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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4844 OF 2024

Harsh Mehta]
Indian adult inhabitant,]
Aged 37 years, having residence]
at C-73, Troika Apartments,]
3rd Cross Lane, Lokhandwala,]
Andheri West, Mumbai – 400053] …Petitioner

VERSUS

1. **Securities and Exchange Board of India**,]
   Having its office at SEBI Bhavan,]
   Plot No.C4-A, G-Block,]
   Bandra Kurla Complex,]
   Bandra (East),]
   Mumbai – 400 051]

2. **Reliance Capital Ltd**]
   through Administrator,]
   Nageswara Rao, Kamala Mills]
   Compound, Trade World,]
   B Wing, 7th Floor, S.B. Marg,]
   Lower Parel, Mumbai 400013]
   Email:]
   rcap.administrator@relianceada.com]

3. **IndusInd International Holdings Limited**]
   Having office at Level 3,]
   Ebene House, hotel Avenue 33]
   Cybercity, Ebene, 72201,]
   Mauritius, 4655526] …Respondents

APPEARANCES-

Adv Ashmita Goradia, i/b. Mr Vijay Katariya, for the Petitioner.

Mr Mustafa Doctor, Senior Advocate, a/w Mr Suraj Choudhary, Mr Akash Jain, Mr Abhishek Nair i/b. Mansukhlal Hiralal & Co., for Respondent No.1.

Mr Rohan Kadam, a/w Ms Aditi Bhansali, Mr Tejas Raghav i/b. AZB & Partners for Respondent No.2.

CORAM : M.S.Sonak & Jitendra Jain, JJ.

RESERVED ON : 21 November 2024

PRONOUNCED ON : 02 December 2024

JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The Petitioner challenges the validity of Regulation 3(2)(b)(i) ("Impugned Regulation") (Exh. A/pg.28) of the SEBI (Delisting of Equity Shares) Regulations, 2021 ("Delisting Regulations") as being ultra-vires to SEBI Act, 1992. The Petitioner also challenges the Order dated 27 February 2024 of the Hon'ble National Company Law Tribunal ("Impugned Order") (Exh.B/pg.60), which approved the Resolution Plan providing for the delisting of shares of Reliance Capital Limited ("RCL") and the further consequent circulars issued by

the National Stock Exchange and the Bombay Stock Exchange dated 29 February 2024 ("Impugned Circulars") (Exh. C colly/pg.91) announcing suspension of trading in the scrip of RCL.

4. This Petition concerns the delisting of RCL's shares, which had a 98.49% public shareholding as of 31 December 2023. On 29 November 2021, the Reserve Bank of India (RBI) appointed Respondent No.2 ("R2") as the Administrator of RCL. R2 applied to initiate the Corporate Insolvency Resolution Process ("CIRP"), which NCLT admitted vide an order dated 6 December 2021. R2 was appointed as the Resolution Professional ("RP") for RCL's CIRP.

5. The Resolution Plan submitted by Respondent No.3 ("R3") was approved by the Committee of Creditors ("CoC"). The NCLT, vide the impugned order dated 27 February 2024, has also approved the plan, which, among other things, nullifies 98.49% of RCL's public shareholding. According to the Petitioner, the plan is currently pending implementation. The Petitioner has been an investor in the securities market since 2013 and acquired 6,700 shares (0.003%) of RCL in November 2022, well after the company was admitted to CIRP on December 6, 2021.

6. Ms Goradia learned counsel for the Petitioner, submitted that the Impugned Regulation is ultra-vires the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). She submits that the object of the SEBI Act is to protect the interests of the investors, and it is the duty of SEBI to protect the interests of investors in the securities market. The Delisting Regulations are made in pursuance of SEBI's primary function, which is to

protect the interests of investors. The Impugned Regulation provides for delisting equity shares pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code (IBC) without due compliance with any of the restrictions and safeguards otherwise provided in the delisting regulations. The impugned regulation, therefore, is far from protecting the interests of the investors seriously prejudices the interests of investors like the Petitioner. Accordingly, the Impugned Regulation, which is a subordinate legislation and does not conform to the objects and provisions of the SEBI Act, which is the Parent Act, is consequently ultra-vires and must be struck down.

7. Ms Goradia submitted that the Impugned Regulation, not passively but actively exempts from the protection accorded by the Delisting Regulations for the public shareholders of a listed entity under CIRP. Such an exemption is not in the interest of investors and, consequently, does not conform with the object and objective of the SEBI Act. Nothing in the provisions of the SEBI Act in general and Sections 11 and 30 of the SEBI Act authorizes the SEBI to make Impugned Regulation, taking away the protection otherwise available to the investors. She submitted that the Impugned Regulation is, therefore, ultra-vires the SEBI Act, i.e., the Parent Act and must be declared as such.

8. Ms Goradia referred to the consultation paper (November 2022) on the framework for the protection of the interest of public equity shareholders in the case of listed companies undergoing CIRP under the IBC. She submitted that this consultation paper, in terms, records that the interest of the public equity shareholders is not protected among other

things by the impugned provisions. Despite this recognition, she submitted that the Impugned Regulation continues, thereby seriously prejudicing the interests of the investors and shareholders. She submitted that such continuance of ultra-vires regulations is arbitrary and, therefore, the Impugned Regulations must be struck down.

