

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH.

NEW DELHI

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022

IN THE MATTER OF:

AGGARSAIN SPINNERS LIMITED

Through its Authorised Signatory
Director Mr. Sunny Garg,
Having its Office At:
2nd Floor, SCO No. 404, Sector 20,
Punchkula, Haryana
Email: aggarsainspinners@gmail.com

...Appellant

Versus

SHREEJI COTFAB LIMITED

5/4, Ground Floor, Singh Sabha Road,
Block No. 41, Shakti Nagar,
New Delhi-110007
Email: accts.shreeji@gmail.com

...Respondent No. 1

MR. JALESH KUMAR GROVER

Reg. No. IBBI/IPA-001/IP-P00200/2017-2018/10390
Resolution Professional for M/s GPI Textiles Ltd.
(Under CIRP)
First Floor (above Yes Bank) SCO 818,
NAC Manimajra, Chandigarh - 160101,
Email: jk.grover27@gmail.com

...Respondent No. 2

COMMITTEE OF CREDITORS

Through the Lead Financial Creditors
Phoenix Arc Private Limited
5th Floor, Dani Corporate Park,
158, CST Road, Kalina, Santa Cruz (E),
Mumbai-400098

...Respondent No. 3

Present:

For Appellant: Mr. Puneet Bali, Sr. Advocate with Mr. Himanshu Vij, Mr. Eshna Kumar, Mr. Surjeet Bhadu and Mr. Akhil Anand, Advocates

For Respondent: Mr. Aalok Jaga, Ms. Pallavi Singh and APS Madaan, Advocates for R1
 Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Karan Kohli, Mr. Prateek Kushwaha, Mr. Viren Sharma, Mr. Pathik Choudhury, Mr. Sahil Bhatia, Mr. Mohit and Nikhil Jain, Advocates for R2
 Mr. Manish Jain, Ms. Divya Sharma and Mr. Siddhant Jain, Advocates for R3

With

Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

IN THE MATTER OF:

AGGARSAIN SPINNERS LIMITED

Through its Authorised Signatory
 Director Mr. Sunny Garg,
 Having its Office At:
 2nd Floor, SCO No. 404, Sector 20,
 Panchkula, Haryana
 Email: aggarsainspinners@gmail.com

...Appellant No. 1

Mr. RAMESH GARG

H. No. 43, Sector 7,
 Panchkula, Haryana
 Email:

... Appellant No. 2

Versus

MR. SUMAT GUPTA

(Reg. No. IBBI/IPA-001/IP-P00167/2017-2018/10336)
 RP for M/s. Vallabh Textiles Ltd. (Under CIRP),
 B-1, Near Zoom Hotel Building,
 Industrial Area-A, Transport Nagar, Ludhiana

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

Email: irp.vallabhtextiles@gmail.com

... Respondent No. 1

COMMITTEE OF CREDITORS

Through the Lead Financial Creditors

Punjab National Bank,

Zonal Sasbra Centre,

5# Ferozpur Road, Ludhiana, Punjab, 141012

...Respondent No. 2

Present:

For Appellant: Mr. Puneet Bali, Sr. Advocate with Mr. Himanshu Vij, Mr. Eshna Kumar, Mr. Surjeet Bhadu and Mr. Akhil Anand, Advocates

For Respondent: Mr. Abhishek Anand, Mr. Prateek Kushwaha, Advocates for R2 Mr. Kunal Godhwani, For RP Mr. Rajiv Khurana

JUDGMENT

Per: Justice Rakesh Kumar Jain.

This order shall dispose of two set of appeals i.e CA (AT) (Ins) No. 635 & 636 of 2022 and CA (AT) (Ins) No. 637 & 638 of 2022 as the issues involved in both set of appeals are common. However, for the sake of convenience, we are recording the facts of both set of appeals separately.

Facts of Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022

2. This appeal is directed against order dated 24.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) by which an application bearing I.A. No. 348 of 2021, filed by Respondent No. 1 M/s Shreeji Cotfab Limited for declaration that

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

the Appellant is ineligible to be a resolution applicant in view of Section 29-A(f) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been allowed, I.A. No. 155 of 2021 filed by the Appellant 'Aggarsain Spinners Limited' to place additional documents to clarify the position of the statutory body i.e. Security Exchange Board of India (in short 'SEBI') has been dismissed and CA No. 287 of 2019, filed by the Appellant for accepting its resolution plan has been dismissed holding that the Appellant is ineligible in view of the Section 29-A(f) of the Code.

3. In brief, M/s Phoenix ARC Private Limited (Financial Creditor) filed an application under Section 7 of the Code before the Adjudicating Authority for initiation of Corporate Insolvency Resolution Process (in short 'CIRP') against M/s GPI Textiles Limited (Corporate Debtor). The Application was admitted by the Adjudicating Authority vide its order dated 06.07.2018 and appointed Jalesh Kumar Grover as an Interim Resolution Professional (in short 'IRP') vide its order dated 12.07.2018. Thereafter, with the majority decision of the Committee of Creditors (in short 'CoC') Jalesh Kumar Grover was confirmed as Resolution Professional (in short 'RP')

4. The 6th meeting of the COC was convened on 17.12.2018 in which RP informed the members of the CoC that pursuant to publication of 'Form-G' dated 15.09.2018, he has received resolution plan and interest from two more parties to submit their resolution plan after the last date of submission of Expression of Interest (in short 'Eoi'). After deliberations, members of the CoC decided to extend the CIRP period in terms of Section

12(2) of the Code, for a period of 90 days and approved the resolution for republishing 'Form-G' in the matter of the Corporate Debtor. 'Form-G' was republished on 22.12.2018, Eols were invited and in pursuance thereof, various resolution plans were put up before the CoC for consideration. The RP convened 10th meeting of the CoC on 21.02.2019, in which he apprised the members of CoC about the amount proposed by the prospective resolution applicants in the matter of the Corporate Debtor and upon discussion, members of the CoC asked the RP to call all the prospective resolution applicants in the matter of Corporate Debtor in the next meeting. The ranks of prospective resolution applicants, as per the evolution matrix, at the end of 10th meeting, was that the Appellant was at no. 1, Shivani Trendz Pvt. Ltd. At no. 2, Navraj Mittal & Others at no. 3 and Pankaj Bhatia & Shreeji Cotfab were at no. 4.

