

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 4 of 2007**

**Date of decision : 16.4.2008**

Palco Metals Limited

..... Appellant

Versus

1. Ahmedabad Stock Exchange Ltd.
2. Securities and Exchange Board of India

..... Respondents

Mr. A.S. Asthavadi Advocate for the Appellant.

None present for Respondent No.1.

Mr. Devanshu Desai Advocate with Ms. Dhvani Mehta Advocate for Respondent No.2.

Coram : Justice N.K. Sodhi, Presiding Officer  
Arun Bhargava, Member  
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

The appellant before us is a limited company incorporated under the provisions of the Companies Act, 1956. Its shares were listed on the Ahmedabad Stock Exchange (for short the exchange) some time in the year 1960 and they continued to remain listed till 11.4.1993. The company was de-listed with effect from 12.4.1993 on account of non-payment of listing fee. The exchange allowed re-listing of the shares from July 9, 1997 because by that time the appellant company had paid the arrears of the listing fee. On February 15, 1997 the shareholders of the company in an extraordinary general meeting authorized the board of directors to allot 900520 additional shares on preferential basis under section 81(1A) of the Companies Act. It is not in dispute that in pursuance to this resolution, the board of directors made the allotment on 8.3.1997. The company then applied on 19.8.1997 to the exchange for the listing of the preferential shares. This application remained pending with the exchange for a few years and during this period correspondence was being exchanged between the exchange and the Board. By letter dated October 18, 2002 the Board informed the exchange that the preferential allotment made by the company was without complying with the regulatory requirements as the shares of the company were not listed on any

stock exchange. The exchange was advised “not to list these shares as the allotment was made during the period when the company was de-listed from the exchange and without complying the regulatory requirements.” In view of this advice, the exchange by its letter dated 22.10.2002 informed the appellant company that its application for listing had been closed. Feeling aggrieved by the action of the exchange in rejecting the application, the appellant filed Appeal no. 8 of 2003 before this Tribunal. It may be mentioned that when the company filed the application for listing of the preferential shares on 19.8.1997 it had already been re-listed with effect from 9.7.1997. When the appeal came up for hearing on 22.9.2004 the learned counsel appearing for the Board took the stand that it (Board) does not advise stock exchanges as to whether a scrip could be listed or not and that it is for the stock exchange to take a decision in that regard. Having advised the exchange to reject the application for listing, it should have defended its action rather than shirking its responsibility to own that decision before the Tribunal. Instead of doing that it washed its hands off and left it to the exchange to take a decision. The learned counsel appearing for the exchange withdrew the impugned order because the ground on which the application had been rejected was no longer then subsisting. Of course, liberty was given to the exchange to pass a fresh order.

After the appeal filed by the appellant had been disposed of, the exchange again took up the matter with the Board and with some independent company secretaries for advice as to how the application for listing could be dealt with. The Board sent a communication dated November 18, 2004 to the exchange pointing out that the company had contended that it was a listed company when the shares were issued on preferential basis on March 8, 1997 and that it had signed the listing agreement with the exchange on October 31, 1996. In view of these facts, the Board drew an absurd inference that the regulatory requirements applicable to listed companies in making preferential allotment had not been complied with. The Board did not point out any specific regulatory requirement which the company is said to have violated. The exchange by its communication dated July 26, 2006 again informed the company that its application for the listing of 900520 equity shares of Rs.10 each issued on

preferential basis stood rejected. The operative part of this communication reads as under :

“Taking into considerations of all the facts and circumstances, SEBI’s advise vide its letter no.CFD/DCR/TO/AT/25769/2004 dated 18<sup>th</sup> November 2004 to the Exchange as well as opinions received from M/s. Kapoor and Ved, Practicing company Secretaries, as well as submissions made by the Company in respect of observations made in the opinions received, the L & D Committee after discussion viewed that the requirement as to auditor’s certificate in respect of pricing of shares may be waived keeping in view the non trading of the securities.

However, in respect of compliance under the provisions of SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, the L & D Committee was of the view that company has failed to comply with the prevalent SEBI (SAST) Regulations and to waive or exempt the company from the requirements of SEBI Preferential issue guidelines as well as SEBI (SAST ) Regulations lies within the purview of SEBI and not with the Exchange.

Over and above SEBI vide its no. CFD/DCDR/TO/AT/25769/2004 dated 18<sup>th</sup> November 2004 has advised the Exchange to take decision on the application of the company in accordance with the rules, regulations and bye laws of the Exchange, after taking into facts and circumstances of the case, interests of the shareholders of the company and the securities market, the listing application of the company should be rejected.