9. Ms Goradia submitted that Regulation 3(2) of the Delisting Regulations of 2009, which existed prior to the Delisting Regulations of 2021, mandated a procedure for delisting under the BIFR Scheme. The SEBI (Delisting of Equity Shares) Amendment Regulations 2018, because of the IBC, amended the exemption in Regulation 3 to provide for a procedure to be laid down in the Plan to complete the delisting of a share. However, the impugned regulation has diluted or removed the procedural mandate, allowing delisting without any procedure. She submitted that allowing such delisting without any procedure or procedural safeguards prejudicially affects the interest of public equity shareholders and investors. Accordingly, at least under the SEBI Act, no such regulations could ever have been framed. The Impugned Regulations are ultra-vires the SEBI Act and travel way beyond the scope and import of the SEBI Act.

10. Ms Goradia pointed out that in the review of the 2009 Regulations, which led to the enactment of the 2021 Delisting Regulations, a recommendation was made for deleting Regulation 3(2). However, there was no recommendation for replacing Regulation 3(2) with the impugned regulation. Therefore, the replacement of former Regulation 3(2) with the impugned Regulation 3(2)(b)(i) is patently illegal and ultra-vires since the same is not backed by any

recommendation based upon which the impugned regulation could have been enacted.

11. Ms Goradia submitted that in enacting the Impugned Regulation, the SEBI has deviated from putting mechanisms in place where promoters are personally liable to offer an exit route to shareholders if the company is driven to the ground by them. Such departure brought about by the Impugned Regulation, apart from being ultra-vires, the SEBI Act, 1992, is patently arbitrary in that it seeks to prejudice the rights of the very persons the SEBI Act, 1992 and its Delisting Regulations were meant to protect.

12. Ms Goradia finally submitted that a public shareholder has no say in a Resolution Plan passed by a listed company, given the Explanation to Section 30(2) of the IBC. Clause (e) provides that the approval for implementing such actions under the resolution plan is to be deemed. Therefore, the only realistic protection that shareholders and investors like the Petitioner would have had was the application of the delisting regulations or permitting the delisting of shares in strict accordance with the Delisting Regulations. The Impugned Regulations, however, exempted the application of Delisting Regulations to the delisting of shares under the IBC, summarily removing the only significant protection available to shareholders and investors like the Petitioner. She pointed out that such an exemption has no logic or rational criteria. Accordingly, she submitted that the Impugned Regulations are ultra-vires the SEBI Act and violative of Article 14 of the Constitution of India.

13. For all the above reasons, Ms Goradia submitted that the Impugned Regulations and the NCLT's order dated 27 February 2024, which is based upon the Impugned Regulation or which was possible because of the Impugned Regulation, be struck down.

14. Mr Mustafa Doctor, the learned Senior Advocate appearing for SEBI (Respondent No.1) opposed the grant of any reliefs in this Petition. He submitted that the Petitioner purchased about 6,700 shares of RCL, corresponding to a minuscule percentage after NCLT admitted the RCL to undergo CIRP via an order dated 6 December 2021. Thus, the Petitioner invested with the full knowledge of the legal consequences that might follow if the CIRP plan was approved for RCL or if RCL were to go into liquidation. He submitted that a challenge at the behest of such a Petitioner should not be entertained.

15. Mr Doctor submitted that the admitted position of the liquidation value of the equity shareholders of RCL was NIL. He referred to the statement in paragraph 17 of the Petition made by the Petitioner to this effect. He submitted that this Court could not consider the Petitioner's contention about such valuation being improper or false in this Petition in the absence of the Petitioner producing any material or filing any appeal before the National Company Law Appellate Tribunal ("NCLAT") to impugn the order dated 27 February 2024 by which the NCLT accepted such valuation. Given this admitted position, the Petitioner would stand to no benefit if RCL were to be wound up. He submitted that the Petitioner could not be said to be prejudiced by the Impugned Regulations and maintain a Petition to challenge the same.

16. Mr Doctor submitted that before the introduction of the Impugned Regulations, there were similar provisions concerning delisting in the erstwhile Sick Industrial Companies Act of 1985. He submitted that the IBC has an overriding effect over other enactments. He submitted that the IBC is a complete code, and the resolution plan, approved under the IBC, binds the Corporate Debtor, its employees, members, creditors, etc. He submitted that the Impugned Regulations accept this legal position and exclude delisting under the IBC. He submitted that even without the impugned regulations, the IBC and the orders made under the IBC would prevail over the Delisting Regulations. He relied on **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and others**[1] to support his contentions.

17. Mr Doctor also referred to the provisions of the IBC, including the Explanation to Section 30(2)(e) of the IBC, which, according to him, creates a deeming fiction whereby the shareholders of the Corporate Debtor are deemed to have approved the Resolution Plan. He stressed that the IBC is a complete code containing a non-obstante clause. He, therefore, submitted that any delisting pursuant to the approval of a plan under IBC will be governed by IBC and the Regulations framed under the IBC. He submitted that Impugned Regulation 3(2)(b) of the Delisting Regulations clarifies what was even otherwise an apparent position. He submitted that nothing is ultra-vires or arbitrary about the impugned provisions when considered from such a perspective.