5. After completion of negotiation process, the RP convened 12th meeting of the CoC on 27.03.2019, in which the CoC declared resolution plan submitted by the Appellant as H-1 and asked the RP to place the resolution plan submitted by the Appellant for voting. The resolution plan submitted by the Appellant was approved by the CoC with 92.55% voting share. The RP then filed an application, bearing CA No. 287 of 2019, under Section 31 of the Code for approval of the resolution plan before the Adjudicating Authority.

6. According to RP, he received an email dated 15.06.2021 from Ayat Processors with some documents, stating that the Appellant was

ineligible, in view of Section 29-A (f) of the Code because at the time of submissions of resolution plan and approval of the resolution plan by the CoC, it had already been debarred by the SEBI from accessing the securities market. The RP filed an additional affidavit dated 05.07.2021 apprising the Adjudicating Authority regarding the said information and documents brought on record by Ayat Processors in the matter of the Corporate Debtor.

7. An application bearing I.A. No. 155 of 2021 was filed by the Appellant to clarify the position of the SEBI in the matter. Another application bearing I.A. No. 348 of 2021 was filed by Respondent No. 1 for declaration that the Appellant was ineligible in view of Section 29-A(f) of the Code at the time of submission of resolution plan to the RP, at the time of completion of the said resolution plan by the CoC and had also filed a false affidavit of being Section 29-A compliant.

8. The Appellant is an Exclusively Listed Company (in short ELC) and its shares were listed on the stock exchanges of Jaipur and New Delhi. Consequent upon the closure of regional stock exchanges, the Appellant was moved to Dissemination Board (in short 'DB') of the Bombay Stock Exchange (in short 'BSE'). According to Respondent No. 1, SEBI had given two options to company, moved to DB to either give exit opinion option to the shareholders or to get the Company listed on a nationwide stock exchange.

9. The case set up by Respondent No. 1 against the Appellant is that the Appellant, an ELC was debarred by SEBI for accessing the security market w.e.f. 27.03.2018 till further orders, for a period of 10 years, due to non-compliance of the SEBI Circulars dated 10.10.2016, therefore, it was ineligible in terms of Section 29-A(f) of the Code to submit the resolution plan and is also guilty of filing of a false affidavit stating therein that it is Section 29 -A compliant.

10. It is further the case of Respondent No. 1 that as per notice no. 20180328-44 dated 28.03.2018 of BSE, the details of the non-compliant ELC has been mentioned and for initiating action against such ELC including RA and its promoters/directors in terms of the circular issued by the SEBI.

11. Counsel for the Appellant has submitted that when the Appellant was moved to DB, two option were given to it either to give an exist plan to its shareholders or to get it listed on a nationwide stock exchange. It is submitted that the Appellant took a decision to get its share listed on the Metropolitan Stock Exchange of India (MSEI) and submitted listing application on 28.12.2017, within the timelines, paid the listing fees on 22.12.2017, informed the BSE of the same and also submitted plan of action to BSE.

12. In the backdrop of the brief relevant facts narrated hereinabove, the Adjudicating Authority took a decision to allow the application bearing I.A.

No. 348 of 2021 filed by Respondent No. 1 and consequently dismissed I.A. No. 155 of 2021 and CA No. 287 of 2019 both filed by the Appellant.

13. Counsel for the Appellant has submitted that not only the impugned order is patently illegal but also the notice of the BSE dated 28.03.2018, based upon the circular dated 01.08.2017 of the SEBI. The crux of his argument is that the order of debarment for a period as long as 10 years is punitive in nature and could not have been passed without following the salutary principle of natural justice i.e. Audi alteram partem and is also in violation of Section 11(4) of the SEBI Act, 1992 (in short 'the Act') which provides for an order before such debarment, which should not only be in writing but also to contain reasons. He has also submitted that the fourth proviso to Section 11(4) of the Act mandates for an opportunity of hearing.

14. It is also submitted that there was no delegation of power by SEBI to BSE in circulars dated 10.10.2016 and 01.08.2017 to restrain any person from accessing the securities market and even if, for the sake of argument, it is presumed that the powers were delegated, the BSE could not have passed the order dated 28.03.2018, debarring the Appellant for a period of 10 years, in terms of Section 29-A(f), without following the mandatory procedure prescribed under Section 11(4) of the Act. Counsel for the Appellant has vehemently argued that the Adjudicating Authority has committed a patent error in declaring the Appellant as ineligible under Section 29-A (f) by holding that the SEBI has prohibited the Appellant for trading in security for accessing the security market and that the notice

dated 28.03.2018 has been issued by the BSE as a delegatee of the SEBI. It is submitted that the power to restrain any person from accessing the security market was never delegated by the SEBI to the BSE as the said power is bestowed upon SEBI under Section 11(4)(b) of the Act. It is further submitted that the circular dated 10.10.2016 issued by the SEBI and actions contemplated under para 6 can only be recommended by the designated stock exchange (BSE) but it does not have the power to debar the entities. It is also submitted that Para 8 of the said circular provides for an advice to facilitate compliance. Counsel for the Appellant has further argued that circular dated 01.08.2017 is a follow up circular to the circular dated 10.10.2016 and the same does not delegate any power to BSE in specific terms. Section 11(1) of the Act provides for power to SEBI but SEBI can delegate its power only in terms of Section 19 and the circular dated 10.10.2016 and 01.08.2017 are not issued under Section 19.

15. In order to make good his argument, Counsel for the Appellant has read the circulars dated 10.10.2016, 01.08.2017 issued by the SEBI and notice dated 28.03.2018 extensively and has also referred to the provisions of the Act and in the end submitted that since no order has been passed for debarment in terms of Section 11(4) of the SEBI or by the BSE being a delegate, therefore, the notice dated 28.03.2018 cannot be relied upon by Respondent No. 1 for the purpose of seeking declaration of debarring the Appellant in terms of the Section 29-A(f) of the Code.

