GAHC010121592012

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 3501/2012

1:RANJAN KR. GOGOI and 59 ORS.
DEMAT A/C NO. 1304140003422709 OIL INDIA LTD., DULIAJAN

2: KARUN CHANDRA MECH
DEMAT A/C NO. 1304140004238856 OIL INDIA LTD
DULIAJAN.

3: RATAN SONOWAL
DEMAT A/C NO. 1304140005411928 OIL INDIA LTD
DULIAJAN.

4: NOLESWAR GOGOI
DEMAT A/C NO. 1304140005408708 OIL INDIA LTD
DULIAJAN.

5: KUNJALATA DUTTA
DEMAT A/C NO. 1304140005411932 OIL INDIA LTD
DULIAJAN.

6: GHANA KANTA GOGOI
DEMAT A/C NO. 1304140005238414 OIL INDIA LTD
DULIAJAN.

7: LAKHESWAR TASA
DEMAT A/C NO. 130414000 OIL INDIA LTD
DULIAJAN.

8: DIPAK CHAKRABORTY
DEMAT A/C NO. 1304140005532297 OIL INDIA LTD
DULIAJAN.

9: DAMBARU DHAR HAZARIKA
DEMAT A/C NO. 1304140005238401 OIL INDIA LTD
DULIAJAN.

10: SUNIL DAS
DEMAT A/C NO. 1304140005163273 OIL INDIA LTD
DULIAJAN.

11: NABA KANTA CHANGMAI
DEMAT A/C NO. 1304140005152400 OIL INDIA LTD
DULIAJAN.

12: PUTUL DUTTA
DEMAT A/C NO. 1304140004711165 OIL INDIA LTD
DULIAJAN.

13: NABIN GOGOI
DEMAT A/C NO. 1304140002377197 OIL INDIA LTD
DULIAJAN.

14: DEEP KAKOTI
DEMAT A/C NO. 1304140004711171 OIL INDIA LTD
DULIAJAN.

15: BECHAN GUPTA
DEMAT A/C NO. 1304140004819551 OIL INDIA LTD
DULIAJAN.

16: ALI RAM DAWO
DEMAT A/C NO. 1304140004459266 OIL INDIA LTD
DULIAJAN.

17: DHANIRAM HAZARIKA
DEMAT A/C NO. 1304140004459331 OIL INDIA LTD
DULIAJAN.

18: DHARANIDHAR KALITA
DEMAT A/C NO. 1304140004464654 OIL INDIA LTD
DULIAJAN.

19: MOHAN CHANDRA GOGOI
DEMAT A/C NO. 1304140004459291 OIL INDIA LTD
DULIAJAN.

20: NRIPEN GOGOI
DEMAT A/C NO. 1304140004459291 OIL INDIA LTD
DULIAJAN.

21: UTPAL DAS
DEMAT A/C NO. 1304140004459247 OIL INDIA LTD
DULIAJAN.

22: BIMAL RAJKHOWA
DEMAT A/C NO. 1304140004522650 OIL INDIA LTD
DULIAJAN.

23: ROBIN DEKA
DEMAT A/C NO. 1304140003965754 OIL INDIA LTD
DULIAJAN.

24: JIBAN SAIKIA
DEMAT A/C NO. 1304140003965716 OIL INDIA LTD
DULIAJAN.

25: DILIP BORUAH
DEMAT A/C NO. 1304140003965701 OIL INDIA LTD
DULIAJAN.

26: BIJOY SONOWAL
DEMAT A/C NO. 1304140003994061 OIL INDIA LTD
DULIAJAN.

27: GANESH BORAH
DEMAT A/C NO. 1304140003161408 OIL INDIA LTD
DULIAJAN.

28: BHADRESWAR BORA
DEMAT A/C NO. 1304140004459232 OIL INDIA LTD
DULIAJAN.

29: ATUL ARANDHARA
DEMAT A/C NO. 1304140002539034 OIL INDIA LTD
DULIAJAN.

30: JADAV GOGOI
DEMAT A/C NO. 1304140003453459 OIL INDIA LTD
DULIAJAN.

