IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18732 of 2022 (O&M)
Reserved on 25.08.2022.
Date of Decision: 12.09.2022

MULTIBAGGER SECURITIES RESEARCH & ADVISORY PVT. LTD THROUGH ITS DIRECTOR AND ANOTHER

........Petitioners

V/s.

SECURITIES & EXCHANGE BOARD OF INDIA THROUGH ITS CHAIRMAN AND OTHERS

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO***
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN

Present: Mr. Manish Goel, Petitioner No.2 in person.

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M.S. RAMACHANDRA RAO, J.

Background facts

Petitioner No.1 is M/s Multibagger Securities Research & Advisory Pvt. Ltd. and Petitioner No.2 is its Director.

Petitioner No.1 is registered with the Securities & Exchange Board of India (for short "Board") as an Investment Advisor on 29.05.2017.

An investigation is being conducted by respondent No.1-Board into the trading activities of certain entities in the scrip of Omaxe Ltd. which were made during the period 01.06.2020 to 01.07.2020.

A Tele-marketier by name M/s Mobonair Wireless Pvt. Ltd. had provided information to the respondents that SMS recommendations were sent by petitioner No.1.

A reply was sought by the respondents from the petitioners through an e-mail dt.10.08.2022 (Annexure P-11) enclosing copy of the document provided by the Tele-marketier with a request to provide complete information.

A week later, on 18.08.2022, summons dt.17.08.2022 were issued by respondent No.3, who was appointed as an investigating authority, to the petitioners as well as another Director by name Shailesh Goyal, directing their personal appearance before respondent No.3 on 25.08.2022 at 1.30 P.M. at the Office of the Board at New Delhi under Section 11C(5) of the Securities and Exchange Board of India Act, 1992 (for short "the Act").

A Summon was also issued on the same day to petitioner No.2 as well as Shailesh Goyal for production of documents before the investigating authority on 24.08.2022 under Section 11C(3) of the Act.

These summons mention that respondent No.3 was appointed as an investigating authority by respondent No.1 to investigate into the dealings in the scrip of Omaxe Ltd., that there is reasonable ground to believe that transactions in securities were being dealt with in a manner detrimental to the investors or the securities market, and cooperation of the petitioner and other Directors is required in connection with the aforesaid investigation.

It is the case of the petitioners that the documents based on which the summons for physical appearance were sent to the petitioners were actually forged documents created by one Vishal Shah possibly in collusion of a Tele-marketier M/s Mobonair Wireless Pvt. Ltd. by counterfeiting the Stamp and Letter Head of petitioner No.1; that this forged document was later given by Vishal Shah to M/s Mobonair Wireless Pvt. Ltd. saying that he is a representative of petitioner No.1; and the Tele-marketier, without bothering to ask for any authorization letter from petitioner No.1, allowed the said person to send millions of fraudulent messages to the unsuspecting investors in the name of the petitioners.

The petitioners also allege that they made complaints to respondent No.4 vide Annexures P-4, P-6, P-8, P-9 and P-12 but the latter did not take any action against the accused.

The petitioners therefore filed this Writ Petition for quashing of Sections 11C(3), 11C(5), 11C(6) and 11C(7) of the SEBI Act.

Section 11C of the SEBI Act states:

"11C. *(1) Where the Board has reasonable ground to believe that—*

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section

12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again :

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and *record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.*

(5) *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

(6) *If any person fails without reasonable cause or refuses—*

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which *may extend to five lakh rupees for every day after the first during which the failure or refusal continues.*

***(7)** Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.*

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to [the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government] for an order for the seizure of such books, registers, other documents and record.

(8A) The authorised officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub section (8) and it shall be the duty of every such officer to comply with such requisition.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court] may, by order, authorise the Investigating Authority –

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation: Provided that the Magistrate or Judge of the Designated Court] shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court] of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal

Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code."

According to the petitioners, these statutory provisions deprived the petitioners and public of their fundamental right of freedom of speech and expression, fundamental right of protection against the self incrimination and fundamental right of life and liberty.

According to them, the petitioners have a right to be silent, but these provisions force the petitioners to make statements on oath or produce documents with the penalty of imprisonment of one year and/or further penalty of ₹1 Crore.

They allege that their right to liberty and right to live with dignity are being taken away by these provisions.

