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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4399 OF 2024

Standard Chartered Bank …Petitioner

Versus

Securities & Exchange Board of India & Ors …Respondents

Mr Arti Raghavan, *with Pulkit Sukhramani & Juan D'souza, i/b, JSA Advocates & Solicitors, for the Petitioner.*

Mr Zal Andhyarujina, **Senior Advocate**, *with Shivani Kumbhojkar, Jahaan Dastur & Siddhant Trivedi, i/b, The Law Point, for the Respondent No. 1-SEBI.*

Mr Ranjeev Carvalho*, with Sachin Chandarana, Amol Rasal & Aagam Mehta, i/b, Manilal Kher Ambalal& Co, for the Respondent No. 2-NSE.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 04 December 2024

PC:-

1. Heard Ms Raghavan, learned Counsel for the Petitioner, Mr Andhyarujina, learned Senior Counsel for Respondent No. 1 and Mr Carvalho, learned Counsel for Respondent No. 2.

2. The Petitioner challenges the communications dated 18 May 2023 and 8 January 2024 at Exhibits 'A' and 'B' to this Petition.

3. Both the impugned communications are identical, and therefore, we transcribe the contents of the communications of 8 January 2024 for the convenience of reference:

Securities and Exchange
Board of India

Assistant General Manager
Market Intermediaries Regulation
&Supervision Department- SEC -5

SEBI/HO/MIRSD/SEC5/SA/MP/9/OW/2024/1077/1/
January 08, 2024

Standard Chartered Bank
Collection Unit,
23/25, Mahatma Gandhi Road,
Fort, Mumbai 400001

Dear Sir/Madam,

Sub: Clarification as regards the sale of property bearing Flat No. 903, 9t Floor. A Wing, Signature Island, Bandra (East), Mumbai - 400051 under SARFAESI Act.

Ref: *Standard Chartered Bank letters dated January 02, 2024 and January 03, 2024*

Please refer to our earlier letter no. SEBI/HO/MIRSD-SEC1/SD/SJR/2003/20039/1 dated May 18, 2023. with reference to your current letters dated January 02 & 03, 2024 on the captioned matter, we would like to re-iterate the stance as conveyed in the earlier letter dated May 18, 2023 wherein reference was made to Section 37 of SARFAESI Act 2002 – Application of other laws not barred, which states as follows:-

"The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial institutions Act 1993 (51 of 1993) or any other law for the time being in force".

Further, regardless of the non-obstante clauses given under Section 26E or Section 35 of the SARFAESI Act, the provisions of the SEBI Act, including Section 28A(3) shall have precedence over the provisions of the SARFAESI Act by virtue of Section 37 of the SARFAESI Act.

Your faithfully

Madhu Pawar

4. On perusing the impugned communications, we find that the Securities and Exchange Board of India ("SEBI") has merely expressed its opinion in the context of Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

5. In its reply, SEBI has styled these communications as "*private communications*" and submitted that they are not orders but private communications with no binding effect. The statement in paragraph C-i of the SEBI's affidavit is relevant in the above regard and is transcribed below for the convenience of reference:

> "***C*** ***<u>No Writ can lie against private communications</u>***
>
> *i Further, the Impugned Communications are merely private letters addressed to the Petitioner wherein the Respondent No. 1 has communicated only its opinion. From the perusal of the records and proceedings in the present writ petitions, it is abundantly clear that when Respondent No. 1 passes any orders, these orders contain detailed facts, findings, and directions including fine and/or penalty to the noticees or parties involved. Therefore, I say that the Impugned Communications issued by the Respondent No. 1 are only that - communications thus have no binding effect. These are not orders passed by Respondent No. 1. The Impugned Communications merely contain only opinion of Respondent No. 1 as to which law would prevail. Therefore, I say and submit that no writ can lie against private letters issued by Respondent No. 1 which have no binding effect."*

6. Mr Andhyarujina, the learned Senior Advocate for the SEBI, also submitted that the SEBI has only expressed its opinion in response to the petitioner's request for such an opinion. He submitted that no Writ Petition would lie to challenge such private communications in which the SEBI has only expressed its opinion on a legal provision.