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[1] (2021) 9 SCC 657

18. Mr Doctor submitted that the Impugned Regulation was entirely consistent with the provisions and the objective of the SEBI Act, 1992. He submitted that arguments very similar to those now raised on behalf of the Petitioner were considered and rejected by the Hon'ble Supreme Court in the case of **Jaypee Kensington Boulevard Apartments Welfare Association and others vs. NBCC (India) Limited and others**[2]

19. Accordingly, Mr Doctor submitted that this Petition may be dismissed with costs.

20. Mr Rohan Kadam learned counsel for the second Respondent, the Administrator of RCL, also urged the dismissal of this Petition. He reviewed the chronology of events and made precise submissions as to why the Petitioner's challenges must fail.

21. At the outset, Mr Kadam pointed out that the Petitioner had not challenged any provisions of the IBC or the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). He submitted that this was relevant since the entire legislative field concerning insolvency resolution of corporate persons and their reorganisation was wholly occupied by the IBC and CIRP Regulations that permit the submission and approval of resolution plans that may provide for NIL value and distribution to the existing equity shareholders as well as delisting and cancellation of their shares.

22. Mr Kadam pointed out that such resolution plans, by operation of law, are binding on all stakeholders, including

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[2] (2022) 1 SCC 401

members like the Petitioner. He submitted that these are statutory consequences that would override and prevail over anything inconsistent or contrary thereto contained in any other law, given the provisions of Section 238 of the IBC. He submitted that the Impugned Regulations, by exempting the delisting pursuant to a resolution plan approved under Section 31 of the IBC from the applicability of the Delisting Regulations, only recognises this legal position and, therefore, there is nothing ultra-vires or arbitrary in these Impugned Regulations.

23. Mr Kadam also pointed out that IBC is a complete code, being an amending and consolidating act. He submitted that the maximisation of the value of assets and the expeditious resolution of the corporate debtor are the core objects of IBC. He submitted that to achieve these objects, Section 30(2) of the IBC enacts that the resolution professional shall examine each resolution plan received by him and confirm that the same conforms to the requirements prescribed under clauses (a) to (f) of Section 30(2). He also referred to the provisions of Section 30(4), 53(1) and 240(1) of the IBC to support his arguments. He relied on **Innoventive Industries Limited vs. ICICI Bank and another**[3] and **Swiss Ribbons Private Limited and another vs. Union of India and others**[4]

24. Mr Kadam referred to the CIRP Regulations, including Regulation 37. He submitted that these provisions clearly envisage and render lawful the making and approval of a resolution plan that places the equity shareholders in the last position and provides for the cancellation or delisting of their

[3] (2018) 1 SCC 407

[4] (2019) 4 SCC 17

equity shares without value. He stressed the provisions in Section 238 of the IBC, which directs that the IBC would prevail over anything inconsistent, and contrary contained in any other law.

25. Mr Kadam also relied on *Ghanashyam Mishra and Sons Private Limited* (supra) to submit that upon implementing a resolution plan, the corporate person starts on a clean slate, free of obligations to all creditors, including the erstwhile shareholders. He submitted that if the Petitioner's contentions were to be accepted, then this would defeat the provisions of the IBC and the CIRP Regulations, even though these provisions have been given an overriding effect.

26. Mr Kadam submitted that the provisions of SEBI Act, 1992, the Delisting Regulations, the IBC and the CIRP Regulations must be construed harmoniously. He submitted that such harmony is achieved by the impugned provision, which exempts the applicability of the Delisting Regulations under the IBC and CIRP Regulations. He referred to Section 32 of the SEBI Act, which provides that the provisions of the SEBI Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. He pointed out that the legislature was aware of the SEBI Act of 1992 when the IBC was enacted in 2016. Therefore, he submitted that there was no question of the Impugned Regulations being either ultra-vires or arbitrary.

27. Mr Kadam submitted that but for the Impugned Regulations, the listing regulations, to the extent they conflicted with the IBC or the CIRP Regulations, might have been vulnerable and, in any event, inapplicable to any

delisting under the IBC. He submitted that the Impugned Regulations had only clarified the legal position; therefore, no case was made for striking down the Impugned Regulations.

28. Mr Kadam submitted that the petition did not even press the contention that there was no notice before the Adjudicating Authority approved the resolution plan on 27 February 2024. In any event, he submitted that such a contention was misconceived since Sections 30 and 31 of the IBC do not provide for any prior notice to the equity shareholders of the CoC voting on the plan or sanctioning it by the Adjudicating Authorities.

29. Mr Kadam submitted that the Petitioner was almost a busybody. Otherwise, he would have appealed to NCLAT, raising valuation issues, etc., within the prescribed limitation period. He submitted that the Petitioner, who invested after the CIRP was reasonably advanced, cannot now complain about the legal consequences or challenge the Impugned Regulations and the NCLT's order.

30. Mr Kadam submitted that the Article 14 challenge, which was not even seriously pressed, is entirely misconceived. He submitted that likes have been treated alike, and neither the Petitioner nor any other shareholders have been discriminated against. He referred to the former provisions applied to seek an insolvent company and pointed out that there was no appreciable difference.

31. Mr Kadam finally submitted that the SEBI Act, the Delisting Regulations, the IBC and CIRP Regulations were all economic legislations. He submitted that the executive and

the lawmakers consistently and internally study and discuss possible views and/or changes. He submitted that the consultation papers relied upon by the Petitioner establish this position. However, based upon the consultation paper or some other material the Petitioner seeks to misinterpret, the Impugned Regulations cannot be struck down or interfered with. He submitted that in matters of economic legislation, sufficient latitude is shown to the legislature, as has been held in several decisions of the Hon'ble Supreme Court and this Court.

