IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION (L) NO. 3298 OF 2020

T. Takano. … Petitioner.
V/s.
Securities and Exchange Board of India
and another. … Respondents.

Mr.Ashim Sood, Mr.Shreya Suri, Ms.Vaishnavi Rao, Mr.Rhythm Buaria, Ms.Swati Mittal, Mr.Armaan Pratap Singh and Ms.Shubhra i/b. Indus Law for the Petitioner.

Mr.Gaurav Joshi, Senior Advocate with Mr.Abhiraj Arora i/b. ELP for the Respondent No.1.

Sanjay K. Nanoskar Digitally signed by Sanjay K. Nanoskar Date: 2020.10.06 14:35:28 +0530

CORAM : NITIN JAMDAR AND
MILIND JADHAV, JJ.

DATE : 29 September 2020.
(Through Video Conferencing)

P.C. :

The Petitioner has challenged the show cause notice issued by Respondent No.1- Securities and Exchange Board of India under the Securities Exchange Board of India Act, 1992 read with Securities Contract Regulation Act, 1986.

2. The Petitioner was working with Ricoh India Limited, a subsidiary of Ricoh Company Limited. The Petitioner was

promoted as the Asia Pacific Head of the Company and shifted to Singapore.

3. While reviewing the financial statement of the Company for the quarter and half year ending 30 September 2015, the Statutory Auditors doubted certain transactions between the Company and its customers and vendors. The Audit Committee of the Company appointed M/s.Pricewaterhouse Coopers Private Limited to conduct a forensic audit. Pricewaterhouse Coopers submitted preliminary findings on 20 April 2016. The Company addressed a letter to Respondent No.1 on 20 April 2016 stating that the financial statements for the concerned quarters did not reflect true state of affairs. The Company requested Respondent No.1 to investigate the matter. Pricewaterhouse Coopers submitted final report which was forwarded by the Company to Respondent No.1 on 29 November 2016. The Respondent No.1 passed an *ex parte* interim order on 12 February 2018 restraining the Petitioner from accessing securities markets. The Respondent No.1 directed Bombay Stock Exchange to appoint an independent audit firm and, M/s.CJS Nanda & Associates was appointed by the Bombay Stock Exchange. On 16 August 2018, the Respondent No.1 passed a final order confirming the interim order/show cause notice dated 12 February 2018. The Petitioner filed an appeal before the Securities Appellate Tribunal in October 2018. The Respondent No.1 appointed Pipara & Company to conduct forensic audit of the Company. On 29 January 2020, the Appellate Tribunal set aside the order dated 16 August 2018,

however, granted liberty to Respondent No.1 to issue show cause notice. On 4 August 2020, Respondent No.1 issued show cause notice impugned in this petition.

4. After receipt of notice, the Petitioner wrote to Respondent No.1 that he has received only a show cause notice along with report of Pipara & Co. and called upon Respondent No.1 to furnish all the documents. The Respondent No.1 communicated to the Petitioner on 13 August 2020 that the investigation report was an internal document and could not be provided to the Petitioner. The Petitioner was given opportunity to inspect the documents which would be made available on 19 August 2020. The Petitioner communicated that it will not be possible for him to take inspection on 19 August 2020. The Respondent No.1 sent soft copies of the annexures to the report and called upon the Petitioner to submit reply. The Petitioner reiterated the demand for furnishing documents. Finally, on 4 September 2020, the Respondent No.1 refused any further time stating that whichever documents are being relied upon will be furnished and the Petitioner should participate in the inquiry. At this stage, the Petitioner has approached this Court.

5. We have heard Mr.Sood, learned counsel for the Petitioner and Mr.Joshi, Senior Advocate for Respondent No.1.

6. The Petitioner has raised two broad contentions- (i) the impugned show cause notice is bad in law as it violates the procedure laid down under the Securities and Exchange Board of India

(Procedure for holding inquiry and imposing penalties) Rules, 1995 and (ii) the action of Respondent No.1 to proceed further with the inquiry without furnishing necessary documents is in breach of the principles of natural justice.

7. First we take up the contention regarding breach of rules. Because of the stand taken by Respondent No.1, it is unnecessary to elaborate the controversy in detail. The contention of the Petitioner that the impugned show cause notice in paragraph-8 where it enumerates the individual role of the noticee refers to violation of the regulations 3(b),(c),(d), 4(1) and 4(2)(e), (f), (k) and (r) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Based on this, the Petitioner contends that the Respondent No.1 had omitted several pre-conditions and essential steps to be taken before imputing breach of regulations to the Petitioner. This contention is based on interpretation of Rule 4 of the Rules of 1995. Rule 4 reads thus:-

> **"Holding of inquiry.**
> 4. (1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB the Board or the adjudicating officer] shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.
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> (2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

It is contended that without following steps under Rule 4(1), (2), (3) and (4) the Respondent No.1 has directly issued show cause notice. The learned Senior Advocate for Respondent No.1 submitted that

the Petitioner has approached this Court at the stage of show cause notice and the petition is not maintainable. Further the Petitioner has remedy to approach the Appellate Tribunal. The learned Senior Advocate further points out that the contention raised by the Petitioner is based on misconstruction of law and facts. He points out that under Rule 4, a show cause notice is only one i.e. prescribed in Rule 4(1) and the impugned show cause notice is issued under Rule 4(1) and, therefore, there is no question of omitting any steps. He submitted that Respondent No.1 will follow and is obliged to follow as in any other case the procedure laid down under Rule 4. The learned counsel for the Petitioner accepts that because of this clarification, this grievance of the Petitioner does not survive.

