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

WRIT PETITION (L) NO.16337 OF 2021

IL & FS Financial Services Limited ..... Petitioner

Vs.

Securities and Exchange Board of India .... Respondents

Mr.Aspi Chinoy, Sr.Advocate along with Mr.Adarsh Saxena, Ms.Drishti Das and Mr.Nihaad Dewan i/b M/s.Cyril Amarchand Mangaldas for the Petitioner

Mr.Mustafa Doctor, Senior Counsel a/w Ms.Nidhi Singh and Ms.Aditi Palnitkar i/b M/s.Vidhii Partners for the Respondents

CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.

DATED : AUGUST 12, 2021

P.C.

. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. By this petition, under Article 226 of the Constitution of India, petitioner is challenging the show cause notice dated 08.07.2021 issued by the Enforcement Department of the respondent under section 15-I(3) of the Securities and Exchange Board of India Act, 1992 calling upon the petitioner to show cause as to why penalty should not be

imposed in terms of section 15HB and 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") for violating the provisions of LODR Regulations as stated in the first show cause notice. Respondent called upon the petitioner to file their reply within 21 days from the receipt of the said notice.

4. The learned Senior Counsel for the petitioner submits that the show cause notice as issued by the respondent itself is bad in law. He submits that the respondent issued the said show cause notice without Jurisdiction and contrary to the express provisions of SEBI Act. He submits that the respondent's power to review its own order is statutorily circumscribed by the second proviso to section 15-I(3), which makes it clear that the power to review is not applicable after expiry of three months from the date of relevant order or disposal of appeal under section 15T, whichever is earlier. He further submits that no Appeal under section 15-T was preferred by the respondent against the order dated 24.12.2020 and the impugned show cause notice has been issued after the expiry of more than 6 months from the date of the order dated 24.12.2020. He submits that for want of Appeal on behalf of the respondent, the order dated 24.12.2020 attained finality and the respondent's attempt to review the said order by issuing the impugned show cause notice is contrary to the provisions of SEBI Act and without any jurisdiction.

5. The learned Senior Counsel for the petitioner submits

that in the present proceeding, earlier the Union of India filed petition before National Company Law Tribunal, Mumbai Bench, Mumbai being C.P.No.3638 of 2018 under section 241 / 242 of the Companies Act, 2013 seeking removal of the then existing petitioners Board of Directors and replacing with new Directors proposed by the Government. It was stated in the Government's petition that the petitioners group incurred a liability of more than Rs.91,000 crores (Rs. Ninety One Thousand Crores only) because of mismanagement, indiscriminate borrowing, negligence and concealment of the correct financial position. He submits that in that C.P. No.3638 of 2018 National Company Law Tribunal, Mumbai Bench, Mumbai passed the order dated 01.10.2018 suspending the then existing board of directors of the Petitioner and appointed new Directors proposed by the Union of India. Operative part of the order reads thus:

> *"8. On the basis of the foregoing discussions and after considering the facts of the case, as narrated in the Petition filed by the Union of India, this Bench is of the considered view that it is judicious to invoke the jurisdiction prescribed under Section 241(2) of the Companies Act, 2013 and the Tribunal is of the opinion that as per Section 242 (1) of the Companies Act, 2013, the affairs of the IL&FS were being conducted in a manner prejudicial to public Interest. The interim prayer of suspending the present Board of Directors and reconstitution of the new Board of Directors is hereby allowed. At present, by an additional affidavit only 6 names (supra) of the Board members have been proposed by the Union of India.*

8.1 Further directed that the present Board of Directors be suspended with immediate effect. The six Directors as reproduced supra shall take over the R1 company immediately. Newly constituted Board shall hold a meeting on or before 8th October, 2018 and conduct business as per the Memorandum and Articles of Association of the company and the provisions of the Companies Act, 2013. Liberty is granted to the Board of Directors to select a Chairman among themselves. Thereafter, report the roadmap to NCLT, Mumbai Bench at the earliest possible not later than the next date of hearing. The suspended directors henceforth shall not represent the R1 company as a Director and shall also not exercise any powers as a Director in any manner before any authority as well.

