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

WRIT PETITION NO.1337 OF 1998

- 1] The Securities & Exchange Board of India, a Board constituted under the Securities & Exchange Board of India Act 1992, having its address at Mittal Court, B Wing Nariman Wing 222 Nariman Point Bombay 400021 ... Petitioner

Versus

- 1] Libra Plantation Ltd. a Company incorporated under the Companies Act 1956 and having its Registered office at 304 Tirupati Udyog, 3rd floor J.B. Patel Road, Goregaon (East) Mumbai 400 063
- 2] Mr Lalit Jogani a Director of Respondent and residing at C-1 Dhiraj Apartments, Poddar Park Malad (East) Mumbai 400 097
- 3] Mr Manish Jogani a Director of Respondent and residing at C-1 Dhiraj Apartments, Poddar Park Malad (East) Mumbai 400 097
- 4] Mr Prahalad Ray a Director of Respondent No 1 residing at B-2 I.C. Colony, Goldess Green, Holy Cross Road, Borivli (West) Mumbai

- 5] Mr Nandu Poddar a Director of
Respondent and residing at 232/34
Kalbadevi Road, 3rd Floor Mumbai
400 002
- 6] The Reserve Bank of India,
constituted under the Reserve Bank
of India Act 1934 and having its
office inter alia at Mint Road,
Mumbai
- 7] Mr Omprakash Jogani
Chairman and Managing Director
of Respondent No.1 Company
residing at C-1, Dhiraj Apartment
Poddar Park, Malad (East)
Mumbai 400 097.
- 8] The State of Maharashtra
- 9] The Official Liquidator
appointed by this Hon'ble Court
in Company Petition No.226 of 1998. ... Respondents

WITH
NOTICE OF MOTION NO. 125 OF 1999
WITH
NOTICE OF MOTION NO. 274 OF 2000
WITH
NOTICE OF MOTION NO. 342 OF 2000
WITH
NOTICE OF MOTION NO. 273 OF 2002
WITH
NOTICE OF MOTION NO. 572 OF 2010
IN
WRIT PETITION NO.1337 OF 1998

The Securities & Exchange Board of India ... Petitioner
Versus
Libra Plantation Ltd. and others ... Respondents

WITH
INTERIM APPLICATION (L) NO. 5606 OF 2022
IN
WRIT PETITION NO.1337 OF 1998

Shree Jogani Beneficiary Trust	... Applicant
<u>In the matter between</u>	
Securities and Exchange Board of India	... Petitioner
<i>Versus</i>	
Libra Plantation Limited Company and others	... Respondents
And	
Dhiraj Co-operative Housing Society Ltd.	... Non-applicant

WITH
CIVIL APPLICATION NO. 576 OF 2016
IN
COMPANY PETITION NO. 226 OF 1998

Ramesh Siddeshwar Nagre	... Petitioner
<i>Versus</i>	
The Official Liquidator of M/s Libra Plantation Ltd.	... Respondent

WITH
CIVIL APPLICATION NO. 478 OF 2010
WITH
CIVIL APPLICATION NO. 479 OF 2010
IN
COMPANY PETITION NO. 226 OF 1998

Smt Kaushlyabai O. Jogani	... Petitioner
<i>Versus</i>	
The Provisional Liquidator of Libra Plantation Ltd. and anr.	... Respondents

Mr Prathamesh Kamat a/w Mr Kayush Zaiwalla, Mr Omprakash Jhah, Ms Radha Naik i/b. the Law Point, for the Petitioner-SEBI.

Ms P H Kantharia, G.P. a/w Ms Jyoti Chavan, Addl.G.P, Mr Abhay Patki, Addl.G.P, Ms Nazia Sheikh, AGP, for Respondent Nos.2 and 7- State of Maharashtra.

Mr Ranjeev Carvalho, for the Official Liquidator and Mr Chetan Shelke, Asst. Official Liquidator.

Mr Yadav, Senior Police Inspector, Unit IV, E.O.W. Mumbai present.

Mr Amit Mhatre, Assistant Police Inspector, Unit IV, E.O.W. Mumbai present.

CORAM

M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON:

24 October 2024

PRONOUNCED ON:

11 November 2024

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

1. Heard learned counsel for the parties.
2. The Securities Exchange Board of India (SEBI) instituted this Public Interest Litigation seeking several reliefs to deal with the menace of entities issuing financial instruments like Agro Bonds, Plantation Bonds, etc. (Financial Schemes) luring investors with promises of high returns but without any tangible securities and then leaving the investors in a lurch.
3. The SEBI instituted this Public Interest Litigation when there was no effective regulatory and statutory framework to control the mushrooming number of entities indulging in such financial schemes. The SEBI did point out that some regulatory and statutory framework was under contemplation, but it prayed for effective directions to deal with the unfortunate situation pending the formulation of statutes and regulatory frameworks to protect the interests of investors.
4. In terms of the 1995 amendments to the SEBI Act 1992, specific provisions were introduced, *inter alia*, to prohibit any

new Collective Investment Schemes (CIS) without obtaining registration from the SEBI. However, separate regulations for regulating such CIS were not in place when SEBI instituted this petition. Therefore, the existing CIS were permitted to continue until regulations were framed under Section 30 of the SEBI Act for effective implementation of the provisions of Section 11(2)(c) and 12(1B) of the SEBI Act. The SEBI did issue some press releases just before and after the institution of this petition.

