IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

MONDAY, THE 11TH DAY OF SEPTEMBER 2023 / 20TH BHADRA, 1945

WP(C) NO. 15627 OF 2022

PETITIONER:

M/S. MUTHOOT FINANCE LIMITED,2ND FLOOR, MUTHOOT CHAMBERS , OPP. SARITHA THEATE COMPLEX, BANERJI ROAD, ERNAKULAM, KERALA 682 018 , REPRESENTED BY ITS AUTHORISED SIGNATORY, SHRI. BIJIMON KUTTIKATTU RAJAPPAN.

BY ADVS.
SANTHOSH MATHEW
VIJAY V. PAUL
ANANDAPADMANABHAN UNNIKRISHNAN
GOKUL ASOK
AIVAN RAJ
SHERYL ELIZABATH SEBASTIAN

RESPONDENTS:

1 COMPETITION COMMISSION OF INDIA,9TH FLOOR, OFFICE BLOCK -1, KIDWAL NAGAR (EAST), NEW DELHI 110023, INDIA REPRESENTED BY ITS SECRETARY.

2 SECURITIES AND EXCHANGE BOARD OF INDIA,C4-A, 'G' BLOCK BANDRA KURALA COMPLEX, BANDRA (EAST) MUMBAI 400051. REPRESENTED BY ITS CHAIRPERSON.

3 TRUSTEESHIP ASSOCIATION OF INDIA,C/O IL & FS TRUST COMPANY LIMITED, IL & FS FINANCE CENTRE, PLOT NO. C-22, G BLOCK, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDRA (EAST) MUMBAI 400051. REPRESENTED BY ITS AUTHORISED SIGNATORY MS. DEEPA RATH.

4 IDBI TRUSTEESHIP SERVICES LIMITED,GROUND FLOOR, ASIAN BUILDING, 17, R KAMANI RD, BALLARD ESTATE, FORT, MUMBAI MAHARASHTRA 400001. REPRESENTED BY ITS AUTHORISED SIGNATORY MR. SHIVAJI B GUNWARE.

5 AXIS TRUSTEE SERVICES LIMITED,AXIS HOUSE, BOMBAY DYEING MILLS COMPOUND, PANDURAG BUDHKAR MARG, WORLI, MUMBAI 400 025, REPRESENTED BY ITS AUTHORISED SIGNATORY MS. DEEPA RATH.

6 SBICAP TRUSTEE COMPANY LIMITED,SBICAP TRUSTEE CO.LTD., 202, MAKER TOWER 'E', CUFFE PARADE, COLABA MUMBAI, 400

005, REPRESENTED BY ITS AUTHORISED SIGNATORY R LAKSHMINARAYANA RAO.

BY ADVS.
MANU S., ASG OF INDIA
K.M.JAMALUDHEEN
MANJU RAJAN
JAYALEKSHMI D.S
G.JAYAPRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM,J

W.P.(C).No.15627 of 2022

Dated this the 11th day of September, 2023

JUDGMENT

Petitioner has approached this Court seeking to quash Ext.P10 to the extent to which it finds that there is a prima facie violation of Section 45 of the Competition Act, 2002.

2. Brief facts necessary for the disposal of the writ petition are as follows: Petitioner is a publicly listed company limited by shares incorporated under the Companies Act, 1956. Petitioner has been issuing Non-Convertible Debentures (NCDs) through public issues and through private placements with the 4th respondent as its debenture trustee for over 10 years. In the month of August 2021, the petitioner sought a fee quote from the 4th respondent for acting as its debenture trustee for its proposed private placement of secured NCDs worth INR 982 crores. In response to this proposal, the 4th respondent quoted a fee structure several folds higher than its previous

pricing mechanism. The 4th respondent claims that this revised pricing structure has been decided and enforced by the 3rd respondent. According to the 4th respondent, the 3rd respondent is preventing its members from charging a fee below the exorbitantly high pricing structure fixed by the 3rd respondent. Petitioner would contend that Exts.P4, P5 and P6 would show the increase in the fee structure. Aggrieved by the anti-competitive agreement entered into by the 3rd respondent in consort with its members, including respondent Nos. 4 to 6 and by the abuse of its dominant position in the relevant market, the petitioner approached the 1st respondent, Competition Commission of India by filing Ext.P1 information as provided under Section 19 of the Competition Act, 2002 ("Act 2002") for violations under Sections 3 and 4 of the Act 2002. On receipt of Ext.P1, the 1st respondent as per Ext.P2 order dated 23.12.2021 directed the Director General of the Competition Commission of India to carry out an investigation in the above matter as the 1st respondent was of the prima facie view that

