

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 176 of 2024

**MIHIR MOHAN PYNE AND ANR
Vs.
THE CALCUTTA STOCK EXCHANGE LIMITED AND ORS**

For the petitioners : Mr. Surojit Nath Mitra, Sr Adv.
Mr. Deepnath Roy Chowdhury, Adv.
Mr. Sourav Sengupta, Adv.
Mr. Aman Baid, Adv.

For the respondents : Mr. Jayanta Sengupta, Adv.
Mr. Uttam Kumar Mandal, Adv.
Ms. M. Roy, Adv.

Hearing concluded on : 30.04.2024

Judgment on : 15.05.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1 is one of the directors of the proforma respondent no.5-Company that is Camperdown Pressing Co. Ltd and the petitioner no.2 is his wife. Admittedly, the petitioner no.1 forms a part of the “promoter group” as defined under regulation 2(1)(w) of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (for short, “the 2015 Regulations”) and the family of the petitioners control the management and affairs of the proforma respondent no.5-Company.
2. The present writ petition has been preferred against the act of the respondent no.1, the Calcutta Stock Exchange (CSE) in freezing the Demat Accounts of the petitioners.

3. Learned counsel appearing for the petitioners takes the court through the provisions of Section 98 of the 2015 Regulations, Chapter V of SEBI (Delisting of Equity Shares) Regulations, 2021 (hereinafter referred to as the “2021 Regulations”) and Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.
4. It is argued that the petitioner is a listed entity under Section 2(1)(p) of the 2015 Regulations.
5. Section 98 of the same provides the actions to be taken by the respective stock exchanges in the manner specified in circulars or guidelines issued by the Board if a listed entity of any other person thereof contravenes the provisions of the Regulations. Under Clause 1(c), freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories, is also contemplated.
6. It is argued that a perusal of the said provisions and the listing agreement of the proforma respondent no.5-Company dated February 19, 1968 will show that the designated securities of the company were 4300 ordinary shares. The Circular of 2020, issued in aid of the 2015 Regulations, lays down the action to be adopted in case of non-compliance with the Listing Regulations. Annexure-I thereof, at Clauses 5 and 6, mandates certain steps, including issuance of notice upon the non-compliant entity within thirty days of the due date of submission of information and, upon continuance of non-compliance, issuance of notice upon the promoter(s) seeking compliance within ten days thereof. Only upon expiry of the stipulated period, the

depositories can be intimated to freeze the entire shareholding and Demat Accounts of the promoters.

7. No such notice, it is argued, was given at least to petitioner no. 1, nor was the guidelines as mandated in the Circular of 2020 complied with.
8. Again, Section 32 of Chapter V of the 2021 Regulations mandates the procedure for compulsory delisting of equity shares of a company which mandates a reasoned order to be passed by a panel constituted by the Stock Exchange as per the said Regulations. It is argued that no such panel has been shown to have been constituted in the present case. Moreover, in paragraph no. 9 at page 15 of the affidavit-in-opposition, the CSE asserts that no delisting of the designated securities of the proforma respondent no.5-Company has been done. Hence, it is argued that the respondent acted in clear deviation of the 2021 Regulations.
9. The issuance of the impugned notice in respect of freezing of the Demat Accounts of the petitioners is thus illegal.
10. Learned counsel for the respondent no. 1/CSE controverts the arguments of the petitioners. It is argued that, in view of the violation and defaults/non-compliances of the 2015 Regulations by the proforma respondent no.5-Company, the CSE issued the first notice on November 9, 2023 annexed at page 24 of the affidavit-in-opposition, calling upon the company to comply with the requisite listing obligations and disclosure requirements, failing which, it was indicated, the CSE would be constrained to initiate appropriate proceedings in terms of Section 32 of the 2021 Regulations.

