



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 11717 OF 2023

Binny Limited ...Petitioner
Versus
Securities and Exchange Board of India ...Respondent

WITH
WRIT PETITION (L) NO. 11721 OF 2023

M Nandagopal ...Petitioner
Versus
Securities and Exchange Board of India ...Respondent

Mr Venkatesh Dhond, Senior Advocate, with Shruti Rajan, Anubhav Ghosh, Vivek Shah & Hari Shankar, i/b Trilegal, for the Petitioner in WPL/11717/2023.

Mr Somasekhar Sundaresan, with Shruti Rajan, Anubhav Ghosh, Vivek Shah & Hari Shankar, i/b Trilegal, for the Petitioner in WPL/11721/2023.

Mr Mustafa Doctor, Senior Advocate, with Suraj Chaudhary & Shivani Kumbhojkar, i/b The Law Point, for Respondent No.1-SEBI in both Writ Petitions.

**CORAM G. S. Patel &
Neela Gokhale, JJ.**

DATED: 4th July 2023

PC:-

1. The Petitions challenge a rejection by Securities Exchange Board of India (“**SEBI**”) of what is called a Settlement Application. The facts in the two Petitions are identical and we will therefore refer to the record in Writ Petition (L) No. 11717 of 2023. The Petitioner in the second Writ Petition is a director of the Petitioner in the first Writ Petition.

2. The background is this. SEBI issued a show cause notice to Binny Ltd on 24th November 2022. A copy of that show cause notice, running to some 28 pages, is at Exhibit ‘A’ from page 66. The notice mentions in paragraph 12 that under the SEBI (Settlement Proceedings) Regulations, 2018 (“**Regulations**”), there is a settlement mechanism provided. Should Binny wish to opt for a settlement process, it could apply in the manner given in these Regulations under intimation to SEBI. Binny was put to notice that the filing of a Settlement Application did not confer any right to seek the settlement of the proceedings. The Settlement Application, which we will examine in detail a little later, is at page 95. It was filed on 24th December 2022. Binny was afforded a personal hearing on 20th February 2023. In parallel, on 31st January 2023, it filed a reply to the show cause notice. On 16th March 2023, SEBI rejected the Settlement Application. A copy of that email intimation is at Exhibit ‘D’ at page 104.

3. The hearing on the show cause notice having concluded, SEBI gave Binny a final opportunity to file post-hearing written submissions by 15th March 2023. A further extension followed till 27th March 2023. On 25th March 2023, Binny sought yet another

extension of four weeks and on 29th March 2023 sought a further extension till 12th April 2023.

4. By this time, of course, the Settlement Application had been rejected and Binny filed this Writ Petition on 25th April 2023 (and one of its directors filed the companion Writ Petition). Curiously, this Petition was not served on SEBI until 12th June 2023 and then applications were made for an early hearing. We passed orders allowing the filing of Affidavits in Reply and Rejoinder.

5. On behalf of Binny, Mr Dhond's assault on the impugned Settlement Application rejection is that it falls afoul of the applicable SEBI Regulations. It merely recites the reasons in the show cause notice but does not independently give any reasons for rejection of the Settlement Application. It is, in his submission, cryptic and without a proper application of mind.

6. Before we turn to the Regulations, it would be useful to know two factual aspects. The first is the four paragraph content of the rejection of the Settlement Application at page 104:

“Madam/Sir,

1. With reference to the subject settlement application, you may note that the same was examined by the Board and following was noted:

a. Binny Limited has allegedly employed deceptive devices for diverting the funds and understating revenue during the investigation period, and adopted dubious practices in drawing up accounts for manipulating the financial results of Binny Limited to present a distorted picture to its shareholders and to the public at large. It was

noted that such alleged acts and omissions were fraudulent on the part of the Company and such acts of serious irregularities have affected the integrity of the market.

b. The share price fell by 4.62% (from Rs. 216.60 on 18/11/2021 to Rs. 206.20 on 22/11/2021) on the first day, i.e. November 22, 2021, post dissemination of the information regarding the appointment of a forensic auditor on the exchanges. The price thereafter reached a level of Rs. 211.65 by November 26, 2021.

c. The alleged diversion of funds of Rs. 851.27 crores to other parties including related parties amounted to a loss to the investors, thus impacting a large number of investors (10507 public shareholders as of the quarter ended December 31, 2021).

d. In view of the above, it was noted that the aforesaid alleged diversion of funds and misrepresentation of the financials of Binny Limited has caused losses to a large number of investors and also affected the integrity of the market.

