

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA No. 373/2017  
in  
C.P. NO.1055/I&BP/2017

Under Section 60(5) of I&BC, 2016

In the matter of :

Roofit Industries Ltd. .... Corporate Debtor

AND

In the matter of :

Jitender Kumar Jain                      ...      Applicant  
Resolution Professional

v/s.

BSE Limited                      ...      First Respndt

And

NSE Limited                      ...      Second Respndt

And

Securities & Exchange

Board of India                      ...      Third Respndt

And

The Secretary, Ministry of  
Corporate Affairs,

The Govt. of India      ...      Fourth Respndt.

Order delivered on: 15.11.2017

Coram:              Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
                            Hon'ble Mr. V. Nallasenapathy, Member (Technical)

**For the Petitioner:**              **Mr. Rishabh Shah, Counsel**  
    i/b Raval Shah & Co.  
    for Resolution Professional

**For the Respondents:**              Mr. Himanshu Vidhani i/b Khaitan & Co.  
    Adv. for Resp. No.1 (BSE)  
    Mr. Ranjith Nair, Advocate  
    i/b The Law Point  
    Adv. for Respn. No.3 (SEBI)

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Mr. Rashid Boatwala,  
a/w LIPSA UNADKAT  
i/b ManilalKher Ambalal & Co.  
Adv. for Respn. No.2 (NSE Ltd.)

*Per B.S.V. Prakash Kumar, Member (Judicial)*

**ORDER**

*Oral order dictated in the open court on 8.11.2017*

1. It is a Company Application filed by the Resolution Professional assailing the Order of Delisting passed by Bombay Stock Exchange delisting the shares of the Corporate Debtor Company along with other Companies on 21.8.2017 with reliefs as follows:

- (a) To declare that the order of 1<sup>st</sup> and 2<sup>nd</sup> Respondents i.e. Bombay Stock Exchange Ltd. and National Stock Exchange Ltd. to delist the shares of the Corporate Debtor and consequential impact that they are under SEBI Laws including the delisting Regulations of the Corporate Debtor as illegal and void in view of the provisions of section 14/238 of the Insolvency & Bankruptcy Code, 2016.*
- (b) To direct the Respondents not to deal with the shares of the Corporate Debtor pending Moratorium granted by this Tribunal.*
- (c) To direct the Respondents to list the shares of the Corporate Debtor back on the Stock Exchanges operated by them pending validity of Moratorium passed by this Bench under section 14 of I&B Code.*
- (d) To declare the provisions of SEBI laws including Delisting Regulations to the extent such provisions are inconsistent with the provisions of I&B Code not applicable to the Companies which are under Corporate Insolvency Resolution process under I&B Code.*



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*(e) Any other relief or reliefs in favor of the Applicants as this Tribunal deem fit and proper.*

2. This Applicant has made not only the Stock Exchanges as parties but also SEBI as R-3, Ministry of Corporate Affairs as R-4 impugning the notice dated 21.8.2017 given under Rule 21(2)(b) of the Securities Contract (Regulation) Rules 1957 delisting the shares of the Corporate Debtor from its Exchange. This Applicant submits that this Corporate Debtor is not under liquidation as mentioned by the First Respondent annexed to the Notice mentioned (BSE). The Applicant submits that the Whole-time Directors, Promoters and group Companies shall be debarred from accessing the Companies securities from the market for a period of 10 years and the Corporate Debtor if debarred from access to securities for a period of 10 years from the date of compulsory date of delisting as envisaged under Regulations 24 of SEBI Delisting Regulations, it will affect the revival of the Corporate Debtor whereby the Insolvency Resolution Professional has filed this Company Application under the assumption that moratorium declared under sec.14(1)(a) of I&B Code, 2016 prohibits the Stock Exchanges from delisting the shares from the Exchanges.

3. The Applicant Counsel has propounded his argument on the premise that for the power has been conferred upon the Resolution Professional under section 35 (2) of the Code to consult all the stake holders entitled to distribution of proceeds u/s 53 of the Code, he says that delisting of shares shall not be permitted, the reason he quoted is that the shares of the company would come to zero value.



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4. Since the RP Counsel has made an argument that by delisting share value gets diminished, the point now for consideration is that, can listing or delisting in the domain of the Stock Exchanges governed by Securities Rules and Regulations come from SEBI be interfered by RP under the garb of prohibition given under section 14 saying that RP is given power to consult any stakeholder, including shareholders entitled for distribution under section 53 of the Code?
5. Looking at section 35 (Powers and Duties of Liquidator) of the Code, in sub-section 2, it has only been mentioned that liquidator has power to consult stakeholders entitled for distribution of assets in the event of liquidation, this power and consultation endowed upon the professional is limited to exercise his powers in respect to distribution of the proceeds under sec.53, not in respect to the governance over listing of the shares of the Corporate debtor Company, which is purely governed by Securities Contract (Regulation) Rules 1957.
6. When this Bench has made this observation, the Resolution Professional has shown an amendment to the Regulation 2017 saying a regulation has been passed on 5.10.2017 conferring power upon the Resolution Professional to deal with the interest of stakeholders including Financial Creditor, Operational Creditor of the Corporate Debtor.
7. By such a Regulation, can it be said that the action taken by a different authority under different enactment should be stayed owing to commencement of Corporate Insolvency Resolution Process? More so, that Regulation has not said anywhere some special power has been conferred upon Resolution professional to deal with securities of a