9. As a consequence of "Admission" of the Petition, issue notice to intimate next date of hearing. The Petitioner is to serve copy of this order along with Petition to all the Respondents. The Respondents in turn may file their reply by 15th October, 2018, only after serving copy to the Petitioner. The Petitioner can file rejoinder, if deem fit, by 30th October, 2018.

10. List for next hearing on 31st October, 2018."

6. The learned Senior Counsel for the Petitioner submits that against the order dated 01.10.2018 passed by NCLT, Mumbai Bench refusing to pass interim order in the nature of 'Moratorium', the Government filed Appeal before National Company Law Appellate Tribunal, New Delhi being Company Appeal (Appellate Tribunal) No.346 of 2018. He

submits that National Company Law Appellate Tribunal, New Delhi passed order on 15.10.2018 granting ad-interim relief in favour of the Petitioner. Operative part of the said order reads thus:

> *"Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of*
>
> *(i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against IL&FS' and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority; and*
>
> *(ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *iii) The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations vailed by IL&FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.*
>
> *(iv) Suspension of temporarily the acceleration of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits and*

any other financial facility by the IL&FS' and its 348 group companies by any party or person or Bank or Company, etc. as of the date of first default.

(v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance lying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL&FS' and its 348 group companies.

The interim order will continue until further orders and not be applicable to any petition under Article 226 of the Constitution of India before any Hon'ble High Court or under any jurisdiction of the Hon'ble Supreme Court."

7. The learned Senior Counsel for the Petitioner submits that thereafter the National Company Law Appellate Tribunal passed final order dated 12.03.2020 confirming the order dated 15.10.2018 and held that under section 241/242 and 424 of the Companies Act, 2013, it has power to pass the order akin to the statutory 'Moratorium' under section 14 of the Insolvency and Bankruptcy Code, 2016. Paragraph 52, 54 and 58 of the said order dated 12.03.2020 read thus:

"52. It cannot be said that NCLT while dealing with winding up matter or a matter under Section 241 r/w Section 242 particularly in a case under Section 241(2), which relates to public interest, the principle of Insolvency and Bankruptcy Code cannot be followed.

> *54. It is true that power of moratorium us Section 14 of the I&B Code cannot be exercised under the Companies Act, 2013, but same power can be exercised by Tribunal under Section 242(4) of the Companies Act by way of an interim order, if the Tribunal thinks fit for regulating the conduct of the Company's affair upon such terms and conditions, which is just and equitable.*
>
> *58. Taking into consideration the aforesaid fact, we hold that Tribunal/Appellate Tribunal has ample power to pass interim order in terms of Section 242(4) of the Companies Act as passed on 15th October, 2018 and requires no modification/ recall."*

8. The learned Senior Counsel for the Petitioner submits that thereafter the Respondent SEBI issued show cause notice dated 16.07.2020 alleging certain violation of the provisions of SEBI (listing, Obligations and Disclosure Requirements) Regulations, 2015. He submits that petitioners filed their response to the said notice on 29.07.2020 raising several objections. He submits that adjudicating officer by its order dated 24.12.2020 accepted the submission made by the Petitioner that the NCLAT's order/Moratorium barred the initiation/continuation of the adjudication proceedings and held that the proceedings were not maintainable and cannot be proceeded with. He relies on paragraph 10(d)(e) and (g), (h), 11 to 16 of the said order which reads thus:

> *"d) Following the order dated October 1, 2018, upon appeals filed by the MCA and IL&FS against the order dated October 12, 2018, the Hon'ble*