32. For all the above reasons, Mr Kadam submitted that this Petition should be dismissed because it has no merit.

33. Ms Goradia, by way of a rejoinder, submitted that there was no conflict between the provisions of IBC, SEBI Act, 1992 and the Delisting Regulations. She submitted that a listed entity undergoing CIRP was still bound to comply with SEBI Regulations. She submitted that if the impugned provisions are struck down, all that would result is that the corporate debtor would be bound to comply with the Delisting Regulations where a resolution plan involves such delisting.

34. Ms Goradia submitted that the object of the IBC includes balancing the interests of all stakeholders, including investors and shareholders. She submitted that even if the Impugned Regulations are struck down, compliance with the IBC or the CIRP Regulations would not be excluded. She submitted that in addition to complying with the IBC and CIRP Regulations, the Delisting Regulations would have to be complied with. She submitted that the Impugned Regulations

allowed delisting without any procedure or safeguards to protect the interests of investors like the Petitioner.

35. Mr Goradia submitted that the liquidation value argument is irrelevant to the challenges raised in this Petition moreso since the company is not being liquidated. She submitted that the main challenge is not to the nil consideration in the resolution plan but to delisting without any exit opportunity or without following any procedure that would have safeguarded the interest of the investors and shareholders.

36. Ms Goradia submitted that the decisions relied upon by the learned counsel for the Respondents were inapplicable. She submitted that if the Impugned Regulations are struck down, the NCLT's order dated 27 February 2024, which is based upon the Impugned Regulations, would not survive and will have to be set aside.

37. For all the above reasons, Ms Goradia submitted that this Petition be allowed, and the reliefs prayed for be granted.

38. The rival contentions now fall for our determination.

39. The admitted facts relevant to appreciating the Petitioner's challenges in this Petition are as follows: -

(a) The RBI, in exercising its powers under Section 45-IE of the Reserve Bank of India Act, 1934 by order dated 29 November 2021, superseded the Board of Directors of RCL and appointed R2 as the Administrator.

(b) On 2 December 2021, the RBI filed C.P.(IB)/1231/MB/2021 before the NCLT for admitting RCL to CIRP under the IBC.

(c) On 6 December 2021, the NCLT admitted RBI's Petition and RCL was admitted to CIRP. In terms of the IBC, the date of admission i.e. 6 December 2021 is the Insolvency Commencement Date ("ICD");

(d) Almost a year after the ICD i.e. November 2022, the Petitioner purchased 6,700 shares of RCL, corresponding to a minuscule percentage (0.003%) of RCL's shareholding. This is significant because this purchase by the Petitioner, which claims to be an investor, was well after RCL was admitted to CIRP;

(e) On 27 February 2024 (Impugned NCLT Order), the NCLT sanctioned the resolution plan submitted in respect of R2, which inter alia assigned nil value to all equity shareholders, and for subsequent delisting and cancellation of all the existing shares of the second Respondent;

(f) No appeal was filed by the Petitioner against the NCLT's impugned order dated 27 February 2024 before the NCLAT, even though, in the Petition, some grievances were made about assigning nil value to the equity shareholders and the delisting and cancellation of shares of the second Respondent.

(g) On 28 February 2024, the second Respondent made the requisite disclosures to the stock exchanges, clarifying that the second Respondent's equity shares would be delisted per the NCLT's impugned order dated 27 February 2024 and the Delisting Regulations. It was pointed out that the liquidation value of the equity shareholders was nil. Hence, the equity shareholders would not be entitled to any payment, and consequently, no offer would be made to any of the shareholders of the second Respondent. [See Exhibit "H" at pages 162 to 167 of the paper-book];

(h) On 29 February 2024, the stock exchanges issued Circulars suspending trading in the shares of the second Respondent effective from 1 March 2024.

(i) The Petitioner filed this Petition on 10 April 2024 to challenge the vires of Impugned Regulations and the NCLT's impugned order dated 27 February 2024.

40. In the rejoinder, Ms Goradia contended that the liquidation value had no bearing on the main challenge in the Petition. She submitted that even if the liquidation value remained nil, the Petitioner is entitled to challenge the Impugned Regulations because they permit delisting without following the provisions under the Delisting Regulations and without providing any exit opportunity to public shareholders like the Petitioner.

41. If, ultimately, the liquidation value is to remain nil, then we fail to comprehend the need for a challenge to the Impugned Regulations and that too, by a Petitioner, who purchased a minuscule percentage of shares in RCL well after the RCL was admitted to CIRP. Indeed, the Petitioner was aware and, in any event, deemed aware of all the consequences arising from the admission of RCL to CIRP under the IBC.

42. In the Petition, at least, a challenge is thrown to the NCLT's impugned order dated 27 February 2024, which holds that the liquidation value of the equity shareholders is nil and, therefore, the equity shareholders will not be entitled to any payment. Again, the impugned NCLT order dated 27 February 2024 directs delisting as per the conditions in the impugned order and the Delisting Regulations. Simply because the

challenge to the impugned NCLT order dated 27 February 2024 was found difficult, mainly since the Petitioner failed to appeal the same to the NCLAT, the contention about liquidation value having no bearing or being irrelevant to the main challenge in the Petition cannot be raised or in any event, accepted.

