BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 27.02.2015
Date of Decision: 13.03.2015

Appeal No. 23 of 2015

52 Weeks Entertainment Ltd.
(Formerly Known as
Shantanu Sheorey Aquakult Ltd.),
Tarabai Hall 97, Shivprasad,
Marine Drive,
Mumbai-400 002 …Appellant

Versus

1. BSE Limited
   Phiroze Jeejeebhoy Towers,
   Dalal Street,
   Mumbai-400 001

2. Securities and Exchange Board of India,
   SEBI Bhavan, Plot No. C-4A, G-Block,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai - 400 051 …Respondents

Mr. Pradeep Sancheti, Senior Advocate with Mr. Vishwanathan Iyer, Advocate i/b Mr. Prakash Shah, Advocate for the Appellant.

Mr. P. N. Modi, Senior Advocate with Mr. Ajay Khaire, Advocate i/b M/s. The Law Point for Respondent No. 1

Mr. J. P. Sen, Senior Advocate with Mr. Mihir Mody and Mr. Rushin Kapadia, Advocates i/b K. Ashar & Co. for Respondent No. 2

CORAM: Justice J.P. Devadhar, Presiding Officer
A.S. Lamba, Member

Per: Justice J.P. Devadhar

1. I have perused the decision rendered by Learned Member Shri A. S. Lamba. I agree with the conclusion drawn therein to the effect that the impugned orders cannot be sustained, however, for the reasons recorded herein.

2. This appeal is filed to challenge the notice put up by the Bombay Stock Exchange Limited ('BSE' for short) on its website on 01.01.2015. By that notice all the trading members of the BSE were informed that the trading in the securities of 22 companies named thereunder including the trading in the securities of the appellant-company would be suspended with effect from 07.01.2015 until further orders.

3. When the appeal was moved before this Tribunal for urgent reliefs, grievance made by the appellant was that the impugned notice is issued without hearing the appellant and without assigning any reasons. Hence we directed the BSE to hear the appellant and record reasons for issuing the impugned notice on 01.01.2015. Accordingly, the BSE has heard the appellant and on 12.01.2015 recorded its reasons for issuing the impugned notice dated 01.01.2015.

4. Question therefore to be considered in this appeal is, whether BSE is justified in suspending the trading in the securities of the appellant with effect from 07/01/2015 for the reasons recorded by it on 12.01.2015 after granting post decisional hearing.

5. Facts relevant for the purposes of the present appeal are that the appellant is a public limited company engaged in the activity connected with the entertainment market such as film making. Shares of the appellant-company are listed on the BSE. However, trading in the shares of the appellant-company on BSE were suspended during the year 2001-

2012 as the appellant was not in a position to pay the Listing fees as also CDSL/NSDL charges, Registrar fees and salary of the employees of the appellant.

6. In the last quarter of 2012, the promoters of the appellant-company decided to revive the operations of the appellant-company and with a view to finance the activities connected with the entertainment market, it was decided that the appellant should raise funds by issuing preferential shares to non-promoters subject to complying with all applicable provisions of the Companies Act, SEBI Act and the Regulations framed thereunder as well as the Rules and Regulations of the BSE.

7. On being satisfied that the proposal put forth by the appellant was in order, BSE by its letters dated 01.03.2013 and 22.11.2013 granted in principle approval for issuance of 1,79,70,000 and 74,45,000 equity shares of ₹ 10 each at par to other than promoters on a preferential basis in terms of clause 24(a) of the Listing Agreement. Thereafter, on 03.09.2014, BSE once again deemed it fit to grant in-principle approval for issuance of 53, 40,000 equity shares of ₹ 10 each at a price not less than ₹ 23 per share to non-promoters on a preferential basis in terms of clause 24(a) of the Listing Agreement. Accordingly, from time to time appellant-company has issued preferential shares to non-promoters. After issuance of the preferential shares, the share capital of the appellant-company rose to 3,48,80,000 shares out of which 3,15,89,450 shares are held by the general public (including preferential

shareholders) and 32,90,550 shares are held by the promoters of the appellant-company.

8. According to BSE, decision to suspend trading in the securities of the appellant was taken as per the directions given by SEBI contained in the minutes of the SEBI Surveillance Committee Meeting held on 10.12.2014 with the Stock Exchanges. In the said minutes, it is recorded that the SEBI had inter alia appraised the Stock Exchanges regarding the modus operandi of market manipulation that is being perpetrated by certain entities, and to prevent further such damage, SEBI has directed the Stock Exchanges to suspend the trading in the companies, which satisfy one or more of the following parameters:-

a) Non-existent on the address mentioned and does appear to be carrying out any operations.

b) Preferential allotments made. Price of the scrip increased with very low volume during one year period of lock-in. After lock-in huge rise in volumes and exit of preferential allottees. This may be coupled with stock split.

c) Companies having week financials and the price rise in such scrip is not supported by financials.

According to BSE the appellant-company fulfills all the aforesaid three parameters laid down in the minutes of Surveillance Committee Meeting held on 10.12.2014, and therefore the BSE by its notice dated

01.01.2015 has sought to suspend trading in the shares of the appellant-company until further orders.

9. Mr. Sancheti, Learned Senior Advocate appearing on behalf of the appellant submitted that the impugned notice dated 01.01.2015 issued by the BSE as well as the reasons recorded subsequently in support of the impugned action cannot be sustained for the following reasons:-

a) Impugned notice published on the BSE website on 01.01.2015 is neither addressed to the appellant nor it contains facts or reasons for suspending the trading in the securities of the appellant. It does not specify the provision of law that is allegedly violated by the appellant and does not specify the period for which the trading in the securities of the appellant shall remain suspended. Such a notice which does not contain facts or reasons for suspending the trading in the shares of the appellant cannot be said to be an order passed in accordance with law and hence unsustainable. In support of the above contentions reliance is placed on the decisions of the Apex Court in case of M/s. Kranti Associates Pvt. Ltd. vs. Massod Ahmed Khan and Ors. Reported in (2010) 9 SCC 496 and Assistant Commissioner vs. M/s. Shukla Brothers repowered in (2010) 4 SCC 785.

b) According to BSE, minutes of the Surveillance Committee Meeting dated 10/12/2014 is the basis for issuing the impugned notice. The said minutes are not approved by SEBI and are not published for the benefit of the trading members and therefore suspending the trading in the securities of the appellant on the basis of unapproved and unpublished draft minutes of the Surveillance Committee Meeting cannot be sustained. In support of the above contention reliance is placed on decisions of this Tribunal in case of M/s. Kaplana Plastiks Ltd. vs. BSE (Appeal No. 78 of 2011 decided on 09.11.2011) and Padmini Engineering Pvt. Ltd. vs. BSE & Anr. (Appeal No. 51 of 2006 decided on 27.05.2008).

c) By the impugned notice dated 01.01.2015 trading in the securities of the appellant is sought to be suspended with effect from 07.01.2015. Obviously, there was no grave and emergent situation which required the BSE to suspend trading in the securities of the appellant immediately without hearing the appellant. In such a case, if BSE could wait for seven days, then BSE could very well have issued show cause notice and pass appropriate orders after hearing the appellant. As the BSE has failed to do the needful

the impugned notice dated 01.01.2015 is liable to be quashed and set aside.

d) Bye Law 39 framed by BSE, deals with suspension of trading, whereas, Bye Law 21 deals with the prohibition of dealing in securities. In the present case, trading is suspended by BSE and that power could be exercised only by the Governing Board of BSE. Since the impugned action is not taken by the Governing Board of BSE, the impugned action is bad in law. Although Bye law 39 is amended by BSE on 16/01/2014 and instead of the Governing Board the 'Exchange' is empowered to suspend dealings on the Exchange for such period or periods as it may determine, the said amendment does not empower Senior General Manager, (Surveillance and Supervision) of BSE to suspend trading as has been done in the present case. Although, Bye Law 39 refers to the standard operating procedure, for suspension of trading, appellant has not violated any of the criteria specified in the SEBI circular dated 30/09/2013. Therefore, the impugned notice issued by the Senior General Manager, (Surveillance and Supervision) of BSE is without jurisdiction and hence liable to be quashed.

