



Extraordinary Together

July 10, 2023

The Listing Department
BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street, Fort,
Mumbai 400 001
BSE Scrip Code Equity: 505537

The Listing Department
National Stock Exchange of India Limited
Exchange Plaza,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051
NSE Symbol: ZEEL EQ

Subject: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time

Dear Sir/Ma'am,

Pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time ("Listing Regulations"), we enclose herewith the order passed today by Securities Appellate Tribunal, Mumbai.

Kindly take the above on record.

Thanking You,

Yours faithfully
For Zee Entertainment Enterprises Limited

Ashish Agarwal
Company Secretary
FCS6669

Encl: As above

Zee Entertainment Enterprises Limited

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BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 27.06.2023

Date of Decision : 10.07.2023

Misc. Application No. 731 of 2023

And

Misc. Application No. 732 of 2023

And

Appeal No. 492 of 2023

Punit Goenka
6 & 7th Floor, Vasant Sagar
Properties Pvt. Ltd.
A Road, Opp. Jay Hind College,
Churchgate,
Mumbai – 400 020.

...Appellant

Versus

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

...Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Pesi Modi, Senior Advocate, Mr. Kunal Katariya, Mr. Nitesh Jain, Ms. Shruti Rajan, Mr. Anubhav Ghosh, Mr. Vivek Shah, Ms. Vatsala Kumar, Mr. Harishankar Raghunath, Mr. Zerrick Dastur, Ms. Smriti Singh, Mr. Kushil Shah, Mr. Jitendra Motwani and Mr. Manendra Singh, Advocates i/b. ELP for the Appellant.

Mr. Darius Khambata, Senior Advocate with Mr. Aditya Mehta, Ms. Vidhi Shah, Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates i/b. M/s. K. Ashar & Co. for the Respondent.

WITH
Misc. Application No. 748 of 2023
And
Misc. Application No. 749 of 2023
And
Appeal No. 493 of 2023

Subhash Chandra
1st Floor, Vasant Sagar Properties Pvt. Ltd.
A Road, Opp. Jay Hind College,
Churchgate,
Mumbai – 400 020. ...Appellant

Versus

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

Mr. Somasekhar Sundaresan, Advocate with Mr. Jitendra Motwani and Mr. Manendra Singh, Advocates i/b. ELP for the Appellant.

Mr. Darius Khambata, Senior Advocate with Mr. Aditya Mehta, Ms. Vidhi Shah, Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates i/b. M/s. K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against an *ex parte ad interim* order dated June 12, 2023 passed by the Whole Time Member

(‘WTM’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) wherein the following interim directions were issued:-

- a) The Noticees shall cease to hold the position of a director or a Key Managerial Personnel in any listed company or its subsidiaries until further orders.
- b) ZEEL shall place this order before its Board of Directors, within 7 days from the date of receipt of the Order.

2. The appellant Punit Goenka is the Managing Director and Chief Executive Officer of Zee Entertainment Enterprises Ltd. (‘ZEEL’ for short) since January 1, 2010. Subhash Chandra was the then Chairman of ZEEL at the relevant moment of time when the alleged violation occurred and at the present moment is the Emeritus Chairman of ZEEL.

3. The facts leading to the filing of the present appeal is, that in November 2019 two independent directors of ZEEL resigned after raising concerns over several issues and one such issue was appropriation of a fixed deposit of Rs. 200 crore of ZEEL

by Yes Bank Ltd. for squaring off loans of related parties of Essel Group.

