THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.3262 OF 2018
ALONGWITH
CHAMBER SUMMONS NO.249 OF 2018

Anand Rathi Commodities Limited ..Petitioner

Versus

Securities and Exchange Board of India
Sebi Bhavan and others ..Respondents

AND
WRIT PETITION (L) NO.3266 OF 2018
ALONGWITH
CHAMBER SUMMONS NO.250 OF 2018

Motilal Oswal Commodities Broker
Private Limited ..Petitioner

Versus

Securities and Exchange Board of India
Sebi Bhavan and others ..Respondents

AND
WRIT PETITION (L) NO.3294 OF 2018
ALONGWITH
CHAMBER SUMMONS NO.251 OF 2018

Geofin Comtrade Ltd. ..Petitioner

Versus

The Securities and Exchange Board of India
(SEBI) and others ..Respondents

AND
WRIT PETITION (L) NO.3295 OF 2018
ALONGWITH
CHAMBER SUMMONS NO.252 OF 2018

IIFL Commodities Limited
(Erstwhile India Infoline Commodities Ltd.)
and others ..Petitioners
Versus
Securities and Exchange Board of India
and others ..Respondents

Mr. Shyam Mehta, Senior counsel a/w Ms. Tanmayi Gadre, Ms. Aparna Wagle and Mr. Yash Garach I/by M/s. Alliance law, Advocate for the Petitioners in WPL No.3295 of 2018.

Mr. Pradeep Sancheti, Senior Counsel a/w Mr. Prateek Seksaria, Mr. Vaibhav Singh and Ms. Sukriti Jaiswal I/by M/s. Shardul Amarchand Mangaldas & Co., Advocate for the Petitioner in WPL No.3262 of 2018.

Mr. J. P. Sen, Senior Counsel a/w Mr. Vaibhav Ghogre, Mr. Rahul Karnik, Mr. Bankim Mehta and Mr. J. S. Anand, Advocate for the Petitioner in WPL No.3266 of 2018.

Ms. Ankita Singhania a/w Mr. Digant Bhatt, Mrs. Anisha Agarwal I/by M/s. I. V. Merchant and company, Advocate for the Petitioner in WPL No.3294 of 2018.

Mr. Parag A. Vyas and Mr. Dharmesh Joshi, Advocate for the Respondent No.6 in WPL No.3266 of 2018 and for Respondent No.5 in WPL No.3262 of 2018.

Mr. Rafique Dada, Senior Counsel a/w Mr. Mihir Mody and Mr. Nirav Parmar I/by M/s. K. Ashar and company, Advocate for the Respondents – SEBI in WPL No.3295 of 2018.

Mr. Fredun Devitre, Senior Counsel a/w Mr. Mihir Mody and Mr. Nirav Parmar I/by M/s. K. Ashar and company, Advocate for the Respondents – SEBI in WPL No.3262 of 2018.

Mr. Kevic Setalwad, Senior Counsel a/w Mr. Mihir Mody and Mr. Nirav Parmar I/by M/s. K. Ashar and company, Advocate for the Respondents – SEBI in WPL No.3266 of 2018 and WPL No.3294 of 2018.

Mr. Arvind Lakhawat a/w Mr. Shashank Trivedi, Advocate for the Applicant/Intervenor in CHSW No.249 of 2018, CHSW No.250 of 2018 and CHSW No.251 of 2018.

Mr. Vijay Agarwal a/w Mr. Waseem Pangarkar, Mr. Abhishek Gupta, Mr. Mudit Jain and Mr. Ashok Agarwal I/by M/s. MZM Legal, Advocate for the Applicant in CHSW No.252 of 2018.

CORAM : B. R. GAVAI &
M. S. KARNIK, JJ.
DATE : 4th OCTOBER, 2018

<u>ORAL JUDGMENT</u> (Per B. R. Gavai, J)

1] The facts and questions of law are identical in all these Petitions. As such they are heard and disposed of by this common judgment and order.

2] For the sake of convenience, the facts referred to hereinafter are taken from Writ Petition (L) No.3295 of 2018.

