

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.09.2014

+ **W.P.(C) 5666/2014**

SURESH GUPTA

..... Petitioner

versus

SEBI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sachin Mittal.

For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition impugning an order dated 30.12.2013 passed by the Securities and Exchange Board of India (in short 'SEBI'), whereby the complaint made by the petitioner against Swastik Investment Stock and Share Dealer was rejected.

2. The petitioner has alleged that it had entered into certain transactions during the financial years 1999-2000 and 2000-2001 whereby certain shares held by the petitioner in dematerialized form were transferred to respondent no.2 (who was described as the Managing Partner of M/s Swastik Investment in the complaint preferred by the petitioner before the SEBI).

3. According to the petitioner, SEBI has failed to exercise its jurisdiction by declining to entertain the petitioner's complaint alleging that respondent no.2 had purportedly acted as a sub-broker. The petitioner further contends that in terms of Section 15Y and 20A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the Civil Courts would not have jurisdiction to entertain the complaints in respect of the transactions between the petitioner and respondent no.2.

4. The transactions in question are alleged to have been entered into in the year 1999-2000 and 2000-2001. Admittedly, these transactions were not transactions relating to securities markets as all these transactions were not transacted on any of the recognized Stock Exchange but were stated to be "off market transactions". This means that the shares alleged to have been transferred by the petitioner to respondent no.2 were on the basis of a private arrangement between the two parties. Concededly, respondent no.2 is not registered as a broker/sub-broker with the SEBI. Further, the SEBI found that the petitioner could not substantiate that respondent no.2 had approached the petitioner as a broker.

5. In the given circumstances, SEBI considered the complaint of the petitioner and by the impugned order dated 30.12.2013 held as under:-

"6. You may please note that Swastik Investment is not registered with SEBI as a stock broker or sub broker. It is observed from your complaint dated December 21, 2009 that you had transferred shares from your demat account to the demat account of Shri Goel and his firm. Such transfer is an off-market transfer between two private entities. Further, the said transaction(s) were between two entities which did not

take place on the platform of any stock exchange. On our examination, it appears that some of the securities transferred by you were actually pledged by Sh. Sunil Goel and hence appear to be of the nature of loan, transactions which are outside the purview of SEBI.

7. It may also be mentioned that it was informed by you in the meeting held at our office on November 18, 2013 that you do not have any documents to substantiate that Shri Sunil Goel approached you as a broker. You further stated that Shri Sunil Goel used to help you and your family members in the purchase/sale of shares. On specific query, you informed that you do not have even the phone number of Shri Goel or Swastik Investment. Thus you dealt with the entity which was not authorised or registered with SEBI. It may be noted that no complaint has been received by us from you prior to 2009 regarding the transfers, which, as referred to in the 'complaint dated December 21, 2009, pertain to the period 1999-2000. It is clear that you preferred to complain to SEBI after 10 years from the time period of dispute between the parties.

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9. In view of the above, the matter appears to be a dispute between you and the entities who are not regulated or registered with SEBI. Therefore, you may like to take up the matter with the appropriate authority.”

6. The functions of SEBI under the SEBI Act include regulating of business in Stock Exchange and other security market and regulating the working of Stock brokers, sub-brokers and other market intermediaries. And, the facts of the present case do not indicate that the transactions entered into between the petitioner and respondent no.2 were transactions either related to the securities market or transactions between an investor

and a broker. The transfer of shares alleged to have been affected by the petitioner in favour of respondent no.2 were, plainly, in the nature of private transactions between two parties, which were unrelated to the securities market.

7. Thus, SEBI would have a very limited role to play in respect of such transactions.

8. The petitioner's contention that the jurisdiction of Civil Courts is barred in respect of the allegations relating to the alleged transaction entered into between the petitioner and respondent no.2 is misconceived. The jurisdiction of Civil Courts to enforce the provisions of the SEBI Act in respect of matters, which are vested with the adjudicating authority is barred by virtue of Sections 15Y and 20A of the SEBI Act, which read as under:-

“15Y. Civil Court not to have jurisdiction. - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

20A. Bar of jurisdiction - No order passed by the Board or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no Civil Court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any

action taken or to be taken in pursuance of any order passed by the Board or the adjudicating officer by, or under, this Act.”

9. The said provisions do not bar the common law remedies and action in relation to a breach of contract. This is clearly spelt out by Section 21 of the SEBI Act, which reads as under:

“21. Savings

Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.”

10. The complaint made by the petitioner before the SEBI was for imposition of penalty upon respondent no.2. However, the SEBI found that petitioner had failed to provide any material to conclude that respondent no.2 had approached the petitioner as a broker. Consequently, the SEBI held that the disputes related to entities, which were not regulated by SEBI. I do not find any infirmity with the SEBI’s decision. The impugned order passed by SEBI is neither patently erroneous nor ill-informed by reason. Accordingly, the present petition is dismissed as bereft of any merits.

VIBHU BAKHRU, J

SEPTEMBER 01, 2014
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