



Pradnya

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

WRIT PETITION (L) NO. 35133 OF 2024

First Overseas Capital Limited]
1-2 Bhupen Chambers]
Dalal Street,]
Fort, Mumbai] ...Petitioner

Versus

Securities and Exchange Board of India]
SEBI Bhavan, Plot No.C4-A, 'G' Block,]
Bandra Kurla Complex, Bandra (East),]
Mumbai – 400 051.] ...Respondent

Mr Prakash Shah, a/w Mr Shyamrishi Pathak, Mr Rinku Valanju, Adv Hiral Shah i/b. R. V. Legal, for the Petitioner.

Mr Mustafa Doctor, Senior Advocate, a/w Adv Suraj Chaudhary, Adv Bhushan Shah, Adv Akash Jain, Adv Gaurav Edekar, i/b. Mansukhlal Hiralal & Co., for the Respondent.

**CORAM M.S. Sonak &
Jitendra Jain, JJ.**
DATED: 4 December 2024

ORAL JUDGMENT : (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. The Petitioner challenges the communication dated 30 October 2024 by which the Petitioner's Settlement

Applications were rejected by the Securities and Exchange Board of India (“SEBI”).

3. Mr Shah, learned counsel for the Petitioner, submits that the rejection is based on the alleged ground that the documents submitted by the Petitioner were deficient and that the Petitioner did not maintain its worth for the Financial years ended March 31, 2019, March 31, 2020, and March 31, 2021.

4. Mr Shah submitted that the documents sought were provided time and again. At no stage was the precise nature of deficiency informed to the Petitioner. He submitted that the Chartered Accountant’s certificate regarding networth was also provided. Accordingly, he submitted that there was no valid reason to reject the Petitioner’s Settlement Applications. Mr Shah submitted that the whole object of the settlement proceedings is to allow the allegedly defaulting parties to make good the defaults and settle the proceedings. He submitted that there had been no fair consideration of the Petitioner’s settlement proposals and that the decision-making process leading to the rejection of the Petitioner’s Settlement Applications was grossly deficient.

5. Mr Shah, without prejudice, submitted that even if the Respondent now informed the Petitioner of the precise deficiencies in the documents submitted by the Petitioner or the precise documents to establish the Petitioner’s net worth for the relevant years, the Petitioner, within a schedule that could be indicated, will provide for the same.

6. Based on the above submissions, Mr Shah submitted that the impugned communication dated 30 October 2024 be interfered with and directions be issued to the SEBI to reconsider the Petitioner's Settlement Applications.

7. Mr Doctor learned Senior Advocate for the SEBI submitted that even earlier, the Petitioner had defaulted in adhering to the timelines for submitting documents. However, by order dated 19 March 2024 in Writ Petition (L) No.393 of 2024, this Court indulged the Petitioner by granting additional time. Despite repeated opportunities, he submitted that the Petitioner has been providing deficient documents from April to October. He submitted that even the net worth requirement is not complied with.

8. Mr Doctor submitted that the documents supplied and the net worth requirements have been examined by the Internal Committee and, finally, the Whole Time Members of SEBI. Several opportunities were granted to the Petitioner, but still, the Petitioner has failed to avail of the same. Therefore, Mr Doctor submitted that there was no unfairness, and the action of the SEBI called for no interference.

9. Mr Doctor pointed out that two show-cause notices have been issued to the Petitioner. Therefore, it is in the petitioner's interest to keep the Settlement Applications pending. He submitted that final orders cannot be made in the show-cause notices until the settlement applications are decided. He pointed out that no malafides are alleged, and in such matters, the commercial decisions of the SEBI should be deferred to.

10. Mr Doctor submitted that the Petitioner has no right to insist on the settlement. Since the Petitioner's Applications have been fairly considered, the scope of judicial review ought to be minimal. Mr Doctor relied on the decisions in **Abans Enterprises Ltd. and another vs. Securities and Exchange Board of India¹** and **Shilpa Stock Broker Pvt. Ltd. and another vs. Securities and Exchange Board of India²** to support his contentions.