there is contravention of Section 3(3)a, r/w Section 3(1) of the Act 2002 by respondents 3 to 6. Petitioner submits that their complaint, Ext.P1, is perfectly legal and valid and that is the reason why as per Ext.P2 order investigation was ordered through the Director General. Petitioner would submit that there is clear violation of Section 3(3) of the Act 2002 and the action of the respondents has an appreciable adverse effect on competition. Petitioner has a further contention based on Section 4 of the Act 2002 which prohibits the abuse of a dominant position of any enterprise or a group in the matter of fixation of price in purchase and sale. The case of the petitioner is that the 3rd respondent in consort with its members has made it difficult for the petitioner to continue issuing NCDs due to the unexpected and steep increase in the pricing mechanism of its trusteeship service and the petitioner was constrained to accept the terms of the 4th respondent under protest so that its fund raising through NCDs could go unhindered and since the

petitioner did not have a suitable alternative at the time. While the investigation was going on as ordered as per Ext.P2, the 3rd respondent filed Ext.P7 application before the 1st respondent alleging willful omission and suppression of material facts by the petitioner in Ext.P1 information. Ext.P7 application was filed relying on Regulation 10 of the Competition Commission of India (General) Regulations, 2009 which mandates that the details of litigation or dispute pending between the informant and parties before any court, tribunal, statutory authority or arbitrator in respect of the subject matter of information should be furnished. The 3rd respondent in Ext.P7 alleged that Ext.P8 letter had been sent by the petitioner to the 2nd respondent on 31.8.2021 to bring to its notice an act of potential cartelization by debenture trustees acting under the banner of the 3rd respondent. While considering Ext.P7 application, the 1st respondent as per order dated 29.3.2022, directed the petitioner to confirm as to whether it had approached the 2nd respondent vide a

complaint dated 31.08.2021 as alleged by the 3rd respondent. In compliance with the aforesaid direction of the 1st respondent, the petitioner submitted Ext.P9 detailed reply to Ext.P7 application dated 2.4.2022 filed by the 3rd respondent. Subsequently, on 4.4.2022, i.e. within two days of the filing of the response, without affording an opportunity of hearing, the 1st respondent passed Ext.P10 order stating that the petitioner has prima facie contravened the provisions of Section 45 of the Act and the petitioner was directed to show cause as to why proceedings against it, in terms of the provisions of Section 45 of the Act 2002, should not be initiated for its failure to inform the 1st respondent about the communication dated 31.8.2021 (Ext.P8) made before the 2nd respondent. Section 45 of the Act 2002 provides penalty for offences in case of failure to furnish information. Petitioner would further point out that in Ext.P10, the 1st respondent has sought for opinion/comment from the 2nd respondent before whom it is alleged that the

petitioner has submitted Ext.P8 complaint. The specific case of the petitioner is that issuance of Ext.P10 show cause notice on a finding that the petitioner has violated Section 45 of the Act 2002 is bad in law in as much as the same has been issued without even affording an opportunity of being heard to the petitioner. Petitioner further submits that the mandate in Regulation 10 of the Competition Commission of India (General) Regulations, 2009 will not come into play in the present case in as much as a mere letter submitted before the 2nd respondent cannot *ipso facto* be deemed to be a litigation or dispute without cognizance thereof being taken by the 2nd respondent as a formal dispute in an adjudicating capacity. The petitioner is not aware as to whether Ext.P8 application has been accepted and any proceedings have been initiated on the basis of the same. The petitioner would further submit that in Ext.P7 application before the 1st respondent, the 3rd respondent falsely claims that the 2nd respondent had issued notice to the 3rd respondent

