



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.31551 OF 2014

AND

M.P.NOS.1 AND 2 OF 2014

M/s.Viswapriya (India) Ltd.,
(formerly Viswapriya Financial
Services & Securities Ltd)
Rep. by its Director,
No.75-C II Main Road,
Gandhi Nagar,Adyar,
Chennai.

... Petitioner

.Vs.

1. The Securities and Exchange Board of India,
Plot No.C4-A "G" Block,
Bandra Kurla Complex,
Bandra East,
Mumbai - 400 051.
2. The Ashika Capital Limited,
1008 10th Floor, Raheja Centre,
No,214 Nariman Point,
Mumbai - 400 021.
3. Snehil Saraf
4. Kamini Saraf
5. The Venture Capital and Corporate
Investments Private Limited,
12-10-167 Bharat Nagar,
Hyderabad - 500 018.
6. The Sonpal Cement and Infrastructure Ltd.,
No.59 Loka nivas, NGO's Colony
Subash Nagar,
Nizamabad - 503 002.

... Respondents

PRAYER:- Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the 1st respondent to conduct an investigation as per



Section 11 C of the SEBI Act in respect of the matters relating to the claimed transfer of 1089400 shares out of the 1121300 shares the shareholders represented by the petitioner herein and consequently to prevent them from sale of the said shares in the open offer and in respect of the violations of the take over code in respect of the 3rd and 4th respondents acquiring the shares and control of the affairs of the 6th respondent company.

For Petitioner : Mr.R.Subramanian
Petitioner in Person

For Respondent : Mr.V.Suresh
For M/s.Shivakumar and Suresh
For R1

Mr.P.R.Raman
Senior counsel
For Ms.Aparajitha Vishwanath
For R3, R4 and R6

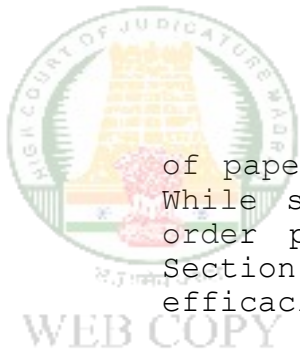
No appearance for R2 and R5

O R D E R

The writ on hand has been instituted to direct the first respondent to conduct an investigation as per Section 11-C of the SEBI Act in respect of the matters relating to the claimed transfer of 1089400 shares out of the 1121300 shares the shareholders represented by the petitioner herein and consequently to prevent them from sale of the said shares in the open offer and in respect of the violations of the take over code in respect of the 3rd and 4th respondents acquiring the shares and control of the affairs of the 6th respondent company.

2. Mr.R.Subramanian, Director of the petitioner Company, who filed the sworn affidavit in the present writ petition and represented the company in person, contended that the writ is for mandamus and the SEBI has not conducted any investigation as required under the provisions of the Act. The only grievance is to conduct an investigation under Section 11-C of the SEBI Act. In view of the fact that the first respondent failed to exercise its powers in the manner required under the provisions of the Act, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the first respondent SEBI contended that an investigation into the complaints made by the petitioner was conducted and an order was issued in proceedings dated 26.11.2014 and the said order is enclosed in the typed set



of papers filed by the petitioner along with the writ petition. While so, if at all the petitioner is not satisfied with the order passed by the SEBI, he has to prefer an appeal under Section 15-D of the SEBI Act and the alternative remedy is efficacious and therefore, the writ petition is to be rejected.

4. The learned Senior counsel appearing on behalf of the respondents 3, 4 and 6 raised an objection that one Director of the Company cannot represent the petitioner company and argue on behalf of the Company, as the petitioner Company is an independent entity. Therefore, the petitioner cannot argue on behalf of the petitioner company. It is further contended that investigations were already conducted by the SEBI based on the complaint given by the petitioner. If at all the petitioner is not satisfied with the investigation conducted by the SEBI, it is for them to approach the appellate authority under Section 15-D of the SEBI Act. Thus, the writ petition is to be rejected.

5. Perusal of the affidavit would reveal that certain issues are raised and undoubtedly such issues cannot be adjudicated on merits in a writ petition under Article 226 of the Constitution of India. The very prayer sought for in the writ petition states that the investigation as per Section 11-C of the SEBI Act is to be conducted in respect of matters relating to claim transfer of 1089400 shares out of the 1121300 shares, the shareholders represented by the petitioner herein and consequently to prevent them from sale of the said shares in the open offer and in respect of the violations of the take over code in respect of the 3rd and 4th respondents acquiring the shares and control of the affairs of the 6th respondent company.

6. The relief sought for prima facie indicates that issues require an elaborate adjudication. Sale of shares, preventing a person, who purchase the shares, from taking over the company etc., and the dispute between the parties, which all are to be resolved by conducting an elaborate adjudication with reference to the documents and evidences to be made available by the respective parties. High Court cannot conduct a roving enquiry in such issues.

7. The power of review of the High Court under Article 226 of the Constitution of India is to scrutinize the process through which the competent authority has taken a decision, but not the decision itself. Thus, the scope of judicial review cannot be expanded for the purpose of conducting adjudication of disputed issues. It is for the parties to approach the competent forum.

8. Even the first respondent in their affidavit categorically states that the petitioner is having an alternate



remedy under Section 15-D of the SEBI Act. The appellate authority is the final fact finding authority. Thus, the adjudication of facts by the appellate authority is of paramount importance and such adjudication would be of greater assistance for the High Court for the purpose of exercise of powers on judicial review. Contrarily High Court at the initial stage cannot go into the merits or de-merits of the issues between the parties and further based on the mere affidavit and xerox copies of the documents filed in the writ petition, findings cannot be arrived in respect of such disputed issues and in such circumstances, no doubt there is a possibility of errors, omissions or commissions. This exactly is the reason why the Constitutional Courts are emphasizing that the alternate remedy is to be exhausted in all circumstances. Only on exceptional circumstances, if any great injustice is caused and any delay would result in denial of justice, then alone the High Court has to interfere and under normal circumstances, the parties must exhaust the alternative remedy contemplated under the provisions of the Statute.

9. The learned counsel for the petitioner reiterated that the SEBI has not conducted an investigation in a proper perspective. Therefore, the case needs to be remanded. When the SEBI appeared in the writ petition and filed a counter stating that they have adjudicated the issues, then order of remand is not required. The remedy would be an appeal and which would be appropriate. Thus, the petitioner is at liberty to approach the appellate authority under Section 15-D of the SEBI Act for the purpose of redressing their grievances.

10. Thus, the petitioner is permitted to submit an appeal within a period of four weeks from the date of receipt of a copy of this order. In the event of filing any such appeal, the competent appellate authority shall condone the delay taking into consideration the period of pendency of the writ petition before the High Court. With these directions, this writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RR



To

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

Copy To:

The Securities Appellate Tribunal,
Mumbai.

+2ccs to Mr.Abishek Jenasenan, Advocate for
Ms.Aparajitha Vishwanath, Advocate, S.R.No.50321

W.P.NO.31551 OF 2014

KG(CO)
PBS/28/10/2021