* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 766/2023 & CM APPLs. 2985/2023, 2986/2023**

Date of Decision: 20.01.2023

IN THE MATTER OF:

NIMISHA SARAF
D/O SH. AJAY SARAF,
8/3, ALIPUR ROAD,
CIVIL LINES,
DELHI-110054 ..... Petitioner

Through: Mr. Gaurav Kejriwal, Advocate

Versus

SECURITIES AND EXCHANGE BOARD OF INDIA
SEBI BHAVAN, PLOT NO. C-4A, G BLOCK,
BANDRA KURLA COMPLEX, BANDRA (EAST)
MUMBAI-400051. ..... Respondent

Through: Mr. Pratap Venugopal, Mr. Abhishek Baid, Mr. Praneet Das, Mr. Anup Jain & Mr. Ashok Kumar Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition seeks for issuance of directions in the nature of mandamus directing the respondents to open/enable the link for payment of penalty in terms of the Scheme and accept the payment on behalf of the Petitioner on or before the closure of the Settlement Scheme of 2022 either physically or online. The petitioner also prayed for production of

file relating to the Petitioner's Order being Adjudication Order No. order/PB/AS/2021-22/14221.

2. The facts of the case are that on 05.08.2021, Show Cause Notice was issued to the petitioner alleging that he carried out non-genuine trades *i.e.* in liquid stock options at the Bombay Stock Exchange, whereby, he violated Regulations 3(a)(b)(c)(d), 4(1) and 4(2)(a) of SEBI (prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets), Regulations 2003. The petitioner filed the reply, however, the adjudicating authority in terms of order dated 18.11.2021 imposed a penalty of Rs.5,00,000/-. The petitioner preferred statutory appeal before appellate authority, which had also suffered the same fate on 07.02.2022. It appears that the review petition filed by the petitioner was also dismissed on 15.07.2022. In August, 2022, the respondent propounded the SEBI settlement Scheme, 2022 with an object to settle enforcement proceedings approved/initiated and pending in respect of Illiquid stock Options. On 18.11.2022, the petitioner through his Advocate forwarded mail to the respondent enabling him to make the payment so as to take the benefit of the concerned Scheme. The Scheme appears to have been extended upto January 21, 2023. Between September, 2022 to January 13, 2023, the petitioner appears to have made various correspondence to the respondent authority requesting them to enable him to take the advantage of the scheme while accepting online payment.

3. Learned counsel for the petitioner while referring to Clause 1 of the Scheme indicates that the object of the concerned Scheme is to settle the enforcement proceedings approved/initiated and pending in respect of

Illiquid stock Options matter. He, therefore, submits that the non-acceptance of the amount from the petitioner as well as non opening of the link is strictly against the mandate of the Scheme, which is adversely affecting the right of the petitioner from entering into a settlement in terms of the Scheme in question. While highlighting the purpose of the Scheme, learned counsel makes an endeavour to suggest that the word used in the Scheme *i.e.* "approved/initiated enforcement proceedings" would mean that the proceedings in hand are still pending before the enforcement directorate in the form of execution. According to him, since the amount has not yet been realised from the petitioner and, therefore, for all practical purposes, proceedings should be treated as pending before the enforcement Department.

4. Learned counsel appearing on behalf of the respondent, on advance notice, vehemently opposed the prayer. He submits that the case of the petitioner has already attained finality and the Scheme in question since has been framed in exercise of Power vested under Regulation 5, SEBI (Settlement Proceedings) Regulations 2018, which specifically states that no application for settlement of any specified proceedings shall be considered. If money is due as per an order issued under securities law are liable for recoveries under securities law. According to him, since the money in question is liable to be recovered under the securities law and, therefore, the Scheme cannot be expanded to include the cases where the proceedings have already attained finality.

5. I have heard learned counsel for the parties and perused the record.

6. Extract of Regulation 5 of SEBI (Settlement Proceedings) Regulations 2018 is reproduced as under:-

5. (1) No application for settlement of any specified proceedings shall be considered, if:

(a) an earlier application with regard to the same alleged default had been rejected;

(b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

(c) monies due under an order issued under securities laws are liable for recovery under securities laws.

7. The eligibility clause of the Scheme under which the petitioner seeks benefit is also reproduced as under:-

"6. *Eligibility: Under the Scheme, 2022, all the entities who had executed non-genuine trades/trade reversals on the stock option segment of BSE during the period April 01, 2014 to September 30, 2015 and against whom enforcement proceedings have been approved or initiated and are pending before any authority/forum, viz. Adjudicating Officer/Hon'ble SAT/Hon'ble Courts/Recovery Officer etc. shall be eligible to avail the one time settlement opportunity".*

8. A perusal of the concerned Regulation and the eligibility Clause would clearly indicate that all the entities who had executed non-genuine trades/trade reversals on the stock option segment of BSE during the period April 01, 2014 to September 30, 2015 and against whom enforcement proceedings have been approved or initiated and are pending before any authority/forum, viz. Adjudicating Officer/Hon'ble SAT/Hon'ble Courts/Recovery Officer etc. shall be eligible to avail the one time settlement opportunity. It clearly indicates that the benefit of Scheme can only be extended where the enforcement proceedings have been approved or initiated and are pending before any authority/forum.

9. In the instant case, the argument made by learned counsel for the petitioner cannot be accepted that the enforcement proceedings are still pending. After approval of the enforcement proceedings, the same are required to be formally initiated before the adjudicating authority and in the instant case, the stage of approval of initiation and of initiation is already over when the adjudicating officer had already passed an order. It is thus seen that as on date the money towards penalty is due under an order issued under Securities Laws, which is liable to be recovered under Securities Laws. Regulation 5 of SEBI Regulation, 2018 puts a specific bar for settlement of such cases. Pendency of recovery proceedings cases are distinct than the original proceedings. Hence, the case of the petitioner does not fall within Clause 6 of the said scheme for eligibility, accordingly, no mandamus can be issued.

10. The petition stands dismissed alongwith pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 20, 2023
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