REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPEALLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 15149 OF 2021

Kavi Arora **Petitioner (s)**

Versus

Securities & Exchange Board of India **Respondent (s)**

J U D G M E N T

***Indira Banerjee, J*.**

This present special leave petition is against the impugned judgment and final order dated 15th September 2021, passed by the Division Bench of the High Court of Judicature at Bombay, dismissing Writ Petition (L) No. 19352 of 2021, filed by the Petitioner under Article 226 of the Constitution of India, whereby the Petitioner had sought directions against the Respondent, Security and Exchange Board of India (SEBI), to forthwith furnish to the Petitioner documents relied upon by the Respondent-SEBI, in Show Cause Notice No. SEBI/HO/IVD/ID2/OW/P/2020/19435/1 dated 17th November 2020 issued to the Petitioner to show cause why

appropriate directions should not be taken against him under Sections 11(1), 11(4), 11B(1) 11B(1), 11B(2), and 11(4A) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act”) and Section 12A(1) and 12A(2) of the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as “SCR Act 1956”) read with SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as, as "SEBI Adjudication Rules 1995") and Securities Contract (Regulation) (Procedure for holding inquiry and imposing penalties) Rules, 2005 (hereinafter referred to as “SCR Penalties Rules 2005”). The Petitioner had also sought orders for supply of a copy of the opinion formed under Rule 3 of the SEBI Adjudication Rules 1995, for constituting an Adjudicating Authority to issue Show Cause Notice dated 17th November 2020 to the Petitioner.

2. The Petitioner joined Religare Finvest Limited (RFL), a subsidiary entity of Religare Enterprises Ltd. (REL) as the President-Consumer Finance, to set up and manage its retail lending business i.e. SME Lending business. Thereafter, he worked as the Managing Director (MD) and Chief Executive Officer (CEO) of RFL to represent the SME Lending Business.

3. Respondent SEBI appointed a Forensic Auditor, M/s MSA Probe Consulting Private Limited (hereinafter referred to as “MSA Probe Consulting”) to conduct an investigation in the matter of M/s

Religare Enterprises Private Ltd. (REL) and related entities for alleged violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the SEBI PFUTP Regulations").

4. Show Cause Notice (SCN) No. SEBI/HO/IVD/ID2/OW/P/2020/19435/1 dated 17.11.2020 was issued by Respondent SEBI to the Petitioner under Section 15HA of the SEBI Act and Rule 3 of the Adjudication Rules pertaining to Section 11(1), 11(4), 11B(1), 11B(2), and 11(4A) of the SEBI Act along with Section 12A(1) and 12A (2) of the SCR Act 1956 read with SEBI Adjudication Rules 1995 and SCR Penalties Rules 2005 as to why appropriate directions for imposing penalty, should not be passed against him.

5. Show Cause Notices were issued against 13 noticees, the Petitioner being one of them (Noticee No. 12). The allegation in the Show Cause Notice is that funds to the tune of Rs. 2315.66 crores were diverted from RFL through several layers of conduit entities for the ultimate benefit of promoters of REL and RFL.

6. On receipt of the Show Cause Notice, the Petitioner filed a Settlement Application dated 22.02.2021, proposing to settle the proceedings initiated by the Show Cause Notice, in terms of SEBI (Settlement Proceedings), Regulations, 2018 (hereinafter referred

to, in short as "the Settlement Regulations"). The Petitioner could not settle the proceedings.

7. The Petitioner sent an e-mail to the Respondent SEBI, requesting Respondent SEBI to afford him an opportunity to inspect the documents relied upon by the Respondent SEBI. Ms. Sneha Jalan, Assistant General Manager, SEBI, offered some documents for inspection of the Petitioner, on 15th January 2021.

8. The Petitioner submits that from time to time, the Petitioner asked the Respondent SEBI to provide for inspection to the Petitioner, the documents relied upon, for the issuance of Show Cause Notice.

9. According to the Petitioner, some documents were supplied to the Petitioner and other noticees. However, certain documents were denied on the ground that those were confidential documents.