3] In these bunch of Petitions, the Petitioners have approached this Court challenging the order dated 4th September

2018 passed by the Deputy General Manager, Markets Intermediaries Regulations and Supervision Department of the Securities and Exchange Board of India (hereinafter referred as "SEBI" for short). By the said order, the Deputy General Manager has informed the Petitioners that their application for withdrawal of the application made by them for registration has been rejected. The Petitioners have also challenged the order dated 30th August 2018 issued by the Whole Time Member of the SEBI, vide which the Petitioners have been directed to submit written submissions within a period of two weeks from the date of the said order and to appear for personal hearing on merits on 27th September 2018. The Petitioners have also challenged the show-cause notice dated 24th April 2017 issued by the Deputy General Manger, Enforcement Department and the Enquiry Report dated 11th April 2017 made by the Designated Authority, SEBI and Pre-Inquiry Show-Cause Notice dated 28th October 2016.

Facts in brief as taken from Writ Petition (L) No.3295 of 2018 giving rise to the present Petitions are as under :-

4] The Petitioner No.1 was trading as commodity broker with National Commodity and Derivative Exchange Limited (hereinater referred as “NCDEX”) and Multi Commodities Exchange of India Limited (hereinafter referred as “MCX”). The Petitioner No.1 in the present Petition was doing such trading from 2004 to 28th September 2015. The Finance Act, 2015, came to be enacted to give effect to finance proposals for the financial year 2015-2016. Though the assent of the President to the said Act was received on 14th May 2015, in view of the provisions of Section 131, the provisions of Chapter VIII, which were concerned in the present Petition were to come into effect from the date as the Central Government may appoint by notification. It also provided that the Central Government may appoint different dates for different provisions of the said part. In so far as Chapter VIII of the said Act is concerned, the Central Government notified 29th September 2015 as the date, from which the part was to be given effect to.

5] The Petitioners in the present Petitions, as provided in Section 28A of the said Act made an application to the NCDEX and MCX respectively for their registration as commodity brokers with Respondent – SEBI and continued to carry out trading activities as a stock broker of NCDEX and MCX during the pendency of their application before SEBI.

6] It appears that on 29th September 2015 and 23rd December 2015, NCDEX and MCX forwarded the Petitioners application to SEBI for grant of registration. On 28th October 2016, the Designated Authority issued a show-cause notice to the Petitioner No.1 under Regulation 25 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred as “Intermediaries Regulations”). The Petitioner No.1 replied to the said show-cause notice on 25th November 2016. On 11th April 2017, the Designated Authority submitted its report recommending that the application of the Petitioner No.1 for registration as a commodity broker be rejected in terms of Regulation 26 and Schedule II of the Intermediaries Regulations. It also recommended that taking into consideration the gravity of the violations committed by the Petitioner No.1, SEBI may consider initiating prosecution under the relevant provisions of the FCRA. On 24th April 2017, the Respondents – SEBI issued a show-cause notice under Regulation 28(1) read with Regulation 7(2) of the

Intermediaries Regulations, thereby calling upon the Petitioner No.1 to show-cause as to why action as recommended by Designated Authority in the Enquiry Report dated 11th April 2017 or any other action, as deemed fit by the Competent Authority should not be taken against it. It appears that thereafter several communications were addressed by the Petitioner No.1 for inspection of the documents referred in the show-cause notice. Some orders also came to be passed by the Whole Time Member on the said applications. Finally on 30th August 2018, Whole Time Member rejected the preliminary objections raised by the Petitioner on the grounds of jurisdiction, discrimination and inspection of documents and directed it to file additional written statement as stated herein-above. It appears that in the meantime, the Petitioner No.1 applied for withdrawal of its application for registration on 17th August 2018. By the impugned order dated 4th September 2018, the said application is rejected. Hence, the present Petition.

7] We have heard Mr. Shyam Mehta, learned senior counsel as well as Mr. Pradeep Sancheti and Mr. J. P. Sen, learned senior counsels along with Mr. Prateek Seksaria and Ms. Ankita

Singhania for the other Petitioners.

8] We have heard Mr. Rafique Dada, learned senior counsel in the lead matter and Mr. Fredun Devitre and Mr. Kevic Setalwad learned senior counsels in the other matters for the Respondent - SEBI.

9] It is the basic contention of the Petitioners that the jurisdiction, which is sought to be invoked by the Respondent - SEBI is only on account of the application made by the Petitioners for registration. It is the contention that when the Petitioners do not desire to press the application and want the application to be withdrawn, the SEBI had no authority to continue the proceedings. It is submitted that it ought to have allowed the application for withdrawal of registration and once the said application was permitted to be withdrawn, the proceedings could not have been continued.

