IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1189 OF 2023

Dipak Panchal & Anr. ..Petitioners

Vs.

Securities and Exchange Board of India. ..Respondent

Mr.Ashish Kamat, Senior Advocate with Ankit Lohia and Ms.Pooja Batra with Mr.Abhay Jadeja, Dhanyashree Jadeja and Vanshika Shroff i/b. Jadeja & Satiya, for the Petitioners.

Mr. J. J. Bhatt, Senior Advocate with Mr.Mihir Mody & Mr.Arnav Misra i/b. K. Ashar & Co., for Respondent No.1.

CORAM : G. S. KULKARNI & JITENDRA JAIN, JJ.

DATE : AUGUST 29, 2023

P.C.:

1. We have heard Mr. Kamat, learned Senior Advocate with Mr. Lohia, learned Counsel for the petitioners and Mr.Bhatt, learned Senior Advocate for respondent No.1.

2. This petition under Article 226 of the Constitution of India assails an order passed by the Whole Time Member of the Securities and Exchange Board of India, dated 30 March 2016 and the consequent show cause notice dated 30 August 2022 issued by respondent No.1. For convenience, the substantive prayers as made in petition can be noted, which read thus:-

> a. This Hon'ble Court be pleased to issue a writ of Certiorari or any other writ, order in the form of Certiorari, calling for the papers and proceedings pertaining to the, Impugned WTM Order dated 30th March 2016 (Exhibit "P-2" hereto) and the Impugned Show Cause Notice dated 30th August 2022 (Exhibit "P-1" hereto) issued by the Respondent, and after going through the papers and proceedings, be pleased to quash and set aside the same;
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> b. This Hon'ble Court be pleased to issue a writ of Mandamus or any other writ, order in the form of Mandamus, directing Respondent to withdraw the Impugned WTM Order dated 30th March 2016 (Exhibit "P-2" hereto) and the Impugned Show Cause Notice dated 30th August 2022 (Exhibit "P-1" hereto);
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> c. This Hon'ble Court be pleased to issue a writ of Prohibition or any other writ, order in the form of Prohibition, restraining the Respondent by themselves, its subordinate officers, servants and/ or agents from taking any steps of any nature whatsoever and/or in any manner acting in furtherance of the Impugned WTM Order dated 30th March 2016 (Exhibit "P-2" hereto) and the Impugned Show Cause Notice dated 30th August 2022 (Exhibit "P-1" hereto) issued by the Respondent;"

3. After the learned Counsel for the parties were heard for some time, we find that the petitioners have an alternate remedy under the provisions of Section 15T of the Securities and Exchange Board of India Act, 1992 (for short '**the SEBI Act**'), to file an appeal against the orders passed by the Whole Time Member under the provisions of Section 11, 11(4) and 11B of the SEBI Act, before the Securities Appellate Tribunal (for short "**the Tribunal"**).

4. From the averments as made in the petition, it appears to be the case of the petitioners that the impugned order dated 30 March 2016 passed by the learned Whole Time Member of the SEBI came to the knowledge of the petitioners only when the impugned show cause notice dated 30 August 2022 was received by the petitioners on 5 September 2022. Such averments are made in paragraph 11 of the memo of the petition. The petitioners have stated that thereafter they applied for a certified copy of the impugned order passed by the Whole Time Member which was received by the petitioners on 24 January 2023. Mr.Kamat appearing for the petitioners has also brought to our notice the information dated 24 January 2023 received from respondent No.1 in regard to the delivery record, in respect of the impugned order passed by the Whole Time Member, by which the petitioners were informed that proof of delivery was not available. Being aggrieved by the said order as also the show cause notice, the petitioners have approached this Court in the present proceedings which were filed on 18 February 2023.

5. Considering the controversy in the proceedings, we are of the opinion that the petitioners need to avail of the alternate remedy to challenge the impugned orders passed by the Whole Time Member. Also it is always open to the petitioners to move an Interim Application in the appeal which would be filed before the Tribunal for such appropriate interim reliefs as the petitioners may intend to seek.

6. As it appears that the petitioners were not served with the impugned order passed by the Whole Time Member for a long time which also appears to be confirmed by the SEBI by the abovesaid communication as noted by us, as also considering that the petitioners were bonafide pursuing the present petition, we are of the opinion that if an appeal is filed by the petitioners within a period of two weeks from today, the same be decided by the Tribunal on its own merits and without any objection as to the limitation.

7. All contentions of the parties on the proceedings before the Tribunal are expressly kept open.

8. Insofar as the hearing of the show cause notice dated 30 August 2022 which has been fixed for today is concerned, Mr.Bhatt, on instructions, has fairly stated that such hearing can be adjourned for some time. As we have permitted the petitioners to move the Tribunal, we are of the opinion that the hearing as scheduled for today, be adjourned for a period of four weeks. This shall be certainly subject to any orders which may be passed by the Tribunal.

9. Disposed of in the above terms. No costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**