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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.02.2022	17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 8666 & 19117 OF 2019

AND

W.M.P. NOS.9202 & 18479 OF 2019

Mr.N.L.Rajah .. Petitioner in WP 8666/2019

Mrs. Sumathi Sridharan .. Petitioner in WP 19117/2019

- 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
7th Floor, 756-L
Annasalai,
Chennai - 600 002.
Tamil Nadu
4. Pentamedia Graphics Ltd.
(Formerly known as Pentasoft Technologies Ltd.)
No.30A, Akbarabad 1st Street
Kodambakkam, Chennai 600 024
Tamil Nadu. ... Respondents in both petitions

W.P. No.8666 of 2019 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari quashing the proceedings in respect of the petitioner under the impugned notice No.EFD/DRA-



1/SM/RK/PENTA/25324/1/2018 dated 07.09.2018 on the file of respondents 1 and 2.

W.P. No.19117 of 2019 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari quashing the proceedings in respect of the petitioner under the impugned notice dated 07.09.2018 on the file of the 2nd respondent.

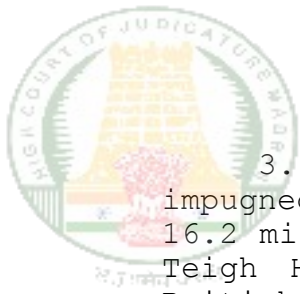
For Petitioners: Mr.P.H.Arvind Pandian, SC, for
M/s.Rajkumar Jhabakh in WP 8666/2019
Mr. P.H.Arvind Pandian, SC, for
Mr. Gokul in WP 19117/2019

For Respondents: Mr.Vijay Narayan, SC, for
M/s.Sivakumar & Suresh for RR-1 to 3
in WP 8666/2019 & WP 19117/2019
Mr. V.M.Shivakumar in WP 19117/19 for R4
Mr. V.Arunagiri for R-4 in WP 8666/2019

COMMON ORDER

The present petitions have been filed by the respective petitioners to quash the show cause notice issued by respondents 1 and 2 in relation to the issuance of Global Depository Receipts (for short 'GDRs') by the 4th respondent.

2. It is the case of the petitioners that the Pentasoft Technologies Ltd. (for short 'the company') is a company engaged in the information technology sector. The petitioners were non-executive directors of the said company between 1998 and 2005 and that in the said capacity of non-executive director, the petitioners were not involved in the day-to-day management and affairs of the said company. It is the further averment of the petitioners that their involvement is very limited pertaining only to some strategic and key decisions that were taken by the said company. In the year 2009, the said company amalgamated with the 4th respondent and is no longer in existence. It is the further case of the petitioners that over the past 14 years, they are in no way connected with the company or had any dealings with the company. In such a backdrop, it is the averment of the petitioners that after such a long passage of time, the show cause notice was issued by the respondents 1 and 2 relating to certain GDR issue that was done by the company.



3. It is the further case of the petitioner that the impugned notice proceeds on the footing that the company issued 16.2 million GDRs amounting to USD 6.48 million on 3.5.02 to one Teigh Holdings Ltd., which is a company incorporated in the British Virgin Islands. The impugned notice further proceeds that the said Teigh Holdings entered into a Credit Agreement of even date with Banco Efisa, S.A., Lisbon, relating to a dollar term facility upto USD 6.48 million in order to subscribe to the GDR issue of the company. Further to the above, Account Charge Agreement of even date, i.e., 3.5.02 was entered into between the company and Banco Efisa, S.A., Lisbon, whereby the company deposited an amount equivalent to the loan availed by Teigh Holdings as security for the obligations under the Credit Agreement dated 3.5.02. It is the further allegation in the impugned notice that the arrangement of Credit Agreement and Account Charge Agreement, which resulted in the subscription to the GDR was not disclosed to the stock exchange and investors, which resulted in publication of misleading news to the stock exchange, thereby, trying to influence the decision of the investors. The GDR issue was subscribed by a sole subscriber and not an open subscription.

