IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.39046 of 2015

M/s.Asurre Agrowtech Limited
having its Registered Office at
Rehaja Complex, 1st Floor,
No.834, Anna Salai,
Chennai-600 002.
rep. by its Managing Director
Mr.S.Thangappalam. ... Petitioner

Vs.

1.Securities and Exchange Board of India,
SEBI Bhavan, Plot No.C4-A,
"G" Block, Bandra-Kurla Complex,
Mumbai-400 051.

2.Assistant General Manager,
Southern Regional Office,
Securities and Exchange Board of India,
overseas Towers,
7th Floor, 756-L, Anna Salai,
Chennai-600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to dispose of the representation of the petitioner company in relation to registration of Applicant's Company as a Collective Investment Management Company filed by the petitioner on 02.03.2015 within a stipulated time as fixed by this Court.

For Petitioner : Mr.P.Subba Reddy
For respondents : Mr.Shivakumar and Suresh

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the 1st respondent to dispose of the representation dated 02.03.2015 given by the petitioner-Company in relation to registration of petitioner -Company as a Collective Investment Management Company.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner viz, M/s.Asurre Agrowtech Limited has been incorporated under the Companies Act, 1956 on 13.09.2007 vide CIN;U51213TN 2007 PLC 064744. The petitioner-Company was incorporated as an infrastructure vehicle to pool farmer's / producers live stocks / resources to enable them to access the business of intensive and integrated goat farming in large scale, which they might not otherwise be able to access in their individual capacities due to requirement of huge investment, technology, knowhow and efficient management team with relevant experience. The activities of Petitioner-company are to organize, operate and manage the Techno based Animal Husbandry Project on behalf of the farmers in line with the idea of producer-Company with the co-operative principle of self-help through mutual help, does not fall within the ambit of CIS as defined by Section 111AA(1) and 11AA(2) of the SEBI Act read with Regulation 65 of the CIS Regulations, 1999. Therefore, the petitioner-Company has not obtained the certificate of registration from the SEBI.

2-2.While the nature of the business activities of the petitioner-Company is so, the respondents had issued a letter No.SEBI/MI/PBR/30084/2014/1, dated 17.10.2014. According to the respondents, the activities of the petitioner-Company falls under 'Collective Investment Management Company'. The Board of Directors of the petitioner-Company at the earliest time, after receipt of the SEBI letter, called several meetings of the farmers/investors and placed before the meeting, the letter dated 17.10.2014 received from SEBI. The petitioner-company, after taking into consideration the suggestion and advise of the farmers/investors, immediately initiated effective steps to register the petitioner company as 'Collective Investment Management'.

2-3.The Board of Directors of the petitioner-Ccompany had convened an extraordinary general body meeting of the members of the company vide Notice dated 02.02.2015, which was held on 09.02.2015 for the approval of the members to change the main object Clause IIIA of the Memorandum of Association to insert the following clause_

“To act as Collective Investment Management Company and be registered with the Security and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, as may be amended from time to time.”

2-4.Thereafter, the petitioner-Company has submitted an application in Form-A, dated 02.03.2015 with the SEBI along with prescribed fee for the grant of registration as collective investment management company, which is still pending for consideration before SEBI. Subsequent to the application, several reminders were sent to the 1st respondent requesting them to register the petitioner company. Inspite of the same, the respondents did not register the petitioner-company; on the contrary, they passed an order dated 03.07.2015 imposing certain restrictions and conditions on the functioning of the petitioner-company, without disposing the original application submitted for registration. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3.The learned counsel for the petitioner submitted that the petitioner's application is pending from 02.03.2015 for the past one year; therefore, a direction could be given to the respondents to dispose of the petitioner and to pass appropriate orders.

4.But, the learned counsel appearing for the respondents, by filing a detailed counter, contended that on 15.10.1999, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 was notified (CIS Regulations). As per the CIS Regulations, any person who has been operating a CIS, at the time of commencement of the CIS Regulations, was required to make an application to SEBI for the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS Scheme without obtaining the Certificate of Registration from SEBI. Even in the absence of any complaint from a private investor, SEBI being the watchdog of right of investors has the statutory duty and right to investigate into the matter and to do all things necessary to ensure that the rights of investors are safeguarded. Any company floating a CIS is statutorily bound to comply with the CIS Regulations. As per the said Regulations, all companies running CIS must register themselves with SEBI and registration with SEBI is a pre-condition for launching any collective investment scheme and collecting money from the public. The petitioner has not registered with SEBI, however, had unauthorisedly mobilised money from their CISs and is therefore guilty of violation of the said Regulations. Hence, the SEBI has initiated proceedings in this matter and passed a restraint order against the petitioner-Company and its directors on 03.07.2015. In fact, by the order dated 03.07.2015, the petitioner was directed to cease and desist and not to solicit such activities and advised to furnish the documents mentioned therein. The petitioner was granted a personal hearing on 13.01.2016 before the Whole Time Member of SEBI, as per his request, and during the personal hearing, the petitioner was directed to submit the documents as sought in the order dated 03.07.2015 by 14.01.2016. There was a delay of six months in submitting the documents. One more personal hearing was granted as per the request of the petitioner. During the personal hearing on 03.01.2016, the petitioner filed his written submissions and prayed to repay the investors and wind up the schemes in accordance with Regulation 73 of the CIS Regulations. On the other hand, the petitioner is praying to consider his application for Registration as CIS. The petitioner is making inconsistent statements. Only after disposal of the pending proceedings before the respondents, the issue regarding registration of the petitioner company can be decided. Thus, the learned counsel for the respondents submitted that the present writ petition is premature and not maintainable.

5.Heard both sides and perused the materials available on record.

6.From a perusal of the materials available on record, it is seen that already there is an interim order against the petitioner to desist from collecting money from the investors. Further, the petitioner had already collected money to the tune of Rs.70 crores under various schemes without obtaining registration from SEBI. The Registration with the SEBI is a pre-condition for collecting money under any scheme. Though interim order was passed restraining the petitioner from collecting money under any scheme, the same was not complied with by the petitioner. Only in this situation, the petitioner has come forward with the present writ petition. Considering the nature of the business activities and conduct of the petitioner, I am of the opinion that it is not a fit case to give direction to the respondents to consider the representation of the petitioner. It is needless to say that this Court cannot mechanically give direction to the respondents to consider the representation of the petitioner in all cases. Further more, in the counter it has been stated that only after disposal of the pending proceedings before the SEBI, the issue of registration of the petitioner-Company could be decided. Therefore, I am of the opinion that there is no need to give any direction as sought for by the petitioner, at this juncture.

Hence, the writ petition is liable to be dismissed and accordingly, the same is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.Securities and Exchange Board of India,
SEBI Bhavan, Plot No.C4-A,
"G" Block, Bandra-Kurla Complex,
Mumbai-400 051.

2.Assistant General Manager,
Southern Regional Office,
Securities and Exchange Board of India,
overseas Towers,
7th Floor, 756-L, Anna Salai,
Chennai-600 002.

+1 cc to Mr.P.Subba Reddy Advocate vide sr.19564
+1 cc to Mr.Shivakumar & Suresh Vide sr.19485

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