NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO.6482 OF 2022
IN
CIVIL APPEAL NOS. 5395-5398 OF 2019

SECURITIES AND EXCHANGE BOARD OF INDIA **.....APPELLANT (S)**

VERSUS

IL AND FS SECURITIES SERVICES LTD. AND ORS. **.....RESPONDENT(S)**

AND IN THE MATTER OF:

DALMIA CEMENT (BHARAT) LTD. **.....APPLICANT/ RESPONDENT NO.5.**

J U D G M E N T

Vineet Saran, J.

This is an application for modification of the order dated 21.09.2021 passed in I.A. No.84110 of 2021 in CA. Nos.5395-5398 of 2019.

2. The short dispute in the present matter is with regard to the release of the mutual funds in favour of the applicant/Respondent No.5, which are of the value of about 350 crores.

3. Earlier, by order dated 27.08.2019, this Court had given the option to applicant/Respondent No.5 to get mutual funds converted/encashed and the amount was to be deposited in a fixed deposit account of a nationalized bank. The said order was modified by this Court by a detailed order dated 16.03.2021 passed in I.A. No.100812/2020 in C.A. Nos.5395-5398 of 2019, the operative portion of which is extracted below:-

> *"10. Therefore, we modify the Interim Order dated 27.08.2019 to the extent that the Mutual Fund units of Respondent No.5-Applicant, kept with the Respondent No.1-ISSL, be released in favour of the Respondent No.5-Applicant by way of transfer of the said Mutual Fund units and crediting the same in the demat account of the Respondent No.5-Applicant. This is subject to the Applicant furnishing requisite Bank Guarantee of equivalent value as the Mutual Fund units, to the satisfaction of the Trial Court. The Respondent No.5-Applicant shall comply with this requirement within one month of filing of application for release of Mutual Fund units (along with a copy of this order) before the Trial Court. The Trial Court shall also dispose of such application expeditiously. It is clarified that the Interim*

Order dated 27.08.2019 shall continue to operate as it was as against the other parties/non-Applicants herein"

4. Another application, I.A. No.84110/2021, was filed by the applicant/Respondent No.5 and this Court further modified the earlier order on 21.09.2021, operative portion of which reads as under:-

"That instead of bank guarantee for a sum of Rs.344.07 crore, which has been furnished by applicant/Dalmia in terms of our order dated 16.03.2021, the applicant/Dalmia shall now furnish a bank guarantee for a sum of Rs.100 crores and further it shall furnish a security to the extent of Rs.300 crores of an unencumbered asset, the value of which may be duly certified by the Chartered Accountant-cum-Valuer, who have no conflict of interest having regard to the parties involved and interest in the subject matter and may be any one of the following.

1. PricewaterhouseCoopers Private Limited

2. Ernst and Young

3. KPMG

The bank guarantee already furnished by the applicant/Dalmia to the extent of Rs.344.07 crores shall stand discharged on the applicant/Dalmia fulfilling the above conditions to the satisfaction of the Trial Court. The applicant/Dalmia shall also file an affidavit before this Court to the extent that the asset, which is being furnished as security, is an unencumbered property."

5. The present application, I.A. No.6482 of 2022, has been filed by the applicant/Respondent No.5 for a further modification of the order dated 21.09.2021, the prayers of which read as under:-

> *"a. Allow the present Application seeking modification of order dated 21.09.2021 passed by this Hon'ble Court in IA No.84110 of 2021; and/or*
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> *b. Modify the order dated 21.09.2021 passed by this Hon'ble Court in IA No.84110 of 2021 in Civil Appeal No.5395 of 2019 and direct the Chief Metropolitan Magistrate (East), Karkardooma Courts, Delhi to return/release the original Bank Guarantee No. OGT0005210053201 dated 23.03.2021 of the IndusInd Bank Limited in the sum of INR 344.07 Crores, furnished by Dalmia Cement (Bharat) Ltd./applicant pursuant to order dated 16.03.2021 passed by this Hon'ble Court, to the Applicant on such terms and conditions as may be deemed fit by this Hon'ble Court; and*
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> *c. Pass such other order(s) as this Hon'ble Court may deem fit."*

6. The submission of Shri Guru Krishna Kumar, learned Senior Counsel appearing for applicant/Respondent No.5 is that subsequent to the passing of the order dated 21.09.2021, a supplementary chargesheet has been filed by the Economic Offences Wing (hereinafter referred to as "EOW"), in which a

clear finding against the ISSL/Respondent No.1 and Allied/Respondent No.4 has been recorded to the extent it has been found that *"after settlement of above trades by ISSL out of the funds of Allied, the securities fraudulently pledged by Allied became free from collateral and ought to have been rightfully returned to its original/rightful owner i.e. Complainant and ISSL cannot have any claim of any nature over the said securities"* (Complainant was the applicant/Respondent No.5).

