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W.P.Nos.3774, 3781, 3786, 6373,
19023 and 30397 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **17.08.2023**

Pronounced on : **11.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND

THE HON'BLE MR.JUSTICE **K.KUMARESH BABU**

W.P.Nos.3774, 3781, 3786, 6373, 19023 and 30397 of 2019
and W.M.P.Nos.4171, 4173, 4180, 7203, 7204, 18370, 18373, 30388,
30390 and 30391 of 2019

W.P.Nos.3774, 3781 and 3786 of 2019

Murugappan Alagappan

... Petitioner in W.P.Nos.3774,
3781 and 3786 of 2019

Vs.

1. The Special Director
Directorate of Enforcement
Southern Regional Office,
Ministry of Finance,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
2. The Assistant Director (Adjudication)
Directorate of Enforcement,
Southern Regional Office,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.



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3. Assistant Director

Directorate of Enforcement,

3rd Floor, 'B' Block, BMTC,

Shantinagar TTMC, K.H.Road,

Shantinagar, Bangalore - 560 027.

... Respondents in W.P.Nos.3774,
3781 and 3786 of 2019

Prayer in W.P.No.3774 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the letter / order bearing No.T-4/03/BGZO/SRO/2016, dated 20.12.2018 issued by the Respondent No.2 (on behalf of the Respondent No.1) and quash the same.

Prayer in W.P.No.3781 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Madamus, calling for the records of the letter / order bearing No.T-4/03/BGZO/SRO/2016, dated 15.01.2019 issued by the Respondent No.2 (on behalf of the Respondent No.1) and quash the same and forbear the Respondent No.1 from taking any actions / proceedings in furtherance to the letter / order bearing No.T-4/03/BGZO/SRO/2016, dated 15.01.2019.

Prayer in W.P.No.3786 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, directing the Respondent No.1 not to proceed with the adjudication proceedings against the petitioner in isolation without the other co-noticees in the Show Cause Notice, dated 06.06.2016.

W.P.No.6373 of 2019



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Murugappan Alagappan

... Petitioner in
W.P.No.6373 of 2019

Vs.

1. The Special Director
Directorate of Enforcement
Southern Regional Office,
Ministry of Finance,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
2. The Special Director
Directorate of Enforcement,
CGO Complex, 3rd M.S.O. Building,
6th Floor, C&D Wing, DF Block,
Salt Lake, Section -I, Kolkatta - 700 064.
3. The Assistant Director (Adjudication)
Directorate of Enforcement,
Southern Regional Office,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
4. Assistant Director
Directorate of Enforcement,
3rd Floor, 'B' Block, BMTC,
Shantinagar TTMC, K.H.Road,
Shantinagar, Bangalore - 560 027.

... Respondents in
W.P.No.6373 of 2019

Prayer in W.P.No.6373 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the Order bearing No.SDE/SRO/BGZO/01/2019(YG), dated 30.01.2019 passed by the office of the Respondent No.1 (and signed by the



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Respondent No.2) and quash the same in so far as against the petitioner.

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W.P.No.19023 of 2019

Kevin Donald Copp

... Petitioner in

W.P.No.19023 of 2019

Vs.

1. The Special Director
Directorate of Enforcement
Southern Regional Office,
Ministry of Finance,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
2. The Special Director
Directorate of Enforcement,
CGO Complex, 3rd M.S.O. Building,
6th Floor, C&D Wing, DF Block,
Salt Lake, Section -I, Kolkatta - 700 064.
3. Assistant Director
Directorate of Enforcement,
3rd Floor, 'B' Block, BMTC,
Shantinagar TTMC, K.H.Road,
Shantinagar, Bangalore - 560 027.

... Respondents in

W.P.No.19023 of 2019

Prayer in W.P.No.19023 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the Order bearing No.SDE/SRO/BGZO/01/2019(YG), dated 30.01.2019 passed by the office of the Respondent No.1 (and signed by the Respondent No.2) and quash the same in so far as against the petitioner.

W.P.No.30397 of 2019



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Deutsche Telekom Asia Pte. Ltd.,
a company incorporated under the
laws of Republic of Singapore and
having its office currently at
23, Tai Seng Drive,
#03-00 Deutsche Telekom Centre,
Singapore - 535 224
and
had its office earlier at
8, Shenton Way, No.10-01, Temasek Tower,
Singapore - 068811,
Represented by its Director
Mr.Pawel Hotulew

... Petitioner in
W.P.No.30397 of 2019

Vs.

1. The Special Director
Directorate of Enforcement
Southern Regional Office,
Ministry of Finance,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
2. The Special Director
Directorate of Enforcement,
CGO Complex, 3rd M.S.O. Building,
6th Floor, C&D Wing, DF Block,
Salt Lake, Section -I, Kolkatta - 700 064.
3. Assistant Director
Directorate of Enforcement,
3rd Floor, 'B' Block, BMTC,
Shantinagar TTMC, K.H.Road,
Shantinagar, Bangalore - 560 027.

... Respondents in
W.P.No.30397 of 2019

Prayer in W.P.No.30397 of 2019 : Writ Petition filed under Article 226 of



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the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the Order bearing No.SDE/SRO/BGZO/01/2019(YG), dated 30.01.2019 passed by the office of the Respondent No.1 (and signed by the Respondent No.2) and quash the same.

For Petitioners	: Mr.Rohan Shah for Mr.Karthik Sundaram in all the Writ Petitions
For Respondents	: Mr.AR.L.Sundaresan Addl. Solicitor General for Mr.A.Kumaraguru in all the Writ Petitions

COMMON ORDER

R.SURESH KUMAR, J

Since the issue raised in these writ petitions arise out of the common adjudication proceedings under the provisions of the Foreign Exchange Management Act, 1999 (In short "the FEMA Act"), with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The necessary facts which are required to be noticed for the disposal of this batch of writ petitions are as follows :

2.1. That a complaint was filed under Section 16(3) of the FEMA Act by the third respondent against 21 persons, i.e., 21 noticees for the alleged



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violation or contraventions of the provisions of the FEMA Act on 31.05.2016 to the first respondent, i.e., the Adjudicating Authority.

2.2. Pursuant to the said complaint, the Adjudicating Authority issued show cause notices to these 21 noticees on 06.06.2016. Thereafter since some of them responded to the show cause notice and remaining not responded, the Adjudicating Authority under Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (In short "the Rules"), has proceeded to conduct the adjudication and issued notice of hearing under sub-rule (3) of Rule 4 of the Rules.

2.3. Such a notice of enquiry before the Adjudicating Authority was issued on 20.12.2018. Thereafter the adjudication process went on and ultimately, the Adjudicating Authority passed the adjudication order on 30.01.2019.

2.4. In the meanwhile, in the year 2016, noticee Nos.1,8 and 13 filed



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writ petitions in W.P.No.35168 of 2018, 35188 of 2016 and 35923 of 2016 before the High Court of Karnataka at Bengaluru challenging the show cause notices, dated 06.06.2016. Those writ petitions were dismissed by the learned single Judge of the High Court of Karnataka by order, dated 06.10.2017.

