

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.11.2019

PRONOUNCED ON: 01.06.2020

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30825 of 2018
and
W.M.P. No. 35969 of 2018

Aditya Birla Money Limited,
'Ali Centre', No.53, Greaves Road,
Chennai-600 006,
Rep.By its Head-Legal & Compliance,
Mr. L.R. Murali Krishnan

...Petitioner

-vs-

1. The National Stock Exchange of India Limited,
Investors Services Cell,
Old No. 7, New No.2, Nawab Garden,
Murugappa Road, Kotturpuram,
Chennai - 600 085.

2. The Securities and Exchange Board of India,
Plot No. C4-A, G Block,
BKC Bandra (East),
Mumbai - 400 051
And also at
7th Floor, 756L, Anna Salai,
Chennai - 600 002.

3. Mr.Alexander Luke

...Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First and Second Respondents relating to the Investor Greivances Redressal Proceedings initiated by the First and Second Respondents by notice dated 14.11.2018 against the Petitioner to re-examine the complaint of the Third Respondent assigned Ref. No. NSF/ISC/18102181347000684/66387 and quash the same as illegal and direct the Respondents to act strictly in accordance with Chapter XI - Arbitration of the Bye-laws of the First Respondent (National Stock Exchange of India Limited).

For Petitioner : Mr. A.L.Somayaji, Senior Counsel for
M/s. S.Ramasubramaniam and Associates

For Respondents : Mr. S.Thiruvenkataswamy(for R1)

Mr. V.M.Shivakumar for
M/s. Shivakumar and Suresh(for R2)

Mr. Adeesh Anto(for R3)

O R D E R

Heard Mr. A.L.Somayaji, Learned Senior Counsel appearing for the Petitioner, Mr. S.Thiruvenkataswamy, Learned Counsel for the First Respondent, Mr. V.M.Shivakumar, Learned Counsel for the Second Respondent and Mr. Adeesh Anto, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a company engaged in purchase and sale of securities as a 'Trading Member' of the First Respondent, viz., National Stock Exchange of India Limited. The Third Respondent, as an 'Investor' in shares and securities, availed the services of the Petitioner in his transactions in the stock exchange of the First Respondent. The Second Respondent, viz., Securities and Exchange Board of India is a statutory authority functioning under the Securities and Exchange Board of India Act, 1992, to protect the investors in securities and to promote the development of, and to regulate the securities market, and as such, in the exercise of regulatory powers on the stock exchanges in the country, by its Circular No. CIR/MRD/ICC/30/2013 dated 26.09.2013 had devised the Investor Grievance Redressal Mechanism (hereinafter referred to as 'IGRM' for brevity) in the Stock Exchanges to shorten legal proceedings and give monetary relief to the investors during the course of proceedings.

3. The Third Respondent invoking IGRM of the First Respondent, made a claim for Rs.2.35 Crore as loss of his holdings with the Petitioner and attributed that loss to the misconduct of the dealing official of the Petitioner, who by consistently presenting him with profit statements over a period of four years, induced him to carry on transactions with the Petitioner. The Petitioner responded that the Third Respondent was fully aware of the trades and its resultant impact on his account by the contract notes regularly issued through e-mail and SMS and the statement of accounts and profit and loss computation sent to him by post under written acknowledgment, and the claim made

was an after thought having lost his shares to set-off the losses incurred in trading. The Investor Grievance Redressal Panel (hereinafter referred to as 'IGRP' for brevity) of the First Respondent by its order dated 18.10.2016 made its observations on the rival contentions of the Third Respondent and the Petitioner, and after considering the written submissions and hearing the parties, held that the admissible claim was 'NIL' and passed the following order:-

"Both parties were heard and explained of their respective position. However, no amicable settlement could be arrived. Hence, parties are advised to take further course of action as they may deem fit and as contemplated under the Exchange Regulations."

It is not in dispute that the Third Respondent did not pursue that claim further by resorting to arbitration provided in Chapter XI of the Bye-laws of the First Respondent made in the exercise of powers under clauses (1) and (2)(n) of Section 9 of the Securities Contracts (Regulation) Act, 1956. However, the Third Respondent made a complaint dated 30.09.2017 against the Petitioner before the Second Respondent, who had also received another complaint against the Petitioner from one Kamalesh Mody and his family members (KTM Investors). The Second Respondent, who had independently examined those complaints, by letter dated 04.10.2018 addressed to the First Respondent noted as follows:-

"(i) Trades were executed by ABML and consent for these were sought from the investors only after execution of trades. Options contract were sold on behalf of the clients for making pay-outs (stated to be profit pay-outs), whenever there were debit balances in the client's ledger due to losses in the previous expiry period. This resulted in postponing disclosure/hiding of actual losses and accumulation of heavy losses to the investors over the period.

