

SUPREME COURT OF INDIA

Jermyn Capital LLC

Vs.

Securities & Exchange Board of India

Jurisdiction Conmt.Pet.(Civil)No.17 of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

14.05.2009

ORDER

1. This contempt petition has been filed alleging willful and deliberate disobedience and non-compliance of the order passed by this Court on 5th December, 2008, while disposing of Civil Appeal No. 1268 of 2008 and C.A.(D)No.5526 of 2008. By the said order, we had disposed of the the said two appeals on the basis of an earlier order passed by the Securities Appellate Tribunal in a Misc. Application in Appeal No.21 of 2006 dated 8th May, 2006, by which the Tribunal had permitted the petitioner to sell its share and securities, which were being held by the Committee, through recognised stock exchanges in accordance with law and through the registered stock brokers and to credit the sale proceeds in the bank account maintained by the appellatant with the ICICI Bank.

2. It appears that pursuant to the said order some of the shares were sold by the appellatant and the amounts which were received on account of such sale were deposited in the account of the appellatant in the ICICI Bank.

3. Certain other shares which had remained unsold were the subject matter of the two appeals which were disposed of by us earlier. By the said order of 5 th December, 2008, following the order passed by the Securities Appellate Tribunal, we had given leave to the petitioner to sell off the remaining shares as was indicated in Annexure D to the affidavit, in the manner indicated in the order passed by the Appellate Tribunal on 8th May, 2006. We had also directed that the sale proceeds were to be deposited in the ICICI Bank and that the same should be invested in short-term fixed deposits along with the amounts which have already been received and which have been deposited with the Bank and that the said fixed deposits were to be kept renewed till a final decision was taken by the Securities and Exchange Board of India (SEBI). We had remitted the matter to the SEBI with a request to dispose of the same expeditiously, preferably within a period of six months from the date of the communication of the order. Pursuant to the said order, an attempt was made by the petitioner to sell the remaining shares, but were prevented from doing so on account of the objection of the Reserve Bank of India that even if the shares were sold, the sale proceeds could not be deposited in an interest-bearing account of the investor.

4. The objection taken on behalf of the SEBI was that since the registration of the petitioner had expired, after sale of the shares, the petitioner could not be allowed to deposit the sale proceeds in the account held by it in ICICI Bank.

5. As far as the ICICI Bank is concerned, the objection taken was that the amount which had already been deposited with the Bank had been frozen on account of the expiry of the registration, and, as such, the same could not be frozen and no withdrawal could be permitted and furthermore, since the registration had expired no on-line transactions could be undertaken.

6. The stand taken by the CBI is that the account of the petitioner could not be operated for the purpose of withdrawal of any amounts from the account. There was no embargo, however, for depositing the amounts in the account, except for the objection taken by the RBI that it could not be deposited in an interest bearing account.

7. It is in this background that when we took up the application for contempt that certain suggestions were made regarding the manner in which the securities which were yet to be sold could be disposed of having regard to the instability of the market conditions so that the petitioner could be insulated against loss on account of the fluctuating market.

8. Since in our order we had directed that the amounts already deposited in the account would also be included in the amounts to be obtained after sale of the shares and be invested in fixed deposits, which appears to be contrary to the Rules and Regulations of the Reserve Bank of India, we direct that the appellant shall be entitled to sell the shares which are being held by I.C.I.C.I.(Securities) as Custodian and the sale proceeds will be deposited with SEBI. The amounts which are already lying in the frozen account of the petitioner with ICICI Bank, will also be released and made over in favour of SEBI. The amounts so received by SEBI shall thereafter be invested by SEBI in short-term fixed deposits in a public sector bank which are to be kept renewed till the final decision of the matter pending before SEBI, as was directed by our earlier order of December 05, 2008. It is also made clear that the disbursement of the amounts, so invested, together with accrued interest, will be subject to the final decision of SEBI.

9. Since the registration of the petitioner has expired preventing any further on-line transactions, ICICI Bank will be entitled to process and record the transactions manually and all parties shall act on the basis of such manual recording.

10. The period for completing the investigation is extended till 31st August, 2009.

11. As far the contempt petition is concerned, having regard to the facts indicated hereinabove, we are not inclined to proceed any further with the contempt proceedings, which are, accordingly, dropped.

12. The application for modification, being I.A.No.1 of 2009, filed by the Reserve Bank of India, is also disposed of by this order.