

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 493 of 2020****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2020****In R/SPECIAL CIVIL APPLICATION NO. 493 of 2020**

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HARESH BHAWAN CHATWANI HUF**Versus****UNION OF INDIA**

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Appearance:

Ms. HIMANI KINI(7489) for the Petitioner(s) No. 1,2,3,4

VINAY D BAIRAGAR(8360) for the Petitioner(s) No. 1,2,3,4

MR AMAR N BHATT(160) for the Respondent(s) No. 5,8

MR. BHADRISH S RAJU(6676) for the Respondent(s) No. 3

MS DHARMISHTA RAVAL(707) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 1

NOTICE UNSERVED for the Respondent(s) No. 6

SERVED BY RPAD (N) for the Respondent(s) No. 4,7

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**Date : 29/06/2022****ORAL ORDER**

Leave to amend.

1. At the outset, learned advocates appearing for the respective parties have submitted that during the pendency of this petition, the final order 02.01.2020 has been passed, hence the interim order, which is challenged has merged with the same.

2. Learned advocate Mr.Bhatt appearing for the respondent nos.5 and 8 has submitted that in fact the petition has become infructuous since the respondent nos.5 and 8 have in fact resigned in the year 2018 and 2010 respectively, and even if the petitioner is aggrieved by any action or inaction of the respondent authority, he has a remedy to file an appeal to the Securities Appellate Tribunal under Section 15T of the Securities and Exchange Board of India Act, 1992 (for short “the SEBI Act”).

3. Learned advocate Ms.Raval appearing for the respondent no.2 has adopted the submissions advanced by the learned advocate Mr.Bhatt and has submitted that as per her instructions, in fact appropriate exercise was undertaken against the respondents no.5 to 8 and if the petitioner is aggrieved by any inaction, he can file an appeal under Section 15T of the SEBI Act.

4. Learned advocate for the petitioner has submitted that the petitioner wants that similar actions, which are taken against the other directors as mentioned in the interim order and in the final order, should have been taken against the respondent nos.5 to 8. He has submitted that in fact the respondent nos.5 to 8 were initially included by the Board while initiating the proceedings under Sections 11(4), 11B and 11D of the SEBI Act read with regulation 35 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, however, by corrigendum dated 09.10.2019 passed by the Board, the respondents were excluded. He has placed reliance on the provisions of Section 27 of the SEBI Act in this regard. He has also orally submitted that in fact incorrect and false affidavit is filed before this Court by the respondent. Finally, it is submitted that in case the petitioners file an appeal, the respondent nos.5 to 8 may not object that appeal is not maintainable

5. I have heard the learned advocates appearing for the respective parties.

6. The facts, as narrated hereinabove, are not in dispute. During the pendency of this petition, a final order dated 02.01.2020 is passed. The petitioners are aggrieved with the inaction of the respondent authorities against the respondent nos.5 to 8. The petitioners are aggrieved with the

corrigendum dated 09.10.2019, whereby the respondent nos.5 to 8 are excluded from exercise of powers under Sections 11(4), 11B and 11D of the SEBI Act.

7. At this stage, it would be apposite to refer to the provisions of Section 15T of the SEBI Act, which read as under:-

“Appeal to the Securities Appellate Tribunal. 15T.

[(1) Save as provided in sub-section (2), any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(1) Save as provided in sub-section (2), any person aggrieved by any order made by any Adjudicating Officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by an Adjudicating Officer with the consent of the parties. Omitted by the Securities Laws (Amendment) Act, 2014, w.r.e.f. 18-07-2013. Prior to omission, subsection (2) read as under: —

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made—

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999; 28

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the 106[Board or the Adjudicating Officer, as the case may be,] is received by him and it shall be in such form and be accompanied by such fee as may be prescribed : Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the 107[Board, the] parties to the appeal and to the

concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

A plain and simple reading of the aforesaid provisions reveal that any person aggrieved by an order of the Board can file an appeal before the Securities Appellate Tribunal. The petitioners can challenge the order dated 02.01.2020 and the corrigendum to such order by way of filing an appeal.

8. It is not in dispute that there are various disputed questions of fact involved in the writ petition, which can only be examined by the Appellate Tribunal. The petitioners are aggrieved by the inaction of the respondent-Board in taking similar action, which are undertaken against the other directors and have excluded respondent nos.5 to 8. The aforesaid fact is also disputed by the learned advocate Ms.Raval appearing for the respondent no.2. She has placed reliance on the affidavit filed by her and has submitted that in fact appropriate exercise was undertaken and investigation was also initiated against the respondent nos.5 to 8.

9. In view of the aforesaid disputed questions of fact, it would be appropriate that the petitioners can avail remedy before the Tribunal under the provisions of Section 15T of the SEBI Act, as contended by the respondent.

10. In this view of the matter, the present writ petition is disposed of. Notice is discharged.

11. So far as the limitation period is concerned in filing the aforesaid appeal, the time consumed before this Court shall be adjusted.

12. In view of the order passed in the main matter, the connected civil application does not survive and the same is disposed of accordingly.

(A. S. SUPEHIA, J)

ABHISHEK/19