ML-58
18.06.2025
AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 29618 of 2024

Last Peak Data Pvt. Ltd and Anr.
-versus
The Union of India & Ors.

Mr. Subhabrata Datta.
Mr. Debashis Sarkar.
...For the Petitioners.

Ms. Akansha Yadav.
Ms. Sakshi Tiwari.
... For the respondent nos. 2 and 3.

Mr. Sakya Sen. V.C.
Mr. Tanuj Kakrania.
Ms. Surabhi Mehta.
... for the respondent nos. 4 to 6.

Mr. Anunoy Basu.
... for the respondent no. 7.

1. The petitioners pray for implementing the ex parte ad interim order dated 30th April, 2020 and the final order dated 11th September, 2020 passed by the Securities and Exchange Board of India under Sections 11(4), 11B and 11D of the Securities and Exchange Board of India Act, 1992 read with Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

2. The specific direction which the petitioners intend to implement is that the stock exchanges shall deal with the complaints/claims of the clients against the member and may return the amount of client fund and securities to the clients and may also use assets of

the Noticee no. 1 to meet clients'/exchanges'/clearing members'/clearing Corporations', obligations.

3. The petitioners submit that as SEBI has already passed order for return of the amount to the client, accordingly, the said order is liable to be implemented.

4. Learned advocate representing the National Stock Exchange and Security Exchange Board of India raises preliminary objection with regard to the maintainability of the writ petition.

5. It has been submitted that in view of the subsequent order passed by the National Stock Exchange wherein there is a specific finding that there is no money due to the petitioners and on the contrary, the petitioners had negative balance and sum of Rs. 22.28 crore is recoverable from the petitioners and his family group as per the exchange's evaluation, there is no scope for refund of any money to the petitioners.

6. It has been submitted that the petitioners have not challenged the order passed by the National Stock Exchange and have directly approached the writ court for relief.

7. Learned advocate representing the Security Exchange Board of India submits that the order which the petitioners seek implementation of clearly mentions that the said order has been passed under disciplinary proceeding against the noticees for violation of the securities laws. Claim of the clients shall be entertained or disposed of as per the by-laws of stock exchanges / depositories.

8. It has been submitted that the matter was thereafter taken up by the National Stock Exchange and no money was found due and payable to the petitioners.

9. The respondents pray for dismissal of the writ petition.

10. I have heard the submissions made on behalf of both the parties.

11. On a perusal of the order which the petitioners seek implementation of, it appears that it has been recorded that the order has been passed under the disciplinary proceedings against the Trading Member for the violations of the Code of Conduct and another provision of Securities Laws.

12. It is specifically recorded that the observation made in the said order does not ipso facto entitle any client of the Trading Member to claim their funds, stock and securities, and such claims are to be taken up by clients with the concerned stock exchanges/depositories in accordance with respective by laws.

13. In the instant case, after the order was passed by Securities and Exchange Board of India, the matter was taken up by the National Stock Exchange and the Exchange was of the opinion that there is no due payable to the petitioners. On the contrary, the petitioners owe certain amount of money to the broker.

14. After the National Stock Exchange has conclusively found that the petitioner does not have any due payable, accordingly, the prayer of the petitioners seeking implementation of the interim and the final order passed by the Security Exchange Board of India cannot be allowed.

15. The writ petition fails and is hereby dismissed.

16. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)