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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

THURSDAY, THE 25TH DAY OF MAY 2023 / 4TH JYAISHTA, 1945

WP (C) NO. 32861 OF 2022

PETITIONER/S:

BRD SECURITIES LTD.,
HAVING ITS REGISTERED OFFICE AT DOOR NO.
XIII/436, A2, 1ST FLOOR, BETHANY COMPLEX,
KUNNAMKULAM, THRISSUR - 680503, KERALA
REPRESENTED BY ITS DIRECTOR, MR. WILLIAM
VERGHESE CHUNGATH CHERU.

BY ADVS.
E.K.NANDAKUMAR (SR.)
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN
PRANOY HARILAL

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF
FINANCE, RAJPATH MARG, E BLOCK, CENTRAL
SECRETARIAT, NEW DELHI - 110011.
- 2 THE SECURITIES AND EXCHANGE BOARD OF INDIA,
REPRESENTED BY ITS CHAIRMAN /WHOLE TIME MEMBER
SEBI BHAVAN I, PLOT C4A-G BLOCK, BANDRA KURLA
COMPLEX, MUMBAI - 400051.
BY ADVS.
SRI.S.VAIDYANATHAN, CGC
K.M.JAMALUDHEEN
LATHA PRABHAKARAN
RAJU JOSEPH (SR.)

OTHER PRESENT:

DSGI S. MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02.02.2023, THE COURT ON 25.05.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 25th day of May, 2023

The petitioner is an unlisted public limited company registered with the Reserve Bank of India as a Non-Banking Finance Company (NBFC) and carrying on the business of asset financing. The second respondent is the Securities and Exchange Board of India (SEBI) constituted under the Securities and Exchange Board of India Act, 1992 with the objective of protecting the interest of investors in securities and regulating the securities market.

2. On 18.03.2020, the petitioner was served with Ext.P3 show cause notice issued by the second respondent alleging violation of provisions of the Companies Act, 1956, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Disclosure and

Investor Protection) Guidelines, in the issuance of debentures and bonds during the period 2003 to 2017. Refuting the allegations and asserting that it has not contravened any statutory provision, regulations or guidelines, the petitioner submitted Exts.P4 and P5 replies and requested for a personal hearing. By Ext.P6 letter, the petitioner was informed that personal hearing would be held before the Whole Time Member of the Board. However, the hearing scheduled on 22.02.2022 was adjourned. Thereafter, by Ext.P8 letter, the petitioner was informed that the personal hearing would be held before the Chief General Manager on 03.10.2022. However, by Ext.P9 letter it was informed that the hearing before the Chief General Manager was adjourned to 18.10.2022. The writ petition was filed at that stage.

3. Senior Advocate E.K.Nandakumar appearing for the petitioner contended that, the proposed

proceedings being quasi-judicial in nature conducted only by the SEBI Board established as per Section 3(1) of the SEBI Act. The functions of the Board, enumerated in Section 11, cannot be delegated to an officer of the Board. Likewise, as per Section 11A, only the Board is empowered to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities. Again, under Section 11B, the Board alone is vested with the authority to issue directions in the interest of investors, the orderly development of the securities market etc and levy penalties. Although Section 19 of the SEBI Act provides for delegation of the Board's powers and functions (except the powers under Section 29) to any member, officer of the Board or any other person, the provision does not envisage delegation of quasi-judicial functions of the Board. The SEBI (Delegation of Statutory and Financial Powers) Order, 2019, issued in

purported exercise of power under Section 19, providing for delegation of Board's function, including those under Sections 11(1), 11(4A), 11B(1), 11B(2), 11B of the SEBI Act or any regulations framed by SEBI to the Chief General Manager, is *ultra vires* the SEBI Act, to the extent, the quasi-judicial functions of the Board is delegated. It is argued that, wherever delegation of powers is intended and permissible, the SEBI Act specifically provides for such delegation as in Section 11C, dealing with appointment of Investigating Authority and Section 15I providing for appointment of Adjudicating Officer. This is for the reason that the Board is best suited to exercise quasi-judicial functions as the members are persons with expertise and knowledge, either appointed or nominated by the Central Government or nominated by the Reserve Bank.