(ii) Further, multiple statements were provided to the investors claiming to be profit and loss statement which are at variance with the actual position.

(iii) ABML did not segregate funds and securities of clients, Mr. Alexander Luke and KTM Investors and it appears that ABML might be indulging in Portfolio Management Services to these clients, Mr. Alexander Luke and KTM Investors, without entering into any agreement with them to provide Portfolio Management Services."

While the Second Respondent, on its own, was examining the findings to initiate appropriate measures as per regulation,

suggested that IGRP of the First Respondent may re-examine the complaint of the Third Respondent keeping the same thing in view and submit the IGRP proceedings within 3 months.

4. In pursuance thereof, the complaint of the Third Respondent against the Petitioner was registered at IGRP of the First Respondent and numbered as 18102181347000684, and the First Respondent by notices dated 30.10.2018 and 01.11.2018 required the Petitioner to provide its response along with documentary evidence on or before 02.11.2018. The Petitioner by reply dated 02.11.2018 sent to the First Respondent contended that the allegations made and relief claimed by the Third Respondent in his complaint attached to the notice dated 30.10.2018 were identical to his earlier complaint dated 04.09.2016, and that after affording opportunity to the Third Respondent and the Petitioner, it was held by IGRP of the First Respondent in its order dated 18.10.2016 that no amicable settlement was reached and the parties were advised to take further course of action in accordance with the Exchange Regulations. In such circumstances, it was contended that the First Respondent is not permitted under the Regulations to review and/or re-examine a complaint, which has already been examined, and as responding to the complaint of the Third Respondent would amount to joining in the unauthorized process, the Petitioner was not submitting any reply to the complaint, and requested the First Respondent to abstain from conducting IGRP proceedings. When the First Respondent again wanted the Petitioner to respond on the merits of the claim made by the Third Respondent, it was restated by the Petitioner by letter dated 14.11.2018 that IGRP proceedings on the complaints of the Third Respondent were without jurisdiction and not maintainable in law and represented that the Third Respondent may be directed to initiate arbitration as contemplated under the Exchange Regulations to redress his grievances, if any. However, the First Respondent by letter dated 14.11.2018 informed that another IGRP meeting will be scheduled in the matter as per the directions from the Second Respondent in its letter dated 04.10.2018, and the Petitioner was requested to co-operate in the matter. In that backdrop, the Petitioner has filed this Writ Petition challenging the said letter dated 14.11.2018 issued by the First Respondent and has sought for consequential direction to the Respondents to act strictly in accordance with Chapter XI of the Bye-laws of the First Respondent, which provides for arbitration to resolve the disputes between the Investors and its Trading Members.

5. The Second Respondent in its Counter Affidavit dated 05.02.2019 has justified its impugned decision requiring IGRP of the First Respondent to re-examine the complaint of the Third Respondent by pointing out that there is no express prohibition for re-examination in its Circular No. CIR/MRD/ICC/ 30/2013

dated 26.09.2013 devising IGRM in Stock Exchanges to resolve disputes between the Investors and Trading members, and that it is in the exercise of the statutory powers as Regulator to protect the public and the integrity of the Capital Market, which does not fall within the scope of the permissible grounds of Judicial Review of this Court as held in certain decisions. While supporting the said contentions, the Third Respondent in his affidavit and additional affidavit dated 19.03.2019 has stated:

- (i) that the fresh IGRP proceedings of the First Respondent are based upon the findings of the Second Respondent mentioned in the letter dated 04.10.2018, which are not the old grounds that had been examined and closed in the order dated 18.10.2016 passed by IGRP of the First Respondent;
- (ii) inasmuch as IGRP proceedings is in the nature of conciliation to amicably resolve the disputes between the Third Respondent and the Petitioner, it cannot be claimed by the Petitioner that prejudice is caused, when such efforts are taken; and
- (iii) that in any event, the Petitioner without taking recourse to the alternative remedy of appeal available before the Securities Appellate Tribunal, could not bypass the same and straightaway approach this Court under Article 226 of the Constitution.