16. On the other hand, Counsel appearing on behalf of Respondent No. 1 has submitted that SEBI performs two separate functions under Section 11 of the Act. According to him Section 11(1) enjoins a duty upon the SEBI to protect the interest of investors in securities and to promote the development of and to regulate the securities market, by such measures as it thinks fit and in the process of regulating the market, the circulars have been issued from time to time in respect of ELC which are on DB addressing them that they have to either provide an exit plan to the shareholders or to get it listed on the nationwide stock exchange. It is argued that SEBI is not required to give any kind of opportunity of hearing or to pass an order with reasons and that too in writing as provided in Section 11(4) of the Act which is required to be passed during investigation or enquiry or on completion of such investigation or enquiry. It is argued that Section 11(4) is more person centric than it is related to the Company. It is further argued that the impugned notice dated 28.03.2018 is based upon the SEBI circular dated 01.08.2017. It is further submitted that Section 11(4) of the Act is subservient to Section 11(1) and has referred to the decision of Hon'ble Supreme Court in the case of Sahara India Real Estate Corporate Limited and Ors. Vs. Securities and Exchange Board of India and Anr. (Civil Appeal No. 9813 of 2011).

17. He has further submitted that the Appellant is unnecessarily harping upon passing of an order by the SEBI with reasons and in writing for the purpose of debarment which was not required because SEBI has taken

administrative action by issuance of circulars dated 10.10.2016 and 01.08.2017 on the basis of which BSE has passed on the notice dated 28.03.2018 which is an administrative act of the SEBI.

18. It is further submitted that during the pendency of these proceedings, the Appellant had filed a writ petition no. 14490 of 2020 before the Punjab and Haryana High Court in which it prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 27.03.2018 by which five promoters/directors of the Appellant Company were debarred for a period of 10 years for non-compliance of the SEBI Circular dated 10.10.2016. However, the said writ petition was dismissed as withdrawn on 22.07.2022.

19. He has pointed out to three emails dated 23.06.2017, 22.08.2017 and 01.02.2018, which came to light from the record of the writ petition, in order to show that the Appellant was interacting with the SEBI or BSE and was found remiss in not fulfilling the conditions or submitting the plan within the stipulated period. It is submitted that because of this reason, on the basis of the circular of the SEBI, the Appellant has been informed that it has been debarred. It is further submitted that the Appellant has filed false affidavit dated 01.01.2019 in which it was averred that they are not prohibited or debarred and made a lame excuse that they were not aware of the notice dated 28.03.2018. It is also submitted that even otherwise the Appellant was required to inform the RP, that it had earned the disability of debarment, as provided in Regulation 36-A(c) of the CIRP

Regulations. It is, thus, submitted that there is no error in the impugned order which requires interference.

20. Counsel for the CoC has submitted that the email, referred to above by the Respondent No. 1, reflects the knowledge of the Appellant which should have been shared with the RP/CoC. It is further submitted that at present the Adjudicating Authority has extended the period of 90 days till 22.08.2022 and has received 18 EOIs and 9 bids, therefore, the period spent during these proceedings provided by the Adjudicating Authority may be excluded.

21. It is further submitted that the Appellant had submitted the information memorandum (Vol. IV Pg. 821) in which, they have mentioned that the promoter/directors of the Company have been restrained from accessing the capital market by SEBI. However as the Company will get listed on MSEI, the said restrained action will get revoked/removed accordingly. It is submitted that this information memorandum was submitted on 04.11.2020 and the resolution application was filed on 11.04.2019.

22. In rebuttal, Counsel for the Appellant has again referred to the provisions of Section 11 of the Act and submitted that there is no order on record of debarment having been passed either by the SEBI or BSE, and until and unless an order is passed in terms of Section 11(4) of the Act, no

action can be taken against the Appellant in terms of Section 29-A(f) of the Code.

Facts of Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

23. These Company Appeal (AT) (Ins) Nos. 637 & 638 of 2022 are filed by Aggarsain Spinners Limited and Mr. Ramesh Garg against two separate orders, passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench), of the same date i.e. 24.05.2022. In one order dated 24.05.2022, the Adjudicating Authority has allowed I.A. No. 342 of 2021 filed by the Resolution Professional (RP) (Sumat Gupta) by which he has sought a declaration that the Appellants are ineligible to submit the resolution plan because of Section 29(A)(f) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') and dismissed the application of the Appellants bearing I.A. No. 154 of 2022 to place additional documents on record to clarify the position of a statutory body i.e. SEBI and by way of separate order dated 24.05.2022 dismissed the application bearing I.A. No. 458 of 2020 filed by the RP, on behalf of the CoC of M/s Vallabh Textiles Ltd. (Corporate Debtor) for approval of the resolution plan of the present Appellants on the ground that the Appellants have been held ineligible in view of Section 29(A) (f) of the Code in I.A. No. 342 of 2021.

24. In brief, Punjab National Bank (Financial Creditor) filed an application under Section 7 of the Code to initiate the Corporate Insolvency Resolution Process (CIRP) against the M/s Vallabh Textiles Ltd. (Corporate Debtor). The

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

said application was admitted on 12.04.2019 and Sumat Gupta was appointed as IRP. The IRP was confirmed as RP by the CoC in the meeting held on 09.05.2019.

25. After various rounds of meeting of the CoC, the Appellants were adjudged as H1, but the Application bearing I.A. No. 458 of 2020 filed by the RP was rejected on the ground that the RA was held to be ineligible under Section 29(A) (f) of the Code at the time of submission of the resolution plan in a separate application i.e I.A. No. 342 of 2021 which was allowed by an order of even date i.e. 25.05.2022 and in order to avoid liquidation of the Corporate Debtor, the period of insolvency resolution process was extended by 90 days for exploring the possibility of resolution of the Corporate Debtor and the matter was referred back to the CoC which was ordered to be reinstated and revived to make another attempt to consider other resolution plan in accordance with law. I.A. No. 342 of 2021 was also filed by the RP of M/s Vallabh Textiles Limited (CD) in which he had prayed that Respondents be declared ineligible to submit the resolution plan, being barred by the provisions of Section 29(A)(f) of the Code and to take action for filing false affidavit under Section 30(1) of the Code, forfeiture of EMD and direct to redeposit EMD of Rs. 15,00,000/-, imposition of penalty of Rs. 2.00 Crore under Section 235A and direct prosecution of the Respondents. I.A. No. 154 of 2021 was filed by the present Respondents to place on record information received from the SEBI under the RTI Act on 09.03.2022 which was declined on the ground that information shared by the SEBI under the RTI Act has