7. It has been further contended that the Serious Fraud Investigation Office (for short 'SFIO') reported prima facie finding that the buying and selling of illiquid contracts was a pre-planned synchronized activity wherein the exchange platform was used to camouflage a financial transaction. As such, the SFIO has also recorded a clear finding that the ISSL has fraudulently allowed movement of collaterals. It has been submitted that although the matter is still under investigation but prima facie view of EOW and SFIO are both clearly against the ISSL/Respondent No.1 and Allied Financial Services Pvt. Ltd./Respondent No.4. It is contended that the applicant/Respondent No.5 is incurring huge expenses/costs by

furnishing bank guarantee and the alternative provided by order dated 21.09.2021 to furnish bank guarantee for a sum of Rs.100 Crores and further to furnish security to the extent of Rs.300 Crores of unencumbered asset is inequitable and unreasonable in the facts and circumstances of the case, as admittedly the securities/mutual funds belong to the applicant/Respondent No.5, who should be given *superdari* of the same without imposing any such conditions.

8. Shri K.V. Viswanathan and Shri Sidharth Luthra, learned Senior Counsel appearing for the Respondent No.1 have vehemently opposed the prayer for any further modification of the order dated 21.09.2021. They have submitted that the conditions imposed in the order dated 21.09.2021 are fully justified. It is contended by them that though the EOW has on 09.11.2021 filed a supplementary chargesheet against Respondents No.1 and 4 but the fulcrum of this chargesheet is the order of the SEBI dated 02.07.2021, which was passed prior to 21.09.2021. It is contended that though observations have been made in the SFIO report, the same are not final as the matter is still under investigation.

9. Shri Pratap Venugopal, learned counsel appearing for the SEBI and Shri Sandeep Bisht, learned counsel appearing for Respondent No.4/Allied and Shri Rishi K. Awasthi, learned counsel appearing for the retail investors have also opposed this prayer for any further modification of the order dated 21.09.2021.

10. We have heard learned counsel for the parties at length and perused the record. In our view, the subsequent supplementary chargesheet submitted by the EOW, and relied upon by the learned counsel for the petitioner, ought not to be ignored while considering this matter. In its earlier orders, this Court has clearly found that the securities need to be released in favour of the applicant/Respondent No.5. The only question is with regard to the mode and manner of the securities to be furnished by the applicant/Respondent No.5. It is not disputed that the petitioner has, in terms of the order dated 16.03.2021, complied with the condition of furnishing bank guarantee of Rs.344.07 Crores.

11. In paragraph 20 of this application filed by the applicant/Respondent No.5, it is stated that the applicant is a

public limited company, having sound financials with a strong balance-sheet and other financial statements (assets of INR 18,556 Crores and turnover of INR 8,779 Crores during financial year 2020-21). The same is not denied by the other parties who have filed their respective replies to this application.

12. Keeping in view the aforesaid facts and circumstances, we are of the opinion that the operative part of the order dated 21.09.2021 deserves to be modified and, accordingly, the same is modified to the extent that instead of bank guarantee for a sum of Rs.344.07 Crores, which has been furnished by applicant/Respondent No.5, in terms of order dated 16.03.2021, the applicant/Respondent No.5 shall now furnish bank guarantee for a sum of Rs.100 Crores and it shall further furnish a corporate guarantee to the extent of Rs.300 Crores. The bank guarantee earlier furnished by the applicant/Respondent No.5 to the extent of Rs.344.07 Crores shall stand discharged on the applicant/Respondent No.5 fulfilling the above condition to the satisfaction of the Trial Court concerned.

13. It is again clarified that any observation made in this order shall not affect the merit of the case and the appeals will be heard on merit.

14. With the aforesaid directions, the I.A. No.6482 of 2022 is disposed of.

.....J
(VINEET SARAN)

.....J
(J.K. MAHESHWARI)

New Delhi
April 11, 2022.