- 11.** Due to persistent refusal/failure of the company and its directors/promoters to take appropriate steps for the purposes of making requisite disclosure and compliance with the listing obligations, the CSE/respondent no.1 was constrained to publish the name of the company in the list of non-compliant suspended companies by way of the public notices dated November 1, 2023 and December 1, 2023.
- 12.** Despite such public notices, which were published on the official website of Respondent no.1, neither the company nor its promoters/directors took the requisite steps for regularizing the non-compliances. Thus, respondent no.1 was constrained to issue the direction upon the depositories by the notice dated January1, 2024 to freeze the Demat Accounts of the promoters/directors.
- 13.** It is reiterated by respondent no. 1 that proceedings pertaining to delisting the equity shares of the company have not commenced and accordingly, no steps have been taken in terms of Regulation 34 of the 2021 Regulations, which relates to consequences of compulsory delisting. Such consequences are punitive in nature, whereby the promoters and/or the whole-time directors of the defaulting company can be debarred from accessing the security market and/or seeking listing of a equity shares and/or to act as intermediary in the security market for a period of ten years from the date of delisting. The said consequences are not mentioned in the notice dated January 1, 2024.
- 14.** Respondent no.1, it is argued, as a measure of protection to the investors and the public at large, is vested with ample powers to freeze

the holding of the designated securities of the promoters/promoter group of any listed entity.

15. In terms of Regulation 98(1)(d) of the 2015 Regulations, the SEBI is also empowered to take any other action for contravention of the provisions of the said Regulations. In exercise of such power, the SEBI had published the Circular dated January 22, 2020, annexed at page 97 of the affidavit-in-opposition, issuing directions upon all recognized stock exchanges and the depositories for taking appropriate steps due to compliance of the 2015 Regulations. Thus, in terms of Regulations 98(1)(c) and 98(1)(d) of the 2015 Regulations in conjunction with the Circular dated January 22, 2020, respondent no. 1 was well within its powers to issue the impugned directions upon respondent no.2 and 3 for freezing the Demat Accounts of the petitioner no.1. Since the petitioner is a joint holder in the accounts, although the petitioner no.2 may be one of the other holders, it is argued that the Demat Accounts-in-question come within the purview of the aforesaid powers.
16. Upon hearing learned counsel for the parties, what transpires is that there has not yet been any delisting under Clauses 32 and 34 of the 2021 Regulations. The step taken in the present case was merely to freeze the Demat Accounts where the petitioner no.1/promoter is co-holder. The power to freeze the designated securities of the promoter, as defined in Section 2(1)(h) of the 2015 Regulations, flows from Section 98 of the said Regulations. Under sub-section(1) of Section 98, the listed entity or “any other person thereof” who contravenes any of

the provisions of the Regulations are amenable, *inter alia*, to freezing of promoters/promoter group holding of designated securities as may be applicable, in co-ordination with depositories. Section 98(1)(c) clearly empowers the said action to be taken against petitioner no.1, who is admittedly one of the promoters.

17. Clause 4 under Chapter II of the 2015 Regulations cast several obligations on the listed entities in respect of disclosures and obligations which have been violated in the present case by the proforma respondent no.5-Company, of which petitioner no.1 is a promoter.
18. The Circular dated January 22, 2020 issued by the SEBI deals with non-compliance of certain provisions of the 2015 Regulations and the Standard Operating Procedure for suspension and revocation of trading of specified security. As a first resort in case of non-compliances, freezing of the entire shareholding of the promoters and promoter group is envisaged.
19. Under Clause 4 of the said Circular, the SEBI stipulates that in order to ensure effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from the concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, not only the entire shareholding of the promoters in such non-compliant listed entity but *all other securities held in the Demat Account of the promoter(s)* as well. Hence, the source of power of the respondent no. 1 to do so with regard to the Demat Accounts of petitioner no. 1, held jointly or otherwise, cannot be denied.

- 20.** The argument of the petitioners that no panel has been formed under Section 32 of the 2021 Regulations is a non-issue, since admittedly the process of compulsory delisting has not yet commenced. Such stand of the respondent no. 1 is also vindicated by the fact that the consequences under Section 34 have not even been threatened against the petitioners.
- 21.** Apart from Clauses 1 and 4 of the 2020 Circular, Annexure-I to the same, in Clauses 5 and 6 thereof, provides for issuance of notices to the non-compliant listed entities within 30 days from the due date of submission of the information and further notice to the promoters to issue compliance with the requirements. Thereafter, on expiry of the stipulated period indicated in the Notices, the recognized Stock Exchange shall forthwith intimate the depositories to freeze the entire shareholding as well as other securities held in Demat Accounts by the promoters of the defaulting entity, which has precisely been done in the present case.
- 22.** On November 9, 2023, a notice was issued by the CSE to the defaulting company granting it a final opportunity for compliance of the provisions of listing of equity shares.
- 23.** Over and above the same, on November 1, 2023, a notice was issued for publication of the non-compliant suspended listed companies of the CSE and a publication was accordingly made, which list included the proforma respondent no. 5-Company. The Notice was issued, as per itself, after reasonable opportunities being given to non-complaint

suspended companies as per SEBI Delisting Regulations and other relevant Rules and Circulars/Notices.

