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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) No.12332/2015 & CM No.32761/2015 (for stay).
MAHADUSHI INTERNATIONAL TRADE LIMITED ..... Petitioner

Versus

BSE LIMITED AND ANR ..... Respondents

\+ W.P.(C) No.226/2016 & CM No.905/2016 (for stay).
SIDDARTH BUSINESSES LTD. ..... Petitioner

Versus

BSE LTD. & ANR ..... Respondents

Counsel for the petitioners:-
Mr. Manish Jain, Mr. Ankur Garg, S. Ganguly, Mr. Siddharth Sharma and Ms. Nanki Arora, Advs.
Mr. S.B. Upadhyay, Mr. Pawan Upadhyay, Ms. Sharmila Upadhyay, Mr. Rajesh Chhetri, Mr. Rajeev Chhetri and Ms. Meenakshi Rawat, Advs.
Counsel for the respondents:-
Mr. Aditya Shankar, Adv. for BSE.
Mr. Sanjeev Narula, CGSC and Ms. Meha Rashmi, Adv. for UOI.
Ms. Abha Malhotra with Mr. Kushal Sharma and Mr. Gaurang Bindra, Advs. for UOI.
Mr. Ripu Daman Bhardwaj, CGSC with Mr. T.P. Singh, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **15.01.2016**

1. Both petitions impugn the notices dated 18th December, 2015 and 21st December, 2015 of the respondent no.1 Bombay Stock Exchange (Exchange) and seek a mandamus to the respondent no.1 Exchange to

restore trading in the securities of each of the petitioners. A direction is also sought to the respondent no.2 Union of India (UOI) to frame guidelines with respect to the affairs of the respondent no.1 Exchange, particularly defining the procedure and circumstances under which trading in the securities of a Company listed on the said Exchange can be suspended.

2. Vide notice dated 18th December, 2015 the respondent no.1 Exchange informed all the Trading Members of the Exchange of the necessity to take further pre-emptive measures to curtail the malice of unusual price movement vis-a-vis preferential issue price and weak financials of the company and increase in manipulation/abrupt movement in the prices of securities and of having adopted a surveillance/preventive measure of suspending the trading in the securities of companies satisfying the parameters of the Exchange including preferential allotment done in the past few years. Vide the same notice Auditor Certificate on the various parameters mentioned therein were also required to be submitted by all the companies which in the past few years had issued preferential shares.

3. In pursuance to the aforesaid policy/decision as contained in the notice dated 18th December, 2015 the respondent no.1 Exchange vide notice dated 21st December, 2015 suspended trading in securities of as many as 35 companies in which the petitioner in each of the petitions is included.

4. W.P.(C) No.12332/2015 came up before this Court first on 23rd December, 2015 when while issuing notice thereof it was directed that till the next date of hearing "the respondents shall not take any coercive action pursuant to notice dated 21st December, 2015 against the petitioner subject to condition that the petitioner will furnish the requisite Auditor Certificate

till 29th December, 2015 as directed vide notice dated 18th December, 2015".

5. W.P.(C) No.226/2016 came up before this Court first on 11th January, 2016 and since then the same is being adjourned from time to time on the request of the petitioner.

6. Today, the counsel for the petitioner in W.P.(C) No.12332/2015 states that pursuant the petitioner furnishing the Auditor Certificate to the respondent no.1 Exchange, the respondent no.1 Exchange is satisfied of the petitioner therein not qualifying for suspension of trading in its securities and notice dated 21st December, 2015 in so far as against the said petitioner has been re-called and trading in the petitioner's securities on the respondent no.1 Exchange has resumed from 28th December, 2015.

7. The counsel for the respondent no.1 Exchange confirms.

8. The counsel for the respondent no.1 Exchange further states that as far as the petitioner in W.P.(C) no.226/2016 is concerned, though has also submitted certain documents but has till date not submitted the preferential share allotment document and the documents showing the utilisation of funds and if furnishes the same, the respondent no.1 Exchange, if satisfied, will revoke the notice dated 21st December, 2015 against the said petitioner also or else will pass a reasoned order in this regard.

9. The counsel for the petitioner in W.P.(C) No.226/2016 states that the said documents, if not already provided, shall be provided.