4. It is the further averment of the petitioners that the allegations in the impugned notice coupled with the enclosed documents do not in any manner make out a case that the petitioner was involved in the execution of these documents or authorised the same or wilfully misled the investors or the stock exchange and neither the impugned notice nor the documents enclosed in support the allegation of the respondents relating to the involvement of the petitioner.

5. It is the further averment of the petitioners that the allegation is that amount for which the GDRs were purchased from the credit arrangement with Banco Efisa, SA., by Teigh Holdings, was subsequently transferred to Banco Efisa by the company on the basis of the Credit Charge Agreement and, in effect, the GDRs purchased by Teigh Holdings was without consideration. It is the further averment of the petitioners that no particulars have been provided in the impugned notice which reveal the purpose for which the transfer of amounts to Teigh Holdings was made and the allegations made by respondents 1 and 2 is not supported by any documentary evidence and is a mere conjecture. Moreover, no material has been placed or provided to show the alleged involvement of the petitioners in these transactions. It is the further averment of the petitioners that it is not the allegation of respondents 1 and 2 that the transfer had taken place on the explicit instruction/authorisation of the petitioners



6. It is the further averment of the petitioner that the impugned notice has been issued after a delay of more than 16 years. Though it is the stand of respondents 1 and 2 that in the meeting conducted on 29.4.2002, resolution was passed allotting 16.2 Million GDRs to Teigh Holdings, which was nearly 17 years ago and the respondents 1 and 2 decided to investigate the allotment a decade later by issuing the impugned notice after a period of 16 years, which is not governed by any limitation period and that the said notice is wholly unreasonable, arbitrary and impermissible, as it is not open to respondents 1 and 2 to conduct investigation after a decade of the occurrence and charge the petitioner for the violation under the relevant regulations. In the aforesaid backdrop, the present petitions have been filed by the petitioner to quash the impugned show cause notice issued by respondents 1 and 2.

7. Learned senior counsel appearing for the petitioners submitted that the inordinate delay in launching the prosecution renders the show cause notice unreasonable. It is the further submission of the learned senior counsel that the offence is alleged to have taken place in the year 2002, yet action was launched after a delay of 16 years in the year 2018. No plausible and reasonable explanation has been given by respondents 1 and 2 for the aforesaid delay. It is further submitted by the learned senior counsel that the company itself having been amalgamated with the 4th respondent and the said company no longer being in existence, action taken by respondents 1 and 2 on the petitioners, who were the non-executive directors about 16 years back, is wholly unjustified.

8. It is the further submission of the learned senior counsel that it has been the settled legal principle that no liability can be fastened on non-executive directors, who are not involved in the day to-day affairs of the company. In the case on hand, it is the submission of the learned senior counsel that it is even the admitted case of respondents 1 and 2 that the petitioners are non-executive directors and, therefore, no liability can be fastened on the petitioners and, therefore, proceeding against them by issuing show cause notice is wholly unsustainable.

9. It is the further submission of the learned senior counsel that the minutes copy, in which the alleged decision is said to have taken place has not been signed and further the presence of the petitioners in the said meeting has also not been established by filing the necessary attendance register. That being the case, the presence of the petitioners itself having not been established, fastening the liability of the petitioners, more so, when they are only non-executive directors, is wholly unsustainable.



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10. Learned senior counsel, in support of his contentions, placed reliance on the following decisions :-