- 24.** Only thereafter, on January 1, 2024, a communication was made to the National Securities Depositories Limited and Central Securities Depositories Limited directing freezing of the Demat Accounts of the petitioner no. 1 and the other promoters of the defaulting company, that is, proforma respondent no. 5.
- 25.** On February 8, 2024, an e-mail was also sent to petitioner no. 1, as per the request of the latter, intimating the non-compliances and the course of action to be taken for regularization. However, on January 9, 2024 a cryptic reply was sent by petitioner no. 1 requesting to know the listing fees and other dues payable by the Company. By a January 3, 2024 e-mail communication, the freezing was indicated to have been executed in respect of the Demat Accounts, spurring the petitioners to prefer the instant writ petition.
- 26.** There are at least two e-mails dated January 3, 2024 and January 5, 2024 intimating the suspension of debits in the Demat Accounts of the petitioners. There were subsequent notices on January 10 and April 20, 2024 as well.
- 27.** The petitioners take a technical objection as to no notice under Clause 5 of Annexure-I of the 2020 Circular having been given to the petitioners. However, the notices contemplated under Clause 5 of Annexure-I are intended to make the defaulting company and its promoters aware of the status of the company and the threatened action under the concerned Circulars. The first notice, even as per

Clause 5, is to be issued to the non-compliant listed entity. Upon expiry of the said notice, however, notices are to be given “to the promoter(s)” to ensure compliance with the requirements.

- 28.** Although all other compliances were done by the respondent no. 1, at the last stage prior to the freezing of the accounts of the petitioners, the CSE failed to comply with the stipulation in Clause 5 of Annexure-I of the 2020 Circular which mandates the Stock Exchange to issue notices to the promoter(s) of the non-complaint entities to ensure compliance with the requirements and pay fines within ten days from the date of the notice.
- 29.** In the present case, petitioner no. 1 has subsequently issued e-mails to the respondent no. 1, showing his willingness to deposit the fines. Although no such intention appears from the conduct of the petitioners to comply with the other formalities, which were amply clarified to the petitioners by the several e-mails, notice and publication made by the CSE, the fact remains that no separate notice was given to the petitioner no.1/promoter before freezing the Demat Accounts where the petitioner no.1 is a joint holder.
- 30.** Clause 5 of Annexure-I specifically distinguishes between the first notice, which is to be given to the listed entity itself, and the second notice which is to be given not to the listed entity but the promoter of the non-compliant entity. The said requirement having not been satisfied by the CSE/respondent no.1, the impugned act of freezing the Demat Accounts of the petitioners was unlawful and not sustainable in the eye of law. However, it cannot be denied that the

stages prior to the same have been duly complied with by respondent no.1. Hence, the laches on the part of respondent no.1 can be rectified if a notice as contemplated in Clause 5 of Annexure-I is issued prior to freezing the Demat Accounts of the petitioner.

- 31.** Accordingly, WPO No. 176 of 2024 is allowed on contest, thereby setting aside the Notice dated January 1, 2024, insofar as the petitioners are concerned and the e-mails dated January 3, 2024 and January 5, 2024 issued by the respondent no.1 and quashing the freezing of the Demat Accounts of the petitioners.
- 32.** Nothing in this order, however, shall preclude respondent no. 1 from proceeding afresh with issuance of a notice to the petitioner no. 1 and the other promoters/promoter group of the proforma respondent no.5-Company individually under the second limb of Clause 5 of Annexure-I of the SEBI Circular dated January 22, 2020 to ensure compliance with the requirements and pay fines within ten days from the date of such notice.
- 33.** In the event the defaults are not made good by compliance with the requirements and payment of fine, the respondent no.1 shall be at liberty to proceed as per the procedure laid down in Clause 6 of Annexure-I of the said Circular by intimating the depositories to freeze the entire shareholding of the promoters as well as other securities held in the Demat Accounts in case of failure of the non-compliant listed entity/proforma respondent no.5-Company to comply with the requirements and pay the fine levied under the said Circular.

- 34. In the said notices, the respondent no.1 shall specify the exact amount of fine payable by the petitioners.
- 35. There will be no order as to costs.
- 36. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)