* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 21st January, 2025**
Pronounced on: 12th February, 2025

\+ LPA 1080/2024 & CM APPL. 63810/2024

JOHNSON KA .....Appellant

Through: Mr. Harish Malhotra, Sr. Advocate and Mr. Ravi Gupta, Sr. Advocate with Mr. Manav Goyal, Mr. Zinnea Mehta, Ms. Ritika Gusain, Mr. Abhishek Jaiswal, Ms. Shriya Agarwal, Ms. Tanushvi Singh, Ms. Muskaan Mehra, Ms. Jahnvi Gupta and Mr. Shrey Sharma, Advocates

versus

EVAAN HOLDINGS PVT LTD & ORS. .....Respondents

Through: Mr. Rajiv Nayyar, Sr. Advocate with Ms. Devika Mohan, Ms. Manya Chandok, Mr. Prabhav Bhaguna and Mr. Saurabh Seth, Advocates for R-1
Mr. Ramesh Babu and Ms. Nisha Sharma, Advocates for R-2/RBI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant appeal under Clause X of the Letters Patent has been filed on behalf of the appellants seeking the following reliefs:

> *"a) Allow the present Appeal and set aside the Impugned Judgement dated 23.10.2024 passed by the Learned Single Judge in Writ Petition bearing W.P. (C) No. 9877 of 2024 titled as "Evaan Holdings Pvt. Ltd. v. Reserve Bank of India*

& Ors." and dismiss the said Writ Petition for being non-maintainable and mala-fide and a gross abuse of process of law; and/ or

b) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

FACTUAL MATRIX

2. The Company namely M/s Exclusive Capital Limited (hereinafter as the "ECL") was incorporated on 18th April, 1994 under the provisions of the Companies Act, 1956 and the appellant herein is the suspended Director of the Company.

3. The respondent no. 1 herein, i.e., the petitioner before the learned Single Judge, is a holder of Compulsorily Convertible Preference Shares i.e., CCPS in ECL, which are worth INR 175 crores.

4. The ECL is a Non-Systematically Important Non Deposit taking Non-Banking Financial Company (hereinafter as the "NBFC") registered with the Reserve Bank of India (hereinafter as the "RBI") i.e., respondent no. 2 herein, and has been carrying on business as NBFC-Investment and Credit Company since 13th October, 2021.

5. The ECL, formerly named as M/s UT Leasing Limited, and the same was amended to its existing name on 16th October, 2021 vide an amended incorporation certificate issued by the Ministry of Corporate Affairs and the respondent no. 2 granted registration to carry on business as an NBFC without accepting public deposit.

6. M/s Teesta Retail Private Limited, which later merged with M/s Siddhant Commercials Private Limited, invested an amount of Rs. 315 Crores in ECL against the issuance of Optionally Convertible Debentures

(hereinafter as the "OCD") and the said investment was done between October, 2021 and March, 2022.

7. However, a written opinion was obtained wherein it was observed that the infusion of OCDs were likely to disturb the leverage ratio of the ECL and hence, requires to be rectified by converting the said OCDs to Compulsorily Convertible Preferential Shares (hereinafter as the "CCPS"). Accordingly, an Extraordinary General Meeting of the members of the ECL was called for on 17th September, 2022 and vide resolution dated 27th September, 2022, the OCDs were converted to CCPS in an attempt to restore the leverage ratio of the ECL.

8. Aggrieved by the resolution passed by the ECL as well as the state of its affairs, Ms. Kantha Aggarwal filed a company petition bearing no. 48/(ND)/2024 before the National Company Law Tribunal (hereinafter as the "NCLT") alleging the oppression and mismanagement by the Board of Directors of the ECL. Vide order dated 15th May, 2024, the learned NCLT observed that the conversion of the OCDs to CCPS was not done in a *bona fide* manner and the same has resulted in the oppression of the minority shareholders. Ms. Kantha Aggarwal (hereinafter as the "NCLT petitioner") is a minority shareholder with 5% shareholding in the ECL.

9. Vide the same order, the learned NCLT has appointed a former Judge of this Court, Justice Mr. R.K. Gauba (Retd.), as the Administrator of the ECL.

10. On 21st May, 2024, respondent no. 1 purchased the said CCPS in the ECL from M/s Siddhant Commercials Private Limited for a sum of Rs. 175 Crores.