10] It is submitted that the action, which is sought to be taken by the Respondent – SEBI against the Petitioners is only with regard to the instances which are prior to 29th September 2015. It is submitted that the Respondent – SEBI does not have jurisdiction to take any action for the alleged acts or misdeeds, which have taken place prior to 29th September 2015 i.e. the date on which the Finance Act, 2015 was made applicable.

11] It is submitted by the learned counsel for the Petitioners that whatever is to be saved from the Forward Contracts (Regulation) Act, 1952 (herein after referred as "FCR Act") has been specifically saved by virtue of Section 29A of the Finance Act, 2015. It is the contention that Section 29A of the Finance Act, 2015, only saves the offences committed and existing proceedings with respect to offences, which may have been committed under the Forward Contracts Act. It is further submitted that what is permitted by the saving clause is a fresh proceeding relating to an offence under the Forward Contracts Act to be initiated by the Respondent – SEBI and that too within three years from the date on which the that FCR Act has been repealed. It is submitted that by virtue of the said saving provision, Respondent – SEBI has already filed criminal proceedings against the Petitioners. It is submitted by the Petitioners that however the proceedings which are now sought to be continued for the alleged deed or misdeeds of the Petitioners prior to 29th September 2015 are beyond the jurisdiction of the SEBI. By referring to Regulations 23 and 24, it is submitted by the learned senior counsels for the Petitioners that the proceeding can be initiated by the Respondent - SEBI only against a person, who has been granted a registration under the act or regulations made therein. It is submitted that the Petitioners have not been granted a certificate of registration under the provisions of either of SEBI Act or under the provisions of Intermediaries Regulations. It is the contention of the Petitioners that if the Petitioners have not been granted a certificate of registration under the act or regulations, then the Respondent - SEBI will have no jurisdiction to take action in pursuance to Chapter V of the Intermediaries Regulations. It is therefore submitted that the entire action is without jurisdiction and proceedings are liable to be quashed and set aside.

12] Per contra, it is the contention on behalf of the Respondents – SEBI that Section 29A of Finance Act, 2015 cannot be read in isolation. It is submitted that Section 29A will have to be read alongwith Section 28A. It is the submission on behalf of the

Respondent – SEBI, that after the commencement of the Finance Act, 2015, all recognized associations under the FCR Act, would be deemed to be recognized stock exchanges under the Security Contracts (Regulations) Act, 1956. Relying on the second proviso of Section 28A, it is submitted that a person buying or selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or such other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the SEBI, for which no registration certificate was necessary prior to such transfer, would be entitled to continue to do so for a period of three months from such transfer or, if he has made an application for such registration within the said period of three months, till the disposal of said application. It is submitted that by virtue of said second proviso, the Petitioners, who were not required to be registered under the FCR Act, were now required to be registered under the provisions of the SEBI Act. It is submitted that a broker etc. would be permitted to continue with the business which he was doing prior to the commencement of the said act for a period of three months and if he has made an application for registration, then till the disposal of such application. It is submitted that taking advantage of the said provisions, the Petitioners have made an application for registration within a period of three months and on their application being made, by virtue of statutory provisions, they were entitled to continue with the business, in which they were continuing prior to the commencement of the said act. It is however submitted that had the Petitioners not made an application within a period of three months, the Petitioners could not have continued with their business after expiry of period of three months. It is therefore submitted that by virtue of statutory provisions, the Petitioners were entitled to continue the business under the control of SEBI and as such, SEBI would have the jurisdiction to enquire into the deeds and misdeeds of the Petitioners.

13] A preliminary objection has been taken by the Respondents that though the first show-cause notice was issued in the month of October 2015 and the second show-cause notice has been issued in the month of April 2017, the Petitioners have chosen to approach this Court only in the month of September 2018, much belatedly. It is submitted that though there are serious findings with regard to the activities of the Petitioners in the earlier two reports, which were supplied to them, they had not taken objection to the said findings and only when they found that they are in a difficult situation, they decided to withdraw their application. It is submitted that in view of Regulation 31 of the Intermediaries Regulations, various factors have to be taken into consideration while considering application for withdrawal of registration. It is submitted that factors like interest of the investors etc. are required to be taken into consideration. It is submitted that while considering the application, an inquiry as to whether a person is fit or proper person to continue with stock market is also required to be gone into. It is submitted that there are serious consequences, if a person is not found to be fit and proper person to deal with the stock market. It is submitted that only after the Petitioners realized that they were in difficulty, an application for registration was made with malafide intention so as to prevent the proceedings initiated against them.