7. We agree that no Writ Petition should be entertained against such communications simpliciter to examine whether the opinion contained in such communications is correct or not. If, based on such opinion, the SEBI makes any orders, then indeed, such orders and consequently the opinion based upon which such orders may be made can be questioned or challenged by instituting appropriate proceedings before the appropriate forum.

8. In this case, the SEBI has made an order dated 11 January 2023 (Exhibit 'M') directing Respondent Nos. 4 and 6 in this Petition not to dispose of or alienate any of the assets, whether movable or immovable (including funds in their bank accounts), or create any interest or charge in any such assets, till such time the refunds/repayments as directed in paragraphs 61(f) and 61(g) are completed. This order is not challenged in this petition.

9. The Petitioner's case is that Respondent Nos. 4 and 6 had borrowed amounts from the Petitioner bank and have defaulted in the payment of the same. The Petitioner's case also involves initiating proceedings under the SARFAESI Act 2002, in which the Petitioner has already taken possession of the properties of Respondent Nos. 4 and 5. It is, therefore, the Petitioner's case that based on the opinion which is now conveyed by the impugned communications, the SEBI has already made an order dated 11 January 2023 prejudicing the Petitioner's interest to deal with the property of Respondent Nos. 4 and 5, the possession of which is already taken over by the Petitioner by resort to the provisions of SARFAESI Act 2002.

10. In its affidavit in reply, the SEBI has objected to the entertainment of this Petition, inter alia, by contending that the Petitioner has a remedy of an appeal under Section 15-T of the SEBI Act. Ms Raghavan, however, submitted that the impugned communications might not qualify as an order made by SEBI. Therefore, there would be some ambiguities about the maintainability of an appeal under Section 15-T of the SEBI Act.

11. Assuming this is so, there can be no ambiguity about appealing the order dated 11 January 2023 made by SEBI based on the opinion communicated by SEBI to the Petitioner vide the impugned communications. As indicated earlier, a Petition to challenge or question an opinion expressed by SEBI in its private communication to the Petitioner should not be entertained.

12. However, since the Petitioner is aggrieved by SEBI's order dated 11 January 2023, in which such opinion has been translated or reiterated, it will surely be open to the Petitioner to appeal SEBI's order dated 11 January 2023. In its return, the SEBI has, in any case, raised the issue of maintainability or entertainability by relying upon the alternate remedy available to the Petitioner under Section 15-T of the SEBI Act.

13. Therefore, in peculiar facts of the present case, the interest of justice would be met if the Petitioner is relegated to the remedy of appeal under Section 15-T of the SEBI Act. Such an appeal had to be filed within forty-five days. However, the proviso to Section 15T(3) provides that the Securities Appellate Tribunal ("SAT") may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

14. The Petitioner was pursuing this Petition bona fide. The Petitioner, possibly based on legal advice, may not have found it appropriate to institute an appeal against SEBI's order dated 11 January 2023 at that stage. However, it is not as if the Petitioner was not pursuing its remedies. The petitioner was not indolent or had not acquiesced with the opinion in the impugned communications, which forms the basis of the SEBI's order dated 11 January 2023.

15. Ms Raghvan requests liberty to appeal SEBI's order dated 11 January 2023 and states that if such liberty is granted, an appeal will be instituted within four weeks of today. Considering the legal position and the SEBI's objection to the entertainability of this petition against the impugned communications on the grounds of the availability of alternate remedy, the interests of justice would be met if liberty, as prayed for, is now granted.

16. Liberty in the above terms is now granted. If an appeal is instituted within four weeks of uploading this order, we request the SAT dispose of it on the merits without mentioning the limitation issue. The learned Counsel for the Respondents have also agreed that they will not raise the limitation issue and will argue the matter on the merits.

17. Accordingly, we dispose of this Petition by granting the Petitioner liberty to avail of the alternate remedy under Section 15-T of the SEBI Act. All contentions of all parties on merits are left open to be decided by the SAT.

18. This Petition is disposed of under the above terms without any cost order.

19. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**