In view of the foregoing the L&D committee has decided to reject the listing application of 900520 equity shares each of Rs.10/- issued on preferential basis by your company at ASE.

This is for your information.”

It is against this rejection that the present appeal has been preferred under section 22A of the Securities Contracts (Regulation) Act, 1956.

We have heard the learned counsel for the parties and are of the view that the appeal deserves to succeed. After the application for listing had been filed on 19.8.1997 there was correspondence exchanged between the exchange and the Board as to whether the preferential shares issued by the appellant company should be listed or not. As already observed, the Board was of the view that since the allotment was made during the period when the company had been de-listed from the exchange, the preferential shares could not be listed without complying with the regulatory requirements. It had not been pointed out as to which regulatory requirement had not been complied with by the appellant company. During the course of the exchange of correspondence between

the exchange and the Board the former had informed the latter by its communication dated 15.11.2000 as under :

“ASE SHALL HAVE “NO OBJECTION” TO THE LISTING OF ABOVE EQUITY SHARES, PROVIDED IN THE CIRCUMSTANCES AND ON FACTS OF THE CASE, SEBI DEEMS IT FIT AND PROPER TO PERMIT THE LISTING OF THESE ADDITIONAL SHARES.”

Again, by its letter dated 9.3.2001 the exchange informed the Board as under :

“FURTHER, RE-LISTING CASE WAS ALSO DISCUSSED WITH SEBI DIVISION CHIEF MR. R. C. FUPTA, AT THE TIME OF HIS VISIT TO AHMEDABAD DURING SEBI INSPECTION AND WE WERE ADVISED TO CONSIDER CASE FOR RE-LISTING AS THE COMPANY HAVING GOOD INVESTOR BASE AND IN THE INTEREST OF PUBLIC SHAREHOLDERS AT LARGE.”

Despite the fact that the exchange had no objection to the listing of the preferential shares, the Board did not allow the exchange to list those shares as, according to it, those had been allotted at the time when the company had been de-listed. This is no ground for refusing listing. The order of rejection passed by the exchange was then withdrawn when the same had been challenged in appeal and the following order was passed by the Tribunal on 22.9.2004.

"The appeal is taken up with the consent of parties.

It is settled law that SEBI does not advise Stock Exchanges as to whether a scrip could be listed or not but, that is the job of the Stock Exchange. However, it can give its opinion with regard to any violation of Regulation, if pointed out. In that view of the matter, the learned counsel for the respondent seeks leave on the court to withdraw the impugned order with liberty to pass an appropriate order, if necessary, in accordance with law.

The appeal is disposed of accordingly.

No order as to costs.”

In pursuance to the liberty granted by this Tribunal to pass a fresh order, the exchange has again rejected the listing application and the operative part of the order has been reproduced hereinabove. It is mentioned that the listing and delisting committee of the exchange was of the view that the appellant company had failed to comply with the provisions of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations without referring to any specific regulation that had been violated. Again, it is not clear whether the Board advised the exchange to reject the application or whether the exchange took a decision on its own and, in any case,

whoever took that decision has given no reasons as to why the application for listing deserves to be rejected. As already observed, neither the exchange nor the Board in its correspondence has pointed out any specific provision of any regulatory requirement that is said to have violated by the company. Having regard to the fact that the exchange on its own had no objection to the listing of the shares, we see no reason why the application for listing should not be allowed. Although the exchange had expressed its willingness to list the preferential shares in the year 2000, for some reason or the other and presumably at the behest of the Board they have not been allowed to be listed till date. The Board and the exchange should realize the loss suffered by the shareholders of the company who have been deprived of the opportunity to trade their shares in the market. This is not the way to protect their interests.

Before concluding, we may mention that the exchange has not put in appearance despite service and we have had no assistance from its side. The Board, as usual, has taken the stand that the issue is between the appellant and the concerned stock exchange, though earlier it had not permit the exchange to allow listing.

In view of what has been stated above, the appeal is allowed and the decision of the exchange to reject the application for listing set aside. The exchange will now list the preferential shares allotted by the appellant company within two weeks from the date of receipt of a copy of this order. The appellant will have its costs from the respondents which are assessed at Rs. 1 lac to be shared by the respondents equally.

Justice N.K. Sodhi  
Presiding Officer

Arun Bhargava  
Member

Utpal Bhattacharya  
Member

16.4.2008  
bk/-