31: NAREN BORGOHAIN
DEMAT A/C NO. 1304140004698223 OIL INDIA LTD
DULIAJAN.

32: KANAKSEN DAS
DEMAT A/C NO. 1304140003459091 OIL INDIA LTD
DULIAJAN.

33: BANESWAR GOHAIN
DEMAT A/C NO. 1304140003423599 OIL INDIA LTD
DULIAJAN.

34: DURBJOY BALMIKI
DEMAT A/C NO. 1304140003423550 OIL INDIA LTD
DULIAJAN.

35: KALPANA HAZARIKA
DEMAT A/C NO. 1304140005380166 OIL INDIA LTD
DULIAJAN.

36: PUMESWAR CHETIA
DEMAT A/C NO. 1304140002539049 OIL INDIA LTD
DULIAJAN.

37: BHUPEN GOGOI
DEMAT A/C NO. 1304140004456060 OIL INDIA LTD
DULIAJAN.

38: RATUL SAIKIA
DEMAT A/C NO. 130414000276953 OIL INDIA LTD
DULIAJAN.

39: NILA KANTA CHANGMAI
DEMAT A/C NO. 130414000 OIL INDIA LTD
DULIAJAN.

40: BHABEN DUTTA
DEMAT A/C NO. 1304140002372243 OIL INDIA LTD
DULIAJAN.

41: DIPAK KUMAR DEKA
DEMAT A/C NO. 130414000345527 OIL INDIA LTD
DULIAJAN.

42: MOHAN CHANDRA BARUAH
DEMAT A/C NO. 1304140004463456 OIL INDIA LTD
DULIAJAN.

43: PINTOO KUMAR KALLICK
DEMAT A/C NO. 1304140004518739 OIL INDIA LTD
DULIAJAN.

44: DURGA PRASAD JORGA
DEMAT A/C NO. 1304140004460854 OIL INDIA LTD
DULIAJAN.

45: DEBASHIS BORA
DEMAT A/C NO. 1304140005409661 OIL INDIA LTD
DULIAJAN.

46: KHIRESWAR SONOWAL
DEMAT A/C NO. 1304140004820014 OIL INDIA LTD
DULIAJAN.

47: KODA JAGANATHAN
DEMAT A/C NO. 1304140003456937 OIL INDIA LTD
DULIAJAN.

48: LILESHWAR SAIKIA
DEMAT A/C NO. 1304140004518711 OIL INDIA LTD
DULIAJAN.

49: MANIK BORA
DEMAT A/C NO. 130414000335377 OIL INDIA LTD
DULIAJAN.

50: OM BAHADUR GURUNG
DEMAT A/C NO. 1304140005357322 OIL INDIA LTD
DULIAJAN.

51: TULSHI PRASAD DEKA
DEMAT A/C NO. 1304140004211711 OIL INDIA LTD
DULIAJAN.

52: HAREKRISHNA HAZARIKA
DEMAT A/C NO. 1304140003456407 OIL INDIA LTD
DULIAJAN.

53: JAYANTA SHARMA
DEMAT A/C NO. 1304140006034924 OIL INDIA LTD
DULIAJAN.

54: NABIN SAIKIA
DEMAT A/C NO. 1304140005407626 OIL INDIA LTD
DULIAJAN.

55: RAM NAGINA CHOUDHURY
DEMAT A/C NO. 1304140005238401 OIL INDIA LTD
DULIAJAN.

56: AMAR JYOTI SAIKIA
DEMAT A/C NO. 130414000 OIL INDIA LTD
DULIAJAN.

57: SAITENDRA NATH SENSUWA
OIL INDIA LTD.
DULIAJAN

58: LAKHESWAR SAIKIA
OIL INDIA LTD.
DULIAJAN

59: PHATIK SAIKIA
DEMAT A/C NO. 1304140004518699 OIL INDIA LTD
DULIAJAN. ALL OF THE ABOVE ARE EMPLOYEES OF THE OIL INDIA LIMITED
DULIAJAN DIBRUGARH
ASSAM.

