

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 348 OF 2023

Varsha Vikrant Modi

..Petitioner

Vs.

IDBI Trusteeship Services Ltd. & Ors.

..Respondents

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Mr. Jocquim Reis, Senior Advocate with Mr. Shailesh Rai for Petitioner.  
Mr. Vaibhav Singh with Bryan Pillai i/b. Shardul Amarchand Mangaldas & Co.  
for Respondent No.1.  
Ms. Sayali Puri with Ms. Daksha Kasekar i/b. Mansukhlal Hiralal & Co. for  
Respondent No.3 (SEBI).

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

DATE : SEPTEMBER 04, 2023.

**P.C.:**

1. We have heard Mr. Reis, learned senior counsel for the petitioner, Mr. Singh, learned counsel for respondent no.1 and Ms. Puri, learned counsel for respondent no.2. Respondent no.2, although served, is not represented.

2. This petition under Article 226 of the Constitution of India has been filed praying for the following reliefs:-

“(a) That this Hon’ble Court be pleased to issue writ of certiorari or any other writ, order and/or direction under Article 226 of the Constitution of India and be pleased to quash and/or cancel the registration of Respondent No.1 with Respondent No.3 which is registered under Registration No. IND 000 000 460;

(b) That this Hon'ble Court may be pleased to issue a writ of certiorari or any other writ, order and/or direction under Article 226 of the Constitution of India and be pleased to direct the Respondent No.2 to take action and conduct inquiry on the basis of the Complaint dated 28<sup>th</sup> May 2022 lodged by the Petitioner with the Respondent No.2;

(c) That this Hon'ble Court be pleased to issue writ of certiorari or any other writ, order and/or direction under Article 226 of the Constitution of India and be pleased to direct the Respondent No.2 to make pay out of Rs. 5.5 Crores to the Petitioner with respect to the NCD's issued by the Respondent No.2 with respect to NCD Series No. INE217K07AY8;

(d) That pending hearing and final disposal of the captioned petition, this Hon'ble Court be pleased to issue writ of certiorari or any other writ, order and/or direction under Article 226 of the Constitution of India directing the Respondent No.1 to deposit a sum of Rs. 5.5 Crores with the Prothonotary and Senior Master of this Hon'ble Court with respect to the NCD's issued by the Respondent No.2 with respect to NCD Series No. INE217K07AY8."

3. At the outset, we may observe that the entire concern and interest of the petitioner is that the petitioner should have been protected in so far as redemption of the debentures as prayed by the petitioner are concerned as the obligation for redemption of such debentures according to the petitioner, was on respondent no.1, when the proceedings were initiated by respondent no.1 before the National Company Law Tribunal, Mumbai Bench being C.P. No. 138/MB/2020 and C.P. No. 139/MB/2020 under the provisions of Section 71(10) of the Companies Act, 2013. We note from the record that such proceedings are already disposed of by orders dated 21 June, 2021, which are independent orders on these two proceedings. We are informed that the said orders have been set aside by

the National Company Law Appellate Tribunal and the proceedings are now before the NCLT. We also note from the record that on the ground that the petitioner's interest ought to have been taken into consideration by respondent no.1 in so far as the redemption of the NCDs of the petitioner is concerned, the petitioner being aggrieved by the inaction of respondent no.1, had approached the SEBI by a representation dated 28 February, 2022 as also a further representation dated 28 May, 2022. Mr. Reis would submit that so far no decision has been communicated to the petitioner by the SEBI on such representations of the petitioner.

4. Considering the nature of the issues and the prayers as made in the present proceedings which would reflect on the contractual relations between the petitioner and respondent no.2 on one hand and respondent no.1, who was appointed as a Debenture Trustee on the other hand, in our opinion, it would be appropriate for the petitioner, to pursue the cause as has espoused in the present proceedings before the NCLT, before which today the proceedings are informed to be pending. All rights and contentions of the parties in that regard are expressly kept open.

5. In so far as the representations made by the petitioner to the SEBI are concerned, so far, SEBI has not informed the petitioner of any decision in regard to such representations. Learned counsel for respondent no.3

submits that such representations have been closed. We are not aware as to what is the nature of the decision taken by the SEBI in regard to the petitioner's representations. If the representation is not decided, the SEBI is requested to consider the petitioner's representations and inform the petitioner of the reasoned decision on the plea as raised by the petitioner in the said representations as the law would mandate. Let the SEBI inform the petitioner of the reasoned decision within a period of four weeks from today.

6. In our opinion, the issues as urged in the present proceeding which is filed under Article 226 of the Constitution of India cannot be taken any further. We leave the petitioner to pursue such appropriate remedy as available in law.

7. We accordingly dispose of this petition in the above terms, keeping open all contentions of the parties. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]