4. To drive home the contention that quasi-judicial functions cannot be delegated, learned Senior Counsel drew attention to the meaning of 'permissible delegation' in 4th Edition (Volume 1) of *Halsbury's Laws of England*, extracted below;

"750. Permissible delegation. An authority to delegate will in some cases be implied, generally on the ground that there is no personal confidence reposed or skill required, and that the duties are capable of being equally well discharged by any person."

Reference was made to the 10th Edition of Wade's *Administrative Law*, to point out that the statutory power to delegate functions, even if expressed in wide general terms, will not necessarily extend to everything. Moreover, in the case of judicial and disciplinary functions, the court should construe the general powers of delegation restrictively.

5. Precedential support for the above

proposition was sought to be drawn from **Barnard and others v. National Dock Labour Board and another** **[[1953] 2 QB 18)**. Therein, the question, whether disciplinary power vested with the National Dock Labour Board could be exercised by a delegated authority was considered. After elaborate discussion, it was held that the decision whether or not to impose penalty is a judicial act or, at least, a quasi-judicial decision and cannot, from any reasonable point of view, be regarded as merely administrative. Being so, the decision, by its very nature, is incapable of being delegated.

6. For the purpose of distinguishing quasi-judicial functions from statutory functions, reference was made to the decision in **Indian National Congress v. Institute of Social Welfare and others** **[(2002) 5 SCC 685]**, wherein, the Apex Court had laid down the following principles;

"24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial."

On the same point, **National Securities Depository Ltd. v. SEBI [(2017) 5 SCC 517]** was also cited. To support the contention that quasi-judicial functions cannot be delegated, the decision of the Karnataka High Court in **Pepsico Restaurants International (India) Pvt.Ltd, New Delhi and others v. Corporation of the City of Bangalore and others [ILR 1996 Karnataka 1357]** and that of the High Court of Uttarakhand in **Savita Chaudhary v. State of Uttarakhand and others [2018 SCC**

OnLine Utt 174], were pressed into service.

7. Replying to the above contentions, Senior Advocate, Raju Joseph appearing for the second respondent, put forth the following arguments;

The SEBI is a regulatory authority. Section 11(1) of the SEBI Act casts the Board with the duty of protecting the interest of investors in securities, to promote the development and regulate the securities market, by such measures as it things fit. Section 19 of the Act *inter alia* allows delegation of such powers and functions to a member or officer of SEBI. In exercise of the power under Section 19 of the SEBI Act, the Board delegated its statutory, financial powers and functions to such members or officers of the Board, as specified in the Securities and Exchange Board of India (Delegation of Statutory and Financial Powers)

Order, 2019 ("Delegation of Powers Order"). Vide the aforesaid Delegation of Powers Order, the Board/SEBI has delegated the quasi-judicial functions to individual Whole-Time Members (WTMs) of the Board. Later, the Delegation of Powers Order was amended with effect from 25.07.2022. By such amendment, the quasi-judicial functions of the Board under Sections 11(1), 11(4), 11(4A), 11B(2), 11D or any regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) can be delegated to the officials of the Board holding the office of Chief General Managers (CGMs) and Executive Directors (EDs) of the Board. Matter in which interim, confirmatory or revocation order is contemplated, are dealt with only by a Whole Time Member and not by the Chief General Manager (CGM) and Executive Director (ED). The above delegation of quasi-judicial functions under Sections 11(1), 11(4), 11(4A), 11B(2), 11D

or regulations framed by SEBI (where no interim, confirmatory order is envisaged in the matter) to Senior Officials of SEBI, reduces the pendency of quasi-judicial work at SEBI and timely disposal of the proceedings. The said quasi-judicial process include effective service of Show Cause (SCNS) and hearing notices, consideration of adjournment requests, conducting hearings etc. In order to minimize any challenge, including constraints in concluding the quasi-judicial proceedings, the Delegation of Powers Order was amended, so as to provide the Board with a wider pool of quasi-judicial authorities. The delegation of quasi-judicial functions and issuance of directions under Sections 11(1), 11(4), 11(4A), 11B, 11D of the SEBI Act or under any Regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) to the Chief General Manager and Executive Director also in addition to the WTM,

was legally and validly made in terms of the express provision of delegation of power given to SEBI under Section 19 of the SEBI Act. It is pointed out that the petitioner had earlier challenged the show cause notices dated 05.04.2019 and 12.12.2019, as also the notice of hearing dated 14.01.2022 issued by the SEBI in the matter of deemed public issue of equity shares, by filing W.P.(C) No.4939 of 2020. That writ petition was disposed of, observing that it was inappropriate for the court to interfere with the statutory proceedings at the show cause notice stage. In the instant case also, the challenge is against show cause notices and by virtue of an interim order, the petitioner successfully delayed a legally and validly instituted proceeding.