4. The respondent conducted an examination regarding the events leading to the resignation of the independent directors. The examination revealed that Subhash Chandra issued a 'Letter of Comfort' dated September 4, 2018 to Yes Bank Ltd. regarding credit facilities availed by certain related entities of ZEEL. Through this 'Letter of Comfort' it was stated that ZEEL would ensure that a fixed deposit of atleast Rs. 200 crore would be made available to the Bank at all times while the loan remained outstanding and, in the event of a default, the bank could appropriate the fixed deposit towards repayment. The investigation further revealed that this 'Letter of Comfort' was only known to a few persons in the management and that the Board of Directors were unaware of the said letter. The examination also revealed that the seven related entities of ZEEL were:-

Sl. No.	Name of the Associate Entities
1.	Pan India Infraprojects Pvt. Ltd.
2.	Essel Green Mobility Ltd.
3.	Essel Corporate Resources Pvt. Ltd.
4.	Essel Utilities Distribution Company Ltd.
5.	Essel Business Excellence Services Pvt. Ltd.
6.	Pan India Network Infravest Ltd.
7.	Living Entertainment Enterprises Pvt. Ltd.

5. The investigation further revealed that seven related entities paid back Rs. 200 crore to ZEEL during September / October 2019 along with interest. The investigation revealed that the issuance of the 'Letter of Comfort' without informing the Board of Directors and without taking its approval was violative of Regulation 4 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short) and accordingly a show cause notice dated July 6, 2022 was issued. In these proceedings a settlement application was filed by the appellants which was rejected on April 18, 2023. The adjudication proceedings are still pending.

6. According to SEBI it decided to examine the matter further with regard to ZEEL's claim of receipt of funds from the related entities. In this regard, details regarding the amount paid by the related entities was sought by SEBI on April 27, 2023. The details were provided by ZEEL on May 8, 2023. Thereafter, SEBI sought some clarifications vide their letter dated June 7, 2023 to which a reply was given on June 11, 2023 and thereafter the impugned *ex parte ad interim* order was passed.

7. While passing the *ex parte ad interim* order directing the appellants that they would cease to hold any position of a director or a Key Managerial Personnel in any listed company or its subsidiaries till further orders, it also directed the appellants to file their reply / objections, if any, within 21 days. Instead of filing a reply the appellants have chosen to prefer this appeal before this Tribunal.

8. We have heard Shri Janak Dwarkadas, the learned senior counsel with Shri Pesi Modi, senior counsel, Shri Somasekhar Sundaresan, Shri Kunal Katariya, Shri Nitesh Jain, Ms. Shruti Rajan, Shri Anubhav Ghosh, Shri Vivek Shah, Ms. Vatsala Kumar, Shri Harishankar Raghunath, Shri Zerrick Dastur, Ms. Smriti Singh, Shri Kushil Shah, Shri Jitendra Motwani and Shri Manendra Singh, the learned counsel in respective appeals and Shri Darius Khambata, the senior counsel with Shri. Aditya Mehta, Ms. Vidhi Shah, Shri Jayesh Ashar, Shri Mihir Mody, Shri Arnav Misra and Shri Harshvardhan Melanta, the learned counsel for the respondent.

9. The contention of the learned senior counsel was that there was no tearing urgency in passing an *ex parte ad interim* order.

The issue relates to the financial year 2019-20 and therefore there was no emergent circumstances which led the respondent to pass an interim order after more than 3 years. It was urged that there is no *prima facie* finding but under the garb of a *prima facie* observation the impugned order was passed which has caused irreparable damage to the profession and reputation of the appellants in blatant disregard to their constitutional rights. It was also urged that the respondent had no power to direct the appellants to cease to hold the position of a director under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short).

10. The learned senior counsel urged that the impugned order does not satisfy the test of an urgent provisional action which is *sine quo non* for passing an ex parte ad interim order.

11. It was urged that the respondent has erred in passing the impugned order without explaining the urgency. It was urged that the respondent has erred in imposing debilitating restraints on the appellants without necessitating any emergent urgency in the matter.

12. The learned senior counsel urged that the impugned order relates to the investigation in the affairs of the company for the

financial year 2019-20. It was urged that the respondent has failed to explain the necessity for passing an *ex parte ad interim* order after more than 3 years from the date of the alleged transaction.