got no bearing on the eligibility criterion of the RA at the time of submission of resolution plan. In so far as the fact of the I.A. No. 342 of 2021 are concerned, the RP had filed an application bearing I.A. No. 458 of 2020 under Section 30(6) of the Code for approval of the resolution plan which was pending adjudication. It is stated that on 15.06.2021 the RP had received two resolution plans one from Sanjay Garg on whatsapp and other from M/s Aayat Processors on email by which the RP was informed that RAs are not compliant of Section 29(A) of the Code because of which the Respondent company as well its directors have been barred from accessing the securities market w.e.f. 27.03.2018 till further orders, for a period of 10 years. According to the RP, he was prima facie convinced with the documents brought to his notice about the non-compliance of Section 29(A) of the Code by the Respondents as it searched the portal of SEBI as well as other stock exchanges and found the name of the Respondents appearing on the website of the BSE as persons debarred from accessing the securities market for a period of 10 years. It has come on record that the RP received a memo dated 29.10.2020 from the State Bank of India by which he came to know about the disqualification of the Respondents who has never informed him and had rather filed a false affidavit of being Section 29(A) compliant. The Respondents have placed on record the status as updated on 16.02.2021 by SEBI that the order debarring the Respondents from accessing the securities market was revoked but according to the RP, the Respondents were not eligible to submit resolution plan and could not have participated in the CIRP at the time of their ineligibility and subsequent

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

revocation of disqualification was inconsequential. The application bearing I.A. No. 342 of 2021 was allowed by the Adjudicating Authority, inter alia, on the ground that the circulars dated 10.10.2016 and 01.08.2017 of the SEBI laid down the conditions of choosing one of the two options out of which one was regarding raising the capital for listing on the nationwide stock exchanges and the other to provide exit mechanism to investor but at the same time contemplated action of debarment for a period of 10 years was also made known. It has been held that action has been taken under Section 11 of the Act through BSE. Counsel for the parties have advanced the same arguments which we have recorded in the other set of appeals.

26. We have heard Counsel for the parties and perused the record with their able assistance.

27. The issue involved in this appeal travels in a narrow compass because the whole emphasis is on the fact that the proceedings under Section 29-A(f) of the Code has been carried out against the Appellant on the basis of notice of BSE dated 28.03.2018 which do not fall within the ambit of Section 11(4) of the Act.

28. On the other hand, the case of the Respondent is that the notice dated 28.03.2018 is in pursuance of the circular of the SEBI issued while exercising administrative powers in terms of Section 11(1) of the Act.

29. Thus, in view of aforesaid facts and circumstances it would be relevant to refer to certain documents available on record, by way of reproduction, for ready reference:-

30. Notice Dated 10th October, 2016

*CIRCULAR

SEBI/HO/MRD/DSA/CIR/P/2016/110 October 10, 2016

All recognised/Non-operational /Exited Stock Exchanges.

All Exclusively Listed Companies in the Dissemination Board (shares of companies available for buying and selling and not for companies referred as vanishing companies.)

Dear Sir/Madam,

Sub: Exclusively. listed companies of De-recognized/Non operational Stock Exchanges placed in the Dissemination Board (DB).

1. SEBI vide circular dated May 30, 2012 issued guidelines facilitating the exit of Derecognized/Non-operational stock exchanges and exit to the shareholders of exclusively listed companies (ELCs) by allowing them to get listed on nationwide stock exchanges after complying with the diluted listing norms of nationwide stock exchanges, failing which they would be moved to the Dissemination Board (DB).

2. Further, SEBI vide circular dated May 22, 2014, inter-alia, provided that ELCs, on de-recognized/non-operational stock exchanges, can also opt for voluntary delisting by following the existing delisting norms of SEBI. It was also specified that if the ELCs fail to comply with the same, they shall be moved to DB.

3. Subsequently, SEBI vide circular dated April 17, 2015 allowed a period of eighteen months' time to ELCs on DB to obtain listing upon compliance with the listing requirements of the nation-wide stock exchanges.

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 JCDR 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.

5. In order to facilitate the raising of capital or provide exit to investors as mentioned under para 4.c and 4.d, it is prescribed that:

a. The ELCs on the DB which are yet to indicate their intention to comply with listing or to provide exit shall submit their plan of action to designated stock exchanges latest within three months from the date of this circular to the satisfaction of the designated stock exchanges, failing which the designated exchange shall recommend action as specified under Para 6 of this circular.

b. The designated stock exchanges shall review the plan of action and ensure completion of the process within 6 months.

6. Action against companies remaining on the DB

a. Any promoter or director whose company is on the DB and has failed to demonstrate adequacy of efforts for providing exit to their shareholders in conformity with the exit mechanism as provided in this circular shall be liable for the following actions:

- The company, its directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.
- Freezing of shares of the promoters, directors.
- List of the directors, promoters etc. of all non-compliant companies as available from the details of the company with nationwide stock exchanges shall be disseminated on SEBI website and shall also be shared with other respective agencies.
- Attachment of bank accounts/other assets of promoters/directors of the companies so as to compensate the investors.

7. The provisions of this Circular are applicable to the exclusively listed companies of all de-recognized/non-Operational stock exchanges which are exited/in the process of exit in terms of exit circular dated May 30, 2012.

8. The respective designated stock exchanges shall ensure that all exclusively listed companies on the DB be accordingly advised to facilitate compliance of the above provisions in a time bound manner.

9. This circular is issued in exercise of powers conferred under Section 11 (1) and 11 (2) (i) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in

securities and to promote the development of, and to regulate the securities market This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

Bithin Mahanta

Deputy General Manager

Division of SRO Administration

Market Regulation Department

+91-22-26449634

Email: bithinm@sebl.gov.in

Annexure-A.