11. Later, the NCLT petitioner filed a representation before the RBI on 24th May, 2024, alleging the siphoning and misappropriation of funds by the directors of the ECL, including the Appellant herein. Thereafter, the respondent no. 1 also filed a representation before the RBI on 21st June, 2024 regarding the conduct of the directors of the ECL and siphoning of funds thereof.

12. The order dated 15th May, 2024 passed by the learned NCLT was challenged before the learned National Company Law Appellate Tribunal (hereinafter as the "NCLAT") and vide order dated 22nd May, 2024, the learned NCLAT preserved the status quo of the order dated 15th May, 2024. However, the said order dated 22nd May, 2024 was modified vide order dated 31st May, 2024, wherein Justice Mr. Gauba (Retd.) was appointed as an Observer of the ECL and the Board of Directors was suspended.

13. On 20th June, 2024, the NCLT Petitioner made another representation before the learned Observer seeking enquiry into the alleged siphoning of funds and misappropriation in the ECL.

14. Thereafter, the respondent no. 1 filed a writ petition bearing no. 9877/2024 under Article 226 of the Constitution of India before the Single Judge of this Court seeking a direction in the form of mandamus against RBI to act on various complaints and representations made by it against the appellants and their management of ECL. The grievance of the respondent no. 1 is essentially that the management of ECL is violating the regulations issued by the RBI and there are several instances of siphoning, using related parties of the appellants. Accordingly, the respondent no. 1 prayed for a direction to the RBI to exercise the powers

under the Reserve Bank of India Act, 1935 (hereinafter as the "RBI Act") in inquiring into the affairs of ECL, which is an NBFC.

15. In the aforesaid writ, an application bearing CM APPL. No. 46471/2024 was filed on behalf of the ECL to decide the preliminary issue of maintainability of the said writ petition, i.e., W.P.(C) No. 9877/2024.

16. While adjudicating the said application, the learned Single Judge vide order dated 23rd October, 2024 (hereinafter as the "impugned order") held that there is no legally sustainable ground available to the applicant for challenging the maintainability of the present writ petition and also held that the respondent no. 2/RBI has failed to exercise its supervisory powers under the RBI Act. While holding the same, the learned Single Judge, in paragraph no. 34 of the impugned order, passed certain directions to the respondent no. 2/RBI to intervene in the matter and to ensure the enforcement of binding regulations provided under the RBI Act.

17. Aggrieved by the aforesaid impugned order, the present LPA has been filed on behalf of the appellant seeking setting aside of the same.

18. It is pertinent to note that the appellant has filed CM APPL. 63810/2024 in the instant appeal, thereby, seeking stay of the impugned order and vide order dated 28th October, 2024, the Predecessor Bench of this Court passed the following orders:

> *"12. Upon a perusal of the impugned order, we find that the Learned Single Judge has, proceeded to issue a series of directions as contained in paragraph no.34 of the said order, few of which directions are overlapping with the issues which are already pending consideration before the National*

Company Law Tribunal/The National Company Law Appellate Tribunal. Learned Senior Counsel for the appellants have urged that directions issued by the learned Single Judge were beyond the reliefs sought in the writ petition.

13. In these circumstances, it is directed that till the next date, the operation of the impugned directions issued in the impugned order will remain stayed. This will, however, not preclude the Reserve Bank of India, respondent no.2 or the NCLT/NCLAT to proceed with the matter and take appropriate action as per law after examining complaints made by the writ petitioner."

SUBMISSIONS

(on behalf of the Appellant)

19. Mr. Harish Malhotra and Mr. Ravi Gupta, learned senior counsel appearing on behalf of the appellant, submitted that the application bearing CM APPL. No. 46471/2024 was filed by ECL to decide the maintainability of the writ petition. Therefore, it is submitted that the said application pertained to the limited aspect of the maintainability of the writ petition and not for adjudication of said writ on merits. It is vehemently submitted that the impugned order, wherein the Board of Directors are suspended, has been passed without giving the opportunity of hearing the Directors of the Company.

20. It is submitted that while holding the maintainability of the writ petition, the learned Single Judge has travelled beyond the ambit and scope of application bearing CM APPL. 46471/2024 by adjudicating the merits of the matter and issuing directions in the nature of final relief.

21. It is submitted that the learned Single Judge failed to appreciate that the respondent no. 1 has not approached the Court with clean hands

as the fact pertaining to the purchase of CCPS from M/s Siddhant Private Limited for a sum of Rs. 175 Crores after the passing of the order dated 15th May, 2024 by the learned NCLT was suppressed.