based on Ext.P8. On 21.02.2022, the 2nd respondent sent a letter to the 3rd respondent in response to a letter dated 24.11.2021 sent by the 3rd respondent seeking details regarding the information filed by the petitioner with the 1st respondent. A perusal of the said letter dated 21.02.2022 which is produced as Ext.P11 would reveal that the 2nd respondent has issued the said letter and convened a meeting on 24.2.2022 to discuss the revised fee structure solely based on the 3rd respondent's own request and not based on Ext.P8 sent by the petitioner. Petitioner further submits that even admitting for argument sake that Ext.P8 amounts to a litigation or dispute pending between the petitioner and respondents Nos.3 to 6 before a statutory authority, such litigation or dispute is not in response to the subject matter of the information filed by the petitioner before the 1st respondent. Petitioner would further submit that the 3rd respondent has approached the High Court of Bombay by filing WP(C) No.3781/2022 challenging Ext.P2 investigation order. The

petitioner would further submit that respondents 3 to 6 have also approached the High Court of Bombay by filing WP(C) Nos.3791 of 2022, 3842/2022 and 3847 of 2022 seeking similar reliefs. Petitioner also submits that on 15.2.2022, Ext.P14 notice was issued by the Director General to the 3rd respondent in furtherance of the investigation order dated 23.12.2021 seeking information from the 3rd respondent pertaining to the contravention of Section 3(3) r/w Section 3(1) of the Act, 2002. The said notice, Ext.P14, was also under challenge in the above-stated writ petitions. On 14.12.2021, the 3rd respondent filed an application before the 1st respondent for making a reference to the 2nd respondent for seeking its opinion under Section 21(A) of the Act, 2002. However, as per Ext.P15 order dated 8.2.2022, the said application was rejected by the 1st respondent since the investigation is already pending before the Director General. The said Ext.P15 order was also challenged before the High Court of Bombay. In those writ petitions, Exts.P16 and P17 common

orders were issued by the High Court of Bombay, by which the 2nd respondent herein was granted time to complete the enquiry to form a prima facie view on the matter until the SEBI concludes its enquiry, the 1st respondent and the Director General were directed, not to adjudicate further any further and not to take any further steps in the matter that is pending before it. Petitioner submits that in view of the said interim orders produced as Exts.P16 and P17, no further steps ought to have been initiated against the petitioner. It is in the said circumstance, that the petitioner has approached this Court challenging Ext.P10. Petitioner relied on Ext.P18 counter affidavit filed by the 1st respondent in WP(C) No.3847 of 2022 before the High Court of Bombay submits that Ext.P8 letter sent by the petitioner before SEBI does not pertain to the subject matter of the information and the same cannot be stated as a litigation or dispute between the informant and parties before any Court, Tribunal, Statutory Authority or Arbitrator.

3. A detailed counter affidavit has been filed

by the 1st respondent, wherein it is admitted that pursuant to Ext.P1 complaint preferred by the petitioner, Ext.P2 investigation order was issued and thereafter, by Ext.P7 complaint, the 3rd respondent pointed out that petitioner had previously filed a complaint before SEBI, the 2nd respondent herein, raising similar allegations. Thereupon, a copy of the complaint was forwarded to the petitioner with a direction to file its response making it clear that if no response is received by 01.04.2022, the Commission shall draw an adverse inference against the petitioner with consequential directions. Thereupon the petitioner filed Ext.P9 detailed response and after considering the response filed by the petitioner, Ext.P10 order was issued wherein the Commission opined that the informant ought to have disclosed the details regarding the filing of the complaint before the 2nd respondent and having not done so, the informant has prima facie contravened the provisions of Section 45 of the Act 2002. The further contention of the 1st respondent is that

Ext.P10 is only a show cause notice and therefore, filing of the writ petition is highly premature since the petitioner has complete liberty to defend its case by replying to the show cause notice. The 1st respondent relies on the judgment in ***The Special Director and Others v. Mohd. Ghulam Ghouse and Others (AIR 2004 SC 1467).*** For challenging the order issued under Section 45 of the Act 2002 an effective alternate remedy is provided under Section 53A(a) of the Act 2002 to approach the National Company Law Appellate Tribunal (NCLAT) and in view of the effective alternate remedy available to the petitioner the above writ petition is not maintainable.

