



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

WRIT PETITION (L) NO.1020 OF 2024

Nidhi Broking Services Private
Limited & Ors.

.. Petitioner

Versus

Central Depository Services
(India) Limited & Ors.

.. Respondents

Mr. Zerick Dastur a/w Mr. Khushil Shah, Ms. Rohma Hameed Haq and
Ms. Esha Nangre i/by Zerick Dastur Associates for the petitioners.

Mr. Kunal Dwarkadas, Mr. Anuj Athalye and Mr. Nitin Jain i/by Legasis
Partners for respondent No. 1.

Ms. Nishin Shrikhande, Ms. Nidhi Faganiya i/by Vidhi Partners for
respondent No.2.

CORAM : M. S. Sonak &

Jitendra Jain, JJ.

DATE : 16 December 2024

PC.:-

1. Heard learned counsel for the parties.
2. On 27 November 2024 we made the following order in this
matter;

Heard learned Counsel for the parties.

*The Securities and Exchange Board of India has filed an affidavit in
this matter stating that the first Respondent's termination of the
depository participant agreement was disproportionate.*

The Coordinate Bench, in its order dated 12 January 2024, while admitting this Petition and granting interim reliefs, had made the following observations in paragraphs 9 to 12:

“9. Having heard learned counsel for the parties and having perused the record and more particularly, the show cause, the impugned termination order and the appellate order, prima facie we are of the opinion that respondent no. 1 itself was in some state of uncertainty as to whether the consequences of non-compliance of regulations of the SEBI would entail a consequence as foisted on the petitioners. CDSL in such regard, had infact approached the SEBI, however, the SEBI did not inform the CDSL on any position it should be taking on such compliances. In such context, it is informed to us by Mr. Sancheti, learned senior counsel for SEBI that once the SEBI had prescribed the requirements under the said regulations, the compliance was an issue between CDSL and its participants on which SEBI would not have any control.

10. In the above circumstances, prima facie we find much substance in the contentions as urged on behalf of the petitioners that petitioners being put to a notice by the CDSL for compliance to be submitted in terms of what was recorded in the letter dated 24 February, 2023 as noted by us hereinabove, which the petitioners complied by submitting a “Net Worth Certificate” on 20 April, 2023. Such a certificate was not rejected by CDSL even on the ground that it is not based on audited accounts. On behalf of the petitioners, it is stated that in fact it was issued only after an audit.

11. Prima facie, we find much substance in the contentions as urged on behalf of the petitioners and wonder whether the petitioner could not have been foisted with termination and more particularly considering the decision the respondent had taken in its letter dated 24 February, 2023, by which also a legitimate expectation was created in the petitioners to achieve the compliance by 24 April, 2023. The CDSL could not have turned around and then shown the rule book to the petitioners, after having granted such opportunity in its letter dated 28 February, 2023 providing time to the petitioners to achieve compliance by 24 April, 2023. In our opinion, such course of action as adopted by CDSL

was in fact in consonance of its bye laws which we have noted hereinabove.

12. It may be that SEBI mandated such compliance but compliance of such a nature, namely of a turnover, in our prima facie opinion cannot amount to compliance of such fundamental nature that a participant needs to instantly lose its right to do business as permitted by a registration as granted by respondent no. 1, when it otherwise acts in accordance with all the legal requirements, this more particularly when about 700 participants of the petitioners would suddenly be in a limbo.”

The record also prima facie shows that the Petitioner complied with the net worth requirements within the extended period granted by the first Respondent. However, submitting the required compliance in the manner required by the first Respondent was not easy.

Based on instructions from the Petitioner, Mr Dastur, the learned Counsel for the Petitioner, has submitted that the Petitioner has no intentions of instituting any suit or otherwise seeking any damages from the 1st Respondent. Moreover, the Petitioners have been protected by interim orders made by this Court.

Based on the above circumstances, we think the 1st Respondent should consider revisiting the impugned decision, considering the peculiar facts of the present case. Ordinarily, possessing the essential requirements before the prescribed date would be mandatory, but the mode of proof may not. The impact of SEBI's affidavit/stance and this Court's prima facie observations in the interim order may also be considered.

We post this matter on 16 December 2024 to enable them to do so. If necessary, an affidavit should be filed to convey some decisions to the Court before that date.

List the matter on 16 December 2024 for directions/disposal.

3. Based upon the same, Mr. Dwarkadas learned counsel for the respondent No.1 had sought for some time to take instructions.
4. Today, we are happy to note that Mr. Dwarkadas and Mr. Dastur have handed in minutes of the order duly signed by the learned counsel.

The minutes are taken on record and mark as 'X' for identification. The minutes basically state that the respondent No.1 has revisited the impugned decision terminating the petitioner as a depository participant vide orders dated 10 November 2023 and 8 January 2024 and has decided to reverse the said decision, including restrictions imposed upon the petitioner regards opening of new demat account.

5. The minutes are transcribed below for convenience of reference :

“1. We are informed by the learned counsel for respondent No.1 that pursuant to the observations in the Order dated 27th November 2024, Respondent No.1 has revisited the impugned decision of terminating the Petitioner as a Depository Participant vide orders dated 10th November 2023 and 8th January 2024 and that the Respondent No.1 has decided to reverse the said decision including the restriction on opening new Demat a/c in view of the following:

(a) The prima facie observations in previous orders that the petitioner complied with the net worth requirements within the extended period;

(b) The petitioner's current and continuing compliance with the net worth requirements;

(c) The statement made by respondent No.2 i.e. the Securities and Exchange Board of India in its Affidavit in Reply that the termination of the Depository Participant Agreement by Respondent No.1 was grossly disproportionate ; and

(d) The statement made by the petition's advocate as recorded in the Order dated 27th November 2024 that the petitioner has no intentions of instituting any suit or otherwise seek any damages from the respondent No.1.

2. The statement made by the petition's advocate as recorded in paragraph 1(d) above is accepted and treated as an undertaking on behalf of the petitioner.

3. In view of the above, nothing survives in the present writ petition. Accordingly, the writ petition is disposed of in

the above terms.

4. Needless to mention, this order has been in the peculiar facts and circumstances of the present case and is not to be treated as a precedent.”

6. Mr. Dwarkadas explained that the respondent No.1 decided as above considering the prima facie observations in the previous orders about the petitioner having complied with the net worth requirements within the extended period and the fact that the petitioner continues to comply with the net worth requirements currently. Besides, Mr. Dwarkadas pointed out that the respondent No.1 has also considered SEBI's stand about disproportionality of the action.

7. Mr. Dastur, learned counsel for the petitioner, has, based on instructions from the petitioner already stated that the petitioner has no intention to institute any suit or otherwise recovering any damages from the respondent No.1. This statement was already recorded by us in our order dated 22 November 2024 and this statement is now reiterated by Mr. Dastur again, based on the instructions of the petitioner. This statement is accepted.

8. Accordingly, we dispose of the petition in terms of draft minutes handed in. We also appreciate the reasonable stance of the parties including the respondent No.1 withdrawing terminations and the petitioner agreeing not to precipitate the matter any further.

9. We note that this order has been passed in the peculiar facts of the

present case, including, stance of the SEBI as reflected in the affidavit.

10. The petition is disposed of in the above terms without any cost order. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)