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company. If at all any such Regulation has come into existence, it cannot be conceived that regulation has been given to supersede the power conferred upon the various Authorities in respect to other laws. Here, even by going through this Regulation, it appears that power has been conferred upon the Insolvency Resolution Professional only to include how he has to deal with the interest of the stakeholders in the statement prepared by him. It is limited to deal with preparation of a statement, not to interfere with governance under some other enactment stretching himself to debar other Authorities from exercising the powers endowed upon under respective laws.

8. By going through the Notice impugned by this Insolvency Resolution Professional, it appears that these Stock Exchanges have taken action under Rule.21(2)(b) of the Securities Contract (Regulation) Rules 1957, as this company failed to comply with the provisions of Listing Agreement. It goes without saying that every listed company shall abide by the listing agreement terms and conditions, if and when any listed company violates the listing terms and conditions, it is given power to delist the same.

9. Moreover, before delisting these shares, the Delisting Committee considered the explanation of the corporate debtor, then only NSE delisted this Company on 7.2.2017 i.e. far before declaration of Moratorium given against this company.

10. If at all this Corporate Debtor has any grievances in respect to the decision taken by the Stock Exchanges, since this could be appealed before Securities Appellate Tribunal, this company ought to have appealed before the respective Tribunal not before this Bench, this kind



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of approach is nothing but messing up with the jurisdictions given under respective statutes.

11. Another argument propounded by the Professional is, that the notice dated 21.8.2017 given by Bombay Stock Exchange is repugnant to the prohibition declared under section 14 of the Code, therefore the impugned notice dated 21.8.2017 issued by Bombay Stock Exchange shall be void in view of Sections 14/238 of the I&B Code.

11. It would be out of context if I say it later that the notice dated 21.8.2017 issued by BSE is a sequel to the delisting order already passed, because once a company is delisted from one Exchange, as per the argument advanced by BSE, it is imperative on the part of other Exchange to follow the same. National Stock Exchange already delisted this company on 7.2.2017 itself.

12. When this Bench has put it to this RP as to under what sub-section of section 14 is applicable to stay the notice issued by BSE, to which his answer is, it is covered u/s 14(1) of I&B Code. On reading this provision, it appears that this provision is in respect to institution of suits, continuation of pending suits or proceedings against the Corporate Debtor including mentioning of any judgment, decree or order in any Court of law, Tribunal, Arbitration panel and other Authorities. If at all combined reading is given to the prohibition given under the said sub-section, it appears it is a prohibition to proceed against the company in respect to the dues payable by the company, not in respect to other violations under various enactments. All actions envisaged there, are of same kind. There cannot be any omnibus applicability of prohibitions or restrictions given under any enactment, including this Code as well.



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There are two tests to be looked into, one is strict application of prohibitory law, it can't be liberally and freely applied like any other beneficiary legislation, two is the doctrine of Eiusdem generis, which is applicable to understand these prohibitions given in section 14 (1) (a) of the Code, because this Code is basically a Code dealing with debts payable by the company, therefore what all prohibitions and overriding effect speaking of under section 238 is to be conceived as an effect to be given in respect to the laws dealing with dues payable by the Company, but not to arrest the effect of all enactments working under respective domains.

13. Companies are governed by various enactments, they have to run in compliance of laws of this country, and it can't be that companies running under CIRP are free enough to flout all other laws. It cannot be the intention of any enactment and it is in fact not so.

14. As to application of section 238 is concerned, that non-obstante clause can be invoked only when any other law, dealing with the core issues this enactment dealt with, is inconsistent with the provisions of I&B Code, since the provisions of Securities Contract Regulations Rules of 1957/provisions in respect to the Listing of shares before Exchanges is nowhere connected to the dues payable by the company, it can't be said that action under Securities Contract Regulations Rules of 1957 is hit by either Moratorium under section 14 or under section 238 of the Code. It is an issue in relation to Investors therefore, such an issue cannot be construed as inconsistent with the provisions of I&B Code, therefore, this Bench is of the opinion that the action of National Stock Exchange or Bombay Stock Exchange is neither connected to the prohibitions given

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under sec.14 of I&B Code nor inconsistent with the non-obstante clause given under 238 of I&B Code.

15. We therefore have not found any merit in the Application filed by this Applicant for declaring the notice dated 21.8.2017 issued by BSE as void, henceforth this Company Application is hereby dismissed without costs.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR  
Member (Judicial)