

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.826 OF 2024

Nium India Pvt. Ltd.	]	..	Appellant
vs.			
Union of India & Ors.	]	..	Respondents

Mr.Aabad Ponda, Senior Advocate a/w Jugal Kanani, A. Mehta, Aviral Sahai, Pragya Chandak, Alok Agrawal i/b Cyril Amarchand Mangaldas for the Appellant.

Mr.Zoheb Hussain a/w Vivek Gurnani for Respondent No.1/ED.

Ms.Sharmila Kaushik, APP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 13th AUGUST, 2024.

P.C.

1] The present Appeal was filed, when the Appellate Tribunal, by order dated 25.07.2024, refused ad-interim relief in favour of the Appellant in the pending Appeal (Appeal No.1384/2024).

This relief was sought in the wake of specific grounds being raised and in particular ground no.(c) and (d) which read to the following effect :

“C. For that the Hon’ble Appellate Tribunal has failed to appreciate that the actions of the Respondent No.3 in not providing the Appellant with the complete set of documents (which have in

fact been relied upon the Respondent No.3 in issuing the SCN), are arbitrary, unreasonable and illegal and are against the tenets of principles of natural justice as laid down by the Hon'ble Supreme Court in T. Takano vs. SEBI, (2022) 8 SCC 162 (Para 29) where it has been held that : "29. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed."

D. For That the Appellant has, in the interim, filed the Reply reserving a right to file further reply, however, non-supply of the documents would impede the Appellant's response and would amount to denial of opportunity to be heard. The case of the Appellant can only be completely stated upon examination of the underlying material in the proceedings and non-supply of the documents would result in infraction of principles of natural justice. The Hon'ble AT has failed to consider that grave prejudice will be caused to the Appellant if access to the documents is not provided, which would curtail the right of the Appellant to file an effective and adequate reply to the SCN."

2] The Appeal was premised on the ground that the Appellate Tribunal has grossly erred in not granting ad-interim relief to the Appellant and refusing the stay during the pendency of the Appeal, leaving no option than to participate in the hearing and that too without having access to the complete set of documents, and this was projected as being violative of the principles of natural justice.

3] During the pendency of this Appeal, it is informed that the Adjudicating Authority has passed the final order on 07.08.2024 in the Original Application No.1180/2024.

Learned senior counsel Mr. Ponda has instructions to make a statement that this order shall be challenged separately by way of an

Appeal before the Appellate Tribunal in terms of Section 26 of the Prevention of Money Laundering Act, 2002.

The learned senior counsel, has, however, make an earnest request, to appreciate the grounds (C) and (D) in the Appeal, as according to him not providing the Appellant the complete set of documents, which was in fact relied upon by the adjudicating authority has affected his right to a fair trial, which include the proceedings, though before an Adjudicating Authority as well as the Appellate Authority.

4] We have given a thoughtful consideration to this submission.

Since it is informed that a final order is passed by the Adjudicating Authority in the Original Application, which shall be subjected to challenge in an Appeal, which is likely to be filed, the question raised as regards non compliance of the natural justice has been rendered academic as far as this matter is concerned.

However, its effect upon the order being passed, as it is sought to be assailed on the ground of it being in violation of principles of natural justice, definitely can be raised, but not in the present Appeal, as we are not inclined to decide the issue on academic aspect, as the prime relief in the Appeal is not pressed in the wake of Original Application No.1180/2024, being already decided by Respondent No.3.

5] In these circumstances, we deem it appropriate to permit the Petitioner to raise this question in a Writ Petition, by seeking appropriate relief to that effect.

By reserving the aforesaid liberty in the Appellant, Appeal is disposed off.

[MANJUSHA DESHPANDE, J

[BHARATI DANGRE, J]