IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodg)NO.2527 2015

1.Yantra Natural Resources Ltd. and Anr. ... Petitioners.

Vs.

Bombay Stock Exchange. ... Respondent

Mr.Aspi Chinoy, Senior Advocate with Mr.Milind Sathe, Senior Advocate with Mr.Prateek Seksaria with Mr.Nivit Srivastava & MR.Nakul Jain, Mr.Harish Behany i/b. Maniar Srivastava Associates, for the Petitioners.

Mr.Percy Mody, Senior Advocate with Mr.Ajay Khaire i/b. Economic Law Practice, for the Respondent.

CORAM : M.S.SANKLECHA &
G.S. KULKARNI, JJ.

DATE : 27th AUGUST, 2015.

P.C. :

1. This petition under Article 226 of the Constitution of India assails the order dated 25th August,2015 passed by the respondent – Bombay Stock Exchange. By the impugned order, as an interim measures, the trading in the securities of the petitioner no.1-

company has been suspended with effect from 28th August,2015 till further directions. This has done as recorded in the impugned order in view of the prima facie view that there was market manipulation in respect of the shares of petitioner no.1-company.

2. Mr.Aspi Chinoy, learned Senior Advocate appearing for the petitioners challenges the impugned order, inter alia on the following grounds:-

(a) Bye law 21 of the Stock Exchange Bye Laws under which the impugned order is passed is violative of Article 14 of the Constitution as it does not provides for any hearing before passing of the order;

(b) impugned order records it is issued in accordance with the directions by SEBI, when there are no directions. In fact what has been referred to as directions is draft minutes of the meeting held between the officers of the SEBI and the officers of the Stock Exchange which merely sets out parameters to be kept in mind for ensuring that the market operations are not manipulated;

(c) the impugned order is beyond the powers of Regulation

21 of Bye-laws, as it can be exercised only by the Stock Exchange Governing Board or its Executive Director on behalf of the the Governing Board. Therefore, the impugned order passed by the Managing Director of the Stock Exchange is void; and

(d) the impugned order of suspending the trading in the petitioner no.1- company's shares is on the basis of stale facts. Therefore, there was no urgency warranting the suspension of trading in the petitioner no.1-company's shares.

3. As against the above, Mr.Mody, learned Senior Advocate appearing for the Stock Exchange contested the submissions made on behalf of the petitioners as under:-

(a) In terms of Securities Contracts (Regulation) Act,1956, the Bombay Stock Exchange is completely governed and controlled by the Regulator i.e. SEBI. The draft minutes which have been relied upon in the impugned order have set out the parameters laid down by the SEBI and any violation of those parameters would necessarily requires Stock Exchange to take action in respect of the shares of the delinquent company pending investigation and final order. Thus, SEBI is a necessary party to the present petition.

(b) Statutory alternative remedy is available to the petitioners under the Securities Contracts (Regulation) Avt,1956 and it could avail of the same;

(c) the impugned order has been passed on the material which prima facie would require further investigation into the dealings of the petitioners' Company's shares as it appears to be not in the interest of the fair operation of the market;

(d) so far as the issue of the order being issued under Bye-law 21 of the Bombay Stock Exchange Bye-laws by the Governing Board or the Executive Director on behalf of the Governing Board, it is submitted that the necessary resolutions have been passed by the Governing Board allowing its Managing Director and Chief Executive Officer to issue orders for and on behalf of the Governing Board. Further the M.D. & C.E.O. is regarded as the Executive Director of the Stock Exchange and so held in an earlier proceedings before the Securities Appellate Tribunal;

(e) the particulars on which the impugned order has been issued are not stale. In fact, the particulars relied upon evidences that any delay on the part of the Stock Exchange would/may result in loss to genuine investors;

It is submitted that all these aspects could be considered before the appropriate forum i.e. in the representation before the Stock Exchange or in appeal to Securities Appellate Tribunal.

4. The trading in stocks and securities on the Stock Exchanges is a specialised activity and for that purpose the Regulator in the form of SEBI has been appointed. These are matters which requires specialised knowledge and is best left to the designated Authority and the Appellate Authority under the Act to decide. Particularly as the contentions of both sides would require detailed examination in the context of Stock Market operations. We find that the impugned order inter alia records as under:-

> "*Based on the aforesaid finding and taking into consideration the orders passed by SEBI in the matters of Radford Global Ltd., Moryo Industries Ltd, First Financial Services Ltd, Kamlakshi Finance Corporation Ltd. (copies of the orders are available on www.sebi.gov.in) wherein similar modus operandi of market manipulation was*

adopted, prima facie there appears to be certain market manipulation affecting the interest of investor and hence, it is necessary that detailed investigation be carried out by the Exchange/SEBI.

… …. …. …. …

In view of the above, as directed by SEBI and as an interim measure, it is necessary to take immediate action. Accordingly, in exercise of the powers vested in me under Bye-law 21 of the Exchange, the trading in the securities of the company is suspended / prohibited w.e.f. August 28, 2015 till further directions; to safeguard the interests of securities market and investors.

In case, you wish to avail an opportunity of making representation with regards to suspension in the trading of securities of your company, you may approach the concerned officials at the below mentioned details."

Thus, it is clear that action to suspend the trading in the securities of the petitioner no.1 – Company has been taken, as it prima facie appears, that there is market manipulation affecting the interest of the investors and same would require detailed investigation. Besides, while suspending the trading, as an interim measure, the impugned order also informs the petitioners of making representation with regard to the interim order, pending investigation, to the respondent

- Stock Exchange for reconsideration of its actions. Besides, we find that Section 23L of the Securities Contracts (Regulation) Act,1956 provides an alternative remedy of an appeal before the Securities Appellate Tribunal from the orders of the Stock Exchange. The running of Stock Exchange is an area of specialization requiring expertise and in view thereof the SEBI has been appointed as a Regulator. This is to ensure that dealings in the shares on the Stock Exchange, are not manipulated to the detriment of genuine investors in stock market. The decision taken by the impugned order being an interim order pending investigation is subject not only to the representation to the Stock Exchange but is also subject to appeal to the Securities Appellate Tribunal. Therefore, the submissions urged before us could be urged either in the representation before the Official of the Stock Exchange or before the Securities Appellate Tribunal in an appeal, if they choose to prefer an appeal. The relief which they are seeking from this Court is something which would be available to them by availing of statutory alternative remedy provided to them under the Securities Contracts (Regulation) Act,1956 or by filing a representation tot he Stock Exchange. Thus, we see no reason to exercise our extraordinary writ jurisdiction in the peculiar facts of this case.

5. So far as the issue of Regulation 21 of the bye-laws of the Bombay Stock Exchange being ultra vires of Article 14 and 19(1)(g) of the Constitution is concerned, the challenge is on the basis that the impugned interim order has been passed without following principles of natural justice etc. Firstly, it must be appreciated that principles of natural justice are not immutable. They necessarily have to yield / be modified to meet different situations. This is only an interim order and the issue of such orders pending further investigation and consideration cannot be faulted as otherwise genuine investors in the Stock Exchange may face ruin. At this stage, we, therefore, refrain from entertaining the challenge to the vires of Regulation 21 as raised by the petitioners.

6. In view of the above we find no merit in the petition. Accordingly, it is dismissed with no order as to costs.

(G.S.KULKARNI, J.) ***(M.S.SANKLECHA, J.)***