- i. The promoter in consultation with the designated stock exchange shall appoint an 'independent valuers from the panel of expert valuers of the designated stock exchange.
- ii. In case the fair value determined is positive the promoter of the company shall acquire shares of such companies from the public shareholders by paying them such value determined by the valuer.
- iii. The promoter shall undertake to complete the entire process within seventy-five working days.
- iv. The promoter of the company to make a public announcement in at least one national daily with wide circulation, one regional language newspaper of the region where the exited stock exchange was located and the website of the designated stock exchanges.
- v. The public announcement shall contain all material information of the fact of such exit opportunity to its shareholders, disclosing therein the name and address of company, including exit price offered by the promoter with the justification therefore, and shall not contain any false or misleading statement.
- vi. The announcement shall contain a declaration about the liability of the promoter to acquire the shares of the shareholders, who have not offered their shares under exit offer up to a period of one year from the completion of offer at the same price determined by the valuer.
- vii. The exit offer shall remain open for a period of minimum five working days during which the public shareholders shall tender their shares. The promoter shall open an escrow account in favour of independent valuer/designated stock exchange and deposit therein

the total estimated amount of consideration on the basis of exit price and number of outstanding public shareholders. The escrow account shall consist of either cash deposited with a scheduled commercial bank or a bank guarantee, or a combination of both. The amount in the escrow account shall not be released to the promoter unless all the payments made in respect of shares tendered for the aforesaid period of one year.

viii. The promoter shall make payment of consideration within fifteen working days from the date completion of offer.

ix. The promoter shall certify to the satisfaction of designated stock exchange that appropriate procedure has been followed for providing exit to shareholders of such companies. Subsequently, the designated stock exchanges upon satisfaction shall remove the company from the dissemination board.

x. The exclusively listed companies which have 100% promoter holding shall be removed from the dissemination board on obtaining a compliance certification from any independent professional with regard to the holding of shares of these companies and submit to the designated stock exchanges.

xi. The names of the companies providing exit opportunity to its shareholders and their promoters shall be displayed in a separate section on the website of the designated stock exchange."

31. Notice Dated 01st August, 2017

"Securities and Exchange Board of India

August 01, 2017

CIRCULAR

SEBIIHO/MRD/DSA/CIR/P/2017192

All Listed Entities

All Registered Registrar & Share Transfer Agents

All Depositories

All Recognised/Non-operational / Exited Stock Exchanges

All Exclusively Listed Companies on the Dissemination Board
(shares of. companies available for buying and selling and not for
companies referred as vanishing companies)

Dear Sir/Madam,

*Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal
(AT) (Insolvency) No. 637 & 638 of 2022*

Sub: Action against Exclusively Listed Companies and its Promoters/Directors pending Exit Offer to the Shareholders

1. SEBI vide circular dated October 10, 2016, provided options to the Exclusively Listed Companies, ("ELCs") on Dissemination Board (DB) to raise capital for meeting the capital requirement for getting listed on the nationwide stock exchanges or to provide exit to investors. An exit mechanism for investors in such ELCs was also specified in the aforesaid circular. Further, ELCs were required to furnish the plan of action by January 09, 2017 to the Designated Stock Exchanges (DSEs), which was subsequently extended till June 30, 2017.

2. The aforesaid circular dated October 10, 2016 stipulated the following action against such ELCs, which remain non-compliant with the above timelines:

- The company, its directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.
- Freezing of shares of the promoters/directors.
- List of the directors, promoters etc. of all non-compliant companies as available from the details of the company with NSE/BSE shall be disseminated on SEB/ website and shall a/so be shared with other related agencies.
- Attachment of bank accounts/other promoters/directors of the companies so as to compensate the investors.

3. In order to ensure that exit option is provided to the public shareholders of ELCs that are non-compliant with the provisions of the said circular dated October 10, 2016 and have not submitted plan of action to the DSEs and in order to protect the interest of investors in ELCs on DB it is hereby directed that, to being with:

a. Such ELCs and the Depositories shall not effect transfer, by was 0 sale, pledge, etc., of any of the equity shares and me corporate benefits such, as dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters or directors of non-compliant Exclusively one Companies till the promoters of such non-compliant Exclusive Listed Companies provide an exit option to the pub shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges ;

b. The non-compliant Exclusively Listed Companies, its directors, its promoters and the companies which are promoted by any of them shall not be eligible to access the securities market for the purposes of raising capital till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.

c. The promoters or directors of non-compliant Exclusively Listed Companies shall not be eligible to remain or become director of any listed company till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.

4. For the aforesaid purposes, "Exclusively Listed Companies" refer to those companies whose equity shares were exclusively listed at a recognised stock exchange at the time of exit of such exchange and were subsequently moved to the Dissemination Board of NSE and SSE and whose shares are available for buying and selling on Dissemination Board.

5. The concerned Designated Stock Exchanges and Depositories shall co-ordinate with each other and ensure compliance of these requirements.

6. SEBI may also take any other appropriate action(s) against the promoters/directors of Exclusively Listed Companies for non compliance with SEBI circular dated October 10, 2016.

7. This circular is issued in exercise of powers conferred under Section 11 (1) and 11 (2) of the Securities and Exchange Board of India Act, 1992, to protect the interest of investors in securities and to promote the development of and to regulate the securities market. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully

Bithin Mahanta

Deputy General Manager

Ph:+912226449634

Email: bithinm@sebi.gov.in

32. Notice Dated 28th March, 2018

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

“NOTICES

Notice No. 20180326-44 Notice Date: 28 March 2018
 Category: Company related Segment: Equity
 Subject: Exclusively Listed Companies (ELCs) of De-recognized /
 Non-operational exited-stock Exchanges placed in the
 Dissemination Board (DB).

It is Informed that as per SES! Circular No. SEB1/HO/MRD/DSA/CIR/P/2017/92 dated August 01, 2017 regarding action against Exclusively Listed Companies and its Promoters/Directors.

The Exchange has shared the details of the non-compliant Exclusively Listed Companies and its Promoters / Directors with the Depositories on March 22, 2018, March 23, 2018, March 26, 2018, March 27, 2018 & March 28, 2018 for initiating the action against following exclusively Listed Companies and its Promoter/Directors in accordance with the above referred circular. The particulars shared with the Depositories are based on the extent of the data made available by De-recognized/Non-operational/existed Stock Exchanges / ROC, to BSE:

Sr. No.	Company Name
1.	ACME STAPATHI LTD
2.	AGGARSAIN SPINNERD LTD

x x x

Further the consequences of non-compliant, includes the following:-

1. The non-compliant ELCs, its directors, its promoters and the companies which are promoted by any of them shall not be eligible to access the securities market for the purposes of raising capital till the promoters of such ELCs provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016 .