43. On a cumulative consideration of significant facts like the Petitioner purchasing minuscule percentage of the RCL shares after RCL was admitted into the CIRP on 2 December 2021 and the failure to challenge the impugned NCLT order dated 27 February 2024 by instituting an appeal within the prescribed limitation period before the NCLAT, we are doubtful about the motives of the Petitioner in instituting the present Petition. In any event, the Petitioner may not be the proper relator in the facts of the present case to question the Impugned Regulations. Still, we do not propose to non-suit the Petitioner on this ground and proceed to examine the Petitioner's challenge to the impugned regulation in this Petition.

44. The Petitioner's main contention is that the SEBI Act of 1992 was enacted to establish a Board to protect the interests of investors in securities. The Impugned Regulations, in so far as they deny the protection of the Delisting Regulations to any delisting of equity shares of a listed company pursuant to a resolution plan approved under Section 31 of the IBC, are ultra-vires the provisions and objects of the SEBI Act of 1992. This contention does not commend us for several reasons, which are discussed hereafter.

45. The Impugned Regulation i.e. Regulation 3(2)(b)(i) is a part of Regulation 3 of the Delisting Regulations, which reads as follows:-

> ""**Scope and applicability**
>
> 3. (1) These regulations shall apply to delisting of equity shares of a company including equity shares having superior voting rights from all or any of the recognised stock exchanges where such shares are listed.
>
> (2) Nothing contained in these regulations shall apply to the delisting of equity shares of a listed company —
>
> (a) that have been listed and traded on the innovators growth platform of a recognised stock exchange without making a public issue;
>
> (b) made pursuant to a resolution plan approved under section 31 of the Insolvency Code, if such plan provides for:
>
> (i) delisting of such shares; or
>
> (ii) an exit opportunity to the existing public shareholders at a specified price:
>
> Provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity:
>
> Provided further that the details of delisting of such shares along with the justification for the exit price in respect of the proposed delisting shall be disclosed to the recognized stock exchange(s) where the shares are listed within one day of approval of the resolution plan under section 31 of the Insolvency Code."

46. The Delisting Regulations, containing the Impugned Regulations, have been made by the SEBI in the exercise of powers conferred by: -

(i) Section 31 read with Section 21-A of the Securities Contracts (Regulation) Act, 1956 – SCRA; and

(ii) Section 30, Section 11(1) and Section 11-A(2) of the Securities and Exchange Board of India Act, 1992 - SEBI Act.

47. SCRA was enacted to prevent undesirable transactions in securities by regulating the business of dealing therein and providing certain matters connected therewith. Section 21-A of SCRA is concerned with the delisting of securities. Section 31(1) of SCRA empowers SEBI to make regulations consistent with the provisions of the Act and rules made thereunder to carry out the purposes of SCRA. Section 31(2) provides that, in particular, and without prejudice to the generality of the powers conferred by Section 31(1), such regulations may provide for all or any of the matters specified in clauses (a) to (d).

48. The SEBI Act was enacted to provide for the establishment of a Board to protect the interest of the investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11(1) of the SEBI Act provides that subject to provisions of the Act, it shall be the duty of the Board to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

49. Section 11-A of the SEBI Act empowers the Board to regulate or prohibit the issue of prospectuses, offer documents, or advertisements soliciting money for the issue of

securities. Section 11-A(2) provides that, without prejudice to the provisions of Section 21 of the SCRA, the Board may specify requirements for listing and transferring securities and other matters incidental thereto.

50. Thus, it is evident that the Delisting Regulations, of which the Impugned Regulations is but a part, have been made by the SEBI exercising the powers conferred upon it by the above-specified provisions of the SCRA and SEBI.

51. The analysis of the provisions under which the Delisting Regulations, which includes the Impugned Regulation, have been made shows that the objectives of SCRA and SEBI are to prevent undesirable transactions in securities by regulating the business of dealing therein, to establish a regulator (SEBI) to protect the interests of investors in securities, and to promote the development of and regulate the securities market. Under the two enactments, sufficient powers are vested in the authorities created by and under the two Acts to undertake matters connected with or incidental thereto.

52. The SCRA aims to prevent undesirable transactions in securities by regulating the business dealing in them and providing for certain other matters connected therewith. Similarly, the SEBI Act establishes the Board not just to protect the interests of investors in securities but also to promote the development of and regulate the securities market and for matters connected therewith or incidental thereto.

53. The two parent Acts, therefore, confer substantial powers on the SEBI to enact regulations, including the

Delisting Regulations covering all aspects of delisting of equity shares of listed companies. The Impugned Regulation, i.e. Section 3(2)(b)(i), provides that the Delisting Regulations shall not apply to the delisting of a listed company made pursuant to the resolution plan approved under Section 31 of the IBC if such plan provides for delisting of such shares or an exit opportunity to existing public shareholders at a specified price. There is nothing in the objects of the two parent enactments or its specific provisions to suggest the grant of such an exemption would be in excess of the powers conferred by the two enactments upon the SEBI, which is constituted as the regulator to regulate the securities market and the matters incidental thereto or connected therewith.

