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

NOTICE OF MOTION (LODGING) NO.564 OF 2014  
IN  
WRIT PETITION NO.337 OF 2014

Financial Technologies (India) Limited

...Petitioner

V/s.

The Forward Markets Commission

...Respondent

Dr.Abhishek Manu Singhvi, Senior Counsel with Mr.Janak Dwarkadas, Senior Counsel, Mr.Kunal Dwarkadas and Mr.Abhishek Venkatraman i/b J.Sagar Associates for the Petitioner.

Mr.Iqbal Chagla, Senior Counsel with Mr.Simil Purohit, Mr.Mihir Mody and Mr.Rushin Kapadia i/b K. Ashar & Co. for the Respondent.

Mr.Gautam Ankhad with Ms.Hiral Thakkar i/b Federal & Rashmikant for the Intervenor / Applicant in Notice of Motion (Lodging) No.35 of 2014.

**CORAM : S.J. VAZIFDAR &**  
**REVATI MOHITE DERE, JJ.**  
**DATE : 17TH NOVEMBER, 2014.**

**P.C. :-**

1. This is the petitioner's notice of motion seeking a stay of an order dated 17.12.2013 passed by the respondent which is impugned in the petition. An earlier application for the same relief was rejected by a detailed order dated 28.02.2014 passed by a

previous Division Bench. Dr.Singhvi, the learned senior counsel appearing on behalf of the petitioner however, submitted that there are change in circumstances which justify this fresh application. We find no change in circumstances justifying our considering the application afresh.

2. By the impugned order, the respondent *inter-alia* concluded that the petitioner as the anchor investor in the Multi-Commodity Exchange Limited (MCX) does not carry a good reputation and character, record of fairness, integrity or honesty to continue to be a shareholder of the MCX and that the petitioner is not a fit and proper person to continue to be a shareholder of 2% or more of the paid-up equity capital of MCX, as prescribed under the guidelines issued by the Government of India for capital structure of commodity exchanges post five years of operation. The respondent further held that neither the petitioner nor any company / entity controlled by it shall hold any shares in any association / exchange recognized by the Government or the Registrar of the respondent in excess of the threshold limit of the total paid-up equity capital of such association / exchange, as prescribed under the commodity exchange guidelines. Several findings have also been rendered against the petitioner's Chairman-cum-Managing Director and two other Directors. The main allegation is regarding a fraud involving a

settlement default of over Rs.5500.00 crores at National Spot Exchange Limited (NSEL) which is the petitioner's wholly own subsidiary. The petitioner's Chairman-cum-Managing Director was, at the relevant time, a director on the Board of NSEL and also functioned as NSEL's Vice Chairman and key management person since inception of NSEL.

3. Dr.Singhvi contended that the impugned order has disastrous consequences for the petitioner. Pursuant to the order, the petitioner has already sold the shares of MCX at a loss of over Rs.290.00 crores. Worse still, he contends, the order is now being blindly followed by the other authorities such as CERC, SEBI, FSC and CBB. Compliance of the orders of these authorities / bodies would involve a further loss of over Rs.1000.00 crores.

4. This notice of motion in effect requires our taking a view contrary to the one taken by the earlier Division Bench in its order dated 28.02.2014. The Division Bench by this order granted rule but refused interim reliefs. The order refusing interim reliefs is in considerable detail and has dealt with most of the contentions raised before us. There are no change of circumstances of a nature that would justify our reopening the issue in another application also for the same interlocutory reliefs. Even at the interlocutory stage, the Division Bench dealt with the petitioner's application for stay of the

impugned order in considerable detail. At the relevant time, the petitioner held 26% of the equity shares in MCX and 99.99% in NSEL. The Division Bench recorded the contentions on behalf of the petitioner that serious consequences would follow on the basis of the impugned order. In this regard, the Division Bench referred to the affidavit in reply filed on behalf of the respondent, in which it *inter-alia* stated that the respondent has not directed the petitioner to divest all its shareholding in MCX and has merely held that the petitioner is not a fit and proper person to continue to hold 2% or more paid-up equity capital in MCX. The Division Bench accepted the statement. We do not wish to express any opinion regarding the effect of the statement. For the purpose of this order, it is sufficient for us to state that the contentions regarding the serious consequences of the order was raised before the previous Division Bench and that despite the same no interim reliefs were granted. A grievance in this regard can be raised only in an appeal and not in a subsequent notice of motion.

5. The reliance upon the order of the learned single Judge of this Court granting the petitioner's officers bail is not well founded. This order does not entitle us to vary the order of the previous Division Bench dated 28.02.2014. The Division Bench noted that the criminal investigations are in progress. They still are.