2.5. As against the dismissal of the writ petitions by the learned single Judge of the High Court of Karnataka, the said three noticees filed Intra Court Appeals in W.A.Nos.6483, 6482 and 6484 of 2017. Those Writ Appeals were pending consideration before the Division Bench of the High Court of Karnataka, only at that point of time, the adjudication order was passed on 30.01.2019.

2.6. After the adjudication order was passed, the Noticee No.17, namely, Murugappan Alagappan filed three writ petitions on 06.02.2019 before this Court, being the Writ Petition Nos.3774, 3781 and 3786 of 2019.

2.7. In the first two writ petitions, the hearing notice issued by the



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respondents dated 20.12.2018 and 15.01.2019 were under challenge. In W.P.No.3786 of 2019, the prayer sought for was a writ of mandamus directing the Respondent No.1 therein not to proceed with the adjudication proceedings against the petitioner, i.e., Noticee No.17 in isolation without the other co-noticees in the show cause notice, dated 06.06.2016.

2.8. While those writ petitions were pending, shortly the Noticee No.17 filed W.P.No.6373 of 2019 challenging the adjudication order, dated 13.01.2019.

2.9. Like that, the Noticee No.4 and Noticee No.20, namely M/s. Deutsche Telekom Asia Pvt. Ltd., and Kevin Donald Copp filed writ petitions in W.P.No.30397 of 2019 and W.P.No.19023 of 2019 challenging the adjudication order, dated 30.01.2019.

2.10. That is how all these six writ petitions as stated supra came to be filed before this Court which were heard together and are disposed of by this common order.

3. Insofar as W.P.Nos.3774, 3781 and 3786 of 2019 are concerned,



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which have challenged the notice for hearing issued under Rule 4(3) and also seek for a mandamus not to adjudicate the matter without roping all other noticees, it cannot have any bearing as of now, because, already the final order of adjudication was passed as early as on 30.01.2019, i.e., even before these three writ petitions were filed before this Court.

4. Therefore, Mr.Rohan Shah, learned counsel assisted by Mr.Karthik Sundaram, learned counsel appearing for the writ petitioners / noticees has stated that, those three writ petitions since have become infructuous, the same may be disposed of accordingly.

5. Therefore the learned counsel appearing for the petitioners would contend that, his arguments would be confined only to the other three writ petitions, i.e., W.P.Nos.6373, 30397 and 19023 of 2019.

6. Mr.Shah, learned counsel taken us to the relevant provisions of the FEMA Act. He would submit that, under Section 13 of the FEMA Act, if any person contravenes any provisions of the Act or rule or regulation,



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notification, direction or order issued in exercise of the powers under the Act, he shall upon adjudication be liable to a penalty up to thrice the sum involved in contravention. For imposing such a penalty, adjudication has to be taken place under Section 16 of the Act and how such adjudication shall be made by holding an enquiry has been contemplated under Rule 4 of the Rules. Therefore he would submit that, the adjudication process if any is initiated, it must go in consonance with Section 16 of the Act r/w Rule 4 of the Rules.

7. In this context, he would further contend that, so far as the Noticee No.4 and 20 are concerned, the show cause notice under Section 16 r/w Rule 4(1) of Rules has not at all been served. Insofar as Noticee No.17 is concerned, though the notice was served on him, proper opportunity had not been given as contemplated under Section 16 r/w Rule 4(3).

8. In this context, the learned counsel would further contend that, insofar as the role of the Noticee No.4,17 and 20 are concerned, that the Noticee No.4 is a company wholly owned subsidiary of Debt Telecom AG



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a well reputed public listed entity in which, the Federal Republic of Germany is a substantial shareholder, approximately 34%. The said company is a strategic foreign investor in Devas Multimedia Pvt., Ltd., (in short Devas) who is Noticee No.1.

9. He would further submit that, insofar as the investment that has been made by Noticee No.4 in Noticee No.1, the Noticee No.4, i.e., the Deutsche Telecom nominated Noticee No.17 and 20 as Nominee Directors not as Executive Directors at the first Noticee company.

10. He would also submit that, in this regard, if at all any complaint is made within the meaning of Section 16(3) of the Act and the Adjudicating Authority, on receipt of the complaint, first must have issued notice to all Noticees including these 3 petitioners, however no notice in the manner that has been provided under Rule 14 of the Rules have ever been made or served on these petitioners / Noticees.

11. However he hasten to add that, insofar as Noticee No.17 is



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concerned, though such a show cause notice had been issued, in the meanwhile, since some of the noticees had already approached the High Court of Karnataka, where the *lis* instituted by them were pending, where interim orders or interim protection had been made by High Court of Karnataka, that was brought to the notice of the Adjudicating Authority by Noticee No.17 stating that, in view of the proceeding that has been pending before the High Court of Karnataka on the *lis* instituted by the co-noticees, independently the proceedings cannot go on against the 17th Noticee or any other Noticees and therefore, the Adjudicating Authority though was requested to wait, he had proceeded to complete the adjudication and passed the final order of adjudication on 30.01.2019 unmindful of the decision to be made by the High Court of Karnataka finally as at that time of passing the adjudication order, the Intra Court Appeals filed by certain co-noticees were still pending before the High Court of Karnataka.

12. Mr.Shah, further added that, insofar as the Noticee No.4 and 20 are concerned, even the Rule 4(1) notice, i.e., show cause notice itself has not been served in the manner contemplated under Rule 14 of the Rules.



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When that being so, the entire proceedings culminated in the impugned adjudication order, dated 30.01.2019 is vitiated and therefore the said order since had been challenged in the remaining three writ petitions, the same are liable to be allowed by the orders of this Court, he contended.

13. In support of his contention, Mr.Shah, has relied upon the following decisions :

(i) Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771

(ii) Nawabkhan Abbaskhan v. The State of Gujarat, AIR 1974 SC 1471

(iii) Nuwood Private Ltd., Madras v. Superintendent of Central Excise, 1980 SCC Online Mad 404

(iv) Girdhari Lal Gupta v. D.H.Mehta and another, (1971) 3 SCC 189

(v) Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., and another, 2002 (7) SCC 655

(vi) K.K.Ahuja v. K.K.Vora, (2009) 10 SCC 48

14. It was also the argument of Mr.Shah that, insofar as the



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imposition of penalty for the alleged violation or contravention of the provisions of the Act, rule or direction or order, by any person who is being a company, that shall be dealt with only under Section 42(1) of the Act, where if at all any responsibility has to be fixed on any person for the violation or contraventions of the provisions of the Act, rule or direction by a company, the person, who, at the time the contravention, was incharge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of contravention and shall be liable to be proceeded against them and be punished accordingly.