13. In support of his submissions the learned senior counsel has placed reliance of a decision of this Tribunal in *North End Foods Marketing Pvt. Ltd.& Anr. vs SEBI, Appeal no. 80 of 2019 decided on March 12, 2019, Dr. Udayant Malhoutra vs SEBI, Appeal no. 145 of 2020 decided on June 27, 2020, Arshad Hussain Warsi & Ors. vs SEBI, Appeal no. 284 of 2023 decided on March 27, 2023 and Dr. Prannoy Roy vs SEBI, Appeal (L) No. 345 of 2019 dated June 18, 2019.*

14. It was also urged that if an opportunity was provided, the appellants would have justified and given proof that the *prima facie* findings arrived at by the respondent that there was round tripping of funds were wholly incorrect and that the money was paid by ZEEL for valid consideration and therefore the impugned order was violative of the principles of natural justice.

15. It was also urged that the directions issued in the impugned order has caused undue prejudice and irreparable

harm to the appellants and is also disproportionate to the alleged violations. In support of the submissions the learned senior counsel placed reliance upon a decision of this Tribunal in *Zenith Steel Pipes and Industries Limited vs SEBI, Appeal no. 554 of 2021 decided on February 21, 2023*.

16. It was contended that the *prima facie* case made out on the basis of bank statements was wholly erroneous as no reasonable person could arrive at a finding that the entries in the bank statements are fictitious or sham or bogus book entries.

17. In the end it was urged that the impugned order is not only arbitrary but is also punitive which cannot be permitted. It was therefore urged that the impugned order should be set aside and the appeal should be allowed.

18. On the other hand, the learned senior counsel for the respondent contended that the charges are serious and based on the investigation made on the basis of the replies submitted by the appellants on May 8, 2023 the *ex parte ad interim* order was passed on June 12, 2023. It was urged that there was no delay on the part of the respondent in passing the order and even though the transaction may relate to the financial year 2019-20 nonetheless necessary information was only provided in

May 2023 by ZEEL which led to further investigation, based on which a *prima facie* case was made out regarding siphoning of the funds of the Company for personal gain of the promoters. It was urged that this siphoning of the funds has led to the passing of the impugned *ex parte ad interim* order on an urgent basis. It was urged that no prejudice has been caused to the appellants.

19. In support of his contention the learned senior counsel for the respondent placed reliance on *Commissioner of Income Tax, West Bengal vs East Coast Commercial Co. Ltd.*, AIR 1967 SC 768, *Vodafone International Holdings BV vs Union of India and Another*, (2012) 6 SCC 613, *Kanta Mohan Shinde and Others vs Charul N. Doshi and Another*, 2019 SCC OnLine Bom 12496, *Anand Rathi and Others vs Securities and Exchange Board of India*, 2002 (1) Mh.L.J. 522, *Paramjit Singh Gill vs Securities and Exchange Board of India*, Appeal no. 52 of 2017 decided by this Tribunal on August 11, 2017, *Gautam Thapar & Ors. vs Securities and Exchange Board of India*, Appeal no. 413 of 2019 decided by this Tribunal on October 1, 2019, *Haryana Financial Corporation and Another vs Kailash Chandra Ahuha*, (2008) 9 SCC 31 and *Union of India and Others vs Alok Kumar*, (2010) 5 SCC 349.

20. It was urged that the impugned order categorically states that if they have any grievance the appellants could file a reply within 21 days which would be considered by the respondent. It was urged that till date no objection has been filed. It was also stated that no evidence has been brought on record to show that *prima facie* findings of round tripping of funds was incorrect or that it was based on surmises and conjectures. It was contended that in absence of any satisfactory explanation being given and in the absence of any evidence, this Tribunal should not interfere in the *prima facie* findings given in the impugned order at this stage.

21. It was contended that principles of natural justice was not violated and in the given circumstances post decisional hearing has been provided which the appellants have failed to avail. It was submitted that the impugned order does not suffer from any error of law and the appeal should be dismissed.

22. Having heard the learned counsel for the parties at some length, we find that the power to pass *ex-parte ad interim* order, pending investigation, flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that

SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section (2) of Section 11 of the Act. SEBI has power to pass an interim order and such interim order can also be passed *ex parte* in order to prevent further possible mischief of tampering with the securities market. If during the course of investigation, it is found *prima-facie*, that the person is violating the securities laws or is siphoning of the funds of the listed company to the detriment of its shareholders, it would be obligatory for SEBI to pass an interim order or for that matter an *ex parte ad interim* order in order to safeguard the interests of the investors and to maintain the integrity of the market.

23. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. However, at times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary

when *ex-parte ad-interim* orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.

24. In *Anand Rathi and Others vs Securities and Exchange Board of India, 2002 (1) Mh.L.J. 522* a Division Bench of the Bombay High Court while interpreting the provisions of Section 11 and 11B of the SEBI Act held:-

“31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. In this regard the following observations of Chinnappa Reddy J. in Liberty Oil Mills case are pertinent : (SCC page 490 para 20).

"We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim

*order of stay or suspension which has the effect of preventing a person, however temporarily say, from pursuing his profession or line of business, may have substantial serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice sufficient to enable the affected person to make an adequate representation (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right; See **Chingleput Bottlers v. Majestic Bottling Company**. That may be and in some cases it can only be after an initial ex parte interim order is made."*

32. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded. In the present case the order of 12-3-2001 itself provided a post decisional hearing on 21-3-2001. The same was availed of by the petitioners. At the post-decisional hearing, full opportunity was given to them to produce evidence and documents and the ex parte order was confirmed only after considering the submissions made by them. In these circumstances, the plea of Dr. Singhvi that there was violation of principles of natural justice, cannot be accepted."

25. In **Gautam Thapar & Ors. vs Securities and Exchange Board of India, Appeal no. 413 of 2019 decided on October 1, 2019** this Tribunal held:-

"14. There is no doubt that an ex-parte ad-interim order can be passed only when there is an urgency.

In Liberty Oil Mills & Ors. vs. Union of India & Ors. AIR (1984) SC 1271, the Supreme Court held that the urgency must be infused by a host of circumstances and further held that the regulatory agency must move quickly in order to curb further mischief and take action immediately in order to instill and restore confidence in the capital market. There is no doubt that only under emergent circumstances and spelling out a case of urgency that an ad interim ex parte orders can be passed. Such exercise of regulatory measures in the form of ad-interim ex-parte orders can only be done upon the existence of circumstances warranting such a drastic measure.

15. *Applying the aforesaid test, we find that considering the allegations spelled out in the ex-parte ad-interim order which we need not refer on merits at this stage, we find that upon the examination of the evidence, a prima facie opinion was correctly arrived at by the WTM based on objective facts indicating diversion of funds from a listed Company which was not in the interest of its shareholders. It was thus extremely necessary that an action on urgent basis was required to stop further defalcation/ diversion/ siphoning of the funds of the Company and to protect the interest of the investors and its shareholders and to instill confidence in the securities market. Such measures if not taken while the iron was hot would defeat the regulatory measures that has been provided to SEBI under the SEBI Act. We are of the opinion that, in the instant case, there was ample evidence to show urgency and, considering the material that has been brought on record, the matter being serious, warranted an inference by the regulator. Whether such transactions indicated in the ex-parte ad-interim order was dully authorized or not by the RAC or whether such transactions were approved by a resolution of the Board of Directors is a matter to be considered on merit by the appropriate authority and it is not appropriate for this Tribunal to consider such documents at this stage as consideration of these documents may prejudice not only the investigation but also the parties.”*

26. Considering the aforesaid we find that in the instant case the WTM has found that the related entities of ZEEL had defaulted in the repayment of the loan taken by them, as a result of which, the fixed deposit given by ZEEL was encashed by the Bank. The related entities alleged that the money was eventually repaid to ZEEL along with interest. In this regard, the details of the payment was sought by SEBI and the information supplied by ZEEL led to a further enquiry which showed *prima facie* a round tripping of the funds by ZEEL. It was found in paragraph 13, 16, 19, 22 and 25 of the impugned order that the funds originated from ZEEL and listed companies of Essel Group and ultimately through multiple layers the funds travelled back to ZEEL within 2 to 3 days. This evidence based on bank statements *prima facie* led to a conclusion that there has been a siphoning of the funds of the listed company through related entities and which is to the detriment of the shareholders and the investors.