60: SADIKUL HASAN BORA
SON OF LATE ABDUL KARIM BORAH PERMANENT R/O DIGBOI PRESENTLY RESIDING AT BELTOLA
GUWAHATI-28

VERSUS

1:THE SECURITIES AND EXCHANGE BOARD OF INDIA and ORS
SEBI, PLOT NO. C-4 '6' BLOCK, BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI- 400501.

2:THE NATIONAL STOCK EXCHANGE OF INDIA NSE
EXCHANGE PLAZA
PLOT-C-1
'6' BLOCK
BANDRA KURLA COMPLEX
MUMBAI-400051

3:THE BOMBAY STOCK EXCHANGE OF INDIA BSE
BJ TOWERS
DALAL STREET
MUMBAI- 400001.

4:INVESTORS GRIEVANCE REDRESSAL COMMITTEE
IGRC
KOLKATA
OF BOMBAY STOCK EXCHANGE LIMITED
REGIONAL OFFICE EAST
57 JAWAHARLAL NEHRU ROAD
HORIZON
2ND FLOOR
NEAR RABINDRA SADAN METRO
KOLKATA-700071.

5:THE RELIANCE CAPITAL
REGISTERED OFFICE AT 'H' BLOCK 1ST FLOOR

DHIRUBHAI AMBANI KNOWLEDGE CITY
NAVI MUMBAI-400710

6:THE RELIANCE SECURITIES LIMITED
REGISTERED and CORPORATE OFFICE AT 11TH FLOOR
R TECH IT PARK
WESTERN EXPRESS HIGHWAY
GOREGAON EAST MUMBAI-400063.

7:THE RELIANCE SECURITIES LIMITED
REGIONAL OFFICE
ANIL PLAZA
G.S. ROAD
GUWAHATI
ASSAM.

8:THE RELIANCE SECURITIES LIMITED
TINSUKIA BRANCH
TINSUKIA
ASSAM.

9:THE RELIANCE SECURITIES LIMITED
DULIAJAN BRANCH
DIBRUGARH
ASSAM.

10:SMT. USHA AGARWAL
W/O MR. PRAVEEN AGARWAL
AUTHORIZED SUB-BROKER OF RELIANCE SECURITIES LIMITED
PARTNER CODE NO. 117540001
TINSUKIA
ASSAM

Advocate for the Petitioner : MR. S K TALUKDAR

Advocate for the Respondent : Dr. A Saraf
Senior Advocate

Mr. A Goel

Ms. G Saikia

Ms. M L Gope

Mr. K Choudhury

Mr. PP Sarma

Mr. K Goswami

Mr. P Baruah

Mr. AK Dutta
Mr. NC Das
Ms. N Hawelia
Mr. N Islam

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 24-05-2018

JUDGMENT & ORDER (ORAL)

Heard Mr. SK Talukdar, learned counsel for the petitioners. Also heard Dr. A Saraf, learned Senior counsel for the respondent Nos. 5, 6 and 7 as well as Mr. N Islam, learned counsel for respondent Nos.1, 2, 3 and 4.

2. Although respondent Nos.8, 9 and 10 were not duly served, but their interest is substantially taken care of by respondent Nos.5, 6 and 7 and further the nature of the order that is proposed to be passed would not be adverse to the said respondents so as to warrant a further delay in the hearing of this matter.

3. It is also noticed that this writ petition has been pending since the year 2012 and the various orders passed reflects that inspite of several opportunities being given to the petitioner for taking steps on the said respondents, but no such steps have been taken. The petitioners being 60 in numbers have preferred this writ petition on a common cause that the petitioners 1 to 59 were holding certain shares of M/s. Oil India Ltd., and had engaged the respondent No.10 as their broker for dealing with such shares. The allegation is that without their due consent, the shares held by the petitioners 1 to 59 were sold off by the respondent No.10 without due consent of the petitioners. In the aforesaid circumstances, this writ petition has been preferred for a direction to the respondent Security Exchange Board of India (for short, SEBI Act of 1992) to invoke its powers under Section 11 and 15 of the SEBI Act of 1992 and cause an enquiry and investigation in the matter whereby loss was caused to the petitioners due to fraudulent and unfair trade practice carried on by the