14] For appreciating rival controversy, we will have to refer to Section 28A and 29A of the Finance Act, 2015 :-

"**28A**.(1) All recognised associations under the Forward Contract Regulation Act, shall be deemed to be recognised stock exchanges under the Securities Contracts (Regulation) Act, 1956 (herein after referred to as the Securities Contracts Act):

"Provided that such deemed recognized stock exchanges shall not carry out any activity other than the activities of assisting, regulating or controlling the business of buying, selling or dealing in commodity derivatives till the said deemed recognized stock exchanges are specifically permitted by the Securities and Exchange Board of India:

Provided further that a person buying or selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or such other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the Securities and Exchange Board of India for which no registration certificate was necessary prior to such transfer may continue to do so for a period of three months from such transfer or, if he has made an application for such registration within the said period of three months, till the disposal of such application."

(2) The Securities and Exchange Board of India (herein referred to as the Security Board) may provide such deemed exchanges, adequate time to comply with the Securities Contracts Act and any regulations, rules, guidelines or like instruments made under the said Act.

(3) The bye-laws, circulars, or any like instrument made by a recognised association under the Forward Contracts Act shall continue to be applicable for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security

Board, as if the Forward Contracts Act had not been repealed, whichever is earlier.

(4) All rules, directions, guidelines, instructions, circulars, or any like instruments, made by the Commission or the Central Government applicable to recognised associations under the Forward Contracts Act shall continue to remain in force for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security Board, whichever is earlier, as if the Forward Contracts Act had not been repealed.

(5) In addition to the powers under the Securities Contracts Regulation Act, the Security Board and the Central Government shall exercise all powers of the Commission and the Central Government with respect to recognised associations, respectively, on such deemed exchanges, for a period of one year as if the Forward Contracts Act had not been repealed."

"29A. (1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.

(2) On and from the date of repeal of Forward Contracts Act -

(a) the rules and regulations framed by the Central Government and the Commission under the Forward Contracts Act, shall stand repealed;

(b) all authorities and entities established by the Central Government under the Forward Contracts Act, including the Commission and the Advisory Council established under section 25 of that Act, shall stand dissolved;

(c) anything done or any action taken or purported to have been done or taken including any inspection, order, penalty, proceeding or notice made, initiated or issued or any confirmation or declaration made or any licence, permission, authorisation or exemption granted, modified or revoked, or any document or instrument executed, or any direction given under the Act repealed in sub-section (1) shall be continued or enforced by the Security Board, as if that Act had not been repealed;

(d) all offences committed, and existing proceedings with respect to offences which may have been committed under the Forward Contracts Act, shall continue to be governed by the provisions of that Act, as if that Act had not been repealed;

(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;

(f) No court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clauses (d) and (e);

(g) clauses (d), (e) and (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-section."

It will also be relevant to refer to Regulations 3(1), 7(e), 23, 24, 25, 28, 31 and Schedule II of the Securities Exchange Board of India (Intermediaries) Regulations, 2008 :-

"**3(1)** On and from the commencement of these regulations, an application, for grant of a certificate to act as an intermediary, shall be made to the Board in Form A of Schedule I with such additional information as required to be provided under the relevant regulations, and the application fee, as specified in the relevant regulations:"

"**7.** (1).........................

(a).........................

(b)..........................

(c)...........................

(d)..........................

(2).......................

(a)........................

(b).........................

(c)........................

(d).........................

(e) where the applicant is not a 'fit and proper person' as stated in Schedule II:"

Cancellation or suspension of registration and other actions.

23. Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –

(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

Appointment of designated authority.

24.(1) Where it appears to the designated member, that any person who has been granted certificate of registration under the Act, regulations made thereunder has committed any default of the nature specified in regulation 23, he may appoint an officer not below the rank of a Division Chief, as a designated authority: Provided that the designated member may, at his discretion, appoint a bench of three officers, each of whom shall not be below the rank of a Division Chief: Provided further that such bench shall be presided by the senior most amongst them and all the decisions or recommendations of such bench shall be by way of majority.

(2) No officer who has conducted investigation or inspection in respect of the alleged violation shall be appointed as a designated authority.

Issuance of notice.

25.(1) The designated authority shall, if it finds reasonable grounds to do so, issue a notice to the concerned person requiring him to show cause as to why the certificate of registration granted to it, should not be suspended or cancelled or why any other action provided herein should not be taken.