54. Considering the objectives for enactment of SCRA and SEBI Act, the specific sections under which the Delisting Regulations have been framed by SEBI the width of the powers conferred upon SEBI for preventing undesirable transactions in securities, for protecting the interest of the investors in securities and to promote the development of and regulate the securities market, we are unable to accept the contention that the Impugned Regulation is ultra-vires the SEBI's powers conferred upon the SEBI by SCRA and the SEBI Act.

55. In **Shilpa Stock Broker Pvt. Ltd. and another vs. Securities and Exchange Board of India**[5] the Division Bench of this Court comprising D. Y. Chandrachud and A. A. Sayed, JJ (as their Lordships then were) explained that the securities market impinges upon investor wealth. Investors as a body

[5] 2012 SCC OnLine Bom 58

represent the collective wealth of numerous individual investors. Trading on the stock exchanges and conducting business on the stock exchanges has a material impact on institutional and individual investors. Actions of stakeholders in the securities market have consequences not merely for the role and position of the stakeholder but also his relationship with SEBI as a regulator. Those actions have serious implications for the overall well-being of the securities market and those whose wealth and investment are impacted by the stock market. SEBI is within its power to protect and streamline the functioning of the securities market.

56. Another Division Bench of the Gujarat High Court in **Securities and Exchange Board of India vs. Alka Synthetics Ltd.**[6] has explained that the SEBI Act is an Act of remedial nature and, therefore, could not be compared with the cases relating to the fiscal or taxing Statutes or other penal Statutes for collection of levy, taxes, etc. It is a matter of common knowledge that the SEBI has to regulate a speculative market, and in case of a speculative market, varied situations may arise, and all such exigencies and situations cannot be contemplated in advance and, therefore, looking to the exigencies and the requirement, it has been entrusted with the duty and function to take such measures as it thinks fit. The Hon'ble Supreme Court approved this decision in the case of **Franklin Templeton Trustee Services (P.) Ltd vs. Amruta Garg and others**[7]**.**

57. The legislature has employed expressions like "*to promote the development of, and to regulate, the securities*

[6] AIR 1999 Guj. 221

[7] (2021) 9 SCC 606

market", "to prevent undesirable transactions in securities by regulating the business of dealing therein" or "*to carry out the purposes of this Act"* or *"by such measures as it thinks fit"* when it comes to dealing with the powers of SEBI generally and in matters of framing regulations. Considering the expressions' width and the powers conferred on the SEBI to regulate the securities markets, we are not prepared to accept that the Impugned Regulation travels beyond the parent Acts and is consequently ultra-vires.

58. The protection of the investors, upon which Ms Goradia laid maximum stress, is not the only objective of the SEBI Act or the SCRA. That is one of the objectives. The other aim is regulating the stock market to promote the development of the securities market. Besides, the Petitioner's argument proceeds on a highly narrow premise that making inapplicable the delisting agreements to the delisting of equity shares of a listed company made pursuant to a resolution plan approved under the IBC would result in entirely ignoring the investors' interest or withdrawing the greater protection earlier granted to the investors.

59. The above premise is incorrect because sufficient safeguards are also provided under the IBC to protect the interest of the shareholders and investors by at least attempting to maximise the corporate debtor's assets and resolve issues of insolvency or bankruptcy of a corporate debtor expeditiously. The extent of the protection to be granted or how such protection must be given are mainly legislative or quasi-legislative policy matters in which the Courts have a minimal role. As discussed later, this principle

applies with even greater vigour when dealing with economic legislation.

60. In **State of Tamil Nadu and another vs. P. Krishnamurthy and others**[8]**,** the Hon'ble Supreme Court explained that there is a presumption in favour of the constitutionality or validity of subordinate legislation. The burden is upon the petitioner, who attacks the subordinate legislation to show that it is invalid, among other things, because it exceeds the limit of authority conferred by the enabling Act. In this case, the Petitioner has failed to discharge this burden.

61. In several decisions, including **Vishwasrao Chudaman Patil vs. Lokayukta, State of Maharashtra and others**[9] and **B.S.E. Brokers' Forum, Bombay and others vs Securities and Exchange Board of India and others**[10], Courts have tended to interpret the enabling clauses of sections liberally in so far as the scope of the power of the subordinate legislation is concerned. The express mention of the power is perhaps only insisted where the subordinate legislation imposes a tax, fee or penal sanction. Therefore, applying these principles, no case is made out for declaring the Impugned Regulations ultra-vires.

62. By making the Impugned Regulations, the SEBI has recognised the relative positions of the SEBI Act and the IBC. Section 32 of the SEBI Act provides that the provisions of the SEBI Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. In

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[8] (2006) 4 SCC 517

[9] AIR 1985 Bom 136

[10] AIR 2001 SC 1010

contrast, Section 238 of the IBC provides that the requirements of the IBC shall override other laws. This Section states that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect by virtue of any such law.

63. Besides, the IBC is a later legislation and is presumed to have taken cognisance of the former legislation, the SEBI Act. Therefore, the doctrine of ultra-vires would not be attracted where the Delisting Regulations of 2021 take cognizance of the relative positions of the IBC and SEBI Act and provide that the Delisting Regulations shall not apply to delisting pursuant to a resolution plan approved under the IBC.