2. Based on the same, the Board was of the considered opinion that the proposed settlement of specified proceedings as requested by you cannot be acceded to since the alleged default attracts the provisions of Regulation 5(2) (ii) and 5(2)(iii) of the SEBI (Settlement Proceedings) Regulations, 2018.

3. In view of the above, the subject settlement application has been rejected by the Board in terms of Regulation 5(5) of the Settlement Regulations.

4. The reason(s) rendered at paragraph 1 above, are intended only for the limited purpose of disposal of the subject settlement application and shall not have any bearing on the pending specified proceeding against the applicant.”

7. This cannot be read in isolation. We will not reproduce the 28-page show cause notice in full, but there is no doubt that there was an investigating authority and a forensic audit. There is a case in the show cause notice of a massive diversion of funds of several hundreds of crores. There is also a case in the show cause notice itself, yet pending this final decision, of loss to investors and an adverse impact on the integrity of the market.

8. But what did Binny actually propose in the Settlement? Sections 19 and 20 of that Settlement Proposal at page 99 are revealing: the monetary proposal is “as per the regulations”, and there is no non-monetary proposal at all. The long and the short of it is that Binny filed a Settlement Application in name only. It had no proposal, offer or suggestion. At least part of the Settlement Application sought to contest or deny the show cause notice on merits.

9. It is in this context that we must view the presentation regarding the relevant Regulations. A copy of these Regulations is at Exhibit ‘O’ from page 239. We are not troubled with the definitions clause and turn to Chapter II which is the Application for Settlement. Regulation 3(1) says that a person against whom any specified proceedings have been initiated and are pending, or may be initiated, may make an application to the Board in the prescribed form. Then there are provisions for fees, etc. A limitation clause is in Regulation 4 and Chapter III then deals with the scope of settlement. Much emphasis is laid on this and therefore Regulations 5, 6 and 8 need to be reproduced in full:

“Scope of settlement proceedings.

5. (1) No application for settlement of any specified proceedings shall be considered, if:

- (a) an earlier application with regard to the same alleged default had been rejected;
- (b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or
- (c) monies due under an order issued under securities laws are liable for recovery under securities laws.

(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default,-

- i. has market wide impact, or
- ii. caused losses to a large number of investors, or
- iii. affected the integrity of the market.

(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may inter alia take into account the following factors,-

- (a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;
- (b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;
- (c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;
- (d) any other factor as may be deemed

appropriate by the Board.

(4) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

(5) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.

6. Rejection of application.

(1) An application may [also] at any time be rejected on the following grounds:

- (a) Where the applicant refuses to receive or respond to the communications sent by the Board;
- (b) Where the applicant does not submit or delays the submission of information, document, [Revised Settlement Terms,] etc., as called for by the Board;
- (c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;
- (d) Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;
- (e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (2) of regulation 15 and/or does not abide by the undertaking and waivers;
- (f) Where the applicant fails to comply with the

condition precedent(s) for settlement within the time as required by the Internal Committee.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

8. Effect of pending application on specified proceedings.

(1) **The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.**

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn:

Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

Explanation.— Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for

settlement and any adverse observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed by such applicant.”

(Emphasis added)

10. Chapter IV then deals with the terms of the settlement and says, importantly for our purposes, that a settlement term may include a settlement amount or a non-monetary term or both in accordance with guidelines in Schedule II. Non-monetary terms may include suspension or cessation of business, exit from management, disgorgement on account of the action or inaction and so on.

11. Two committees are contemplated in Chapter V. There is an Internal Committee under Regulation 12 and a High Powered Advisory Committee under Regulation 11. Chapter VI then sets out the procedure for settlement. Regulation 13 deals with proceedings before the Internal Committee and Regulation 14 deals with the proceedings before the High Powered Advisory Committee.

12. Mr Dhond’s submission is that the Board cannot simply invoke Regulation 5(2)(ii) and (iii) saying that loss has been caused to the investors or that the integrity of the market has been affected but must consider the Settlement Application ‘on merits’ and follow the procedure set out in the Regulations. He and Mr Sundaresan who appears for the Petitioner in the companion matter argue that this is the mandate of the statute as seen from Section 15(JB) of the SEBI Act which says in sub-section (2) that the Board may after

taking into consideration the nature, gravity and impact of defaults agree to the proposal for settlement on payment of such sum by the defaulter or such other terms as may be determined by the Board in accordance with the Regulations made under this Act.

13. Both Mr Dhond and Mr Sundaresan argue that the phrase ‘in accordance with the Regulations’ necessarily means that the Board is bound to follow the entire gamut of proceedings under the Regulations including a reference to the Internal Committee and then the High Powered Advisory Committee and that it cannot have direct recourse to Regulation 5(5).

14. There is a fundamental flaw to the argument that the application had to be considered on merits. It simply has no merits. It says not a thing. It offers nothing. It proposes nothing.

15. The submission is an attempt to substitute what is clearly a discretion vested in SEBI with an obligation. The whole of the Regulations from beginning to end speak of the discretion in the Board. Nothing in Chapter III persuades us that the Board is duty-bound to consider an application however fruitless, however jejune, and however grave the charges against the company — merely because it has been *filed*. The submission is not just that the filing of a Settlement Application is a right, but that the mere filing creates an entitlement denuding the Board of all discretion. The reference to the statutory provisions is equally pointless because even those speak of the Board’s discretion.

16. If we were to examine the reasons for or the background for the introduction of these Regulations, we should find them compactly stated in the elaborate report by the Justice AR Dave Committee. That is a report of 10th August 2018 on Settlement Mechanisms. The Settlement Regulations were introduced for the first time following this report. The *raison d'être* of the Regulations are compactly noted in the Report. The very first sentence of the *Background* section at internal page 8 (brief page 558) has the oft-quoted adage that *justice delayed is justice denied*. Mr Justice Dave went on to say that it was of the utmost significance, and that the constant struggle to uphold this legal maxim has been a bitter battle in every judicial system. There is then a discussion on methods of plea bargaining and finally the background says that the ever-growing requirements of a free market, concerns of confidentiality and other factors require the evolving of a settlement process for effective enforcement. *A settlement is required to avoid protracted litigations and in particular, while dealing with settlements, care must be taken to avoid prolonging a dispute. For this, pertinent questions as to what would constitute a serious violation and who may be permitted to apply for the settlement process remain a challenge.*

17. We should take a step back to consider the impact of what it is that is being canvassed by these Petitioners in the context of the allegations in the show cause notice. There is a specific finding based on a forensic audit report of an alleged diversion of funds, and even SEBI says that this is only alleged, of Rs 851.27 Crores. There is also a reference to loss to investors. What is being proposed is that while this Settlement Application, (one that proposes absolutely nothing) wends its way from one committee to another committee

and then results in some decision, the show cause notice will remain pending because of the provisions of Regulation 8(1), which says in terms as noted above that a final order will be held in abeyance. That seems to be the game plan: file some sort of application, style it as a 'Settlement Application', say and propose nothing at all in it, and immediately demand that the decision on the show cause notice be kept in abeyance.

18. It does not end there. Although it is clear that there is no appeal, it is useless for these Petitioners to pretend as if that is the end of their recourse to remedies. As we are now painfully aware, having spent the better part of two hours on this matter, they have ready recourse to a writ court, where the Petitioners expect to have no questions asked of their time, and seem to be entitled to help themselves greedily to vast amounts of very scarce judicial time. Undoubtedly, any order the Board makes under the Regulations will instantly be challenged in yet another writ petition. This process will go on indefinitely with no end in sight. All the while, the show cause notice will remain without final decision. Thus, the Regulation 8(1) abeyance will go on forever, with any Settlement Application 'decision' being queried, questioned and challenged at every single turn.

19. This is precisely what the Regulations do *not* contemplate: protracted litigations in the face of serious violations required to be answered.

20. Mr Dhond's argument that even an application for condonation of delay requires reasons¹ is really of little assistance. If a delay application is not allowed, the principal cause is lost. Here the principal action is the show cause notice, not the Settlement Application. In fact, this submission tells us everything we need to know because it clearly implies that the Settlement Application is being used as a mechanism to block the final adjudication of the show cause notice.

21. The argument that every order needs the kind of reasoning as one might expect in a judgment is fundamentally fallacious. The reliance by the Petitioners on *Madhyamam Broadcasting Ltd v Union of India and Ors*² in paragraph 62 was in a completely different context. The observations made by the Supreme Court in the *Madhyamam* were in the context of the 'sealed cover procedure' used by the Ministry of Home affairs while disclosing relevant material solely to the Kerela High Court. It was in this context that the Supreme Court observed that the non-disclosure of even a summary of reasons for denying security clearance to MBL does not share a rational connection with the purpose identified. The present Petitioners have no vested right to insist that the dispute be resolved in terms of a consensual settlement: that would denude the Board of discretion to reject any settlement application no matter how sterile and worthless.

1 *New Delhi Television Ltd v Securities and Exchange Board of India & Anr*, 2019 SCC Online Bom 1772.

2 2023 SCC Online SC 366.

22. Mr Doctor, learned Senior Advocate for SEBI, has invited our attention to a Division Bench judgment of this Court in *Shilpa Stock Broker Pvt Ltd v Securities and Exchange Board of India*.³ It is true that this is a decision rendered before the Regulations came into force. But substantially, the submission there parallels the one that is made before us today. Paragraphs 12, 13 and 15 of the judgment in *Shilpa Stock Broker* are as relevant now as they were then. That decision is not diluted by the introduction of the Regulations. To say otherwise would be unthinkable. The reason is that the paragraph 12 of *Shilpa Stock Broker* sets out a general standard in such matters. Paragraphs 12, 13 and 15 read thus:

“12. 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 SEBI. 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. SEBI is vested with statutory powers, in the public interest and the exercise of power must, therefore, be guided by the public interest that SEBI is vested with the power to protect. The considerations which are spelt out in clause 11 provide some indication of the nature of the power that is exercised. Amongst the

3 2012 SCC Online Bom 58.

circumstances which are to be borne in mind is whether the violation is intentional, the conduct of the party during the course of investigation, the gravity of the charge, the track record of the violator, whether a violation is technical or minor, the extent of harm that may be caused to investors, processes which have been adopted to minimize future violations, proposed compliance schedule, economic benefits that have accrued from delayed or failure in compliance, conditions necessary to deter future non-compliance, satisfaction of claims of investors and compliance of civil enforcement action. These factors indicate 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 securities market impinges upon investor wealth. Investors as a body represent the collective wealth of numerous individual investors. Trading on the Stock Exchanges and the business conducted by Stock Exchanges has a material impact on investors, both institutional and individual. Actions of stake holders in the securities market have consequences not merely for the role and position of the stake holder and his relationship with SEBI as regulator. Those actions have serious consequences for the overall well being of the securities market and those whose wealth and investment is impacted by the stock market. **SEBI is vested with the power to protect and streamline the functioning of the securities market. A person who is alleged to be in breach of the Regulations or statutory provisions which are designed to protect the public interest can have no vested right either to insist upon SEBI settling a dispute or in enforcing compliance of the terms of a proposed offer of settlement.**

13. If the matter is considered from this perspective,

it is evident that the High Court in the exercise of its jurisdiction under Article 226 of the Constitution would not be justified in issuing a mandamus to SEBI to act upon a settlement or to accept a settlement as proposed. The guidelines which have been framed by SEBI are administrative in character. Since the judgment of the Supreme Court in *G.J. Fernandez v. State of Mysore* it has been a settled principle of law that if administrative guidelines issued by an authority have no statutory force, they can confer no right on an individual that could be enforced by a writ of mandamus. This principle was reiterated in a subsequent decision of the Supreme Court in *J.R. Raghupathy v. State of A.P.* But, apart from this position, **it is equally fundamental, while analyzing the provisions of the guidelines to emphasis that where the guidelines have conferred a discretionary power upon SEBI to resolve a dispute which has still not reached the stage of adjudication or criminal action, or a dispute for that matter which is pending proceeding, it is for SEBI, on a considered view of all the circumstances of each case, to determine as to whether the dispute merits an amicable solution.**

15. For these reasons, we are of the view that there is no merit in either of the submissions that are urged on behalf of the Petitioners. The Guidelines in so far as they mandate that proceedings should either be in contemplation or be pending before they can be resolved, are based on a valid rationale. The whole purpose of the Guidelines is to ensure that the time and effort of the regulator is devoted to cases which duly merit trial and enforcement. The Guidelines thus recognise an enabling power in SEBI to resolve certain cases which in the view of SEBI can be set at rest without compromising either an issue of principle or public interest. We have, therefore, come to the conclusion that (i) The Guidelines do not confer a vested right in any person to

insist on the acceptance of a proposed settlement; (ii) In the present case, the adjudication which was initiated by SEBI had attained finality before the Supreme Court; and (iii) A proceeding which has attained finality, cannot be reopened and the attempt to enforce terms of consent would result in nullifying the effect of the order of the Supreme Court which is impermissible. In the circumstances, we do not find any merit in the Petition.”

(Emphasis added)

23. Interestingly, *Shilpa Stock Broker* is cited specifically in the Justice Dave Report to which we have earlier referred. It is therefore impossible to say that this decision is of no relevance.

24. Viewed from any perspective, these Petitions, like the Settlement Application, are entirely without substance. We understand quite clearly now that the only purpose of the Settlement Application and indeed these Writ Petitions was to prolong and delay the adjudication of the show cause notice. If there was any doubt about this, it is surely put to rest by one look at the prayers in the Binny Petition, and in particular prayer clause (b) which is really the prayer that is being sought, for a stay of the adjudication on the show cause notice. Interestingly, although prayer clause (a) ought to be really for a certiorari not a mandamus, there is not even a prayer for a direction to SEBI to reconsider the Settlement Application. In other words, an order on this Writ Petition would effectively put an end to all SEBI action as a regulator. That is simply unthinkable.

25. These Petitions have taken an inordinate amount of time when our dockets are already overcrowded. We believe these Petitions are now fit cases for orders of costs.

26. The Petitions are rejected with an accompanying order of costs of Rs 2.5 Lakh in each Petition payable equally (i.e., Rs.1.25 lakhs each) to:

(a)	The Society for the Rehabilitation of Crippled Children
A/c No.	00051450000144 (Savings)
Bank Name	HDFC Bank Ltd.
Branch	Bhulabhai Desai Road, Mumbai 400026
RTGS/IFSC/NEFT Code	HDFC0000005

(b)	St. Jude India ChildCare Centres
A/c No.	02402320004130
Bank Name	HDFC Bank Ltd.
Branch	Sandoz House, Dr AB Road, Worli, Mumbai 400 018
RTGS/IFSC/NEFT Code	HDFC0000240

27. Costs are to be paid within a period of ten days from today.

(Neela Gokhale, J)

(G. S. Patel, J)

Digitally signed
by RAJU
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GAIKWAD
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