22. It is submitted that the learned Single Judge failed to appreciate that the respondent no. 1 has no locus in the said Writ Petition as all the transactions complained of are prior to its purchase of CCPS on 21st May, 2024 i.e., after the passing of the order dated 15th May, 2024.

23. It is submitted that the learned Single Judge failed to consider that the respondent no. 1 despite being aware that the conversion of OCDs to CCPS is under challenge before the learned NCLT, purchased the same, which only indicates its intention to harass the management and Company in unnecessary litigation.

24. It is submitted that the learned Single Judge failed to realize that the similar reliefs sought in the said writ petition were already sought before the learned NCLT and that the learned NCLT and NCLAT are seized of the instant matter.

25. Furthermore, it is submitted that the respondent no. 1 has failed to disclose any violation of a right as required under Article 226 of the Constitution. Moreover, it is submitted that the RBI has been conducting its enquiry and is seized of the instant matter, therefore, additional directions given by the learned Single Judge is unwarranted.

26. It is submitted that the learned Single Judge while passing the impugned order has gone beyond the scope of its jurisdiction under Article 226 of the Constitution and passed directions which cannot be granted in its capacity.

27. It is further submitted that the learned Single Judge failed to give an opportunity to the Appellant to make requisite submissions on the merits of the case, and yet, passed directions impacting the merits of the case. Therefore, the same amounts to a violation of the principles of natural justice.

28. In view of the foregoing submissions, it is crystal clear that the impugned order, wherein the final reliefs have been granted while deciding the preliminary issue of maintainability cannot be sustained in the eyes of law and therefore, the same is liable to be set aside and the said writ petition ought to be dismissed for being non-maintainable.

(on behalf of the respondent no. 1)

29. Mr. Rajiv Nayyar, learned senior counsel appearing on behalf of the respondent no. 1 vehemently opposed the instant LPA submitting to the effect that there is no illegality or error in the impugned order passed by the learned Single Judge and rightly held that the writ petition is maintainable.

30. It is submitted that the principal grounds raised in the appeal are *firstly*, the writ petition itself was not maintainable; *secondly*, issues raised in the writ petition are already pending adjudication before the NCLT and NCLAT; and, *thirdly*, the impugned order was passed in violation of the principle of natural justice, since it has passed final relief without hearing the parties on merits.

31. It is submitted that upon plain reading of the writ petition, the reliefs sought in the said petition, cannot be granted by the NCLT and NCLAT. It is further submitted that the RBI has the duty to exercise its

power vested under the RBI Act. It is further submitted that RBI has found ECL to be in violation of its regulations but failed to exercise its power.

32. Mr. Nayyar, learned senior counsel submitted that there is no force in the arguments of learned senior counsel for the appellant pertaining to the violation of natural justice since the parties were heard on the issue of maintainability as well as on merits.

33. It is submitted that allegations made in the writ petition of continuous siphoning and non-compliance have been confirmed by the learned Observer of ECL.

34. It is submitted that the writ petition filed under Article 226 of the Constitution of India by the respondent seeking issuance of writ of mandamus against the RBI to take appropriate action against ECL in accordance with the RBI Act, particularly under Chapter-III-B, Section 45Q of the RBI Act wherein it stipulates that the provisions of Chapter IIIB of the Act shall have an overriding effect over any other laws in force and the same includes the Companies Act, 2013. It is further submitted that the NCLT and NCLAT are tribunals constituted under the Companies Act, 2013 and can exclusively exercise powers vested thereunder. Therefore, NCLT or NCLAT cannot exercise powers under the RBI Act and issue any directions to the RBI. For this reason, the reliefs sought in the writ petition against the inaction of RBI, cannot be granted by NCLT or NCLAT. It is vehemently submitted that therefore, the pendency of the proceedings before NCLT or NCLAT do not oust the jurisdiction of writ Court under Article 226 of the Constitution of India.

35. In support of his arguments, learned senior counsel appearing on behalf of the respondent no. 1 relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***IFB Agro Industries Ltd. v. SICGIL India Ltd. & Ors,***[1] wherein the Hon'ble Supreme Court held that the transactions falling within the jurisdiction of regulatory bodies created under a statute must necessarily be subjected to their scrutiny, enquiry and adjudication. Consequently, violations of the NBFC Directions can only be adjudicated by the RBI, the regulator of NBFCs.

