Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Money Suit No. 23 of 2022
MS (COM) 23 of 2022
CNR No. WBSP18-000074-2022

Order No.27
Date:06.05.2024

In the matter of:
Suit for recovery of money valued at Rs. 11,86,03,41,595/-.
AND
In the matter of:
Power Trust & 03 Ors.
Vs.
Ashika Stock Broking Ltd. & 02 Ors.

JUDGMENT

Todayis fixed for passing judgment/order of the application being I.A. no. 03 of 2023.

Both sides have filed their respective haziras.

Now, the instant matter is taken up for passing necessary order.

I.A. no. 03 of 2023

1. The plaintiffs/petitioners have filed the instant application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 praying for Judgment on admission.

2. Plaintiff nos. 2 to 4 are admittedly trustees of the Plaintiff no. 1, Power Trust herein, a trust registered under the Indian Trusts Act, 1882 having its office presently at EN-46, 3rd Floor, Salt Lake City, Sector-V, Kolkata-700 091. Defendant No. 1, Ashika Stock Broking Limited (hereinafter referred to as Ashika), is a company registered under the Companies Act, 1956, dealing with the business of Stock Broking and inter alia providing services as a Depository Participant in which

the Plaintiff no. 1 has a Depository Account. Defendant no. 2 is the Compliance Officer of the Defendant no. 1 company.

3. The Plaintiffs filed the aforementioned suit for realization of a sum of Rs. 11,86,03,41,595/-, as mentioned in the prayer of the said suit, along with interest, inter alia, alleging that Defendant no. 1 to 2 are jointly and severally liable therefore. An application under Order XXXVIII Rule 5 of CPC was filed by the Plaintiffs.

4. Plaintiff no. 1 is emancipated from the scheme of arrangement and amalgamation under Sections 391 to 394 of the Companies Act, 1956 duly sanctioned by the Hon'ble High Court at Calcutta furthermore approving the names of the trustees and the incidental deed of trust dated 10th May, 2013 redacted by the then breathing trustees.

5. By way of an application being C.A. 565 of 2013 filed by the proforma Defendant herein, SEBI before the High Court at Calcutta, the Hon'ble Court by an Order dated 27th January, 2017 directed the Power Trust to sell 32,63,16,563 of IPCL (the per se company wherefrom the present Power Trust was exhumed by amalgamating with another company named DPSC) shares to the public by 30th April, 2017 which period was subsequently extended by the Hon'ble High Court vide its Order dated 25th August, 2017 till February, 2018. Subsequently, being filed an application by Power Trust before the High Court seeking an extension of time to sell the remaining IPCL shares to the public, the Hon'ble Court by virtue of an Order dated 18th May, 2018 disposed of the said application directing that all steps to dispose of the balance IPCL shares be taken expeditiously in pursuance of the relevant SEBI Regulations.

6. As such, admittedly, the Plaintiff no. 1, Power Trust has been engrafted to comply the direction of the Hon'ble Court so as to obviate the contempt proceeding which might be proceeded against him by SEBI, the Defendant no. 3 herein, for non-subservience of the aforesaid Order of the Hon'ble Court.

7. Positing in the above-stated echelon, Power Trust brought seven offers for Sale till date wherein aggregate 25,71,398 shares of IPCL in compliance of the Order of the Hon'ble Court.

8. Incidentally, in the year of 2021 two trustees of Power Trust were resigned expounding their personal inconveniences for not being further in the said Trust (conspicuously exposited from two letters dated 26th May, 2021 written by the said trustees, annexed with the present application). Consequently, the remaining sole trustee, Mr. Dipak Rudra, prior to resign from the said trust, inducted Plaintiff nos. 2 to 4 into the Power Trust as trustees. As a result, on 8th November, 2021 the Power Trust was embellished by new trustees, inter alia, the Plaintiff nos. 2 to 4 herein.

9. Having been reshuffled, new members of the Power Trust applied for change of signatories in the bank account of the Power Trust. Apropos branch of Axis Bank Limited upon request of new trustees effected changes of the signatories of the account of the Power Trust maintained with the said bank.

