

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 29 of 2013

Date of Decision : 09.04.2013

White Water Management Services Pvt. Ltd.
(formerly known as Nishwet Management
Services Pvt. Ltd.)
601, Plot No. 371, Sukha Castle,
Opp. HDFC Bank, Bhandarkar Road,
Matunga, Mumbai – 400 019.

...Appellant

Versus

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

...Respondent

Mr. Zal Andhyarujina, Advocate with Ms. Akshaya Bhansali, Advocate for the
Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the
Respondent.

CORAM : P.K. Malhotra, Member & Presiding Officer (*Offg.*)
Jog Singh, Member

Per : P.K. Malhotra (Oral)

This appeal is directed against the order dated August 24, 2009 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) confirming the ex parte ad interim order dated April 23, 2009 passed by the Board pending investigations in the matter of Pyramid Saimira Theatre Limited. By the ex parte ad interim order dated April 23, 2009, the appellant was restrained from buying, selling or dealing in securities market including initial public offerings directly or indirectly till further directions. We are informed that the investigation in the matter was concluded as early as on July 31, 2010. Thereafter the appellant has been making representations to the Board for vacating the interim order but no further action has been taken by the Board. The appellant also states that the directions issued by the Board against the appellant are being continued even after the passage of more

than three years. The Board has neither initiated any action nor it has taken any steps to discontinue directions against the appellant restraining it from accessing the securities market. It is, therefore, prayed that the impugned order, in so far as it relates to the appellant, be set aside.

2. During the course of the hearing, learned counsel for the respondent Board stated that in furtherance to the investigation, a show cause notice has been issued to the appellant on March 26, 2013. The appellant is now required to furnish its reply to the said show cause notice which will be considered by the Board. It was stated, on instructions, that the Board will pass a final order in the matter within a period of three months from the date of receipt of reply to the show cause notice from the appellant. Since the Board has already issued a show cause notice after completion of the investigations, it was submitted that, in view of the changed scenario, no interference is called for by the Tribunal at this stage.

3. We have heard learned counsel for the parties for some time who have taken us through the records of the case. We take note of the fact that as per Board's own admission, the investigations in the matter were concluded on July 31, 2010. However, show cause notice was issued to the appellant only on March 26, 2013 and that too after the appellant had approached this Tribunal for relief. On an earlier occasion also, under similar circumstances, we had expressed our unhappiness and concern over this approach of the Board which amounts to making the appeal infructuous. If the Board proposes to pass an order which is likely to affect the appeal pending before this Tribunal, it is expected that the Board should bring this fact to the notice of the Tribunal before passing such order. We expect that the Board will follow this practice lest such action may be seen as interference in the judicial process.

4. Coming to the facts of the present case, we are of the view that since a show cause notice has already been issued and a statement has been made on behalf of the

Board that final order will be passed within a period of three months from the date of receipt of reply from the appellant, we are not inclined to go into the merits of the case or to deal with the impugned order. However, we direct the Board to pass a final order in the matter within a period of three months from the date of receipt of reply to the show cause notice from the appellant. In case the Board fails to do so, the impugned order passed against the appellant shall automatically stand vacated.

5. Mr. Zal Andhyarujina, learned counsel for the appellant further prayed that since the appellant has been restrained from trading in the market under the interim order for almost a period of four years now, the respondent be directed to allow the appellant to dispose of all its shares in the demat and pool accounts to avoid any contingent losses. We have given our thoughtful consideration to the prayer of the appellant. Since the Board has already agreed to pass a final order within a period of three months, we are not inclined to deal with this prayer at this stage, more so, when no details of the shares maintained in the demat and pool accounts of the appellant have been placed on record. However, the appellant is at liberty to approach the Board with necessary details and Board may deal with such request as it may deem appropriate in the facts and circumstances of the case. The decision on such request should be taken by the Board as per law within two weeks from the date of receipt of such request.

The appeal stands disposed of as above with no order as to costs.

Sd/-
P.K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
Jog Singh
Member

09.04.2013

Prepared and compared by:
msb