They also contend that Section 11C(7) which directs that notes of any examination under Sub Section (5) would be taken down in writing and would be read over to or by and signed by the person examined, and may thereafter be used in evidence against him, violates Article 20 (3) of the Constitution of India.

In addition, it is contended that the summons for physical appearance of all the Directors of petitioner No.1 are unconstitutional, unreasonable and amounts to harassment.

According to the petitioners, one Director by name Shailesh Goyal, who is well aware of the workings of the company, was requested to be permitted to appear on behalf of petitioner No.1 company vide Annexure P-15, but respondent No.2 called the petitioners and also sent an e-mail to the effect that presence of all the Directors is required physically.

We have noted the contentions of the petitioners.

CONSIDERATION BY THE COURT

The Board was established to protect interests of the investors in Securities and to promote the development of and to regulate the securities market by such measures as it thinks fit.

The various measures it is empowered to take are set out under Sub-Section (2) and (2A) of Section 11. It has also been conferred in subsection (3) of Section 11 with the powers which are vested in a Civil Court under the Civil Procedure Code while trying a suit in respect of matters set out including power to summon and enforce the attendance of persons, and examining them on Oath.

Under Section 11B of the SEBI Act, the Board is also empowered to issue certain directions and levy penalties if it is satisfied that it is necessary to do so in the interest of investors or orderly development of securities market or to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to the interest of investors of securities market.

Section 11C confers on the Board the power of investigation. It is entitled to exercise this investigative power if it has reasonable ground to believe that the transactions in securities have been dealt with in a manner detrimental to the investors or the securities market or that any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the Rules and Regulations made or directions issued by the Board thereunder.

For the purpose of conducting the investigation, it is empowered to appoint any investigating authority.

In exercise of the power conferred on the investigating authority by Section 11C, the investigating authority is empowered to require any intermediary or any person associated with securities market in any manner to furnish such information to or produce such books or registers or other documents or record before him or any person authorized by it in this behalf.

In ***DLF Ltd. v. Securities and Exchange Board of India***[1], a learned Single Judge of the Delhi High court considered Sec.11 C and held that powers conferred by the said provision on SEBI are in the nature of 'inquisitorial powers' and not 'quasi judicial powers'; that an investigating authority is extensively empowered to unearth facts (see Section 11C(2) to 11C(9) of the SEBI Act), and cause a detailed investigation into the matter; and once the investigation has been ordered under Section 11C and an investigation report made, the SEBI, while examining the said report and acting upon it, functions in its quasi judicial capacity. He held:

> *" 58.Similarly, SEBI has also been invested with powers & responsibilities to function in a dual capacity. It functions in an inquisitorial capacity while examining the issue, whether reasonable grounds exist to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or, whether any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules & regulations made thereunder, or directions issued by the Board. If it finds that reasonable grounds exist to believe the existence of the aforesaid state of affairs, it can direct an investigation by an investigating authority under Section 11C of the Act. Once the investigation has been ordered under Section 11C and an investigation report made, the SEBI while examining the said report*

[1] 2012 SCC OnLine Del 46 : (2012) 186 DLT 145 : (2012) 170 Comp Cas 22

and acting upon it, functions in its quasi judicial capacity. This is evident from Section 11(4) of the SEBI Act, which, inter alia, reads:

"(4) Without prejudice to the provisions contained in subsections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:- ...."

59. ... Pertinently, an investigating authority is extensively empowered to unearth facts (see Section 11C(2) to 11C(9) of the SEBI Act), and cause a detailed investigation into the matter. That exercise would get defeated if the Board were to, on the basis of a prima facie view, return findings of fact by itself holding a full fledged hearing. As in the case of Competition Commission of India, in the present case as well, the functions to be performed by SEBI cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated by the plain language of Section 11C."

This decision was approved by a Division bench of the Delhi High Court in ***DLF Ltd. v. Securities & Exchange Board of India***[2]**.** The Division Bench also approved the view of the Securities Appellate Tribunal in the case of **Bhoruka Financial Services ltd** to the following effect:

"It is not the requirement of Section 11C that opportunity of hearing is to be afforded to any intermediary of the market before ordering such investigation. The reason is obvious. An investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order directing an investigation."(emphasis supplied)

We respectfully agree with the views of the Delhi High Court in the above case and hold that the power to conduct investigation,

[2] 2012 SCC OnLine Del 5765 : (2013) 112 CLA 55

conferred on the Board by Sec.11C, is *inquisitorial* in nature and cannot by itself adversely affect any person or intermediary.