10. The Petitioner submits that, as per SEBI Rules, it is mandatory on the part of Respondent SEBI to provide a copy of the opinion formed by Respondent SEBI for issuance of the Show Cause Notice to the noticee, before hearing the Show Cause Notice. It is further submitted that copies of all documents were relied upon by the Respondent SEBI at the time of issuing Show Cause Notice have to be provided to the Petitioner. It is contended that without

getting access to those documents, it would not be possible for the Petitioner to reply to the Show Cause Notice.

11. On the other hand, it is the case of Respondent SEBI, that as per the SEBI Adjudication Rules, the Board has to form an opinion, to decide whether the Show Cause Notice is required to be issued or not. The Respondent SEBI is not required to furnish the noticee with a copy of the opinion. It is further, the case of Respondent SEBI, that in addition to physical inspection of all relevant documents. Respondent SEBI has provided the Petitioner with a Compact Disc containing voluminous records, except those which contain internal confidential documents or documents which affect the confidentiality of third parties. By a letter dated 24th March 2021, the Petitioner was informed that the documents mentioned in paragraphs 3, 4 and 5 of his e-mail dated 23rd March 2021 were confidential documents. The Petitioner, however, made an application to SEBI to supply the documents relied upon to form an opinion as per the SEBI Adjudication Rules, to commence inquiry.

12. Mr. Sidharth Luthra, learned Senior Counsel appearing on behalf of the Petitioner submitted that Show Cause Notice had been issued to the Petitioner by Respondent SEBI, inter alia, under Section15HA of SEBI Act (Chapter VI-A) and Rule 3 of the SEBI Adjudication Rules which requires formation of opinion for appointing an Adjudicating Authority, before proceeding under Chapter VIA.

13. Mr. Luthra submitted that that on 17th November 2020, Show Cause Notice was issued to the Petitioner. The Petitioner filed his preliminary reply on 28th December 2020, reserving his right to file a detailed reply after inspection of documents.

14. By an order dated 6th January 2021, the Adjudicating Authority adjourned the hearing for inspection of documents. Inspection of documents was conducted on 15th January 2021. Many documents relied upon in the Show Cause Notice were not shown to the Petitioner.

15. By an email dated 23rd March 2021, the Petitioner through his Advocate requested for all documents relied upon by the Respondent SEBI.

16. On 24th March 2021, only some of the documents relied upon were supplied and other documents refused on the ground of confidentiality.

17. The Petitioner's Advocate again requested for supply and inspection of relied upon documents on 12th April 2021 and 4th May 2021. On 12th May 2021 & 14th May 2021, online inspection was made by Advocate of the Petitioner. According to the Petitioner, documents relied upon were neither shown, nor supplied to the Petitioner.

18. On 27th May 2021, illegible copies of some documents identified by the Petitioner were supplied but not the remaining ones.

19. On 13th July 2021, the Petitioner filed two applications for supply of opinion formed under Rule 3 of the SEBI Adjudication Rules 1995 and for supply of documents relied upon. However, without supplying the documents relied upon the Adjudicating Authority fixed the matter for final hearing on 26th August 2021.

20. On 26th July 2021, the Petitioner's Advocate sent an email showing that the proceedings could not be fixed for final hearing in terms of Rule 4(1), 4(2), 4(3) 4(4) and 4(5) of SEBI Adjudication Rules 1995 which provide for two-tier adjudication process.

21. On 26th August 2021, the Petitioner sought permission to address arguments on the two applications but the Adjudicating Authority refused to hear them and it was observed by the Adjudicating Authority that documents not supplied would not be relied upon in the final order.

22. It was argued that the Petitioner had sought inspection of the opinion under Rule 3, by an email dated 4th May 2021. The proceedings before the Adjudicating Authority were listed on 29th September 2021. The Adjudicating Authority, without hearing the Petitioner sent the Record of the proceedings dated 29th September 2021 to the Petitioner on 30th September 2021, incorrectly recording that the arguments were heard by the Adjudicating

Authority on the Applications filed by the Petitioner. In the record of proceedings, it was *inter-alia* stated that an opportunity to inspect the opinion, would be provided to the Petitioner.

23. Counsel argued that after numerous requests, an opportunity to inspect the opinion was given to the Advocate of the Petitioner on 10th December 2021, under Rule 3 of the SEBI Adjudication Rules 1995. According to the Petitioner, only redacted opinion was supplied to the Petitioner. In the circumstances, Petitioner sought the complete opinion formed under Rule 3 of the SEBI Adjudication Rules 1995 by the Adjudicating Authority.

