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W.P.Nos.34758 & 34763 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 05.02.2025**

**CORAM:**

**THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.Nos.34758 & 34763 of 2024**

**and**

**WMP.Nos.37690 & 37697 of 2024**

**W.P.No.34758 of 2024**

M/s.MK Dandeker & CO LLP

Rep.by its authorised signatory, Mr.Poosaidurai

Partner

2<sup>nd</sup> Floor, New No.185, Old No.100,

Poonamallee High Road

Kilpauk, Chennai 600 010.

... Petitioner

Vs.

1.Securities and Exchange Board of India  
Plot No.C4-A, 'G' Block, Bandra – Kurla  
Complex, Bandra (E), Mumbai 400 051.

2.National Financial Reporting Authority  
8<sup>th</sup> Floor, HT Building, KG Marg, New Delhi  
110 003.

....Respondents



W.P.Nos.34758 & 34763 of 2024

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 15<sup>th</sup> September 2023 passed by the respondent No.1 bearing reference No.QJA/VS/CFID/CFID/29200/2023-24 and quash the same insofar as it pertains to the allegations and/or observations made against the petitioner.

**W.P.No.34763 of 2024**

M/s.MK Dandeker & CO LLP  
Rep.by its authorised signatory, Mr.Poosaidurai  
Partner  
2<sup>nd</sup> Floor, New No.185, Old No.100,  
Poonamallee High Road  
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For Petitioner in  
both W.P.Nos. : Mr.Sathish Parasaran  
Senior Counsel  
for M/s.Arva Merchant

For Respondents  
in both W.P.Nos. : M/s.Shivakumar & Suresh for R1

Mr.Zoheb Hossain  
for Mr.K.Srinivasamurthy for R2  
Senior Counsel

### **COMMON ORDER**

These Writ Petitions are filed for a writ of certiorari, call for the records pertaining to the impugned order dated 15.09.2023 passed by the first respondent bearing reference Nos.QJA/VS/CFID/CFID/29159/29159/2023-24 and QJA/VS/CFID/CFID/29200/2023-24 and to quash the same insofar as it pertains to the allegations and /or observations made against the petitioner.



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2. The brief factual matrix in which these Writ Petitions arise is that the petitioner is a Limited Liability Auditor Firm. It rendered its services to the entity known as Talwalkars Better Value Fitness Limited for the financial years 2016-17, 2017-18 and 2018-19. While so, when the said concern and yet another company by name M/s.Talwalkars Healthclubs Limited, whose name was later changed as M/s.Talwalkars Health Clubs Limited underwent a demerger effective from 01.04.2016, as per the order issued by the National Company Law Tribunal the petitioner continued as their Auditor for the financial year 2017-18 and 2018-19. Thereafter, yet another firm was appointed for the financial year 2017-18 onwards. While so, in an inquiry that was conducted as against the said management, its directors and office bearers, the SEBI passed an order on 15.09.2023 that is impugned in the Writ Petition. Adverse observations were also made against the petitioner. In paragraph 21 of the affidavit filed in support of the Writ Petition the relevant paragraphs containing these adverse observations are given. The petitioner was not even a party in the enquiry. In their absence without hearing them, the first respondent ought not to have made such observations.



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Now in view of the said findings that are made behind the back of the petitioner, the second respondent who is the appropriate authority for initiating disciplinary proceedings, has initiated proceedings against the petitioner. Therefore, those adverse findings visit the petitioner with grave consequences and are made without notice to the petitioner in violation of the principles of natural justice and therefore, the petitioner is before this Court.

3.The Writ Petition is resisted by the respondents. The Learned counsel for the first respondent awaiting the fair copy of the counter affidavit submitted a photocopy of the same. It is the contention of the first respondent that it is entitled to make an enquiry against the erring management. Originally it used to pass orders even as against the Chartered Accountants. Only because of the judgement rendered in the *Satyam Computers case*, by the Special Appellate Tribunal, the first respondent refrained from issuing show cause notice or summoning the petitioner firm and merely referred the matter to the second respondent which is the appropriate authority to initiate action. The learned counsel for the first respondent would further submit that as against the order of the Securities Appellate Tribunal, an appeal is pending



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before the Supreme Court and if the appeal is allowed in favour of the SEBI, the SEBI would itself initiate action even as against the auditors.

4. The second respondent resisting the Writ Petition by filing counter affidavit submits that it is the statutory authority to undertake an enquiry whether there is any omission and Commission/lapses on the part of the petitioner firm. It is their contention that they will not take the observations that are made by the SEBI as conclusive facts and that they will conduct an independent enquiry and will come to a conclusion after duly hearing the petitioner.

5. Heard *Mr.Sathish Parasaran*, the learned Senior Counsel appearing on behalf of the petitioner, *Mr.Shivakumar*, the learned counsel appearing on behalf the first respondent and *Mr.Zoheb Hussain*, the learned counsel appearing on behalf of the second respondent. The learned counsel on either side would reiterate the said stands as narrated above.



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6. Considering the submissions that are made, the primary grievance of the petitioner stood redressed with the submission made on behalf of the second respondent that they will not take the observations made by the SEBI on face value or as a conclusive proof of the facts mentioned therein and they will come to their independent conclusion while conducting an enquiry and also only after duly hearing the petitioner herein. For initiating the proceedings there must be a trigger point and those observations can only be considered as the starting point. Every fact will be independently ascertained by them and only after hearing the petitioner, conclusions will be drawn. Therefore that redresses the primary grievance of the petitioner.

7. The second grievance expressed by *Mr.Sathish Parasaran* is that when the petitioner is a reputed firm carrying on its business in accordance with its ethics and rules, these observations which are made behind the back will spoil their very reputation and also their business. The said grievance can also be redressed by holding that those observations are made without hearing the petitioner and cannot be taken by any other authority for initiating any action or concluding such facts as against the



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petitioner. For concluding the said facts against the petitioner, the findings will have to be made ultimately by the second respondent after due enquiry after hearing the petitioner.

8. With the above observations, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

**05.02.2025**

Neutral Citation : Yes/No  
dna

**To**

- 1.The Securities and Exchange Board of India  
Plot No.C4-A, 'G' Block, Bandra – Kurla  
Complex, Bandra (E), Mumbai 400 051.
- 2.The National Financial Reporting Authority  
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