6. In the Reply Affidavit dated 08.04.2019, the Petitioner has denied the factual correctness of the claim made by the Second and Third Respondents, apart from dealing with the legal contentions raised by them. It has also been informed that IGRP proceedings by the First Respondent initiated against the Petitioner on the complaint of KTM Investors similar to that made by the Third Respondent, have also ended in favour of the Petitioner without any admissible claim.

7. Having regard to the rival submissions made by the parties, the core question that arises for determination in this Writ Petition is whether IGRP of the First Respondent has jurisdiction to re-examine the complaint of the Third Respondent pursuant to the direction issued by the Second Respondent in its letter dated 04.10.2018, after having arrived at the conclusion that the admissible claim of the Third Respondent against the Petitioner was 'NIL' and relegated the parties to take further course of action under the Exchange Regulations in the earlier order dated 18.10.2016, which has attained finality having remained unchallenged in the manner recognized by law. However, before delving into its intricacies, it would be necessary to first take up the objections raised by the Respondents on the

maintainability of the Writ Petition.

8. In response to the claim of the Third Respondent that the Petitioner has an alternative remedy of appeal before the Securities Appellate Tribunal, it is contended by the Petitioner that the matter raised in the Writ Petition does not come under any of the categories for which such appeal lies. The Hon'ble Supreme Court of India in Whirlpool Corporation -vs- Registrar of Trade Marks, Mumbai [(1998) 8 SCC 1] had observed that the rule of exclusion of Writ Jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion and that in an appropriate case, in spite of availability of alternative remedy, the High Court may still exercise its discretionary powers in some contingencies, one of which is where the impugned proceedings are wholly without jurisdiction. As the bone of contention in this Writ Petition is the jurisdiction of IGRP of the First Respondent to re-examine the complaint of the Third Respondent, which is a pure question of law and does not require any adjudication on disputed questions of fact, the objection raised by the Third Respondent is overruled in this regard.

9. The next submission of the Respondents is that the impugned IGRP proceeding are in the exercise of statutory powers by the Second Respondent as the Regulator of the Capital Market in public interest for which the Constitutional Court ought to be loathe to interfere. In order to buttress the same, Learned Counsel for the Second Respondent has cited the following decisions:-

(i) Agri Gold Farm Estates India Private Limited -vs- Securities and Exchange Board of India (Order dated 17.08.2015 in W.P. No. 12310 of 2015 passed by this Court), where it has been observed that in matters touching upon technical aspects involving economy, the Court should adopt dignified reluctance to leave the issues open to be decided by the Statutory Authority.

(ii) Shri Sitaram Sugar Company Limited -vs- Union of India (AIR 1990 SC 1277), where the Hon'ble Supreme Court of India has observed as follows:-

"57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test

of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land..."

(iii) MCX Stock Exchange Limited -vs- Securities & Exchange Board of India [(2012) 172 Comp Cas 602] where the Bombay High Court noted that the SEBI is an expert statutory body and that the High Court would not be justified in substituting the view of an expert adjudicator as follows:-

"36.While assessing the challenge the Court must bear in mind that the interference of the Court must bear in mind that the interference of the Court under Article 226 of the Constitution is confined to certain well settled, if restricted, parameters. The view of the expert should not be disturbed unless it is perverse or not based on evidence or is based on a misreading of evidence... The High Court under Article 226 of the Constitution would not be justified in substituting the view of an expert adjudicator for another view merely because it commends itself to the Court."

(iv) Nikhil. T. Parikh -vs- Union of India [(2014) 2 GLH 582] where the Gujarat High Court has held as follows:-

" The SEBI is charged with the duty to protect the public and the integrity of the capital market, and as a regulator, it has powers to issue the circular impugned in this petition in public interest including the regulations, and the interference at the end of the Court in such type of matters should be minimal unless it is established that the same is in gross violation of any of the provisions of law or the Constitution of India.

.....

In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for distinct ways and means of imposing fiscal or regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

We should not be understood to have meant that the

judiciary should never interfere with administrative decisions. However, such interference should be only within the narrow limits e.g. When there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal...."