2. The promoters and directors of non-compliant ELCs shall not be eligible to remain or become director of any listed company till the promoters of such non-complaint ELCs provide exit option to public shareholders. In compliance with SEBI circular dated October 10, 2016 .

In case Trading Members require any clarifications on the subject matter of this notice, they may please contact to the following:

At the exchange:
Ms. Siddhi Keluskar – Listing Dept.
Tel No. 91-22-22725603

Mail:

siddhi.keluskar@bseindia.com, ordirect.listing@bseindia.com

For, BSE Ltd
Bhushan Mokashi

Atul Dhotre
Senior Manager

Additional General Manager
Wednesday, March 28, 2018

33. Section 11 of the SEBI Act is reproduced herein below:-

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for-

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) registering and regulating the working of the depositories, [participants], custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of 15[venture capital funds and collective investment schemes], including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and takeover of companies;

- (i) calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market], intermediaries and self-regulatory organisations in the securities market;
 - (ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
 - (ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard: Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;
 - (j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;
 - (k) Levying fees or other charges for carrying out the purposes of this section;
 - (l) conducting research for the above purposes;
 - (la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]
 - (m) performing such other functions as may be prescribed.
- [(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.”

[(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under 23[clause (i) or clause (ia) of sub-section (2) or sub-section (2A)], the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;]

[(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A); (v) issuing commissions for the examination of witnesses or documents.]

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act,

or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market : Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]

[(5) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.]

[Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities”.

34. SEBI Debarred letter dated 27.03.2018:

B	C	D	E	F
Kumar Ramesh	AFLPK2316K	*	27.03.2018	Restrained Director/Promoter of Aggarsain Spinners Ltd. from accessing the securities market till further orders for a period of 10 years. Action initiated due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016.
			16.02.2021	Revoked the directions against the

				entity as they are compliant
Ashok Goel	AAYPG9149G	*	27.03.2018 16.02.2021	Restrained Director/Promoter of Aggarsain Spinners Ltd. from accessing the securities market till further orders for a period of 10 years. Action initiated due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016. Revoked the directions against the entity as they are compliant
Kansal Suresh	ACEPK8116F	*	27.03.2016 16.02.2021	Restrained Director/Promoter of Aggarsain Spinners Ltd. from accessing the securities market till further orders for a period of 10 years. Action initiated due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016. Revoked the directions against the entity as they are compliant
Jagdish Kansal Rai	ACEPK0682N	*	27.03.2016 16.02.2021	Restrained Director/Promoter of Aggarsain Spinners Ltd. from accessing the securities market till further orders for a period of 10 years. Action initiated due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016. Revoked the directions against the entity as they are compliant
Gopal Krishan Arora	ACBPK4161F	*	27.03.2016	Restrained Director/Promoter of Aggarsain Spinners Ltd. from accessing the securities market till further orders for a period of 10 years. Action initiated due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016.

		16.02.2021	Revoked the directions against the entity as they are compliant
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35. Email dated 23.06.2017:

“S.C.O. No. 234, Sector 20, Panchkula-134120 Tel 0172-4644666
Fax 0172-4644777
CIN:L1729HR1998PLC034043

Annexure A

Date: 23rd June 2017

To,

Head - Listing Operations,
BSE Limited,
P.J. Towers, Dalal Street, Fort,
Mumbai - 400 001.

Date:

Dear Sir,

Sub: **Application from the Director, or ELC informing BSE for exercising the option in compliance with SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016**

I, Ramesh Kumar, Director, an Indian Inhabitant, aged about 51 years residing at 731, HUDA Sector-11, Panipat (Haryana) PIN-132103 with PAN number AFLPK2316K and DIN 01037508 in the capacity of Director hereby submit our plan of action to BSE as required by SEBI in its circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016.

We will get our company's equity shares listed on any stock exchange having nationwide trading in electronic form and follow prescribe procedure mentioned in the above referred SEBI circular.

We undertake to complete the process within the timelines as prescribed in SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016.

The details of the company are as given below:

Sr. No.	Particulars	Details to be filled in by the ELC
1.	Name of the Exclusively Listed Company (ELC)	Aggarsain Spinners Limited

2.	Date of incorporation	05.11.1993
3.	Place of incorporation	Delhi
4.	CIN of the ELC	L1729HR1998PLC034043
5.	Pan of the ELC	AABCA1351Q
6.	Tan of the ELC	
7.	Name of all the Stock Exchange where listed prior to shift to DB	Delhi Stock Exchange Jaipur Stock Exchange
8.	Address of Registered Office of the ELC	Bhola Bhawan, Near Geeta Mandir, Geeta Colony, Panipat (Haryana) PIN-132103
	Tel. Nos.	9814075222
	Fax Nos.	
	Email Id.	aggarsainspinners@gmail.com
	Web-Site	
9.	Certified True Copy of Board Resolution for exercising the option	Attached
10.	Details of contact person/compliance officer	
	Name	Mr. Ramesh Garg
	Tel No.	0172-4644777
	Cell No.	9814075222
	Mail Id.	aggarsainspinners@gmail.com

Thanking you,
Yours faithfully,
For Aggarsain Spinners Limited

Ramesh Kumar
Designation: Director
DIN : 01037508
Address: 731, HUDA Sector-11
Panipat (Haryana) PIN-134109
E-MAIL ID: aggarsainspinners@gmail.com
REGD. OFFICE: BHOLA BHAWAN, GEETA COLONY, PANIPAT
143102"

36. Email dated 22.08.2017:

"Submission of documents for removal of company name from Dissemination Board-Listing on other Stock Exchange

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

Atul Dhotre atul.dhotre@bseindia.com

To: Direct listing direct.listing@bseindia.com

Tue, Aug 22, 2017 at 2:40PM

Dear all,

We are in receipt of plan of action, pursuant to SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016. As you are aware that the said SEBI circular prescribed the process to be followed by ELCs for removal of its name from DB. As per the circular, the Company are required to complete the entire process as prescribed.

It is observed that after submission of plan of action by the Company, the Exchange is yet to receive the remaining documents related to status of the company listing on other stock exchange.

The process to be followed by the ELCs is available on the exchange website www.bseindia.com The URL for the same is given below

<http://www.bseindia.com/investors exercising option>.....