e) Relying on a decision of Gujarat High Court in case of Alka Synthetics Limited vs. SEBI reported in (1995) 95 Comp. Cas 663 (Guj) and a decision of Karnataka High Court in case of Bharat Electronics Limited vs. BEL Head Officer Staff Association reported in 2001(3) Kar L. J. 201, it is submitted that when an order is passed whether in exercise of its administrative functions or quasi judicial functions, reasons recorded in the said order alone has to be considered and the reasons cannot be supplied by other documents or evidence. In the present case, impugned notice dated 01.01.2015 does not contain any reason and therefore the impugned notice cannot be sustained.

f) In any evident, it is submitted that the first parameter set out in the draft minutes dated 10.12.2014 cannot be said to have been satisfied in the present case, because, the registered office of the appellant is in fact located on First Floor of Tarabai Hall at Marine Drive, which premises is taken on leave and license basis by Sheorey Digital Systems Limited (a group company of the appellant) and part of that premises is being used by the appellant pursuant to the permission in writing granted by Sheorey Digital Systems Limited on 29/07/2013. Documentary evidence such as written permission granted by Sheorey Digital Systems

Limited in favour of the appellant to occupy part of the aforesaid premises, print outs from the master data maintained by the registrar of companies showing both the companies (Sheorey Digital Systems Limited and the appellant) at the above address, various business agreements entered into by the appellant with third parties and letters received by the appellant-company at the above address were furnished to the BSE which clearly show that the appellant-company is situated at its registered address and that the appellant-company is in fact engaged in the business of film making.

g) Contention of BSE that on 30/12/2014 when a BSE official visited the office of the appellant, there was neither any employee of the appellant nor there was the name plate of the appellant-company is not correct, because, name plate was in fact displayed outside the office premises as is evident from the photographs furnished by the appellant to the BSE. As regards the allegation that no employee of the appellant was present when the BSE official visited the office, it is submitted that Mr. Morne, an employee of the appellant present at the office, had met the BSE official and had informed him that Mr. Cyrus Bhot who looks after the day to day affairs of the company had gone out for business work at Nariman Point. In

fact, Mr. Morne contacted Mr. Bhot over the telephone immediately and Mr. Bhot, spoke to the BSE official on telephone and offered to give all assistance or information by personally coming to BSE on the next day. Thereupon, the BSE official told Mr. Bhot that he would consult his seniors and would intimate the time during which Mr. Bhot could meet the BSE officials on the next day. However, the BSE official did not contact Mr. Bhot on the next day. In these circumstances, it is submitted that the decision of SEBI that the appellant-company neither exists at the registered address nor is carrying on any business is wholly unsustainable.

h) The second parameter set out by SEBI in the draft minutes dated 10.12.2014 required BSE to identify the companies which have made preferential allotments and if the price of the scrip of those companies increased with very low volume during the first year of lock-in period and after the lock-in period if there is huge rise in the volume and exit of preferential shareholders then, suspend the trading in the shares of those companies. In the present case, shares under the third preferential issue duly approved by BSE were issued at a premium of ₹ 23 per share. Apart from the above, there were corporate announcements made on

BSE website in relation to the following contracts entered into by the appellant with third parties:-

a) Line Production Agreement dated 09/10/2013 entered into by and between appellant and Abbas Mustan Film Productions Pvt. Ltd. (‘AMFP’ for short) for production of a film. AMFP is a reputed and well known entity inter-alia engaged in the business of creating, managing, supervision, developing creative content for and supervision and executing the production and distribution of cinematograph films.

b) Film Director Agreement dated 25/08/2014 entered into between appellant and Mr. Abbbas Burmawala/ Mr. Mustan Burmawala and for production of a Hindi film at a cost of ₹ 10 crore towards the cost of production, ₹ 3 crore towards artists fee and ₹ 3.5 crore towards directors remuneration.

c) Agreement dated 24/08/2014 with Mr. Kapil Sharma (well known for his T.V. Serial ‘Comedy Nights with Kapil’) under which Mr. Kapil Sharma has agreed to act in the

lead role of the film to be produced by the appellant.

d) MOU dated 18/12/2014 with Four Lions Films private Limited and its shareholders, wherein it is agreed that the appellant would invest funds in Four Lions Films Private Limited and acquire 50% shares of that company, which is engaged in the business of production of Cine Films, TV Serials, Advertising Films, Telefilms, Documentary Films, Feature Films etc.

Corporate announcements made by the appellant to the above effect were duly displayed on the BSE website from time to time. Thus, the investors had every reason to believe that the appellant has bright future and consequently the shares of the appellant have been steadily rising and the same was within the knowledge of SEBI and BSE. Therefore, no fault can be found with the price rise due to trading in the scrip of the appellant.

i) When preferential shares are issued with lock-in period, it is obvious that after the lock-in period is over, the preferential shareholders are entitled to off-load the shares, if they choose to do so and therefore, mere fact that there is spurt in trading activities after

the lock-in period cannot be a ground to suspend the trading in the scrip of the appellant-company. Fact that some of the preferential shareholders in the appellant-company, namely, Dilip Jiwrajka, Surendra Jiwrajka, Ashok Jiwrajka and Kamal Jajoo were also preferential shareholders in Moryo Industries Ltd. and Radford Global Limited and in those cases they have been restrained by SEBI from buying, selling or dealing in the securities market either directly or indirectly in any manner till further directions cannot be a ground for suspending the trading in the securities of the appellant. Assuming that SEBI/BSE are investigating the role of those preferential shareholders in the appellant-company, SEBI/BSE may impose restriction on those preferential shareholders but that cannot be a ground to suspend the trading in the shares of the appellant-company especially when there no allegation that the appellant-company has indulged in any irregularities/illegality either while issuing the preferential shares or the promoters of the of appellant-company have traded in violations of the norms laid down by SEBI/BSE.

j) Trading in 6,01,877 shares of appellant-company throughout the year commencing from 15.03.2014 to 06/01/2015 as against the total quantity of 3,48,00,000

shares issued by appellant cannot be said to be abnormal trading. Moreover, if the criteria was to suspend the trading in the shares of loss making companies, then there were several loss making companies and there was no reason to selectively suspending the trading in the securities of certain companies including the appellant-company.

k) The third parameter set out in the draft minutes dated 10/12/2014 required BSE to identify the companies with weak financials and if the price rise in the scrip of those companies are not supported by the financials of those companies then suspend the trading in the shares of those companies. If the price rise is due to market manipulation of the shares on the exchange, then the proper course is to pass an order against that person and not to suspend the trading in the shares of the company. In the present case, from the price volume chart of BSE, it is seen that the increase in the price has in fact started from September 2014 after the appellant-company came out with third preferential issue at a premium of ₹ 23/- per share and the same was duly approved by BSE and intimated to the investors through the BSE website. In such a case, neither the appellant-company which has commenced its revival by issuance of preferential shares can be

said to be a company with weak financials, nor, the increase in the volume of trading after the shares were released from the lock-in period could be treated as unusual trading in shares. Decision of SEBI, in case of Radford Global Limited, Moryo Industries Limited and First Financial Limited are not comparable with the case of appellant as there is nothing on record to suggest that the persons found guilty in those cases had connived with the appellant or its promoters and had indulged in market manipulations in the scrip of the appellant. Hence suspending the trading in the shares of the appellant-company is wholly unjustified.