respondents Reliance Securities Ltd. It is stated that the respondent No.10 who was entrusted to deal with the shares of the petitioners was in fact a sub broker of the Reliance Securities Ltd., and, therefore, claim of the petitioners is in the nature of vicarious liability of the Reliance Securities Ltd. Further relief that is sought for is that the respondent Reliance Securities Ltd., be directed to pay a penalty of 25 crores for having indulged in a fraudulent and unfair trade practice and such relief is being sought under Section 15HA of the SEBI Act of 1992. The respondent Reliance Securities Ltd., entered appearance and took a stand that the relief claimed by the writ petitioners are untenable under the provisions of SEBI Act of 1992. A further stand has been taken that the respondent No.10 did not hold any shares on behalf of the 60 petitioners, and, therefore, he has no *locus standi* to be a petitioner and secondly, the affidavit accompanying the writ petition having been sworn by the petitioner No. 60, it is technically defective and not liable to be entertained in the present form. A stand has also been taken by the respondent, Reliance Securities Ltd., that under the agreements between the investors and the brokers as well as the bye-laws of the Bombay Stock Exchange and National Stock Exchange there is a clause for arbitration and from such point of view also, the writ petition is not maintainable.

4. It has also been brought to the notice of the Court that as against the grievance raised by the petitioners, an ejahar had also been lodged before the Duliajan Police Station which is dated 09.04.2011 and the said ejahar which is annexed as Annexure-3 to the writ petition indicates it was received by the police. Paragraph 14 also indicates that the resultant Tinsukia Police Station Case No.341/2011 under Section 408/468/420 of the IPC had been registered. It has further been brought to the notice of the Court that the petitioners have submitted a representation to the Chairman, SEBI, which had caused the matter to be placed before the Investors Grievances Redressal Committee of SEBI. Accordingly, the Investors Grievances Redressal Committee at Kolkata had given a consideration to the complaint lodged by the petitioners resulting in the minutes dated 31.10.2011.

5. Mr. SK Talukdar, learned counsel for the petitioner submits that under the SEBI Act of 1992, the SEBI has the jurisdiction and authority to enquire into the allegations as made by the petitioners. To this extent, Mr. Talukdar relies upon Section 11(1), 11(2-B), 11(2-E), 11(2-i), 11(2-A), 11.3 and 11.4 and also Section 15 HA and 15-I of the SEBI Act of 1992.

6. The core submission of Mr. Talukdar is that in exercise of the powers exercisable by the SEBI under the aforesaid sections it has sufficient power to call for the required information from the respondent broker as regards the sell of the shares of the petitioners and thereupon if found to be fraudulent and unauthorized, to take appropriate action thereon. Before examining the submissions made by the learned counsel for the petitioners, in detail, what has to be kept in mind is that the nature of relief sought by the petitioners is that the SEBI authorities be directed to make an enquiry and investigate into the alleged fraudulent sell of the shares of the petitioners, make it incumbent upon the SEBI to pass appropriate orders for taking actions against the respondent broker as well as to compensate to the petitioners for the alleged loss they have suffered.

7. When the aforesaid relief being sought for by the petitioner is considered, it is to be seen that the relief sought for is basically in the nature of investigating a criminal complaint being made by the petitioner that their shares were unauthorizedly sold off. If the said aspect is taken into consideration, the enquiry and investigation being sought by the petitioners would be in the nature of a criminal investigation, *inasmuch as*, the core allegation is that their shares were sold off by the respondent broker in an unauthorized and fraudulent manner. Unauthorized sell of the shares, which, in fact, is the property of the petitioners would amount to disposing of a property of one person by another person in an illegal manner, which would amount to specific offences under Chapter XVII of the Indian Penal Code. Similarly, disposal of the property of the petitioners by a fraudulent means would also amount to a penal offence under the IPC under the Chapter. What is noticeable is that in the allegations of the petitioners, other than the element of unauthorized and fraudulent disposal of their property, there is no further allegation that the respondent broker had done an act which in any way had manipulated the share values of the petitioners resulting in a loss being suffered by them.