Please note that further the SEBI vide its circular no. SEBI/HO/MRD/DSA/CIR/P/2017/82 dated August 1, 2017 (copy attached) has mentioned the actions to be initiated against Exclusively Listed Companies (ELCs) and its promoters /directors pending listing on stock exchange.

In view of the same, you are requested to complete the process as intimated to the exchange (action plan) as soon as possible to avoid the initiation of the action against the promoter/directors of the company as prescribed in aforesaid SEBI Circular.

For further clarification related to the above, you may contact the following officials at BSE.

At the Exchange	At the Exchange
Ms. Siddiqa Reoon Listing Dept. Tel No. 91-22-22728154 Mail siddiqa.rioon@bseindia.com or directlisting@bseindia.com	Ms. Siddhi Kaluskar Listing Dept. Tel No. 91-22-2272 5603 Mail siddhi.caluskar@bseindia.com or directlisting@bseindia.com

Regards

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

Atul Dhotre
Senior Manager
Listing Operations (MF & Direct Listing)

BSE Limited. P J Tower, Dalal Street, Mumbai – 400001,
India
Phone (Direct.) 022 22728934
Mobile: 9833722388

www.bse.india.com
World's Fastest Exchange with a Speed of 6 Microseconds

37. Email dated 01.02.2018:

“Non Submission of documents pursuant to plan of action submitted by Exclusively Listed Company (ELCs)

Siddiqua Reoon Siddiqua.reoon@bseindia.com Thu, Feb 1, 2018 at 7:44 PM

To: Direct listing directlisting@bseindia.com

Dear Sir/Madam,

SEBI vide its circular no. SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016 had advised the ELCs to indicate their intention to comply with listing or to provide exit. Such ELCs had to submit their plan of action to designated stock exchange latest within three months from the date of the circular to the satisfaction of the designated stock exchange.

Further SEBI in the said circular also prescribed action against promoters/directors of such exclusively listed companies (ELCs) which do not provide any action plan. In order to comply with the above. ELCs were initially given a period till January 09, 2017 which was subsequently extended till June 30, 2017.

According to the said SEBI circular ELCs were required to submit plan of action to the designated stock exchange exercising one of the two options prescribed by SEBI, the implementation of which was to be completed within a period of six months from the June 30, 2017 i.e. by December 31, 2017.

We have observed that you have submitted the Plan of Action to BSE, however, it has been more than six months since we received intimation off the plan of action from your end but we are yet to receive the supporting remaining documents w.r.t completion/implementation of the plan of action.

The documentation requirements and procedure to be followed by ELCs seeking removal from DB can be accessed at the following URL:

http://www.bseindia.com/investors/exercising_option.aspx.....

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

You are requested to note that the exchange would be initiating the action against promoters/directors of your company as prescribed by SEBI in its circular SEBI/HO/MRD/DSA/CIR/P/2017/92 dated August 01, 2017 if the remaining supporting documents is not received by the Exchange on or before February 7, 2018.

In case of any clarifications on the subject matter of this letter, you may please contact to the following:

Ms. Siddiqua Reoon Listing Dept. Tel No. 91-22-22728154 Mail siddiqua.reoon@bseindia.com or directlisting@bseindia.com	Ms. Siddhi Kaluskar Listing Dept. Tel No. 91-22-2272 5603 Mail siddhi.kaluskar@bseindia.com or directlisting@bseindia.com
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Siddiqua Reoon
Management Trainee
Listing Operations (MF & Direct Listing)
PJ Tower 20th Floor, Dalal Street, Mumbai – 400001, India
Phone (Direct) 022-22728154
World's Fastest Exchange with a speed of 6 Microseconds.”

38. The circular dated 10.10.2016 provides for the clarification to raise the capital and process of exit from the DB. The ELCs hosted by nationwide stock exchange on its DB is referred to as Designated stock exchange and these ELCs were to exercise one of the two options as mentioned in Para 4.c or 4.d of the circular, 4.c deals with Raising capital for listing on Nationwide Stock Exchanges and 4.d, provides procedure to provide exit to investors. The action contemplated for non-compliance either of the two mentioned herein above is specified in Para 6 of the circular which says that “any promoter or director whose company is on the DB and has failed to demonstrate adequacy of efforts for providing exit to their shareholders in

conformity with the exist mechanism as provided in this circular shall be liable for the following actions i.e. the company, its directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.” The circular dated 01.08.2017 issued by the SEBI provides that ELCs were required to furnish the plan of action by January 09, 2017 to the Designated Stock Exchange, which was subsequently extended till June 30, 2017. It reiterated the action which can be taken against such ELCs who are not following the circular dated 10.10.2016. It has been noticed in the impugned order that in the closing balance sheet of the Appellant for the month of March, 2017 the Appellant had disclosed that:

“Material changes
Consequent to the closure of regional stock exchanges, name of your company has been moved to the DB of the BSE. The SEBI has given an option to such companies whose name has moved to DB either to given an exit option to the shareholders or to get the company listed at exchange having nation wide trading”

39. It is pertinent to mention that by email dated 23.06.2017 the Appellant submitted the plan of action regarding listing of equity shares at the stock exchange having nationwide trading in pursuance to the circular dated 10.10.2016. The SEBI sent email dated 02.08.2017 to the Appellant that it had received the plan of action submitted by it pursuant to the circular dated 10.10.2016 and informed it to complete the process in terms of circular of the SEBI. It also informed the Appellant that after submission of the plan of action by it the exchange has not yet received the remaining

documents related to status of the company listing on other stock exchange. The Appellant was also informed that the process to be followed by the Appellant is available on the exchange website of the SEBI and further requested it to complete the process as intimated to the exchange (action plan) as soon as possible to avoid the initiation of the action against the promoters/directors of the company as prescribed in aforesaid SEBI circular. Since, the Appellant did not complete the process, therefore, on 01.02.2018 the SEBI sent an email informing that as per the circular dated 10.10.2016 the process of action plan was to be completed within three months from the date of the circular to the satisfaction of the designated stock exchange. It was also informed that initially the time was given up to 09.01.2017 which was subsequently extended up to 30.06.2017. It is also informed that ELCs were required to submit plan of action to the designated stock exchange exercising one of the two options, the implementation of which was to be completed within a period of six months from the June 30, 2017 i.e. by December 31, 2017 but it constrained to observe that it has been more than six months since they have received intimation of the plan of action from there side and they were yet to receive the supporting remaining documents with respect to completion/implementation of the plan of action. The Appellant was informed that action would be initiated against the promoters/directors of the company as prescribed by the SEBI in the circular dated 01.08.2017 if the remaining supporting documents are not received on or before 07.02.2018. It is argued by Counsel for Respondent that firstly the

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

agitation of the Appellant is that it had no knowledge about the proceeding being carried out against the Appellant by the SEBI/BSE of debarment is incorrect and secondly the impugned notice was issued by the Respondent (BSE) on the basis of the circulars of the SEBI. It is, therefore, submitted that the action taken in this regard falls within the purview of Section 11(1) of the Act and does not attract the provisions of Section 11(4) of the Act as suggested by Counsel for the Appellant.

