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Rev. Ptn. No.58/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.04.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

REVIEW PETITION NO. 58 OF 2022

IN

W.P. NO. 8666 OF 2019

Mr.N.L.Rajah

.. Petitioner

- Vs -

1. Securities Exchange Board of India
rep. by its Chairman
SEBI Bhavan, Plot No.C4-A
"G" Block, Bandra Kurla Complex
Bandra (E), Mumbai 400 051.

2. General Manager
Enforcement Department
Securities Exchange Board of India
SEBI Bhavan, Plot No.C4-A
"G" Block, Bandra Kurla Complex
Bandra (E), Mumbai 400 051.

3. Securities Exchange Board of India
SEBI Bhavan, Plot No.C4-A
"G" Block, Bandra Kurla Complex
Bandra (E), Mumbai 400 051.

4. Pentamedia Graphics Ltd.



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(Formerly known as Pentasoft Technologies Ltd.)
No.30A, Akbarabad 1st Street
Kodambakkam, Chennai 600 024
Tamil Nadu.

.. Respondents

Review Petition filed under Order 47 Rule 1 of the Code of Civil Procedure
r/w Section 114 of the Code of Civil Procedure r/w Article 226 of the
Constitution of India praying this Court to review the common order dated
17.2.2022 passed in W.P. Nos.8666 of 2019 and allow W.P. No.8666 of 2019
filed by the petitioner.

For Petitioner : Mr. Rajkumar Jhabakh

For Respondents : Mr.Sivakumar for RR-1 to 3

ORDER

The present review petition has been filed by the petitioner in W.P.
No.8666 of 2019 to review the order dated 17.02.2022 passed in W.P. Nos.8666
and 19117 of 2019, with regard to the errors apparent on the face of the record.
However, the petitioner in W.P. No.19117/2019, who is also covered by the said
order, has not filed any petition before this Court.



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2. Learned counsel appearing for the petitioner submitted that the writ petition was filed challenging the show cause notice issued by the Securities and Exchange Board of India against the petitioner and when the said show cause notice was put to challenge before this Court, this Court, vide its order dated 17.2.2022, while disposing the writ petitions, issued the following directions :-

i) The show cause notice issued to the petitioners by respondents 1 and 2 is kept in abeyance for a period of twelve weeks from today. In the meantime, the petitioners are directed to file appropriate petitions/applications before SAT with regard to the issues raised before this Court.

ii) On such application/petition being filed by the petitioners, the period of limitation, if any, shall be computed excluding the period when the matter was sub judice before this Court.

iii) Further, on such application/petition being filed by the petitioners, SAT shall take up the matters and consider the same on merits and accordance with law and pass orders as expeditiously as possible.

iv) Till the time granted by this Court for the petitioners to file petition/application before SAT, no coercive action



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shall be taken by the respondents 1 and 2 against the petitioners.

v) The petitioners are permitted to canvass all the points that have been raised before this Court in the petition/application that may be filed before SAT.

3. It is the submission of the learned counsel for the petitioner that though this Court had kept in abeyance the show cause notice issued by respondents 1 and 2 and directed the petitioners to approach the Securities Appellate Tribunal (for short 'SAT') along with certain other consequential directions as aforesaid, however, it is the submission of the learned counsel that as against the show cause notice, there is no provision in the statute, which contemplates a challenge of the same before the SAT. Further, it was the persistent case of the petitioner that SAT has no jurisdiction to decide the issue raised by the petitioner at this stage. Therefore, that being the case, the errors apparent on the face of the record warrant appreciation by this Court with consequential modification to the order passed by this Court.



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4. On the above contention, this Court heard Mr.Sivakumar, learned counsel appearing for respondents 1 to 3, who fairly conceded that against the show cause notice, no provision provides for a remedy before the SAT at this stage. However, it is the further submission of the learned counsel that it has been the consistent view of the Courts that at the very inception, in respect of a challenge to the show cause notice, the Courts shall not invoke its extraordinary jurisdiction and the person, against whom show cause notice is issued, should agitate his rights by submitting his explanation to the show cause notice and, therefore, respondents 1 and 2 should not be precluded from conducting an enquiry by obtaining a reply from the petitioner, which can very well be adjudicated by respondents 1 and 2. In such circumstances, this Court may direct the petitioner to submit explanation to the show cause notice and respondents 1 and 2 may be directed to consider the same within the time stipulated in accordance with law and dispose of the same.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the errors, which are said to be apparent on the



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face of the record, warranting reconsideration of the directions issued by this Court.

6. This Court is in agreement with respect to the error apparent on the face of the record, pointed out by the learned counsel for the petitioner. There is no remedy available before the SAT in respect of agitating a show cause notice, which has been inadvertently noted in para 33 and 35 of the order dated 17.2.2022, which has resulted in the issuance of the directions in para No.37. However, the said error would not in any way persuade this Court to grant the relief of quashment of the show cause notice, as has been pointed out by the learned counsel for respondents 1 and 2, that it is the consistent view of the Courts not to interfere at the stage of show cause notice when there are *prima facie* materials warranting issuance of show cause notice. This Court has already held, in the writ petition, on the appreciation of the materials, that the said show cause notice cannot be said to be bad in the eyes of law, warranting interference this stage. Further the whole issue is at a nascent stage and, therefore, it would not be in the interest of justice to preclude respondents 1 and 2 from conducting an enquiry and calling upon the petitioner to submit his explanation by issuance



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of show cause notice. It has been time and again held by the Courts that so long as the show cause notice is not illegal, perverse or vitiated, the same should not be set aside. It is always open to the person, against whom show cause notice is issued, to submit his explanation to the same which could be considered by the authorities in accordance with law. In the case on hand, as pointed out in the order passed by this Court in the writ petition, only based on *prima facie* materials, the show cause notice has been issued. That being the case, it would not be proper for this Court to interfere with the show cause notice at the threshold.

7. However, in view of the error pointed out in the order passed by this Court, for the reasons aforesaid, this review petition is disposed of by recalling the directions issued by this Court in para No.37 of the order dated 17.02.2022 in W.P. No.8666 of 2019 and the following directions are issued in lieu thereof and this order will govern the petitioner in W.P. No.19117/2019 also :-

i) The petitioners are directed to submit their explanation to the show cause notice within a period of six weeks from the date of receipt of a copy of this order;



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ii) On such explanation being submitted by the petitioners, the same shall be considered by respondents 1 and 2 in accordance with law and orders passed thereon within a period of eight weeks from the date of submission of the explanation to the show cause notice;

iii) Till such time, the respondents 1 and 2 shall not take any coercive action against the petitioners.

iv) The petitioners are permitted to canvass all the points that have been raised before this Court in the explanation to be submitted to the show cause notice.

27.04.2022

Index : Yes / No

Internet : Yes / No

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To

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Securities Exchange Board of India
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"G" Block, Bandra Kurla Complex
Bandra (E), Mumbai 400 051.
2. General Manager
Enforcement Department
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M.DHANDAPANI, J.

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