8. When the submission made by Mr. Talukdar, learned counsel for the petitioner is examined from the aforesaid prospective of the matter, the conclusion that can be arrived at in respect of the individual Sections of the SEBI Act of 1992 which Mr. Talukdar relies upon would be as under:

a. Section 11(i) of the SEBI Act of 1992, *inter alia*, provides that subject to the provisions of the Act, it shall be a duty of the Board to protect the interest of the investors in security and to promote the development of the security and to regulate the security market by such measures as it deems fit.

Section 11(i) begins with the expression subject to the provisions of the Act, which means

that all actions that are to be taken by the SEBI in exercise of its powers under Section 11(i) has to be in matters which are covered by the SEBI Act of 1992 and not be exercised in respect of such matters which are not so covered.

b. The said expression subject to the provision of the Act has to be interpreted in contra distinction of the expression notwithstanding anything contained in the Act, which otherwise would have meant that even aspects which are not covered by the SEBI Act can also be enquired by the SEBI. But when the Section describing the powers of the SEBI begins with the expression subject to the provisions of the Act, the same can be interpreted to mean that the SEBI is authorized to act only upon such provisions which are covered and provided in the SEBI Act of 1992 itself.

c. The other aspect is that Section 11(i) pro vides for three kinds of functions of the SEBI i.e., firstly, to protect the interest of the investors in the security; secondly, to promote the development of the security and thirdly to regulate the security market. When the said expression is looked into i.e., the interest of the investors in the security, the development of the security and to regulate the security market, the jurisdiction and authority of the SEBI would be to act upon such matters where abnormal movement of the security should not be allowed to happen because of any act of any person, including the brokers to manipulate the value of the security as well as to make them fluctuate in an unauthorized and abnormal manner. In other words, in protecting the interest of the investors in the security and to promote its development and to regulate its security market, an alleged unauthorized and fraudulent sell of the security held by any person or by any broker cannot be brought into the purview of protecting the interest of the investors in security, promoting the development of the security and regulating the security market as envisaged under Section 11(i). Further the said interpretation of the expression protecting the interest of the investors in security appearing in Section 11(i) would have to be adjudicated keeping in view the expression subject to the provisions of the Act appearing in Section 11(i).

d. When the statement of objects and reasons of the SEBI Act of 1992 is looked into, it is noticed that the SEBI Act of 1992 was enacted for promoting an orderly and healthy growth of the security market and for investors protection so as to instill a sense of confidence of the public in the growth and stability of the capital market. From the said point of view, the unauthorized and

fraudulent sell of the security share of an individual cannot be equated with the concept of instilling the sense of public in the growth and stability of market. From the said point of view also, the expression subject to the provision of the Act has to be construed in the aforesaid manner.

e. Section 11-2(b) pertains to registering and regulating the working of the stock broker and sub broker etc. From the point of view of the objects and purpose of the SEBI Act of 1992, the expression regulating the working of stock broker and sub broker etc., would have to be construed with regard to their acts, commission and omission, as regards its effect upon the growth and stability of capital market, rather than, regulating the individual acts of the brokers and the sub brokers as to whether an individual share was sold in an unauthorized manner or as to whether there was a fraud in the sell of such share, provided of course other than the element of unauthorized sell and fraud, the selling of such shares were conducted in a manner without having its effect on the growth and stability and development of the capital market.

f. Section 11-2(e) in a similar manner providing for prohibiting fraudulent and unfair trade practice relating to security market would also have to be looked from the point of view as to whether such fraudulent and unfair trade practice related to the growth and stability of the capital market as well as development of the security or such fraudulent acts related to the sell of individual shares of a person without due authorization. It would also be a distinguishing factor as to whether the unauthorized and fraudulent sell of an individual share was more in a nature of a criminal act of illegally disposing of the property of another person rather than a fraudulent and an unfair trade practice relating to the development of security or to the growth and stability of the capital market.

g. Section 11-2(i) provides for calling of information from the intermediaries and self regulatory organizations for the purpose of undertaking inspections, conducting enquiries and audit of the stock exchanges. The said provision also relates to an inspection or conducting enquiry and audit by the SEBI authorities and all provisions associated with the security market so as to conclude as to whether any such dealing with the security shares may influence the development of the security or the growth and stability of the capital market. For similar reasons, as indicated above, the said power also cannot be construed to be a power to cause an enquiry as to whether there was a criminal element in selling of shares of some individual person.