36. It is submitted that the RBI is a statutory authority and therefore subject to the jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, the writ petition is maintainable against the RBI for failing to exercise its powers under the RBI Act.

37. It is submitted that even otherwise, neither RBI nor the answering respondents are party before the proceedings in NCLT or NCLAT. Therefore, the proceedings before the learned NCLT or NCLAT cannot be a ground to oust the answering respondent or object to the directions passed against the RBI in writ petition.

38. It is submitted that the RBI is the primary regulator of NBFCs and is the competent authority to ensure compliance with its regulations and take action against violations by NBFCs. For this purpose, RBI is armed with powers which include (i) removal of directors under Section 45-ID of the RBI Act, (ii) collection of information and documents under Sections 45K and 45L of the RBI Act, (iii) restrain acceptance of any deposit or restrain alienation of any assets by the NBFC under Section 45 MB of the RBI Act; (iv) conduct inspection under Section 45N of the

[1] **(2023) 4 SCC 209**

RBI Act; (v) prevent business of the NBFC to be conducted in a manner detrimental to any depositors of the NBFC under Section 45 NB of the RBI Act; (vi) conduct a special audit of the NBFC under Section 45MA of the RBI Act.

39. It is submitted that the power vested with the RBI is not discretionary, however, it is to maintain public interest and interest of depositors like the answering respondent. Indisputably, the power of RBI is coupled with a duty to act and take protective measures.

40. It is submitted that it is trite law that a writ of *mandamus* ought to be issued to public authorities upon their failure to exercise power coupled with the duty to act. It is also settled law that the High Court in exercise of its plenary powers under Article 226 of the Constitution of India, may pass an order or give directions to the Government or the public authorities to act in accordance with law.

41. It is submitted that vide order dated 28th October, 2024 passed in these proceedings, the Predecessor Bench of this Court permitted the RBI to take appropriate action against ECL but till date RBI has not taken any action or exercise any power under the RBI Act against the ECL. It is further submitted that there is no violation of principle of natural justice as alleged by learned senior counsel appearing on behalf of the appellant.

42. It is submitted that the learned Single Judge while exercising its writ jurisdiction can adjudicate issues both pertaining to facts as well as law. Moreover, the RBI has categorically stated in the Status Report placed before the learned Single Judge that the ECL has violated the NBFC Directions. Therefore, this admission by the RBI in its Status

Report, itself vitiates the objections raised by the appellants regarding the non-maintainability of the petition on the basis of question of fact.

43. It is submitted that the RBI in its Status Report has specifically mentioned its concerns pertaining to the violation of the leverage ratio by converting the OCDs to CCPS, non-furnishing of requisite documents for satisfying the queries of respondent no.2, and the criminal complaint filed against the Managing Director of the Company. Therefore, it is submitted that the violations and breaches on part of the ECL have been affirmed by the RBI.

44. Further, it is submitted that the RBI is the prime regulator of the ECL and that as per Section 45IA of the RBI Act empowers the respondent no. 2 to maintain public interest and ensure *inter alia* that the affairs of the NBFCs should not be conducted in a manner detrimental to the interest of its present or future depositors. It is further submitted that the non-compliance with these conditions by any NBFC, empowers RBI to cancel registration of such NBFC.

45. It is submitted that there is no violation of principles of natural justice as the learned Single Judge has passed the impugned order pertaining to the issue of maintainability and has not touched upon the merits of the case.

46. It is submitted that in addition to the siphoning transactions, the observer, in this report as well as its previous report, has also noted that the appellant and other directors of ECL have violated the restraining orders of NCLAT by taking unilateral decisions without the approval of the learned Observer and the said facts have also been taken into consideration by the learned Single Judge.

47. Therefore, in view of the foregoing submissions, it is prayed that the instant appeal, being devoid of any merits, may be dismissed.

ANALYISIS AND FINDINGS

48. Heard learned senior counsel for the parties and perused the record as well as the written submissions filed by the respective parties.

49. The appellant has assailed the impugned order primarily on the ground that the learned Single Judge has passed an order on merits whereas the hearing was limited to the question of maintainability of the writ petition. It is also contended that the appellant, who is one of the Directors of ECL, ought to have been heard by the learned Single Judge before passing the impugned order.