15. Citing this provision, i.e., Section 42(1) of the Act, Mr.Shah, would contend that, insofar as the Noticee No.17 as well as 20 is concerned, they were not the Executive Directors who were in the helm of affairs during the relevant point of time, i.e., between 2005 and 2006. These two Noticees since had been nominated as Directors only in August 2008 they left the company by February 2011 and September 2012 respectively. When that being so, during the relevant point of time for the alleged transactions which are to be considered as contraventions of the provisions of the Act, rules,



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directions, etc., by the company within the meaning of Section 42(1) of the Act, against these two noticees no responsibilities can be fixed to impose the penalty within the meaning of the provisions of the Act. Therefore, the learned counsel would contend that, in order to explain these positions before the Adjudicating Authority, since no proper opportunity had been given, firstly by way of show cause notice and thereafter the notice of hearing, and the entire adjudication process went on and completed by passing the adjudication order on 30.01.2019, the Adjudicating Authority has completely violated the procedure that has been contemplated both under the Act as well as the Rules.

16. In this context, the learned counsel would further contend that, the non issuance of show cause notice as well as non giving of an opportunity of being heard within the meaning of Section 16 of the Act r/w Rule 4(1) and 4(3) of the Rules certainly would amount to violation of principles of natural justice. Therefore he would submit that, if there is a violation of principles of natural justice, that can easily be construed as an arbitrary exercise of power. Therefore such a proceedings completed and adjudication order



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passed by the Authority would no doubt be treated as exfacie illegal and without jurisdiction. Therefore the learned counsel for the petitioners would contend that, the order impugned, i.e., the adjudication order, dated 30.01.2019 is liable to be set aside and hence, the prayer sought for in these writ petitions are to be allowed.

17. On the other hand, Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondents would contend that, it is an adjudication to be made under the provisions of Section 16 of the FEMA Act, where if complaint is filed under sub-section (3) of Section 16, the Adjudicating Authority shall hold an enquiry under sub-section (1), where after giving a reasonable opportunity of being heard, ultimately if it is found that, there has been a contravention of the provisions of the Act, Rules etc., penalty as contemplated shall be imposed.

18. The learned Additional Solicitor General would contend further that, how the enquiry, i.e., adjudication shall be made has been provided under Rule 4 of the Rules under the heading “Holding of Enquiry” where



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first a show cause notice has to be issued under Section 4(1), which has been issued in respect of all the 21 noticees including these noticees on 06.06.2016 itself, thereafter notice of enquiry normally would not be given to all those who did not even respond to the show cause notice.

19. In this context, the learned Additional Solicitor General would rely upon Rule 4 sub-clause 1, 2 and 3. He would contend therefore that, after issuing show cause under Rule 4(1), on receipt of the same, if the noticee responded by giving a cause to the said show cause, the Adjudicating Authority after considering the cause if any, shown by such person or noticee, is of the opinion that an enquiry should be held, then only he shall issue a notice fixing date for the appearance of the person either in person or through his legal practitioner or Chartered Accountant duly authorised by him.

20. Relying upon these provisions of the Rule, the learned Additional Solicitor General would contend that, insofar the noticees who had responded, that is giving cause to the show cause notice issued on



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06.06.2016 alone having been considered was given the notice of hearing.

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Therefore in the present set of cases, so far as Noticee No.4 and 20 are concerned, since they did not respond to the show cause notice, the further proceedings by issuing a notice of enquiry does not arise.

21. However, insofar as the Noticee No.17 is concerned, as he responded to the show cause notice seeking the deferral of the adjudication by citing the *lis* that was pending before the High Court of Karnataka instituted by some co-noticees, the Adjudicating Authority, in fact had issued notice of enquiry at least twice, i.e., on 20.12.2018 as well as 15.01.2019 which are under challenge in W.P.Nos.3774 and 3781 of 2019 filed by Noticee No.17, i.e., Murugappan Alagappan.

22. The learned Additional Solicitor General would further contend that, therefore as per the procedure that has been contemplated under the rule as to how the enquiry should be conducted, the Adjudicating Authority conducted the enquiry and ultimately passed the final order of adjudication dated 30.01.2019.

23. Only after the final adjudication order was passed, these writ



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petitions were filed including the first set of three writ petitions filed by Noticee No.17 and second set of three writ petitions filed by Noticee No.4,17 and 20 respectively.

24. Insofar as the challenge that has been made in the second set of writ petitions, where the adjudication order, dated 30.01.2019 was under challenge is concerned, they made the complaint mainly on the alleged reason of violation of principles of natural justice.

25. In this context, the learned Additional Solicitor General would contend that, insofar as the said complaint made by the petitioners is concerned, the show cause notice in fact had been served in the manner contemplated under Rule 14 of the Rules. He would further contend that, all the 21 noticees were served the notice through the company address that has been given at Bengaluru and on receipt of the notice, some of the noticees in fact responded to the show cause notice and some of them not.

26. The Noticee Nos.4 and 20 is concerned, they claimed that, they



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are in foreign soil, therefore, they are not ordinarily residing or carrying business in India, hence, the notice if at all sent to the Bengaluru address, that cannot be construed as a servicing of notice within the meaning of the Act as well as the Rule that has been discussed herein above.

27. The learned Additional Solicitor General in this context has relied upon the following averments made in the counter affidavit filed on behalf of the respondents.

"5. It is submitted that considering the cause shown by the third respondent complainant, the first respondent issued Show Cause Notice bearing number T-4/03/BGZO/SRO/2016, dated 06/06/2016 in terms of rule 4(1) and rule 4(2) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 against the Indian Investors, the persons responsible in the Indian Company including the Directors and also the Foreign investors, including the petitioner and initiated the Adjudication process. Show Cause Notice was issued to 21 noticees, including the petitioner. The Writ Petitioner has been cited as



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Noticee No.4 in the show cause notice so issued.

The noticees were, inter alia, asked to show cause in writing within 30 days from the date of receipt of the Show Cause Notice, as to why adjudication proceedings as contemplated under Section 15 of FEMA should not be held against them, in the manner as provided under Rule (4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, for the above mentioned contraventions of the provisions of FEMA, 1999 and the Regulations issued there-under. Copies of all the documents relied upon for the issue of the Show Cause Notice were furnished to the Noticees in the form of soft copy in a compact disk along with the Show Cause Notice and a copy of the complaint filed by the third respondent. The show cause notice addressed to 21 Noticees individually were served in terms of Rule 14(a) and/or 14(b) and/or 14(c) of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. The Show Cause Notices addressed to all the noticees including the petitioner, were served on DMPL by the postal authorities under acknowledgement on 08.06.2016. DMPL vide



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letter dated 14/06/2016 returned the Show Cause Notice, including the one meant for the petitioner to Respondent No.1, inter alia, stating that the company is not authorised to receive any communication on their behalf. The Show Cause Notices meant for Noticee No.2 to Noticee No.21 were again served under acknowledgement to Shri R.Mohan, S/o.D.Ranganathan, Director (Finance & HR) of DMPL on 01/07/2016. Copies of Show Cause Notices meant for all the 21 noticees, including the one meant for the petitioner, were also served by way of affixation at the premises of DMPL in terms of rule 14(c) of The Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 on 13/12/2017."