64. But for the Impugned Regulation, a controversy might have arisen regarding the application of the Delisting Regulations made under the SEBI Act and SCRA to the delisting of shares made pursuant to a resolution plan under the IBC. The SEBI, conscious of the relative positions of the SCRA and SEBI Act on the one hand and the IBC on the other, chose to let the IBC and its regulations govern the delisting under the resolution plan approved under the IBC. In doing so, the SEBI cannot be said to have exceeded its powers or acted ultra vires.

65. A somewhat similar controversy arose in the interface between the Real Estate Regulatory Authority Act and the IBC, which the Hon'ble Supreme Court had to resolve in the case of *Jaypee Kensington Boulevard Apartments Welfare Association and others* (supra). The Court, upon analysis of the two enactments and even in the absence of a provision like the

Impugned Regulation, held that in the event of a clash, RERA must give way to IBC because RERA cannot be regarded as a Special statute that would override the IBC. The Court relied upon the decisions that have repeatedly held that the IBC is a complete code with an overriding effect using a non-obstante clause in Section 238 of the IBC.

66. Given the provisions of Sections 231 and 238 of the IBC, the Hon'ble Supreme Court held that once the CoC and the Adjudicating Authority formulate a resolution plan, such resolution plan shall bind all stakeholders. The provisions of the IBC will prevail over other laws and instruments having effect under any such laws. The Court also held that the commercial wisdom of the CoC must be given some precedence in matters of approving a resolution plan. This is yet another reason to hold that the Impugned Regulation is not ultra-vires.

67. In *Ghanashyam Mishra and Sons Private Limited* (supra) the Hon'ble Supreme Court has held that IBC is a complete code and the resolution plan approved under IBC binds the Corporate Debtor, its employees, members, creditors, etc., thereby enabling the resolution applicant to start on a clean slate basis so that such applicant is not flunked with any surprise claims. The Court observed that if that were to be permitted, the very calculations based on which the resolution applicant submits its plans would go haywire, and the plan would become unworkable.

68. Section 30 of the IBC provides for the submission of a resolution plan. Section 30(2) requires the resolution professional shall examine each resolution plan received by

him to confirm that each resolution plan, inter alia, does not contradict any of the provisions of law for the time being in force. The Explanation provides that for clause 30(2)(e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given, and it shall not be a contravention of that Act or law. The whole effect must be given to the legal fiction created by the legislature, and such effect must not be cut down or diluted by applying the delisting regulations to a delisting pursuant to a resolution plan approved under Section 31 of the IBC.

69. Thus, considering that IBC is a complete code containing a non-obstante clause, a delisting of equity shares pursuant to the approval of a plan under IBC would be governed by the provisions of the IBC and the regulations made thereunder. Therefore, if the SEBI felt that governing such delisting under the Delisting Regulations might not be appropriate, there is no question of SEBI acting ultra vires. Accordingly, the Impugned Regulation, i.e. Regulation 3(2)(b)(i), providing that the Delisting Regulations shall not apply in the case of delisting of equity shares pursuant to a resolution plan approved under Section 31 of the IBC cannot be regarded as ultra-vires the SEBI Act or the rules made thereunder.

70. Mr Kadam's contention about harmonious construction of the SEBI Act, 1992 provisions, the Delisting Regulations, the IBC and CIRP Regulations has considerable merit. By striking down the Impugned Regulations, we would introduce a conflict between the SEBI Act/Regulations on the one hand

and the IBC/CIRP Regulations on the other. Even in such a conflict, in all probability, the provisions of the IBC/CIRP Regulations would prevail, given that the IBC is later legislation that has been given an overriding effect. In contrast, the SEBI is an earlier legislation, and Section 32 of the SEBI Act, as noted earlier, provides that the provisions of the SEBI Act, 1992 shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

71. The arguments based on the consultation paper or the review of 2009 are not grounds for declaring the Impugned Regulations as ultra-vires. Ultimately, these are suggestions for the formulation of policy. It is not as if such consultation papers or reviews bind the SEBI, particularly in exercising its quasi-legislative powers of framing regulations. The suggestions in the consultation paper or the review must be considered from the perspective that we are dealing with economic legislation based on experimentation where wide latitude must be given to the legislative bodies.

72. The review of SEBI (Delisting of Equity Shares) Regulations, 2009 (Exhibit "F") refers to the Primary Markets Advisory Committee's ("PMAC") suggestion to delete Regulation 3(2) of the Delisting Regulations as they then stood. Regulation 3(2), as it then stood, dealt with the non-applicability of Delisting Regulations made on the delisting made pursuant to the scheme sanctioned by the BIFR under Sick Industrial Companies (Special Provisions) Act, 1985 ("the SICA, 1985") or by the NCLT under Section 424D of the Companies Act, 1956.

73. The above recommendation suggests that even the earlier Regulation 3(2) did provide for non-applicability of the Delisting Regulations on a delisting made pursuant to a scheme sanctioned by BIFR under the SICA, 1985 or NCLT under Section 424D of the Companies Act, 1956. This deletion was recommended by PMAC only because SICA had since been replaced with IBC. In this context, therefore, it is evident that the Impugned Regulations neither represent any marked shift in policy nor could we say that the Impugned Regulations conflict with the recommendations of the PMAC. Based on a consultation paper or a review that, in any event, does not bind the SEBI or statutorily curtail its quasi-legislative powers to frame regulations, the Impugned Regulations cannot be considered ultra-vires.