10. Mr. Modi, Learned Senior Advocate appearing on behalf of BSE submitted as follows:

a) Pursuant to a reference from the income tax department that Stock Exchanges are used as a platform for illegal gains through market manipulation, SEBI on investigation passed ad-interim ex-parte orders in case of Moryo Industries Limited on 04/12/2014 and in case of Radford Global Limited and First Financial Services Limited on 19/12/2014. According to SEBI, the modus operandi for market manipulations were as follows:-

i) the concerned companies were listed companies with weak financials poor performances, having barely any business and their stocks were traded at meager prices;

ii) the concerned companies then raised large amounts by preferential allotment of shares which had a lock-in period.

iii) funds received on preferential allotment were not used for the purpose as disclosed and there was no major change or improvement in the performance of the concerned companies, yet there was considerable increase in the prices of the shares of those companies.

iv) the market prices were manipulated by parties who were found to be connected to the concerned companies and/or the allottees, and the prices were pushed up substantially on relatively small volumes.

v) once the lock-in period was over, the preferential allottees sold their shares at such rigged high prices t o connected parties who were set up to buy the same and made huge

profits which are also exempt from capital gains tax.

b) According to SEBI, such misuse of the trading system whether amounts to money laundering or tax evasion would be gone into by the concerned agencies and that the SEBI would only be investigating the matter from the angle of probable violation of securities laws.

c) During the SEBI Surveillance Committee Meeting held with Stock Exchanges on 10/12/2014, SEBI urged the Stock exchanges to suspend the trading of shares of companies which satisfy any one or more of the three parameters set out in the minutes recorded on 10/12/2014. Thereafter by e-mails dated 19/12/2014 and 29/12/2014 SEBI insisted that the exchange must immediately implement the directions contained in the minutes dated 10/12/2014 by suspending the trading in the securities of those companies which fulfill one or more parameters set out in the minutes dated 10/12/2014. Accordingly BSE identified the companies which fulfilled the parameters set out in the minutes dated 10/12/2014 and accordingly on 01/01/2015 suspended the trading in the shares of the companies set out therein which included the appellant-company. Thereafter, as per the directions given by this Tribunal, the Executive Management Committee (‘EMC’ for

short) of BSE gave personal hearing to the appellant on 08/01/2015 and by its order dated 12/01/2015 recorded that the appellant was covered within the three parameters set out in the minutes dated 10/12/2014, and therefore, the trading has been correctly suspended and that the suspension ought to be continued till the investigation carried out by SEBI is completed.

d) Argument of the appellant that the power to direct suspension is only with the Governing Board under Bye Law 39 is not correct. Under Bye law 21, power conferred on the Governing Board and Executive Director (now known as 'Managing Director') to prohibit trading in securities included power to suspend trading in securities. Moreover, suspension, in the present case, is carried out as per the directions of SEBI which is directly covered under Bye Law 21. Even under Rule 98(c) of the BSE Rules, it is the duty of the CEO to give effect to the directives of SEBI and the Managing Director is also obligated to do so as per regulation 25(5) of Securities Contracts (Regulation) (Stock Exchange and Clearing Corporations) Regulations, 2012. Apart from the above, the Board of Directors of BSE on 12/02/2015 have confirmed that the MD and CEO had the requisite power to pass the order and suspension of trading under Bye Law 21 and

it has also confirmed, ratified and approved all actions taken on 01/01/2015.

e) Regarding the first parameter set out in the minutes dated 10/12/2014, it is submitted that as per the site inspection report, there was no name plate/board of the company and there was only the name plate/ board of Sheorey Digital Systems Limited ('Sheorey' for short). Photograph relied upon by the appellant purports to show the name plate of the appellant immediately below the name plate of Sheorey, whereas, the photograph taken by the BSE official shows only the name plate/board of Sheorey. Therefore, the EMC has correctly concluded that the name plate of the company was affixed after the Exchange official's visit to circumvent the observations made by the BSE. Thus, the appellant has fabricated false evidence to mislead this Tribunal and committed perjury.

f) contention of appellant that Sheorey had permitted the appellant to use part of its premises is unsustainable, because, the leave and license agreement between Sheorey and the Trustees of Tarabai Trust, prohibits Sheorey from allowing user of the said premises in whole or in part to any person/persons. The telephone bill, bank statement produced by the appellant merely show the mailing address and do not satisfy the

requirement. Some of the documents produced by the appellant show different address as its registered office. It is relevant to note that the appellant had changed its name pursuant to a resolution dated 15/01/2013 but the application filed by appellant with the BSE for change in name was incomplete and could not be processed. The exchange has repeatedly reminded the appellant to submit the required documents, but the same has not been furnished till date.

g) The second parameter prescribed by SEBI is also satisfied in the present case. Admittedly the appellant had made three preferential allotments during the period from March 2013 to September 2014. By issuance of the said preferential shares appellant has raised ₹ 38.36 crores, while its previous paid up capital was only ₹ 5 crore consisting of ₹ 50 lac shares of ₹ 10/- each. The preferential allottees together hold approximately 86% of the company's total capital. The appellant has not disclosed as to how funds raised vide the preferential allotments have been utilized.

h) During the lock-in period (03/01/2013 to 14/03/2014) only 1692 shares were traded and after the lock-in period (15/03/2013 to 14/03/2014) 6,01,877 shares were traded. The fact that the preferential allottees have not yet sold off all their holdings is what even

more so justifies suspension to maintain status quo, so that they cannot face the investigation with a fait accompli.

i) Some of the preferential allottees of the appellant-company, namely Dilip Jiwrajka, Surendra Jiwrajka, Ashok Jiwrajka and Kamal Jajoo are the same parties against whom orders have been passed by SEBI in case of Moryo Industries Limited and Radford Global Limited. This cannot just be a mere coincidence.

j) Preferential allottees viz. Dharmendra A. Roliya & Dipika D. Roliya (holding 3,00,000 shares) sold part of their allotted shares at abnormal prices of about ₹ 26.50 (gain of about 165%) ₹ 44.95 (gain by 349%). Preferential allottees have also made various off market transfers and the trail of the share movement will have to be traced in the investigation to see the consequences and the conclusion to be drawn.

k) Various decisions relied on by the counsel for appellant relate to final orders passed by the concerned court/authority and none of those decisions related to ad-interim orders passed in emergency situations and pending investigation as is the present case. Hence none of those decisions have any relevance in the present case.

l) In an emergent situation it is open to BSE to suspend trading without hearing and grant post decisional hearing. In the present case post decisional hearing is granted and reasons are recorded in the order dated 12/01/2015.

m) The third parameter specified in the minutes dated 10/12/2014 are also satisfied in the present case, because, admittedly during the previous three years the company's income has been shown in its own accounts as nil or negative and it has suffered only losses. During the years 2001 to 2012 the financials of the appellant were so weak that it could not even pay listing fee of ₹ 10,000/- per annum and could not pay salary of its staff. Thus, the huge price jump up in the shares of appellant is not justified by the performance of the appellant and is obviously a manipulation.

n) Various agreements produced by the appellant merely give hope of future prospectus. Not a single rupee has been earned by the appellant since the last three years. Merely, announcing execution of some contracts cannot justify the huge price increase. The contracts relied upon by the appellant does not remotely indicate the revenue likely to be earned by the appellant in the future. In these circumstances, exceptional price in the scrip from ₹ 2.67 to ₹ 149 between 16/12/2013 to

31/12/2014 which is a 5480.52% increase in the price is totally unbelievable and cannot be said to be genuine merely because public announcements of executing some contracts for producing a film in future have been made. The price rise was on very small volumes on most days and the price kept rising even when large volumes were sold on certain odd days inter alia by the preferential allottees. This is not at all commensurate with the financials of the appellant-company and is a clear indication of manipulation.

o) argument of the appellant that the parameters specified in the minutes of the Surveillance Committee Meeting have not been disclosed to the public and therefore, the impugned order based on the above parameters are unsustainable, is without any merit, because, worldwide, surveillance is always done in a confidential manner and disclosure of the parameters in advance would have defeated the intention and enabled the parties to cover up to evade detection. In any event, the parameters have been now disclosed and the appellant was given full opportunity to respond and thereafter order dated 12/01/2015 has been passed.

p) Decision as to what should be appropriate interim measure in such situation is left to the expert authority in the field viz SEBI. In the present case, since almost

the entire capital is held by the parties who are believed to be parties to the mischief and they are the beneficiaries of the mischief, the impugned decision cannot be faulted.

q) Decision to suspend taken on 01/01/2015 was made effective from 07/01/2015, because 03/01/2015 and 04/01/2015 being Saturday and Sunday there were no trading on those two days and BSE always gives advance notice of 3-4 trading days time before suspension so that innocent investors can sell off the shares they hold, if they so desire. Therefore, making the order operative with effect from 07/01/2015 would not invalidate the impugned order.

r) When a prima facie view is formed that there is market manipulation, then, pending investigation, suspension of trading is the proper course to prevent further damage at the interim stage. In the present case, it is necessary to conduct a detailed investigation and pending such investigation, as the company has satisfied all parameters laid down by SEBI, the suspension in the trading ought to be implemented and continued to prevent further damage to the market and the investors as directed by SEBI.