- "i) Oryx Fisheries Pvt. Ltd. - Vs - Union of India & Ors. (2010 (13) SCC 427);
- ii) Siemens Ltd. - Vs - State of Maharashtra & Ors. (2006 (12) SCC 33);
- iii) K.I.Shephard & Ors. - Vs - Union of India & Ors. (1987 (4) SCC 431);
- iv) M/s.WABCO India Ltd. - Vs - The Deputy Commissioner of Income Tax (W.A. No.884 of 2018);
- v) Amit Jain - Vs - SEBI & Anr. (2018 SCC OnLine el 9784);
- vi) Joint Collector, Ranga Reddy District & Anr. - Vs - D.Narsing Rao & Ors. (2015 (3) SCC 695);
- vii) State of Pubjab & Ors. - Vs - Bhatinda District Co-op. Milk Producers Union Ltd. (2007 (11) SCC 363);
- viii) Government of India - Vs - Citadel Fine Pharmaceuticals, Madras & Ors. (1989 (3) SCC 483);
- ix) Bhavnagar Municipal Corporation - Vs - Palitana Sugar Mills (P) Ltd. & Ors. (2004 (12) SCC 670);
- x) Ashok Shivilal Rupani & Anr. - Vs - SEBI (Appeal No.417/2018);
- xi) SEBI - Vs - Ashok Shivilal Rupani & Anr. (Civil Appeal Nos.8444-8445 of 2019);
- xii) Chintlapati Srinivasa Raju - Vs - SEBI (2018 (7) SCC 443);
- xiii) N.Magesh - Vs - State of TN (2019 SCC OnLine Mad 38922);
- xiv) Institute of Chartered Accountants of India - Vs - L.K.Ratna & Ors. (1986 (4) SCC 537);
- and
- xv) Om Prakash Chautala - Vs - Kanwar Bhan & Ors. (2014 (5) SCC 417).

11. Per contra, learned senior counsel appearing for respondents 1 to 3 submitted that the writ petition is premature and is not maintainable as the case is at the show cause stage. Show cause notice dated 7.9.18 has been issued with regard to certain discrepancies in the issuance of GDRs by the company. The impugned show cause notice has provided the findings of the investigation in the matter and the alleged role played by various persons, including the petitioners and by no stretch could it be construed to be a categorical finding against the petitioners.



12. Learned senior counsel further submitted that it is a mere show cause notice issued to the petitioners calling for their replies along with supporting documents and also affording them an opportunity of personal hearing by indicating their willingness to appear before the respondents. It is the further submission of the learned senior counsel that it has been the consistent view of the courts that no interference be caused by the courts at the stage of show cause notice, as the issue involved are at the stage of enquiry, which needs to be determined. It is the further submission of the learned senior counsel that the above falls within the realm of disputed questions of fact and the same would be decided by the whole time member, which shall not be decided at the threshold by the courts.

13. It is the further submission of the learned senior counsel that interference with a show cause notice could be made only if it is issued without any authority or if it is patently illegal. It is the submission of the learned senior counsel that it is not the contention of the petitioners that the said show cause notice is either patently illegal or issued without jurisdiction. Such being the case, this Court may not interfere with the said show cause notice.

14. It is the further submission of the learned senior counsel that SEBI Act provides for appeal against any order that may be passed by SEBI before the Securities Appellate Tribunal (for short 'SAT'). That being the case, the remedy being an efficacious alternate remedy, the petitioner ought to have espoused his cause/grievance before SAT and ought not have rushed before this Court by filing the present writ petition as, as against the orders of SAT, remedy to the petitioner lies before the Hon'ble Supreme Court. Therefore, there is a clear exclusion of the jurisdiction of the High Courts and unless it is shown that that order passed by respondents 1 and 2 is without authority or patently illegal, this Court shall not entertain the writ petition, more so, when the petition itself is not maintainable before this Court.

15. It is the further submission of the learned senior counsel that the delay in launching the investigation is due to the fact that the factum of the issuance of GDRs without the proper consent and permission of SEBI came to light only at a later point of time, when investigation relating to certain other companies, which had floated similar GDRs, was being undertaken by the respondents. Immediately on obtainment of information, investigation was taken up resulting in the issuance of show cause notice along with the materials that were in possession of respondents 1 and 2. Therefore, the delay cannot be put against the respondents as immediately on



knowledge of the transaction, the respondents 1 and 2 have taken swift action.

16. It is the further submission of the learned senior counsel that insofar as the contention relating to the petitioners being non-executive directors and not involved in the day to-day affairs of the company, it is the submission of the learned senior counsel that the petitioners are non-executive directors of the company is not disputed, however, reliance is placed on the annual report of the company in which it has been specifically stated that the petitioners were members of the audit committee. It is therefore the submission of the learned senior counsel that merely because the petitioners are non-executive directors cannot be a ground to absolve them from the rigours of investigation, as the annual report of the company itself reveals that the petitioners were members of the audit committee, which position of the petitioners have wider ramifications.

