BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.12.2018

Delivered on : **13**.03.2019

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **P.D.AUDIKESAVALU**

W.P.(MD)No.4947 of 2018,and
Contempt Petition (MD) No.1532 of 2018

T.Palpandi ...Petitioner in WP and Contempt Petition

Vs

1.The Ministry of Finance
Government of India,
Jeevan Deep Building,
Parliament Street, New Delhi - 110 001.

2.The Ministry of Corporate Affairs,
Government of India,
A Wing, Shastri Bhawan
Rajendra Prasad Road,
New Delhi, Delhi - 110 001.

3.The Securities and Exchange Board of India,
Plot No.C4-A, G Block, Near Bank of India,
Bandra Kurla Complex,
Bandra East, Mumbai, Maharashtra 400 051. ...Respondents in Writ Petition

Ministry of Corporate Affairs
Represented by its Secretary Mr.Injeti Srinivas
'A Wing, Shastri Bhavan
Rajendra Prasad Road,
New Delhi. ...Respondent in Contempt Petition

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus, directing the second and third respondent herein to take necessary action against the delinquent brokers as mentioned in the Grant Thornton Report dated 21.09.2013 and specifically prayed for in the representation dated 21.02.2018 sent by the petitioner to the respondents.

Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondent for the willful and deliberate disobedience of the order dated 02.07.2018 in WP(MD) No.4947 of 2018.

For Petitioner : Mr.P.Wilson
Senior Counsel
for Mr.C.Deepak

For Respondents : Mr.V.Kathirvel
Assistant Solicitor General of India
for Mr.P.Paulpandi
Central Government Standing Counsel
for R1 and R2
Mr.G.Masilamani, Senior Counsel
for Mr.C.Prasanna Venkatesh for R3

C O M M ON O R D E R

K.K.SASIDHARAN, J.

The petitioner filed this writ petition in *pro bono publico* to direct the Ministry of Corporate Affairs, Government of India and the Securities and Exchange Board of India (for short "SEBI) to take appropriate action against the delinquent brokers indicated in the Grant Thornton Report dated 21 September 2013 by considering his representation dated 21 February 2018.

2. The petitioner in the affidavit filed in support of the writ petition contended that payment default by brokers had occurred on the platform of National Spot Exchange Limited (NSEL) to the tune of Rs.5600 crores and as a result of which 13,000 derivative traders have not received their pay-out as defaulting pay-in brokers have failed to pay their pay-in obligation on NSEL. According to the petitioner, pursuant to the report submitted by Grant Thornton India LLP, Forward Markets Commission, being the regulator issued show cause notice to the promoter of NSEL now known as 63 Moons Technologies Limited to show cause as to why they should not be declared not fit and proper persons to hold shares in the commodity exchange. Even though there are investigations pending before various statutory authorities no concrete action was taken against the accused. The Union of India has passed a draft order dated 21 October 2014 and thereafter, a final order on 12 February 2016 amalgamating the National Spot Exchange Limited with its holding company namely Financial Technologies (India) Limited under Section 396 of the Companies Act, 1956.

3. The petitioner has come up with a grievance that in spite of the string of allegations against the brokers, SEBI failed to initiate action against such brokers, who were responsible for the payment default. The petitioner submitted a comprehensive representation on 21 February 2018 requesting the statutory authorities to take action. Since there was no follow up action taken by any of the authorities, the petitioner was constrained to file this writ petition.

4. This Court passed an order on 2 July 2018 directing the respondents to consider the representation and pass appropriate orders within a period of six weeks. Since orders were not passed

pursuant to the said direction, the petitioner filed a contempt petition in Cont.P.(MD)No.1532 of 2018.

5. We have heard the learned Senior Counsel for the petitioner, the learned Assistant Solicitor General of India for respondents 1 and 2 and the learned Senior Counsel for the third respondent.

6. The petitioner seeks a direction to the respondents 2 and 3 to take appropriate proceedings against the erring brokers. Since the matter was pending before the SEBI, we have directed the said authority to file action taken report.

7. The SEBI filed a status report and a few documents to demonstrate that action has already been initiated in the matter.

8. The action taken report indicates that SEBI had initiated enquiry proceedings against 295 Clearing/Trading Members in respect of whom SEBI has information that they were members of NSEL and have applied/registered with SEBI as Clearing/Trading Member under SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. Show Cause Notices have been issued by the Enquiry Officer against the said 295 Clearing/Trading Members and it is under process at various stages.

9. Similarly, SEBI had initiated action against 5 brokers (Anand Rathi Commodities Ltd., Geofin Comtrade Limited, India Infoline Commodities Ltd., Motilal Oswal Commodities Broker Pvt. Ltd and Philip Commodities India Pvt. Ltd., and final hearing was concluded on 31 October 2018 and it is under process before the Designated Whole Time Member of SEBI for final outcome.

10. The SEBI had referred the case to the Economic Offences Wing (EOW) Mumbai for taking appropriate legal action under Forward Contracts (Regulation) Act, 1952 (FCRA) against the aforesaid Clearing/Trading Members of NSEL platform who had applied/registered with SEBI and also against other members who have traded in illegal forward contracts organised by NSEL. FIR has been registered with EOW, Mumbai on 28 September 2018 against 300 brokers for the alleged violation of the provisions of FCRA. The investigation is stated to be pending.

11. The statutory authorities have already initiated action in the matter. Since the authorities have already taken action in accordance with the relevant statutes, there is no need for a further direction to the SEBI and the Ministry of Corporate Affairs for disposal of the representation submitted by the petitioner. The authorities have already acted pursuant to the representation and the matter is now pending. We are therefore of the view that there is no need for a further adjudication of the matter at the instance

of the petitioner.

12. **The writ petition is disposed of with the above observation. No costs.**

<u>Cont.P.(MD)No.1532 of 2018</u>

13. The contempt petition was filed alleging non-compliance of the interim order passed by this Court. Since the respondents have taken action pursuant to the direction issued by this Court, there are no grounds made out to proceed with the contempt petition. **We therefore close the contempt petition.**

Sd/-
Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Ministry of Finance
Government of India,
Jeevan Deep Building,
Parliament Street, New Delhi - 110 001.

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3.The Securities and Exchange Board of India,
Plot No.C4-A, G Block, Near Bank of India,
Bandra Kurla Complex,
Bandra East, Mumbai, Maharashtra 400 051.

+1cc to Mr.P.PAUL PANDI, Advocate, SR.No.54042

<u>W.P.(MD)No.4947 of 2018 and</u>
<u>Contempt Petition (MD) No.1532 of 2018</u>

SVKI
KK/SAR-/01.04.2019/4P-5C