11. Mr. Sen, Learned Senior Advocate appearing on behalf of SEBI submitted as follows:-

a) BSE has suspended the trading in the securities of the appellant company on the basis of directions, which are formulated in Surveillance Meeting held on 10/12/2014 with a view to protect the interest of investors and the securities market.

b) Under Section 11 of SEBI Act, SEBI is empowered to take such measures as it thinks fit. Thus, the extent of the nature and the manner of taking measures that can be adopted by SEBI have been left to the discretion and wisdom of SEBI. Apex Court in case of Sahara India Real Estate Corporation Limited vs. SEBI reported in (2013) 1 SCC 1 has considered the aforesaid powers of SEBI and held that aforesaid powers are conferred to promote the development of the securities market and the said power has not been curtailed or whittled down in any manner by any other provisions under the SEBI Act, as no provision has been given an overriding effect over Section 11(1) of SEBI Act.

c) SEBI came across serious market manipulations, which were operated by raising large amounts in companies having weak financials, by issuing preferential allotment of shares, which had a lock in

period of one year. The market prices were manipulated by parties who were found to be connected to the companies or the allottees. The prices were pushed up substantially on relatively small volumes and once the lock-in period was over, the preferential allottees sold their shares at high prices to connected parties and made huge profits which were also exempt from long term capital gains tax.

d) SEBI noticed that other companies followed the trend as stated above and the market platform was then used for money laundering and tax evasion purposes. SEBI specifically noticed the above practice in Moryo Industries Limited in which SEBI has passed an interim order dated 04/12/2014, restraining 98 persons/ entities from accessing the securities market and buying, selling or dealing either directly or indirectly, in any manner. Similar orders have been passed on 12/12/2014 in case of Radford Global Ltd, wherein 108 persons/entities are restrained from accessing the securities market and in case of First Financial Services Limited, 152 persons/ entities are restrained from accessing the securities market.

e) In the Surveillance Committee Meeting held with the Stock Exchanges on 10/12/2014 it was decided that

the Stock Exchanges shall immediately shortlist scrips by applying the three parameters specified therein and suspend the trading in such scrips with immediate effect which satisfy the aforesaid parameters and intimate the same to SEBI. Since appellant and several other companies satisfied the three parameters set out in the minutes of the Surveillance Committee Meeting held on 10/12/2014, the trading in the scrip of appellant as also other companies were suspended.

f) In the instant case, minutes of Surveillance Committee Meeting held on 10/12/2014 were approved by the Executive Director-Surveillance on 16/12/2014 and a specific approval was obtained from the Whole Time Member of SEBI on 19/12/2014. Accordingly, vide e-mails dated 19/12/2014 and 29/12/2014 Stock Exchanges were called upon to immediately comply with the minutes dated 10/12/2014.

g) The modus operandi, in these matters appears to be that the entities/ persons wanting to convert their unaccounted money to white money, approaches Key Operator. The Key Operator and other entities find companies, which have weak financial, poor performance having barely any business and their

stocks are traded at meager prices. The concerned companies then raise large amounts by preferential allotment of shares which have a lock-in period of 1 year. The market prices are manipulated by the parties who are found to be connected to the concerned companies or the allottees and the prices are pushed up substantially on relatively small volumes. Once, the lock-in period is over, another syndicate buys the shares from original preferential allottees through series of market transactions at substantially higher prices. The preferential allottees sold their shares at high prices to connected parties who are set up to buy the same by preferential allottees and make huge profits which were exempt from capital gains tax. The market platform in this type of transaction was misused by artificially rigging the price so as to have an unfair long term capital gains tax exemption.

h) SEBI as a market regulator, while not directly concerned with money laundering or tax evasion, is certainly concerned with the manipulation of the price of a scrip and to achieve that object, suspension of trading in such scrips it was agreed upon as a surveillance measure to suspend the trading in shares, pending investigation. The suspension pending

investigation is imperative and naturally in the interest of small investors who may be otherwise induced by market manipulation to invest in the scrip.

i) Surveillance measures by their very nature are confidential and hence cannot be made public.

j) BSE has passed a reasoned order and given its reasons for suspending the trading in the shares of the appellant-company. In the present case, in view of the complex nature of investigation where large number of entities are involved and a number of transactions are required to be scrutinized, it would take at least one year for completion of investigation by SEBI. Accordingly, it is submitted, that pending investigation it is absolutely essential in the interest of investor protection to continue suspension of trading in the shares of the appellant company.

12. We have carefully considered rival submissions.

13. At the outset it is relevant to note that the trading in the securities of the appellant company have been suspended by BSE at the instance of SEBI, because, SEBI in similar cases viz. in case of Moryo Industries Limited, Radford Global Limited & First Financials Limited prima facie found that there is market manipulation and accordingly by ex-parte ad-interim order has restrained those companies, their

promoter/directors and other connected entities from buying, selling or dealing in securities until further orders. In those cases SEBI has held that the said companies in connivance with preferential shareholders of those companies and other related parties had indulged in market manipulations. If SEBI on investigation had found, prima facie, that the appellant has indulged in market manipulation, then SEBI would have passed ex-parte ad-interim order against the appellant as has been done in case of aforesaid three companies. Very fact that SEBI has not passed any order against the appellant and has directed BSE to suspend the trading in securities of those companies which fulfill the three parameters set out in the surveillance minutes dated 10/12/2014 clearly shows that apart from presuming that the companies which satisfy the three parameters set out in the surveillance minutes dated 10/12/2014 must have been involved in market manipulation, there is no other material to suggest that prima facie the appellant is involved in the market manipulation.

14. In the ex-parte-ad-interim order passed by SEBI on 04/12/2014 against Moryo Industries Ltd., its promotes, directors, preferential allottees and Moryo group entities, it is specifically recorded that Moryo Industries Ltd. did not have any business activity, that there were no corporate announcements and that certain entities related/connected to Moryo Industries Limited had substantially traded amongst themselves in shares of Moryo Industries Limited and created artificial volume and contributed to the artificial price rise in the scrip. In the present case, neither SEBI, nor BSE have found that the appellant-company or its

promoters/directors have directly or indirectly traded in the shares of the appellant-company. Hence, the case of the appellant being not comparable with Moryo Industries Limited SEBI, in the absence of any evidence to suggest that the appellant has indulged in market manipulation SEBI could not have asked BSE to suspend the trading in securities of the appellant if the three parameters set out in the minutes dated 10/12/2014 were satisfied.

15. Fact that some of the preferential shareholders of the appellant-company were also preferential shareholders of Moryo Industries Limited and Radford Global Limited and those preferential shareholders have been found to have prime facie connived with those companies along with its directors/promoters in resorting to market manipulation while trading in the shares of Moryo Industries Ltd./Radford Global Limited cannot be a ground to presume that the preferential shareholders of the appellant company as also the appellant company, its directors/promoters have connived and resorted to market manipulation, especially when there is not an iota of evidence to sustain such presumption. In the absence of any prima facie evidence to suggest that the appellant is in any manner connected to the alleged market manipulation, SEBI is not justified in directing the BSE to suspend the trading in the securities of the appellant.

