IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28690 of 2019

Belair Corporation Pvt Ltd.,
Rep. By its Managing Director,
Mr.Aravindsrinivasan,
N.No.94, O.No.140a,
Luz Church Road, Mylapore,
Chennai-600 004. ...Petitioner

Vs.

1. The Ministry of Finance,
Department of Economic Affairs,
Rep. By its Secretary,
North Block, New Delhi-110 001.

2. The Chairman,
Securities Exchange Board of India,
SEBI Bhavan BKC,
Plot No.C4-A, 'G' Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai-400 051, Maharashtra.

3. National Stock Exchange of India Ltd.,
Exchange Plaza, C-1, Block G,
Bandrakurla Complex,
Bandra (E), Mumbai-400 051. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 3rd respondent to refund the Interest Free Security Deposit to the tune of Rs.75,76,613/.- (Seventy Five Lakhs and Seventy Six Thousand Six Hundred and Thirteen Only) as per the statement dated 02.09.2018 along with interest at 18%.

For Petitioner : M/s.Eswar Kumar and Rao

For Respondent R1 : Mr.B.Ramaratnam, CGSC

For Respondent R2 : Mr.C.Prasannavenkatesh
for M/s.Prasannavenkatesh & Associates

For Respondent R3 : M/s.P.Giridharan

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus to direct the 3rd respondent to consider the petitioner's representations dated 23.05.2018 and 01.08.2018 and refund the Interest Free Security Deposit of Rs.75,76,613/- along with interest at 18% in favour of the petitioner.

2. The case of the petitioner is that, the petitioner company was admitted as a trading member for both Capital Market and Futures & Options segment with effect from 25.02.2010 by the 3rd respondent. The petitioner has paid Interest Free Security Deposit of Rs.1,10,00,000/- and other incidental and necessary advances. During the year 2013, the petitioner company suffered a setback in business and was forced to request the 3rd respondent to disable the company from further trading in both market sector and the same was accepted by the 3rd respondent and disabled the petitioner company from trading on 29.11.2013. Thereafter, the petitioner company settled all the dues to their clients and made an application for the surrender of membership and the same was approved by the 3rd respondent. Despite, several representations dated 23.05.2018 and 01.08.2018 made by the petitioner before the 3rd respondent, till date the remaining IFSD was not refunded in favour of the petitioner. Hence, the present petition is filed.

3. Though very many grounds have been raised, learned counsel for the petitioner submits that, it would suffice if this Court issues direction to the 3rd respondent to consider the petitioner's representations dated 23.05.2018 and 01.08.2018 and refund the Interest Free Security Deposit of Rs.75,76,613/- in favour of the petitioner within a particular time frame fixed by this Court.

4. The learned counsel appearing for the 3rd respondent submitted that, as per the Circular No.293 of 2017 dated 10.01.2017, the 3rd respondent revised and modified the Circular dated 08.09.2010 and further stated that the IFSD of members, whose last trade was more than three years from the date of surrender approval would be eligible for release of the IFSD, if they have no history of any on-going complaints / litigation

against the members and SEBI confirmation, regarding cancellation of registration is received. In the light of the above, since there is history of complaint against the petitioner, its email dated 24.08.2018 was rejected and refund of deposit to the petitioner was denied vide reply email dated 31.08.2018 sent by the 3rd respondent, however, the same was not challenged by the petitioner firm. He further submitted that, the only remedy available to the petitioner with regard to the refund of the IFSD is to approach appellate tribunal, however, without availing the said remedy nor challenging the rejection email dated 31.08.201, filing the present writ petition is not sustainable.

5. Heard the arguments advanced by the learned counsel on either side.

6. In view of the fair submissions made by the learned counsel appearing for the 3rd respondent that, since there is history of complaint against the petitioner and that, as per the circular No.725 dated 08.09.2010, issued by the 3rd respondent, the three year period will be calculated only from the date of surrender and not from the date of disablement, however, the 2nd respondent has cancelled the Registration of petitioner company only on 28.03.2017 and also that, the remedy available to the petitioner with regard to release of IFSD is before the appropriate appellate tribunal. Without availing the said remedy nor challenging the rejection email dated 31.08.2018, filing this Writ petition is not sustainable.

7. Recording the above submission, this writ petition is dismissed with liberty to the petitioner to workout its remedy in the manner known to law. No costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Ministry of Finance,
Department of Economic Affairs,
Rep. By its Secretary,
North Block, New Delhi-110 001.

2. The Chairman,
   Securities Exchange Board of India,
   SEBI Bhavan BKC,
   Plot No.C4-A, 'G' Block,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai-400 051, Maharashtra.

3. National Stock Exchange of India Ltd.,
   Exchange Plaza, C-1, Block G,
   Bandrakurla Complex,
   Bandra (E), Mumbai-400 051.

+1cc to Mr.C.Prasana Venkatesh, Advocate SR.No.5508
+1cc to Mr.P.Giridharan, Advocate SR.No.4590

W.P.No.28690 of 2019

NR(CO)
CB(02/03/2022)