50. The learned Single Judge, vide order dated 24th July, 2024, issued notice in the writ petition filed by the respondent no. 1. The order of issuance of notice i.e., 24th July, 2024 was also challenged by the ECL before the Division Bench of this Court in LPA bearing No. 742/2024 on the ground of maintainability of the writ petition.

51. The Coordinate Bench of this Court vide order dated 9th August, 2024 found the abovementioned appeal to be premature as the order assailed was only with regards to the issuance of notice and held that the matter requires examination. It was also observed by the Coordinate Bench of this Court that the parties may take all their arguments on the maintainability as well as merits of the writ petition before the learned Single Judge.

52. Subsequently, the appellant filed application bearing no. CM APPL. 46471/2024, in the aforesaid writ petition, thereby, challenging the maintainability of the writ petition. While deciding the maintainability

of the writ petition, the learned Single Judge has taken note of the submissions of respondent no. 1 to pass protective orders to protect the corpus of ECL from being pilfered by the appellant and the said submissions were recorded in paragraph no. 8 of the impugned order which is reproduced hereinbelow:

> *"8. It was urged by the learned Senior Counsel for the petitioner company that the aforesaid breaches committed by the Board of Directors of respondent No.2 company are yet to be rectified and even after directions by the NCLT dated 15.05.02024, as well as the order of the NCLAT dated 31.05.2024, the Statutory Auditor has not been appointed in a lawful manner. It was, therefore, urged that not only the present writ petition is clearly maintainable, but the RBI should be directed to ensure that respondent No. 2 company should function under the supervision of the Administration, so as to ensure that its precious funds are not pilfered and/or wasted for personal consumption by its Board of Directors."*

53. While passing the impugned order, the learned Single Judge also noted that the respondents no. 3 and 4, who are former independent Directors in ECL, also expressed grave concern regarding the functioning of the ECL at the hands of appellant. The relevant portion of the impugned order is reproduced hereinbelow:

> *"9. Mr. Sidharth Luthra, learned Senior Counsel for respondents No. 3 and 6 urged that the fact that the affairs of the respondent No.2 company are being mismanaged is evident from the fact that independent directors having vast experience of working with NBFCs have been removed and the control has been vested in inexperienced directors. It was pointed out that independent directors have been removed during the pendency of the petition before the NCLT despite operation of the restrain order, which fortifies the petitioner company's apprehension that the Board of*

Directors may take steps to prejudice and jeopardize the investment of the petitioner company, and therefore, appropriate measures are required to be taken by the respondent No.1/RBI under Section 45 (i) (e) of the RBI Act.

10. Learned Senior Counsel for respondents No. 3 to 6 also urged that the answering respondents were often informed of the transactions undertaken by the respondent No. 2 company only after these transactions had already been given effect to. Initially the answering respondents did not raise any alarm and passed such decisions as routine business transactions. However, they later objected to several decisions made by the Board of Directors that were prejudicial and not in the best interest of the company. Emails dated 12.10.2023, 24.01.2024, 05.02.2024 and 06.02.2024, were written by the independent directors regarding these concerns, but no explanation were provided for the various acts, omissions and transactions by the respondent No.2 company, the shareholders, or even the Statutory Auditors. It was urged that the present management of the respondent No.2 company has been consistently breaching their financial duties as directors."

54. In paragraph no. 4 of the impugned order, the submissions on merits have also been duly recorded by the learned Single Judge on behalf of the ECL, where the appellant was a director. Paragraph no. 4 of the impugned order is reproduced hereinbelow:

"4. Learned counsel appearing for respondent No.2 has urged that the maintainability of the present writ petition was earlier addressed but the said issue was not decided by this Court while passing the earlier order dated 24.07.2024, and aggrieved thereof, they filed LPA 742/2024 dated 09.08.2024, in which the following operative order was passed:

> *"7. In our view, at the moment, the appeal is premature. The learned Single Judge has not ruled one*

way or the other, i.e., either on the preliminary objections concerning maintainability of the writ action or on the merits of the matter.

8. It is our sense that the observations are exploratory at this stage and do not advert to the final decision on the issues concerning preliminary objections or qua the merits.