16. According to the BSE trading in the securities of the appellant are suspended because, the appellant fulfils all the three parameters set out in the SEBI surveillance minutes dated 10/12/2014. Question, therefore

to be considered is, whether BSE is justified in holding that the appellant-company satisfies the three parameters specified in the SEBI surveillance minutes dated 10/12/2014.

17. First parameter set out in the surveillance minutes dated 10/12/2014 is held to be satisfied on ground that the appellant does not exist at the address mentioned and does not appear to be carrying out any operations. Above conclusion of BSE is inter alia based on the report submitted by its official that during his surprise unit, there was no name plate/board of the appellant and only the name plate/board of Sheorey Digital Systems Limited ('Sheorey' for short) was displayed at the office premises. According to the appellant, the name plate of the appellant was in fact displayed just below the name plate/board of Sheorey. This fact is seriously disputed by BSE. Existence of a company is not to be determined on the basis of name plate/board. In the present case, the facts and the documents produced by the appellant in support of its contention reveal the following:-

a) The record of Registrar of companies shows that Sheorey and appellant have the common address as the registered office address.

b) The BSE official who visited the premises does not dispute that Sheorey is in possession of the premises in question.

c) Documentary evidence is produced to show that Sheorey is a group company and Sheorey has permitted the appellant to use part of the said premises. Terms on which Sheorey has taken the premises in question do not specifically bar a group company from using part of the premises given to Sheorey.

d) Appellant has produced telephone bills, bank statements to show that the appellant is operating from the said premises.

e) Appellant has entered into contracts with third parties by showing the premises in question as the registered of the appellant. None of those contracts have been doubted.

f) Fact that in some contracts the appellant has erroneously shown their administrative office address as the registered address of the appellant cannot be a ground to hold that the appellant-company does not exist, especially when, existence of the administrative office is not disputed.

In these circumstances, presumption drawn by BSE that the appellant-company does not exist at the address mentioned and does not appear to be carrying out any operations is wholly unjustified and contrary to the facts on record.

18. It is also held that when BSE official gave surprise visit, no employee of the appellant was present at the said address and hence the appellant cannot be said to be existing at the address mentioned. It is not in dispute that the BSE official who gave surprise visit to the appellant-company, had met Mr. Morne, (an employee of the appellant) at the premises in question. It is also not in dispute that on the BSE official disclosing his identity, Mr. Morne informed that Mr. Cyrus Bhot who looks after the day to day affairs of the company had gone out for business work at Nariman Point. In fact Mr. Morne contacted Mr. Cyrus Bhot and in turn Mr. Cyrus Bhot spoke to the BSE official and offered all assistance in the matter. In these circumstances, decision of BSE that the appellant-company does not exist at the address mentioned and does not carry on business from the said premises and thus fulfils the first parameter set out in the SEBI minutes dated 10/12/2014 cannot be sustained.

19. According to BSE, the second parameter set out in the SEBI Surveillance Committee minutes dated 10/12/2014 is also satisfied in the present case, because, appellant had issued preferential shares and share prices of the appellant-company had increased with very low volume during the first year of lock-in period and after the lock-in period there is huge rise in the volume of trading and exit of preferential shareholders. Fact that the appellant-company had issued preferential shares with the approval of BSE cannot be a ground to hold that appellant has indulged in market manipulation. Similarly, fact that the share prices of the appellant-company started rising after the funds were pumped in after

issuance of preferential shares and the share prices rose further, on account of the trades executed by some of the preferential shareholders after the lock-in period, cannot be the sole ground to presume that the appellant-company is involved in market manipulation. Admittedly, BSE approved the third issue of preferential shares at a premium of ₹ 23/- per share. It is not the case of BSE that the appellant has made any misrepresentation to the BSE in issuing the preferential shares at a premium. Therefore, if a defunct company like the appellant revives it business by pumping in finance through the issuance of preferential shares duly approved by BSE and there after corporate announcements have been made from time to time in relation to the business commenced by the appellant and those announcements were duly displayed on the BSE website, then rise in share prices of that company would be a natural phenomena and in such a case, in the absence of any evidence to the contrary it cannot be presumed that there must be market manipulation and pending investigation suspend the trading in the shares of those companies. In the case of three companies, SEBI has passed ex-parte ad-interim order after specifically recording a finding that prima facie those companies were involved in market manipulation. In the present case, no such findings are recorded. Hence, decision of BSE that second parameter set out in minutes dated 10/12/2014 are satisfied in the present case is unsustainable.

20. Apart from the above, preferential shareholders, after the lock-in period were legally entitled to off-load the shares acquired by them on preferential basis. In such a case, mere fact that the preferential

shareholders after the lock-in period have sold their shares cannot ipso-facto be a ground for suspending the trading in the shares of the appellant-company. Assuming that the preferential shareholders who had traded in the shares of the appellant-company had prima-facie indulged in market manipulation, then those preferential shareholders could be restrained from buying, selling or dealing in shares to prevent the market abuse. Instead of taking action against those violators, BSE has penalized the appellant by suspending the trading in the shares of the appellant-company, even though there is not an iota of evidence to show that the appellant-company or its promoters/ directors have directly or indirectly indulged in market manipulation.

21. According to BSE even the third parameter set out in the SEBI Surveillance Committee minutes dated 10/12/2014, is satisfied in the present case, because, the appellant-company has weak financials and the price rise in the scrip of the appellant is not supported by the financials. Fact that during the last three years, the appellant had no income and had incurred losses could not be a ground to treat the appellant-company as having weak financials, because, financial position of the appellant started reviving only after the BSE approved issuance of preferential shares on 01/03/2013, 22/11/2013 and 03/09/2014. It is not in dispute that by issuing preferential shares from time, to time the appellant-company has raised ₹ 38.36 crores. Thereafter, the appellant-company has commenced its business of film production by entering into contracts with reputed entities/persons in the film industry and that film production has already commenced. Neither

the execution of contracts nor commencement of film production is disputed by the BSE. Admittedly, corporate announcements made by appellant regarding raising funds through preferential shares and also corporate announcements made by appellant regarding the contracts entered with reputed entities/persons were duly displayed on the BSE website so that the investors are made known about the revival of the appellant-company. In such a situation, inference drawn by BSE that the appellant-company has weak financials and the price rise in such scrips is not supported by financials is wholly unjustified.

22. Neither the SEBI nor BSE have deemed it fit to initiate action against those persons whose trades are responsible for the rise in the script of the appellant from ₹ 2.67 per share to ₹ 149/- per share. If the price rise is due to market manipulation, then, instead of catching the market manipulators, the trading in the shares of the appellant-company has been suspended at the instance of SEBI. As a market regulator, SEBI is bound to take action against those who have prima facie indulged in market manipulation and it is not open to SEBI to direct the Stock Exchanges to suspend the trading in the securities of the companies if they satisfy certain parameters fixed by SEBI which have no bearing whatsoever with the alleged market manipulation.

23. At no point of time, either before passing the impugned order on 01/01/2015 or before passing the reasoned order on 12/01/2015, the appellant was called upon to explain the manner in which the funds collected by issuing preferential shares have been utilized. However, in

the order dated 12/01/2015 it is alleged that no particulars have been given as to how the funds have been utilized. Such a finding recorded without seeking any explanation from the appellant is wholly unjustified.

24. Fact that 86% of the shares of the appellant-company are held by preferential shareholders and the fact that some of those preferential shareholders have allegedly indulged in market manipulation cannot be a ground to consider that all preferential shareholders are market manipulators. In any event, fact that some of the preferential shareholders has indulged in alleged market manipulation, cannot be a ground to suspend the trading in the shares of the appellant-company until further orders. SEBI through its counsel and also in its written submissions stated before us that it would take at least one year to complete the investigation and till then, it would be just and proper to suspend the trading in the shares of the appellant in the interest of investors. In the facts of present case, since there is not an iota of evidence to show that prima facie, the appellant-company or its promoters/ directors have indulged in market manipulation, SEBI/BSE are not justified in presuming on the basis of facts in case of Moryo Industries Ltd., Radford Global Ltd. and First Financials Limited that the appellant-company its promoters/directors must have connived in resorting to market manipulation and on that presumption suspending the trading in the securities of the appellant until further orders. Since SEBI has conducted investigation in case of three companies and after finding prima facie evidence that those three companies were parties to

market manipulation deemed it fit to take action against those three companies, SEBI/BSE ought to have followed the same procedure in case of appellant. Therefore, in the facts of present case, suspending the trading in securities of appellant solely based on conjectures and surmises is wholly unjustified.

25. In order to demonstrate bonafides on part of the appellant, counsel for appellant submitted that pending investigation, trading in the securities of the appellant be allowed subject to the promoters of the appellant-company giving an undertaking to the effect that they would not trade in the shares of the appellant-company for such period as this Tribunal deems fit and proper.

26. In view of aforesaid decision, questions as to whether the impugned order dated 01.01.2015 is violative of the principles of natural justice, the question as to whether the draft minutes dated 10/12/2014 have the sanctity of law, and the question as to whether the EMC of BSE had power to suspend the trading in the securities of the appellant-company would become academic and hence are not gone into.

Sd/-
Justice J.P. Devadhar
Presiding Officer

13.03.2015
Prepared & Compared By: PK

Per : A.S. Lamba

27. This appeal has been preferred by 52 Weeks Entertainment Ltd., formerly known as Shantanu Sheorey Aquakult Ltd., (Appellant) against directions issued by Bombay Stock Exchange Ltd. (BSE), Respondent No. 1 on January 1, 2015 suspending Appellant alongwith 21 others from trading of securities, with effect from January 7, 2015, until further notice; and against Securities and Exchange Board of India (SEBI), Respondent No. 2.

28. The following was observed in the notice of BSE dated January 1, 2015, on subject "suspension in trading of securities":

- Suspension in trading of 22 companies was without stating any reason;
- Suspension was without any reference to any bye-law of BSE or any other securities law governing BSE relationship with these entities;
- Suspension was without any mention of time period;
- Suspension was without any reference to any previous correspondence between BSE and any of 22 entities, such as show cause notice, explanation, reply of these entities;
- Only statement for suspension in trading of the entities was – "pursuant to directions received from SEBI, as a surveillance measure trading in the securities of the following companies will be suspended with effect from Wednesday January 7, 2015 until further notice".
- Against two of these 22 entities, sign (*) existed – which is explained as – "Scrips already under suspension", when these companies are already under suspension, how can these be suspended another time.
- Towards, the end, it was stated – "In case of any clarifications, members may contact Shri Ravindra Shetty (22728792) / Shri Rajesh Gandhi (22728281) – who are Ravindra Shetty or Rajesh Gandhi, not mentioned.

29. Only clarity, to some extent, in Notice of BSE dated January 1, 2015 was that the Notice was issued by BSE – in pursuant to directions received from SEBI, as a surveillance measure, and accordingly, SEBI was requested to clarify the subject matter, and SEBI clarified the following:

- During SEBI Surveillance Meetings held on October 8, 2014 and December 10, 2014, concerns were raised with respect to emerging trading activity in the lowly priced scrips (such as below Rs. 10) having weak fundamentals, including doubtful existence coupled with huge upsurge in prices of such scrips in the recent past. SEBI appraised that the *modus operandi* being used by entities for Long Term Capital Gains (LTCG) through preferential allotment route in such companies. It was emphasized during the discussion that generally some companies may have one or more of the following features:

  (a) Non-existent on the addresses mentioned and does not appear to be carrying out business;

  (b) Preferential allotment made. Price of the scrip increases with very low volumes during 1 year period of lock in. After lock-in huge rise in volumes and exit of preferential allottees. This may be coupled with stock split;

  (c) Companies having weak financial and the price rise is not supported by financials.

30. Considering the above, the stocks which broadly fulfill any of the parameters stated above, an immediate need was felt to take stern actions so as to contain any damage to the market integrity. How market integrity is damaged by above features, was not explained. Accordingly, SEBI advised the exchanges to immediately shortlist the scrips by applying the above

parameters and suspend trading in such scrips with immediate effect, under intimation to SEBI.

31. For implementation of decisions of SEBI Surveillance Meeting held on December 10, 2014, a note was put up to Ld. WTM (RKA) for approval, by Integrated Surveillance Department of SEBI and relevant extract of same is:

(a) Non-existent on the addresses mentioned and does not appear to be carrying out any operations;

(b) Preferential allotment made. Price of the scrip increases with very low volumes during 1 year period of lock in. After lock-in huge rise in volumes and exit of preferential allottees. This may be coupled with stock split;

(c) Companies having weak financials and the price rise in such scrips is not supported by financials.

32. However, in this respect with above note, it may be pointed out, at this stage, that following was also mentioned / decided in SEBI surveillance meeting, which was not put up to Ld. WTM (RKA):

- The exchanges were of the view that suspension in non-existent companies would be lifted only when the company is able to satisfy its presence at registered office address along with the assets / operations of the company.
- In respect of company where preferential allotment was done, it was decided that SEBI would share its findings and name of the companies with the exchanges. The exchanges were advised to conduct a comprehensive back-listing based on the SEBI analysis and submit their feed-back by December 19, 2014.

- Since the above LTCG route has been witnessed in scrips relisting after invocation of suspension, BSE/NSE were advised to tighten their procedure for relisting including a site visit in such cases.

33. The above points mentioned were part of minutes of agenda item and were relevant, important and were in context of subject matter, but were omitted from note seeking approval of Ld. WTM (RKA) for implementation, after 'presumably' the same had been approved by Chairman of surveillance meeting i.e. by Shri Gyan Bhushan, ED, SEBI; but it is certain that this note was routed through the same ED (Gyan Bhushan) for approval of Ld. WTM (RKA). It is not clear why these points, were not "put up" or "omitted", when approval of Ld. WTM (RKA), for implementation of this agenda item was sought.

34. Ld. WTM (RKA), minuted on the note as –

> "(1) Line of action is approved, however, the criteria for taking various actions may be further fine tuned in discussion with the exchanges and referring to the data available.
>
> (2) All possible efforts should be made to take appropriate action against the Cos. which are using the stock exchanges mechanisms for tax-evasion. Exchange should be suitably advised on the issue".

35. It is seen that Ld. WTM (RKA) has approved line of action, but criteria for same was to fine tuned, in discussion with exchanges and referring to the data available. Hence, at this stage no action / instructions was to be communicated to stock exchanges, until the criteria have been reworked and approval of WTM (RKA) obtained.

36. Thus some decisions were taken in meeting of SEBI surveillance meeting on December 10, 2014, all the decisions were not put up to Ld. WTM (RKA) for approving implementation of same since parts of minutes were not put up and Ld. WTM (RKA) did not approve the criteria and wanted the same to be fine tuned with some observation on tax-evasion but without revision of criteria as per noting of Ld. WTM (RKA), minutes in original were sent by SEBI to Exchanges for immediate action with direction that Exchanges shall continuously fine tune the criteria for ensuring appropriate immediate action against the companies which are misusing / advising / manipulating the stock market for tax-evasion", - which is different from objective of SEBI Surveillance Meeting dated December 10, 2014, viz. deal with modus operandi being used by entities for Long Term Capital Gain.

37. The most significant aspect of above is that objective of entire exercise has been changed from dealing with aspect of LTCG through mechanism of stock exchanges – which to the best of this Tribunal's understanding is a legitimate activity and not barred by any law / enactment / executive order of the Government – but to tax-evasion (which tax evasion, not stated which may be illegal) using the stock market mechanism. The entire exercise undertaken by stock exchange to identity companies on basis of above criteria become irrelevant to original objective and whether serves the new objective - is very doubtful, and suspension of these companies become unfructuous, since purpose of identification is now tax-evasion which was preventing companies from using mechanism of stock exchanges for purposes of LTCG.