28. Relying upon the said averments made by the respondents in the counter affidavit, the learned Additional Solicitor General would contend that, the show cause notice addressed to all the noticees including the petitioner noticee were served on DMPL, i.e., Devas Multimedia Pvt., Ltd., Noticee No.1 by the postal authorities under acknowledgement on 08.06.2016. Since DMPL vide letter, dated 14.06.2016 returned the show



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cause notice including the one meant for the petitioner to Respondent No.1 inter alia stating that the company is not authorised to receive any communication on their behalf. The show cause notices meant for Noticee No.2 to Noticee No.21 were again served under acknowledgment to one R.Mohan, S/o. D.Ranganathan, Director (Finance & HR) of DMPL on 01.07.2016.

29. That apart, copies of show cause notices meant for all the 21 noticees including the one meant for the petitioners were also served by way of affixation at the premises of DMPL in terms of Rule 14(c) of the Rules on 13.12.2017.

30. Therefore the learned Additional Solicitor General would contend that, the show cause notice in fact had been served in the manner that has been contemplated under Rules to all noticees.

31. That apart, the learned Additional Solicitor General would further contend that, as against the show cause notice, on receipt of the same only, some of the noticees, i.e., Noticee No.1, 8 and 13 filed writ petitions before



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the High Court of Karnataka at Bengaluru and those writ petitions were dismissed by order of the single Judge, dated 06.10.2017, as against which, they preferred Intra Court Appeals in Appeal No.6483, 6482 and 6484 of 2017 and those Writ Appeals also were dismissed by a Division Bench of the High Court of Karnataka on 05.07.2019, as against which, they filed Special Leave Petitions, which were also dismissed by the Hon'ble Supreme Court, by order, dated 09.07.2021, directing the petitioners therein, i.e., Noticee No.1,8, and 13 to file Appeal before the Appellate Tribunal and in this context, the learned Additional Solicitor General would contend that, appeals were also filed by them which are pending consideration before the Appellate Tribunal.

32. In this context, the learned Additional Solicitor General would point out that, if any order is passed by the Adjudicating Authority, appeal can be preferred to the Appellate Tribunal under Section 19 of the FEMA Act. As against the order to be passed by the Appellate Tribunal, further appeal or Second Appeal also can be filed before the High Court, i.e., this Court under Section 35 of the Act. In this context, he relied upon the



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relevant provisions of the Act, i.e., Sections 19 and 35 which are quoted hereunder for easy reference.

"19. Appeal to Appellate Tribunal—(1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be



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filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be



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made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

35. Appeal to High Court - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period,



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allow it to be filed within a further period not exceeding sixty days.

Explanation.—In this section “High Court” means — (a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

33. Therefore the contention of the learned Additional Solicitor General was, as against the order of adjudication , which is impugned in these writ petitions, appeal can be filed before the Appellate Tribunal under Section 19 of the Act.

34. This of his submissions since has been fortified, according to him, by the decisions of the High Court of Karnataka, which has been confirmed by the Hon'ble Supreme Court. Therefore he has relied upon the Division



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Bench of the High Court of Karnataka who disposed the three writ appeals filed by Noticee No.1,8 and 13, namely Devas Multimedia Pvt., Ltd., D.Venugopal and M.Umesh.

35. The learned Additional Solicitor General has relied upon the following passages of Division Bench Judgement of the High Court of Karnataka.

"8. Before we deal with the submissions made on merits, we must deal with the effect of the adjudication order made during the pendency of the writ appeals. There are applications filed under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 for amendment of writ appeals for incorporating a challenge to the adjudication order. There is no dispute that against the said order, a remedy of appeal under sub-section (1) of Section 19 of FEMA is available. Under the said order of the adjudicating authority, penalty has been imposed. The first proviso to sub-section (1) of Section 19 requires deposit of the amount of penalty while filing an appeal. Second



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proviso confers jurisdiction of the Appellate Tribunal to dispense with the requirement of the deposit.

9. The contentions which are raised in the writ petitions and writ appeals can be always raised before the appellate authority. Merely because the adjudicating authority has passed an order during the pendency of the writ appeals, it cannot be said that the writ appeals have become infructuous. We agree with the said submission made by the appellants. It may be also correct that when the show-cause notice is quashed and set aside, the order of the adjudicating authority will not survive. These writ appeals arise out of writ petitions under Article 226 of the Constitution of India. The question is whether writ appeals should be entertained.

10. Against the impugned order passed by the learned Single Judge, the appellants have preferred these appeals on 17th November 2017. It appears that on 20th December 2018, a notice was served on the appellants by the Assistant Director (Adjudication), Directorate of Enforcement, informing that the adjudicating authority has fixed



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the matter for personal hearing on 4th January 2019. Thus, the appellants were put to notice of the date fixed for appearing before the adjudicating authority. It is not the case of the appellants that they appeared before the adjudicating authority and sought time to move this Court for grant of appropriate interim relief. After receiving the notice dated 20th December 2018, instead of moving this Court for grant of appropriate relief, or appearing before the adjudicating authority for seeking time, it appears that only a letter was sent to the Assistant Director, (Adjudication) who had served notice of the date fixed for hearing. Thus, the appellants were fully aware about the date fixed for hearing before the adjudicating authority. There is a default on the part of the appellants as they did not appear before the adjudicating authority and they did not move this Court for grant of appropriate interim relief. Knowing fully well that the adjudicating authority is proceeding with the hearing, the appellants took no steps and allowed the adjudicating authority to pass an order. It is not as if immediately after the impugned order was passed, that the adjudicating authority fixed the



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matter for hearing. The date for hearing was fixed nearly one year after the present appeals were filed.

11. As observed earlier, one of the arguments canvassed on behalf of the respondents that the appeals have become infructuous, cannot be accepted. However, these appeals are continuation of writ proceedings before the learned Single Judge under Article 226 of the Constitution of India. A remedy under Article 226 of the Constitution of India is always discretionary and equitable. The impugned order of the learned Single Judge was passed on 6th October 2017. The present appeals were pending from 17th November 2017. The adjudicating authority granted enough time to the appellants to seek interim relief in these appeals. The hearing was fixed one year after the impugned order of the learned Single Judge. The averments made in the application for amendment in W.A.No.6484/2017 show that notice of the date fixed before the adjudicating authority was served on 27th December 2018. The appellants took the risk of not attending before the adjudicating authority knowing fully well that the appellants were not armed with any ad-interim order of stay



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of this Court. Thus, due to their own conduct, the appellants allowed the adjudicating authority to pass orders of adjudication. It is not the case of the appellants that they did not receive legal advice. They are represented by Senior Advocates.