8. In answer to the argument that quasi-judicial functions cannot be delegated, the Senior Counsel contended that the general

principle has no application when statute specifically provide for such delegation. In this regard, reliance is placed on the decision in **Sahni Silk Mills (P) Ltd. v. ESI Corpn. [(1994) 5 SCC 346]**. Therein, the challenge was against the delegation of power on the Regional Director of the Employees State Insurance Corporation in exercise of the power under Section 94A of the Employees State Insurance Act. The order imposing damages passed by the Regional Directors under Section 85B, on the strength of the delegated power, was questioned on the ground that the power under Section 85B could have been exercised either by the Corporation or its Director General and not by the Regional Director. The Apex Court repelled the challenge and held that the legislature can permit any statutory authority to delegate its power to any other authority, if the policy is indicated in the statute itself.

Attention was also drawn to the decision in **DKG Buildcon (P) Ltd. v. SEBI [(2023) 3 SCC 689]**, wherein the adjudicating officer's power to adjudicate violations under Section 15A(a) of the SEBI Act and impose penalty was repelled. **M/s.Newtech Promoters and Developers Pvt.Ltd v. State of UP and others etc. [2021 SCC OnLine SC 1044]** was cited, to point out that, the challenge was against the delegation made by the Real Estate Regulatory Authority in exercise of its power under Section 81 of the Real Estate (Regulation and Development) Act, 2016 which is in *para meteria* with Section 19 of the SEBI Act was held unsustainable.

9. The fact that the functions under Sections 11(1), 11(4), 11(4A), 11B, 11D of the SEBI Act are quasi-judicial in nature being irrefragable, the question arising for consideration is whether those functions can be

delegated to an officer, since the requirement is of the Board itself exercising that function. For answering that question, it is necessary to have a look at Section 19;

"19. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29), as it may deem necessary."

It is also essential to understand the difference between statutory functions and quasi-judicial functions. The distinction, as explained by Prof. H.W.R Wade in Administrative Law, 6th Edn., is as follows;

'A judicial decision is made according to law, while an administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice.'

10. Among the decisions cited, **Pepsico Restaurants International (India) Pvt.Ltd** (*supra*), considered the question whether the quasi-judicial power vested with the Municipal Commissioner could be delegated to a Health Officer by invoking Section 66 of the Karnataka Municipal Corporations Act, 1996. The challenge was upheld on the premise that Section 66 empowered the Commissioner to delegate only his ordinary powers, including the one specified in Schedule III and did not empower delegation of quasi-judicial powers to any of the officers, except the one specified in Scheduled III.

11. In **Savita Chaudhary** (*supra*), the Uttarakhand High Court went on to observe that it is the settled position of law that judicial and quasi-judicial powers cannot be delegated. In the absence of any discussion or reasoning in support of that conclusion, the decision cannot

be taken as an authoritative pronouncement.

12. Coming to the decisions cited by the second respondent, the following observation in **DKG Buildcon (P) Ltd** (supra), is of relevance, even though the issue involved was different;

"It is also pertinent to mention that Section 19 of the 1992 Act provides that SEBI may delegate to any member, officer of SEBI or any other person, such of its powers and functions under this Act (except the powers under Section 29) as it may deem necessary. Thus, when the appellants failed to comply with the directions issued under Section 11-C(3) of the 1992 Act and failed to produce the required documents and information, the investigating authority, being a delegated authority of SEBI, was empowered to levy the penalty as provided in Section 15-A(a) of the 1992 Act. Hence, we find no merit in these appeals. The appeals are dismissed. Parties to bear their respective costs."

