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

\+ **W.P.(C) 6269/2018, CM APPL. 24180/2018, CM APPL. 20778/2019**

Date of Decision: 14.02.2023

IN THE MATTER OF:

1. LUMAX ANCILLARY LTD. AND ANR.
A company incorporated under the
Companies Act, 1956 having its
registered office at:
B-86, Mayapuri Industrial Area
New Delhi.

2. MR. DHANESH KUMAR JAIN
S/o Sh. Late S.C. Jain
R/o Farm No. 23, Silver Oak Marg,
Ghirtoni,
Delhi. ...... Petitioners

Through: Mr. Sanjeev Puri, Sr. Advocate with Ms. Pragy Puri, Advocates.

versus

1. SECURITIES AND EXCHANGE BOARD OF INDIA LTD.
5th Floor, Bank of Baroda Building
16 Sansad Marg,
New Delhi-110001 …. Respondent No.1

2. NATIONAL STOCK EXCHANGE OF INDIA LTD.
4th Floor, Jeevan Vihar Building
Parliament Street
New Delhi. …... Respondent No. 2

3. BOMBAY STOCK EXCHANGE LTD.
101, 1st Floor, Aggarwal Corporate Tower
Plot No.232, District Center …... Respondent No. 3

Through: Mr. Chandra Prakash, Advocate for R-1.
Mr. Neeraj Malhotra, Sr. Advocate

with Mr. Vedant Kumar, Mr. Nimish Kumar & Ms. Shreya Singh, Advocates for R-2.
Ms. Surekha Raman & Ms. Unnimaya S., Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition assails the impugned notice dated 09.05.2018, and a subsequent notice dated 19.05.2018 (Annexure-P1 Colly.) issued by respondent Nos.2 and 3 to the extent that it includes the name of the petitioners as Promoter of Lumax Automotive Systems Limited. The petitioners have also prayed for the relief to direct respondents No.2 and 3 to remove the name of the petitioners from the "Promoter Group" of Lumax Automotive Systems Limited and reclassify the petitioners as "public group category”.

2. The petitioners have taken various grounds to challenge the impugned action of the respondents, however, during the pendency of the instant writ petition, respondent No.3 while presenting a brief synopsis, has pointed out that the petitioner-Lumax Automotive Systems Limited was compulsorily delisted w.e.f. 11.05.2018. It has also been pointed out that at the relevant time, the status of the company, as reflected on the website of the Ministry of Corporate Affairs (MCA) was “Active” and was not showing as “Liquidated/ Under Liquidation”, therefore, the fair value for the company was computed by an independent valuer appointed in terms of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as ‘Delisting Regulations, 2009’). The share value of the petitioner

company was estimated at Rs.16/- per share.

3. According to respondent No.3-Bombay Stock Exchange (BSE), the Fair Value along with the names of the promoters, as available on the BSE's records, was included in the Final Public Notice issued by the BSE on 12.05.2018, in the Financial Express newspaper (English) and on 15.05.2018, in Regional language newspaper in Navshakti (Marathi). Respondent No.3 has further stated that as per Regulation 24 of the Delisting Regulations, 2009 and in view of the fact that the Fair Value was positive, the demat account of the promoter/promoter group was frozen at the relevant time till an exit opportunity is provided to public shareholders at the Fair Value.

4. It has also been submitted on behalf of respondent No.3 that subsequently, the office of the Official Liquidator, New Delhi in terms of communication dated 24.01.2019, informed respondent No.3 that the petitioner-company was already wound up and a copy of order dated 16.10.2017, passed in Company Petition No.829/2016 by this court was brought to the notice of respondent No.3. The said respondent noticed that the status of the company on MCA website was shown as "Under Liquidation". Respondent No.3 thereafter, had taken corrective measures and advised the depositories to unfreeze the company's promoters' demat accounts.

5. According to respondent No.3, SEBI's Regulation 24 of the Delisting Regulations, 2009 would not have any application in the case of the petitioners. Respondent No.3 in its brief synopsis has placed on record the following averments which are reproduced as under:-

> *"…..*
> *7. SEBI had provided the following clarification vis-a-vis Regulation 24 of the Delisting Regulations:-*

> *(a) If a company has been compulsorily delisted before the appointment of provisional liquidator or the order of winding-up, then the restrictions provided under Regulation 24 of Delisting Regulations shall be applicable.*
>
> *(b) If the company has not been compulsorily delisted before the appointment of provisional liquidator or the order of winding-up, the process of delisting will happen by operation of law and the restrictions under Regulation 24 of Delisting Regulations shall not be applicable.*
>
> *......"*

6. Realizing the fact that the Regulation 24 of the Delisting Regulations, 2009 would not have any application in the case of the petitioners, respondent No.3 had taken following steps:-

> *"(a) The Exchange vide its letter dated April 24, 2019 intimated Mrs. Santosh Jain (i.e. Impleading Party in the present Writ Petition) about such unfreezing of her demat account and non-applicability of Regulation 24 of the Delisting Regulations.*
>
> *(b) Issuance of Public Notice in the newspapers, i.e., Financial Express and Navshakti dated June 8, 2019 informing about non-application of consequences under Regulation 24 of the Delisting Regulations on the promoters/ promoter group of the Company. A copy of the said Public Notice published in Financial Express is attached herewith and marked as Annexure "1"*

7. In view of the aforesaid, since Regulation 24 of Delisting Regulations, 2009 would not have any application in the instant case, no further orders are necessary to be passed in the instant case.

8. Learned senior counsel appearing on behalf of the petitioners, however, states that since on the basis of the averments made by respondent No.3, it is seen that the impugned notices were issued on account of incorrect facts, therefore, in the interest of justice, the impugned notices deserve to be quashed.

9. The submission made by learned senior counsel appearing on behalf of the petitioners has been opposed by learned counsel appearing on behalf of respondent Nos.2 and 3 and they state that once the legal

position is clear, the Regulation 24 of Delisting Regulations, 2009 will not have any application, there is no necessity to set aside the impugned notices.

10. Mr. Neeraj Malhotra, learned senior counsel appearing on behalf of respondent No.2 specifically points out that the impugned notices have not only been issued on the basis of application of Regulation 24 of Delisting Regulations, 2009 but there are other reasons also, including the reason of non-trade for a period of six months. He further states that the impugned notices covered more companies than Lumax Automotive Systems Limited.

11. It is seen that the main reason for issuance of the impugned notices is the application of Regulation 24 of Delisting Regulations, 2009 which admittedly did not have any application, therefore, this court finds it appropriate to set aside the impugned notices, as the same are based on wrong presumptions.

12. Accordingly, the impugned notices qua the petitioners are set aside.

13. The parties are at liberty to take appropriate recourse in accordance with the law, if so advised. If the respondent feels that notwithstanding the non-applicability of Regulation 24 of Delisting Regulations, 2009, they are still empowered to take any further action, the same can be done as per law.

14. The petition is accordingly disposed of along with pending applications.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 14, 2023
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