Item No.9
01.10.2024
Court. No. 9
GB/
S. Biswas

W.P.A. 24076 of 2024

The Calcutta Stock Exchange Limited & Anr.
Vs.
Security and Exchange Board of India & Ors.

Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Jishnu Chowdhury,
Mr. Aritra Basu,
Mr. Uttam Kumar Mandal,
Mr. Abhidipto Tarafder,
Mrs. Maitree Roy
... for the Petitioners.
Mr. Tilak Bose, Sr. Adv.,
Mr. Prasanta Kumar Dutt,
Mr. Rupak Ghosh,
Mr. Susanta Kumar Dutt,
Mr. Syamantak Banerjee
... for the SEBI.

1. Affidavit-of-service filed in Court today, is taken on record.
2. The Calcutta Stock Exchange (hereinafter referred to as 'CSE') is the petitioner no.1 and the petitioner no.2 is the Chief General Manager, working for gain at 7, Lyons Range, Kolkata. 7.
3. The writ petition has been filed for various reliefs:-

(a) A declaration that a permission or a 'no objection' was not required from the Securities and Exchange Board of India (SEBI), in view of the letter dated May 26 2014.

(b) The petitioners be permitted to sublease the land in order to utilize the funds in accordance with the Corporatization and Demutualization (C&D) in order to achieve the requirements of Regulation 14 of the

Securities Contract (Regulation) (Stock Exchanges And Clearing Corporations) Regulations 2018 (hereinafter referred to as the 'said Regulation of 2018').

(c) Approval to sublease the land situated at EM bypass be given by SEBI, to enable the petitioners to raise the requisite funds and to utilize the funds in accordance with the C&D scheme in order to achieve the net worth in terms of the said Regulations of 2018.

d) Order restraining SEBI from objecting and/or interfering with the sublease or assignment of the land at EM bypass.

e) Assistance be given to the petitioners in the process of such sublease.

f) Interim order of injunction restraining the respondents from interfering with the process of creating the sublease of the land situated at EM bypass.

5. Mr. Abhrajit Mitra, learned senior advocate appearing for the petitioners submit that the direction of SEBI to exit as a stock exchange, had lost its effect. By the order of the Hon'ble Division Bench, CSE was granted liberty either to establish a clearing corporation in compliance with the provisions of the Regulations of 2012 or to tie up with another clearing corporation eligible to clear trades, as per the Regulations of 2012. Such order was passed to enable CSE to achieve the prescribed net worth within a period of six months from the date of the

judgment. The judgment was delivered on February 19, 2024.

6. Mr. Mitra submits that CSE sought to tie up with other clearing corporation. Attempt was being made to set up its own clearing corporation, by transferring the land at EM Bypass by creating a sublease. An auction notice was published and offers were received. The entire process had been made subject to the final approval of SEBI. The property was proposed to be leased out on as is, where is, whatever is, basis.

7. According to Mr. Mitra, the order of modification of the judgment dated February 19, 2024, clearly indicated that the Hon'ble Division Bench was alive to the issue of sub-lease of the land situated at EM bypass and had held, upon going through the facts that, there was no lack of bona fide on the part of the CSE in trying to set up its own clearing corporation by raising the required funds as per the regulations. Once the Division Bench had granted an extension for a year (which was to expire on February 18, 2025) thereby permitting the CSE to either set up its own clearing corporation or tie up with any other clearing corporation, the question of SEBI objecting to any attempt on the part of the petitioners from exploring all possibilities to mobilize the funds, would not arise. SEBI did not raise any objection at the relevant point of time with regard to the attempts on the part of the petitioners to sublease the land in question.

8. It is further submitted that the issue of sublease of three acres of land at EM bypass was not a recent proposal. As far back as in 2014, SEBI had permitted the sublease subject to certain conditions, one of such condition being for utilization of the fund in accordance with Corporatization and Demutualization (C&D). After the order of the Division Bench, a letter was issued by the SEBI dated June 14, 2024, asking the petitioners not to proceed with the proposed sublease of the land, without approval of SEBI. Another letter was issued on August 13, 2024, informing the petitioners to stay its hands from proceeding with the sublease of the land, at EM bypass, as the request for approval had not been given by SEBI.

9. Thus, Mr. Mitra submits that the SEBI cannot turn around from its earlier approval by issuing the subsequent letters, upon having accepted the order of the Hon'ble Division Bench by denying permission to the petitioners to sublease the said land. Mr. Mitra, learned Senior Advocate, relied on a subsequent master circular and regulations in support of his contention that the permission granted in 2014 was saved by the repeals and savings clause of the subsequent circular.

10. Mr. Tilak Bose, learned senior advocate appearing for SEBI submits that the permission in 2014 was given for a limited purpose and the purpose of such permission was referable to the request made by the petitioners in

the letter dated February 19, 2014. The contents of the letter dated February 19, 2014, did not indicate that the purpose of subleasing the land was to acquire funds to set up a clearing corporation. Mr. Bose submits that SEBI is the regulatory body. Since 2013, the activity of CSE as a clearing corporation had stopped. Thereafter, in order to continue the trading, CSE tied up with Bombay Stock Exchange and National Stock Exchange, but both the stock exchanges have now washed their hands off and neither any collaborative effort or tie-up exist in respect of the trading aspect as well.