17. It is therefore the submission of the learned senior counsel that only show cause notice has been issued to the petitioners, the petitioners can very well place their explanation along with the materials available with them for the consideration of respondents 1 and 2 so as to absolve themselves and coming before this Court for interfering with the show cause notice would be an impermissible exercise as this Court is not clothed with the powers to entertain the same when an alternate remedy is available before SAT. Therefore, the learned senior counsel for the respondents 1 to 3 prayed for dismissal of the present petitions.

18. In support of his submissions, learned senior counsel appearing for respondents 1 to 3 placed reliance on the following decisions :-

- i) SEBI - Vs - Rakhi Trading Pvt. Ltd. (2018 (13) SCC 753);
- ii) SEBI - Vs - Shri Kanaiyalal Baldevbhai Patel & Ors. (2017 SCC OnLine 1148);
- iii) SEBI - Vs - Pan Asia Advisors (2015 (14) SCC 71);
- iv) Mayrose Capfin Pvt. Ltd. - Vs - SEBI (SAT Order - Appeal No.20 of 2012);
- v) Pyramid Saimira Theatre Ltd. - Vs - SEBI (SAT Order - Appeal No.242 of 2009);
- vi) National Securities Depository Ltd. - Vs - SEBI (CA No.5173 of 2006);
- vii) Special Director & Anr. - Vs - Mohamed Ghulam Ghouse & Anr. (2004 (3) SCC 440);
- viii) Agri Gold Farm Estates India Pvt. Ltd. - SEBI - (W.P. No.12310 of 2015 - Dated 17.8.2015);



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- ix) Union of India - Vs - Coastal Container Transporters Association (2019 SCC OnLine SC 274);
- x) State of UP - Vs - Synthetics & Chemicals Ltd. (1991 (4) SCC 139);
- xi) State of Orissa - Vs - Balaram Sahu (2003 (1) SCC 250);
- xii) Common Cause - Vs - Union of India (2004 (5) SCC 222);
- xiii) Natwar Singh - Vs - Director of Enforcement (2010 (13) SCC 255);
- xiv) Peerless General Finance & Investment Co. Ltd. & anr. - Vs - RBI (1992 (20 SCC 343);
- xv) Shree Jai Bhagwan Goel & Anr. - Vs - SEBI (WP (L) 10354/2021);
- xvi) Dr. Prannoy Roy & anr. - Vs - SEBI & anr. (WP 3581 of 2019);
- xvii) SEBI - Vs - Adi Cooper (Civil Appeal No.380 of 2021);
- xviii) SEBI - Vs - Adesh Jain (Civil Appeal No.180 of 2021);
- xix) Adi Cooper - Vs - SEBI & Kishore Hedge - Vs - SEBI (Appeal No.124 & 300 of 2019);
- xx) Ajay Sethi - Vs - SEBI & Ors. (SAT Order);
- xxi) Mohandas Shenoy Adige - Vs - SEBI (SAT Order); and
- xxii) Jindal Cotex Ltd. & Ors. - Vs - SEBI (SAT Order).

19. This Court gave its anxious and careful consideration to the submissions advanced by the learned senior counsel appearing on either side and perused the materials available on record as also the decisions on which reliance was placed.

20. A careful perusal of the submissions advanced on behalf of the petitioners reveal that the contentions advanced stand broadly classified under three heads, viz.,

- i) Maintainability of writ petition challenging show cause notice;
- ii) Vicarious liability of a non-executive director; and
- iii) Inordinate delay in the issuance of show cause notice which renders the same unsustainable.

21. On the first contention relating to the interference of the Courts in respect of challenge made to a show cause notice, it is trite that normally courts would not interfere with the show cause notice, except under two circumstances, viz., either the show cause notice has been issued without authority or that



the show cause notice is patently illegal. In the case on hand, it is not the case of the petitioners that the show cause notice has been issued by an authority, who has no authority to issue the same nor is it the case of the petitioners that the said show cause notice is patently illegal. In fact, the said show cause notice has been issued following the relevant provisions of the SEBI Act.