10. The new trustees, by providing all the executed KYC forms and documents, certified copies of the resolution passed by the Board of Trustees etc. to Ashika, called upon the Ashika, Defendant no. 1 herein, being the depository participant with whom the IPCL shares are held in dematerialized form, to change the names of the signatories in their records. Defendant no. 1 with supervision of the Defendant no. 2 failed and neglected to take niche steps in order to effectuate such change on diverse pretexts and crippled excuses. It is allegedly stated by the Plaintiffs that several requests were sent by them to Ashika to effectuate the above stated changes of signatories, albeit, with a gross irony, Defendant nos. 1 and 2 turned down the same sketching some frivolous pretexts (for discerning of the Court, correspondences exchanged between the Plaintiffs and Defendant nos. 1 and 2 are annexed with the present application).

11. Finding no other alternative way as the Plaintiffs are posited to comply the Order of the Hon'ble Court, Plaintiffs lodged a complaint with the SEBI, vide a letter of complaint date 6th April, 2022 and also lodged an online complaint with SEBI Complaints Redressal System (SCORES) on the same day. But it could not pour any effect on the determined stand of Ashika. Rather, Ashika without being succumbed to concede the request of the Plaintiffs, overturned the same, and substantiated their claim questing the changing process of neo-nominees of Power Trust.

12. Plaintiffs fall in a fix as the afore-delineated stand of the Ashika borders on gross disregards of the Order passed by the Hon'ble Court directed to the Plaintiffs to dispose of balance IPCL shares in an expedite manner. That being so, Plaintiffs filed this suit before this Court.

13. It appears from the record that by the Order dated 07th February, 2023 passed by the Hon'ble High Court at Calcutta in CA/5/2021 arising out of C.P. No. 206 of 2012 wherein the Hon'ble Court was pleased inter alia to record a specific observation to the effect that Ashika Stock Broking Limited, being the defendant/respondent no. 1 herein, has no objection to changing the signatories to the dematerialized account of the Trust.

14. Contentions of the defendant/respondent nos. 1 and 2 are as follows.

a. The order dated 7.02.2023 passed by the Hon'ble High Court at Calcutta was subsequently modified by an order dated 20th March, 2023 [a copy of such Order dated 20th March, 2023 of the Hon'ble Court has been annexed with the said written objections].

b. The defendants/respondents no. 1 and 2 requested SEBI, the pro-forma defendant/respondent herein, by a letter dated 31st March, 2023 to issue appropriate directions for changing the signatories to the plaintiff/petitioner 1's demat account [a copy of the said letter dated. 31st March, 2023 sent by the defendant/respondent nos. 1 and 2 to SEBI has been annexed with their written objections].

c. SEBI replied to such letter of the defendant/respondent nos. 1 and 2 by its letter dated 10th April, 2023 stating inter alia that the question of SEBI issuing any directions did not arise and further advised the depository participant to be guided by the applicable legal provisions including the Bye Laws of Depositories for effecting the changes in authorized signatories [A copy of the said letter dated. 10th April, 2023 sent by SEBI TO Ashika Stock Broking Ltd. has been annexed with the said written objection].

15. To counter the aforesaid contention of the defendants, the plaintiffs have stated as follows.

a. It has been consistent stand of the defendants that they have no objection to effecting the change of signatories to the demat account of the plaintiff no. 1 maintained with it. The precise position of the depository participant in this regard is aptly contained in the Order dated 20th March, 2023 passed by the Hon'ble Court at the instance of the Ashika Stock Broking Limited in an application taken out by its and which has been accepted by its without protest. The relevant portion of the said order reads: "*In view of the aforesaid, the order dated 7th February, 2023 is modified to that extent that the contention of the applicant that they have no objection in changing the signatories to the dematerialize account of the Trust is suitably modified to read as "the applicant Ashika does not object in changing the signatories to the dematerialized account of the Trust in case SEBI permits such change*".

b. It thus transpires that the defendants in and of themselves have no objection to changing the authorized signatories to the demat account of the plaintiff no. 1's objection to the same, if any, can come only from SEBI.