9. The appeal is, accordingly, closed.

10. Needless to add, the parties will have their complete say before the learned Single Judge.""

55. In the aforesaid application in the writ petition, the RBI filed its status report dated 12th August, 2024 before the learned Single Judge. The relevant portion of the said status report is reproduced hereinbelow:

"10. Thereafter, a team of two officers from the New Delhi Office of RBI New Delhi went to ECL to conduct a scrutiny, on 01.08.2024. However, the company could not provide the Balance Sheet, Profit & Loss account and Statutory Auditor's Certificate for the Financial Year ended 31.03.2024. Documents such as valuation of Security Receipts/Assignment of Loans at the time of purchase or background papers for the same could also not be provided by the company. Hence, the scrutiny of the company could not be conducted. The company was advised to finalize its accounts and get the statutory Audit of the same done without any further delay. The Company was again advised for the same by emails dated 08.08.2024. A true copy of the email dated 08.08.2024 is annexed herewith as ANNEXURE R-9.

Supervisory concerns of RBI in ECL i.e., Respondent No. 2:

It is submitted that the answering Respondent, after having examined the various replies, documents and after conducting an onsite scrutiny of records of the Respondent No. 2, has observed following supervisory concerns:-

1. Breach of leverage ratio: *RBI has defined leverage ratio as Total Outside Liabilities divided by Owned Funds and prescribed a limit of 7 as the upper ceiling for Base Layer NBFCs us per para 1 of Master Direction of RBI dated October 19, 2023 and para 6 of Master Direction DNBR.PD.007/03.10.119/2016-17 dated September 01, 2016. However, the leverage ratio of the company was 117.77 as of March 31, 2022. A copy of the Master Directions dated September 01, 2016 is enclosed herewith as ANNEXURE R-10.*

2. Issue of OCDs of Rs 315 crore without permission of RBI and conversion of OCDs to CCPS' without prior approval of RBL:

The company accepted optionally convertible debentures (OCDs) without the permission of RBI, which were classified as public funds under Para 3(xxvi) of Reserve Bank of India Master Direction Non-Banking Financial Company - Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated September 01, 2016 (applicable at that time) breaching the upper ceiling of Leverage Ratio. Further, the said OCDs were converted into Compulsorily Convertible Preference Shares (CCPS), again in contravention of Para 61 of Reserve Bank of India Master Direction-Non Banking Financial Company Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated September 01, 2016 (applicable at that time) which requires all applicable NBFCs to seek prior written permission from RBI for acquisition transfer of control. These CCPS are non-cumulative and are convertible into equity shares within a period not exceeding 20 years from the date of issuance, based on the is 20 years which is more than valuation of the shares at the time of conversion. As currently, maximum tenure of fall under the category of Public Fund in para 5.1.27 of Master Directions, 2023 and will be reckoned for arriving at Leverage Ratio, Nonetheless, Ld. NCLT, New Delhi vide order dated 15.05.2024 has observed that -

"The OCDs/CCPS issued by the Respondent No.1, in violation of the RBI regulations, shall stand cancelled and money, thereof, shall he returned to respective holders and necessary formalities in this regard would be completed..."

Ld. NCLAT, however, vide order dated 22.05.2024 has granted status quo with respect to the order dated 15.05.2024 of Ld. NCLT, New Delhi.

3. Non-submission of essential returns/documents to RBI: *The company has not submitted essential returns/documents such as Balance Sheet, Profit & Loss account and Statutory Auditor Certificate for the financial year 2023-24 and Statutory Auditor Certificate for the financial year 2022-23.*

4. Complaint against the Managing Director: *There is a complaint against Mr Satya Prakash Bagla alleging that there are cases against Managing Director, Mr. Satya Prakash Bagla who has criminal antecedents and is subject to investigations by various authorities viz., the DRI, CBI, ED, EOW and other regulatory agencies. These allegations are yet to be verified. The answering Respondent has sent an email dated 09.08.2024 to the company asking for their comments on these as well as other allegations made in the complaint dated 07.08.2024 received Shri Anuj Goenka, Director of Evaan Holdings Private Limited, within three days.*

Proposed action by the RBI:-

1. ECL has been advised vide e-mail dated 08.08 2024 to prepare its balance sheet, profit & loss statement as on 31.03.2024 and get its statutory audit done. Thereafter, the scrutiny/inspection of the company would be conducted by the answering Respondent. If the respondent NBFC is found to have contravened any provision of RBI Act and/or the extant statutory directions issued by RBI, appropriate supervisory and regulatory action, will be taken against the company, in accordance with, law and procedure laid down for the same.