h. Section 11(2)(a) provides that without prejudice to the provisions of Sub-Section2, the SEBI may also undertake inspection of any book, register etc., of any listed public company or a public company, which intends to get its security listed in any of the recognized stock exchanges, where the SEBI has reasonable ground to belief that such company has been indulging in insider training or fraudulent trade practice. The provision of Section 2(a) pertains to causing an inspection of the book, register etc., of a public company, in order to ascertain the existence of any insider training or fraudulent or unfair trade practice. The said power cannot be related to an incident where the broker or sub-broker may have sold a share of a particular investor without authority or by committing fraud, where there is no relation with the concerned public company being involved inside the training or fraudulent and unfair trade practice._

i. Although Section 11(3) begins with the expression notwithstanding contained in any other law for the time being, but what is provided under the said Section is that the SEBI while exercising any of its power under Section 11(ii) or 11(ii)(a) shall have the same power as vested in a civil court under the Code of Civil Procedure. The said Section 11(iii) therefore, merely prescribes for the procedure that the SEBI may follow and exercise while proceeding under Section 11(ii) and 11(ii)(a) and the said Section cannot construed to have empowered the SEBI with any further power even to act upon an allegation of therebeing unauthorized and fraudulent sell of the shares of an individual by a particular broker or sub broker.

j. Section 11(iv) empowers the SEBI to act in certain particular manner in respect of any pending or complete investigation or enquiry. In other words, the provision of 11(iv) can be invoked by SEBI only in the event of there existing a pending investigation or enquiry or a complete investigation. The same by itself does not bestow the SEBI with an independent power to cause any investigation or enquiry beyond what is provided in Section 11(i), 11(ii) and 11(ii)(a).

k. Section 11(C) refers to an investigation where the SEBI has reasonable ground to believe that the transaction in the securities are being done in a manner detrimental to the investors or to the security market or where any provision of the Act, Rules or Regulation may there under by the SEBI had been violated. The expression 'transaction in securities' being dealt in a manner detrimental to

the investor or security market would have to be looked from the point of view that such transaction had an adverse impact on the value of the securities or shares, because of which, the investors were to be in a disadvantage or which had adversely effected the security market has a whole. Such act of dealing with securities or shares in a manner detrimental to the investor obviously cannot also include the act of the broker or the sub broker in selling of the shares of an individual investor without his authority, or in a fraudulent manner. Again the clear distinction of selling of shares in an unauthorized and fraudulent manner would have to be distinguished from the selling of a share made with the purpose to cause an undue fluctuation or manipulation in the value of the shares and securities which may have a detrimental effect on the investor. Further in the instant case, no such action had also been brought to the notice of the Court as regard the violation of any provision of the Act or the Rules and Regulations made there under by the broker or the sub broker while selling of the shares of the petitioners.

l. Section 5(H)(A) pertains to the liability to pay a penalty which would not be less that Rs.5 lacs, but may extent up to Rs. 25 lacs or three times, the amount of the products made out of any fraudulent and unfair trade practice relating to security. As explained earlier, the fraudulent and unfair trade practice relating to security would have to be construed in the context of the SEBI Act, 1992 to be an act done with the purpose to manipulate or cause an unusual fluctuation in the value of the share and securities rather than an individual case, where the share may have been sold off in an unauthorized or fraudulent manner.

m. Section 15(I) of the SEBI Act, 1992 relates to adjudicating the power of the SEBI in respect of the provision of Section 15(a), 15(b), 15(c), 15(d), 15(e), 15(f), 15(g), 15(h), 15(h)(a) and 15(h)(b) of the SEBI Act, 1992 and the same does not provide for an independent power to adjudicate in the event, any matter is not covered by the aforesaid Sections.

10. In the instant case, the allegation of the petitioners as regards the unauthorized and fraudulent sell of their shares and securities are not covered by any of the aforesaid provision of the SEBI Act of 1992, and as such, in this respect it cannot be concluded that the SEBI has the power to adjudicate the present grievance of the petitioners under Sections 11(1), 11(2-B), 11(2-E), 11(2-i), 11(2-A), 11.3 and 11.4 and also Section 15 HA and 15-I of the SEBI Act of 1992.