24. It is argued that Show Cause Notice relies heavily on the probe conducted by an independent agency called MSA Probe Consulting. The said MSA Probe Consulting submitted a report upon completion of investigation, along with all supporting documents. The said Report along with its enclosures was made Annexure 1 to the Show Cause Notice.

25. Mr. Luthra argued that while deciding whether or not to issue Show Cause Notice, SEBI relied upon the MSA Probe Report and its enclosures, but refused to supply the same once the Petitioner entered appearance, on the contention that it would not rely on the said documents. It is contended that Respondent SEBI withheld the following documents:-

> *"i. Index of bank statements.*
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> *ii. Calendar of evidence (oral) consisting of gist of interviews conducted.*

> *iii. Calendar of evidence (documentary) consisting of emails/ letters/ hardcopies,*
>
> *iv. Calendar of evidence (documentary) consisting of soft copies of emails/communications/ bank statements & certain supporting documents in CDs*."

26. Mr. Luthra submitted that while Respondent SEBI has taken a stand that documents are confidential without giving reasons, the Adjudicating Authority had on 26th August 2021 taken a stand that documents would not be relied upon. He stated that the documents at (i), (iii) & (iv) mentioned above, were stated to be confidential documents.

27. Mr. Luthra submitted that the documents relied upon by the Respondent SEBI the Show Cause Notice, could not be denied to the Petitioner. In support of his submission Mr. Luthra cited ***T. Takano v. SEBI[1], Natwar Singh v. Directorate of Enforcement and Another[2]*** and ***Indian Commodity Exchange Limited v. Neptune Overseas Limited[3].***

28. In ***Natwar Singh v. Directorate of Enforcement and Others[4]***, this Court held:-

> ***"31.*** *The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are*

1 2022 SCC Online SC 210

2 (2010) 13 SCC 255

3 2020 SCC Online SC 967

4 (2010) 13 SCC 255

required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.

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33. *In this regard, the learned Senior Counsel for the appellant pressed into service the doctrine of duty of adequate disclosure which according to him is an essential part of the principles of natural justice and doctrine of fairness. A bare reading of the provisions of the Act and the Rules do not support the plea taken by the appellants in this regard. Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of the principles of natural justice. No court can compel the authority to deviate from the statute and exercise the power in altogether a different manner than the prescribed one.*

34. *As noticed, a reasonable opportunity of being heard is to be provided by the adjudicating authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the adjudicating authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the adjudicating authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show-cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the*

> *controversy for correcting or contradicting anything prejudicial to their view."*

29. In ***Shashank Vyankatesh Manohar v. Union of India***[5], the High Bombay Court interfered with the Show Cause Notice impugned, even though the Court found that there was nothing on record to indicate that the Adjudicating Authority had considered certain aspects adverted to by the noticee, before forming the opinion to proceed further with the inquiry. However, a communication calling the Petitioner in that case for a personal hearing was set aside and the Special Director was directed first to form his opinion after recording reasons, whether to proceed against the Petitioner with regard to the impugned 11 Show Cause Notices.

30. In ***Amit Jain v. Securities and Exchange Board of India and Another***[6], the Delhi High Court held:-

> *"33. It is apparent from the above that the formation of an opinion by the Board that there are grounds for adjudging under any of the provisions of Chapter VIA of the Act is a pre-condition for appointment of an Adjudicating Officer. It follows that in absence of such an opinion, an Adjudicating Officer cannot be appointed and any such appointment would be without jurisdiction. The respondent also does not dispute the above proposition. It claims that the Board has formed an opinion that there are grounds for adjudging under the provisions of Chapter VIA of the Act and, therefore, the appointment of the Adjudicating Officer cannot be faulted. In its counter affidavit, the respondent has averred as under:-*
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> > *"It is submitted that SEBI had examined into the alleged irregularities in the trading in shares of Himalayan Granites Ltd. and into possible*

