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19.08.2024
Ct. No. 11
rrc

RVW 228 of 2024
with
IA No. CAN 1 of 2024
and
IA No. CAN 2 of 2024

and

RVW 230 of 2024
with
IA No. CAN 1 of 2024
and
IA No. CAN 2 of 2024

in

FMA 3446 of 2016
with
IA No. CAN 7 of 2024

and

FMA 4398 of 2016
with
IA No. CAN 7 of 2024
(The Calcutta Stock Exchange Limited Vs. Securities and Exchange Board of India represented through its Chairman)

Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Jishnu Chowdhury
Mr. Uttam Kumar Mondal
Mr. Aritra Basu
Mr. Abhidipta Tarafdar
Ms. Maitree Roy
.... For the appellants

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Prasanta Kumar Dutta
Mr. Rupak Ghosh
Mr. Susanta Kumar Dutt
Mr. Syamantak Banerjee
..... For the SEBI

Mr. Anumoy Basu
Mr. Mehul Bachhawat
..... For the respondent no. 4
(in RVW 230 of 2024)

1. On the prayer of the learned advocate-on-record of the appellants, the review applications and the

applications connected thereto are dismissed as *'not pressed'*.

2. Records reveal that in connection with the appeals, two applications for modification of the judgment dated 19th February, 2024 have been preferred.

3. Mr. Mitra, learned senior counsel appearing for the appellants/applicants submits that after delivery of the judgment on 19th February, 2024, a Board meeting was held on 28th February, 2024 and it was resolved that necessary steps be initiated to sub-lease the land held by the Calcutta Stock Exchange Limited (in short, CSE) on 99 years lease with an option for renewal for another 99 years. The said land is situated at *'E M Bye pass, JBS Halden Avenue, Kolkata-700046, located between ITC Royal Bengal and J W Marriott Hotel'*. CSE thereafter engaged a consultant on 1st March, 2024 to sub-lease the said land, in respect whereof a *'no objection'* had already been granted by Securities and Exchange Board of India (in short, SEBI) on 26th May, 2014, for raising requisite funds for establishing a clearing corporation. Accordingly, on 11th March, 2024 e-auction notices were issued inviting bids for transfer of leasehold interest of the said land in various newspapers. During the period from 13th March, 2024 to 15th March, 2024, SEBI visited the office premises of CSE to ascertain as to whether any steps have been taken by CSE in terms of the statutory provisions. In furtherance of its initiative to tie up with another clearing corporation, a work order was issued by

CSE to Deloitte Touche Tohmatsu India LLP (in short, Deloitte) on 6th May, 2024 for transformation of technology in order to set up security trading platform. Subsequently, on 8th May 2024, CSE requested NCL and ICCL to execute the Inter-CCP agreement in order to form a tie up. However, on 14th June, 2024 SEBI issued a letter to CSE informing that any lease of land would fall within the purview of unrelated activity and would accordingly be subject to approval of SEBI and thereafter by a letter dated 8th July, 2024, SEBI requested CSE to submit information in terms of the check list. A further letter was issued by SEBI on 13th August, 2024 observing *inter alia,* that CSE's request for approval of subleasing of 3 acres of the said land has not been acceded to.

4. He argues that the Court may in its discretion from time to time enlarge a period granted even though said period originally fixed or granted, may expire. The true purport of a conditional order is that the said orders merely create sanction for obedience of the Court's order but cannot take away the Court's jurisdiction. The facts would reveal that active steps were taken by CSE in terms of the liberty granted to tie up with another clearing corporation eligible to clear trades as per the regulations to achieve the prescribed net worth. There had thus been no negligence on the part of CSE. Appropriate steps were initiated by CSE but the same could not be concluded within the time frame. In view thereof, a reasonable time may be granted by the Court

modifying its directions contained in paragraph 30 of the said judgment. In support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of *Chinnamarkathian alias Muthu Gounder and Another* reported in *(1982) 1 SCC 159, Debabrata Maiti Vs. The Mallabhum Gramin Bank & Ors.* reported in *(2008) 3 Cal LT 85* and *Salem Advocate Bar Association, T. N. Vs. Union of India* reported in *(2005) 6 SCC 344.*

5. Mr. Bose, learned senior counsel appearing on behalf of SEBI opposes the prayer for extension of time as initially granted by the judgment dated 19th February, 2024 and contends that the Court had been approached belatedly with the modification applications and that as such, any extension of time would be having the effect of granting a premium to the laches on the part of the appellants.

6. He argues that there is no subsisting *lis* amongst the parties at this juncture inasmuch as the time granted to the appellants by the judgment dated 19th February, 2024 had already expired. In view thereof, the judgments upon which reliance has been placed by Mr. Mitra have no manner of application in the present case.

7. We have heard the learned advocates appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of the case.

8. Paragraph 30 of the said judgment dated 19th February, 2024 runs as follows:-

> *'30. Disengaging ourselves from the logjam, we direct that CSE would be at liberty to establish a clearing corporation in compliance with the provisions of SECC Regulations, 2012 or to tie up with another clearing corporation eligible to clear trades as per SECC Regulations, 2012 to achieve the prescribed not worth within a period of six months from date. In the event CSE fails to do so, SEBI would be free to take necessary steps thereafter, in accordance with law.'*

9. The said judgment was delivered taking note of the fact that the contradictions amongst the parties are essentially non-antagonistic in nature and that when exit circular was issued, it did not apply to CSE since it had a turnover much higher than the requirement. It had a turnover above Rs. 11,979/- crore for the year ending 2011-2012 and an annual turnover exceeding Rs. 9000/- crore for the year ending 2012-2013. The interim order initially passed in the said writ petitions continued for a period of more than seven years and SEBI did not take any steps for vacating the same. In such circumstances, 6 (six) months' time was granted to CSE for establishing a clearing corporation or to tie up with another clearing corporation eligible to clear trades as per the regulations. The said judgment has also not been challenged by SEBI.

10. In the said conspectus and in view of the correspondence amongst the parties after the delivery of the judgment dated 19th February, 2024, it appears that steps have been initiated by CSE towards sale of its land and for tying up with existing recognized clearing corporations to achieve the prescribed net worth. The conduct of the appellants does not appear to be tardy and no want of *bona fide* is imputable to the appellants.

11. In such circumstances, the period stipulated in paragraph 30 of the judgment dated 19th February, 2024 is extended for a further period of 6 (six) months from date.

12. With the above observations and directions, the applications being CAN 7 of 2024 in both the appeals are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.) **(Tapabrata Chakraborty, J.)**