As already stated, the matter in issue in this Writ Petition is the jurisdiction of IGRP of the First Respondent to re-examine the complaint of the Third Respondent against the Petitioner on the directions issued by the Second Respondent, which falls within the realm of scrutiny of the lawfulness of that impugned action concerning the decision-making process, and it is not directed against the merits of the dispute between the contesting parties touching upon the soundness of that decision itself. As such, the jurisdictional issue which has arisen for determination in this case squarely falls within the aforesaid parameters for judicial review explained in the decisions cited by the Second Respondent, which do not conflict with the exercise of such powers on the facts of this case.

10. Yet another crucial aspect, which has to be analysed relates to the nature of IGRP proceedings of the First Respondent with specific reference to its impact on the rights of the Petitioner, as according to the Third Respondent, it is merely an attempt to amicably settle the disputes between the Investor and the Trading Member and does not cause any prejudice to the Petitioner if he participates in the impugned re-examination exercise. It is expressly mentioned in the concluding portion of the Circular No. CIR/MRD/ ICC/30/2013 dated 26.09.2013 devising IGRM issued by the Second Respondent that it is in the exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with Sections 9(2)(n) and 10 of the Securities Contracts (Regulation) Act, 1956, which obviously means that it is statutory in character and has the force of law. It would also be useful here to refer to the procedure for IGRM in the relevant portions of that circular extracted below:-

"2) With a view to streamline and make more effective the investor grievance redressal mechanism at Stock Exchanges, and consequent to discussions with Stock Exchanges and Depositories, it has been decided to shorten the time taken for the proceedings as well as to give monetary relief to the investors, during the course of pendency of proceedings. In this regard, Stock

Exchanges are advised as under:

- a) Stock Exchanges shall ensure that all complaints are resolved at their end within 15 days as mentioned in the circular no. CIR/MRD/ICC/16/2012 dated June 15, 2012. The correspondence with the Member & investor (who is client of a Member) may be done on email if the email id of the investor is available in the UCC database. The Member (Stock Broker, Trading Member and Clearing Member) shall provide a dedicated email id to the stock exchange for this purpose.
- b) In case the matter does not get resolved, conciliation process of the exchange would start immediately after the time lines stated in sub-para (a) above.
- c) Investor Grievance Redressal Committee (IGRC) shall be allowed a time of 15 days to amicably resolve the investor complaint.
- d) IGRC shall adopt a two-fold approach i.e. for proceedings leading to direction to the Member to render required service in case of service related complaints and proceedings leading to an order concluding admissibility of the complaint or otherwise in case of trade related complaints.
- e) In case the matter is not resolved through the conciliation process, IGRC would ascertain the claim value admissible to the investor.
- f) Upon conclusion of the proceedings of IGRC, i.e. in case claim is admissible to the investor, Stock Exchanges shall block the admissible claim value from the deposit of the Member.
- g) The Stock Exchange shall give a time of 7 days to the Member from the date of signing of IGRC directions as mentioned under sub-para (d) above to inform the Stock Exchange whether the Member intends to pursue the next level of resolution ie. Arbitration.
- h) In case, the Member does not opt for arbitration, the Stock Exchange shall, release the blocked amount to the investor after the aforementioned 7 days."

A conspectus of the aforesaid provisions clearly show that if the dispute between the Investor and the Trading Member is not amicably resolved through conciliation process, IGRP of the

Stock Exchange has been empowered to ascertain the claim amount admissible to the Investor, which the Stock Exchange shall block from the deposit of the Trading Member. If the Trading Member intends to pursue the next level of arbitration, he would have to inform the Stock Exchange of that decision within 7 days, in which event the Investor would be released 50% of the claim value or Rs.75,000/- whichever is less from that deposit of the Trading Member with the Stock Exchange. Viewed from this perspective, there is force in the contention of the Petitioner that IGRM cannot be looked as a mere conciliatory process giving option for amicable settlement through consensual arrangement and that it also involves financial ramifications for a Trading Member in the event of determining the claim amount admissible, if found due. In short, the aforesaid traits of IGRP proceedings necessarily leads to inference that it is in the nature of adjudication in a legal proceeding, which binds the Investor and the Trading Member of the Stock Exchange, and whichever party is aggrieved by its outcome would have to pursue the matter to the next level of arbitration. It follows as its corollary that the submission made by the Third Respondent that no prejudice would be caused to the Petitioner, if IGRP proceedings for re-examination of the complaint of the Third Respondent, does not deserve any acceptance.

