

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 30.11.2023

Date of Decision: 04.12.2023

Misc. Application No. 1436 of 2023

IN

Appeal No. 499 of 2020

1. Alpana R. Kirloskar
‘Lakaki’ Compound,
Pune- 411 016, Maharashtra.

2. Arti A. Kirloskar
“Radha”, 453,
Gokhale Road,
Pune - 411 016, Maharashtra.

3. Jyotsna G. Kulkarni
1, Yena Bungalow,
Adwait Nagar, Paud Road,
Kothrud, Pune - 411 038.

4. Rahul C. Kirloskar
‘Lakaki’ Compound,
Pune- 411 016, Maharashtra.

5. Atul C. Kirloskar
“Radha”, 453, Gokhale Road,
Pune - 411 016, Maharashtra.

...Applicants

Versus

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

2. National Securities Depository Limited
Trade World, ‘A’ Wing 4th Floor,
Kamala Mills Compound,
Lower Parel (W),
Mumbai- 400 013

...Respondents

Mr. Kunal Katariya, Advocate with Mr. Tushar Ajinkya, Advocate for the Applicants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates i/b. M/s. K. Ashar & Co. for the Respondent No. 1.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abishek Venkataraman, Mr. Pulkit Sukhramani, Ms. Vidhi Jhavar, Mr. Deepank Anand and Mr. Shourya Tanay, Advocates, i/b JSA, Advocates & Solicitors for the Respondent No. 2 NSDL.

AND
Misc. Application No. 1437 of 2023
IN
Appeal No. 503 of 2020

Anil N. Alawani
Flat No. 5, Yashodeep, C
Rambaug Colony, Navi Peth,
Pune - 411030.

...Applicant

Versus

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

2. National Securities Depository Limited
Trade World, 'A' Wing 4th Floor,
Kamala Mills Compound,
Lower Parel (W),
Mumbai- 400 013

...Respondents

Ms. Sukanya Sehgal, Advocate for the Applicant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates i/b. M/s. K. Ashar & Co. for the Respondent No. 1.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abishek Venkataraman, Mr. Pulkit Sukhramani, Ms. Vidhi Jhavar, Mr. Deepank Anand and Mr. Shourya Tanay, Advocates, i/b JSA, Advocates & Solicitors for the Respondent No. 2 NSDL.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. The Securities and Exchange Board of India (“SEBI” for convenience) passed an order dated October 20, 2020 in the matter of Kirloskar Brothers Limited restraining the appellants/applicants from accessing the securities market for a period of six months. The said order was challenged by the appellants before this Tribunal. An interim order dated December 24, 2020 was passed staying the effect and operation of the SEBI’s order subject to an undertaking to be provided by the appellants to the effect that they would not sell the shares of Kirloskar Industries Limited (“KIL” for convenience).

2. Thus, in terms of the interim order, the demat account was defreezed except to the extent of the shares held by the appellants in KIL which remained frozen pursuant to the Tribunal’s order dated December 24, 2020.

3. This Tribunal vide order dated October 12, 2022 quashed the SEBI’s order dated October 20, 2020. As a result of the final order of this Tribunal, the interim order passed by this

Tribunal on December 24, 2020 merged with the final order dated October 12, 2022.

4. In spite of the appeal of the appellants being allowed, the appellants' shares in KIL remained frozen. In this regard, the appellants addressed an email dated February 22, 2023 to SEBI requesting that the Depository Participant, namely, National Securities Depository Limited ("NSDL") be directed to unfreeze the shares held by the appellants in KIL. The appellants vide email dated February 23, 2023 also addressed an email to NSDL requesting NSDL to unfreeze the shares. In this regard, NSDL vide email dated February 24, 2023 requested the appellants to share further details from SEBI / Statutory Authority regarding defreezing of the securities frozen in terms of Securities Appellate Tribunal's ("SAT's") order. In response to the said email, the appellants vide email dated February 25, 2023 intimated NSDL about the final order passed by this Tribunal and requested defreezing of their shares. A reminder to this effect was again sent on March 02, 2023. It further transpired that NSDL issued an email dated March 13, 2023 seeking directions / guidance from SEBI with regard to defreezing of the shares. It is alleged by NSDL that no response was received from SEBI. On August 08, 2023 the appellants' addressed

another email to NSDL for defreezing of the shares which remained unaddressed.