10. Though the petitions can be disposed of in the aforesaid terms but the counsels for the petitioners state that the challenge to the notice dated 18th December, 2015 needs to be adjudicated. It is stated that the policy/procedure devised therein of suspension of trading in securities of

Companies, though purportedly placing reliance on Bye-law 21 of the Bye-laws of the respondent no.1 Exchange, is violative of the principles of natural justice. It is contended that both the notices i.e. notice dated 18th December, 2015 and 21st December, 2015 are addressed only to the Trading Members of the Exchange and are not addressed to the companies listed on the respondent no.1 Exchange. It is further contended that the petitioner in each of these petitions has otherwise also not received any intimation from the respondent no.1 Exchange of suspension in their respective securities. On enquiry as to how the companies are affected by suspension of trading in their securities, it is stated that it is detrimental to their shareholders confidence and is harmful to the reputation of the company. It is yet further argued that suspension cannot be without complying with the principles of natural justice and which have not been complied with in this regard. It is also stated that Bye-law 21 on which the policy/decision communicated vide letter dated 18th December, 2015 is purported to be premised deals with the power of the respondent no.1 Exchange to prohibit dealing in any security and which entails a sense of permanency. It is contended that it is only Bye-law 39 which empowers the respondent no.1 Exchange to suspend the trading in the securities of a company listed on the Exchange. It is argued that though Bye-law 39 also does not provide for any opportunity of hearing to be given prior to suspension but the same has to be complied with in accordance with the principles of natural justice. Reliance is placed on the order of the Securities and Exchange Board of India in ***52 Weeks Entertainment Ltd. Vs. BSE Limited*** MANU/SB/0008/2015 in this regard and on ***J.T. (India) Exports Vs. Union of India*** 2001 (60) DRJ 651 (FB).

11. On enquiry as to under exercise of what law or power the respondent no.1 Exchange has framed its Bye-laws, attention is invited to Section 9 to the ***Securities Contracts (Regulation) Act, 1956*** which empowers a recognised Stock Exchange to, subject to the previous approval of the Securities and Exchange Board of India (SEBI) make Bye-laws for the regulation and control of contracts.

12. I have considered, whether in the aforesaid scenario to call for the counter affidavits of the respondents or to dispose of the writ petitions inasmuch as at least qua W.P.(C) No.12332/2015 the cause of action does not survive and qua the other writ petition the respondent no.1 Exchange is yet to consider the documents and pass a reasoned order. The only reason for keeping the petitions pending can be to test the validity of the policy/decision contained in the notice dated 18th December, 2015 and of the Bye-laws 21/39 supra.

13. I am of the opinion that for adjudication of the aforesaid larger issues, the presence of SEBI before this Court is essential and which has not been impleaded as a respondent. Not only are the Bye-laws as aforesaid to be formulated with the approval of SEBI but even the notice dated 18th December, 2015 records that the action taken therein is in the light of similar actions taken in the past by SEBI.

14. Since the said policy decision is of a recent vintage i.e. 18th December, 2015, it is deemed appropriate that rather than keeping this petition pending, the respondent no.1 Exchange be directed to consider the procedure to be followed in future in pursuance to the decision contained in the letter dated 18th December, 2015 particularly in the light of what is

recorded hereinabove and to inform the said decision at least to the petitioners if not to all its Trading Members and the companies listed with it. I say so also because it was the contention of the counsel for the respondent no.1 Exchange that the action of suspension of trading in the securities of the petitioners has been taken after elaborate scrutiny and observation. However as it has turned out, notwithstanding such elaborate scrutiny and observance, the decision taken at least qua the petitioner in W.P.(C) No.12332/2015 has turned out to be erroneous. It thus appears that to avoid such a situation in future, a mechanism at least in cases where there is no extreme urgency providing for a procedure for hearing be devised.

15. The petition is accordingly disposed of with the following directions:-

A. The petitioner in W.P.(C) No.226/2016 to on or before 18th January, 2016 submit the documents aforesaid if not already submitted and any other documents which may have been called by the respondent no.1 Exchange and to appear before the concerned official of the respondent no.1 Exchange on 20th January, 2016 at 1100 hours and the respondent no.1 Exchange to by 22nd January, 2016, if satisfied, re-call the order dated 21st December, 2015 of suspension of trading in the securities of the petitioner in W.P.(C) No.226/2016 and if not satisfied, to pass a reasoned order thereon and furnish a copy thereof to the petitioner.

B. The respondent no.1 Exchange to, before end of February, 2016 pass a reasoned order devising a procedure to be followed for prohibiting trading in securities under Bye-law 21 and for suspending trading in securities under Bye-law 39 supra or under the policy / decision contained in notice dated 18th December, 2015 and to intimate the same as aforesaid at least to the petitioners if not to all the Trading Members and listed companies.

C. Needless to state, anyone aggrieved from the decisions so taken shall have remedies in law.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

JANUARY 15, 2016
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