National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/54364	**Date: November 10, 2022**
Circular Ref. No: 166/2022	

To All NSE Members

Sub: **SAT Order in the matter of The Bombay Dyeing and Manufacturing Company Ltd.**

This is with reference to NSE circular no. NSE/INVG/54183 dated October 21, 2022 referring to SEBI Order no. WTM/ AB/CFID/CFID_1/20686/2022 23 dated October 21, 2022.

Hon'ble Securities Appellate Tribunal (SAT) vide its order dated November 10, 2022, has stated that the effect and operation of the impugned order against the below entities shall remain stayed during the pendency of the appeal.

Sr. No.	Name of Entity	PAN
1	The Bombay Dyeing and Manufacturing Company Ltd	AAACT2328K
2	Scal Services Limited	AAACS9121P
3	Mr. Nusli N Wadia	AAAPW0990M
4	Mr. Ness N Wadia	AAAPW0814G
5	Mr. Jehangir N Wadia	AAAPW0989N
6	Mr. D S Gagrat	AACPG8665M
7	Mr. N H Datanwala	AACPD5729K
8	Mr. Shailesh Karnik	AISPK4123A
9	Mr. R Chandrasekharan	AABPC3516A
10	Mr. Durgesh Mehta	AAKPM9703A

The detailed order is available on SAT website (http://www.sat.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Rohit Swami (Extension: 23023), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: - SAT Order in the matter of The Bombay Dyeing and Manufacturing Company Ltd.

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 10.11.2022

Misc. Application No. 1353 of 2022
And
Misc. Application No. 1354 of 2022
And
Appeal No. 838 of 2022

The Bombay Dyeing and Manufacturing Company Limited & Anr. …Appellants

Versus

Securities and Exchange Board of India …Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Rohan Kelkar, Mr. Abhay Jadeja, Mr. Varun Satiya and Mr. Arun Unnikrishnan, Advocates i/b Jadeja & Satiya for the Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Feroze Patel, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K Ashar & Co. for the Respondent.

WITH
Misc. Application No. 1355 of 2022
And
Misc. Application No. 1356 of 2022
And
Appeal No. 839 of 2022

Nusli Neville Wadia & Ors. …Appellants

Versus

Securities and Exchange Board of India …Respondent

Mr. Darius Khambata, Senior Advocate with Mr. J.P. Sen, Senior Advocate, Mr. Tushar Hathiramani, Mr. Abhay Jadeja, Mr. Varun Satiya and Mr. Arun Unnikrishnan, Advocates i/b Jadeja & Satiya for the Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Feroze Patel, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K Ashar & Co. for the Respondent.

AND
Misc. Application No. 1373 of 2022
And
Misc. Application No. 1374 of 2022
And
Appeal No. 840 of 2022

SCAL Services Ltd. & Ors. …Appellants

Versus

Securities and Exchange Board of India …Respondent

Mr. Navroz Seervai, Senior Advocate with Mr. Abhisek Venkataraman, Ms. Arti Raghavan, Mr. Alhan Kayser and Mr. Aniket Worlikar, Advocates i/b Sujit Lahoti & Associates for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K Ashar & Co. for the Respondent.

ORDER:

1. All these appeals are against a common order and are being taken up together. Since the appeals have been taken up for consideration, the urgency applications are disposed of.

2. We have heard Shri Darius Khambata, Shri J.P. Sen, the learned senior counsel, Shri Somasekhar Sundaresan, the learned counsel, Shri Navroz Seervai, the learned senior counsel for the appellants and Shri Gaurav Joshi, the learned senior counsel and Shri Sumit Rai, the learned counsel for the respondent.

3. The show cause notice alleges that the appellants and other noticees were involved in a fraudulent scheme of misrepresentation of financial statements of The Bombay Dyeing and Manufacturing Company Limited (‘Bombay Dyeing’ for short) by inflating sales of Rs. 2492.94 crores and profits of Rs. 1302.20 crores arising from the alleged sale of flats by Bombay Dyeing to SCAL Services Ltd. (‘SCAL’ for short) over a period from financial year 2011-12 to 2017-18. The show cause notice alleges that the shareholding structure of SCAL was deliberately designed in such a manner that even though Bombay Dyeing directly held only 19% in the share capital of SCAL, but through its indirect holdings, Bombay Dyeing was able to exercise complete control over the entire share capital of SCAL. The show cause notice alleged that the direct shareholding of Bombay Dyeing in SCAL was deliberately designed to keep it at 19% so as to ensure that the

definition of Associate Company was not attracted and therefore the financial statements of SCAL was not consolidated with the financial statements of Bombay Dyeing. It was alleged that if the financial statements of SCAL had been consolidated with Bombay Dyeing the aforesaid sales and profits of Bombay Dyeing from transaction with SCAL would not have been reflected in the consolidated financial statements.

4. The Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) found that the consolidation of financial statements of SCAL with Bombay Dyeing was not mandatory and even though there was a deliberate design to directly hold 19% in the share capital of SCAL yet by *de facto* means controlled the entire share capital of SCAL and Bombay Dyeing was able to eschew from the compliance of consolidation of financial statements, thereby hatched a grand scheme of fraudulent misrepresentation of the financial statements by inflating sales and profits of Bombay Dyeing.

5. The question which arises for consideration is, whether the financial statements of SCAL was required to be consolidated with the financials of Bombay Dyeing. Admittedly, SCAL was

not a subsidiary and the question is whether SCAL is an associate of Bombay Dyeing within the meaning of Section 129 read with Section 2(6) of the Companies Act, 2013. Section 2(6) provides that an associate company means control of atleast 20% of total share capital under an agreement. Section 129(3) required consolidation of the financial statement of the Company and its subsidiaries. Associate companies was added with effect from 07.05.2018. Further consideration is, whether non-consolidation of financials amounts to fraud under Regulation 3 and 4 of PFUTP Regulations.

6. Admittedly, SCAL was an associate company and whether its financial statements were required to be consolidated with the financial statements of company Bombay Dyeing is to be considered in the present appeal.

7. We find that admittedly Bombay Dyeing had 19% of the share capital of SCAL and this was continuing since the financial year 2011-12 whereas Section 129 of the Companies Act, 2013 came into effect from 01.04.2014.

8. Further in the absence of any inducement, prima facie case of fraud is not made out especially when there was no bar for consolidation of financials.

9. In view of the aforesaid, let a reply be filed by the respondent within three weeks from today. Rejoinder may be filed within three weeks thereafter. The matter would be listed for admission and for final disposal on January 10, 2023.

10. Considering the fact as to whether the company Bombay Dyeing was obligated to consolidate the financials of its Associate Company SCAL in view of Section 2(6) of the Companies Act, 2013 read with Section 129(3) of the Companies Act coupled with the fact that there was no diversion of funds nor there is any finding of any disproportionate gains or loss caused to any investor nor we find that there was any market impact regarding the financials of the company Bombay Dyeing, we consequently direct that the effect and operation of the impugned order shall remain stayed during the pendency of the appeal. The stay applications are disposed of.

11. 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

10.11.2022
msb