11. The focus now reverts to the crux of the controversy as to the jurisdiction of IGRP of the First Respondent to re-examine the complaint of the Third Respondent after having earlier arrived at the conclusion that the admissible claim amount was 'NIL' in the order dated 18.10.2016 passed in the matter. While the Petitioner asserts that there is no such provision in IGRM devised in the Circular No. CIR/MRD/ICC/30/2013 dated 26.09.2013 issued by the Second Respondent, the thrust of rebuttal by the Respondents is that there is no express bar for conducting the same. Reference must be made for this purpose to the law relating to finality of litigation, as deduced from various binding judicial decisions, which has been summarized below:-

- (a) The doctrine of finality of litigation is founded upon two age old salutary principles of public policy, viz., interest reipublicae ut sit finis litium which signifies that it is in the interest of the State that there should be an end to litigation, and the other principle, viz., nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa conveys that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities or by adopting a procedure prescribed by law. The other principle

is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. In the absence of such principle, great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a resourceful and malicious litigant may succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The universally acclaimed rule of res judicata has been evolved to prevent such anarchy. (See M.Nagabhushana -vs- State of Karnataka [(2011) 3 SCC 408] and Union of India -vs- Major S.P.Sharma [(2014) 6 SCC 351]).

- (b) The rule of res judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding which has been initiated in breach of the rule of res judicata is prima facie a proceeding which has been initiated in abuse of the process of Court. (See M.Nagabhushana -vs- State of Karnataka [(2011) 3 SCC 408] and Union of India -vs- Major S.P.Sharma [(2014) 6 SCC 351]).
- (c) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. The adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is

not permissible for the parties to re-open the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice. (See Ambika Prasad Mishra -vs- State of Uttar Pradesh [(1980) 3 SCC 719], Direct Recruit Class II Engg. Officers' Assn. -vs- State of Maharashtra [(1990) 2 SCC 715], M.Nagabhushana -vs- State of Karnataka [(2011) 3 SCC 408] and Union of India -vs- Major S.P.Sharma [(2014) 6 SCC 351]).

- (d) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. (See K.K.Modi -vs- K.N.Modi [(1998) 3 SCC 573]).
- (e) The power of review on merits when the error sought to be corrected is one of law and is apparent on the face of the record, is not an inherent power and if it is intended to be exercised, the statute must have specifically conferred it. (See Narshi Thakershi -vs- Pradyumansinghji [(1971) 3 SCC 844] as explained in Grindlays Bank Ltd -vs- Central Government Industrial Tribunal [(1980) Supp. SCC 420]).
- (f) However, when a review is sought due to a procedural defect, such as:-
 - (i) where the court proceeds to make a decision without notice to a party or without making him as party to that proceeding, the power to re-open concluded proceedings at the instance of those adversely affected persons in consonance with the principles of natural justice inheres in every court or Tribunal to thwart the abuse of its process. (See Shivdeo Singh -vs- State of Punjab (AIR 1963 SC 1909)); and
 - (ii) where a party is prevented from appearing at the hearing due to sufficient cause, and is faced with an ex parte decision, it is as if the party is visited with that decision without notice of the proceedings and the inadvertent error committed must be corrected ex debito justitiae to prevent miscarriage of justice, unless the statute expressly prohibits or excludes it by necessary implication (See Haryana Suraj Malting Limited -vs- Phool Chand [(2018) 16 SCC 567] and Rajeev Hitendra Pathak -vs- Achyut Kashinath Karekar [(2011) 9 SCC 541]).

- (g) Similarly, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court as it affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the judicial process. (See Indian Bank -vs- Satyam Fibres (India) Pvt., Ltd., [(1996) 5 SCC 550] and United India Insurance Co., Ltd., -vs- Rajendra Singh [(2000) 3 SCC 581]).