27. These bank statements made the WTM to observe *prima facie* that there has been a siphoning of the funds and round tripping of the funds from ZEEL to ZEE through related entities.

28. The contention of the appellants that the transaction related to the financial year 2019-20 and therefore there was no tearing hurry to pass such kind of interim order at this stage is not acceptable. There is nothing on record to indicate that the details of the repayment made by the related entities was made known to the SEBI or to the Stock Exchange in 2019-20. These details only surfaced when ZEEL provided the information on May 8, 2023. Thus, *prima facie* at this stage there is no delay in the passing of the impugned order.

29. The contention that no *prima facie* case existed in passing the impugned order is wholly erroneous. The contention that the conclusion of siphoning of the funds cannot be arrived at on the basis of the bank statements is an attractive argument but such contention cannot be considered in view of the fact that a *prima facie* opinion was arrived at based on objective facts indicating diversion of funds from a listed company which was not in the interest of its shareholders and the investors coupled with the fact that no evidence of any sort has been placed before us to show that the *prima facie* finding is perverse.

30. In the absence of any evidence being led by the appellants before this Tribunal to show and prove that the *prima facie* findings given in the impugned order in paragraph 13, 16, 19, 22 and 25 relating to round tripping of funds by ZEEL through 13 entities within two days is incorrect, we are of the opinion that the appellants should avail the opportunity of filing the objection before the WTM and provide the documents and prove that the funds given by ZEEL to the related entities were for valid consideration and that there was no round tripping of the funds.

31. The contention that such evidence would be provided at the appropriate stage to the WTM only after the impugned order is stayed cannot be accepted. In the instant case we find that an *ex parte ad interim* order was issued considering the sense of urgency which was infused by a host of circumstances, namely, diversion of funds from a listed company to related parties which are controlled by the appellants. In the absence of any evidence being filed by the appellants before us, we do not find any perversity, irregularity, illegality or irrationality in passing of the impugned order.

32. Since the appellants have failed to provide any cogent evidence barring the fact that one of the entities, namely, Pen India Ltd. which according to the appellants is not a related entity, we are of the opinion that the appellants should file an appropriate reply for vacation / modification of the impugned order dated June 12, 2023. We do not find any reason to interfere in the impugned order at this stage and we dispose of the appeals directing the appellants to file a reply / objection along with a stay vacating application to the *ex parte ad interim* order dated June 12, 2023 within two weeks from today. The WTM will fix a date for hearing within a week from the date of filing the reply by the appellants and the WTM will pass appropriate orders within two weeks thereafter after giving the appellants an opportunity of hearing.

33. It is made clear that all arguments raised before this Tribunal will remain open to the appellants to raise the same before the WTM which will be considered and appropriate orders would be passed by the WTM. The WTM will also take into consideration the proportionality of the directions given in the impugned order vis-à-vis the alleged violation.

34. We also make it clear that any observation made by this Tribunal in our order is only *prima facie* and will not be utilized by either of the parties.

35. We, however, find that the WTM while passing the impugned order took into consideration the interim order dated April 25, 2023 passed in the matter of Shirpur Gold Refinery Ltd. in which the appellants are not parties but this order has influenced the WTM in passing the impugned order. We find that the order passed in Shirpur Gold Refinery Ltd. was passed by the same WTM who has passed the impugned order.

36. We also find that the settlement application filed by the appellants was considered by a Committee under the Settlement Regulations in which the WTM was a Member and therefore there is a possibility of the WTM being influenced by the discussions that took place in the settlement proceedings. In our opinion WTM is required to focus on the material evidence which is on the record and should not import information which is in his personal knowledge. Thus, in order to remove any kind of bias, we direct SEBI to appoint another WTM to consider the objections of the appellants.

37. In view of the aforesaid, the appeals are disposed of.
All the miscellaneous applications are also disposed of.

38. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

10.07.2023
msb