13. In **M/s.Newtech Promoters and Developers Pvt.Ltd** (supra), the challenge was with respect to the delegation under Section 81 of the Real

Estate (Regulation and Development) Act, empowering a member of the authority to hear and decide complaints under Section 31 of that Act. It was contended that Section 81 permits the Authority to delegate only powers and functions which are mainly administrative or clerical and not core functions including judicial functions to be discharged by the Authority. The contention did not find favour for the reasons stated below;

"117. The further submission made by learned counsel for the appellants that Section 81 of the Act permits the authority to delegate such powers and functions to any member of the authority which are mainly administrative or clerical, and cannot possibly encompass any of the core functions which are to be discharged by the authority, the judicial functions are non delegable, as these are the core functions of the authority. The submission may not hold good for the reason that the power to be exercised by the authority in deciding complaints under Section 31 of the Act is quasi judicial in nature which is delegable provided there

is a provision in the statute. As already observed, Section 81 of the Act empowers the authority to delegate its power and functions to any of its member, by general or special order."

14. The question whether a Whole-Time Member of SEBI has the power to cancel/withdraw recognition of a stock exchange under Section 5 of the Securities Contracts (Regulations) Act, 1956 was considered by the Gujarat High Court and the notification dated 30.09.1994 issued by the SEBI in exercise of the power under Section 29 A of the Securities Contracts (Regulations) Act r/w Section 19 of the SEBI Act, delegating the full time member of the Board with the power to exercise the functions under Section 11 of the SEBI Act, upheld. The Apex Court dismissed the SLP filed against that judgment, affirming the finding of the Gujarat High Court. This position was reiterated by the Supreme Court in **Saurashtra Kutch Stock Exchange Ltd v. SEBI and**

another [2012 (13) SCC 501].

15. The delegation of quasi-judicial power to whole-time member having thus been approved, the challenge against delegation of powers to the Chief General Manager/ Executive Director brought in by way of amendment dated 25.07.2022 cannot also be interfered with. The fact that members of the Board are appointed/nominated by the Central Government and Reserve Bank, while the officers are appointed by the Board will not render the delegation bad. As observed in **Sahni Silk Mills (P) Ltd** (*supra*), in the present administrative set up judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to enormous rise in the nature of activities to be handled by the

statutory authorities, the maxim '*delegatus non potest delegare*' can no longer be applied blindly.

16. A conspectus of the decisions cited indicates that the wide power to delegate statutory and administrative functions gets restricted when it comes to quasi-judicial functions and is almost non-existent in the case of judicial functions. In the Indian context, delegation of quasi-judicial functions is permissible if the statute provides for such delegation. A plain reading of Section 19 of the SEBI Act shows that, all powers and functions of the Board (except the rule making power under Section 29) can be delegated to any member, officer or any other person.

For the aforementioned reasons, the challenge against Ext.P10 delegation order, to the extent it permits delegation of quasi-judicial functions

to an employee/officer of the second respondent,
and the consequential challenge against Ext.P9
communication, is rejected.

In the result, the writ petition is
dismissed.

Sd/-

V. G. ARUN
JUDGE

Scl/

APPENDIX OF WP(C) 32861/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE CERTIFICATE OF INCORPORATION DATED 09.03.1993 ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS.
- Exhibit P2 A TRUE COPY OF THE LATEST CERTIFICATE OF REGISTRATION DATED 29.05.2017 ISSUED BY THE RBI TO THE PETITIONER .
- Exhibit P3 A TRUE COPY OF THE SHOW-CAUSE NOTICE DATED 13.03.2020 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P4 A TRUE COPY OF THE REPLY (PART I) DATED 16.10.2020 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P5 A TRUE OF THE REPLY (PART II) DATED 15.12.2020 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P6 A TRUE COPY OF THE LETTER DATED 02.02.2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P7 A TRUE COPY OF LETTER DATED 02.02.2022 ISSUED BY THE 2ND RESPONDENT TO MR. WILLIAM VARGHESE CHUNGATH.
- Exhibit P8 A TRUE COPY OF THE LETTER DATED 22.09.2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P9 A TRUE COPY OF LETTER DATED 26.09.2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P10 THE RELEVANT PORTIONS OF THE SEBI (DELEGATION OF STATUTORY AND FINANCIAL POWERS) ORDER, 2019. (DATED 31-07-2019) .