4. A counter affidavit has also been filed by the 2nd respondent wherein it is stated that the petitioner has preferred Ext.P8 complaint before the 2nd respondent alleging exorbitant fee fixed by the Debenture Trustees and its Association and the contention of the petitioner that their attempt was only to bring the alleged increase in fees and cartelization to the notice of this respondent and

not for any action by the respondent cannot be accepted. The 2nd respondent further contended that they are well within their power to initiate any action based on a complaint in the nature of Ext.P8 and their authority to do so has been settled by the Apex Court in ***Competition Commission of India v. Bharti Airtel Limited (2019) 2 SCC 521***.

5. I have heard the rival contentions on both sides.

6. The question to be considered is as to whether any interference is called for against Ext.P10. Ext.P1 information was submitted by the petitioner before the 1st respondent under Section 19 of the Act 2002 alleging violation of Sections 3 and 4 of the Act 2002. By Ext.P2 order, the 1st respondent being prima facie satisfied that there is contravention of the provision of the Act, 2002 directed the Director General to conduct an investigation in this regard. The situation which led to the issuance of Ext.P10 show cause notice against the petitioner by the 1st respondent was

its submission of Ext.P8 letter to the 2nd respondent bringing to its attention the potential cartelization by debenture trustees acting under the banner of the 3rd respondent. Ext.P10 was issued as mandated as per the provisions of Section 45 of the Act 2002, which provides for penalty in case where any person furnishing any information to the 1st respondent omits to state any material facts. In the context of issuance of Ext.P10 show cause notice, the stand taken by the 1st respondent in the counter affidavit filed before the High Court of Bombay in the writ petitions filed by respondents Nos.3,4 and 5 as WP(C) No.3781/22,3791/22 and 3842/22 assumes importance. In the said counter affidavit, the stand taken by the 1st respondent is that they have exclusive jurisdiction to deal with violations of the Act 2002 and the SEBI Act 1992, along with Rules and Regulations framed thereunder do not contain any provision analogues to Section 3 of the Act 2002, i.e., dealing with the prohibition of anti-competitive agreements, including the fixing of

purchase or sale price by associations. In the said counter affidavit, further stand taken is that the investigation by the 1st respondent is independent of SEBI's finding and there are no jurisdictional facts, especially arising from any *in personam* disputes, that require the consideration of SEBI and it was further stated that the complaint filed by the petitioner with SEBI does not allege any violation of SEBI Act or any regulation framed thereunder and the complaint before the SEBI only alleges that the action of debenture trustees amount to cartelization under the Competition Law. It is further stated in Ext P18 counter affidavit that the alleged behaviour of the petitioner is immaterial to the 1st respondent's power to investigate which can even be exercised *suo moto*, especially in view of the fact that the alleged suppression of complaint before SEBI has no material impact on the issues raised by the petitioner and that the said issues can still be looked into by the 1st respondent divorced from the conduct or motive of the petitioner and the mere

non disclosure of SEBI complaint would not affect the investigation carried out by the 1st respondent. On the basis of the said stand taken by the 1st respondent in Ext.P18 counter affidavit especially the stand that the alleged suppression of the complaint preferred before the SEBI, the 2nd respondent herein, has no material impact on the issue raised by the petitioner and the stand that the complaint preferred by the petitioner before SEBI does not allege any violation of SEBI Act or Regulations framed thereunder, I find considerable force in the contention of the petitioner that the issuance of Ext. P10 by the 1st respondent lacks non-application of mind. Another crucial aspect is that Ext.P10 is not just a mere show cause notice. A reading of Ext.P10 would reveal that it is a show cause notice issued after prima facie entering a finding that the petitioner has contravened the provisions of Section 45 of the Act 2002, that too after calling for response from the petitioner, to which the petitioner has submitted a detailed objection also. In view of the above facts and

circumstances, I am of the opinion that Ext P10 ought to have been issued only after affording an opportunity of being heard to the petitioner and after duly considering the objection filed by the petitioner. The specific contention of the petitioner that Ext.P10 has been issued without hearing is not denied in the counter affidavit filed by the 1st respondent. Yet another aspect which has not been duly considered while issuing Ext P10 is the stand of the 1st respondent in Ext P18 counter affidavit filed before the High Court of Bombay. In view of the above, I am of the opinion that the petitioner cannot be non suited relying on the judgment in ***Mohd. Ghulam Ghouse's*** case cited supra. Had an opportunity of hearing been afforded to the petitioner, they could have represented their case in a better manner based on their contentions taken in the objection filed before the 1st respondent and also based on the stand of the 1st respondent in Ext P18 counter affidavit filed before the High Court of Bombay, especially when there is a prima facie finding

entered in Ext.P10 that there is violation of Section 45 of the Act 2002.