38. In this context, it may also pointed out, no mention – of any securities law (SEBI Act, Securities Contracts (Regulation) Act, or Companies Act, 1956 or any regulation framed under it – exists in the entire proceedings and direction of SEBI to stock exchanges have to have reference to these, since

stock exchanges are expected to take action for suspension listed companies with stock-exchanges, which have far reaching legal consequences. However, some objective of this entire exercise is mentioned in para (xii) of draft minutes of Surveillance Meeting held on December 10, 2014 as – "Stock Exchanges agreed that these types of companies are not serving any genuine investor intent and possibly needs to be suspended from trading". Actually the word "intent" was replaced by "interest", by BSE. "Genuine investor intent / interest" – is a new term used by SEBI, without defining as to what it is and certainly, it is not purpose for which SEBI was created, as per SEBI Act, 1992.

39. Having dealt with Meeting of Surveillance of SEBI dated December 10, 2014, following which some directions were issued to Stock Exchanges vide SEBI's communicated dated December 19, 2014 to BSE & NSE and BSE issued notice dated January 1, 2015 suspending 22 entities from trading; we may deal with Appellant's submissions on BSE's notice dated January 1, 2015 as follows:

- The impugned order is not based on violation of any provision of law, hence has no legal basis.
- Impugned order is in violation of the principles of natural justice, equity and fair-play.
- Respondent should have given opportunity of being heard to Appellant, before its notice dated January 1, 2015.
- Respondent No. 1 ought to have shared the directions received from Respondent No. 2 with the Appellant and ought to have informed Appellant's role, in irregularities purportedly carried out by Appellant in the trading of Appellant Company.

- Respondents have not informed the Appellant about any surveillance issues as far as trading in securities of Appellant Company is concerned.
- Impugned order has created chaotic situation for the Appellant Company and its shareholders.
- Respondent No. 1 has not passed reasoned / speaking order while conveying its decision to suspend trading in securities.
- Approval of competent authority for effecting suspension has not obtained.
- I.O. suffers from legal / technical deficiencies, including interests of retail investors, ignorance of provisions of law, lackadaisical approach and inept handling of the matter.
- I.O. not based on show cause notice.

40. On first day of hearing of the case by this Tribunal, it was decided that BSE will afford an opportunity of hearing to the Appellant based on a reference from BSE to Appellant stating parameters for taking a decision on suspension of scrip and BSE's observation on each of the parameters and pass suitable order in the matter. Parameter, observation of BSE and Reply of Appellant are stated as follows;

Parameter: Non-existence of company at registered office address available in Exchange Office (This has been changed from 'Non-existent' on the addresses mentioned and does not appear to be carrying out any operation).

Observation: BSE official visited Co.'s office, did not find any nameplate of the Company and no Company official was present, at the time of visit.

Reply: Company represented that BSE official visited and asked for Director of the Company and was informed that Mr. Cyrus Bhot – working director – was away and official left his visiting card with receptionist (Mr. Marne) and that Director be informed of his visit. Mr. Bhot - was informed of this by Mr. Marne - who contacted official of BSE immediately

Parameter: Regarding the missed out part of the first information i.e. does not appear to be carrying out any operations.

Observation: No observation.

Reply: Appellant has produced copies of its financial results (audited and unaudited) for years 2011 to 2015; minutes of meeting of BOD during 2013-2014-2015 and have also produced copies of agreements with various parties, in furtherance to it's business.

Parameter: Weak Financials and Price Rise of Scrip:

Observation: Company is having weak financials and income during last three years was 0.00,-0.29,-6.79 cr. A question was put to BSE as to how income of a company could be negative and Sr. Counsel replied that it was stated, as such, by Company.

Reply: Company has admitted their financial position has been weak in last three years but now Company has entered into new ventures, which will produce results in future.

Parameter: Price Rise of Scrip – increased from Rs. 2.67 as on December 16, 2013 to Rs. 149 as on December 31, 2014.

Observation: No observation.

Reply: Capital market increased in general. Company has ventured into film production, signed popular comedian and acquired rights in

TV serial production and these announcements were made from website of BSE - generating investors' interest – as viewing Co. with future prospects and hence price of scrip increased.

Parameter: Company made three preferential issue - post revocation of suspension in September 2012 - resulting in total issue of 2.988 crore shares and generating Rs. 36.172 crore.

Observation: No observation.

Reply: Only one allottee of preferential shares sold 4 lakh shares in April 2014 at price Rs. 10 to 13 and price rise in scrip cannot be linked to exit of preferential allottee.

41. The allegations as in SCN, observations of BSE, and submission of Appellant were placed before Exchange Management Committee (EMC) of BSE and this committee has decided that it is necessary that a detailed investigation be carried out by the Exchange / SEBI. Pending such investigation, as the company has satisfied all parameters laid down by SEBI, the suspension in the trading of the securities of the company ought to be implemented and continued as an interim preventive measure and to maintain orderly development in the securities market, such suspension is essential and in the interests of market and the investors, and the same is as directed by SEBI.

42. It must be clarified, at this stage, that BSE or any Stock Exchange has no mandate to act for the objective, as stated above and stating this in its decision to keep Appellant Company under suspension is not justified since this mandate is available to SEBI, as per SEBI Act, 1992 and, at the most BSE can state that parameters indicated by SEBI, are met by the Appellant, and hence Appellant is suspended, as per parameters specified by SEBI.

43. It was one of the grounds for appeal by Appellant that I.O. has travelled beyond scope, purview and compass of BSE's power and jurisdiction and is contrary to BSE's rules, byelaws and regulations and BSE's acting on mandate of SEBI is not as per scheme of arrangements worked out in SEBI Act and Securities Contract (Regulation) Act, under which Stock Exchanges function.

44. One of the grounds of appeal is that decision of suspending the trading in securities and who have signed the I.O. are not the authorized officials who could take such decision. From perusal of earlier notice of BSE, dated January 1, 2015 suspending trading in Appellant scrip, it is seen that no authority or rule, bye-law, regulation is cited.

45. This question was posed to Ld. Sr. Counsel for BSE, who stated that suspension was in terms of Bye-law 21 - "Governing Board may prohibit dealings" and was approved by MD, earlier designated ED. It was pointed out Bye-law 21 of BSE authorized Governing Board and not MD / ED and that Bye-law 21 allows "prohibition of dealings", while BSE's Bye-law 39 allows "suspension of Admission to Dealings on the Exchange". Ld. Sr. Counsel could not deal with the query satisfactorily how suspension can be affected under Bye-law 21, but stated MD/ED was authorized by Governing Board for this purpose. Ld. Sr. Counsel for BSE has produced a resolution of Board of Directors of BSE dated February 12, 2015 to the effect that "MD & CEO was and is empowered to take requisite actions to prohibit dealings in securities pursuant to right vested in him by virtue Bye-law 21 of the exchange and has correctly exercised the power of suspending trading in the various scrips and for consequential proceedings. In any event, decision taken by EMC on December 24, 2014 and January 1, 2015 with regard to suspension of trading

in various scrips pursuant to direction from SEBI is hereby confirmed, ratified and approved".

46. To say the least, the above resolution of BSE does not correct the position that MD & CEO of BSE was authorized by Governing Board before he acted on January 1, 2015 in suspending trading by Appellant due to the following reasons:

- For a person has to have the authority on day he acted and this cannot be given to him on ex-post facto basis.
- The Tribunal had asked for production of the authority on or before January 1, 2015 and a simple production of same was sufficient, if it existed - but by conferring this authority, when he had acted before hand, gives rise to suspicion that such an authority did not exist prior to January 1, 2015.
- It is stated in resolution that – "Bye law 21 of BSE empowered MD & CEO to take requisite action to prohibit dealings in securities, but then how MD & CEO exercised their power to suspend trade – which is as per the BSE Bye-law 39. When suspension and prohibition are different measures and under different Bye-laws, then how one can be used to exercise power under the other.
- As a matter of fact BSE could take the plea that suspension was under Bye-law 39, but then here MD & CEO does not have inherent power to exercise the same, unless specifically authorized by GB, but since the same did not exist on the date the same was exercised by MD & CEO, BSE in now tying itself in knots to make us believe that same existed, whereas same did not exist on January 1, 2015.
- If MD & CEO of BSE has acted within power conferred on him by GB or inherited by him, there was no need to say the last sentence in

resolution – that "In any event, the decision taken by the EMC on December 24, 2014 and January 1, 2015 with regard to suspension of trading in various scrips pursuant to directions received from SEBI is hereby confirmed, ratified and approved". EMC has taken a decision to suspend trading in scrip of Appellant, once again, on January 12, 2015 and whether this is covered by GB's resolution dated February 12, 2015 of GB is not known.