40. Moreover, the validity of the notice of the BSE cannot be determined in the proceedings before the Tribunal for which the appropriate forum is the writ court. Admittedly, the directors of the Appellant including the Appellant No. 2 had approached the Hon'ble High Court of Punjab and Haryana to challenge the correctness of the notice of the SEBI but for the reasons best known to them the petition was withdrawn and permission was taken to raise all the issues before this Tribunal.

41. We also are of the view that if the Appellant had any issue with the veracity of the notice or circular of SEBI, it should have raised this issue in appeal in the relevant forum. We follow the Judgment of Hon'ble Supreme Court in the case of M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors., Civil Appeal No. 9170 of 2019.

42. Section 29(A)(f) of the Code provides that "A person not eligible to be resolution applicant: (f) is prohibited by the securities and exchange board of India from trading in securities or accessing the securities markets." The Appellant in this case has been categorically debarred for the reasons that it failed to comply with the mandatory direction issued by the SEBI in the

Company Appeal (AT) (Insolvency) No. 635 & 636 of 2022 and Company Appeal (AT) (Insolvency) No. 637 & 638 of 2022

circular dated 10.10.2016 and 01.08.2017 by which the Appellant was repeatedly cautioned that in case, one of the option is not exercised within the time line prescribed, the necessary action shall be taken as prescribed in clause 6 of the circular dated 10.10.2016.

43. We are not impressed with the argument of Counsel for the Appellant that the SEBI was required to follow the provisions of Section 11(4) of the Act before initiating the action in terms of circular dated 10.10.2016 and 01.08.2017 as the said action has been taken in terms of Section 11(1) of the Act. In this regard, reference could be had to be the decision of the Hon'ble Supreme Court in the case of Sahara India Real Estate Corporation Limited & Ors. (Supra) in which it was held that:

"The reason for the instant inference is, that sub-section (2) does not curtail the powers and functions vested with the SEBI under sub-section (1) of section 11 of the SEBI Act as subsection (2) aforementioned commences with the words "Without prejudice to the generality of the foregoing provisions ... ". This expression obviously preserves, the power vested in the SEBI under sub-section (1) of section 11 of the SEBI Act, to protect the interest of investors in securities and to promote the development and to regulate the securities market "by such measures as it thinks fit". Furthermore, sub-section (2) of section 11 of the SEBI Act, after making a reference to the measures generally referred to in sub-section (1) empowers/authorizes that SEBI "may provide for" a series of measures, which are delineated in clauses (a) to (m) thereof (of sub-section (2) of section 11 of the SEBI Act). The use of the words "may provide for" besides indicating the discretion vested in the SEBI, demonstrates that, the measures depicted in clauses (a) to (m) are illustrative and not exhaustive, more so, because subclause (2) of section 11 of the SEBI Act does not dilute the power vested in the SEBI under sub-section (1) thereof. While interpreting sub-section (1) of section 11 of the SEBI Act, it has already been concluded hereinabove, that the measures to be adopted by the SEBI in carrying out its obligations are couched in open-ended terms having no pre-arranged limits, to the discretion of the SEBI. Likewise, sub-sections (2A) and (4) of section 11 of the SEBI Act, commence with the words "without prejudice to the

provisions contained in sub-section (2)". This establishes the legislative intent i.e., that sub-section (2A) and (4) are subservient to sub-section (2) of section 11. But it has already been concluded above, that sub-section (2) is subservient to sub-section (1) of section 11. Therefore both sub-sections (2A) and (4) will inferentially be subservient to sub-section (1) of section 11 of the SEBI Act. Therefore, the obligation cast on SEBI, to protect the interest of investors in securities, to promote the development of the securities market, and to regulate the securities market " by such measure as it thinks fit", remains undiluted even by sub-sections (2A) and (4) of Section 11 of the SEBI Act."

44. The Tribunal has also observed that "Thus, it can be safely concluded that under the SEBI Act, it enjoins two types of powers first is quasi-judicial power and second is regulatory power. So far as quasi-judicial powers of SEBI are concerned, a due process of law is to be adopted by SEBI before passing any order of punishment or penalty, but in the case in hand, it is the open-ended regulatory power of SEBI, which has been delegated to BSE, vide which Resolution Applicant has been debarred to access the capital market for 10 years. Thus, it can be held in unequivocal terms that Resolution Applicant was ineligible under Section 29A(f) of the Code and deemed to be prohibited by SEBI from trading the securities or accessing the securities market."

45. Counsel for the Appellant has submitted that there is no delegation of power by SEBI to BSE which is required to be done in accordance with Section 19 of the Act but in this case, we are of the considered opinion that BSE has passed on the information to the Appellant by the impugned notice that it had been declared as non-compliant of Section 29(A) (f) of the Code in view of its act and conduct considered by the SEBI in pursuance of the circulars dated 10.10.2016 and 01.08.2017 and has exercised power

under Section 11(1) of the Act. It is also a fact that the Appellant had admitted that it is barred in the list of BSE from accessing the security market for 10 years and when the resolution plan was submitted on 28.01.2019 and the Appellant was ineligible in view of Section 29(A) (f) of the Code.

46. Thus, in view of the detail discussions, we are of the considered opinion that the impugned order does not require any interference as there is no merit in these appeals and hence, the same are hereby dismissed. However, before parting with this order, keeping in view the prayer made by Counsel for the CoC, the period spent during the proceedings before this Tribunal are hereby excluded.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi

14th September, 2022

Sheetal