IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION (L) NO. 3293 OF 2020

AT Rajan. … Petitioner.
V/s.
Securities and Exchange Board of India
and another.. … Respondents.

Mr.Nikhil Sakhardande, Senior Advocate with 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.

Digitally signed by Sanjay K. Nanoskar
Sanjay K. Nanoskar
Date: 2020.10.03 16:16:12 +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 as the Managing Director and Chief Executive Officer of Ricoh India Limited, a subsidiary of Ricoh

Company Limited. 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. Preliminary findings were submitted 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 real 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, the Bombay Stock Exchange appointed CJS Nanda & Associates. 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.

3. 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 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.

4. We have heard Mr.Sakhardande, Senior Advocate for the Petitioner and Mr.Joshi, Senior Advocate for Respondent No.1.

5. 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.

6. 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, 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.
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> (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."

Petitioner contended that without following steps under Rule 4(1), (2), (3) and (4) the Respondent No.1 has directly issued the show cause notice.

7. The learned Senior Advocate for Respondent No.1 submits that this contention 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 in law 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, the grievance of the Petitioner on this count does not survive.

8. The next ground is regarding breach of principles of natural justice by non-supplying necessary documents. Though the request by the Petitioner in the correspondence is widely stated, the learned counsel for the Petitioner has restricted the request in this petition 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 contends 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. Petitioner has sought a copy of the Inspection Report, which request is contested by the Respondent no.1 The learned Senior Advocate for Respondent No.1 submitted that copies of the documents used against the Petitioner in the inquiry under the show cause notice, would be given to the Petitioner and it is not necessary to supply the documents not being used against the Petitioner.

9. In view of the consensus at the bar after some arguments, it is not necessary to adjudicate on this issue as well. The learned counsel for the parties have agreed to leave it to the Adjudicating Officer to decide whether the report of CJS Nanda & Associates and the Inspection Report needs to be given to the Petitioner. It would be open to the adjudicating officer to take an appropriate decision.

10. In view of this consensus, no further orders are required to be passed in this petition. Clarifying the position as above, we dispose the petition.

11. 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.

12. 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)