5. Faced with the aforesaid situation, the appellants filed Misc. Application No. 1436 of 2023 in Appeal No. 499 of 2020 and Misc. Application No. 1427 of 2023 in Appeal No. 503 of 2020 seeking directions for defreezing of their shares in KIL.

6. SEBI in their reply responded that they had issued instructions to NSDL vide email dated December 13, 2022 to comply with the order of SAT and, therefore, contended that there is no default on their part and that NSDL is responsible for not defreezing the shares of the appellants.

7. NSDL was not a party in the appeal but we had directed NSDL to appear and reply to the applications filed by the appellants. NSDL contended in their affidavit that they could not take any action on the email of SEBI dated December 13, 2022 as the Permanent Account Number (“PAN”) of the appellants were not provided. NSDL further submitted that in response to the emails of the appellants for defreezing NSDL sent an email to SEBI on March 13, 2023 seeking directions /

guidance from SEBI with regard to defreezing of the shares. It was contended that no response was given by the SEBI.

8. In response, SEBI contended that the email of NSDL dated March 13, 2023 was issued to a wrong person and, therefore, remained unattended.

9. Having heard the learned senior counsel for SEBI and NSDL, we find that a blame game has started between SEBI and NSDL. Both the entities are blaming each other for non-compliance of SAT order. According to SEBI, they had addressed an email dated December 13, 2022 directing NSDL to comply with the final order of SAT. NSDL admits receiving this email but contends that they were unable to comply as the PAN Nos. of the applicants were not given. We also find that NSDL had written an email on March 13, 2023 seeking directions from SEBI on which no response was given by SEBI. SEBI contends that the email was sent to a wrong person. We also find that the appellants had also sent an email dated February 22, 2023 to SEBI requesting SEBI to direct NSDL to unfreeze the shares of the appellants. This email has not been denied by them and no action was taken by SEBI on this email.

10. The net result is, that there is apathy on the part of SEBI in not taking follow up action. No doubt they had issued an email dated December 13, 2022 to NSDL to comply with the orders of SAT but when the appellants further sent an email dated February 22, 2023 requesting SEBI to use their offices and direct NSDL to defreeze their shares, we find that no action was taken by SEBI. We also find that when NSDL had issued an email on March 13, 2023 to SEBI seeking directions and guidance in the matter SEBI took no action.

11. Considering the aforesaid, we are of the opinion that this lackadaisical approach by SEBI is contrary to the spirit of the SEBI Act which in our opinion is to protect the interest of the investors. In the instant case, we find that the interest of the investors, namely, the appellants were least considered and apathy was writ large.

12. We also find that when the Misc. Applications were filed before this Tribunal on November 01, 2023, all hell broke loose and the demat accounts and the shares of the appellants were defreezed on November 03, 2023. This by itself speaks volumes of the functioning of SEBI in reacting to matters at the last moment.

13. Considering the aforesaid, we are of the opinion, that SEBI should have been more diligent in ensuring compliance of the orders of this Tribunal and by taking a lackadaisical approach the interest of the investors suffered. For more than a year the appellants shares remained frozen inspite of their appeals have been allowed. Consequently, we dispose of the Misc. Applications directing the SEBI to pay cost of Rs. 5 lakhs to be deposited before the Registrar of this Tribunal within two weeks from today. In the event, SEBI finds that the fault lay with NSDL it will be open to them to take appropriate remedial measures against NSDL. The aforesaid direction has been passed by us in exercise of the powers conferred under Rule 21 of SAT (Procedure) Rules, 2000.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member