NCLAT vide an order dated October 15, 2018 was pleased to grant interim stay qua IL&FS and its group companies (including IFIN) on inter alia institution or continuation of suits or any other proceedings by any party or person against IL&FS and its group companies (including IFIN). The relevant extract of order dated October 15, 2018 is as follows:

> *"... Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of:-*
>
> *(i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against IL&FS' and its 348 group companies in any Court of Law/ Tribunal/Arbitration Panel or Arbitration Authority; and*
>
> *(ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(iii) The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations availed by IL & FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.*

(iv) Suspension of temporarily the acceleration of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits and any other financial facility by the 'IL&FS' and its 348 group companies by any party or person or Bank or Company, etc. as of the date of first default.

(v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance bying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL&FS' and its 348 group companies."

e) Thereafter, the interim order dated October 15, 2018 was confirmed by the Hon'ble NCLAT, vide its judgement and order dated March 12, 2020. In the order dated March 12, 2020, the Hon'ble NCLAT held that the Hon'ble NCLT/NCLAT has the power to pass an order of moratorium under Section 242(4) of the Companies Act, 2013 by way of an interim order. The relevant extract is as follows:

"50. From the aforesaid provision, it is clear that Tribunal Appellate Tribunal is required to follow principles of natural justice and other provisions of the Companies Act, 2013 'or the Insolvency and Bankruptcy Code, 2016 'and of any rules made thereunder for regulating its own procedure. Since the amendment of Section 424 with effect from 15th October, 2016, the Tribunal, Appellate Tribunal is vested with the power to follow the procedure of Insolvency and Bankruptcy Code, 2016, in addition to procedure laid down in Companies Act, 2013 and the tules framed under the aforesaid Code and Act.

52. It cannot be said that NCLT while dealing with winding up matter or a matter under Section 241 r/w Section 242 particularly in a case under Section 241(2), which relates to public interest, the principle of Insolvency and Bankruptcy Code cannot be followed.

54. It is true that power of moratorium a/s Section 14 of the I&B Code cannot be exercised under the Companies Act, 2013, but same power can be exercised by Tribunal under Section 242(4) of the Companies Act by way of an interim order, if the Tribunal thinks fit for regulating the conduct of the Company's affair upon such terms and conditions, which is just and equitable.

58. Taking into consideration the aforesaid fact, we bold that Tribunal / Appellate Tribunal has ample power to pass interim order in terms of Section 242(4) of the Companies Act as passed on 15th October, 2018 and requires no modification/ recall."

g) In regard to the status of instant proceedings the AR vehemently argued that the office of Adjudicating Officer conducting inquiry has all the attributes of a tribunal. In support of this the Noticee submitted that the Hon'ble Supreme Court has in a plethora of decisions laid down tests which are to be employed to determine whether a statutory authority is a Tribunal or not. In the decision of The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd, and Ors, vs. The Hind Cycles Ltd., Bombay AIR 1963 SC 874, a Constitutional Bench (5 Judge Bench) of the Hon'ble Supreme Court has held that a test to determine whether an authority is a Tribunal or not is to enquire whether the said body or authority is clothed with the trappings of a

Court. The AR further submitted that the test contemplates an assessment of the procedural powers conferred on such tribunal to adjudicate upon an issue and also to determine whether the statute requires a Tribunal to act judicially and to comply with rules of natural justice.Further if an authority created by statute which has the power to do any act which will prejudicially affect the subject then irrespective of whether two parties are not contesting the dispute, the final determination of that authority will be a quasi-judicial act if the authority is required by the statute to act judicially. The Noticee further submitted that keeping the above principle in mind, the adjudication proceedings before SEBI has all the attributes of tribunal because of the following:

i. SEBI acts as a statutory regulator,

ii. the present proceedings are also in its capacity as a statutory adjudicatory authority;

iii. SEBI is required to follow due process of law and principles of natural justice;

iv. SEBI in the eyes of law is acting as a statutory tribunal and / or is deemed to be Tribunal; and