12. As pointed out earlier, an efficacious remedy of filing an appeal under Section 19(1) of FEMA is available to the appellants. It cannot be said that the remedy is not efficacious as there is a power vested in the appellate Tribunal to waive the requirement of the deposit of the penalty. Moreover, all contentions which are raised in the appeals can be gone into by the appellate authority.

13. We must make it clear that the issues raised by the appellants have not been finally concluded and notwithstanding the observations made by the learned Single Judge, all issues remain open which can be agitated by the appellants in the statutory appeals.

14. It is for the reasons which are recorded above that we are not inclined to entertain the writ appeals and interfere with the proceedings under FEMA. Accordingly, appeals and also pending interlocutory applications are dismissed.



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15. We make it clear that we have made no adjudication on the merits of the challenge made in the writ petitions and as also merits of the adjudication order and all issues are left open which can be decided by the appellate authority."

36. When Special Leave Petitions were filed against the order passed by the Division Bench of High Court of Karnataka, the Hon'ble Supreme Court has held as follows :

" This special leave petition is directed against the judgment of the High Court taking the view that the petitioner must avail of the statutory remedy, as the competent authority has passed final order on 31.01.2019.

We agree with the view so taken by the High Court.

Considering the arguments on both sides, in our opinion, for the stand taken by the petitioners, we direct the Appellate Authority to exempt the requirement of pre-deposit as regards this petitioner (M.Umesh), in case he resorts to remedy of appeal in light of the liberty given in terms of



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this order. In other words, the Appellate Authority shall not insist for pre-deposit requirement qua the petitioner herein, i.e., M.Umesh.

Besides, the appellate authority shall not non-suit the petitioner for having filed the appeal beyond limitation as the petitioner was pursuing remedy before the High Court in the first place and thereafter before this court, after issuance of show-cause notice.

The petitioner through counsel assures to file the appeal within three weeks from today. If the appeal is filed beyond three weeks, the limited relief regarding limitation, in terms of this order, shall not apply and the entire limitation period be reckoned by the Appellate Authority."

37. Relying upon the Judgments of the Division Bench of the High Court of Karnataka and the Hon'ble Supreme Court as well, the learned Additional Solicitor General would contend that, it has been exhaustively discussed with regard to the availment of alternative, efficacious, statutory appeal remedy in this case by the Division Bench of High Court of Karnataka, where ultimately the Division Bench directed those Noticees, i.e.,



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Noticee No. 1, 8 and 13 to approach the Tribunal by filing appeal. Despite that order, when the noticees preferred SLP, the Hon'ble Supreme Court has also confirmed the decision of the High Court of Karnataka, but in fact permitted to take some concession for one noticee to give waiver to the payment of pre-deposit and for other two, it was given a discretion to the Tribunal, where the Noticees were directed to file an application seeking for waiver of the pre-deposit.

38. Therefore, the learned Additional Solicitor General would contend that, whatever be the Judgments of the law courts that has been cited before this Court on behalf of the petitioners, may be a legal precedent, but those decisions cannot be made applicable to the present case, as in the present set of cases, the very same adjudication order having been considered by the Division Bench of the High Court of Karnataka as well as the Hon'ble Supreme Court ultimately they driven the noticees to approach the Appellate Tribunal under Section 19 of the Act. Therefore, the learned Additional Solicitor General would contend that, the Judgment cited by the learned counsel appearing for the petitioners may have some persuasive value in



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general but need not be followed in the present set of cases in view of the peculiar facts, where already the issue with regard to the alleged violation of principles of natural justice, as has been stated by the co-noticees, has been held in favour of the department and against the noticees and therefore, the very same fate has to be faced by these noticees / petitioners also, the learned Additional Solicitor General contended.

39. In support of his contention, the learned Additional Solicitor General has relied upon the following decisions :

(i) Special Director v. Mohd. Ghulam Ghouse, (2004) 3 SCC 440

(ii) Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC

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(iii) United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110

(iv) South Indian Bank Ltd., v. Naveen Mathew Philip, 2023 SCC

Online SC 435.

40. We have given our anxious consideration to the aforestated submissions made by the learned respective counsels appearing for the



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parties and have perused the materials that were placed before us.

41. Even though several points have been canvassed by Mr.Shah, learned counsel appearing for the petitioners, the main focus was on the alleged violation of principles of natural justice. At least in respect of 2 writ petitioners, i.e., Noticee No.4 and 20 is concerned, it was alleged by Mr.Shah, that no show cause notice under Rule 4(1) was served on them. In order to deal with the said aspect, if we look at the relevant rule, i.e., Rule 4, it provides the following :

"4. Holding of inquiry

(1) For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, 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 ten 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 contravention



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alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the Adjudicating Authority 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 legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, directions or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

(5) The Adjudicating Authority 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 Authority shall not be



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bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).

(6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce 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 Authority 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 Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.

(8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act."



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42. Under Rule 4(1) for the purpose of adjudication under Section 13 of the Act, the Adjudicating Authority shall issue a notice to such person requiring him to show cause within such period. This notice can be construed as show cause notice under Section 4(1).

43. Rule 4(2) contemplates that, every notice under sub-rule (1) shall indicate the nature of contravention alleged to have been committed by him. Rule 4(3) makes it clear that, if any cause is given by noticee to the show cause notice, the Adjudicating Authority is of the opinion that, an enquiry should be held, he shall issue a notice fixing the date for the appearance. That means, only those who responded to the show cause notice and given some cause, considering the same, if the Adjudicating Authority decides still the enquiry should be held, then only he shall issue a notice fixing a date of appearance. Therefore those who received the show cause notice but not responded to the show cause notice by giving a cause may not be entitled to get a notice for hearing. The reason being that, a person who on receipt of the show cause notice even did not care of responding to the show cause notice may not be eligible to get a further notice of hearing, as he had chosen



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not to even give cause to the show cause, therefore the presumption would be that, the Adjudicating Authority can go ahead with the enquiry with the available records insofar as such noticee is concerned.

44. Now let us go to Rule 14 under the heading “**Service of notice, requisition or orders**”, which reads thus :

"14. Service of notices, requisitions or orders

A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,—

- (a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person,
- (b) by sending the notice or requisition or order to him by registered post with acknowledgment due to the address of his place of residence or his last known place or residence or the place where he carried on, or last carried on, business or personally works or last worked for gain, or
- (c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or



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carried on business or personally works or has worked for gain and that written report thereof should be witnessed by two persons; or
(d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation or area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain."

45. This Rule contemplates that, notice can be served on any person by various manner. 14(a) contemplates that the notice be delivered or tendered to that person or his duly authorised person, which means a direct service to the person or noticees. 14(b) says that, the notice can be sent by registered post with acknowledgement due to the address of his place of residence or his last known place or residence or the place where he carried on or last carried on business or personally works or last worked for gain.

46. Therefore under the second mode, i.e., under Rule 14(c), the



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Adjudicating Authority can send a notice, i.e., show cause notice by registered post with acknowledgement to the residential address of the noticee or his last known place or where the place he carried on business or last carried on business or he worked personally or last worked for gain.

