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IN THE HIGH COURT OF JUDICATURE ATBOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodg.) NO. 300 OF 2019

Reliance Industries Limited and Anr. … Petitioners.

V/s.

Securities and Exchange Board of
Indian and Anr. ... Respondents.

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Rohan Rajadhyaksha, Mr. Vaidhyanathan Iyer, Mr. Amey Nabar, Ms. Sonali Mathur and Ms. Cheryl Fernandes I/b. AZB & Partners for the Petitioners.
Mr. D.J. Khambata, Senior Advocate a/w. Mr. Mihir Mody and Mr. Nirav Parmar I/b. K. Ashar & Co. for Respondent 1.

CORAM : NARESH H. PATIL,C.J. &
N.M. JAMDAR, J.

DATE : 04 FEBRUARY, 2019.

P.C. **:-**

The Petitioners challenge an email communication sent by the Securities and Exchange Board of India (SEBI) dated 28 January 2019. In connection with the letter issued on 16 April 2010 conveying the findings of the investigation, the settlement proceedings were initiated and the consent applications was filed by the Petitioners for settlement.

2. During the course of settlement proceedings, SEBI had appointed one Mr. Y.H. Malegam, Chartered Accountant to submit a report and accordingly, the Chartered Accountant visited the Office of the Petitioner in January 2019.

3. The Petitioner submitted an application dated 21 January 2019 at Exhibit 'D' wherein the Petitioner prayed for copies of the report of the Chartered Accountant submitted to the SEBI and other information related to other documents which referred to in the said communication.

4. In response to the said communication, the Respondent – SEBI rejected the request to furnish the report of Mr. Malegam. The Respondent relied upon the provisions of Section 13(2) of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2019. The said communication is annexed at Exhibit 'E' dated 28 January 2019. This communication is impugned to the Petition.

5. The learned Senior Advocate for the Petitioner submitted that Internal Committee should have shown fairness of handing over said copy of the report of the Chartered Accountant which would have helped the Petitioners to formulate its stand during the negotiation proceedings/settlement proceedings. There is

no reason not to hand over copy to the Petitioner. The learned Counsel has referred to various provisions of the Regulations in support of the submissions. It is submitted that the Internal Committee may look into the said report of Mr. Malegam, Chartered Accountant without providing a copy to the Petitioner. The learned Counsel has referred to order dated 30 June 2014 passed by the Securities Appellate Tribunal, Mumbai on Appeal No. 1 of 2013 and the order of the Supreme Court dated 10 January 2017 in Civil Appeal Nos. 6003-6004 of 2012 with Civil Appeal Nos. 6000-6001 of 2012.

6. The learned Senior Advocate for SEBI submitted that under the scheme of the Regulation and the ambit of the Internal Committee functioning, the Petitioner is not entitled to receive copy of the said report. The Internal Committee proceedings are initiated on the application filed by the Petitioner. The appropriate proceeding in respect of the subject of violation of Section 77(2) of the Companies Act is yet to take place. It is submitted that the arguments advanced by the Petitioner may be of some relevance in respect of the proceedings as and when undertaken before the Adjudicatory Forum. The Internal Committee Report under the Regulations is submitted to the High Powered Committee which is headed by a retired judge. The learned Senior Advocate referred to the judgment of the Apex Court in the case of *Shilpa Stock Broker*

Pvt. Ltd. And Anr. V/s. Securities and Exchange Board of India reported in *2012 SCC Online Bom. 58* and the judgment of the learned Single Judge of this Court in *Criminal Writ Petition No. 1894 of 2018* dated 30 October 2018.

7. We have perused the record placed before us and the judgments and the orders cited.

8. The Government of India has published the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. These Regulations refer to the procedure regulating the proceedings of settlement. Chapter III refers to Scope of Settlement. Regulation 7 refers to withdrawal of application. Regulation 8 under the said Chapter, refers to effect of pending application on the specified proceedings. Chapter IV refers to Terms of Settlement. Regulation 10 prescribes factors to be considered to arrive at the settlement terms. Chapter VI prescribes the Procedure of Settlement. Regulation 13(1) prescribes proceedings before the Internal Committee.

9. The relevant Regulations are reproduced for ready reference. Regulation 13(1) reads as under :-

> *"13(1) Save as otherwise provided in these regulations, an application shall be referred to an Internal*

Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may :

(a) call for relevant information, documents, etc., pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

Explanation – Nothing in these regulations shall confer a right upon the applicant to seek information from the Board or require the Board to seek information from any other person for the purpose of relying upon it in the settlement proceedings or request the Board to permit it to present information not already disclosed in the application, which the applicant was aware of at the time of making the application or which information upon diligent enquiry being made could have become known to the applicant.

(b) call for the personal appearance of the applicant before it;

Provided that a duly authorized representative of the applicant may represent on behalf of the applicant;

Explanation – Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.

(c) permit the applicant to submit revised settlement terms within a period not exceeding ten working days from the date of the Internal Committee meeting;

Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount.

(3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee."

Regulation 14 refers to High Powered Advisory Committee. Under Regulation 10 Schedule – II prescribes Guidelines for arriving at settlement terms. Guideline No.7 reads as under :-

"7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice ot show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA.

In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC) or the Panel of Whole Time Members (WTMs) are of the opinion that the facts disclose a different default, the modification of the charge(s) may be sought."

10. The Internal Committee of the SEBI is seized of the matter. During the proceedings, an application came to be filed by the Petitioner seeking copies of certain documents including copy of the report submitted by Mr. Malegam. The provisions of Regulation 13 (2)(a) are clear. These regulations do not confer any right on the

Petitioner to ask for a copy of said report. In that view of the matter, the issue of principles of fairness does not arise at this stage, considering the purpose of the proceedings before the Internal Committee and the powers of the High Power Committee and the Regulations framed in this regard. There is no right conferred under the Regulations on the Petitioner to ask for such a copy. In the facts, we are not convinced to exercise our Writ Jurisdiction.

11. As and when the adjudicatory proceedings takes place, the Petitioner may ask for copies of such documents in accordance with the procedure established to conduct the proceedings.

12. There is no merit in the Petition. The Petition is accordingly rejected.

N.M. JAMDAR, J. **CHIEF JUSTICE**