8. Though the request on paper made by the Petitioner in the correspondence widely stated, the counsel for the Petitioner has restricted the request to two documents i.e. (i) forensic report by CJS Nanda & Associates and (ii) Inspection Report. As regards the report of CJS Nanda & Associates, it is contended that the same finds reference in the order passed by the Appellate Tribunal in the earlier round and needs to be given to the Petitioner The Respondent No.1 that the report of CJS Nanda & Associates having been found incomplete, a report was prepared through Pipara & Co. and the show cause notice issued is based on the report of Pipara & Co. of which copies are already supplied to the Petitioner.

9. In view of the consensus at the bar after some arguments, it is not necessary to adjudicate the dispute on this document. The

learned counsel for the parties have agreed to leave it to the Adjudicating Officer to decide whether the report of CJS Nanda & Associates needs to be given to the Petitioner. It would be open to the adjudicating officer to take an appropriate decision.

10. The second document which the Petitioner seeks from Respondent No.1 is the Inspection Report. Here it needs to be noted that the present petition was heard along with Writ Petition (L) No.3293/2020 filed by another director of the Company, Mr.A T Rajan. This petition was disposed of by consensus that the issue of Inspection Report would be left to the Adjudicating officer to decide. Learned counsel for the Petitioner took instructions and informed that this Petitioner is not ready for this course of action and seeks a direction to give the Inspection Report now.

11. The Inspection Report sought by the petitioner is prepared under regulation 9 of the *Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003*. Regulation 9 and 10 Reads thus:

> **Submission of report to the Board**
> **9.** The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority:
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> Provided that the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority.

Enforcement by the Board

10. The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation 11 and regulation 12: Provided that the Board may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue

Provided further that the Board may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post – decision a l hearing to the persons concerned as expeditiously as possible.

The Petitioner contends that the report prepared under Regulation 9 finds reference in Regulation 10 which clearly stipulates that the Board, after consideration of report under Regulation 9 *"if satisfied"* that there is violation of regulations, would proceed further. He submitted that further steps based on this inspection report would culminate into action against the Petitioner. It was also submitted that Regulation 11 refers to sections 11A and 11B of the Act of 1992 which finds reference in the show cause notice and this clearly indicates that the inspection report forms the basis for the action against the Petitioner and, therefore, the Petitioner is entitled to receive the same.

12. Respondent No.1 contends that the report is for the satisfaction of the Board and it is only a matter of internal purposes that a preliminary report is called for and upon satisfaction, the Respondent No.1 will proceed further. It is categorically submitted

by Respondent No.1 that preliminary report is not treated as a material against the Petitioner in the inquiry under the present Show Cause Notice.

13. In the decision of this Court in the case of *Dr.Prannoy Roy and another v. Securities and Exchange Board of India and another*[1], the petitioner had sought documents from the Stock Exchange Board of India including the material gathered through inspection and the inspection report. The Division Bench of this Court by order dated 6 January 2020 had dismissed the petition.

14. The preliminary Report under Regulation 9 is a matter of internal administrative discipline. Even otherwise, in this case, it does not form the basis of the Show Cause Notice. The Apex Court in the case of *Natwar Singh v. Director of Enforcement*[2] has laid down there is no duty to disclose all the documents under the possession of the adjudicating authority. The Apex Court in paragraph-48 of the said judgment held as under:

> "48. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the

1 WP No.3581/2019 decided on 6 January 2020.
2 (2010) 13 SCC 255

> fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.
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> (emphasis supplied)

The above position of law is clear. The Respondent No.1 has clarified that this report is not used against the Petition and the does not form basis of the Show Cause Notice. Respondent No.1 has reiterated its stand that it is willing to give inspection as per its communication and will furnish and have furnished copies of the documents relied upon by it in the Show Cause Notice. In our opinion, no direction as sought for by the petitioner is, therefore, warranted.

15. The Petitioner requests for extension of time to take inspection and file reply. We extend the time to take inspection by 7 working days. Time to file reply is extended by 15 working days. The time limit will be calculated from the date the order is uploaded.

16. As a result, the consensus of the parties on the two issues as above, is noted. We decline to issue any other direction.

17. Writ petition is disposed of in above terms.

18. This order will be digitally signed by the Personal Assistant/ Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

(MILIND JADHAV, J) (NITIN JAMDAR, J)