22. In this regard, useful reference can be had to the decision of the Hon'ble Supreme Court in the case of Mohd. Ghulam Ghouse case (supra) wherein, it has been held as under :-

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

23. In such a backdrop, when the show cause notice has been issued within the four corners of law, this Court would be very much circumspect in interfering with the said show cause notice at the threshold in the absence of there being any violation by carefully seeing to it that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter



and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold.

24. Coming to the issue relating to the case of the petitioners being non-executive directors of the company and, therefore, no vicarious liability could be fastened on them, attention of this Court was drawn to the decision of the Hon'ble Apex Court in Srinivasa Raju's case (supra), wherein, the Hon'ble Apex Court held as under :-

"16. In Pooja Ravinder Devidasani v. State of Maharashtra, it is stated:

"17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company— M/s Elite International (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour of cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at



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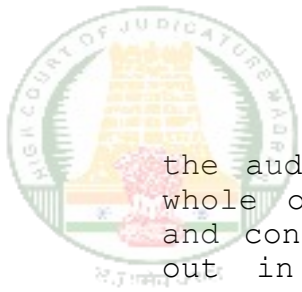
the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company."

25. There is no controversy about the fact that the petitioners are non-executive directors. Non-executive directors cannot be held vicariously liable for any act committed by the company unless they have any interest in the affairs of the company or they have involved themselves in the day to-day affairs of the company. However, it is the stand of the respondents that the petitioners were the Chairman/Member of



the audit team, which is one of the very crucial teams in the whole of the organisational setup and without whose knowledge and concurrence financial transactions of the nature as pointed out in the show cause notice would not have taken place. However, the said fact is disputed by the learned counsel for the petitioners. Such being the case, this being a disputed question of fact, this Court cannot adjudicate the same in a petition under Article 226 of the Constitution. Therefore, this Court refrains itself from deciding the issue in exercise of its inherent jurisdiction, as this Court is precluded from deciding such disputed questions pertaining to the status of the petitioners as non-executive directors.

26. Insofar as the contention of the petitioners relating to inordinate delay in issuing the show cause notice after more than 16 years, reliance is placed on the decision in Narsing Rao's case (supra), wherein, the Hon'ble Apex Court held as under :-

"25. The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power revisional or otherwise such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

* * * * *

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud.



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Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

27. On this aspect too, there is no quarrel with the proposition of law laid down by the Hon'ble Apex Court. However, it has also been repeatedly held by the Courts in a catena of decisions that so long as the delay has been explained properly and reasonably, the Courts are bound to consider the same while deciding the issue of delay.

28. In the case on hand, the GDRs pertain to the period 2002, whereas, action has been taken on the petitioners only in the year 2018, after a delay of 16 years. However, it is the case of respondents 1 and 2 that while the respondents were investigating certain other transactions pertaining to other companies, it came to light from the submissions made by Banco Efisa, with whom the company had the Credit Charge Agreement, that similar transaction of this nature has been done by the company in the year 2002, which fact was not within the knowledge of respondents 1 and 2 at any earlier point of time. Though it is pointed out that permission of SEBI is not required for floating GDRs, however, for finalising the process, certain procedural aspects codified by the Reserve Bank of India have to be followed of which one is information to be shared with SEBI. However, the petitioners dispute the said fact.

29. The fact remains that respondents 1 and 2 have come out with explanation as to the reason for the delay in issuing the show cause notice. True it is that the delay is enormous, but coupled with the reason assigned for the delay in issuing the notice, this Court is of the considered view that the stand of respondents 1 and 2 with regard to the reason for the delay cannot be brushed aside and has to be taken into consideration holistically.

30. Be that as it may. Contra to the aforesaid submissions of the petitioners, with equal vehemence, the respondents 1 and 2 have put forth a primary contention that the remedy for the petitioner against the show cause notice lies not before this Court but before SAT and without exhausting the said remedy, the petitioner has rushed to this Court and, therefore, the petitions at the behest of the petitioners are not maintainable and the petitioners should be relegated to avail the alternative remedy, which is equally efficacious.



