

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 30.05.2018

Misc. Application No. 112 of 2018
And
Appeal No. 146 of 2018

1. B S Appliances Limited
17th KM, Old Madras Road,
Avalahalli, Virgonagar Post,
Bangalore – 560 049.
2. BPL Limited
BPL Works,
Palakkad – 678 007.
3. Dynamic Electronics Private Limited
11th KM, Arakere, Bannerghatta Road,
Bangalore – 560 076.
4. Namfil Finance Company Private Limited
No. 23/57, 41st Cross,
East End ‘C’ Main, 9th Block,
Jayanagar, Bangalore – 560 069.
5. Nambiar International Investment
Company Private Ltd.
167E, Poonawadi, Ambedkar Road,
Dadar, Mumbai – 400 014.
6. Electro Investments Private Ltd.
12A, Goodwill House,
Manmalatank Road,
Mahim, Mumbai – 400 016.
7. Electronic Research Pvt. Limited
“Dynamic House”,
No. 64, Church Street,
Bangalore – 560 001.
8. BPL Management Services Limited
(Formerly BPL Sanyo Finance Limited)
17th KM, Old Madras Road,
Avalahalli, Bangalore – 560 049.
9. Merino Finance Pvt. Ltd.
No. 23/57, 41st Cross,
East End ‘C’ Main, 9th Block,
Jayanagar, Bangalore – 560 069.

10. TPG Nambiar
No. 4, Ali Asker Road,
Bangalore – 560 052.

11. Meena Nambiar
10/3, Cunningham Crescent Road,
Cunningham Road Cross,
Bangalore 560 052.

12. Ajit G Nambiar
10/3, Cunningham Crescent Road,
Cunningham Road Cross,
Bangalore 560 052.

13. Anju Chandrasekhar
No. 375, 13th Main,
3rd Block, Koramangala,
Bangalore – 560 034.

14. Thankam Nambiar
No. 4, Ali Asker Road,
Bangalore – 560 052.

.....Appellants

Versus

National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. Vinay Chauhan, Advocate with Mr. K.C. Jacob, Advocate i/b Corporate Law Chambers India for Appellants.

Mr. Rahul, Advocate with Ms. Rashi Agarwal, Advocate i/b Manilal Kher Ambalal & Co for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Dr. C. K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

Misc. Application No. 112 of 2018:-

By this Misc. Application appellant seeks condonation of 6 days delay in filing the Appeal No. 146 of 2018. For the reasons stated in the

Misc. Application, the delay is condoned. Accordingly, Misc. Application is disposed of with no order as to costs.

Appeal No. 146 of 2018:-

1. This appeal has been filed to challenge the order of the National Stock Exchange of India Limited ('NSE' for short) dated April 27, 2018 by which the equity shares of Appellant No. 1, namely, B.S. Appliances Ltd. ('BSAL' for short) has been delisted with effect from May 22, 2018 as per Chapter V of SEBI (Delisting of Equity Shares) Regulations, 2009. While Appellant No. 1 is the Company, BSAL, Appellant Nos. 2 to 14 are disclosed promoters of BSAL.

2. The company, BSAL was incorporated under the Companies Act, 1956 on February 27, 1989 and listed in NSE on May 31, 1995. Trading in the equity shares of BSAL has been suspended with effect from October 10, 2005, admittedly due to non-compliance of various provisions of the Listing Agreement. It is also an admitted fact that the operation of the company has been closed pursuant to an order of the Department of Labour, Government of Karnataka dated March 30, 2005. Thereafter, the secured lenders have taken possession of the factory and asset of BSAL mortgaged to the lenders through an asset reconstruction company under SARFEASI Act. So, effectively from 2005 the company is non-functional, with its shares suspended for trading with effect from October 10, 2005. As per the latest filing available on record as on June 30, 2006, 41.05% of the shares of BSAL are being held by the public constituting 19,988 shareholders. The remaining 58.95% shares are with the promoter group.