11. The rival contentions now fall for our determination.

12. At the outset, it is necessary to clarify that the Petitioner has no right, much less a vested right, that the SEBI accept its settlement proposal. However, this does mean that the Petitioner's settlement proposal should not be considered fairly or following the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. If there is any arbitrariness or unfairness in rejecting the settlement proposal, then, to that extent, judicial review of the decision-making process would be available. But this Court, exercising its extraordinary jurisdiction, would be reluctant to interfere with SEBI's decision on merits or as if this Court were an appellate forum in such matters.

13. In the present case, the Petitioner's settlement proposal was rejected and aggrieved by such rejection, the Petitioner instituted Writ Petition (L) No.393 of 2024. This was disposed of by order dated 19 March 2024. In paragraph 6 of this order, this Court noted that certainly there was a delay on the part of the Petitioner in not complying with the timelines on

¹ Writ Petition No.4457 of 2024 decided on 11 November 2024.

² 2012 SCC OnLine Bom 58

submission of the documents, which, according to the Petitioner, were relevant in regard to the Settlement Applications and as demanded by the Respondent in the course of the proceedings. After recording this observation about the delay on the Petitioner's part, this Court, *"considering the peculiar facts of the case and the reasons which were set out by the Petitioner"* opined that the Petitioner deserved to be granted an opportunity for having its settlement proposal consider, even though the furnish of documents was admittedly and certainly delayed.

14. Accordingly, in its order dated 19 March 2024, this Court directed the SEBI to grant the Petitioner an additional opportunity and dispose of the Petitioner's Settlement Applications within eight weeks. All parties' contentions were left open, and it was made explicit that the order should not be treated as a precedent since it was passed in the peculiar facts and circumstances of the case. Therefore, though there was nothing wrong with rejecting the Petitioner's settlement proposal in the earlier round, considering the peculiar facts and mostly by way of indulgence, the Petitioner was granted yet another opportunity, with consequential directions to the SEBI to dispose of the Petitioner's Settlement Applications expeditiously.

15. Based on the record, we do get an impression that the Petitioner was interested in keeping these applications pending because of the provision in the Settlement Regulations about no final orders being passed on the show cause notices until the Settlement Applications are finally disposed of. There is correspondence on record exchanged between the parties regarding the supply of documents by the

Petitioner and the Respondent, pointing out the deficiencies in the supplied documents. There is correspondence about the Petitioner's net worth for the relevant financial year endings. At one stage, the SEBI was constrained to file the Interim Application (L) No.24256 of 2024 in this Court to seek an extension of time since this process was on. Such extension was granted up to 31 October 2024.

16. Settlement applications are usually examined in three tiers: first, by the Internal Committee, followed by the High-Powered Committee, and finally, by the Whole-Time Members. In this case, the application was considered by both the Internal Committee and the Whole-Time Members. Even Mr Shah fairly pointed out that no malafides were alleged against the SEBI, its committees, or the committee members.

17. The impugned communication dated 30 October 2024 records the following in paragraphs 4, 5 and 6:-

“4. The documents submitted by you were examined and found to be deficient and therefore, vide email dated April 19, 2024, you were informed of the said deficiencies and advised to rectify and submit the revised documents. Thereafter, the documents submitted by email dated May 07, 2024 were examined and were still found to be deficient. Accordingly, another IC meeting was scheduled for July 11, 2024. However, on July 09, 2024 and July 10, 2024 additional new documents were submitted by you which were required to be examined. On examination, the said documents were found to be deficient and accordingly in the IC meeting held on October 03, 2024 you were advised to rectify the said deficiencies and submit the revised documents by October 10, 2024. On your request, data sought was also provided to you vide email dated October 07, 2024. Thereafter the documents submitted by you were examined and were still found to be inaccurate and incomplete. Accordingly, the IC noted that despite multiple opportunities provided to you to rectify the deficiencies in

the documents submitted by you, it has been found that the documents are still incomplete and inaccurate.