v. SEBI's decisions are also open to challenge before the Securities Appellate Tribunal

h) The Notice has relied upon various decisions of Hon'ble Supreme Court, viz., in the case of Clairant International Limited & Anr. v. SEBI (2004) 8 SCC 524 the Hon'ble Supreme Court has held that SEBI

acts in 3 capacities ie. (a) legislative capacity, (b) executive capacity, and (9) judicial capacity. In the present case, by conducting a hearing pursuant to the SCN, SEBI is acting in its judicial capacity and therefore the moratorium SINUS order dated October 15, 2018 (as confirmed by the order dated March 12, 2020) is squarely applicable to the present care prohibiting the institution and/or continuation of legal proceedings before SEBI. This decision has been followed by the Hon'ble Supreme Court in National Securities Depository Limited v. SEBI (2017) 5 SCC 517.

i) The Noticee has also relied upon the case of Dewan Housing Finance Corporation Limited SEBI, wherein the Hon'ble SAT had the occasion to consider whether SEBI/Adjudicating Officer can conduct proceedings for imposition of penalty and/ or other measures against a company in respect of which a moratorium order (under Section 14 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'IBC") has been passed by the Hon'ble NCLT. The Noticee also submitted few facts which were recorded in the order are as follows:

> *i. A moratorium (albeit under Section 14 of the Code) was operative when SEBI issued a Show Cause Notice to institute proceedings for violations under securities laws; and*
> *ii. The board of directors of Dewan Housing had been suspended and an administrator had been*
> *appointed to resolve Dewan Housing.*

11. I have perused the submission of the Noticee made as above. I note that Hon'ble NCLT vide order October 12, 2018 had refused to pass the interim order in view of prayer of 'moratorium made by

Union of India. In this regard Union of India appealed before Hon'ble NCLAT and Hon'ble NCLAT vide its order dated October 15, 2018 passed an interim order allowing moratorium under section 241 and 242 of the Companies Act and later confirmed it on March 12, 2020, in respect of IL &FS & its 348 group companies including the Noticee. I note that the confirmation of the Hon'ble NCLAT's order dated March 12, 2020 is still in force.

12. I further note that Hon'ble NCLAT vide its order dated October 15, 2018 has held that tribunal has much wider power under section 241 and 242 of the Companies Act, 2013 than the powers vested under provisions of IBC. Therefore, the IBC will apply to the section 241 /242 of the Companies Act.

13. I agree with the submissions of the Noticee that SEBI is equivalent to tribunal in the light of the ruling of Hon'ble Supreme Court as relied upon by the Noticee in para 10(g) above. Therefore, as far as implication of moratorium is concerned, the direction of moratorium passed by Hon'ble NCLAT vide its order dated October 15, 2018 is applicable to the present adjudication proceedings

14. I observe that the moratorium order was passed on October 15, 2018 and confirmed by Hon'ble NCLAT on March 12, 2020, which is prior to the initiation of the instant proceedings i.e., on July 03, 2020.

15. Therefore, in view of the above there is a bar on continuation of the present adjudication proceedings as on date, in view of the Hon'ble NCLAT orders dated October 15, 2018 and March 12, 2020.

16. In view of the aforesaid observations, the present proceedings are not maintainable, and therefore cannot be proceeded with. The Show Cause Notice is accordingly disposed of."

9. The learned Senior Counsel for the Petitioner submits that after lapse of seven months and contrary to the express statutory bar contained in the 2nd proviso to section 15-I(3), respondent issued show cause notice dated 08.07.2021 to the Petitioner for reopening/revising the order dated 24.12.2020 and requiring the Petitioner to show cause why penalties should not be imposed on the Petitioner for violating the LODR Regulations.

10. The learned Senior Counsel for the Petitioner submits that as the said show cause notice is contrary to the statutory bar / prohibition contained in the second proviso to section 15-I(3) of the SEBI Act, they preferred the present Writ Petition for setting aside the same and interim relief to stay the operation and implementation of the said show cause notice dated 08.07.2021.