(2) Every notice under sub-regulation (1) shall specify the contravention alleged to have been committed by the noticee indicating the provisions of the Act, rules, regulations, circulars or guidelines in respect of which the contravention is alleged to have taken place.

(3) There shall be annexed to the notice issued under sub-regulation (1) copies of documents relied on in making of the imputations and extracts of relevant portions of documents, reports containing the findings arrived at in an investigation or inspection, if any, carried out.

(4) The noticee shall be called upon to submit within a period to be specified in the notice, not exceeding twenty-one days from the date of service thereof, a written representation along with documentary evidence, if any, in support of the representation to the designated authority.

Procedure for action on receipt of the recommendation.

28.(1) On receipt of the report recommending the measures from the designated authority, the designated member shall consider the same and issue a show cause notice to the noticee enclosing a copy of the report submitted by the designated authority calling upon the noticee to submit its written representation as to why the action, including passing of appropriate direction, as the designated member considers appropriate, should not be taken.

(2) The noticee may, within twenty one days of receipt of the notice send a reply to the designated member who may pass appropriate order after considering the reply, if any received from the noticee and providing the person with an opportunity of being heard, as expeditiously as possible and endeavour shall be made to pass the order within one hundred and twenty days from the date of receipt of reply of the notice or hearing.

Surrender of any certificate of registration.

31.(1) Any person, who has been granted a certificate of registration under the Act or the regulations made thereunder, desirous of giving its activity and surrender the certificate, may make a request for such surrender to the Board and while disposing such request, the Board shall not be bound by the procedure specified in the foregoing provisions of this Chapter.

(2) While disposing a request under this regulation, the Board may require the concerned person to satisfy the Board the factors as it deems fit, including but not limited to the following -

(a) the arrangements made by the person for maintenance and preservation of records and other documents required to be maintained under the relevant regulations;

(b) redressal of investor grievances;

(c) transfer of records, funds or securities of its clients;

(d) the arrangements made by it for ensuring continuity of service to the clients;

(e) defaults or pending action, if any,

(3) While accepting surrender, the Board may impose such conditions upon the person as it deems fit for protection of the investors or its clients or the securities market and such person shall comply with such conditions."

"SCHEDULE II

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

(See regulations 7)

Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer [the director, the promoter] and the key management persons by whatever name called -

(a) integrity, reputation and character;

(b) absence of convictions and restraint orders;

(c) competence including financial solvency and noteworth;

[(d) absence of categorization as a wilful defaulter]"

15] Upon the plain reading of Regulations, at first blush, the arguments made on behalf the Petitioners appear to be attractive. Regulation 23, which deals with cancellation or suspension of registration and other actions, begins with the words "where any person who has been granted a certificate of registration under the Act or regulations." It could thus be seen that on a plain reading of Regulation 23, it would appear that for invoking provisions of Regulation 23 onwards, a person against whom action is sought to be taken must have been granted a certificate of registration under the Act or regulations made thereunder. Even the words used in Regulation 31 would also show that an application for surrendering the registration has to be made by a person who has been granted a certificate of registration.

16] However, in the present matter, while considering the regulation, we will have to consider as to what is the effect of Finance Act, 2015. No doubt that by virtue of Section 29A, FCR Act has been repealed. While repealing the said act, the Parliament has also saved the certain things. All offences committed or existing proceedings with respect to the offences, which may have been committed under the FCR Act are provided to be continued to be governed by the provisions of the said act, as if the said act has not been repealed. A fresh proceeding related to the offences under the FCR Act, is also permitted to be initiated by SEBI, within a period of three years from the date on which the earlier act is repealed and proceeded with, as if that Act had not been repealed. It is not in dispute that the criminal proceedings have already been filed within a period of three years. However, in the present case, we do not find it necessary to go into that aspect of the matter, since the only question that falls for consideration before us is as to whether the Respondent – SEBI was bound to allow the application of the Petitioners for withdrawal of their application for registration and as to whether the continuation of the proceedings under the various regulations are permissible or not.

17] We find that the provisions of Section 28A of the Finance Act, 2015, would be the most relevant for determining the said issue. Undisputedly, prior to Finance Act, 2015, coming into effect, it was not necessary for intermediaries like the Petitioners, to have registration under the FCR Act. For the first time, by virtue of Finance Act, 2015, such a registration has become mandatory. By virtue of Section 28A, particularly sub section (1) thereof, all recognized associations under the FCR Act have been deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956. The first proviso thereof provides that such deemed recognized stock exchanges would not carry out any activities other than the activities of assisting, regulating or controlling the business of buying, selling or dealing in commodity derivatives till the said deemed recognized stock exchanges are specifically permitted by the SEBI.