5. With respect to the default of not maintaining the networth for the Financial Year ended March 31, 2019, March 31, 2020 and March 31, 2021 of Rs.5 Crores by you, the IC noted that the requirement to maintain capital adequacy at all times during the period of registration is a condition- failure of which may amount to cancellation or suspension of registration of the applicant. Therefore, it is essential to ensure that the applicant has complied with the capital adequacy requirement before its applications may be considered for settlement. In that regard, the IC noted that your compliance with the networth requirement is under investigation and proceedings are proposed to be initiated for the same. In view the same, you do not appear to be presently meeting the networth requirement.

6. In view of the same, the IC recommended rejection of your settlement applications on the ground that you have failed to comply with the condition precedents within the time required by it. The recommendation of the IC to reject your settlement applications was placed before the Panel of Whole Time Members who in terms of Regulation 6(1)(f) of the Settlement Regulations and in exercise of their power under Regulation 5(5) of the Settlement Regulations have approved rejection of your settlement applications.”

18. In exercising the limited scope of judicial review in such matters, we have no reason to second guess the observations in paragraphs 4 and 5. The observations indicate the number of opportunities granted to the Petitioner and the lack of compliance. Even on net worth, there is no question of going only by the Chartered Accountant’s certificate filed by the Petitioner. This is not any case of unfairness or arbitrariness. The committees have considered the documents and other material supplied by the Petitioner. It is not for this Court to scrutinise all such documents and substitute itself as the Internal Committee, the High-Powered Committee or the Whole Time Member. Ultimately, these are expert bodies, and

this Court will have to defer to their expertise and commercial decisions.

19. As noted earlier, the petitioner has not even alleged any malafides or breaches of the SEBI Act or the Settlement Regulations. The argument based upon alleged unfairness is not supported by the record. The petitioner cannot be assisted in simply keeping its settlement application pending and disabling the SEBI from effectively passing final orders on the show-cause notices issued to the Petitioner. Despite the indulgence on the first occasion, the Petitioner persisted in supplying deficient documentation and did not comply with the net-worth requirements.

20. In *Shilpa Stock Broker Pvt. Ltd. and another* (supra) a coordinate Bench of this Court has held that whether a dispute should be resolved or whether the wider public interest in ensuring regulatory compliance requires that proceedings should be initiated and, if initiated should be followed to their logical conclusion, is a matter which falls within the discretion of the SEBI. Further, the court held that as a matter of first principle, a person against whom action has been initiated by SEBI or a person who apprehends that action will be initiated by SEBI has no vested right to insist that the dispute be resolved in terms of a consensual settlement. SEBI has been constituted as an expert regulator to ensure the stable and orderly functioning of the securities market. Acting as a regulator of the securities market, decisions taken by SEBI impact upon the economy and financial stability.

21. The Court held that the question as to whether a dispute should be resolved by a consensual settlement does not merely involve a private lis between the violator and the regulator but involves a consideration of wider issues of public interest. The Court also held that the whole purpose of the settlement guidelines which were the subject matter of the said decision was to ensure that the time and effort of the regulator is devoted to cases which duly merit trial and enforcement.

22. As noted earlier, the SEBI has devoted sufficient time to the Petitioner's settlement proposal. The same was rejected earlier but, by way of indulgence, the Petitioner was granted further opportunity in March 2024. From April to October, the Petitioner supplied documents or certificates that were found to be deficient upon examination. The impugned communication also refers to the inter se correspondence, which gives an idea of the time spent by SEBI in considering the Petitioner's settlement proposal. At this stage, Mr Doctor, on behalf of SEBI, is therefore justified in contending that enough was enough and no further indulgence was deserved by the petitioner.

23. For all the above reasons, we are satisfied that the Petitioner's proposal was fairly considered and rejected. There is no arbitrariness involved. The petitioner was given ample opportunities; in that sense, no breach of natural justice was involved. The decision-making process was not defective. Accordingly, we are satisfied that no case has been made to interfere with the impugned communication.

24. This Petition is liable to be dismissed and is hereby dismissed without any cost order.

(Jitendra Jain, J)

(M.S. Sonak, J)