3. The basic contention of the learned counsel Shri Vinay Chauhan appearing for the appellants is that compulsory delisting would adversely

affect the promoters and the directors of the promoter companies. The impact on one of the promoter group companies, viz. BPL Limited will be very harsh as it is a listed company and they will not be able to mobilize public resources due to the 10 year restraint that would follow as a consequence of compulsory delisting of a group entity. Since 2015 the company has been making efforts to revive its business and this fact has been given in response to the show cause notice issued by the NSE on April 18, 2016. In response to the show cause notice dated April 18, 2016 one of the directors of BSAL filed detailed reply on May 13, 2016 detailing the facts and the plans to revive business. In the light of that, the company had requested NSE not to compulsorily delist the company. However, the shares of the company was delisted unilaterally vide NSE's order dated March 6, 2017. Since that action was unilateral / ex-parte the appellants appealed against that order in this Appellate Tribunal and vide order dated November 21, 2017 this Appellate Tribunal set aside the order of NSE and directed NSE to pass a fresh order. Accordingly, in the personal hearing held on January 12, 2018 the representative of the appellants reiterated the stand of the company, its plan to revive business and the severe consequence of compulsory delisting on the promoters and therefore reiterated its request not to compulsorily delist the company. Subsequently, on February 5, 2018 when the NSE sought an action plan for voluntary delisting of the company, on February 26, 2018 BSAL submitted such an action plan. However, without considering its request / proposal the impugned order was issued by NSE on April 27, 2018.

4. Learned counsel for the appellants further submitted that in their proposal dated February 26, 2018 in response to the letter dated February 5, 2018 from NSE, it was clearly stated that the company consulted a SEBI registered merchant banker who had advised them that prior to

commencement of the process of voluntary delisting the company will have to seek revocation of suspension of trading of its shares on the NSE. In addition to seeking the same the company also sought a list of non-compliances from NSE. It was also promised that following revocation of suspension BSAL would submit a detailed plan for voluntary delisting of shares of the company. However instead of giving any response to these proposals, NSE issued the impugned order whereby the shares of BSAL have been compulsorily delisted with effect from May 22, 2018.

5. On a specific query from the Bench as to why a detailed plan of action for voluntary delisting was not given to NSE even 2 years after the SCN the learned counsel submitted that the appellants may be given some more time in providing such a plan.

6. We find no merit in the submissions made by the learned counsel for the appellants. The entire argument is premised on the implications of compulsory delisting of the shares of BSAL on the promoters and related entities in terms of their consequential inability to mobilize resources from the securities market for a period of 10 years. There is not a single word either in the appeal memo or in the submissions as to the impact on 19988 public shareholders who hold 41.05% of the shares of the company which remains suspended for trading since October 10, 2005. There is nothing on record to show that the promoters of the company made any effort in reviving its business or in compliance with the requirements of continuous listing since 2005. On the other hand, it is on record that the assets of the company have been taken possession under SARFEASI Act. In the absence of any effort by the company / promoters for reviving its business for 13 years a statement that it proposes to revive its business does not carry any merit. Similarly, appellants claim to have submitted a proposal to NSE on

February 26, 2018 for voluntary delisting of the company. However, vide this proposal the company (BSAL) has squarely put the ball back to NSE asking NSE to revoke suspension of trading in the securities of BSAL so that it can initiate the process of voluntary delisting presumably as advised by a merchant banker whom the BSAL had consulted. In its letter / reply BSAL further states that it “will not be able to resolve defaults in finalization of accounts etc. Hence, we request you to, kindly, permit the company to settle only the Annual Listing Fees payable to the Exchange and it is requested all other non-compliances be waived”. We are unable to comprehend how trading in the shares of a company which has been suspended since October 10, 2005 can be resumed when the company itself admits its inability to provide annual accounts or comply with conditions of remaining listed as per regulations except that of paying the annual listing fee. On what basis public can trade in such shares when securities market functions on the basis of dynamic information and compliance of regulatory requirements?

7. In view of the above it is an admitted position that the company could not make any meaningful effort in either reviving its business or in even initiating a meaningful process for voluntary delisting for 13 years from the closure of business and even after two years from the date of receiving the show cause notice dated April 18, 2016. Therefore, the argument of the appellants solely based on the consequences of compulsory delisting on the promoters of the appellant company has no merit. Listing Regulations, including the requirements for continuous listing and the consequences for non-compliance, are very onerous. This has been made onerous with the explicit purpose of bringing discipline in the market for listed securities and to protect and promote the interests of public / minority shareholders. The

submissions of the appellants before us do not in any way promote these stated intentions of law. As such the impugned order cannot be faulted.

8. In the result, we find no merit in the appeal and the appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

30.05.2018

Prepared and compared by:msb