Therefore, I am of the opinion that Ext P10 is liable to be interfered with. The above writ petition is disposed of quashing Ext.P10 with a consequential direction to the 1st respondent to reconsider the matter after affording an opportunity of being heard to the petitioner and all other affected parties including respondents nos. 2 to 6 and take a final decision in the matter within an outer limit of three months from the date of receipt of a copy of this judgment.

sd/-

VIJU ABRAHAM,
JUDGE

pm

APPENDIX OF WP(C) 15627/2022

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE INFORMATION FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.
Exhibit P2	TRUE COPY OF THE INVESTIGATION ORDER DATED 23.12.2021 PASSED BY THE IST RESPONDENT.
Exhibit P3	TRUE COPY OF THE E-MAIL COMMUNICATION SENT BY THE 4TH RESPONDENT TO THE PETITIONER WITH THE REVISED FEE QUOTE.
Exhibit P4	TRUE COPY OF THE E- MAIL COMMUNICATION SENT BY THE 4TH RESPONDENT STATING THE REASON FOR THE PRICE HIKE.
Exhibit P5	TRUE COPY OF THE REVISED PRICING STRUCTURE FOR PROVIDING TRUSTEESHIP SERVICES TO ISSUERS.
Exhibit P6	TRUE COPY OF THE PREVISIONS FEE STRUCTURE COMMUNICATION BY THE 4TH RESPONDENT VIDE EMAIL DATED JUN 26.2020.
Exhibit P7	TRUE COPY OF THE APPLICATION DATED 14.03.2022 FILED BY THE 3RD RESPONDENT BEFORE THE IST RESPONDENT.
Exhibit P8	TRUE COPY OF THE LETTER DATED 31.08.2021 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
Exhibit P9	TRUE COPY OF THE REPLY FILED BY THE PETITIONER ON 02.04.2022 TO EXHIBIT P7 APPLICATION FIELD BY THE 3RD RESPONDENT BEFORE THE IST RESPONDENT.
Exhibit P10	TRUE COPY OF THE ORDER DATED 04.04.2022 PASSED BY THE IST RESPONDENT.
Exhibit P11	TRUE COPY OF THE LETTER DATED 21.02.2022 SENT BY THE 2ND RESPODNENT TO THE 3RD RESPONDENT.

Exhibit P12	TRUE COPY OF THE SEBI CIRCULAR DATED 26.03.2018.
Exhibit P13	TRUE COPY OF THE FAQS AVAILABLE ON THE SCORES WEBSITE.
Exhibit P14	TRUE COPY OF THE NOTICE DATED 15.02.2022 ISSUED BY THE DG.
Exhibit P15	TRUE COPY OF THE ORDER DATED 08.02.2022 PASSED BY THE IST RESPONDENT.
Exhibit P16	TRUE COPY OF THE ORDER DATED 08.04.2022 PASSED BY THE HON'BLE HIGH COURT OF BOMBAY IN WPC NO. 3781/2022 WPC NO. 3791/2022 AND WPC NO. 3847/2022.
Exhibit P17	TRUE COPY OF THE ORDER DATED 11.04.2022 PASSED BY THE HON'BLE HIGH COURT OF BOMBAY IN WPC NO . 3781/2022 . WPC NO. 3791/2022 . WPC NO. 3842/2022 AND WPC NO/. 3847/2022.
Exhibit P18	TRUE COPY OF THE COUNTER AFFIDAVIT FILED W.P.(C) NO.3847/2022 BY THE COMPETITION COMMISSION OF INDIA AND OTHERS BEFORE THE HON'BLE COURT OF JUDICATURE AT BOMBAY.

RESPONDENTS' EXHIBITS

Exhibit R2(a)	. TRUE COPY OF THE JUDGMENT OF THE HIGH COURT OF BOMBAY IN WRIT PETITION NO.3781/2022 AND CONNECTED CASES DATED 21-2-2023