11. The learned Senior Counsel for the Petitioner submits that bare reading of the section 15-I(3) of the SEBI Act shows that the Respondent have no power to issue show cause notice after expiry of three months from the date of the order passed by the adjudicating officer or disposal of the Appeal under section 15T, whichever is earlier. He submits that bare reading of the provisions of section 15-I(3) of the said Act clearly shows that the show cause notice

dated 08.07.2021 is required to be set aside. He further submits that the Apex Court in the matter of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1*** held that if show cause notice is challenged by the Writ Petition under Article 226 of the Constitution of India on the ground that notice is wholly without Jurisdiction, in that case High Court can entertain the Petition. Paragraph 73 of the said order reads thus:

> *"73. In view of the pendency of these proceedings in the High Court and specially in view of Section 107 of the Act, the Registrar could not legally issue any suo motu notice to the appellant under Section 56(4) of the Act for cancellation of the Certificate of Registration/Renewal already granted. The appeal is consequently allowed and the show-cause notice issued by the Deputy Registrar (respondent No.2) on 26th of Sept. 1997 under Section 56(4) of the Act is hereby quashed. The appellants shall be entitled to their costs."*

12. On the basis of these submissions, the learned Senior Counsel for the Petitioner submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Writ Petition setting aside the show cause notice dated 08.07.2021 under section 15-I(3) of the SEBI Act issued by the Respondent. He submits that if Petition is not allowed, irreparable loss will be caused to the Petitioner.

13. On the other hand, the learned Senior Counsel for the Respondent vehemently opposed the present Writ Petition. He submits that Petition as it is filed by the Petitioner is not maintainable. He submits that the Respondent by show

cause notice dated 8th July 2021 under section 15-I(3) of the SEBI Act, called upon the Petitioner to show cause as to why the penalty should not be imposed in terms of section 15HB and 15A(b) of the SEBI Act, for violating the provisions of LODR Regulations as stated in the first show cause notice. He submits that they called upon the Petitioner to file their reply within 21 days from the receipt of the notice. He submits that till today, neither the Petitioner filed their reply nor applied for extention of time to comply the said show cause notice. He submits that there is no question of setting aside the show cause notice by which the Respondent called upon the Petitioner to show cause why action should not be taken against them. He submits that similar issue was before the Kerala High Court in Writ Petition (C) No.13682 of 2020 in the matter of I. Unnikrishnan v. Union of India and Ors. He submits that the Kerala High Court by judgment dated 12.02.2021 dismissed the Petition holding that there is no question of staying the operation of the show cause notice. Para 4, 5 and 13 of the said judgment read thus:

> *"4. The petitioners challenge Ext.P2 show-cause notice on various grounds. Supervisory powers on Non-Banking Financial Companies in raising deposits, maintenance of accounts etc. is vested in Reserve Bank of India under Chapter 3B of the RBI Act, 1934. The SEBI has issued the impugned show-cause notice on the presumption that it has supervisory powers under* Sections 55A, 117B *and* 67 *of the Companies Act, 1956. The SEBI has no such powers. The impugned show-cause notice has been issued only to make a rowing enquiry to find out whether there has been any statutory violation of the Companies Act, 1956. Ext.P2 is therefore liable to be set aside. The Companies Act, 1956 has been repealed by the Companies Act, 2013.*

Ext.P2 is unsustainable on that ground also. The learned counsel for the petitioners brought the attention of this Court to various provisions in the Reserve Bank of India Act, Banking WP(C) Nos.13682&22430/2020 Regulation Act, the Companies Act and the SEBI Act and placed reliance on the following judgments of the Apex Court, to contend that the SEBI lacks power and jurisdiction to issue Ext.P2 show-cause notice to the Company:-

