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

WRIT PETITION NO.25 OF 2024

Kotak Securities Limited ....Petitioner

V/s.

National Stock Exchange of India Ltd. & Ors. ....Respondents

Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Rohaan Cama, Ms. Anshika Misra, Mr. Akilesh Menezes and Ms. Aakruti Jayendran i/by AZB & Partners for petitioner.

Mr. Anubhav Ghosh a/w Mr. Anurag Gupta and Ms. Rebecca Cardozo i/by Trilegal for respondent no.1.

Mr. Rafique Dada, Senior Advocate a/w Mr. Nishit Dhruva, Ms. Niyati Merchant, Mr. Yash Dhrva and Mr. Harsh Sheth i/by MDP & Partners for respondent no.2 (SEBI).

Mr. Ashish Mehta a/w Mr. Himanshu Singh i/by Ethos Legal Alliance for respondent no.3.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 24th JULY 2024

P.C. :

1 There is an affidavit filed by one Leena Kumar affirmed on 15th February 2024 on behalf of respondent no.3. Respondent no.3 is the Union of India. Paragraphs IV of the said affidavit reads as under :

*"IV. **<u>Submissions made by Respondent No.3 (Union of India)</u>***

a. The Department of Economic Affairs, Ministry of Finance would like to draw the attention of the Hon'ble Bombay High Court to the following:

(i) The Securities Contracts (Regulation) Rules, 1957 (SCRR) have been made by the Government of India as a subordinate legislation as per powers under section 30 of the Securities Contracts (Regulation) Act, 1956 (SCRA). They were also previously published as required under sub-section (3) of section 30 of SCRA.

(ii) *NSE has vide issued circular 02/22 dated January 7th 2022, published illustrative list of activities that are construed as non-compliance to Rule (1Xf) and Rule 8(3)(f) of the said SCRR rules. One such activity mentioned at para 10 constitutes "Investments made in group companies such as subsidiaries & associates etc., not in connection with or incidental to or consequential upon the securities/ commodity derivatives business. (Ex: Investment in companies engaged in other businesses such as NBFC, Real Estate, etc.)."*

(iii) *Any interpretation of the SCRR (Rule 8 in this case) or any modification that has the potential to enhance or restrict the scope of the rule should be done by the Government of India.*

(iv) *NSE has provided the interpretation enlarging the scope of the rule through a circular without any consultation with the Government of India.*

(v) *As per Section 31, SCRA, 1956 the Securities and Exchange Board of India (SEBI) is required to make regulations consistent with the provisions of SCRA and the SCRR made there under to carry out the purposes of the Act. However, SEBI's regulations also do not cover the aspect interpreted by the NSE.*

(vi) *Prima facie, it appears that the NSE, vide its circular dated 07th January 2022, has interpreted "investments made in group companies" to mean "**any business"** for the purposes of Rule 8(1)(f) and Rule 8(3)(f). In the normal course, investment of surplus funds and conducting of business are generally to be considered separate activities.*

(vii) *The said Circular also does not throw any light on why investments is companies other than the group companies are acceptable. It is also noted that the investment in the four group companies in case of the Kotak Securities Ltd. is not in companies having activities in the Indian stock market.*

(viii) *SEBI itself had permitted one of the investments by Kotak Securities Ltd. in 2009 in one subsidiary company and also permitted partial exit in 2012.*

(ix) *Further, investment in debentures of another company, one of the four investee companies in case of Kotak Securities Ltd., does not give any management right to the investor, and in no way can be interpreted to be a business.*

(x) *The purpose of the rules and the regulations should be to provide appropriate safeguards for activities in the securities market without placing unreasonable restrictions on normal investments and business*

activities. The circular issued without due consultation, prima-facie, seems to have placed excessive restrictions on normal investment of surplus funds without bringing out the rationale.

(xi) From the marker integrity perspective, there may be a case to put certain safeguards or limits on the investment of the surplus funds or business activities including financial management activities in either group companies or other entities. However, that should be done through prior public consultation.

(xii) An appropriate course of action may be that the Government should issue the interpretation or carry out the required amendment to the Rule, if required. For doing so, a consultation paper would be brought by the Government inviting inputs from the market participants and views of the SEBI, exchanges and market intermediaries. It is most respectfully submitted that this exercise make require around 6 months."

2 Mr. Dada states that Committee has been formed to receive inputs from the market participants to have a re-look at the Circular issued by respondent no.1 read with the applicable Rules in the light of the affidavit of Leena Kumar. Mr. Dada states that the Committee will take some time to give its findings.

3 Therefore, keeping open rights and contentions of the parties, we admit the petition.

4 Rule. Respondents waive service.

5 Until further orders, the impugned order dated 13th October 2023 passed by respondent no.1 is stayed.

6 As regards the Circular dated 7th January 2022 is concerned, the Circular to the extent the words used in unnumbered paragraph 5 "or activities or transactions" and whole of "clause 10" is stayed. This order

is applicable only for petitioner.

7 We clarify that the "activities or transactions" stayed is only restricted to clause 10 which reads as under :

> *"10. Investments made in group companies such as subsidiaries & associates etc., not in connection with or incidental to or consequential upon the securities/commodity derivatives business. (Ex. Investment in companies engaged in other businesses such as NBFC, Real Estate etc."*

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**