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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.12981 OF 2024

Amit Goenka

.. Petitioner

Vs.

Securities and Exchange Board of
India (Through Chairman) & Ors.

.. Respondents

...
Mr. Pradeep Sancheti, Senior Advocate with Mr. Vikramaditya
Deshmukh, Ms. Shreni Shetty, Ms. Antara Kalmbi i/by ANB Legal
for petitioner.

Mr. Mustafa Doctor, Senior Advocate with Ms. Vidhi Shah Ajmera,
Mr. Mihir Mody with Mr. Harshavardhan Melanta, Mr. Shreyas
Menkudale i/by M/s. K. Ashar & Co., Advocates for respondent
no.1-SEBI.

Mr. Sagar Divekar with Mr. Abhimanyu Mhapankar Advocates for
respondent no.2.

Mr. Siddhesh Bhole with Adv. Riddhi Natekar i/by SSB Legal and
Advisory, Advocates for respondent no.3.

...

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 14th AUGUST, 2024.

P.C. :

1. Heard. The petitioner has raised a challenge to the
communication dated 13th September 2021 that has been issued
by SEBI-Securities and Exchange Board of India-SEBI by which
KPMG-KPMG Assurance and Consulting Services, a limited
liability partnership-KPMG has been appointed as Forensic
Auditor with regard to the financial statements of the fourth
respondent- Shirpur Gold Refinery Limited-SGRL for the financial
years ending 2018-2019 to 2020-2021. The records/documents

to be verified have been indicated in the said communication. Consequent upon its appointment as Forensic Auditor, KPMG has submitted its report dated 21st March 2023 which is also under challenge.

2. Mr. Pradeep Sancheti, learned Senior Advocate for the petitioner submitted that KPMG was not eligible to be called upon to submit a Forensic Report as it did not satisfy the eligibility criteria prescribed under the tender issued by SEBI. According to him, KPMG was not registered as required by Section 2(1)(ca) of the Chartered Accountants Act, 1949. It also did not have any FRN registration or CIN number. Inviting attention to various documents on record, it was submitted that KPMG on 21st March 2023 submitted a Project Aurum Report which could not be called a Forensic Report as was directed to be submitted. There was no reference to any Unique Document Identification Number-UDIN in the said report which was mandatory. In the list of firms registered with the third respondent-Institute of Chartered Accountants of India-ICAI, the name of KPMG as a registered firm was not indicated. He also referred to the objects of KPMG to indicate that carrying out Forensic Audit was not included therein. Relying upon the decision in *Lakshmanaswami Mudaliar*

& Others Vs. Life Insurance Corporation of India & Anr, AIR 1963 SC 1185 it was submitted that in absence of any such object behind formation of KPMG, it could not have carried out such forensic audit. Even in its list of partners, the name of the person who had prepared the report was not mentioned. KPMG having failed to file any affidavit in response to the averments made in the writ petition, an adverse inference was therefore liable to be drawn against it.

Inviting attention to the judgment of the Supreme Court in *National Securities Depository Limited Vs. Securities and Exchange Board of India (2017) 5 SCC 517*, it was submitted that appointment of a Forensic Auditor to undertake a forensic audit was an administrative order and hence no appeal could be filed for challenging the communication dated 13th September 2021 appointing KPMG for such purpose. The writ petition therefore ought to be entertained on merits especially in the light of the fact that the show cause notice was issued by SEBI on 25th April 2023 and inspection of the relevant records was granted only in September 2023 as well as January 2024. Since the petitioner had approached the Court diligently, the prayers made in the writ petition ought to be granted. In addition, it was submitted that though the petitioner had submitted his reply to the show cause

notice, it was doubtful whether SEBI would be entitled to go into these jurisdictional aspects.