12. Applying the aforesaid legal principles to the facts of the case on hand, there cannot be any doubt that the attempt to re-examine the complaint of the Third Respondent against the Petitioner by IGRP of the First Respondent without any specific provision to that effect in IGRM devised by the Second Respondent in Circular No. CIR/MRD/ICC/30/2013 dated 26.09.2013, which certainly amounts to re-litigation, is barred. Inasmuch as the earlier adjudication in IGRP of the First Respondent, which culminated in its order dated 18.10.2016, does not suffer from any procedural defect, the question of invoking the inherent powers to re-open the proceeding does not arise. Though a faint plea is made by the Third Respondent that the Petitioner has played a fraud on him, the letter dated 04.10.2018 issued by the Second Respondent to the First Respondent to re-examine the complaint of the Third Respondent does not suggest of the same. What has been mentioned therein is that the Second Respondent has independently examined the complaint and those findings are examined to initiate appropriate measure as per regulation. At best, it is a preliminary opinion and no definite conclusion on the culpability of the Petitioner has been expressed to treat that any fraudulent act has been committed by the Petitioner against the Third Respondent. As such, it is not possible to uphold the re-examination of the complaint on the ground of exercise of inherent powers for any act of fraud committed by the Petitioner against the Third Respondent.

13. Learned Counsel for the Third Respondent has referred to the decision of the Hon'ble Supreme Court of India in Securities and Exchange Board of India -vs- Ajay Agarwal [(2010) 3 SCC 765] where after holding that the Securities and Exchange Board of India Act, 1992, was a social welfare legislation for promoting the orderly growth of the Securities Market and for protecting the interest of the Investors, it has been expressed as follows:-

"33.The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing the participation of the investors. In fact such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.

34. The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. It is a well-known canon of construction that when the court is called upon to interpret provisions of a social welfare legislation the paramount duty of the court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it...."

Relying on those passages, it is canvassed that the view must be taken in this case that in the absence of any express bar, IGRP of the First Respondent has inherent power of re-examination of a closed complaint as it would advance the beneficent objects of the Securities and Exchange Bureau of India Act, 1992, under which the Second Respondent has devised IGRM. It requires to be noticed that the Hon'ble Supreme Court of India in the aforesaid case was dealing with the specific question as to whether the Securities and Exchange Board of India could pass orders in a matter relating to allegations which surfaced prior to the coming into force of the amendments made in 1995 and 2002 to Section 11-B of the Securities and Exchange Board of India Act, 1992, and it was held that inasmuch as the nature of relief sought in that case was not 'punishment' for an 'offence', it does not attract the bar of retrospective operation imposed in clause (1) of Article 20 of the Constitution. In other words, the availability of power was not in dispute there, unlike the instant case where the conclusion of lack of jurisdiction of IGRP of the First Respondent to re-examine the complaint of the Third Respondent has been arrived by this Court based on the existing provisions of IGRM devised by the Second Respondent. It could, thus, be seen that the aforesaid ruling cited by the Third Respondent does not have any application to the intrinsic contestation involved in this case.

14. Moreover, there is no explanation from the Third Respondent for not having resorted to the next level of arbitration proceedings in terms of Chapter XI of the Bye-Laws of the First Respondent, if he was not satisfied with the adjudication made by IGRP of the First Respondent in the order dated 18.10.2016, especially when the Petitioner even now agrees for adopting such course of action as mentioned in the relief sought in the Writ Petition. That apart, there is nothing which precludes the Third Respondent to rely on any new evidence which has come to his knowledge after the order dated 18.10.2016 passed by IGRP of the First Respondent in arbitration, which is in the nature of an original proceeding. It is needless to add here that no view has been expressed by this Court on the merits of the disputes between the Third Respondent and the Petitioner, and no authority shall be inhibited or influenced by any of the

observations made in this order while adjudicating the same.

15. In view of the foregoing discussion, the letter dated 04.10.2018 sent by the Second Respondent to the First Respondent insofar as it suggests that IGRP of the First Respondent may re-examine the complaint of the Third Respondent, is quashed as without jurisdiction and the First Respondent shall be restrained from continuing with the IGRP proceedings initiated in pursuance thereof. It is needless to clarify here that it is for the Second Respondent to exercise its powers conferred under the statute to first make necessary amendments to IGRM so as to create provision for review of an earlier decision of IGRP of a stock exchange, if it so intends, and thereafter require the First Respondent to act in furtherance thereof.

16. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Chairman,
National Stock Exchange of India Limited,
Investors Services Cell,
Old No. 7, New No. 2, Nawab Garden,
Murugappa Road,
Kotturpuram,
Chennai - 600 085.

2. The Chairman,
Securities and Exchange Board of India,
Plot No. C4-A, G Block,
BKC Bandra (East),
Mumbai - 400 051,
And also at
7th Floor, 756L, Anna Salai,
Chennai - 600 002.

W.P. No. 30825 of 2018

KS (CO)
RN(05/06/2020)