47. Therefore, insofar as the address that has been made available as per records to the Adjudicating Authority insofar as all these 21 noticees are concerned, it is the address of the first noticee, namely M/s. Devas Multimedia Pvt. Ltd., at Bengaluru. To the said Bengaluru address, as per the averments that has been made in para 19 of the counter affidavit as quoted herein above, show cause notice has been sent by the respondents. The notice was in fact received by the concerned person at DMPL at Bengaluru, thereafter it has been returned back saying that, they are not authorised or suppose to receive the notice. Thereafter again the notice was sent to Noticees 2 to 21 who were again served under acknowledgement to one R.Mohan, S/o.D.Ranganathan, Director (Finance & HR), DMPL on 17.01.2016.



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48. That apart, as per clause (c), i.e., Rule 14(c) copy of the notice has been affixed at the premises of DMPL on 13.12.2017. In this context, it is to be noted that, as per Rule 14(c), notice can be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or has worked for gain.

49. If at all, these noticees who are the petitioners herein made a claim that, they were not the permanent residents or carrying business permanently at Bengaluru with DMPL and they left and were residing somewhere else and one of the petitioner is a resident of a foreign country, therefore on these grounds the notice that has been served at DMPL in Bengaluru cannot be considered as a notice within the meaning of Rule 4(1) is concerned, the answer that is available in Rule 14 itself.

50. A person who carried on business or worked for gain or last known place or last worked for gain also the place where the notice can be served both under mode 14(b) as well as 14(c).



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51. In both the modes, such a service has been effected by the respondent department. This has been clearly demonstrated before this Court as per the averments that is made in the counter affidavit filed by the respondents. Therefore the contention that has been made by Mr.Shah, on behalf of the petitioners that, no show cause notice under Rule 4(1) had been ever served on these petitioners / noticees cannot be countenanced.

52. Insofar as the Noticee No.17, namely Murugappan Alagappan is concerned, he did receive the notice and that is the reason why he responded asking some time citing the *lis* that was pending before the High Court of Karnataka at Bengaluru. Therefore the next step under Rule 4(3) has been taken in respect of the said noticee, i.e, Murugappan Alagappan, where the notice of hearing under Rule 4(3) has been issued twice, i.e., on 20.12.2018 and 15.01.2019. Those notices though had been served on him, having receipt of the same, he did not respond till the order of adjudication was passed.

53. Only after the order of adjudication was passed, the very notice of



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hearing, dated 20.12.2018 and 15.01.2019 were under challenge by filing writ petitions only at 06.02.2019 by Noticee No.17 in W.P.Nos.3774 and 3781 of 2019.

54. In this context, even though a distinction was sought to be made by Mr.Shah, learned counsel appearing for the petitioners that, insofar as three noticees namely Noticee No.1,8 and 13 are concerned, they did receive show cause notice and their contention are only on the merits of the case including the alleged no opportunity given to them as the *lis* that is the Intra Court Appeal that were pending before the High Court, the adjudication order finally since was passed that was complained by those noticees before the High Court of Karnataka and therefore in that context, the Division Bench of the Karnataka High Court has taken a view that the point that was taken by noticees that principles of natural justice was violated cannot be countenanced because of the factual matrix and therefore they were driven to go before the Appellate Tribunal under Section 19 of the FEMA Act which was in fact confirmed by the Hon'ble Supreme Court in the unsuccessful SLPs filed by those three noticees.



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55. However according to Mr,Shah, the present writ petitioners, especially the Noticee No.4 and 20 are concerned, they have never been served the show cause notice within the meaning of Section 16 r/w Rule 4(1) and 14 of the Rules. Therefore what has been stated or held by the High Court of Karnataka in its Division Bench Judgment, confirmed by the Hon'ble Supreme Court can be applied to the facts of the present writ petitioners, especially the Noticee No.4 and 20.

56. Though such a distinction was attempted to be made by Mr.Shah, we are not impressed with the same, in view of the factual matrix on these noticees also. The reason being that, the mode of service of notice has been clearly demonstrated at Rule 14, i.e., 3 methods, namely 14(a), 14(b) and 14(c).

57. At least Rule 14(b) and 14(c), the notices have been served on these noticees in their last known address or the address where they carried on business last.



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58. Merely because at the time of serving the notice, these noticees were not available at the address at Bengaluru would not *ipso facto* entitle them to claim immunity that the notices served on them at the Bengaluru address cannot be construed as a notice within the meaning of Section 16 r/w Rule 4(1) and Rule 14(b) or (c) of the Rules.

59. Therefore, this Court have no hesitation to hold that, notice as contemplated under the Act as well as the Rules as discussed herein above have been served on these noticees.

60. The next argument of Mr.Shah was that, assuming the notice have been served at least in respect of Noticee No.17, the adjudication order would not stand in the legal scrutiny because it does not fulfill the requirement of Section 42(1) of the Act.

61. In this context, if we look at Section 42 of the FEMA Act, which reads thus :

"42. Contravention by companies.—(1) Where a person committing a contravention of any of the



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provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be



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proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm."

62. Under Section 42(1), if a person committing a contravention who is a company, every person who at the time of contravention was committed was incharge of and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceed against and punished accordingly.

63. Insofar as the application of Section 42(1) against these noticees are concerned, it was the vehement contention of Mr.Shah, that the two Noticee namely Noticee No.17 and 20 were the nominee Directors, i.e., Non-executive Directors of the first Noticee company on behalf of the fourth



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Noticee company. When their very appointment as a Director itself is a mere nominee on behalf of the fourth noticee company as a Non-Executive Directors, therefore they are not incharge of and was responsible to the conduct of the business of the company as well as the company.

64. Therefore assuming that, any contravention that has been made by the first Noticee company, for which these noticees namely Noticee No.17 and 20 cannot be found fault with. Therefore under Section 42(1) no contravention cannot be attributable against these Noticees. Insofar as this contention of the learned counsel appearing for the petitioners are concerned, whether they were the Non-Executive Directors or nominee Directors and during the relevant point of time whether they were in the helm of affairs or the company or not, whether the contravention that has been made by the first Noticee company would amount to the contraventions of the persons like Noticee No.17 and 20 also, for which, they are also to be proceeded against and be punished by imposing penalty or not, are all the matters for adjudication which have been adjudicated and decided by the Adjudicating Authority through the impugned order.



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65. As against the impugned order, an appeal has been provided before the Appellate Tribunal under Section 19 of the Act. Even if there is any failure before the Appellate Tribunal and it goes against the interest of these noticees, again a further appeal is provided under Section 35 of the FEMA Act, where Second Appeal can be preferred before this Court (High Court).

66. When such a hierarchy of appellate forum is provided under the Act itself, whether the jurisdiction that has been conferred under the Act, especially under Section 35 of the Act to the appellate side of this Court, whether can be taken away by entertaining these writ petition is a question, for which the answer is in the negative.