74. Ms Goradia argued the matter ably but was unclear about why the Impugned Regulations contravene Article 14 of the Constitution of India. In **Association for Democratic Reforms (Electoral Bond Scheme) vs. Union of India**[11]**,** the Constitution Bench held that even the charge of manifest arbitrariness of subordinate legislation must be primarily tested in relation to its conformity with the parent statute.

75. Since there is no conflict between the parent statute and the Impugned Regulations, the charge of violating Article 14 or manifest arbitrariness cannot be upheld. Besides, the Impugned Regulation, which excludes the application of the Delisting Regulations under well-defined conditions spelt out in Regulation 3(2)(b)(i), can hardly be criticized as lacking any determining principle or logical consistency. The

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[11] (2024) 5 SCC 1

Impugned Regulations cannot be styled as capricious, irrational or excessively disproportionate.

76. The argument that no procedure is required is also flawed. Under the IBC, an elaborate procedure is provided before any resolution plan is prepared and approved. The statutory effect of the provisions in Sections 30 and 31 of the IBC cannot be ignored. The relative positions of the different enactments dealing with the protection of investors and the regulation and development of securities markets is also significant. The Petitioner has not challenged any provisions of the IBC, perhaps conscious that the Hon'ble Supreme Court has already upheld the constitutional validity of the enactment comprehensively in *Swiss Ribbons (Supra)*. Therefore, if the delisting is in pursuance of such an approved resolution plan, there is no question of arbitrariness or breach of the equality clause under the Constitution.

77. The SCRA, SEBI Act, IBC, and the rules and regulations framed thereunder are examples of economic legislation. The Hon'ble Supreme Court has repeatedly held that when dealing with issues of constitutionality of economic legislation, the legislature must be given a wide berth and free play in the joints. Apart from the presumption of constitutionality, the Courts must defer to the economic choices made by the legislature. Even under inclusion would not result in a death knell of such laws on the anvil of Article 14 of the Constitution of India.

78. The Court has held that economic legislation is essentially empiric. It is based on experimentation and, therefore, cannot anticipate all possible situations or abuses.

Complicated experimental economic legislation may contain crudities and inequities, but they cannot be struck down solely on that ground. The system of checks and balances must be used with the primary objective of accelerating economic growth rather than suspending it by doubting its constitutional efficacy at the threshold itself.

79. The Court has held that to stay experimentation in things social and economic is a grave responsibility. Denying the right to experiment may have severe consequences for the Nation. The Courts do not substitute their social and economic beliefs for the judgment of the legislative bodies elected to pass laws. The legislative bodies must be given a broad scope to experiment with financial problems [See *Swiss Ribbons (Supra)*].

80. The Bankruptcy Law Reforms Committee report refers to a company representing a contract between equity and debt. As long as the shareholders can service the debt, they have complete control over the company and the freedom to run it as they see fit. However, corporate governance demands that if the shareholders cannot service the debts, thereby jeopardizing the interests of the creditors, they lose their right to run the company. This is especially important in highly leveraged companies where the promotor shareholders have only a small shareholding percentage. In such a case, the promotor has little personal interest in successfully running the business since most of the creditors are at risk. The report noted how most of these issues were not effectively handled by legislation like the Sick Industrial Companies Act 1985.

81. The report contained a draft of the Insolvency and Bankruptcy Code, intended to replace the patchwork of laws with a single comprehensive code. The Government accepted this report, and the Parliament passed the draft code as the Insolvency and Bankruptcy Code, 2016. The aim of the IBC is to rehab a company rather than liquidate it. The legislature made a conscious decision to accord priority to the financial creditors. A moratorium is provided during which period the company's creditors cannot sue it. However, some provisions effectively exclude the erstwhile owners from management.

82. The Committee of Creditors (CoC), which comprises the corporate debtor's financial creditors, can make significant decisions during the CIRP process. One of the most important decisions is considering and approving the resolution plan proposed by the prospective buyer. This resolution plan is expected to contain details about the company's revival, how various creditors would be paid off, the treatment of shares, and other financial decisions. Once approved, the resolution plan will bind all creditors and stakeholders.[12]

83. The challenge to the NCLT's impugned order dated 27 February 2024 was premised upon such an order being based on the Impugned Regulation, which, according to the Petitioner, was ultra vires. This premise was misplaced. Still, now that we have found no infirmity in the Impugned Regulations, the challenge to NCLT's impugned order dated 27 February 2024 fails and is liable to be rejected.

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[12] Saurabh Kirpal, Fifteen Judgments-Cases that Shaped India's Financial Landscape (VINTAGE, 2022).

84. The argument that the Petitioner was not given notice before the CoC voted to approve the resolution plan is misconceived, given the facts of the present case referred to in paragraph 39 above, the provisions of sections 30 and 31 of the IBC, and the provisions of regulation 37 of the CIRP regulations. This is possibly why the Petitioner avoided challenging the NCLT's impugned order dated 27 February 2024 by appealing to the NCLAT. As the Hon'ble Supreme Court explained in *Jaypee Kensington Boulevard Apartments Welfare Association and others* (supra), the scope of judicial review in such matters is minimal.

85. For all the above reasons, we see no merit in the challenges raised in this Petition. Accordingly, this petition is liable to be dismissed and is hereby dismissed.

86. The Rule is discharged. However, there shall be no cost orders.

(Jitendra Jain, J) **(M. S. Sonak, J)**