

Prabhat Dairy Limited

March 08, 2021

BSE Limited Phiroze Jeejeebhoy Towers Dalal Street Mumbai Ref. Scrip Code : 539351	National Stock Exchange of India Ltd., Exchange Plaza, C-1, Block G, Bandra Kurla Complex, Bandra (E) Mumbai – 400 051 Ref: Symbol - PRABHAT
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Ref.: Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

Dear Sir/Madam,

This is to inform all the stakeholders that the Company had filed an appeal with Securities Appellate Tribunal (SAT) for an order dated December 21, 2020 passed by Securities and Exchange Board of India (SEBI) under Section 11 (1) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 25A of the Securities and Exchange Board of India (Delisting of equity shares) Regulations, 2009. The H'ble SAT passed an order on 4th March, 2021 which was uploaded on its website on 8th March, 2021. The SAT order is attached herewith.

Kindly take the same on your records and acknowledge.

Thanking you.

Yours faithfully

For Prabhat Dairy Limited



Vivek Nirmal
Joint Managing Director

CIN : L01100PN1998PLC013068

Registered Office : Gut No.122, At.Ranjankhol, Po.Tilaknagar, Tal.Rahata, Shrirampur, Dist.Ahmednagar, Maharashtra-413720. Tel.:+91-2422-265995,

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BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 04.03.2021

Appeal No. 42 of 2021

Prabhat Dairy Limited
Gut No. 122, At Rajankhol,
Post Tilaknagar,
Ahmednagar District,
Maharashtra- 413 720

...Appellant

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 Stock Exchange of India Limited
Exchange Plaza Block G, C1,
Bandra Kurla Complex,
G Block BKC,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra 400 051
3. BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal St, Kala Ghoda, Fort,
Mumbai, Maharashtra- 400 001

...Respondents

Mr. Janak Dwarkadas, Senior Advocate with Ms. Rishika Harish, Mr. Aditya Bhansali, Mr. Suyash Bhandari, Advocates and Ms. Nirali Mehta, Practicing Company Secretary i/b Mindspright Legal for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Anubhav Ghosh and Mr. Ravishekhar Pandey, Advocates i/b The Law Point for Respondent No. 1.

Mr. Vishal Kanade, Advocate with Mr. Rashid Boatwalla, Advocate i/b MKA & Co., for Respondent No. 2

Mr. Sagar Divekar, Advocate with Mr. Abhimanyu Mhapankar, Advocate for Respondent No. 3

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against the order dated December 21, 2020 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) allowing the application of the appellant and extending the timeline for filing the final application as required under Regulation 8(1)(d) of the SEBI (Delisting Regulations of Equity Shares) Regulations, 2009 (“Delisting Regulations, 2009” for convenience) subject to certain conditions imposed therein. The appellant being aggrieved by the imposition of the conditions has filed the present appeal.

2. The brief facts leading to the filing of the appeal is, that the Board of Directors of the Company Prabhat Dairy Ltd. resolved on September 10, 2019 to seek approval for voluntary delisting from the shareholders of the Company. Based on this

resolution a special resolution was passed by 99.13% of the shareholders which was approved by the Board of Directors on October 14, 2019. Thereafter, a formal application was filed before the two stock exchanges namely; National Stock Exchange of India Limited (“NSEIL”) and BSE Ltd. (“BSE”) on October 22, 2019 seeking approval under Regulation 8(1)(c) of the Delisting Regulations, 2009.

3. The application is required to be disposed of by the stock exchange within 5 working days under Regulation 3 of the Regulations if the application is complete in all respects and thereafter a final application is required to be filed and processed under Regulation 8(5) of the Regulations.

4. Since no order was passed on the application seeking approval of voluntary listing by the stock exchanges and the validity of the special resolution which is twelve months was going to expire under the Companies Act, the appellant filed an application on October 14, 2020 seeking extension of the validity of the special resolution by six months. This application was allowed by the WTM by the impugned order of December 21, 2020 and the validity of the special resolution

was extended by six months i.e. till April 13, 2021. However, the extension was hedged with certain conditions.

5. We have heard the learned senior counsel Shri Dwarkadas, for the appellant and Shri Dada, the learned counsel for SEBI and Shri Vishal Kanade, the learned counsel for NSEIL and Shri Sagar Divekar, the learned counsel for BSE Ltd.

6. We find that the conditions imposed in paragraph 14 of the impugned order is directly against the teeth of the order of this Tribunal dated November 09, 2020 passed in ***Appeal No. 413 of 2020 (Prabhat Dairy Limited & Ors. Vs SEBI)***. This Tribunal had categorically stated in paragraph 28 of the order dated November 09, 2020 that the forensic audit report has nothing to do in so far as the processing of the delisting application is concerned. This Tribunal in paragraph 33(iv) of its order had further directed that the delisting application should be processed within six weeks. For facility paragraph 28 and 33(iv) is extracted hereunder:

“28. We are also of the opinion that the determination of price of the shares of the Company is the domain of the shareholders and SEBI has no say in it. Further, the submission of the forensic report also has nothing to do so far as the application of the

appellant for delisting approval is concerned in as much as the person / entity who has to pay to the shareholders in the event the delisting application is allowed is the acquirer and, on the other hand, the distribution of the sale consideration has to be done by the Company. To that extent the learned senior counsel Shri Rafique Dada's contention on this aspect is correct and justified but, at the same time, the respondent cannot blow hot and cold and this can be seen from the fact that the respondent is not processing the delisting application and are awaiting the result of the forensic report which is only confined to the sale transactions and the distribution of the tax liability, indemnity, transaction cost etc.

33(iv) Simultaneously, the respondent shall process the delisting application under the Delisting Regulations and SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011 and pass appropriate orders within six weeks from today."

7. The period of six weeks has expired and no order has been passed by the stock exchange. In the impugned order of December 21, 2020 the WTM has also directed the stock exchanges to process the delisting application. We are

constrained to observe that inspite of the direction of this Tribunal as well as by SEBI, no efforts have been made by the stock exchanges to process the delisting application. According to the instructions received by the counsels for the stock exchanges they were awaiting further instructions from SEBI without realizing that the stock exchanges are required to process the application within a stipulated period as per the provisions of the Delisting Regulations, 2009.

8. We also find that the WTM while imposing the conditions mentioned in paragraph 14 of the impugned order has totally exceeded its jurisdiction in passing such order which was in complete violation of the provisions of the Delisting Regulations, 2009. Further, the said direction was a clear case of circumventing the order of this Tribunal dated November 09, 2020. We are also constrained to observe that by not processing the delisting application the interest of the minority shareholders are being jeopardized.

9. Considering the aforesaid the conditions mentioned in paragraph 14 of the impugned order dated December 21, 2020 are quashed and the appeal is allowed to that extent. Since the special resolution is valid till April 13, 2021 and the stock

exchanges are required to process the application as per Regulation 8(3) of the regulations, we direct the two stock exchanges to process the application within the stipulated period as provided under the regulations and pass appropriate orders in accordance with law. In the circumstances of the case, there shall be no order as to costs.

10. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

04.03.2021
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KSHMI H
NAIR

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by RAJALAKSHMI
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