5 2014(1) MahLJ 838

6 2018 SCC Online Del 9784

> *violation of the provisions of the SEBI Act and PIT Regulations. Further, the adjudication proceedings were initiated in the matter after the Whole Time Member was prima-facie satisfied that there are sufficient grounds to enquire into the affairs and adjudicate upon the alleged violations under the SEBI Act and PIT Regulations. It is submitted that the same can be seen from Page no.66 (Annexure 10) of the writ petition containing the file noting."*

31. Mr. Luthra pointed out that Rule 4 of the SEBI Adjudication Rules 1995 provides for a two-tier adjudication process. The said Rule is in *pari materia* with Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

32. Rule 4 of the SEBI Adjudication Rules 1995 contemplates that the Adjudicating Authority is first required to form an opinion on the basis of the reply to the Show Cause Notice, as to whether an inquiry should be conducted against the noticee or not. Even after forming the opinion, the Adjudicating Authority cannot proceed to the stage of final hearing, without first issuing notice to the Petitioner for explaining the charges against him and then giving him an opportunity to produce documents and examine witnesses.

33. It is submitted that, in this case, the Adjudicating Authority has not followed the procedure, and instead fixed the case for final hearing without forming an opinion, as required under Rule 4(3) of the SEBI Adjudication Rules 1995. In the context of his argument. Mr. Luthra relied on the decision of the High Court at Bombay in ***Shashank Vyankatesh Manohar*** *(supra)* upheld by this Court in

SLP (C) No. 017104/2014 titled ***Union of India v. Shanshank Vyankatesh Manohar.*** In ***Shashank Vyankatesh Manohar*** *(supra)*, the High Court held:-

> *"10. It is true that ordinarily this Court would not entertain a Writ Petition against a show cause notice as the noticee would get an opportunity to submit his reply and of hearing before the adjudicating authority. However, the scheme of the Adjudication Rules in question is different from the other inquiries where an authority issues a show cause notice, the noticee submits his reply, the authority then hears the complainant and the noticee for taking a decision in the matter. Ordinarily, inquiries are not divided into different stages, unlike the inquiry for which procedure is laid down in Rule 4 of the Adjudication Rules. In ordinary inquiries, the inquiry officer is not required to form any opinion before conclusion of the inquiry. On the other hand, the scheme of Rule 4 of the Adjudication Rules is quite different and the same is required to be examined both for the purpose of considering the last alternative submission of the petitioner about breach of Rule 4 of the Adjudicating Rules and also for considering the aforesaid preliminary objection raised by the learned Additional Solicitor General about maintainability of the Writ Petition.*
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> ***
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> *12. On reading the above Rule, particularly sub-rules (1) and (3) thereof, it is clear that on the issue of show cause notice, a noticee is permitted to submit his reply to the same. In terms of the above Rule, the Adjudicating Authority has to consider the objections raised by the noticee and only if he forms an opinion that an inquiry should be continued further that the Adjudicating proceedings can be proceeded with, by issuing a notice for personal hearing. However, if the Adjudicating Authority is satisfied that the objections raised to the notice are valid, he may drop the show cause notice. The provision as found in Rule 4 of the Adjudication Rules is a unique provision. The Counsel for the parties were not able to point out any similar rules under which a two tier adjudication of a show cause notice is provided for in any other statute. Normally, once a show cause notice has been issued, the Adjudicating Authority deals with all the objections of the noticee, be it preliminary as well as any other defence, by passing one common order of*

> *adjudication. The fact that the legislature has provided in Rule 4 of the Adjudication Rules that on issue of notice, the noticee can object to the same and this objection has to be considered by the Adjudicating Authority for forming an opinion to proceed further with the show cause notice would require giving some meaning to it, otherwise it would be rendered otiose."*

34. In ***T. Takano*** *(supra),* cited by Mr. Luthra, this Court relying upon its decision in ***Natwar Singh*** *(supra)* held:-