(1) Giridhar G. Yadalam v. Commissioner, Wealth Tax and another [(2015) 17 SCC 664],

(2) Achal Industries v. State of Karnataka [(2019) 7 SCC 203],

(3) Rattan Singh and others v. MD, Moga Transport Company and another [AIR 1959 P & H 196],

(4) Toubro Infotech and Industries Limited and another v. SEBI [2004 SAT 46 (Mumbai)],

(5) Sahara India Real Estate Corporation Limited and others v. SEBI [(2013) 1 SCC 1],

(6) UOI and others v. Madhumilan Syntex Pvt. Ltd. and others [AIR 1988 SC 1236],

(7) State of Punjab and others v. Bhatinda District Co- operative Milk Producers Union [(2007) 11 SCC 363],

(8) Adjudicating Officer, SEBI v. Bhavesh Pabari [(2019) 5 SCC 90],

(9) Astra Zeneca Pharma India Ltd. v. SEBI [2019 SCC Online SAT 356-Mumbai Bench],

(10) Ashok Shivlal Rupani and another v. SEBI [2019 SCC Online SAT 169-Mumbai Bench - upheld by SC in SEBI v. Ashok Shivlal Rupani and another [MANU/SCOR/48290/2019],

(11) MCP Enterprises and others v. State of Kerala [2020 (1) KHC 127],

(12) Calcutta Discount Co. Ltd. v. ITO, Companies District Calcutta and another [AIR 1961 SC 372 - Constitution Bench],

(13) East India Commercial Company Ltd., Calcutta and others v. Collector of Customs, Culcutta [AIR 1962 SC 1893],

(14) Shrisht Dhawan v. Shaw Brothers [(1992) 1 SCC 534],

(15) Naresh Kumar and Co. Pvt. Ltd. v. UOI [2015 (37) STR 451 (Cal)],

(16) Jeans Knit Pvt. Ltd. v. Deputy Commissioner IT, Bangalore and others [(2018) 12 SCC 36],

(17) India Tobacco Co. Ltd. v. CTO, Bhavanipore and others WP(C) Nos.13682&22430/2020 [(1975) 3 SCC 512],

(18) State of Kerala and others v. Mar Appraem Kuri Co. Ltd. and others [(2012) 7 SCC 106-Constitution Bench],

(19) Udai Singh Dagar and others v. UOI [(2007) 10 SCC 306],

(20) Baiju AA and others v. STO, Works, Contract, SGST Department [2020 (1) KHC 39].

> *5. The Standing Counsel appearing for SEBI contended that the SEBI has issued only a show-cause notice. The petitioners can very well submit their reply to the show-cause notice and agitate the issues including jurisdiction and limitation before the SEBI. The Hon'ble Apex Court has held on more than one occasion that the High Court exercising jurisdiction under Article 226 of the Constitution of India shall not interfere in any proceedings at the show-cause stage. Therefore, the writ petitions filed by the petitioners against the show-cause notice is unsustainable. The petitioners can place all their objections/opinion before the SEBI. The writ*

> *petitions therefore should be dismissed, contended the Standing Counsel for SEBI.*
>
> *13. Furthermore, the proceedings of SEBI are only at the show-cause stage. The petitioners have the opportunity to establish their case before the Board. As rightly pointed out by the Standing Counsel for the SEBI relying on the judgment of the Hon'ble Apex Court in Peerless General Finance and Investment Company Limited v. Reserve Bank of India [(1992) 2 SCC 343], the function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority."*