c. SEBI is a part to the instant proceeding, having been arrayed as pro-forma defendant/respondent no. 3. Till date, it has not filed any document indicating any objection on its part to the proposed change of authorized signatories despite multiple opportunities for raising such objections.

d. SEBI has clarified its position in this regard by the letter dated 10th April, 2023 which it has sent to the defendant no. 1 in response to its letter dated 31st March, 2023. SEBI has drawn inspiration from the observation on the Hon'ble High Court to the effect that the arrangement between the plaintiff no. 1 and the defendant no. 1 is in the nature of a private arrangement to refrain from issuing any direction with regard to the change of signatories. It has further advised the defendant/respondent no. 1 to be guided by the appropriate legal provisions in this regard including the bye laws of the depository participant.

e. Though inter alia the letter dated 10th April, 2023 as well as its conduct before the Hon'ble High Court as well as this Court, SEBI has signified, in no uncertain terms, its no objection to propose change of the authorized signatories.

f. In the written objections of the defendants, it has been stated that the objection raised by the defendants to the plaintiffs' request for change in authorized signatories was in view of certain alleged discrepancies in the conduct of the entire process by the plaintiffs/ petitioners.It is further stated that the defendants apprehend that they may be subject to penal action by the pro forma defendant/ respondent no. 3 if the change requested by the plaintiffs were to be effected.

g. This specific stand of the defendant/respondent nos. 1 and 2 further reinforces the fact that they have, in and of themselves, no objection to the requested changes and that their objection, if any, is owing to the apprehension of adverse penal consequences from the proforma defendant no.3 i.e., SEBI. As highlighted above, SEBI has signified, in no uncertain terms it's no objection to the proposed change of the authorized signatories and hence, no impediment can exist in allowing the present application.

h. As per the **Clause 2.2.2 of the Compliance Manual (Annexure P-8 of the pliant)** which the defendant nos. 1& 2 are bound to follow and abide by, the documents and details of which a depository participant can insist upon for change of authorized signatories to a depository account held by a non-individual are clearly and unambiguously enunciated. The relevant clause is extracted hereunder: ***"In case of change in authorized signatory, the Client should provide a fresh board resolution mentioned authorized signatories who shall operate the depository account along with specimen signature and photograph of the new authorized signatory. Participants need not obtain the details of the existing signatories if they remain unchanged. Thereafter, participants are advised to capture the signature of the new authorized signatories in the DPM system. Participants should ensure that the signature of the outgoing signatories are dislodged from the DPM systems".***

i. **Clause 2.2.2 of the Compliance Manual** specifically lists out the documents which a depository participant can legally ask of its non-individual client for effecting a change in the authorized signatories to the demat account held by such client, namely, a fresh board resolution mentioning authorized signatories who shall operate the depository account along with specimen signature and photograph of the new authorized signatory. It is no one's case that these documents have not been provided by the plaintiffs.

j. In ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India &Ors***[1]., the Hon'ble Supreme Court was pleased to dwell on the scope and ambit of

[1]Reported in (2000) 7 SCC 120.

Order XII Rule 6 of the Code of Civil Procedure, 1908. In which***the Hon'ble Supreme Court has been pleased to hold that***

"12.As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgement for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgement at least to the extent of the relief to which according to the admission of the defendants, the plaintiff is entitled." We should not unduly, narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgement. But the other party has made a plane admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.

k. In ***Karam Kapahi&Ors. V. Lal Chand Public Charitable Trust &Ors***[2]. The Hon'ble Supreme Court was pleased to enunciate the expanding horizon of the Court's power under Order XII Rule 6 of the Code of Civil Procedure, 1908 and held that

40. "If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 factors is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of he words used therein, namely, admission of fact......either in the pleading or otherwise, whether orally or in writing".

[2]**Reported in (2010) 4 SCC 753.**

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case."

16. In ***Barnwal Marketing v. Gee Pee Infotech Pvt. Ltd.***[3], the Hon'ble Calcutta High Court has observed that an admission under Order XII Rule 6 of the Code of Civil Procedure, 1908 need not be limited to the pleadings and may be in any other form, either written or even orally. The Hon'ble Court was further pleased to allow the application for a judgment upon admission disregarding the defence sought to be set up by the respondent as being concocted and unacceptable. The plaintiffs/petitioners have relied upon paragraph nos. 16 to 19 of the said decision.