- In any case this "cocky attitude" of BSE is not appreciated.

47. A lot of discussion took place and case laws cited when an action taken without affording hearing to the aggrieved party can be corrected by affording post direction hearing to meet the requirements of law to natural justice we may not go into this question now, since it was done with consent of both the parties and raising this question, after proceedings undertaken and raising question whether it rectifies the earlier shortfall in proceedings or not, is not considered proper.

48. Lastly let us see the Impugned Order dated January 12, 2015 as decided by EMC. The pleas taken by Appellant were:

- Are conditions for taking action in emergent situation satisfied, if decision is taken, made known to all, but is to be implemented after six days.
- EMC has come to a wrong conclusion that company did not exist at its registration address – although sign-board of Company did not exist at that address and apparently Company tried to correct this by putting sign-board subsequently, but Company is right in stating there is no requirement-in-law for an official of the Company to be present there during working hours, when a receptionist existed, at premises, to take a messages and he conveyed the message also.

49. The second part of first parameter that "does not appear to be carrying out any operations" is not satisfied in Appellant's case since Appellant has been able to produce Profit & Loss statement for three years, five BOD resolutions and agreements / contracts for carrying out business - for good prospects in future and these were hoisted on BSE's website also.

50. Regarding second parameter- "Weak financials and price rise in the scrip not supported by the parameters, it is admitted by Company that financial results of the last three years – after resumption of listing – have been bad with practically no income, but as per the Company – business model of company is Entertainment Business is such that income / revenue start after 3 years or so and investors invest in these companies on basis of so many factors like future prospects, which as per company, are healthy in view of producing films / TV serials - necessary ground work for same has been done.

51. In any case, weak financial is not a good parameter to suspend trading of a company on Stock Exchange and as per Appellant 30% of listed companies on BSE are loss-making, at any time and then their trading is to be suspended.

52. Price of scrip depends on so many factors for scrips of company's operating in different segments and sectors that is not possible to relate the price of the scrip on simply one or two such factors. As a matter of fact these factors may run into hundreds and still it may not be possible to say that all have been accounted for. As a matter of fact, it is foolhardy on part of SEBI / BSE to go into this question, which in any case is determined by market and only requirement of SEBI (through not of BSE) is to act in investors interests in securities and to promote development and regulation of securities market

and if it is seen that the same is being compromised, manipulated, rigged; SEBI is duty bound to act decisively, in shortest possible time, to deal with these on emergency basis, but unless such a situation is apprehended or arise, SEBI may let market forces decide prices.

53. In the Appellant case the price has increased from Rs. 2.67 to Rs. 149 in little over one year, SEBI / BSE may analyze the trading pattern and if it is seen some people are indulging in self trade, circular trade or increasing / decreasing prices at regular interval, dealing with small quantities of shares in pursuance to a scheme or deceptive device or in contrivance in contravention of provisions of SEBI (PFUTP) Regulations, SEBI must take action against such persons, as per law, but fixing a parameter and then tying scrips to same - is in the opinion of this Tribunal - is not the proper course of action and do injustice to investors or distorts the market, which may cause hardship / loss to one set of investors and/or which appears the case here since only 4 persons , not connected to promoters, have traded in shares of Appellant – these people if have done traded in manipulative manner, which can be recognized, should be appropriately dealt with, as per law but if due to action of these 4 persons, trading in scrip is suspended it will affect promoters, who appeared working hard to revive the company or other intending buyers and sellers in this scrip, who want to trade in same but will also be deprived of trading, even if they have not acted for manipulation of the scrip.

54. Another factor on which BSE was relying was on Table at para 4.5 (c) which shows increase in shares traded and average volume, before and after lock-in period. It was seen that average was arrived at by dividing no. of shares traded by number of days scrip was traded, before and after lock-in and since no. of days of trading before and after lock-in were different and hence

comparison of company's averages traded volume, before and after lock in, is not correct for arriving at informed decision.

55. Towards the end question of dealing with the entire issue - on emergency basis and on basis of the three parameters was not that investors do not evade tax, but was to see that investors do not use stock exchange mechanism for LTCG, but after deciding parameters to prevent use of stock exchanges for purposes of LTCG, the objective was changed to prevent use of stock exchanges for tax-evasion; the question arises if parameter suitable for preventing LTCG – which is a legal activity – can be used for purposes of tax evasion – which is an illegal activity – without addressing the issue transparently or even consciously.

56. It is now being stated by SEBI / BSE that these companies were almost non-existent companies with hardly any activity, let alone profit, in the last 3-4 years, and had weak financials although - quite a few of these were delisted / suspended for non-payment of exchange's fee etc. but it is strange that BSE recommended these company's case to SEBI for permission to raise funds through rights issues to outsiders, not once but three times in most of these cases, despite knowing fully well about their no activities, non-existence, weak financials but also allowed these companies rights issue based on what - this Tribunal does not know but after having these companies file DRHP with them - offer suggestion for changes or issue observations, which was to be necessarily carried out, in terms of SEBI (ICDR) Regulations, 2009; did SEBI / BSE not know these facts before recommending / allowing them to raise funds through rights issue, and also did not observe abnormal price rise of these companies scrip, from one year prior to end of lock-in period, through their surveillance system, where price movement of all traded shares is monitoring on line – on minute to minute basis and these surveillance

reports are analyzed by in house expert analyst and sometimes these abnormal price movement, on trading of small number of shares can be seen, yet SEBI / BSE did not find anything abnormal for one full year and yet allowed them stock splits when lock-in period ended. This raises more questions about effectiveness, generation and monitoring of surveillance by concerned persons – who catch / notice these activities when they want to.

57. Towards the end, it must be concluded that SEBI / BSE have done everything that was required to do in a very undesirable manner, whimsical and callous manner and SEBI has tried to do get it done through BSE, when only SEBI had the mandate and a duty cast on SEBI - to protect interests of investors, etc. - and is loaded with all unfettered powers to deal with such situations, on emergent basis but both SEBI / BSE are trying to do these things – which are legal and have legal ramifications – without mention of any law, and not obtaining mandatory and unambiguous approval of WTM of SEBI, which were legally required, before advising BSE to act and BSE also acting without proper authorization, taking action under a bye-law when another one was more appropriate, without mention of any law / authority in exercise of powers and thereafter trying to regularize the matter on ex-post facto basis; have not covered themselves in glory, but rather harmed the interests of investors adversely and debilitated growth of securities markets.

Sd/-
A.S. Lamba
Member

13.03.2015
Prepared & Compared By:
msb

Per: Tribunal

58. For all the aforesaid reasons, the impugned order dated 01/01/2015 in so far as it relates to the appellant as also the order dated 12/01/2015 recording reasons for suspending the trading in the shares of the appellant-company are quashed and set aside subject to the following conditions:-

a) Promoters of the appellant-company shall not buy, sell or deal in the securities of the appellant-company till 30/06/2015.

b) Setting aside the impugned order dated 01/01/2015 & order dated 12/01/2015 shall not come in the way of SEBI/BSE, either to suspend the trading in the shares of the appellant-company or to restrain the appellant, its promoters/directors or any of the preferential shareholders from buying/selling/dealing in the securities of the appellant-company in any manner whatsoever, if SEBI/BSE find any prima-facie evidence to suggest that any of them have indulged in market manipulation.

59. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
A S Lamba
Member

13.03.2015
Prepared & Compared By: PK/msb