> *2. Thus, it is submitted that the answering Respondent is actively investigating into the affairs of the Respondent No. 2 on the basis of the complaints received by the answering Respondent. The present Status Report is submitted for the perusal and consideration of this Hon'ble Court, It is submitted accordingly."*

56. The aforesaid paragraphs of the status report filed by the RBI reveal that the management of the ECL has in fact breached mandatory regulations issued by the RBI.

57. The respondent no. 1, in the writ petition, has sought for a direction to the RBI to exercise its power under Chapter IIIB of the RBI Act governing NBFCs. It has been contended therein that the RBI has the power under Section 45IE of the RBI Act to supersede the Board of Directors of an NBFC and to conduct a special audit under Section 45MA of the RBI Act. The main grievance of the respondent no. 1 (writ petitioner) is that there is a failure to exercise the power by the RBI in relation to the affairs of ECL.

58. This Court has taken notice of an email dated 24th May, 2024 issued by the RBI to ECL noting the violations committed by the ECL. Despite taking note of all the irregularities committed by the ECL, the RBI has not taken any action against ECL till date.

59. It is an elementary principle that when a public authority is vested with specific powers, it is duty bound to act accordingly. Therefore, any failure to exercise statutory powers gives rise to a cause of action to secure performance of such duty by way of issuance of writ of mandamus under Article 226 of the Constitution of India.

60. In the case of ***CAG vs. K. S. Jagannathan & Anr.***[2], the Hon'ble Supreme Court held that a writ of mandamus can be issued where there is a failure to exercise power vested with a public authority. The relevant paragraphs are reproduced hereinbelow:

> ***"18.*** *The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission—both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. ITO [AIR 1966 SC 81 : (1965) 3 SCR 536, 540] this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In Hochtief Gammon v. State of Orissa [(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226 : (1976) 1 SCR 667, 676] this Court held that the powers of the courts in England as*

[2] **1986 2 SCC 679**

regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. *Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in Mayor of Rochester v. Regina [1858 EB & E 1024, 1032, 1034] said:*

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: Comyn's Digest, Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in King v. Revising Barrister for the Borough of Hanley [(1912) 3 KB 518, 528-9, 531] . In Hochtief Gammon case [(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226 : (1976) 1 SCR 667, 676] this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous

ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In Padfield v. Minister of Agriculture, Fisheries and Food [1968 AC 997] the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus

"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

***20.** There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper*

case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

61. In view of the above position of law as discussed, it is crystal clear that a duty is implied by the vesting of statutory power upon a public authority. Further, the performance of such duty can be secured by proceedings under Article 226 of the Constitution of India.

62. As noted above in the foregoing discussion, the respondent no. 1 has sought for the interference of the learned Single Judge considering the failure of RBI to act in exercise of its power under Chapter-III-B and more particularly Section 45-IE and Section 45MA of the RBI Act. Such reliefs claimed are, therefore, clearly maintainable in proceedings under Article 226 of the Constitution of India.

63. Another plea raised by the appellant, which was not taken up during the final arguments before the learned Single Judge, is that the NCLT and NCLAT are seized of the matter and the bar of Section 430 of the Companies Act, 2013 applies. This Court does not find any force in this argument as the appellant has assailed the learned NCLT's decision dated 15th May, 2024 in relation to ECL on the basis that the RBI is looking into the matter and the learned NCLT ought not to have exercised its jurisdiction.

64. Therefore, the appellant, now, in these proceedings is estopped from taking the opposite position from what was taken in the proceedings before the learned NCLT.

65. The reliefs prayed for in the writ petition i.e., issuance of writ of mandamus to the RBI to exercise its jurisdiction is not and could not have been the subject matter of the NCLT proceedings.

66. The learned NCLT has no jurisdiction to issue prerogative writs to RBI to exercise such powers under the RBI Act. Therefore, this fact has no bearing on the merits of the dispute or such that is determinative of the outcome of these proceedings since the existence of the NCLT proceedings is duly disclosed and considered by the learned Single Judge while passing the impugned order.

67. This Court has perused the representations dated 20th June, 2024 and 21st June, 2024 made by the respondent no. 1 to RBI which clearly states the instances of siphoning of funds and rampant irregularities in the affairs of ECL.