18] The second proviso to Section 28A would be the most relevant one. It provides that a person buying or selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or such other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the SEBI for which no registration certificate was necessary prior to such transfer, may continue to do so for a period of three months from such transfer. It is further provided that if he has made an application for such registration within the said period of three months, then till the disposal of such application, he would be entitled to continue with his activities.

19] It could thus be seen that after the Finance Act, 2015 has come into effect, it has become necessary for every intermediary, who is dealing in commodity derivatives to get registered with SEBI. As a transitory measure, three months period has been given to them, so as to enable them to get themselves registered with SEBI. Even if within three months such persons move an application for registration, they are entitled to continue with their activities, till their application is finally decided by SEBI. It could thus be seen that by virtue of second proviso of Section 28A, such intermediaries who are dealing with commodity derivatives and who have made an application within a period of three months have been brought under the control of SEBI.

20] We find that in the present case, we will have to apply Heydon's rules of interpretation. It will be relevant to refer to the following observations of the Constitution Bench of the Hon'ble Apex Court in the case of ***Bengal Immunity Co. Ltd. Vs. State of***

Bihar and others[1] **:-**

> “22 It is a sound rule of construction of a statute firmly established in England as far back as 1584 when - Heydon's case, (1584) 3 Co. Rep. 7A (V) was decided that-
>
> "................... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-
>
> > 1st. What was the common law before the making of the Act,
> >
> > 2nd. What was the mischief and defect for which the common law did not provide,
> >
> > 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and
> >
> > 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro privato commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico".
>
> In - 'In re Mayfair Property Co.', [1898] 2 Ch. 28, at p. 35 Lindley, M. R. in 1898 found the rule "as necessary now as it was when Lord Coke reported 'Heydon's case (V)'. In - 'Eastman Photographic Material Co. v. Comptroller General of Patents, Designs and Trade Marks', 1898 AC

1 AIR 1955 SC 661

> 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows:
>
> "My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."
>
> It appears to us that this rule is equally applicable to the construction of Art. 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

21] It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was noticed by the Parliament. As such, by virtue of the Finance Act, 2015, the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority.

22] Apart from that we find that the conduct of the Petitioners itself dis-entitles them for equitable reliefs under Article 226 of the Constitution of India. The proceedings against the Petitioners, after the Petitioners have made an application for registration, were initiated for the first time in October 2016. It is to be noted that the Petitioners were addressed a detailed show-cause notice on 28th October 2016, under Regulation 25(1) of the Intermediaries Regulations. The second show-cause notice was addressed to the Petitioners on 24th April 2017, alongwith the inquiry report running into 108 pages. Undisputedly, there are findings adverse to the interest of the Petitioners in both these reports. At this stage, we do not find it necessary to go into the correctness or otherwise of the findings made in the said reports, inasmuch as the proceedings are pending before Whole Time Member of the SEBI.

23] We find substance in the contention of the Respondents that only after the authorities of the Respondent – SEBI in the inquiries conducted under the relevant regulations of Intermediaries Regulations found some material against the Petitioners, they chose to file an application for withdrawal of their application for registration, so as to prevent any adverse finding coming against them. Perusal of the Regulation 7(e) r/w Schedule II would reveal that while making an inquiry to find as to whether the applicant is a "fit and proper person" the board is entitled conduct an inquiry not only about the Applicant - intermediary, but also its principal officer, director, promoter and the key management persons, with regard to their integrity, character, absence of conviction and restraint orders, competence including financial solvency and networth, absence of categorization as a willful defaulter.

24] We are of the view that after the authorities of SEBI came to a prima-facie finding that there exists some adverse finding against the Petitioners, the Petitioners have moved an application for withdrawal of registration with an apprehension that some findings adverse to the interest would be arrived by the Whole Time Member of SEBI. We find that this is nothing else, but an attempt to leave the proceedings in the nip of the bud.

25] In that view of the matter, we are not inclined to entertain the Petitions in its extraordinary jurisdiction under Article 226 of the Constitution of India. The Petitions are therefore rejected.

26] In view of disposal of Writ Petitions, Chamber Summons do not survive and accordingly stand disposed of.

[M. S. KARNIK, J.] **[B. R. GAVAI, J.]**