> ***"30.*** *The submission of Mr. C U Singh, learned senior counsel is that only those materials which are relied upon should be disclosed to the first respondent. Regulation 10, as we have noted earlier, stipulates that the satisfaction of the Board whether there has been a violation of the regulations has to be arrived at:*
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> *(i) after considering the report of the investigating authority referred to in Regulation 9; and*
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> *(ii) after giving a reasonable opportunity of hearing to the person concerned.*
>
> ***31.*** *Once the subordinate legislation mandates that the investigating authority's report is an essential ingredient for the Board to arrive at the satisfaction, it requires due disclosure.*
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> ***
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> ***51.*** *The above extracts indicate that the findings of the investigation report are relevant for the Board to arrive at the satisfaction on whether the Regulations have been violated. Even if it is assumed that the report is an inter-departmental communication, as held in Krishna Chandra Tandon (supra), there is a duty to disclose such report if it is relevant for the satisfaction of the enforcement authority for the determination of the alleged violation."*

35. As held by this Court in ***T. Takano*** (supra), it would be fundamentally contrary to the principles of natural justice if the relevant material were not disclosed to the noticee.

36. In ***T. Takano*** *(supra),* this Court approved and followed the law laid down in ***Natwar Singh*** *(supra)* and reiterated that the

Adjudicating Authority had the duty to disclose the materials that had been relied upon during the stage of adjudication. It is also true that the Adjudicating Authority cannot exercise unfettered discretion to redact documents necessary for the noticee to defend his case.

36. The Respondent SEBI has, in this Case clearly stated that the documents specified, namely, Index of bank statements, Calendar of evidence (oral) consisting of emails/letters/hard copies, Calendar of evidence (documentary) consisting of emails/ letters/ hardcopies, Calendar of evidence (documentary) consisting of soft copies of emails/communications/ bank statements & certain supporting documents in CDs are confidential. Mr. Luthra submitted that the Petitioner has been able to show that withholding of documents containing exculpatory material would adversely affect the defence of the Petitioner.

37. Mr. Chander Uday Singh, learned Senior Counsel appearing on behalf of the Respondent SEBI submitted that SEBI had conducted an investigation in the matter of Religare Enterprises Ltd. (REL) and various related entities for alleged violation of the provision of SEBI Act and/or SEBI PFUTP Regulations", during the period between 1st April 2011 to 31st March 2018.

38. Mr. Singh submitted that MSA Probe Consulting was appointed Forensic Auditor on 10th May 2018 to examine alleged

diversion of funds from REL and/or its subsidiaries for the benefit of the promoter/promoters and/or connected entities.

39. The Petitioner was apparently President, Consumer Finance of Religare Finvest Ltd., a subsidiary of REL and a related entity from 15th May 2008. He was CEO from 2009 and Managing Director and CEO till November 2017. Mr. Singh submitted that he was at the helm of affairs of Religare Finvest Limited subsidiary of REL during the period when funds were diverted from REL and Religare Finvest Limited and other related entities.

40. The Petitioner along with 12 other entities had been issued common Show Cause Notice dated 17th November 2020 along with relevant documents relied upon by SEBI for issuance of the Show Cause Notice. The Petitioner was required to show cause why an inquiry should not be held against him. After considering the cause shown, the Adjudicating Officer might issue notice under Rule 4(3) fixing a date for appearance of the noticee either personally or through a lawyer or authorised representative.

41. Mr. Singh submitted that having filed preliminary reply, the Petitioner repeatedly sought and obtained inspection of various records and documents. In addition to physical inspection, SEBI provided a compact disc containing voluminous records of most of the documents, except some documents which were internal or confidential or affected the confidentiality of third parties and hence could not be provided.

42. Mr. Singh submitted that the Petitioner did not submit his reply to the Show Cause Notice but sent emails demanding to know which documents were relied upon by SEBI and which documents were not. Further, online inspection was granted as physical inspection was not possible due to the Pandemic. The Petitioner made an application for supply of the following documents:-

> *"(i) Enclosure (i) to the MSA Probe Report containing index of bank statements;*
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> *(ii) Enclosure (iii) to the MSA Probe Report containing calendar of oral evidence consisting of gist of interviews conducted.*
>
> *(iii) Complete set of Enclosure (iv) to MSA Report i.e. Calendar of evidence (Documentary) consisting of emails/ letters/hard copies.*
>
> *(iv) Complete set of enclosure (v) to the MSA Report i.e. Calendar of Evidence (Documentary) consisting of soft copies of emails/communications /bank statement and certain supporting documents in CD."*

43. According to Mr. Singh, the Petitioner had been provided with all documents relied upon by SEBI which were relevant for the Petitioner to reply to the Show Cause Notice.