67. The reason being that, the law which has been held by law courts with regard to the exhaustion of alternative remedy is well settled. Though it is not a hard and fast rule that each and every case, the exhaustion of alternative remedy shall stand in the way in entertaining the case under the



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extraordinary jurisdiction of this Court under Article 226 of the Constitution, still limitations are there for the High Courts who are empowered to issue prerogative writs under Article 226 of the Constitution of India.

68. While exercising such extraordinary jurisdiction under Article 226, the High Court on the one side cannot take away or absolve the appellate jurisdiction being exercised by the same High Court under the provisions of the statute which is special in nature.

69. Here in the case in hand, ultimately the aggrieved party can approach this Court by filing the Second Appeal under Section 35 of the Act, instead, if these writ petitions are entertained and the impugned order of adjudication is challenged and a decision is made on the merits of the issue, certainly that will amount to interfering or transgressing the appellate jurisdiction of this Court, which normally the court would not do in exercising the extraordinary jurisdiction under Article 226 of the Constitution.



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70. Mr.Shah, in fact relied upon a decision of the single Judge of this Court in Nuwood Private Ltd., Madras v. Superintendent of Central Excise reported in 1980 SCC Online Mad 404 (*cited supra*), where he relies upon para 9, 10 and 11, which reads thus.

" 9. It is equally well settled that the effect of a breach of the principles of the natural justice vitiated the original decision cannot be cured by the principles of natural justice being complied with at the appellate stage. Denning LJ. put the matter very clearly in Barnard v. National Dock Labour Board, 1953-2-QBD 18, thus "So far as the decision of the appeal tribunal is concerned, it seems to me that, once the port manager's order is found to be a nullity, it follows that the order of the appeal tribunal is also a nullity. The appeal tribunal has no original jurisdiction of its own; it cannot itself make a suspension order; it can only affirm or disaffirm a suspension order which has been already made. If none has been made, because it is a nullity the tribunal can do nothing".

10. In Learvy v. NU of Vehicle Builders, 1970-2-All ER 713, it has been observed as follows :-



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"As a general rule, at all events, I hold that a failure of natural justice in the trial body, cannot be cured by a sufficiency of natural justice in an appellate body."

11. It, therefore, follows that even if the petitioner had filed an appeal, the appellate authority could not have set right the defect of the failure of the principles of natural justice committed by the Assistant Collector in passing an order on 18-12-1975. It is equally well settled that a void order is destitute of legal effect and the same can be ignored with impunity..."

71. By citing this decision, the learned counsel would contend that, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body, therefore even if an appeal is filed, the appellate authority could not have a set right the defect of the failure of the principles of natural justice committed by the original authority.

72. Since this Judgment being a Judgment passed by a single Judge, it is not binding on us, however certainly it would have some persuasive value.



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73. In this context, we do hold that, absolutely there has been no quarrel on the said principle stated by the learned Judge in the said Judgment. However in the facts of the present case, what is the incurable defect, that has been committed by the original authority in the present case is the question. As we held above, the notice, i.e., show cause notice had already been served properly under the mode as contemplated under the Act as well as the Rule. Therefore, first of all it cannot be construed that the principles of natural justice has been violated. Assuming that, because of the enquiry notice that has not been served on the noticees as claimed by them, whether any injury is caused by virtue of passing of adjudication order, certainly those issues can be canvassed before the Appellate Tribunal challenging the order of adjudication. Hence, we do not find that any incurable defect or injustice caused to the noticees at the adjudication stage and therefore, that cannot be stated that such a defect, if any, cannot be cured by the appellate forum.

74. The learned counsel appearing for the petitioners heavily relied



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upon the decision of the Hon'ble Supreme Court in Radha Krishan Industries case cited supra. In the said case, in para 27 ultimately the Hon'ble Supreme Court has explained the principles which are to be borne in mind by the law courts with regard to what is alternative remedy and what are all the exceptions to the rule of alternative remedy. The relevant portion of the Judgment reads thus :

27 The principles of law which emerge are that :

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.3. Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without



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jurisdiction; or (d) the vires of a legislation is challenged;

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.



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28. These principles have been consistently upheld by this Court in Chand Ratan v Durga Prasad [(2003) 5 SCC 399], Babubhai Muljibhai Patel v Nandlal Khodidas Barot [(1974) 2 SCC 706] and Rajasthan SEB v. Union of India [(2008) 5 SCC 632] among other decisions.

75. Para 27.3 of the said Judgment is relevant, where the following situations have been mentioned as exception to rule of alternative remedy.

- (1) the writ petition has been filed for the enforcement of a fundamental right protected by part III of the Constitution;
- (2) there has been a violation of principles of natural justice;
- (3) the order or proceedings are wholly without jurisdiction;
- (4) the vires of a legislation is challenged.

76. Out of these four situations, definitely the situation No.1 and situation No.4 do not fall in the present facts of the case and in fact, the learned counsel for the petitioners has not canvassed that point at all.

77. Since he canvassed the point No.2 and 3, i.e., violation of principles of natural justice, therefore the proceedings is wholly without



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jurisdiction is concerned, we have already given our answer that the principles of natural justice has not been violated in this case. Therefore, it cannot be said that the Adjudicating Authority without jurisdiction has passed the order of adjudication. Therefore, if we apply the said principles enunciated in Radha Krishan's case (*cited supra*) in the present facts of the case, that will advance the case of the respondents not the case of the petitioners.

78. Moreover as has been rightly pointed out by the learned Additional Solicitor General appearing for the respondents that, even though some Judgments have been cited by the learned counsel appearing for the petitioners, that can only be treated as a legal precedent, but so far as the facts of the present case is concerned, the very same adjudication order since has been considered by both the Division Bench of the High Court of Karnataka as well as the Hon'ble Supreme Court, where clear findings have been given, that shall certainly bind the present petitioners who are none other than the co-noticees.



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79. The said contention made by the learned Additional Solicitor General appearing for the respondents is appealing to us, because, as against the very same adjudication order, since attempt had been made by the co-noticees before the High Court of Karnataka, at that time to deciding the Intra Court Appeal, that by passing the adjudication order during the pendency of the Intra Court Appeal, that itself would amount to violation of principles of natural justice, because already the very show cause notices had been questioned and when that *lis* was pending, the Adjudicating Authority did not have any jurisdiction to proceed further and to pass final adjudication order.

80. Having considered the said question raised before the High Court of Karnataka, the Division Bench of the said Court has given its clear finding which has been quoted herein above.

81. In para 9 of the Division Bench Judgment, the High Court of Karnataka has stated that, the contentions which are raised in the writ



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petitions and writ appeals can be always raised before the Appellate Authority. Merely because the Adjudicating Authority has passed an order during the pendency of the Writ Appeals, it cannot be said that, the Writ Appeals have become infructuous.

