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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13322/2022

BALVIR SINGH

..... Petitioner

Through: Mr. Uday Gupta, Mr. Hiren Dasan,
Mr. M.K. Tripathi, Ms. Hemlata Das,
Advs.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

..... Respondents

Through: Ms. Pinky Anand, Sr. Adv. with Mr.
Ashish Aggarwal, Ms. Sandamini
Sharma, Ms. Jasmine Kaur, Ms.
Nikita Sharma, Advs. for SEBI

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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15.09.2022

W.P.(C) 13322/2022 & CM APPL. 40430/2022 (Stay) & CM APPL. 40431/2022 (Lengthy Synopsis & List of Dates), 40432/2022 (for exemption)

This writ petition has been preferred against an order dated 22 February 2021 passed by the Adjudicating Authority in terms of the provisions made in Section 15D of the Securities and Exchange Board of India Act, 1992 [“the Act”].

Ms. Anand, learned senior counsel appearing for the respondents, takes a preliminary objection to the maintainability of the writ petition and submits that against the order impugned, the petitioner has an efficacious

alternative remedy of preferring an appeal in terms of Section 15T of the Act.

Learned counsel appearing for the petitioner however submits that the entire proceedings emanate from the original order passed by the Securities and Exchange Board of India [“Board”] in 2013. It was his submission that the aforesaid order was never challenged by the petitioner since in his estimation the Board had clearly held that past Directors of respondent No. 3 cannot be held liable and that they would not be adversely impacted by the decision ultimately taken. It was contended that misconstruing that decision, earlier also the respondents had initiated coercive action against the petitioner which constrained him to prefer a writ petition before this Court. That writ petition being W.P.(C) 4517/2017 ultimately came to be disposed of on 05 February 2018 with the following operative directions:-

19. Accordingly, the impugned order is set aside giving liberty to the Recovery Officer to issue a fresh demand notice pursuant to the recovery certificate drawn up by him as required under Clause 2 of the Second Schedule of the Income Tax Act, 1961. The only caveat being is that since moneys have already been transmitted to the Board it will retain the same in trust till such time the Recovery Officer passes a final order after issuance of notice, giving due opportunity to the petitioner to respond to the same.

19.1 In case the Recovery Officer agrees with the contention of the petitioner that in terms of the order of the Board, he could not have been characterized as the defaulter, the logical corollary would be that the Board would have to return the moneys held in trust by it. Needless to say if the Recovery Officer reaches a contrary conclusion, then, the Board would continue to hold the moneys and use the same as mandated by law.

20. With the aforesaid observations, the writ petition is disposed of.

Learned counsel drew the attention of the Court to the relevant parts of the said decision in which too the petitioner had urged that no liabilities could be foisted upon the petitioner in terms of the original decision of the

Board. That writ petition however ultimately came to be disposed of with the learned Judge finding that the recovery certificate which was impugned there was contrary to the provisions made in the Second Schedule of the Income Tax Act, 1961. That decision however did not record any finding on merits on the principal challenge which was addressed by the petitioner, namely, the petitioner by virtue of being a past Director not being otherwise liable under the original decision of the Board. It had in terms of Para 19.1 thereof observed that it would be open to the Recovery Officer to examine all issues and contentions including that of the petitioner not being liable in terms of the original order passed. The learned Judge had further observed that in case the Recovery Officer find merit in the challenge so raised, it would not continue the proceedings as initiated against the petitioner. It was further observed that in case it reached a contrary conclusion, it would be open for the Board to continue to hold the monies and utilise the same in accordance with law. Learned counsel seeks to draw sustenance from the fact that subsequently and pursuant to the directions issued by this Court on the earlier writ petition, the Recovery Officer had in fact by an order of 22 March 2018 withdrawn all proceedings which had been initiated against the petitioner. It is in aforesaid backdrop that learned counsel contended that the petitioner is not liable to be relegated to the alternative remedy.

The Court finds itself unable to sustain the aforesaid submission for the reason that the order of the Recovery Officer does not record any categorical findings on whether the petitioner was or was not liable in terms of the original order which had been made by the Board. The issues which were canvassed before this Court in the earlier writ petition thus do not appear to have been decided or ruled upon on merits. In any case, the

present proceedings which flow from the power of the respondents to levy penalties under the Act stand on a completely distinct footing.

In that view of the matter, it would be appropriate for the petitioner to raise all objections and contentions before the Appellate Tribunal.

The writ petition shall consequently stand dismissed on the ground of alternative remedy.

YASHWANT VARMA, J.

SEPTEMBER 15, 2022
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