11. According to Mr. Bose, the petitioner no.1 does not have any tie up either for trading or for clearing with any stock exchange. Reference is made to the regulations to show that without the permission of SEBI, no steps could have been taken, even to call for an auction. It is further submitted that the letters referred to by Mr. Mitra, which have been assailed before this court clearly indicated that the permission had not been granted to sub-lease that land. The matter had been kept on hold on the ground that there was no clarity on the proposal of the petitioner no.1 as to how they would proceed to sublease the land in order to establish a clearing corporation.

12. Mr. Bose further submits that the applicability of the exit circular was not in dispute and the Hon'ble Division Bench also did not interfere with the same. All that the

Division Bench did, was to allow a breathing time to the petitioner no.1, to try and revive its operations by setting up its clearing corporation either by tying up with some other clearing corporation or establishing its own. The order of the Hon'ble Division Bench was almost a charity done to the petitioner no.1, taking note of its history and heritage, but the said order could not be used as a shield by petitioner no.1, to absolve itself from complying with necessary rules and regulations mandatorily applicable. SEBI, as a regulatory body, had an overall jurisdiction over the functioning of the stock exchanges and was within its right to demand a proper and transparent plan from the CSE, before any permission could be accorded with regard to sublease of the land in question.

13. Mr. Bose further submits that there appears to be dispute over the land in question and before any permission is granted, SEBI is required to probe deeper into the matter, in order to ascertain the status of the land.

14. Having heard the learned senior advocates for the respective parties, this court finds that in 2014 a permission was given to the petitioner to sublease the land. The contents whereof is quoted below:

> "1. Please refer to your letter dated February 19, 2024 and other correspondences wherein you have requested SEBI to give no-objection/permission to

the CSE to sub-lease its leasehold land of 3.0 acres situated at E.M. Bye-Pass, Kolkata.

2. In this regard, Kindly note that SEBI has no-objection to CSE, sub-leasing its leasehold land subject to submission of an undertaking by CSE for the following

a) All requisite / statutory approvals have been obtained.

b) Proceeds from such sub-lease would be utilized solely for the purpose as stated in your email dated May 06, 2024 subject to compliance with C&D scheme of CSE approved by SEBI."

15. It is true that the Hon'ble Division Bench gave a breather to the CSE by taking note of its historical past and permitted the CSE to tie up with any clearing corporation or create a clearing corporation of its own. The correct interpretation of the order would be that the petitioner no.1 was allowed to explore all possibilities to try and revive the business either by tying up with the clearing corporation or by setting up its own clearing corporation. The regulation requires that to set up a clearing corporation, the net worth should be Rs.100 crores and above. In order to achieve such purpose, the petitioner once again proposed to sublease the land at the EM Bypass, in order to mobilize the funds. The attempt to mobilize the funds is in consonance with the spirit of the order of the Hon'ble Division Bench, but the modality of such transaction would have to be passed through SEBI. The Division Bench also records that the

transfer of land was being pursued by the petitioner, with diliquence. However, these attempts of the petitioner cannot be independent of the regulatory mechanism of SEBI. The regulations of 2012 and 2018, both impose restrictions on any stock exchange to deal with its assets, without the permission of SEBI. In this case, upon coming to know of the attempt to sublease the land by calling an auction prior to the permission from the SEBI, a letter was issued to the petitioners and SEBI tried to stop the finalization of the sub-lease.

16. SEBI was also in the dark with regard to the auction process. Without any clarity or transparency with regard to the entire process followed by the petitioner, SEBI had asked the petitioner to stay their hands and provide the details of the negotiation process and the auction process.

17. In my view, monitoring by SEBI is neither unwarranted nor illegal. The letters have been issued pursuant to the powers granted under the relevant laws. The letters have not been issued in violation of the orders of the Hon'ble Division Bench. If, in the process of creation of any clearing corporation, or tying up with a clearing corporation, the petitioners require certain formal approvals from SEBI, the petitioners are required to approach SEBI for the same.

18. Under such circumstances, the writ petition is disposed of with the direction upon the petitioner to approach SEBI by filing a representation with details of the steps which had been taken and which are proposed to be taken, including the factum of receipt of money from auction etc. SEBI will decide the issue of granting permission, keeping in view the decision of Hon'ble Division Bench, the letter of permission of 2014 and the rules and regulations operating in the field. The true spirit of the order of the Hon'ble Division Bench is that the Calcutta Stock Exchange may not have to exit. Opportunities were given on two occasions to revive CSE on such ground, which has been termed by the Hon'ble Division Bench as a 'cause of social justice'. SEBI should look into the matter and do the needful, on receipt of the detailed representation of the petitioner. SEBI will indicate if any further details or clarifications were required or not. The petitioners will satisfy SEBI that the attempts in this regard to sublease the land and to try and establish a clearing corporation were in terms of the liberty granted by the Division Bench and upon following the regulations.

19. The petitioners will comply with this order by supplying the detailed representation with all facts, figures and documents within a period of two weeks from date. SEBI will respond to the said letter within

two weeks from receipt of the representation of the petitioners. The entire issue with regard to the approval to sublease the land on as is where is basis, as prayed for by the petitioners, shall be decided by SEBI within a month from completion of the communication and exchanges between the parties pursuant to this order.

20. As the matter is being remanded to the regulatory authority, the issues raised in this writ petition are not required to be answered at this stage, and are left open.

21. Accordingly, the writ petition is disposed of.

22. There shall be no order as to costs.

23. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)