6. Firstly, the order granting bail does not alter the basis on

which the order dated 28.02.2014 was passed refusing interim reliefs. By an order dated 22.08.2014, the learned single Judge of this Court granted the petitioner's Chairman-cum-Managing Director bail. The order does not constitute a change in circumstance sufficient to take a different view at the interlocutory stage. Dr.Singhvi relied upon the observations of the learned single Judge to the effect that it is difficult to accept that the brokers and/or their clients were deceived by the NSEL inasmuch as in all probability, the brokers and the investors were well aware that they were not entering into a genuine sale and purchase contract ; that it is the borrowers who had benefited by the transactions and the money of the investors had gone to them and that the ill-gotten amount has not gone to the petitioner's Chairman-cum-Managing Director or for that matter to NSEL. Even assuming that these observations are justified, it would make no difference as far as the present application is concerned. Firstly, these observations are *prima-facie*, made in an application for bail preferred by the petitioner's Directors.

7. More important, it is not as if the petitioner and its Directors and officers have been given a clean chit by the said order. On the contrary, there are observations against them. For instance, the learned Judge also observed that at the stage of bail it cannot be accepted that the petitioner's Chairman-cum-Managing Director had

no knowledge of the illegalities / fraudulent transactions that were taking place in the activities by the NSEL ; that there are wrong doings ; it cannot be suggested that those who permitted such fictitious trading have not committed serious offences ; that illegal and bogus transactions of sales and purchases were shown as having taken place and that the same was possible because NSEL did not stick to its business model. It is further observed that to show the bogus sales, bogus documents were created and that this was possible with the connivance of the officers and directors of NSEL. The learned Judge disbelieved the petitioner's Chairman-cum-Managing Director's contention that he was not aware of the illegalities or that as he was a non-executive director of NSEL, and that he was not concerned with the illegal activities. The learned Judge observed that the only real allegation against the petitioner's Chairman-cum-Managing Director is that he allowed the NSEL to violate the rules and regulations and its own business model which enabled the borrowers to dupe the investors.

8. There are therefore, adverse observations even against the petitioner's directors and the officers in the order granting bail in respect of the dealings with the NSEL. The order granting bail far from supporting the application for a modification of the previous order creates a hurdle in the petitioner's way of having the previous

order modified or varied. Before we pronounced the order today, we were informed by Mr.K.J. Dwarkadas that the Supreme Court dismissed the petition for special leave to appeal against the order granting bail. In view of what we have held that would not support the case for modifying the order dated 28.02.2014.

9. Dr.Singhvi then contended that the orders and directions issued by the impugned order were without the authority of law. When the impugned order was passed, the Government's guidelines of the year 2009 were in force. Thus the guidelines did not provide for consequences of the petitioner's actions in view whereof the impugned order was passed.

10. This however, was an issue that could have been raised before the Division Bench, when it passed the order dated 28.02.2014. We will assume that it was not raised through inadvertence. That would not justify our modifying the order. The petitioner's remedy is to challenge the order or to seek a review thereof.

11. Dr.Singhvi also relied upon the issuance of fresh guidelines by the Government on 06.05.2014. These guidelines permit the issuance of orders of the nature passed by the impugned order. Dr.Singhvi firstly contended that the 06.05.2014 guidelines cannot operate retrospectively. Secondly, he submitted that the

06.05.2014 guidelines constitute an admission by the respondent that the previous guidelines of the year 2009 prohibited the respondent from passing such orders in respect of the petitioner's alleged acts of commission and omission.

12. We do not see how the revised guidelines of 06.05.2014 constitute a change in circumstances. The 06.05.2014 guidelines obviously did not prevent the respondent from having taken the impugned action. At the highest the 06.05.2014 guidelines can be relied upon by the petitioner to contend that the respondent did not have power to pass the impugned order under 2009 guidelines. The 06.05.2014 guidelines therefore, do not constitute a change in circumstances entitling us to vary or modify the order dated 28.02.2014.

13. Dr.Singhvi's reliance upon the judgment of the Supreme Court in *Pyare Lal Sharma vs. Managing Director (1989) 3 SCC 448* and *State of A.P. vs. Gandhi (2013) 5 SCC 111* is not well founded. The respondent does not contend that it derived its power to pass the impugned order dated 17.12.2013 from the 06.05.2014 guidelines. Indeed it obviously cannot do so, as those guidelines came into force later.

14. Considering the view that we have taken, we did not think it necessary to grant the respondents time to file further affidavits.

15. In the circumstances, the notice of motion is dismissed.  
There shall be no order as to costs.

**(REVATI MOHITE DERE, J.)**

**(S.J. VAZIFDAR, J.)**

Bombay High Court