14. The learned Senior Counsel for the Respondent submits that there is no question of bar under section 15-I(3) of the SEBI Act to issue the show cause notice after expiry of period of 3 months from the date of order passed by adjudicating officer or disposal of the Appeal under section 15T of the said Act in the present case in hand. He submits that in the present case, adjudicating officer by its order dated 24.12.2020, was under the impression that in view of order dated 12.03.2020 passed by National Company Law Appellate Tribunal, they cannot proceed with the show cause notice. He submits that in any case in view of the orders passed by the Apex Court from time and again in Suo Moto Writ Petition (Civil) No.3 of 2020, there is no question of bar of three months as per section 15-I(3) of the SEBI Act. He submits that the Apex Court by its order date 27.04.2021 in Misc. Application No.665 of 2021 in Suo Motu Writ Petition No.3 of 2020 specifically held that limitation, as prescribed under in general or special laws in respect of

all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. He relies on following portion of the said order dated 27.04.2021 passed by the Apex Court which reads thus:

> *"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.*
>
> *It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
>
> *We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.*

This order may be brought to the notice of all High for Courts being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in 6 weeks."

15. The learned senior Counsel for the Respondent submits that, therefore, the objection raised by the Petitioner in view of section 15-I(3) of the SEBI Act is not applicable in the present case. He further submits that there is no questing of setting aside and or stay of the show cause notice as held by the Kerala High Court in Writ Petition No.13682 of 2020. He further submits that even the Apex Court by its order dated 11.05.2021 in Civil Appeal No.1523 of 2021 filed by the Petitioner held that the order passed by the Respondent SEBI shall be subject to the further order passed by the Apex Court. On the basis of these submissions, the learned Senior Counsel for the Respondent submits that there is no substance in the present Writ Petition and same is required to be dismissed with costs.

16. We have heard both the sides at length.

17. It is to be noted that the issue involved in the present Writ Petition is whether show cause notice issued by the Respondent dated 08.07.2021 is required to be set aside. Bare reading of the show cause notice under section 15-I(3) of the SEBI Act, 1992 shows that the Respondent called upon the Petitioner to show cause as to why penalty should

not be imposed in terms of section 15HB and 15A(b) of the SEBI Act, for violating the provisions of LODR Regulations. SEBI called upon the Petitioner to submit that reply within 21 days from the receipt of notice.

18. It is to be noted that the Apex Court in the matter of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*** (Supra) held that if the notice is issued without Jurisdiction then only High Court to entertain the petition under Article 226 of the Constitution of India. In the present proceeding, as per section 15-I(3), Respondent can call and examine the record of any proceeding under the said Section. Section 15-I of the SEBI Act reads thus:

> *15-I - **Power to adjudicate***
>
> *(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*
>
> *(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.*

> *(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:*
>
> *Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:*
>
> *Provided further that nothing contained in this sub-section shall beapplicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.*

19. Bare reading of section 15-I (3) shows that the Respondents have right to call and recall the record of any proceedings. The 2nd proviso states that noting contained in sub section 3 of section 15(I) shall be applicable after expiry of period of three months from the date of order passed by the adjudicating officer or disposal of Appeal under section 15T whichever is earlier.

20. It is to be noted that Apex Court in Suo Motu Writ Petition (Civil) No.3 of 2020 time and again passed order and held that limitation, as prescribed under in general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. Prima facie, this clearly shows that show cause notice dated 08.07.2021 was according to

proviso of sub section 3 of section 15-I of SEBI Act. Apart from that, it appears that Respondent called upon the Petitioner to show cause why action should not be taken. Therefore, whether the Respondent issued show cause notice dated 08.07.2021 is according to section 15-I(3) with second proviso or not, that can be decided by the authority at the time of considering the show cause notice on its own merits.

21 Therefore, without going into merits of the matter, whether Respondents issued show cause notice dated 08.07.2021 according to law or not, whether favourable or not, let the authority to decide on its own merits. Therefore, at this stage, we do not find any substance in the present Writ Petition. Hence, following order is passed:

a. Writ Petition stands dismissed.

b. All contention of both the parties are kept open before the adjudicating officer at the time of considering the show cause notice dated 08.07.2021, issued under section 15-I(3) of the Securities and Exchange Board of India Act, 1992

c. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) **(K.K.TATED, J.)**