17. In ***E.D. Enterprises Pvt. LTd. v. Kaiser Begum &Anr.***[4]**,** the Hon'ble Calcutta High Court *inter alia* laid emphasis on the fact that an admission can also be inferred from the facts and circumstances of a case. The plaintiffs/petitionershave relied upon paragraph nos. 7 to 10 of the said decision.

18. In ***H.K. Taneja &Ors. V. Bipin Ganatra***[5], the Hon'ble Bombay High Court dilate on the scope and ambit of Order XII Rule 6 of the Code of Civil Procedure, 1908.

19. In ***Pooja Sharma v. Gurmeet Kaur***[6], the Hon'ble Delhi High Court was pleased to hold that when relevant facts had been admitted, the mere fact that the respondent had tried to put its own interpretation to such admitted facts with a view to defeat the claim of the petitioner cannot be permitted to be a ground to decline relief under Order XII Rule 6 of the Code of Civil Procedure, 1908.

20. From the rival contentions of the both the parties as well as the decisions cited above, it appears that the judicial pronouncement is referred to above emphasise the broad extent of the power of the court to grant relief in an application for judgement

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[3]Reported in 2014 SCC OnLine Cal 20106: (2015) 2 Cal LT 260: (2015) 1 CHN 476.
[4]Reported in 2022 SCC OnLine Cal 4428: AIR 2022(NOC773) 361.
[5]Reported in 2013 (1) MahLJ 783.
[6]Reported in 2013 SCC OnLine Del 4730.

upon admission under Order XII Rule 6 read with section 151 of the Code of Civil Procedure, 1908. The consistent stand of the defendant/respondent nos. 1 and 2 before this Court as well as before the Hon'ble High Court at Calcutta has been that they have no objection to changing the authorised signatories if SEBI does not object to the same. By the letter dated 10th April, 2023 , SEBI has unequivocally stated that it does not object to the defendant/respondent nos. 1 and 2 changing the authorised signatories. SEBI further advise the defendant/respondent nos. 1 and 2 to be guided by the applicable legal provisions including the Bylaws of the Depositories.

21. The defendant/respondent nos. 1&2 have not pointed out any legal provision or any provision from the Bylaws of Depositorieswhich prohibits the changing authorized signatories as requested. In fact, it is not even their case that the changing authorized signatories as requested is prohibited by law. The only thing holding them back from making the changes requested is an apprehension of adverse penal action by SEBI.

22. SEBI, who is a party to the instant proceedings as well as the company proceedings before the Hon'ble High Court at Calcutta, is not for once objected to the manner of appointment of the new trustees were the present plaintiffs/petitioners. In the present proceedings, till date, SEBI has not filed any document expressing any objection or reservation on its part to change of authorized signatories. As such, it must be taken that SEBI has admitted that it has no objection to the defendant/respondent numbers 1 &2 changing the authorized signatories to the demat account held by the plaintiff/petitioners.

23. In view of the above discussions, this Court is of the view that the plaintiffs/petitioners are entitled to get decree as prayed for in terms of prayer(a) of the application under Order XII Rule 6 with Section 151 of the Civil Procedure Code, 1908.

24. Hence, it is,

ORDERED

that, the application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff/petitioners are allowed on contest without any order as to costs and the suit is decreed in terms prayer (a) of the said application.

The application being I.A. No. 03/2023 is, thus, accordingly disposed of

Fix the matter on **25.06.2024 at 11:00 a.m.** for further order.

Parties to act on the basis of the downloaded copy of the Order-sheet from the Web site/E-courts-app.

Dictated and corrected by me,

Sd/-	Sd/-
Judge, Commercial Court at Alipore, for South 24 Parganas, Purba Medinipur, Paschim Medinipur & Jhargram	Judge, Commercial Court at Alipore, for South 24 Parganas, Purba Medinipur, Paschim Medinipur & Jhargram