44. Rules 3 and 4 of the Security and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 reads:-

> *"**Appointment of adjudicating officer for holding inquiry.** 3. Whenever the Board is of the opinion that there are grounds for adjudging under any of the provisions in Chapter VI-A of the Act, it may appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.*
>
> ***Holding of inquiry**.*

4.(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G [15HA and 15HB] whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15F, 15G [15HA and 15HB] 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.

(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 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 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 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 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 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 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 adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

1. Substituted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.

2. Substituted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.

3. Inserted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.

45. At the stage of Rule 3, the Board appoints an Adjudicating Officer if it is of the opinion that there are grounds for adjudication under any of the provisions in Chapter VIA of the SEBI Act. At this stage, the Board only decides whether adjudication proceedings should be initiated or not. The formation of opinion is not a formal inquiry proceeding involving any person or persons against whom inquiry is contemplated. The participation of the person against whom inquiry is contemplated is not necessary. The Board forms its opinion, based on whether there are *prima facie* materials or grounds for initiation of inquiry. The opinion of the Board under Rule 3 has nothing to do with the outcome of the enquiry.

46. After the Board forms its opinion to appoint an Adjudicating Officer, comes the next stage, which is the stage under Rule 4 of an inquiry for adjudging under Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J and 15HB whether any person has committed contraventions as specified in those sections. The inquiry commences with a Show Cause Notice calling upon the noticee to show cause why an inquiry should not be held against him. The Show Cause Notice has to specify the nature of offence alleged to have been committed and the penalty proposed, to enable the

noticee to effectively reply to the show cause. A reading of Rule 4(3) makes it clear that, if after considering the cause, if any shown by the noticee, the Adjudicating Officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for appearance of that person either personally or through his lawyer or other authorised representative. The noticee is not required to be heard personally or through lawyer before taking a decision to proceed with an inquiry in respect of the contraventions alleged in the Show Cause Notice. Decision to proceed or not to proceed with the inquiry may be taken on the basis of the reply of the noticee to the Show Cause Notice. Once it is decided to proceed with the inquiry, an opportunity of personal hearing is mandatory. The inquiry has to be conducted in accordance with law, in compliance with the principles of natural justice.

47. In this case, the Board was of the opinion that there were grounds for adjudication and accordingly appointed Adjudicating Officer. Adjudicating Officer issued Show Cause Notice to the Petitioner to which the Petitioner gave a preliminary reply and thereafter sought documents as observed above. Inspection of some documents was permitted. After considering the reply, the Adjudicating Officer was of the opinion that inquiry should be held. Accordingly, a notice fixing a date for appearance was issued. There was no procedural irregularity, at least till the stage of notice fixing a date of hearing.

48. In Course of argument before the High Court, counsel for the Respondent SEBI made a statement that SEBI would not rely on any document apart from those which had been provided to the Petitioner.

49. It is well settled that the documents which are not relied upon by the Authority need not be supplied as held in ***Natwar Singh*** *(supra)* where this Court held:-

> *"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 fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework."*

50. The High Court rightly did not interfere with the proceedings at the stage of the Show Cause Notice. The Petitioner has apparently been permitted to inspect the opinion formed under Rule 3 of the SEBI Adjudication Rules. There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the noticee in its entirety. The documents relied upon for formation of opinion under Rule 3, are not required to be disclosed to the noticee unless relied upon in the inquiry. In the event, the Petitioner is prejudiced by reason of any adverse order, based on

any materials not supplied to the Petitioner, or any prejudice is demonstrated to have been caused to the Petitioner, it would be open to the Petitioner to approach the appropriate forum.

51. This Court has by its interim order dated 27th September 2021 permitted Respondent SEBI to hold the inquiry, without relying upon any documents, not supplied to the Petitioner. The interim order will govern the inquiry.

52. In our view, there is no infirmity in the impugned judgment and order of the High Court dismissing the writ petition filed by the Petitioner.

53. In view of the foregoing reasons, the Special Leave petition is dismissed.

..... J.
[INDIRA BANERJEE]

..... J.
[A. S. BOPANNA]

NEW DELHI
SEPTEMBER 14, 2022