5. Disclosures regarding the first respondent Company revealed that it floated 18 schemes, each maturing after about 15 years. The company collected approximately Rs.16,01,81,000/—(Rupees Sixteen Crores, One Lakh, and Eighty One Thousand only) through these 18 schemes. The SEBI sought specific reliefs concerning the first respondent because it was found that the promoters and directors absconded after collecting a vast amount to avoid honouring the commitments made.

6. The Company Court also admitted a Company Petition No.226/1998, and an Official Liquidator was appointed to take over the assets of the first respondent. Several orders were passed in the Company Petition, and it was suspected that even the order for the appointment of the Liquidator was obtained without complete disclosures and only to absolve the promoters and directors of the first respondent Company. Accordingly, the Company Petition was also tagged along with this petition so that the division bench could consider both matters in tandem. The first respondent's assets, including bank accounts, were attached under the various orders made in the two petitions. The Official Liquidator controls and

possesses these assets, and the winding-up process is underway.

7. Learned Counsel for the parties submitted that most of the reliefs in this petition are substantially worked out. They pointed out that this petition was filed, given the vacuum in primary and subordinate legislation, to deal with a situation where CIS were rampantly floated without any safeguards or securities for investors. Learned Counsel pointed out that the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999, are already in place. They have been amended from time to time to protect the interests of investors.

8. Learned Counsel for the parties agreed that this petition could be disposed of now, given that the 1999 regulations already address the situation highlighted in it. They suggested that Company Petition No.226/1998 be detagged from this petition so that the Company Court could consider it applying the well-settled principles under Company Law and the 1999 regulations.

9. We see no difficulty in accepting the above suggestion. Now that the main petition can be disposed of, it would not be appropriate for this Court to continue with the proceedings in the Company Petition. Instead, it would be appropriate if the Company Petition is detagged and the Company Court considers the same. This would include consideration of the various reports made by the Liquidator from time to time considering the affairs of the first respondent Company (in winding up).

10. There are specific issues regarding non-compliance with the directions issued by this Court from time to time in these joint proceedings. Even these matters can now be effectively considered by the Company Court in the Company Petition. These directions were common to both the proceedings and would now pertain to the Company Petition. The orders and directions in these joint proceedings would now continue operating in the Company Petition.

11. By orders made in this petition, the Deputy Commissioner of Police was appointed as the Investigating Officer and directed to file reports in sealed covers at the final hearing. However, we could find no such reports in the file, and ultimately, it turned out that the Deputy Commissioner of Police did not file any such Reports. Accordingly, we adjourned the matter to enable the learned A.P.P. to obtain instructions.

12. Learned A.P.P. submitted that the Police Authorities were unable to locate any reports. He submitted that since the directions were made in 1998, there has been difficulty in complying with these directions or reporting on the compliance status. This is not acceptable. The concerned Deputy Commissioner of Police must file the necessary reports, including compliance reports, before the Company Court in Company Petition No.226/1998. This should be done within eight weeks from today.

13. Similarly, we find that the Reserve Bank of India was directed to appoint three auditors to investigate the affairs of the first respondent Company. One of the auditors submitted its report to the Deputy Commissioner of Police. However, no

inquiry report has been filed as directed in our order dated 16.06.1998. Therefore, this direction should be complied with within eight weeks of today by filing the inquiry report before the Company Court in company petition no. 226/1998.

14. The Official Liquidator oversees respondents nos.1 to 5 and 7 properties. He should take steps in the best interest of the investors, make reports to the Company Court, and hereafter act under the orders and guidance of the Company Court. The issue of attachment, sale, etc., of the assets of respondents nos.1 to 5 and 7 will now be considered by the Company Court in Company Petition No.226/1998. The further issues of repayment of the invested amounts or at least proportionate invested amounts will also be dealt with in the Company Petition in terms of the procedure prescribed. This will involve inviting of claims, adjudication of claims, formulation of schemes, etc.

15. The pending notices of motion and civil applications do not survive and are disposed of. However, this does not preclude any parties from filing similar notices of motion, interim applications, etc., in Company Petition No.226/1998.

16. This petition is accordingly disposed of after detagging the Company Petition No.226/1998. The Registry must obtain necessary orders for placing Company Petition No.226/1998 before the Company Court to facilitate disposal of the said Company Petition by the Company Court.

17. This Writ Petition No.1337 of 1998 is disposed of in the above terms without any cost orders. Notice of Motions and Interim Application (L) No. 5606 of 2022 in Writ Petition

No.1337 of 1998 are also disposed of with the liberty to file a fresh Motions/Interim Application in the Company Petition. However, it is clarified that Company Petition No.226/1998 is not disposed of but only detagged so that the Company Court could independently hear it.

18. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)