The mode of inquiring into complaints by SEBI as per the scheme of the Act is as under:

(i) investigations conducted *prior to* ordering investigation under Section 11C.

(ii) the investigation under Section 11C by the Investigating Authority, exercising powers enumerated under that Section.

(iii) Finally, adjudication conducted under Section 15I, if such course is thought prudent.

The petitioner has approached this Court in Stage (ii) of the 3 stages mentioned above.

In the instant case respondent No.3 was designated as an investigating authority in order to enable the Board to investigate into the dealings in the scrip of Omaxe Ltd. on the basis that there was a reasonable ground to believed that transactions in securities were dealt with in a manner detrimental to the investors or securities market.

It is in exercise of this inquisitorial power conferred under Sec.11C that respondent No.3 issued summons to the petitioners to investigate as to whether the petitioners had anything to do with the buy recommendations made in the scrip of Omaxe Ltd during 01.06.2020 to 01.07.2020. The basis for the investigation is the document provided by the telemarketer M/s Mobonair Wireless Pvt. Ltd. which had informed the Board that SMS recommendations were sent by the petitioner No.1, and it had also provided document alongwith its email dt.10.08.2022.

When the Board has been conferred an investigative power by Parliament, and when a complaint is received against an Investment Advisor such as petitioner no.1, the Board has a statutory duty to investigate it; and in the course of such investigation, it can ask for information from the persons against whom such allegations are leveled, to assist it in the investigation.

If it is not made obligatory for the persons proceeded against by SEBI to cooperate with the investigation by furnishing information in person or producing documents in their possession (by enacting provisions like Sec.11(3), (5) and (6)) the whole purpose of empowering the SEBI to investigate, would come to a nought. Such powers are necessary to ensure that the complaint is investigated thoroughly and if after such investigation, it is thought prudent, then an adjudication under Sec.15-I of the Act will happen.

The penalty of imprisonment of a term which would extends to one year or fine which would extend to ₹1 Crore become leviable under sub section (6) of Section 11 C only if without reasonable cause a person were to refuse to produce before the investigating authority the books, registers and other documents or furnish information which is his duty to furnish or refuses to appear before the investigating authority personally or to answer any question which is put to him by the investigating authority or to sign the notes of any examination referred to in sub section (7).

The punishment of imprisonment or fine will be imposed under Sec.11C(6) only after a complaint is lodged before a competent criminal court by SEBI against the person refusing to cooperate in the investigative process and the said court will consider whether in the facts and circumstances of the case, such refusal is bonafide and whether punishment ought to be imposed and if so, to what extent.

There are, thus, adequate safeguards provided in the enactment itself against any misuse of the power.

In our opinion, the petitioner has not been able to show that powers conferred on the SBI by Sec.11 C (3), (5), (6) and (7) interfere or violate in any way and fundamental rights conferred upon the petitioners by Article 19(1) (a), 20(3) and 21 of the Constitution of India. Such powers are necessary to be exercised in public interest and to protect investors.

If the case of the petitioners is that the documents on the basis of which summons were issued to the petitioners are forged documents and they are not guilty of the allegations of giving buy recommendations in the scrip of Omaxe Ltd. at all, they have a duty to assist in the investigative process undertaken by respondent No.3 and place whatever material they have in their possession to enable the investigating authority to complete the investigation and place the report thereon before the Board.

Therefore, no case has been made out by petitioners for quashing the impugned summons issued for physical appearance of petitioner No.2 and other Directors. So the prayer made in that regard is rejected.

As regards the prayer of the petitioners for directing respondent No.4 to register FIR and take other necessary action against Ms. Vishal Shah and M/s. Mobonair Wireless Pvt. Ltd. and others is concerned, in the event the Police is not registering the FIR on the complaint lodged by the petitioners, they have an effective alternate remedy vested under Section 154(3) Cr.PC by giving complaint in writing to the Superintendent of Police concerned; and in spite of that if their grievance persists, then they could approach the Magistrate under Section 156 (3) Cr.P.C.

Therefore, we are not inclined to grant any relief to the petitioners in this Writ Petition. Accordingly, the same is dismissed.

No costs.

Pending application(s), if any, is disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARMINDER SINGH MADAAN)
JUDGE

September 12, 2022
Ess Kay

Whether speaking / reasoned	:	*Yes /No.*
Whether Reportable	:	*Yes/No*