

July 6, 2022
Sl. No.12,13 &14
Court No.1
PA-RB

MAT 689 of 2022

With

CAN 1 of 2022

Enforcement Directorate

vs.

*Magma HDI General Insurance Company
Limited and others*

WITH

MAT 688 of 2022

With

CAN 1 of 2022

Enforcement Directorate

vs.

*Sanjay Chamria, Director of Magma HDI General
Insurance Company Limited*

WITH

MAT 686 of 2022

With

CAN 1 of 2022

Enforcement Directorate

vs.

*Mayank Poddar, Director of Magma HDI General
Insurance Company Limited*

Mr. Arijit Chakrabarti, Advocate

...for the appellant/ED

Mr. P. Chidambaram, Sr. Adv.

Mr. Aman Gandhi,

Mr. Debanjan Mandal,

Mr. Sanket Sarawagi, Advocates

... for the respondents in MAT 689 of 2022

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Sarvapriya Mukherjee,

Ms. Iram Hassan, Advocates

... for the respondent in MAT 688 of 2022

Mr. Soumabho Ghose,

Mr. Deepan Sarkar,

Ms. Mahima Cholera, Advocates

... for the respondent in MAT 686 of 2022

These appeals are directed against the identical
order dated 19th of April, 2022 passed in WPA 20930 of
2021, WPA 21011 of 2021 and WPA 21014 of 2021. It is

undisputed that all these petitions and appeals involve the same issue.

It is undisputed that against the order dated 24th of November, 2021, an appeal before the SAFEMA Tribunal was preferred but since the Tribunal is not functional, therefore writ petition has been filed.

Before the learned Single Judge, the issue of maintainability of the writ petition arose and the learned Single Judge by the order dated 17th of January, 2022 had directed the respondents therein to use an affidavit even on the question of jurisdiction and nature of justice and had stayed the operation of the order impugned. This order was subject matter of challenge before Division Bench in FMA 290 of 2022 and connected MATs and this Court on dated 31st of March, 2022 had passed the following order:

“Having heard learned Counsel for the parties and on the perusal of the record, it is noticed that the issue of maintainability of the writ petition is yet to be decided by the learned Single Judge. Appellant has an option to file the affidavit before the learned Single Judge confining to a preliminary objection at the first instance, questioning the maintainability of the petition, reserving his right to file the subsequent affidavit to contest the issue on merit, if the need so arises. If the appellant feels that any modification in the impugned order is required, then also he has the option to apply for the same before the learned Single Judge. Issues which are raised before this Court need not be gone into at this stage by this Court as none of these issues have been finally decided by the learned Single Judge. Hence, the parties are at liberty to raise all legally permissible issues before the learned Single Judge. It is pointed out that the matter is listed before the learned Single Judge on 04th April, 2022.

Hence, considering the aforesaid judgment of the Hon'ble Supreme Court in the matter of **Shyam Sel (Supra)** we dispose of the present appeal without interfering in the impugned order but permitting the parties to file appropriate application/affidavit and raise all legally permissible issues before the learned Single Judge and we hope that the application/affidavit, so filed and issue raised, therein, will be duly considered by the learned Single Judge in accordance with law.”

Learned Single Judge by the order under appeal dated 19th of April, 2022 has held the writ petition to be maintainable, taking note of the fact that the SAFEMA Tribunal is not functioning for want of appointment of Presiding Members and has further directed that the order impugned in the writ petition will remain stayed until disposal by the Tribunal of the application made by the writ petitioners under Section 19 of The Foreign Exchange Management Act, 1999 for waiver of pre-deposit or until any orders by the Writ Court, whichever is earlier. He has also granted last opportunity to the respondent in writ petition to use affidavit-in-opposition.

Learned counsel for the appellant submits that the Writ Court should not enter into the merits of the controversy and stay of order impugned in the writ petition should be continued till the appeal is taken up and heard by the Tribunal which had got the jurisdiction to decide the issue.

Opposing the prayer, learned counsel appearing for the respondent writ petitioner has submitted that since the order impugned in the writ petition itself is without

jurisdiction, therefore, the Writ Court is entitled to entertain the writ petition and this issue is yet to be decided by the Writ Court. He has stated that the respondent will withdraw the appeal if the writ petition is taken up for hearing. Learned counsel for the respondents has further submitted that the minimum solvency margin as per IRDAI Regulations is 1.5 times at any point of time and if the E.D. penalty is adjust, then as on 31st of March, 2023, the solvency margin will fall below 1.5 times, hence, the issue needs to be decided early as it is affecting the writ petitioner's business.

Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that the learned Single Judge by the order under appeal has held the writ petition to be maintainable because the Tribunal is not functioning presently for want of Presiding Members. Even if the Tribunal is functional, the writ petitioners are entitled to maintain the writ petition if the order impugned is without jurisdiction but this issue has not been gone into till now. Hence, we dispose of the present appeals expressing hope that the learned Single Judge will decide the issue of jurisdiction of the concerned authority which had passed the order impugned in writ petition. If the order is found to have been passed by the authority having no jurisdiction, then no further adjudication may be required. If this ground of challenge is rejected, then learned Single Judge will duly consider if

legality of the order impugned in the writ petition is to be examined on other grounds by the Writ Court or writ petition is to be disposed of directing continuance of the order of stay till the disposal of appeal by Tribunal. We hope that having regard to the nature of controversy involved in the matter, learned Single Judge will take up the petition expeditiously.

Accordingly, these appeals are disposed of.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]