31. It is also the further contention of respondents 1 and 2 that in fact after availing the appellate remedy, the relief for the petitioner lies before the Hon'ble Apex Court as orders from SAT are appealable only before the Hon'ble Apex Court. The mechanism provided for appellate and revisional remedy is only two tier and not a three tier remedy as is normally available in other revenue enactments.

32. The Hon'ble Supreme Court in Union of India - Vs - Guwahati Carbon Ltd. (2012) 11 SCC 651) after adverting to various decisions has held that when the statute provides an alternate and efficacious remedy before a particular forum in a particular way, the party should seek the relief before the said forum and all other forums and modes for seeking the remedy stands excluded. In the said context, the Hon'ble Apex Court held as under :-

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205 : AIR 1979 SC 1250] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)

"23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded."

9. A Bench of three learned Judges of this Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] held: (SCC p. 440, para 11)

"11. ... The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed..."

10. In other words, existence of an adequate alternative remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (see Rashid Ahmed v. Municipal



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Board, Kairana [AIR 1950 SC 163 : 1950 SCR 566]).

11. In Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] this Court held: (SCC pp. 9-10, para 15)

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

33. In the case on hand, admittedly, as against the show cause notice issued by respondents 1 and 2, an alternative and efficacious remedy is available to the petitioners before SAT. The said fact is also not disputed by the petitioners. The only claim of the petitioners is that the show cause notice has been issued after an inordinate delay of about 16 years and that the petitioners being non-executive directors, vicarious liability cannot be fastened on them and, therefore, on those grounds, this Court, exercising its inherent jurisdiction could very well quash the show cause notice.

34. However, as already pointed out above, Courts shall normally refrain from quashing the show cause notice at the initial stage, unless the said show cause notice has been issued without authority or that the same is patently illegal. In the case on hand, the show cause notice has been issued by the authority, who is competent to issue the same and that there is no illegality in the said show cause notice and, therefore, the ratio laid down by the Hon'ble Supreme Court in Mohd. Ghulam Ghouse case (supra) stands squarely attracted to the case of the petitioner and, hence, it is incumbent on the petitioners to submit their explanation to the show cause notice and it would not be right on the part of this Court to assume the robes of the adjudicating authority at the initial stage of show cause notice.



35. When an alternative and efficacious mechanism is provided by the statute in the form of SAT to adjudicate the issues raised by the petitioners, the petitioners ought to have moved the SAT questioning the issue of show cause notice and coming before this Court invoking its extraordinary and inherent jurisdiction would be wholly impermissible and would be against all the judicial precedents on this issue. further, it is not the case of the petitioners that SAT is incompetent to decide the issue raised by the petitioners. In fact, SAT is fully competent to decide the issue, including appreciation of disputed facts and the petitioners can place both oral and documentary evidence before SAT, which can go in-depth into the issue to render a finding. This Court, in any way, going into the issues, as raised above, would be nothing but usurping the powers of SAT, which has been vested in it on the basis of a statute. Therefore, the submission of respondents 1 and 2 that the petitioners should ventilate their grievances first before SAT deserves acceptance.

36. However, one aspect, which lingers in the mind of this Court is the fact concerning inordinate delay in issuing the show cause notice. Though respondents 1 and 2 have placed certain reasons before this Court, which are the cause for the delay, however, this Court cannot brush aside the fact that the delay is so enormous that the reason assigned by respondents 1 and 2 could be taken merely at face value, without putting it through proper appreciation in the manner known to law. Therefore, this Court, in the interest of justice, feels that the interest of both the parties to the lis requires to be safeguarded.

37. In such circumstances, this Court while disposes of the writ petitions, is inclined to issue 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.



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

38. The writ petitions are disposed of with the aforesaid directions. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

GLN

To

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+1cc to M/s.Rajkumar Jhabakh, Advocate SR.No.10872

W.P. NOS. 8666 & 19117 OF 2019

RGN(CO)

GMV(08/03/2022)