IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Writ Petition No.353 of 2020
and W.M.P.Nos.2572, 403 & 404 of 2020

V.R.Venkatachalam ...Petitioner

Vs

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

2. The Recovery Officer and Deputy General Manager,
   Recovery Division (Southern Regional Office),
   Securities and Exchange Board of India,
   Overseas Towers, 7th Floor,
   756-L, Anna Salai, Chennai 600 002.

3. ICICI Securities Limited,
   ICICI Centre, H.T.Parekh Marg,
   5th Floor, Churchgate,
   Mumbai 400 022. ... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India, to issue Writ of Certiorarified Mandamus calling for the records comprising the impugned order of the second respondent dated 13.11.2019 and the consequential notice/communication bearing No.SEBI/SRO/OW/VR/2020/179/1 dated 02.01.2020 and quash the same as being arbitrary, illegal and forbear the 1st and 2nd respondents from enforcing the same.

For Petitioner :Mr.P.S.Raman, Senior Counsel,
Mr.P.H.Arvind Pandian, Senior Counsel

For Respondents :Mr.C.Prasanna Venkatesh,
Standing Counsel

O R D E R

The Writ Petition has been filed in the nature of Certiorarified Mandamus, calling for the records of the second respondent, namely Recovery Officer and Deputy General Manager, Recovery Division (Southern Regional Office), Securities and Exchange Board of India, Chennai, who had passed the order dated 13.11.2019, which order has been called in question in this Writ Petition and the further notice/communication dated 02.01.2020 and to set aside the same.

2.The petitioner has challenged the recovery proceedings initiated by the first respondent, namely Securities and Exchange Board of India, Mumbai, and this recovery proceedings has been initiated through the second respondent, who had passed the impugned order mentioned above. To put the said order into effect, the second respondent had originally passed an order dated 13.11.2019 and in the said order, the petitioner was directed to remit an amount of Rs.18,24,69,318/-, which was lying in the bank accounts of the defaulters and there was a further direction to redeem the units in the name of the defaulters. Among others, this notice was sent to the third respondent namely the ICICI Securities Limited. A copy was addressed to the petitioner herein. The petitioner was more aggrieved with the subsequent order dated 02.01.2020, which was also addressed to the third respondent, by which, the first and second respondents had called upon the third respondent to effect sale of securities of the defaulters and among the defaulters mentioned, is the petitioner herein. A recovery certificate was also issued and attachment proceedings has also been initiated and the amount due as on 31.12.2019 was crystallised as Rs.18,23,55,281/-. It was also stated that the present petitioner was a beneficial owner of the securities in the demat accounts which details were also given in the said letter.

3.A brief background of the facts which led to the situation in which the petitioner now finds himself entangled in this web are that as a promoter of TCP Limited, which was a originally listed in the Madras Stock Exchange and later in the National Stock Exchange, the petitioner had involved himself with two other companies namely, Binny Limited and Mohan Breweries and Distilleries Limited ("MBDL"). They are closely held to limited companies. There was a cross-holding of the promoters. A scheme of arrangement was also implemented and there was also a Company Petition filed in CP.No.66/2010 before this Court. The scrip rates naturally were dependent on the market and over night the petitioner and the other promoters found that the scrip rate had fallen from Rs.454.65/- to Rs.159/-. There were further arrangements among the family members, more particularly, the petitioner and one Mr.E.Shanmugam had entered into a family arrangement on 30.09.2013. In the midst of this, owing to the fluctuating prices in the transactions in the stock market, the first respondent had issued a show cause notice on 09.10.2017 stating that the price of the scrip, which according to the petitioner fell drastically owing to market uncertainty was actually "depressed" to facilitate the petitioner to execute transactions at lower rate. Consequent to the issuance of show cause notice on 09.11.2017, the proceedings continued and finally, penalty amounting to Rs.15.03 crores was imposed. In this, there was also a component of Rs.3,00,000/- for violation of Model Code of Conduct for Insider Trading. The petitioner challenged the same. The principal amount had multiplied and with the interest came to Rs.18,23,55,281/- as on 31.12.2019. The challenge laid by the petitioner travelled beyond two layers and the petitioner found himself before the Hon'ble Supreme Court of India. He had no further Court to go. He could not obtain any favourable orders. In the meanwhile, this Writ Petition was filed, ostensibly to protect the sale of securities, as stated by the first respondent in their letter dated 02.01.2020, to the third respondent. An attempt was made to deposit a sum of Rs.15 crores in cash before this Court, to some how or other prevent the sale of securities, since some of the securities, as on date, have became quite valuable in the market value. Unfortunately, owing to various circumstances, including medical ailments and other reason, over which, this Court as on date is not going into, the petitioner was not able to deposit the said sum of Rs.15 crores. It was informed to this Court that the petitioner had filed a Review Application before the Hon'ble Supreme Court. Today, Mr.P.S.Raman, learned Senior Counsel and Mr.P.H.Arvind Pandian, Senior Counsel for the petitioner stated that the Hon'ble Supreme Court had refused to grant relief to the petitioner.

4.Heard arguments.

5.Without going into the merits of the case, an offer is made by the learned Senior Counsel for the petitioner that the petitioner herein would offer as security an unencumbered property, to the value of Rs.25 crores, which according to the learned Senior Counsel would certainly cover the demand now raised by the respondent. The learned Senior Counsel further stated that the petitioner would file a regular appeal before the Securities Appellate Tribunal, under Section 15(D) of the said Act. It would only be in the interest of the petitioner to take urgent steps to file the statutory appeal. In view of this statement made at the Bar, the writ petition itself is disposed of, with direction to the first and second respondents not to take any coercive action as against the petitioner till 14.02.2020, within which time, the petitioner in his own interest must offer an unencumbered immovable property to the value of Rs.25 crores to the satisfaction of first and second respondents, within which time, the petitioner should file a regular appeal under Section 15(D) before the Security Appellate Tribunal. The petitioner may seek further orders from the said

Tribunal.

6.The learned Standing Counsel for the respondent stated that appeal under Section 15(D) is not maintainable before the Security Appellate Tribunal. At any rate, it is for the Tribunal to decide the issue. However, the objection of the learned Standing Counsel for the respondents is placed on record.

7. With the above observations, the Writ Petition itself is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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

2. The Recovery Officer and Deputy General Manager,
Recovery Division (Southern Regional Office),
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3. ICICI Securities Limited,
ICICI Centre, H.T.Parekh Marg,
5th Floor, Churchgate,
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+1 CC to Mr.R. Parthasarathy, Advocate sr 9945.

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SP(07/02/2020)