82. In para 13 of the Division Bench Judgment, it has been held that, the issues raised by the appellants having not been finally concluded and notwithstanding the observations made by the learned single Judge, all issues remain open which can be agitated by the appellants in the statutory appeals.

83. Ultimately in the penultimate para, the Division Bench has held that, we make it clear that, we have made no adjudication on the merits of the challenge made in the writ petition and also merits of the adjudication order and issues are left open which can be decided by the Appellate Authority.



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84. Therefore what are all the issues that were raised before the High Court of Karnataka by the co-noticees of these petitioners having been considered was negated by the said Judgment of the Division Bench, where it was held in unequivocal terms that all issues are left open to be decided by the Appellate Authority, before whom the parties can go and file an appeal.

85. In fact when this was appealed to the Hon'ble Supreme Court, the Supreme Court also expressed its view in the similar line, where in respect of one set of noticee, a complete exemption was given by giving a direction to the appellate authority to exempt the requirement of pre-deposit as regards to the noticee namely M.Umesh and also in respect of the limitation point is concerned, in filing an appeal under Section 19 of the Act, the Supreme Court has made it clear that, the appellate authority shall not non-suit the petitioner for having filed the appeal beyond limitation as the petitioner was pursuing remedy before the High Court in the first place and thereafter before this Court (Supreme Court) after issuance of show cause notice.

86. In respect of other noticees, the Supreme Court has given a limited



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relief by permitting them to file a petition under second proviso to Section 19 to seek for such an exemption or waiver of the pre-deposit. The relevant portion of the order of the Supreme Court reads thus :

"If the appeal is filed in time, as aforesaid, the Appellate Authority may proceed with the appeal on its own merits in accordance with law and not non-suit this petitioner on ground of limitation as the petitioner has been bona-fide pursuing remedy against the show cause first before the High Court and also before this Court.

It will be open to the petitioner to file a formal application before the Appellate Authority for granting exemption from paying 100% pre-deposit amount. That application be considered on its own merits and in accordance with law. We may not be understood to have expressed any view either way in that regard."

87. Since such a clear orders have been passed by the Division Bench of the High Court of Karnataka, which has been confirmed by the Hon'ble Supreme Court, on the *lis* that was instituted by the co-noticees of these



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present petitioners, of course arising out of the same adjudication proceedings which culminated in the adjudication order, dated 30.01.2019, we do not find any reasons to entertain these writ petitions as canvassed by Mr.Shah, learned counsel appearing for the petitioners.

88. We have held that, as contemplated under Section 16 r/w Rule 4 and 14 of the Rules, show cause notice since have been served on all the petitioners herein, i.e., Noticee No.4,17 and 20, on the alleged ground of violation of principles of natural justice, these writ petitions cannot be entertained especially in applying the principle as laid down by the Hon'ble Supreme Court in the Radha Krishan Industries case cited supra.

89. Despite the above, it is open to the petitioners to raise these point of the violation of principles of natural justice before the Appellate Tribunal in case still the petitioners feel that the issue also can be adjudicated as one of the issue before the Appellate Tribunal.

90. That apart, insofar as the merits of the case is concerned, as we held above, we do not want to hold anything on the merits of the case, because that will have a bearing on the cause of the petitioners, when they



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approach the Tribunal by filing the appeal.

91. For all these reasons stated herein above, we are inclined to dispose of these writ petitions with the following orders :

(i) that the Writ Petitions in W.P.Nos.3774, 3781 and 3786 of 2019 are liable to be dismissed, since the final adjudication order has been passed on 30.01.2019, therefore they are dismissed as having become infructuous.

(ii) Insofar as W.P.Nos.6373, 30397 and 19023 of 2019 are concerned, as the alternative, effective, statutory appeal remedy provided under Section 19 of the FEMA Act, can very well be availed by the petitioners, without availing the same, since the petitioners have approached this Court, on that ground, these writ petitions are liable to be dismissed. Therefore these writ petitions are dismissed.



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(iii) However it is open to the petitioners to approach the Appellate Tribunal by filing appropriate appeal against the impugned order of adjudication, dated 30.01.2019, under Section 19 of the FEMA Act.

(iv) If such an appeals are filed within three weeks from today, the same shall be entertained by the Appellate Tribunal unmindful of the limitation prescribed under the Act.

(v) It is also open to the petitioners to file necessary application under second proviso to Section 19 to seek waiver or exemption, from the Tribunal, for the pre-deposit and if any such applications are filed, the Tribunal is hereby directed to consider the same on merits and pass orders thereon as a preliminary issue.

(vi) The aforestated permissions to the petitioners to file appeal belatedly with a petition to seek for waiver of the pre-deposit is granted by following the order passed by the Hon'ble



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Supreme Court in the said SLPs filed by the co-noticees arising out of the very same impugned adjudication order.

92. With the aforesaid directions and observations, all these writ petitions are dismissed. However, there shall be no order as to costs.

(R.S.K., J.) (K.B., J.)
11.12.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

1. The Special Director
Directorate of Enforcement
Southern Regional Office,
Ministry of Finance,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.

2. The Special Director
Directorate of Enforcement,
CGO Complex, 3rd M.S.O. Building,
6th Floor, C&D Wing, DF Block,

70/72



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Salt Lake, Section -I, Kolkatta - 700 064.

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3. The Assistant Director (Adjudication)
Directorate of Enforcement,
Southern Regional Office,
3rd Floor, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.
4. The Assistant Director
Directorate of Enforcement,
3rd Floor, 'B' Block, BMTC,
Shantinagar TTMC, K.H.Road,
Shantinagar, Bangalore - 560 027.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.
tsvn

Common order in
W.P.Nos.3774, 3781, 3786,
6373, 19023 and 30397
of 2019

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and

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18370, 18373, 30388, 30390 and 30391 of 2019

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

[Order of the Court was made by R.SURESH KUMAR, J.]

After pronouncing the orders, Mr.Rohan Shah, learned counsel appearing for the petitioners has made an appeal stating that, since these noticees are foreign nationals or foreign residents and as of now they are out of India, it takes some reasonable time to workout the formalities to approach the Tribunal to file an appeal, therefore the three weeks time granted by this Court may not be sufficient, hence the learned counsel requested for granting more time beyond three weeks.

2. Mr.A.Kumaraguru, learned Standing Counsel appearing for the respondents has submitted that, one noticee viz., Murugappan Alagappan is in India only, even in respect of another noticee who is the foreign national is



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concerned, for the purpose of filing appeal, his physical presence may not be required, therefore all such formalities can be undertaken at his place in the foreign soil itself.

3. Having considered these submissions, we feel that, since the Hon'ble Supreme Court in the order referred to above has granted only two weeks time in the said cases for the noticees therein to approach the Tribunal to file appeal, we do not want to give more time than the three weeks which itself is sufficient time, according to our view. Therefore, the request made by the learned counsel appearing for the petitioners is declined.

[R.S.K.J.]

[K.B.J.]

11.12.2023

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11.12.2023