3. Mr. Mustafa Doctor, the learned Senior Advocate for SEBI opposed the writ petition by submitting that it suffered from delay and laches. KPMG came to be appointed as forensic auditor way back on 13th September 2021. After inspection of the relevant records, KPMG submitted its report. SEBI thereafter had passed an interim order on 25th April 2023 and also issued a show cause notice to the petitioner. This interim order was appealable under the Securities and Exchange Board of India Act, 1992 but the petitioner did not file any appeal for challenging the said order. The petitioner had replied to the show cause notice on 4th April 2024 and had raised similar grounds of defence therein. The petitioner having failed to challenge the interim order dated 25th April 2023, there was no explanation furnished for belatedly challenging the appointment of the Forensic Auditor that was made on 13th September 2021. It was further submitted that all contentions that were being now raised for challenging the communication dated 13th September 2021 could be raised in answer to the show cause notice. Moreover, if any adverse order was passed against the petitioner, the remedy of appeal was

available to him. Since an interim order was passed pursuant to the report submitted by the Forensic Auditor which was not challenged despite being a quasi-judicial order, the challenge raised to the appointment of the Forensic Auditor was merely for delaying the proceedings. The writ petition was therefore not liable to be entertained.

4. Having given thoughtful consideration to the rival submissions, we are of the view that the writ petition is not liable to be entertained on the ground that a belated challenge has been raised to the communication dated 13th September 2021 and the consequent report submitted by KPMG. After KPMG came to be appointed as Forensic Auditor pursuant to the communication dated 13th September 2021, it submitted its report on 21st March 2023. SEBI considered the said report and thereafter passed an interim order and also issued a show cause notice on 25th April 2023. Admittedly, this interim order has not been challenged by availing any statutory remedy. In response to the show cause notice, the petitioner has submitted his reply on 4th April 2024 and the matter is under consideration by SEBI. The present writ petition has been filed only on 15th April 2024.

Thus much water has flown after issuance of the

communication dated 13th September 2021 appointing KPMG as Forensic Auditor. We do not find any justifiable reason assigned by the petitioner in the writ petition for the belated challenge being raised to the appointment of KPMG as Forensic Auditor on 13th September 2021. The submission that inspection of the records was given in September, 2023 and January 2024 by itself would not be of much avail in the present facts as a challenge could have been raised much earlier.

5. It is further seen that in the reply to the show cause notice filed on 4th April 2024, the petitioner has also raised an objection to the eligibility of KPMG for being appointed as Forensic Auditor. In this regard, we may refer to the stand taken by SEBI. In paragraphs 41 and 45 of the affidavit-in-reply filed by SEBI, it has been stated as under:-

41. Further, in paragraphs 8, 17 and 47 of the Petition, it is the Petitioner's case that the Interim Order has been passed pursuant to the Forensic Audit Report. In paragraph 93 of the Interim Order, SEBI has specifically requested for a reply to the Interim Order. Therefore, the Petitioner may raise any grievance that he may have against the Forensic Audit Report in his reply to SEBI's Interim Order, which he has already and admittedly done. There is no reason to invoke this Hon'ble Court's discretionary jurisdiction under Article 226, when an alternatively efficacious remedy is available.

45. With reference to paragraphs 18 through 20, it is submitted that the Petitioner has already raised its challenge to the Forensic Audit Report, including the appointment of the Forensic Auditor, before SEBI, which will be considered by SEBI and is now pending adjudication. Given these pending proceedings, it is not open to the Petitioner to raise these grievances before this Hon'ble Court.

It can thus be seen that the petitioner has already questioned the appointment of KPMG as forensic auditor. We are therefore of the view that the petitioner having raised all these grounds while replying to the show cause notice dated 25th April 2023, he ought to pursue the same in accordance with law.

6. Hence on the ground that the challenge to the communication dated 13th September 2021 has been raised belatedly for which there is no justifiable explanation coupled with the fact that in the interregnum, an interim order has been passed by SEBI on 25th April 2023 which has gone unchallenged, we are not inclined to entertain the petitioner's challenge to the communication dated 13th September 2021 issued by SEBI as well as the report dated 21st March 2023 submitted by KPMG. The petitioner having filed reply to the show cause notice and having questioned the appointment of KPMG as Forensic Auditor as well

as the Report as submitted, he is free to pursue the matter before SEBI in accordance with law. It is clarified that we have not examined the challenge as raised on merits. All grounds of challenge raised by the petitioner to the communication dated 13th September 2021 issued by SEBI as well as the report dated 21st March 2023 submitted by KPMG are kept open. The writ petition is disposed of as not entertained.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]