68. The learned NCLT, vide order dated 15th May, 2024, has set out detailed findings of siphoning of funds by the appellants from ECL. The facts mentioned before the learned NCLAT have been duly noted by the learned Single Judge in paragraph no. 27 which is reproduced hereinbelow:

> *"During the course of arguments, a report dated 01.07.2024 of Hon'ble Mr. Justice R.K. Gauba (Retired) was shown, who was appointed as an Administrator by the NCLT vide order dated 15.05.2024 and later has been made as an Observer by the NCLAT vide order dated 31.05.2024. The report would also go to suggest that despite directions of the NCLT/NCLAT, major policy decisions were taken without*

consulting him. It is revealed in the report that, although no major policy decisions were made during the meeting held on 20.06.2024, the reply filed by respondent no. 2 company in this case shockingly states that Shri Sunil Kumar Sobti was appointed as an Additional Director, and M/s K. S. Oberoi & Co. was appointed as the Statutory Auditor of the respondent No.2 company. It is also brought to the fore that despite repeated reminders, the present management of respondent No.2 company has not shared several details in the nature of organizational structure of the respondent No.2 company, list of secretarial records, statutory compliances, detailed particulars of all the managerial personnel (current and former) scope of their respective roles/responsibilities along with the details of their remuneration/perks and benefits, in particular the copies of the audited and unaudited financials of the company with schedule and trial balances besides the list of list of receivables and payables besides list of secured and unsecured creditors, and such non-compliances assumes significance that all is not well in running the affairs of respondent no. 2 company by the present management."

69. Taking into consideration the discussions in the foregoing paragraphs, the impugned order dated 23rd October, 2024, has been passed by the learned Single Judge on the basis of clear findings of the RBI that there have indeed been violations of mandatory regulations by the ECL. These findings recorded by an apex expert body like the RBI, certainly warrant for issuance of protective *ad-interim* orders.

70. Moreover, once a regulatory authority finds a wrong doing on the part of an entity, it is duty bound to act and take corrective measures. However, the RBI, in the instant case, despite noting the wrongdoings of ECL, has chosen not to act, which appears to be a clear case of failure to exercise its public duty.

71. This Court has also taken note of the report of the learned Observer, in which it has been clearly observed that despite repeated reminders, the management of ECL has not shared several details regarding the nature of organizational structure of ECL, list of secretarial records, statutory compliances, detailed particulars of all the managerial personnel (current and former), scope of their respective roles/responsibilities along with the details of their remuneration/perks and benefits. It is also observed that non-compliance of another direction of the learned Observer in the light of the order of learned NCLAT, and such non-compliances assumes significance that the affairs of the ECL are not being managed rightly by the present management.

72. In these circumstances, the respondent no. 1 (writ petitioner) cannot be left out remediless and therefore, the learned Single Judge, while exercising the jurisdiction under Article 226 of the Constitution, held that the writ is maintainable and passed several directions in paragraph no. 34 of the impugned order.

73. However, without going into the merits of the case and limiting itself only to the aforesaid issue of scope of power of the writ Court in issuing interim directions while exercising powers under Article 226 of the Constitution, this Court is of the considered view that while adjudicating on the issue of maintainability, the learned Single Judge was well within its power to give interim directions. Moreover, it is made clear that the issue before this Court is not pertaining to the merits or veracity of the interim directions passed by the learned Single Judge or the vacation thereof.

74. At this juncture, it is also pertinent for this Court to mention the contention raised by the appellant that they were not given an opportunity to be heard by the learned Single Judge on merits of the case, thereby violating the principles of natural justice. However, upon perusal of the impugned order, it is clear that the parties therein have elaborately argued both on maintainability as well as the merits of the case. Hence, there is no validity in the said contention of the appellant.

75. Taking into consideration the aforesaid discussions, this Court upholds the findings of the learned Single Judge on the maintainability of the writ petition. In view of the same, the impugned order dated 23rd October, 2024, passed by the learned Single Judge in CM APPL. 46471/2024 in WP (C) No. 9877/2024, is, hereby, upheld.

76. Accordingly, the instant letters patent appeal is dismissed being devoid of any merits. Pending applications, if any, also stands dismissed.

77. It is made clear that the parties are at liberty to take up all the contentions made before this Court before the learned Single Judge in the main writ petition and the parties are also at liberty to pursue their arguments before the writ court with respect to the interim directions as mentioned in paragraph no. 34 of the impugned order.

78. The judgment to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 12, 2025
gs/mk/st

Click here to check corrigendum, if any