11. In view of the analysis of the aforesaid provision and upon examining its applicability as regards the allegation of the writ petitioners of unauthorized and fraudulent sell of their shares by the respondent broker, it cannot be concluded that the SEBI has the authority and jurisdiction to enquire and investigate to such allegation in exercise of any of its power under the aforesaid sections of the SEBI Act, 1992.

12. The allegation of the petitioner being an allegation simplicitor of their shares being sold out by the respondent sub broker in a fraudulent manner without their authority would imply that such shares are sold off by forging the signature of the individual petitioners in the relevant documents that are required to be submitted in order to effect such a sell. The forging of the signature or creation of such a document in a fraudulent manner would clearly be within the realm of a criminal investigation rather than that of causing an act of inhibiting the development of the security or to adversely affect the confidence of the public in the growth and stability of the capital market.

13. In view of the aforesaid conclusions, we do not find it to a fit case for directing the SEBI to conduct an enquiry and enquire into the allegation of the petitioners as regards their allegation of unauthorized and fraudulent sell of their shares.

14. Further it is also taken note of that in response to the representation of the petitioners before the Chairman of SEBI raising such grievance, the matter had been appropriately placed before the Investor Grievance Redressal Committee at Kolkata and the minutes dated 31.10.2011 clearly provides that for such grievance, the petitioners may either go for arbitration or that the act complained of needs a forensic examination by the competent authority. From the said point of view also, the grievance raised before the SEBI authorities by the petitioners had been addressed and no infirmity can be found in such conclusion of the Investors Grievance Redressal Committee of the SEBI.

15. It is true that both the agreement between the investor and the brokers as well as the bye-laws of the Bombay Stock Exchange, wherein, the shares and securities in question were listed provides for an arbitration in the event of there being any dispute between the investors and the brokers.

16. The present dispute raised is apparently a dispute between the investors and the brokers and the arbitration clause being provided thereof, the jurisdiction of the SEBI authorities to enquire and investigate against such allegation would also be barred under the law. Further as regards the other observation of the Investors Grievances Redressal Committee, that it would be apposite for the petitioners to have their transaction be considered in a forensic examination by the competent authority, such conclusion also cannot be faulted with inasmuch as, the core allegation of the petitioners is that the documents pertaining to the sell of their shares and securities were done by forging their signatures and by manipulating them in a fraudulent manner.

17. Both the situation requires a forensic proof, which apparently is not within the jurisdictional authority of the SEBI. From the said point of view also the conclusion of the Investors Grievance Redressal Committee of the SEBI cannot be faulted with.

18. It is fundamentals of criminal jurisprudence that criminal investigation can be made only upon being statutorily empowered for the purpose and no authority can assume a jurisdiction to make a criminal investigation.

19. From the aforesaid point of view also, the relief sought in the writ petition that the SEBI be directed to make an investigation on the allegation that the shares of the petitioners were fraudulently sold off by the respondent sub broker, accordingly, cannot agreed upon. As already eluded, no provision in the SEBI Act is found which would empower the SEBI authorities to make an investigation of such allegation of fraudulent sell of shares, which, otherwise is within the realm of a criminal investigation.

20. In such view of the matter, no merit is found in the relief claimed by the petitioners for causing an investigation and enquiry by the SEBI authorities in respect of their allegation of their shares being sold off in an unauthorized manner by the respondent broker and further to direct the SEBI to cause a penalty be paid by the respondent broker to the petitioners.

21. However, the rejection of the aforesaid relief being claimed by the petitioners in the present writ petition shall not preclude the petitioners from pursuing with any other remedy that may available to them under the law

22. In view of the aforesaid aspect that the writ petition has been dealt on its merit in the background of the factual situation and the related law applicable, the other contention of the respondent Reliance Security Limited that the petition is not maintainable *inasmuch as* the petitioner No.60 has no *locus standi*, and the affidavit accompanying the writ petition was made by him, need not be answered for the present.

23. Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant