



Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2271 OF 2022

Artha Vriddhi Securities Ltd ...Petitioner
Versus
The National Stock Exchange
of India Ltd & Ors ...Respondents

Mr Rushin Kapadia, *with Rinku Valanju & Hiral Shah, i/b, RV Legal, for the Petitioner.*

Mr Rohan Savant, *with Sachin Chandarana, Jaiveer Dhakan, i/b, Manilal Kher & Ambalal & Co, for the Respondent No. 1.*

Mr Rafiquie Dada, Senior Advocate, *with Suraj Choudhary, Bhushan Shah, Akash Jain & Abhishek Nair, i/b, Mansukhlal Hiralal & Co, for the Respondent No. 2-SEBI.*

Mr Omprakash Jha, *with Manish Chhangani, Sunit Yadav, Abhay Chauhan & Atul Aggarwal, i/b, TLP for the ICCL.*

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CORAM **M.S. Sonak &
Jitendra Jain, JJ.**
DATED: **28 November 2024**

PC:-

1. Heard learned Counsel for the parties.
2. The Petitioner challenges Clause 7 of Securities and Exchange Board of India ("SEBI") Circular No. SEBI/HO/MIRSD/DPIEA/CIRP/2020/2015, dated 1 July 2020, on the grounds that it is arbitrary and unconstitutional.
3. Mr Rushin Kapadia, the learned Counsel for the Petitioner, submits that the impugned clause provides that

once a member is disabled or show cause is issued for declaring such member as a defaulter to a Trading Member (TM)/Clearing Member (CM) (whichever is earlier), no further Investor Grievance Redressal Committee ("IGRC")/arbitration meetings shall be conducted. He submits that in this case, the Petitioner has a claim against Blue Sea International, the complainant, before the IGRC. He submits that on account of the impugned clause, the Petitioner is deprived of the arbitration remedy. He submits that such restriction is unreasonable and arbitrary, mainly because the show cause notice, after response, may as well be discharged. He submits that denial of such remedy violates Article 14 of the Constitution of India, and accordingly, the impugned clause must be struck down.

4. In this case, the IGRC ordered on 8 November 2021, directing the Petitioner to pay Blue Sea International approximately Rs 1.54 Crores. In terms of the SEBI circular dated 26 September 2013, the Petitioner had to give an intimation within seven days to the stock exchange from the date of signing of the IGRC directions informing the stock exchange whether the Petitioner intends to pursue the next level of resolution, i.e., arbitration.

5. The Petitioner did give such an intimation by an e-mail dated 12 November 2021. However, by further e-mail dated 27 November 2021, the Petitioner informed the stock exchange that it was withdrawing the intimation of arbitration and that the Petitioner would settle the dispute amicably. The Petitioner neither paid the IGRC-ordered amount nor settled the matter amicably.

6. The stock exchange issued a show-cause notice to the Petitioner on 5 January 2022, requiring it to explain why it should not be declared a defaulter. On receipt of the show-cause notice, the Petitioner belatedly informed the stock exchange, by communication dated 20 January 2022, that it wished to pursue the arbitration remedy.

7. The impugned clause in SEBI's circular dated 1 July 2020 provides that the further remedy of arbitration may not be available once the member is disabled or a show cause notice is issued for the declaration of such member as a defaulter.

8. Mr Rohan Sawant, learned Counsel for the stock exchange, pointed out that, pursuant to the show notice dated 5 January 2022, a final order dated 26 November 2024 was passed declaring the Petitioner a defaulter. He also pointed out that the Petitioner may have a right to appeal this order before the Securities Appellate Tribunal (SAT).

9. Through its various Benches, this Court repeatedly enquired from the Petitioner whether the Petitioner was willing to deposit any amount to secure the directions in the IGRC's order. At one stage, the Petitioner made a statement that an amount of Rs 70,37,973/- belonging to the Petitioner is lying with the Indian Clearing Corporation Limited ("ICCL") and that the Petitioner will have no objection if this amount is transferred to the National Stock Exchange ("NSE"). Therefore, this Court made an order on 3 July 2024, issuing notice to ICCL.

10. On 23 October 2024, the ICCL appeared before this Court and stated that the Petitioner's funds were not available to the ICCL. Even today, learned Counsel for the Petitioner was categorical in stating that the Petitioner is not in a position to deposit any amount in this Court to secure the directions of IGRC. On instructions, the counsel for the petitioner states that the petitioner has no means to pay or secure the amounts.

11. Under the above circumstances, we are satisfied that the petitioner is abusing our extraordinary and discretionary jurisdiction to buy time, having solemnly declared that it has no means to pay. The Petitioner made but unconditionally withdrew his request for arbitration. Therefore, the Petitioner, at least prima facie, cannot now urge that it wishes to proceed with arbitration. However, on account of Clause 7, which is now challenged in this Petition, it cannot do so. The Petitioner claims to have no funds to secure the IGRC's directions.

12. The Petitioner has openly flouted the discipline imposed by the SEBI circular dated 26 September 2013. We regret to say that the entire objective appears to be to somehow keep the pot boiling and frustrate the claimants' attempts to secure any amounts based on the IGRC order. Surprisingly, the petitioner has not even bothered to implead the claimant, Blue Sea International, as a Respondent in this Petition.

13. In somewhat similar circumstances, this Court had declined to exercise its extraordinary and discretionary jurisdiction favouring the Petitioner in **Dealmoney Securities Pvt Ltd Vs National Stock Exchange of India** through its

Investor Grievance Redressal Panel and Anr¹ after referring to the SEBI's circular dated 26 September 2013 to streamline and make the investor grievance mechanism more effective.

14. The salient features of SEBI's circular dated 26 September 2013 were set out in paragraph 2 of **Dealmoney Securities Pvt Ltd** (supra), which we transcribe for convenience of reference:

"2. On 26 September 2013, Securities and Exchange Board of India issued a circular to streamline and to make the Investor Grievance mechanism more effective. It was decided to shorten the time taken for the proceedings as well as to give monetary relief to investor during the course of the proceedings. The Stock Exchanges were advised to ensure that all complaints are resolved at the earliest. The mechanism laid down in the Circular briefly is as follows. In case the matter does not get resolved, conciliation process of the exchange would start immediately after the time lines stated. The Committee shall be allowed a time of 15 days to amicably resolve the investor complaint. In case the matter is not resolved through the conciliation process, Committee would ascertain the claim value admissible to the investor. Upon conclusion of the proceedings of the Committee i.e. in case claim is admissible to the investor, Stock Exchanges shall block the admissible claim value from the deposit of the Member. The Stock Exchange shall give a time of 7 days to the Member from the date of signing of IGRC directions as mentioned above to inform the Stock Exchange whether the Member intends to pursue the next level of resolution i.e. Arbitration. In case, the Member does not opt for arbitration, the Stock Exchange shall, release the blocked amount to the investor after the aforementioned 7 days. In case, the Member opts for arbitration and the claim value admissible to the investor is not more than 10 lac, there is a further procedure to be undertaken by the Stock Exchange. The Circular has placed responsibility on the trading member to

¹ 2019 SCC OnLine Bom 5400

opt for arbitration after the opinion is referred by the Investor Grievance Redressal Committee.”

15. The coordinate Division Bench also made the following observations in paragraphs 10 and 11:

“10. The petitioner being a member of the Stock Exchange is covered by the Circular of 2013. This methodology is operating for almost six years now. We find no special circumstances to make an exception from the procedure laid down, which is designed to secure confidence in the trading of the Stock Exchange.

11. The terminals of the petitioner would be shut down only if the petitioner does not furnish the requisite margin amount. The hearing was adjourned twice for the petitioner to inform about security for the blocked amount. The petitioner to inform about security of a residential flat of his family members, without original title deeds. Thereafter, during the course of arguments, the petitioner stated that 50% of the amount would be generated within six weeks. Dr. Saraf is correct in pointing out that the Stock Exchange cannot sell the immovable properties, that to recover to the amount payable to the Complainant. That is not the role of the Stock Exchange. Shut down of terminals is not an order passed by the SEBI, but a situation created by not securing the amount and the margin money.”

16. The Petitioner before us is also a member of the National Stock Exchange. The methodology prescribed in the circular of 2013 has been operative for almost 11 to 12 years. The Petitioner is very aware of this methodology and, therefore, declared his intention to resort to arbitration within seven days of the ICRC’s order. However, soon after that, the Petitioner withdrew this intimation by explicitly stating that the Petitioner does not wish to pursue arbitration. After a show cause notice was issued on 5 January 2022, the Petitioner made the volte-face and wrote to the NSE that it

wanted to pursue the arbitration. Admittedly, this intimation exceeded the timelines prescribed in the SEBI circular. Fortunately, the petitioner has not questioned the SEBI's circular dated 26 September 2013.

17. The Petitioner, as noted above, claims it has no means to honour the directions issued by IGRC but that it has its claim to pursue against the complainant, who, the Petitioner, has not even shown the courtesy of impleadment. If the Petitioner's claims that it has no money are correct, then it is apparent that this entire exercise is only to waste time and to keep the pot boiling by adopting contradictory stances. The extraordinary jurisdiction of this Court under Article 226 of the constitution cannot be exercised at the behest of such Petitioner and for such purposes.

18. The record shows that several constituents have filed complaints against the Petitioner for large amounts. Now, by order dated 26 November 2024, the Petitioner has already been declared the defaulter. All these circumstances suggest that the Petitioner only wants to depart from the discipline imposed by SEBI's circulars or the NSE's by-laws for reasons which, at least prima facie, do not appear to be valid or even bona fide.

19. Although learned Counsel for the Respondents did try to make some submissions about how the impugned clause is not unconstitutional or unreasonable, at least in this Petition and at the behest of the Petitioner, we do not wish to address or discuss this issue. The bald contention about arbitrariness is far from substantiated. Any decision on this issue at the behest

of such a petitioner might foreclose serious challenge at the behest of some genuine relator.

20. For all the above reasons, we decline to entertain this Petition and dismiss it with costs of Rs 25,000/—, which the Petitioner must pay within four weeks of today. The Counsel for the Respondents state that the costs may be paid to Tata Memorial Hospital (Cancer wing). We order accordingly, and direct receipt to be filed in this Court within this period.

(Jitendra Jain, J)

(M.S. Sonak, J)