would not survive. In view of the

above, SEBI was directed to file an affidavit in this regard. In compliance with the said order, SEBI has filed a compliance report, *inter alia.* affirming as under:-

> "1. SEBI/Respondent No.1 vide letter dated January 12 2018 *inter-alia* advised Calcutta Stock Exchange (CSE) to immediately ensure:
>
> **(a)** Transfer of all the 63 companies (including Bharat Nidhi Ltd. - Respondent no. 2) which have got itself listed on CSE from the date it became non-operational till date, to the Dissemination Board of BSE/NSE and refrain from listing any company till the matter of compulsory exit is sub-judice.
>
> (b) Transfer of listing fees if any, received from all those 63 companies into the Investor Protection Fund (IPF) of CSE.
>
> (c) Submit a compliance report in this regard within 15 days.
>
> 2. Pursuant to Respondent No. 1 - SEBI letter dated January 12, 2018, CSE vide its reply dated February 19, 2018 had submitted a detailed response in the matter to Respondent No. 1 - SEBI and sought certain clarifications. The same was examined by Respondent No. 1 - SEBI.
>
> 3. Thereafter the Respondent No. 1 - SEBI vide letter dated April 18, 2018, has directed CSE to immediately ensure inter-alia:
>
> **(a)** Transfer of all the 63 companies (including Bharat Nidhi Ltd. - Respondent no. 2) which have got listed oh CSE from the date it became non-operational till date to the Dissemination Board of BSE/NSE.
>
> Further, CSE is advised to submit a compliance report in this regard within 15 days. However, vide letter dated

> April 30, 2018, CSE has requested for grant of additiona period of 15 days to submit a compliance report. True copy of the CSE letter dated April 30, 2018 is annexed herewith and marked as **ANNEXURE - A/I**"

16. BNL has also filed an affidavit enclosing therewith a letter dated 10.08.2018 received from CSE affirming that if BNL does not elect the option for voluntarily de-listing or for obtaining a listing in the Nation-wide Stock Exchange, it shall be transferred to the Dissemination Board. The relevant extract of the said letter is set out below:-

> "As per the directions of the Securities and Exchange Board of India (SEBI) contained in its letter Ref. SEBI/HO/MRD/DSA/OW/P/18973/1 dated July 5, 2018 addressed to this Exchange read with SEBI's email to CSE dated August 10, 2018 you are one of the 34 Exclusively Listed Companies (ELCs) of this Exchange which shall be transferred to the Dissemination Board of nation-wide stock exchange(s) subject to the following conditions. Copies of the letter dated July 5, 2018 and the email dated August 10, 2018 are enclosed for your reference.
>
> We are further directed by SEBI to inform you that you may either opt for voluntary delisting from CSE in the manner laid down in the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (as amended from time to time) and other applicable laws and regulations or may obtain listing in nation-wide stock exchange(s).
>
> Unless you chose either of the above options within 45 days of receipt of this communication, we have been directed by SEBI to transfer you the Dissemination Board of nation-wide stock exchange(s)."

17. Mr Sethi, learned Senior Counsel appearing for respondent no.2 states

that BNL had not opted for any of the two options as mentioned in the letter dated 10.08.2018 and, therefore, is required to be transferred to the Dissemination Board. In view of the above, the principal grievance of the petitioners does not survive. This is so because the petitioners' challenge to SEBI's clarification dated 06.04.2017 was premised on the basis that it had permitted companies listed on the CSE to be removed from the Dissemination Board contrary to its earlier circular dated 22.05.2014 and 10.10.2016.

18. In view of the above, this Court does not consider it necessary to examine the question whether the removal of BNL's name from the Dissemination Board of BSE was otherwise illegal as BNL is now required to be replaced on the Dissemination Board.

19. The petitioners have also raised certain other issues with regard to the manner in which the shares of the existing shareholders are to be valued. Controversy in this regard is premature and further not a subject matter of the petitions as originally filed. It is, thus not necessary to examine that issue. The aforesaid questions are, accordingly, left open and all contentions of the parties are reserved.

20. In addition, the petitioner has also raised certain grievances regarding the identity of the promoters of BNL. This court is of the view that the said issues are required to be examined by SEBI in the first instance. It would thus be open for the petitioners to make a complaint to SEBI. Needless to state that if such complaint is made, SEBI shall examine the same in accordance with law.

21. The petitions are disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

DECEMBER 06, 2018
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